

UDC 321.015:321.728:[328.132.7:328.162]
DOI <https://doi.org/10.32782/apfs.v053.2025.32>

A. Yu. Voichuk

ORCID ID: <https://orcid.org/0000-0002-1925-1307>

PhD in Political Science,

Assistant at the Department of Political Science

Taras Shevchenko National University of Kyiv

THE PLACE AND ROLE OF THE SYSTEM OF CHECKS AND BALANCES IN THE STRUCTURE OF THE SEPARATION OF POWERS

Problem statement. The issue of the separation of powers is one of the fundamental topics in political science and constitutional law. It defines the essential principles of the functioning of a democratic state, its institutional stability, and the assurance of the rule of law. At the same time, the very concept of the separation of powers would be incomplete without the system of checks and balances, which provides a practical mechanism for self-regulation and prevents the usurpation of power by any single branch.

In the modern political process, the system of checks and balances performs not only a legal but also a political function – it ensures transparency, accountability, and the legitimacy of public governance. However, in the context of political regime transformations, democratic crises, and the hybridization of governance models, there is a growing need to critically reconsider the role of this system in light of contemporary challenges.

Analysis of the latest research and publications. Among the numerous studies and publications that explore the role of the system of checks and balances within the framework of the separation of powers, the works of the following scholars deserve particular attention: A. Vanderbilt, N. Zhuk, M. Oriu, I. Protsiuk, I. Yatsenko, O. Bulba, and Ya. Mytrovka and others.

The aim of the article. The purpose of this article is to analyze the place and role of the system of checks and balances in the separation of powers.

Presentation of the main research material. The principle of the separation of powers is one of the fundamental principles of modern democracy and the rule of law. As such, the American scholar A. Vanderbilt refers to the separation of powers as the most important principle of state governance. He argues that individual freedom and the progress of civilization can only be achieved if each of the three branches of government operates on the basis of this principle [14, p. 212]. The German author R. Dahrendorf notes that the separation of powers is not a fact of real life; in society, there can be no complete separation of powers, but rather an intertwining and blending of them, with each state combining them in a unique and specific way [6, p. 4].

The main requirements of the separation of powers include the institutional and functional independence of state bodies differentiated by their roles, the clear definition of their specific powers and legal forms of activity, as well as their mutual influence, balancing, restraint, and oversight mechanisms [3, p. 17].

Over time, the principle of the separation of powers has undergone both conceptual changes and shifts in how it is perceived. For example, in twentieth-century Europe, the principle was often challenged. Scholars focused particular attention on the issue of ensuring unity among the separated branches of power. Thus, I. Kant wrote that the branches of power must “mutually complement one another, maintaining the necessary connection and coherence for the good of the state” [10, p. 512]. G. Hegel envisioned the state as a “cohesive organism functioning through the differentiation, interconnection, and living organic unity of various powers derived from the strength of the whole” [9, p. 194].

The unity of power can be viewed as the unity of fundamental goals and directions in the activities of state authorities. This approach is appropriate, as it allows for the concentration of efforts across all parts of the state apparatus to address socially significant issues. However, some have interpreted unity of power as the concentration of all authority in a single body. Moreover, the very founders of the concepts of unity and separation of powers did not always refer to the same notion when using the term “power”. Charles-Louis de Montesquieu focused on the organizational and legal interpretation of the separation of powers, while Jean-Jacques Rousseau, opposing the principle, advocated for unity of power from a sociological standpoint [13, p. 52]. These differing approaches laid the foundation for the development of various models concerning the structure of supreme state authorities.

An equally important aspect of the separation of powers is the nature of the interaction between the branches of government. Two main types of separation of powers can be distinguished – rigid and flexible. These are primarily manifested in two forms of government: the presidential and the parliamentary republics.

