

The idea of division and balance of powers and how it guarantees individual rights and freedoms

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Abstract: *This article explores the historical and theoretical underpinnings of the division and balance of power, a cornerstone principle in Western political thought that ensures individual rights and freedoms. Tracing its roots back to the mixed polity theories of ancient Greece and Rome, the concept has profoundly influenced modern Western state structures, including the executive, legislature, and judiciary. The separation of powers, as articulated by philosophers such as John Locke and Montesquieu, and its practical application in constitutional governments, particularly in the United States and the United Kingdom, showcases its pivotal role in stabilizing political situations and promoting political progress. By examining the evolution of this concept and its application in different political entities, this paper highlights the fundamental importance of a balanced division of power in protecting individual liberties and fostering democratic governance. Through historical analysis and practical examples, the paper argues that the division and balance of power not only shapes the superstructures of states but also safeguards the social life and rights of individuals, thereby contributing to the advancement of social justice and the rule of law in contemporary societies.*

Keywords: *John Locke, Separation of powers, checks and balances, Montesquieu*

1. Introduction

The idea of division and balance of powers was originated from Plato and Aristotle, was officially presented by Polybius in Ancient Rome Age and was developed by John Locke. Finally it was integrated by Montesquieu and afterwards was carried out by the USA constitution drawn up by Thomas Jefferson and Alexander Hamilton. The system of separation of powers of western countries are different because they reflect the differences of Social-historical conditions and political tradition among them. However, they are very similar in fundamentals and it means checking power by power or power being balanced Mutually. Due to the variation of time and space, the ideal has evolved into numerous of ways. The idea of division and balance of powers effects the modern western state structures profoundly, which including the executive, the legislature and the judiciary powers. Therefore, it does not only modeled the superstructures of states, it also affects each and every individuals who involves in social life. Hence, in this essay I will try to make a thorough inquiry of 1) The origin of division and balance of power; 2) How does the balance of power affects individuals (how does it works) in different entities and states. And give some practical examples.

2. Origins of the idea of division and balance of power

To start with, what is the idea of division and balance of power? The division and balance of power, as know as separation of power, or checks and balances. The ideal of the separation or the division of powers suggests that the principal institutions of state— executive, legislature and judiciary— to safeguard liberties that should be functionally independent.

2.1 Plato (428-347 BC) suggested a "mixed government" in the political system

In this system, he designed governing organizations as follow: law protectors, citizens' assemblies, executive councils, and night meetings. What he advocated was monarchy and democracy. The former example is the Persian regime, the latter refers to the Athenian regime, and the other regimes are actually just a deformation of these two regimes. He believes that if a political system wants to integrate the virtues of freedom, friendship, and wisdom, it must adopt one of these two forms of government at the same time. If any country does not adopt the components of these two forms of

government, then it cannot be regarded as a legitimate organization. It is believed that the government's enforcement of the law should be based on the wishes of the people, not on coercion, that is, the government is based on the consent of the ruled, so as to prevent the inappropriate expansion of authoritarian power. It is pointed out that the government of Sparta, besides the king, still has the check of parliament and inspector is a suitable example. So far there has been the concept of "checks and balances".^[1]

2.2 Aristotle's theory of decentralization focused on political systems in his book "Politics."

Aristotle believed that mixed polity was good, but he believed that in special environments, which regime is the best depends on whether it can adapt to the environment. As long as a regime has many supporters and few opposers, and can maintain stability and order, it is a good regime. He believed that "any state organization" should have three organs: (1) Deliberative Organ, responsible for the election and supervision of administrative officials, declaration of war and peace, contracted legislation and death sentence, and has the highest legal power. (2) Administrative Organ; and (3) Judicial Organ. He also pointed out that no matter what kind of government a country has, there must be one of such an institution.

Aristotle's "three elements" theory declares that the deliberative function, the administrative function, and the judicial function are actually the way to divide the political power by the functions of different parts of the political system, and provide an important ideological source for the theory of the separation of powers in later generations.

