

РОЗДІЛ 3 ПОЛІТИЧНІ ІНСТИТУТИ ТА ПРОЦЕСИ

УДК 321.015:342.51/.52+342.56](73)
DOI <https://doi.org/10.32782/2663-6170/2024.39.6>

THE EMERGENCE OF THE SYSTEM OF CHECKS AND BALANCES IN THE UNITED STATES

ВИНИКНЕННЯ СИСТЕМИ СТРИМУВАНЬ І ПРОТИВАГ У США

Voichuk A. Yu.,
PhD,

*Assistant at the Department of Political Science
Taras Shevchenko National University of Kyiv*

The relevance of the study of the emergence of the system of checks and balances lies not only in its historical significance, but also in the impact of this system on the democracy of the state power. Studying the process of creating this system allows us to better understand the foundations of democracy and the role of institutions in maintaining the stability and legitimacy of state power. This article analyzes the historical, political, and philosophical background of the system of checks and balances and its introduction into America's political practice. According to the U.S. Constitution, which was adopted in 1787, the three branches of government were not only separated but also controlled each other. It is most fully manifested in the strict separation of powers inherent in a presidential republic. A presidential republic is characterized by the fact that the president elected in general elections is legally and actually the head of state and the head of the executive branch.

With a strict separation of state power, the system of checks and balances as an integrated set of powers of different branches of state power, which allows them to balance and limit each other, is of particular importance. The parliament influences the executive and judiciary through the laws it adopts. The president influences the laws passed by the parliament through his veto power. Parliament can override the president's veto of a law by a qualified majority vote. The judicial constitutional control body, in turn, can declare laws and acts of the president unconstitutional, which will make them invalid. The president does not have the right to dissolve the parliament, but the latter cannot dismiss the government or an individual minister. Parliament can remove the president from office by impeachment, but only by a qualified majority and in case of violation of the constitution and laws.

Key words: system of checks and balances, USA, presidential republic, president, executive branch, legislative branch, judiciary.

Актуальність дослідження виникнення системи стримувань і противаг полягає не лише в її історичному значенні, а й у впливі цієї системи на демократизм державної влади. Вивчення процесу створення цієї системи дозволяє глибше зрозуміти основи функціонування демократії та її роль у підтримці стабільності та легітимності державної влади. У цій статті проаналізовано історичні, політичні та філософські передумови виникнення системи стримувань і противаг, її запровадження в політичну практику США. Згідно з Конституцією США, яка була прийнята 1787 року, три гілки влади не лише були розділені, а й контролюють одна одну. Найповніше вона виявляється в умовах жорсткого поділу влади, притаманного президентській республіці. Президентська республіка характеризується тим, що обраний на загальних виборах президент юридично і фактично є главою держави і главою виконавчої влади. За жорсткого поділу державної влади особливого значення набуває система стримувань і противаг як інтегрована сукупність повноважень органів різних гілок державної влади, що дає їм змогу урівноважувати й обмежувати одна одну. Парламент впливає на виконавчу і судову владу через прийняті ним закони. Президент впливає на прийняття парламентом законів через право застосовувати щодо них вето. Парламент може подолати вето президента на закон кваліфікованою більшістю голосів. Орган судового конституційного контролю, своєю чергою, може визнати неконституційними закони та акти президента, через що вони втрачуть чинність. Президент не має права розпуску парламенту, але й останній не може відправити уряд чи окремого міністра у відставку. Парламент може усунути президента з поста в порядку імпичменту, але тільки кваліфікованою більшістю і в разі порушення ним конституції і законів.

Ключові слова: система стримувань і противаг, США, президентська республіка, президент, виконавча влада, законодавча влада, судова влада.

Introduction. In the late 18th century, the system of checks and balances was first introduced in the United States of America. Its introduction was the result of deep political, philosophical and social discussions among the founding fathers of the

United States. The system of checks and balances is based on a strict separation of powers, which was first formulated in the works of Enlightenment thinkers such as John Locke and Charles Louis de Montesquieu.

The U.S. system of checks and balances sought to prevent the concentration of power in a single hand by ensuring a balanced coexistence of the legislative, executive, and judicial branches. No branch of government can have either formal or de facto supremacy over the others. In this context, the U.S. Constitution, adopted in 1787, was the first system of legal norms that began to balance the branches of government.

Recent literature review. Among the numerous studies and publications that cover the issue of the emergence of the U.S. system of checks and balances, the works of the following researchers deserve special attention: O. Valevskyi, N. Haidaienko, H. Zabavska, V. Rebkalo, I. Salo, L. Silenko, V. Surrin, etc.

The purpose of the article is to analyze the emergence and implementation of the system of checks and balances in the United States.