A rigid separation of powers is characteristic of presidential republics. One of its main features is the institutional isolation of the branches of government. However, this approach is often misunderstood. In systems with rigid separation, each branch is independent and operates within its own sphere of authority, separate from the others. Nevertheless, they are not entirely isolated from one another. French scholars note that interpreting separation of powers through the lens of strict isolation is “practically inconvenient and dangerous, devoid of legal logic”, and may lead to a situation where “one branch is privileged through the isolation of the others” [7, p. 97], which contradicts the very essence of the separation of powers.

The principle of separation of powers is based on the allocation of checks and balances between branches. Montesquieu wrote: “If the executive authority does not have the right to stop the actions of the legislative assembly, the latter will become despotic... The legislative power has the right and must examine how its laws are being implemented” [11, p. 113]. Thus, the executive and judiciary have the authority to influence the legislative branch. The head of state may exercise influence by vetoing parliamentary laws, while the judiciary does so through constitutional review mechanisms.

Additionally, as noted by N. Zhuk, the executive may be granted certain judicial powers, such as the right of pardon. Parliament, in turn, can interfere in the activities of the executive through parliamentary oversight. It also performs quasi-judicial and judicial functions. For example, impeachment conducted by parliament is essentially a judicial process; similarly, declarations of amnesty contain elements associated with the judiciary’s prerogatives [3, p. 19].

Avoiding any form of mutual restraint between branches of power is impossible, even under rigid separation. However, such interaction remains limited. For instance, “the legislative power should not have the right to stop the actions of the executive... nor should it have the authority to judge a person, including the conduct of the executive” [11, p. 114]. In this context, the observation by French scholar M. Hauriou is particularly relevant. While acknowledging that modern understandings of separation of powers are based on Montesquieu’s doctrine, he argued that the doctrine was often misinterpreted by his followers. According to Hauriou, Montesquieu’s contemporaries believed that “the parliament, the government, and indirectly the courts are organs, each of which must remain locked within its own specific function” [8, p. 507]. The error lay in the fact that Montesquieu emphasized the necessity of a system of checks and balances between state institutions – an element that many of his European followers ignored.

Absolute separation of powers has never existed in practice, nor was it ever prescribed by any constitution, including the earliest bourgeois constitutions (such as the 1787 U.S. Constitution and the 1819 French Constitution). In its 1974 ruling in *United States v. Richard Nixon*, the U.S. Supreme Court articulated its view of the principle of separation of powers: “The Constitution not only divides power to better secure liberty, but it also contemplates that the divided powers must come together in practice for effective governance. The Constitution mandates that the branches of government be both separate and interdependent – autonomous, yet also interactive” [5].

Thus, the establishment of the presidency in the United States and the development of the checks and balances system associated with it were intended to ensure mutual restraint and cooperation among the branches. As N. Zhuk notes, the need for closer interbranch cooperation was not as pressing at the time the checks and balances system emerged as it would later become due to the natural development of society and the state. During the early capitalist period, the state was not expected to intervene extensively in the economy. Its role was largely confined to that of a “night watchman” [3, p. 20]. In the U.S. during that era, this was reflected in several court rulings declaring the delegation of legislative powers unconstitutional, and in multiple uses of the veto power.

It was in the 1920s, particularly after World War II, that the system of checks and balances began to come to the fore both constitutionally and in practice. Rigid separation of powers became incompatible with extensive state intervention in the economy. Theoretical justification for closer cooperation among the branches, including through expansion of administrative discretion and executive powers, became necessary due to new domestic and international challenges. This prompted the development of mechanisms aimed at daily interbranch communication and the search for workable policy solutions.

This marked a natural evolution of the separation of powers in other forms of government as well. The departure from a rigid interpretation of the principle during the second half of the 20th century was also evident in Western Europe. First, it appeared in the conceptual justifications for changes in the structure of power in modern states. Second, it found expression in the constitutional recognition of mixed forms of government.