2.3 John Locke: The separation of powers was mentioned by John Locke (1632-1704) in his Two Treaties of Government

Locke believes that if the same group of people have the power to make and enforce laws at the same time, this will give people a great temptation to their weaknesses and make them seize power at their wills, so as to save themselves from obeying the laws they make, and while formulating and implementing laws, they make the laws suitable for their own private interests, so they have different interests from the rest of the society, which violates the goals of society and the government.

In short, Locke emphasizes that the people are the supreme power. On the one hand, they use the legislative power to supervise the executive power, and on the other hand, the people personally supervise the legislative power to protect their lives, freedom and property. For example, the government legislative department or the administrative department cannot perform the duties, and when the rights of the people are ravaged, the people can start revolutions against the government.

2.4 Montesquieu's arguments: It was mainly presented in his book "The Meaning of Law (or the Spirit of Law)

Montesquieu advocated the separation of powers for the purpose of protecting the political freedom of the people. Montesquieu improved Locke's decentralization theory structure, it formed administrative, legislative, and judicial powers and he indicate that these powers should be separated, checked and balanced by each other. It has made great contribution in political democratization.

According to Montesquieu's philosophy, in order to maintain the political freedom of the people, power must be "separated", and in order to avoid abuse of power, power must be "checked and balanced." Therefore, "separation of powers" and "checks and balances of powers" are actually very important connotations of the "separation of powers" advocated by him. Montesquieu not only divided the political power of the country into three powers, but he also advocated that the three powers must be strictly separated.

Assigned to three different organs. This is the concept of "separation of powers". It also advocates that to avoid abuse of power, power must be restrained by power, and there is a concept of "power checks and balances". Montesquieu's doctrine was originally intended to preserve the monarchy, so his theory was an improvement, not a revolution. His doctrine had a great influence on the American constitution, especially after the nineteenth century, his three powers the theory of separation is universal in all countries in the world and has become one of the basic principles of democratic constitutionalism.

To sum up, all these scholars' opinion indicates that it is of vital importance to use the idea of

division and balance of power to protect individuals' rights and freedom. Montesquieu also claimed in 1748: When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty... there is no liberty if the powers of judging is not separated from the legislative and executive... there would be an end to everything, if the same man or the same body... were to exercise those three powers.

To explain it from a more structural and more simple perspective is that: Separation of powers refers to the separation of government power in the three factors: organization, function, and personnel. Thus, in order to establish and maintain political freedom, the government is divided into three departments: legislative, administrative, and judicial. Each of the three departments has correspondingly defined functions. They are all limited to the execution of its own functions. The personnel who make up the three government agencies must remain separated and distinct, and no one is allowed to be a member of more than one department at the same time. Each department will be a restriction on the other departments, and no group of people can control all the agencies of the country. Thus, as the ideal of division and balance of the power has evolved through hundreds of years, how do countries and entities construct a government framework to achieve the ultimate goal of checks and balances? And how does the idea of division and balance of power make influences on protecting individual's rights and freedom? [2]

3. Practical example of division and balance of power. How does the balance of power protect individuals' rights and freedom in different entities and states. (Took USA and UK as examples.)

USA example:

The idea of division and balance of powers was born and formed in Europe, but first came to fruition on the American continent. The United States Constitution, the first written constitution in the world, designed its national system strictly in accordance with the doctrine of separation and decentralization of powers. Under the American system of separated powers, the federal government would serve as a check on the states; and at the federal level, the legislative, executive and judicial branches would restrain each other. According to the U.S. Constitution, congress is the highest legislative power in the United States. Legislations in Congress must be approved by the President, and the President has the right to deny legislations from the Congress. The President can also influence Congress' legislation through the "State of the Union message". The Vice President also serves as the Speaker of the Senate, which also constitutes an executive authority over the legislature which contributes to one of the elements of the idea of division and balance of power; in turn, Congress has the power to impeach the president, it has the right to approve the appointment of judges by the president and the conclusion of treaties with foreign countries. [3]

What is more, rather than being characterized by a system of functionally separate powers, after much debate, the American Constitution substituted a model of mutual inter-dependency in place of the continental model of strict compartmentalization. Under the American model, "each power center would remain dependent upon the others for the final efficacy in its social designs." At the core of the American system of separating powers through a regime of checks and balances was the idea that governmental actors could not be trusted. The doctrine of separation of powers in particular is to raise the decision costs of government in order to face. Economic activity out of the public domain and into the private domain. Checks and balances could also provide for the protection of individual citizens by making it more difficult for government to pass laws. In other words, if the system of division and balance of powers does nothing else, it makes it more difficult to enact statutes.