The main part of the article. The question of the most appropriate form of organization of state power was one of the most acute during the American Revolution of 1775-1783 and in the first post-revolutionary years. Already at the beginning of the revolution, the social strata dominating the North American colonies had to formulate a system of political and legal views, which, however, was significantly influenced by the English experience. The very structure of political power in the colonies was such that the principles of the English constitution, especially mixed government, could be easily reproduced on American soil.

This aspect of the American view was reflected in the development of the constitution. However, in Great Britain, as is well known, mixed government, reflecting a compromise between the landed aristocracy and the bourgeoisie, was the result of the country's internal socio-political development. In America, however, there was no hereditary aristocracy, and therefore there were no conditions for the realization of the idea of mixed government [1, p. 12]. The internal structure of power in the colonies expressed the contradiction between the interests of the metropolis and the colonialists. It was a product of this contradiction, which consisted, on the one hand, in an objectively determined desire for self-government, and, on the other hand, in the metropolis' attempts to limit this self-government in some way. This contradiction could only be resolved by solving common economic, social, and political problems, by revolutionary means. Therefore, in the constitutional practice of the revolutionary period, it was not the concept of mixed government that was implemented, but the most democratic version of the theory of separation of powers, which was much closer to the bourgeois-democratic theory of J. Lilburne than to the compromise theories of J. Locke and S. Montesquieu.

During the revolution, the principle of separation of powers became a kind of slogan that demanded separation of power from the executive body and transfer to the legislative body. The system of legisla-

tive bodies throughout the revolution was dominated by state legislatures, and the executive branch was subordinate. The executive branch was characterized by the following features: short terms of office of governors (from one to three years); restrictions on the right to re-election; election not by the population, but by members of the legislatures (only in New York and Massachusetts was the governor elected by the population, and in Pennsylvania – by a special council). In addition, all states, with the exception of New York and New Hampshire, created executive councils appointed by the legislature to oversee the activities of the executive branch. Thus, the executive branch in the states became collegial in nature and was fully subordinated to the legislature [1, p. 14].

Even at the beginning of the Revolution, American figures criticized the situation in the system of state authorities. These were J. Washington, who, as commander-in-chief, was aware of the shortcomings of such an organization of power, as well as A. Hamilton, J. Adams, T. Morris, T. Jefferson, J. Madison, and others. In the 80s of the eighteenth century, the situation was exacerbated by the fact that the union of states formed in 1781 on the basis of the Articles of Confederation was fragile and could not cope with any problem. The Confederate Congress, which was headed by 13 states, had extremely limited power. Although formally it was vested with legislative, executive and judicial functions (Article IX of the Articles of Confederation) [6], these were functions limited to a narrow range of issues (mainly in the foreign policy sphere) and not backed by real powers, given the lack of necessary funds and an independent government apparatus capable of implementing the planned measures in practice.

Under such circumstances, the Constitutional Convention in Philadelphia took up the task of saving the state. In May 1787, 55 delegates representing 12 states began drafting a new constitution. Most delegates were in favor of creating a strong centralized state. This was associated primarily with a strong executive branch. In line with the strengthening of the executive branch, the convention considered the question of its structure. The political organization of the federation was based on the principle of separation of powers. The result of lengthy discussions, disputes, and compromises was the creation of a special mechanism of «checks and balances» that complemented the principle of separation of powers. The Constitution vested legislative power in a bicameral Congress, executive power in the President, and judicial power in the Supreme Court and lower federal courts. All three branches of government were formed in different ways. The House of Representatives was elected directly by the population; the Senate was elected by state legislatures (until 1913); the President was elected by the electoral college; the Supreme Court and lower federal courts were elected

jointly by the President and the Senate. Their terms of office varied: congressmen were elected for two years, senators for six years, and the President for four years. Judges served for life. According to the logic of the Constitution, this procedure was intended to consolidate the independent position of each of the three branches of government, to establish their respective functional competence within certain and clearly defined limits. The fact is that the uniqueness of the presidency in the United States lies precisely in the fact that this system of checks and balances balances power by dividing it.

The founding fathers of the young American state made a historic choice between a monarchy and a republic at both theoretical and practical levels. The search for the most acceptable form of executive power was based on republicanism, which provided for the election of all officials. It was concluded that the executive branch should be unified, i.e. concentrated in the hands of one, not several, officials, and the principle of one-man rule was established. According to the Constitution, the head of the executive branch in the country was called the President of the United States of America. This name of the head of state is connected not only with the fact that the president was associated with the republican form of government, but also with the fact that in a number of American states at that time the heads of executive power were called presidents, not governors [2, p.35]. The office of the president, which combined the head of state and the head of government in one person, was enshrined in the Constitution. With the entry into force of the U.S. Constitution in 1789, J. Washington was elected President of the country.