Within the framework of parliamentarism – where many different bodies exercise power, often without clearly defined institutional or functional boundaries – new concepts emerged such as the “diffusion”, “dispersion”, or “blending” of powers. This gave rise to the flexible model of separation of powers characteristic of parliamentary systems. Key features of the flexible model include: the exec-

utive branch is formed by the representative body based on a parliamentary majority; the principle of mutual restraint operates through the parliament's ability to express a vote of no confidence in the government, while the government retains the right to dissolve parliament; executive power is exercised by a collegial body – the cabinet; the head of state is not the head of government and holds limited powers; the government assumes responsibility for the actions of the head of state; and the head of state's acts must be countersigned by the head of government and/or the relevant minister. Furthermore, the rigidity or flexibility of the separation of powers often depends on the parliamentary party structure, particularly whether a single party holds a majority of seats.

The system of checks and balances under a flexible separation of powers has certain specific features. The government is formed by the parliament and is politically accountable to it, stepping down when such responsibility is invoked. In turn, the government, through the parliamentary majority that supports it, influences the legislature. It is granted the right of legislative initiative and, under certain conditions, may initiate the dissolution of parliament by the head of state. In parliamentary systems, the separation of powers functions internally within the legislature—between the governmental majority and the opposition.

Additionally, as early as 1918, German scholar R. Redslob described how, in a typical continental parliamentary system, the main axis of tension shifted from the executive-legislative relationship to inter-party dynamics. Reflecting on the nature of separation of powers in his time, he lamented: "The system of interconnections brought forth by parliamentarism, created on a party-political basis, is extremely difficult to balance successfully solely through constitutional separation of powers. Thus, the "spirit" of parliamentarism is more likely "dead" and left unchecked" [12, p. 71].

It is inappropriate to deny the strong influence of various social factors—particularly political parties – on the implementation of the separation of powers. On the contrary, there is a need to find ways to mitigate the negative consequences of such influence and provide theoretical justification for reforms, as Charles de Gaulle did in 1958 by introducing a mixed system of government in France. The counterbalance to the party regime, which saw the parliament as the main instrument of its politics, was found in the specific role of the president – endowed with exceptional powers and positioned as the arbiter of the nation. The mixed form of government aimed to combine the advantages of presidential and parliamentary systems. The key characteristics of the separation of powers under a mixed system include: dualism within the executive

branch; the existence of a prime minister; the countersignature mechanism; the presidential veto; the government's dual political accountability; and the president's authority to dissolve parliament.

According to M. Hauriou, in a mixed system of government, the separation of powers takes on an "elastic nature", which allows for the comprehensive strengthening of executive bodies when necessary [8, p. 654].

On one hand, the diversity of approaches to the principle of separation of powers in practice can serve as a pretext for deviations from even its classical and universally recognized requirements. On the other hand, particular attention should be paid to the view of M. V. Tsviak, who noted: "A global model of separation of powers does not exist. Depending on specific historical conditions, various forms or combinations of forms are applied" [4, p. 62]. It should also be noted that public expectations of the system of power shift over time. For example, the political crises that emerged in Ukraine after the collapse of the Soviet Union in the early 1990s fostered public support for a strong presidential system [1, p. 8]. In contrast, public discontent with systematic executive abuses, combined with weak parliamentary institutions, economic stabilization, and the desire for European integration, led to a constitutional revision just a decade later that strengthened parliamentary foundations in Ukraine [2].

In practice, the same form of government can differ across states in terms of the checks and balances implemented and their ability to ensure an effective separation of powers. For example, presidential-parliamentary systems in France (since 1958) and Ukraine (since 1996) demonstrate varying degrees of effectiveness in balancing powers. In France, the system granted the president significant dominance over parliament and the judiciary. In contrast, Ukraine's system has promoted a more balanced relationship between the judiciary and the other branches of power.

