УДК: 321.7

СТАНОВЛЕННЯ ТА РОЗВИТОК ІДЕЙ ЩОДО ФУНКЦІОНУВАННЯ СИСТЕМИ СТРИМУВАНЬ І ПРОТИВАГ

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(стаття надійшла до редколегії – 26.09.2017 р., прийнята до друку – 25.10.2017 р.)

Розглянуто основні історичні етапи становлення поглядів на систему стримувань і противаг. Виокремлено основні характеристики кожного з історичних періодів дослідження зазначеної проблематики. Відстежено еволюцію основних ідей щодо поділу влади та показано зміст системи стримувань і противаг як основної запоруки демократичного функціонування влади за умов республіканської форми правління. Виокремлено характерні особливості системи стримувань і противаг на практиці сучасних демократій.

Ключові слова: *стримування, противаги, поділ влади, гілки влади, республіка, форма правління, система, демократія.*

BECOMING AND DEVELOPMENT OF IDEAS ABOUT THE FUNCTIONING OF THE CHECKS AND BALANCES SYSTEM

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The article deals with the main historical stages of the formation of views on the checks and balances system. Taking into account the main historical stages of the development of ideas concerning the functioning of the checks and balances system, on the basis of the historical and comparative methods, the main features of understanding the separation of powers and functioning of the checks and balances system under the specific conditions of political and legal thought development are emphasized.

The periodization of the relevant ideas and views development in world history, including the pre-classical stage, the classical stage, the stage of legal enforcement and implementation, the stage of changing political doctrines and the modern stage is proposed. It was emphasized that the era of Antiquity laid down the basic principles of justifying the idea of forming the government and dividing the powers between the branches of government. Special attention was paid to the development of the views of the Enlightenment Age thinkers in relation to this issue and their impact on the modern interpretation of the system of checks and balances. With the help of document analysis method, the beginning of the legislative consolidation of the system of checks and balances in the first constitutions and other normative legal acts of the end of the eighteenth century is shown.

Based on the system method, the system of checks and balances is proved to be a basic guarantee of democratic functioning of branches of power and is capable of realizing itself in the conditions of a republican form of government. The special features of the checks and balances system in the practice of modern democracies are described.

Key words: *checks, balances, division of powers, branches of power, republic, form of government, system, democracy.*

The modern conditions of the world democratization show a clear orientation of countries for the achievement and realization of fundamental aspirations, ideals, and values that can be secured through a democratic political regime. Historical practice convincingly confirms that the principle of the distribution of power is an integral element of democracy and the rule of law, which ensures an adequate level of political freedoms and the human rights protection of the citizen. Nowadays, in the context of the global spread of democracy, the principle of separation of powers is formulated as a crucial challenge for countries that have embarked on democratic political transformations. One of the most important problems concerning power relations is the abuse of powers; therefore, to overcome this problem, or to reduce its manifestations, the idea of creating the mutual deterrence between the branches of power has appeared. World experience shows that the system of checks and balances is a reliable means of eliminating the negative phenomena that arise during the organization and functioning of state power, through which the interaction of different branches of power takes place in the process of solving their national issues.

The essence of understanding the functioning nature of the current system of checks and balances in democratic states is the historically formed principle of

the dialectical unity of adversity and interaction and agreement between different social groups representing different interests. However, the roots of the idea of this system introduction into socio-political practice trace back to ancient times, as the question of power and its distribution has never been left out of public attention.

The aim of the article is to analyze the development and formation of ideas of the system of checks and balances functioning of in world practice. At various historical stages, the problems of studying the system of checks and balances were handled by Aristotle, Polybius, Machiavelli, Montesquieu, Locke etc. [Арістотель 2003; Полибий 1992; Локк 1988; Макиавелли 2014; Монтескье 1955]. There are Ukrainian researchers who paid attention to the problems of studying the evolution of the views of the checks and balances system: Sylenko, Gaidanenko, Zhuk, Rabkalo and others [Силенко 2000; Жук 2006; Гайдаєнко 2010; Рабкало 2008]. At the same time, despite a wide range of scholars who have paid attention to this aspect of the checks and balances system study, there is currently no single integrated approach to the periodization and history of the development of views on separation of powers and related constraints and counterbalances. The study of this issue is especially relevant for Ukraine, as the system of checks and balances and its main elements are not steady and have been changed during the history of our state creation.

The author uses such method in this study as system method, historical method, comparative method, as well as the method of document analysis should be mentioned.