Thus, the system of checks and balances was first introduced in the United States. The United States is a presidential republic. A presidential republic is characterized by the fact that the president elected in general elections is legally and actually the head of state and the head of the executive branch. The main features of a presidential republic are: strict separation of powers and a balanced system of checks and balances; election of the president in general elections; combination of powers of the head of state and the head of government in the person of the president and, as a rule, the absence of the post of prime minister; formation of the government by the president with limited participation of the parliament; lack of political responsibility of the government to the parliament; lack of the president's right to dissolve the parliament; lack of the institution of counter-signature - binding of the president's acts with the signatures of ministers [4, p. 410].

In addition to the above, the essential features of a classical presidential republic include the absence of the right of legislative initiative, which significantly limits the president's influence on the exercise of legislative power.

In a presidential republic, the strict separation of powers is most consistently implemented, characterized by formal isolation of the branches of power and lack of close functional relations between them. The parliament and the government are functionally independent of each other; the government is to some extent controlled by the parliament, but is not politically accountable to it and cannot be dismissed by it. The government has no significant institutional (legally established) means of influencing the parliament. The president has no effective means of influencing the parliament – he is not endowed with the right of legislative initiative and the right to dissolve the parliament. Parliament, for its part, has no tangible influence on the formation of the government, which is unaccountable to the parliament and does not bear political responsibility to it, which could result in its resignation. The separateness of the judiciary in the system of separation of powers is primarily based on the independence of courts and the independence of judges, which are fundamental principles of organization and functioning of the judiciary and mean that courts and judges are not accountable to anyone in the administration of justice and are subject only to the law.

According to the U.S. Constitution of 1787, the U.S. President and the Supreme Court operate on the basis of laws passed by Congress. The President of the United States has a line-item veto over laws passed by Congress, which can be overridden by a qualified majority of votes. In addition, the President of the United States can use a «pocket veto», which is applied to bills passed by Congress in the last ten days of the session. According to the Constitution, the President must sign or reject a bill sent by Congress within ten business days during the session. If a bill is received by the President less than ten days before the end of the current session of Congress, the President, without making any decision on the bill, may hold it until the end of the session and thereby prevent it from entering into force. Congress will not be able to send the bill to the president a second time because of the principle of laches, according to which all bills introduced to Congress during a given session are not carried over to the next session.

The Supreme Court is vested with the function of constitutional review and can declare both laws passed by Congress and presidential acts unconstitutional and thus annul them. The President appoints members of the Supreme Court «with the advice and consent of the Senate» [6]. The President does not have the right to dissolve Congress, but the latter cannot dismiss the government as a whole or a single minister. The appointment of ministers by the President, as well as members of the Supreme Court, also requires the consent of the Senate, but the latter is guided not by the political affiliation of the candidates, but only by their professional and moral

qualities. The Congress has the right to remove the President from office by impeachment in case of a crime. The President of the United States may be removed from office «upon conviction by impeachment of treason, bribery, or other high crimes and misdemeanors» (Section 4, Article II, Section II of the U.S. Constitution of 1787) [6, p. 360].

The terms of office of the supreme bodies of state power are different: members of the House of Representatives are elected for two years, members of the Senate – for six years, the President – for four years, which should contribute to the diversity of their political composition and continuity in public policy.

The U.S. president does not have significant powers to influence the parliament and the legislative process, which stems from the strict separation of powers on which the presidential republic is based. However, the U.S. President is an active participant in the legislative process. Most bills are submitted by him to the parliament, although he does not formally have the right of legislative initiative. However, the president's quasi-legislative initiative is quite often manifested, in particular, when he sends to the parliament (or one of the chambers) annual or/and extraordinary messages on the internal and external situation of the state, which have the character of a program of legislative activity. There are several types of the U.S. President's messages: the State of the Union (Federation) Address, the Budget Address, the State of the Union Address, and others. The messages are

read out at a meeting of the parliament, usually by the president personally. This circumstance allows us to call the President of the United States the chief legislator [7, p. 34].

Conclusion. Thus, the system of checks and balances, which is the basis of the United States government, has become one of the most important innovations in political theory and practice. Its introduction has provided an effective mechanism for the separation of powers, which avoids the concentration of power in the hands of one person or body. This system guarantees a dynamic balance between the legislative, executive and judicial branches of government, ensuring their independence and interaction at the same time.

The U.S. experience shows that the system of checks and balances is an important tool for protecting democratic principles and the rule of law. It has not only contributed to the formation of a stable political system in the United States, but has also influenced the models of government in other countries seeking to implement democratic principles.

At the same time, the functioning of this system requires constant improvement, as modern challenges, such as globalization, technological progress, and new political realities, require its adaptation. Thus, the analysis of the U.S. system of checks and balances remains relevant and serves as a valuable source for the development of political science and practice.

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