The founders of USA separated powers within and between many levels of government - national, state and local. Within the federal government they separated power among the legislative, executive and judicial branches. Between the federal government and the states, the Founders separated the total powers of the federal government from the general powers of the states. The power of each state government is similarly separated between legislative, executive and judicial branches. And, within each state, local governments operate with autonomy from the statewide government in their respective spheres, also separated among the three branches.

All this is to say that there is vertical separation of powers among at least three levels of government, and horizontal separation of powers within each layer among the three branches of government. The point of this nine-fold separation of powers is clear, as the Americans claim: to preserve individual liberty and freedom and to protect individual citizens from the tyranny of an unchecked government.

UK example:

The United States Constitution adheres closely to the separation of powers. Article I grants powers to the legislature; article II gives executive power to the President; and article III creates an independent judiciary. Congress is elected separately from the President, who does not sit as part of the legislature. The Supreme Court can declare the acts of both Congress and President to be unconstitutional. Globally, the separation of powers has enjoyed very different degrees of implementation. Parliamentary systems of government have usually united legislature and executive for the sake of expediency. By contrast, presidential systems tend to be strictly separated.

In practice, however, many countries do not aim for a strict separation of powers, but opt for a compromise, where some functions are shared between the institutions of state. In the United Kingdom and other common law jurisdictions, however, the theory of separation has enjoyed much less prominence. In the UK, the major offices and institutions have evolved to achieve balance between the Crown (and more recently the Government) and Parliament. The system resembles a balance of powers more than a formal separation of the three branches, or what Walter Bagehot called a “fusion of powers” in *The English Constitution*. In the UK, the powers of Parliament, Government and courts are closely intertwined. In fact, the executive and legislature are seen as a “close union, nearly complete fusion of the executive and legislative powers,” which Walter Bagehot viewed as the “efficient secret of the English constitution”.^[4]

In the UK, the executive comprises the Crown and the Government, including the Prime Minister and Cabinet ministers. The executive formulates and implements policy. The legislature, Parliament, comprises the Crown, the House of Commons and the House of Lords. The judiciary comprises the judges in the courts of law, those who hold judicial office in tribunals and the lay magistrates who staff the magistrates’ courts. Senior judicial appointments are made by the Crown.

In order to prevent the executive from controlling Parliament, the House of Commons (Disqualification) Act 1975 created limits on the number of salaried ministers who sit in the Commons. Additionally, the legislative branch of government retains the formal power to dismiss executive officers from office. The convention of ministerial responsibility establishes the accountability of government to Parliament. Following the decision to cut the number of MPs in the House of Commons from 650 to 600, enacted in the Parliamentary Voting System, the Public Administration Select Committee examined the role and responsibilities of ministers to see if there was scope for reductions there too. About 20% of MPs are currently on the “payroll vote” as ministers or their Parliamentary aides and are obliged to vote with the Government or resign their position.

Some scholars put forward three suggestions when summing up the good of the legislation and practice of the US and UK’s balance and division of powers:

- (1) Separated power must be real power, not symbolic power.
- (2) The restriction of power must be two-way or multi-directional, mutual restriction, not one-way supervision.
- (3) Judicial power must be independent. This is quite insightful.