In practice, mixed systems of government lack the structural stability of purely presidential or parliamentary systems and tend to shift toward one or the other. This evolution is reflected in the transformation of the system of checks and balances, with new elements introduced from either presidential or parliamentary models. Consequently, mixed systems gradually gravitate toward becoming either presidential or parliamentary. The constitutional reform in Ukraine provides a vivid example of this trend.

In general, the analysis of global and domestic theory and practice related to the transition from traditional to mixed forms of government reveals several key trends. First, such transitions are usually prompted by the need to curb abuses of power by one branch or institution. Second, they reflect

both the democratization of governance and the persistence of certain authoritarian tendencies, such as the establishment of personalized leadership – as seen in France in 1958. Third, the executive in presidential-parliamentary republics is characterized by the fusion of presidential and executive powers, with the president effectively heading the executive and thus becoming more than just a head of state. Fourth, the transition from a presidential-parliamentary to a parliamentary-presidential system often involves transforming the presidential power into a distinct branch, alongside the legislative, executive, and judicial powers. This is facilitated by removing the president from direct executive functions and strengthening the autonomy of the cabinet.

Conclusions and prospects for further research.

This study has confirmed that the system of checks and balances is an integral part of the concept of separation of powers. Without it, the principle loses both its functional effectiveness and practical viability. The system serves as a mechanism for maintaining dynamic equilibrium among the legislative, executive, and judicial branches, preventing power concentration and preserving democratic order.

Historical experience – from the origins of the system in the United States to its development in European states – demonstrates that the system of checks and balances can adapt to political change while preserving its core function: ensuring citizens' rights and freedoms by maintaining a balance of authority. In the face of growing internal and global challenges, the relevance of this system only increases, as it promotes institutional resilience, transparency in decision-making, and protection against authoritarian tendencies.

Nevertheless, the effectiveness of the system depends not only on its formal entrenchment in constitutional law but also on political culture, the maturity of institutions, and society's capacity for democratic dialogue. Thus, it is essential not only to uphold a formal balance of power but also to create real conditions for its operation within a state governed by the rule of law.

Bibliography

1. Бульба О. Питання поділу влади в Україні: пошук оптимальних варіантів. *Право України*. № 4. 2003. С. 8–11.
2. Жданов І. Програми політичних партій про організацію державної влади в Україні. «Вибори – 2002: позиції політичних партій і блоків з питань організації державної влади в Україні». Український Центр економічних і політичних досліджень ім. О. Розумкова. Київ, 2002. березень.
3. Жук Н. Стимування і протидія в системі поділу влади в Україні (загальнотеоретичні проблеми): дис... канд. юрид. наук: 12.00.01. Х., 2006. 221 с.

4. Цвік М. В. Конституційні проблеми розподілу властей (деякі загально-теоретичні аспекти) / Вісник Академії правових наук України. 1993. № 1. С. 60–68.

5. Constitution of the United States in 1787. URL: <https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm> (date of application: 12.01.2024).

6. Darendorf J. R.A. Confusion of powers. Politics and the Rule of law. *Modern law review*. 1977. Vol. 40. N 1. Pp. 1–15.

7. Demichel de André, Demichel Francine, Piquemal Marcel. Institutions et pouvoirs en France. Éditions sociales. 1975. 224 p.

8. Hauriou Maurice. Précis de droit constitutionnel. 2e édition. Dalloz 1929. 794 p.

9. Hegel Georg Wilhelm Friedrich. Grundlinien der Philosophie des Rechts. Edition Holzinger. Taschenbuch. 268 p.

10. Kant, Immanuel. Critique of pure reason. A library of Universal Literature: Pt. 1 / I. Kant. New York, 1901. 617 p.

11. Montesqu, Charles-Louis de Secondat. De L'esprit Des Lois, Volume 1... Legare Street Press. 2023. 286 p.

12. Redslob R. Histoire des Grandes Principes du Droit des Gens depuis l'antiquité jusqu'à la veille de la grande guerre. Paris. Librairie Arthur Rousseau. 1923. 600 p.