The gradual formation of ideas about the distribution of power and the system of checks and balances raises the need to distinguish the historical stages of such evolution. It should be noted that this field of historiographical research is not universal and completed. In particular, Ukrainian scientist Sylenko emphasizes that the following qualitative stages of genesis of the system of checks and balances should be considered:

The first stage – the study of the checks and balances system doctrine in the works of ancient philosophers and the origin of elements of this system in the state construction of those countries;

The second stage – the development of the doctrine of the system of checks and balances in the political and legal thought of medieval thinkers;

The third stage – the development of a classical model of the principle of the distribution of power and the allocation of checks and balances in it;

The fourth stage – legislative confirmation of the system of checks and balances theory in the constitutional and legal acts and its implementation in the mechanism of state authorities organization and functioning;

The fifth stage – perception of the system of checks and balances as a necessary component of the rule of law theory and its implementation in the mechanism of state governing worldwide;

The sixth stage – development, and modification of the system of checks and balances in modern constitutional theory and practice [Силенко 2000].

This classification includes the main stages of the development of the system of checks and balances ideas, but in our opinion, requires a deeper systematization. The weaknesses of this periodization are a significant gap between the fourth and fifth stages, as well as the lack of a qualitative assessment of the processes of development or inhibition of the division of powers ideas in the world practice. According to the specifics of the main achievements in developing the system of checks and balances study and also taking into account the historical aspects of such development (including some external factors and events), we, in turn, propose to divide this historical process into several historical stages:

I. The pre-classical stage, which can be divided into:

a) The period of first ideas' formation about the need for the functioning of the system of checks and balances in the ancient political philosophy. At this stage, the country's first pragmatic ideas about the organization and emergence of the functioning of direct democracies of independent cities-states (policies) are formed.

b) The period of inhibition of the necessary theoretical support and practical implementation development in the conditions of absolute monarchs rule in the Middle Ages. In the context of the sharp and contradictory relationship between the spiritual and world power and the development of theological theories in Western Europe, the development of ideas about the system of checks and balances was suspended. The views of several thinkers of the High and Late Middle Ages periods were exceptions from general tendency.

II. The classical stage, which includes the formation of the classical theory of power distribution, the creation of prerequisites for its implementation in the era of modern times during the XVII–XVIII centuries. At this stage, the main theoretical foundations of the theory of separation of powers and the system of mutual deterrence between different poles of power are formed. The Age of Enlightenment ideas and the creation of preconditions for industrial transition have become the basis for obvious representations of social and state order.

III. The stage of legal enforcement and implementation. This stage is characterized by the beginning of the constitutional approval of the need for the state power distribution and the widespread implementation of the system of checks and balances in democratic states (from the time of the first legislative consolidation in the US Constitution in 1787).

IV. The stage of changing the political and legal doctrines orientations considering the background of socialist theory. At this stage, the inhibition of the development and spread of ideas of the distribution of power appeared, mainly due to the spread of ideas of Marxism and socialism, the gradual Sovietization of the countries of Eastern Europe.

V. The modern stage of modification of the implementation of the system of checks and balances, the creation of modern theoretical approaches to substantiate the need for its application in various forms of republican rule. According to democratization processes of the social system and the separation of branches of powers the checks and balances system became one of the most important attributes of a democratic system.

Modern understanding of the system of checks and balances retained the elements that were put into the content of this concept in Antiquity. The need for a division of power was described by ancient Greek philosophers. In particular, Plato (427–347 BC) believed that the principle of the division of labor between different statuses should be the basis for the creation of an "ideal" state and society. Each status must act independently in its field without interfering into other people's affairs thereby ensuring the general needs of the city – a polis [Платон 2000: 223–224].

Aristotle (384–322 BC) put forward the idea of separating power between the three state bodies: a legislative body (People's Assembly), in which all free citizens may take part; an administrative body (magistracy), which has the authority to rule; judicial body that carries out justice [Арістотель 2000: 114].

Polybius (210-128 BC) introduced the closest to the modern interpretation of the system of checks and balances approach. He considered a distribution of powers between the Consul, the People's Assembly and the Senate as a dynamic equilibrium to be the best political form of government. These bodies must interact with each other, mutually constricting and supporting each other [Полибий 1992: 130–135].

Among the political and legal ideas of ancient Rome, Mark Tullius Cicero (106–43 BC) approached the idea of the division of power. In the philosophical treatise "On the Commonwealth", thinking about the best form of state, the thinker concludes that the most perfect and stable is the aristocratic senate republic, which includes elements of the monarchical (royal), aristocratic (the power of the optimist) and democratic (power of the people) rule. The proposed combination of elements of all three forms of government remotely resembles a modern three-dimensional system of power distribution. The views of Cicero were actively used in the teachings of the philosophers of the New Age and the Age of Enlightenment [Цицерон 1998: 55–56].