As one of the most important elements of the idea of division and balance of power, rights should restrict power. The principle of restricting power by rights is simple: the basic rights of citizens should be protected by the law, and the exercise of any power must not infringe the legal rights of citizens. Innate human rights. One of the value goals pursued by the rule of law in a civilized society is to achieve social justice. Protect the basic rights of citizens. However, as Locke said: The greatest danger of rights does not come from the abuse of individual rights, but from political power. "The impact of power on rights is immeasurable. From a certain perspective, legally due rights often require the recognition and protection of power to become actual rights. It is precisely because of the authority of power. It is also the most likely to infringe on rights. One of the tasks of the law is to constrain power, clearly stipulating that the exercise of power within a predetermined scope must be limited to the basic rights of citizens. A good constitutional model is to establish a reasonable boundary between state power and civil rights and their mutual coordination In order to protect the rights of citizens, especially statutory basic rights, through the standardization of the exercise of power.^[5]

On the other hand, citizens also enjoy the right to litigation of administrative powers, and can resort to judicial power for improper administrative actions of administrative departments. In order to guarantee this right, it is necessary to strengthen the independence of the judicial organs, improve the efficiency of the judicial organs in handling cases, and strictly enforce the law in accordance with the

force of the law, the matter and the law.

Finally, for issues that are not resolved by administrative agencies and judicial agencies, citizens can appeal to the power agencies to verify that they are true and should have the power to order relevant departments to correct them. If they do not correct, the power agencies have the power to punish those directly responsible. The competent authority may not be able to handle the case in time due to the accumulation of cases, and it may authorize an independent supervisory department that has no interest in the case to handle it. It can be seen from this that the protection of civil rights should be a progressive process of layered protection, and it is inseparable from the power restraint relationship between state agencies. What needs to be emphasized is that the power to restrict power not only requires that power cannot infringe on power, but also that the exercise of power should be guaranteed. The legal right should be transformed into real right to the greatest extent in the system of division and balance of power.

4. Conclusion

The ideal of division and balance of power has a long history in the Western world. The theory of mixed polity in ancient Greece and Rome provides a theoretical basis for it. The idea of separation of powers and checks and balances originated from Plato and Aristotle in ancient Greece, and Bolibes in ancient Rome formally proposed it, and was developed by Locke and other great thinkers. It was concluded by Montesquieu. It was put into practice in the American Constitution formulated by Thomas Jefferson and Alexander Hamilton. It was conceived and born in the Western revolution, and has been baptized, tested and developed in the practice of revolutions. The ideal of division and balance of power were completed before the French Revolution storm came; The ideal of division and balance of power was formed maturely in the American independence war. It was mostly manifested as the pure doctrine of the separation of powers during the revolutionary period of the European continent; while in the non-revolutionary period, it was manifested as a combination of the separation of powers and checks and balances.

With the rise of the modern democratic movement, a new value emerges in the Western world, which is social justice. It has increasingly become the overriding value in the government of the modern era, so the theory of separation of powers and checks and balances has also been revised and has new developments. It is no longer just the internal decentralization and checks and balances of various parts of the government, but emphasizes the separation and coordination of state power among many social forces such as different political parties, multiple interest groups or pressure groups, and news media, and emphasizes the external social power to control or affect state power. The idea of division and balance of power has shifted from emphasizing internal powers and checks and balances to increasingly concerned about external powers and external control; the political freedom of the people is the fundamental motivation, and the ultimate goal.

In fact, the idea of division and balance of power is a philosophy. In the development process of world constitutional government, if this balance is well controlled, it will help stabilize the country's political situation and promote the country's political progress and help to protect individuals freedom and rights; conversely, if the power of a certain department is too expanded, political instability and frequent cabinet collapses will occur, or there may be political disturbances.

In short, in the development process of constitutional government, through the separation of powers, the state power will not be concentrated in the hands of a few people or individuals, which profoundly protects the rights of the citizens.

The constraints between powers will not easily lead to autocracy, promote the stability of the political situation. All those who have power are prone to abuse power. This is an experience which has been tested through thousands of years. People who have power use power until they stop when they encounter boundaries. Therefore, from the perspective of the exercise of state powers, the idea of division and balance of power emphasizes the balance and restriction of power within state agencies. It has a positive effect on preventing autocracy, implementing a country under the rule of law, and establishing pluralistic democracy and a blameless rule of law.

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