13. Rousseau Jean-Jacques. The Two "Discourses" and the "Social Contract". University of Chicago Press. 2014. 344 p.

14. Vanderbilt A. The Doctrine of the Separation of Powers and Its Present-Day Significance. University of Nebraska press. Lincoln, 1963. 522 p.

Summary

Voichuk A. Yu. The place and role of the system of checks and balances in the structure of the separation of powers. – Article.

This article examines the place and role of the system of checks and balances within the framework of the classical concept of the separation of powers, which forms the foundation of a democratic state. The study analyzes the historical origins of the concept, beginning with the ideas of Charles-Louis de Montesquieu and culminating in the practical implementation of the system of checks and balances in the United States. There are two types of separation of powers: rigid and flexible. Rigid separation of powers is typical for presidential republics and is characterized by the formal isolation of state branches. The system of checks and balances is most fully implemented in presidential republics, where the government is not politically accountable to the parliament and cannot be dismissed by it, while the president, in turn, lacks the authority to initiate legislation and dissolve the parliament. Flexible separation of powers is inherent in parliamentary forms of government. The system of checks and balances under flexible separation has specific features: the government is formed by the parliament and is politically accountable to it; the government influences the parliament through the supporting parliamentary majority; it holds the right of legislative initiative and,

under certain conditions, may initiate the dissolution of parliament by the head of state. In parliamentary systems, the separation of powers is functionally realized within the parliament itself – between the governing majority and the opposition. Thus, the system of checks and balances serves as a key factor in ensuring the stability and legitimacy of democratic governance, while its weakening or disregard creates preconditions for authoritarianism and the usurpation of power. Accordingly, the continuous improvement of mechanisms of mutual control among the branches of government is emphasized as a guarantee of the effective functioning of the rule of law.

Key words: system of checks and balances, separation of powers, flexible separation of powers, rigid separation of powers, presidential republic, parliamentary republic, mixed republic.

Анотація

Войчук А. Ю. Місце і роль системи стримувань і противаг у структурі поділу влади. – Стаття.

У статті розглядається місце та роль системи стримувань і противаг у контексті класичної концепції поділу влади, яка лежить в основі демократичної держави. Здійснено аналіз історичних витоків концепції, починаючи з ідей Шарля-Луї де Монтеск'є та завершуючи практичним втіленням системи стримувань і противаг у США. Існує два різновиди поділу влади: жорсткий та гнучкий. Жорсткий поділ влади характерний для президентської республіки. Він характеризується

формальною ізоляваністю гілок державної влади. Найбільш повно у президентській республіці реалізується система стримувань і противаг. У такій системі уряд не підзвітний парламенту в політичному сенсі та не може бути ним усунений, тоді як президент, у свою чергу, позбавлений повноважень щодо законодавчої ініціативи й не має права розпускати парламент. Гнучкий поділ влади притаманний парламентарним формам правління. Система стримувань і противаг за гнучкого поділу влади має певні особливості: уряд формується парламентом і несе перед ним політичну відповідальність, за настання якої йде у відставку; уряд через парламентську більшість, на яку він спирається, впливає на парламент; уряд наділяється правом законодавчої ініціативи і за певних умов може ініціювати розпуск парламенту главою держави. За парламентарних форм правління поділ влади функціонально відбувається всередині парламенту – між урядовою парламентською більшістю та опозицією. Отже, система стримувань і противаг виступає ключовим чинником забезпечення стабільності та легітимності демократичної влади, а її ослаблення або ігнорування створює передумови для авторитаризму та узурпації повноважень. У зв'язку з цим наголошується на необхідності постійного удосконалення механізмів взаємного контролю між гілками влади як запоруки ефективного функціонування правової держави.

Ключові слова: система стримувань і противаг, поділ влади, гнучкий поділ влади, жорсткий поділ влади, президентська республіка, парламентарна республіка, змішана республіка.