The next stage of the pre-classical stage of the development of the idea of a system of checks and balances has restricted the development of the doctrine of state power. In the period of the High Middle Ages (XI–XIV centuries), only Italian scholar Marsilius of Padua (1280–1343) in his work "The Defender of Peace" was the first to clearly distinguish between legislative and executive functions in the state. In his learning, Marsilius of Padua acknowledges the need for mutual non-interference of church and state power in the affairs of each other. The thinker also justifies the principle of accountability for all government actions that are set up to administer justice and enforce laws [Падуанский 2014: 109–112].

In the period of the Late Middle Ages (XIV–XVI centuries) the Italian thinker Niccolo Machiavelli (1469–1527) became the first researcher who scientifically substantiated the system of checks and balances on the example of the Florentine authorities. In his "History of Florence" he described the model of political power in Florence, which combines complex and confusing mechanisms of checks and balances and made it impossible to spread arbitrariness. On this occasion, N. Machiavelli wrote that due to the new system of government in Florence, legitimacy prevails, and it will preserve its freedom and glory for a long time [Макиавелли 2014: 68–100].

The classical interpretation of the system of checks and balances and its theoretical substantiation evolved in the New Age era. The doctrinal justification of the principle of the distribution of power and the establishment of a system of checks and balances is found in the writings of J. Locke and C.-L. Montesquieu. According to the English philosopher John Locke (1632–1704), the division of power is necessary foremost for the protection of human rights and freedoms. J. Locke is a supporter of a representative system, which is formed by the will of the people and is responsible to him. In his work "Two Treatises on Public Governance", the thinker distinguishes between the legislative, executive and allied (federal) branches of government and outlines the main ideas regarding the system of checks and balances. Legislative power, according to J. Locke, is higher in the sense that laws are strictly binding to the government, officials and judges. In turn, the monarch as the chairman of executive power has the right to dissolve and convene a parliament, has the right to veto, the right of legislative initiative and the right to improve the electoral system. But the activities of the monarch must be strictly accountable to the "letter of law", and the monarch should not prevent the regular convocation of the parliament. The aforementioned mechanisms of the system of checks and balances described by the thinker have acquired some modifications, but are actively used

in the practice of modern democratic republics. [Локк 1988: 65–68; Монтескье 1955: 287].

Many scholars believe that Charles-Louis Montesquieu (1689–1755) was the first thinker who theoretically substantiated the equivalence of the branches of power and the system of checks and balances. In his work "On the Spirit of the Laws" the philosopher argued that in order to create a moderate rule, it was necessary to combine power, regulate it, restrain it, bring it into action, add, so to speak, a ballast to one another, so that it can balance another [Монтескье 1955: 288–289]. The thinker has distinguished between legislative, executive and judicial branches of power within the state, adding that the concentration of full power in the hands of one of them necessarily leads to abuse and arbitrariness ("power equilibrium"). Therefore, it is necessary to create such an order, according to Montesquieu, when "one authority restrains another". Therefore, each of the three branches of power should restrain and restrict each other. The triad of branches of power, highlighted by the thinker as an alternative to monarchical absolutism, laid the basis for the modern theory of constitutionalism [Монтескье 1955]. The doctrine of a liberal understanding of freedom, civil rights and the separation of powers laid the foundation for the first constitutions and the Declaration on Human Rights and Citizenship of 1789.

Some provisions of the power distribution are found in the Jean-Jacques Rousseau (1712–1778), another French thinker of the Enlightenment, doctrine. In accordance with the study of the thinker, the indivisibility of sovereignty implies the inadmissibility of separation of powers, while, in order to avoid lawlessness, it is nevertheless necessary to delineate the competence of executive and legislative bodies. The executive branch should be led by the sovereign, and control of the people's assembly is necessary to avoid usurpation [Русско 2001: 117–125].

The stage of implementation of the system of checks and balances was underlined by its constitutional consolidation. The first document in history, where certain elements of the system of checks and balances were legally established, was "Pacts and Constitutions of Rights and Freedoms of the Zaporizhian Host", which was an agreement between hetman P. Orlyk and the elders and Cossacks of the Zaporizhian army in 1710. In 16 articles of the document, the main powers of the three branches of power (the legislative, represented by the General Council, the executive headed by Hetman and the general officer, the judicial, which is realized through the activities of the General Military Court), with elements of mutual restraint, are determined [Чухліб 2011: 8–15].

Despite the historically confirmed fact of the primacy of the constitutional document belonging to the P. Orlyk Constitution, the US Constitution of 1787 is considered the standard of declarative approval of the separation of powers and the system of checks and balances. The principle of separation of powers was the basis for consolidating the presidential form of government in the United States [Levy 2000]. In particular, the "father of the American constitution" James Madison drew attention to the expediency of such a component in the theory of the division of power as a system of checks and balances. He considered the system of checks and balances as necessary element to prevent the abuse of power. [Sheehan 2013: 23–25].

Another American politician J. Adams was one of the first to threat the state system. The three-element balance in the form of three independent and mutually balanced branches of power – legislative, executive and judicial – should be distinguished in the apparatus of power. The organization of the interaction of the three poles of power J. Adams borrowed from the treatise Cicero "On the Commonwealth" [Adams 1990]. According to the practical work of John Marshall as head of the Supreme Court and his personal observations and experience, John Marshall justified the need for judicial review of compliance with the Constitution, while the judicial system and the right of judicial supervision consider to be a cornerstone in the functioning of the checks and balances system [Marshal 1968: 70–74].

The first declarative statement of the principle of separation of powers and interaction between the branches of power is found in the provisions of the French Declaration of Human Rights and Freedoms in 1789 and later in the Constitution of France in 1791. The practical application of the principle of separation of powers was followed by theoretical support by the representatives of Western European political and legal thought of the late XVIII century and the beginning of the XIX century. In particular, the German political and legal thought of this period fully supported the idea of separation of powers. The prominent German philosopher Immanuel Kant (1724–1804) allocates three branches of power: the legislative ("collective will of the people"), the executive (concentrated in the legal ruler and the accountable executive branch) and the judiciary (appointed by the authorities of the executors) [Кант 1965]. Another German philosopher Georg Hegel (1770–1831) developed a political and legal doctrine of the separation of powers in the state as a pledge and guarantee of public freedom, highlighting the legislative branch of power, government power and the power of the sovereign [Гегель 2000].

Similar views were shared by the great British theorists of European liberalism, J. Bentham and J. Mill, as well as the ideologues of the French bourgeoisie B. Constant and A. Tocqueville [Кормич 2009: 143–162].

Significant inhibition of the democratic ideas development from the end of the XIX century was kept in the countries of Europe until the suppression of the fascist regimes and the acquisition of complete independence by the satellites of the Soviet Union. Since the beginning of independence and the entry into the path of democratic transformation, the principle of the development of state power included the fundamental elements of the system of checks and balances with acquire their own peculiarities for each particular state. At present, political thought is represented by a large number of studies, but there is no single integrated study that would analyze the state of the system of checks and balances on the theoretical and practical levels in modern democracies.

The following features are typical for the modern system of checks and balances:

– is applied in the states, where the democratic principle of the distribution of power is observed. Instead, in the non-democratic states there is no concept of the division of power at all, since it concentrates in one's hands;

– the content of the system depends on the form of government that defines the mechanisms used within the political system and depends on the nature and development of the state mechanism, the economic situation in the state, the historical, political and cultural traditions that have developed in society.

– the elements of the system have a formally defined character. For example, the procedure for carrying out the impeachment is clearly stated in the Constitution of Ukraine;

– depends on the form of government. In the federal state, the emphasis is on "vertical" interaction, that is, the links between the center and the subjects of the federation. A unitary state is characterized by a "horizontal" interaction that is carried out at the level of central government.

We may conclude, that: allocation of the stages of these doctrines development allowed to systematize the main ideas of historical periods and to follow the main tendencies in relation to the system of mutual restraint as a necessary component in the functioning of state power. We propose the periodization of the relevant ideas and views development in world history, which includes *the pre-classical stage, the classical stage, the stage of legal enforcement and implementation, the stage of changing political doctrines and the modern stage*.

Today, the use of the system of checks and balances in modern republics is changing and transforming, at the same time retaining its fundamental foundations that were laid down in different historical epochs. The problem of the checks and balances system, while maintaining its relevance, needs to be considered in detail from the standpoint of other scientific and theoretical approaches and should be considered from the perspective of other scientific disciplines. Future studies in this direction can serve as an important aspect of the general study of the distribution of power in modern democratic republics, which will allow observing the main advantages and disadvantages of the system's efficiency within the apparatus of state power. Based on the historical development and practice, further researches on the theoretical level and also in the sphere of practical implementation of the checks and balances system principles in Ukraine should become especially important.

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