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## The principle of separation of state powers : Theory and practice

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### ABSTRACT

For a long time in the field of government, almost unlimited power can be placed in the hands of one person - but it may be abusive to use its unlimited powers, one way to limit power and prevent management from one person, is theory and practice and the principle is the separation of powers, and this research deals with a study The theory of the separation of powers, and analyzes the impact of this principle on a number of modern developed countries where special importance is attached to the system of checks and balances between the judicial, legislative and executive powers of the government.

**KEYWORDS:** The separation of powers, theory and practice, modern states.

### CITATION OF THE ARTICLE



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## I. INTRODUCTION

To talk about the justifications for adopting the principle of separation of powers in the state; First, we must show the situation that brought some thinkers (Luke, Montesquieu, and Roo Soo) to this picture, as some of their ideas came in reaction to the situation in which they live under absolute authoritarian monarchy, while others came as a result of being affected by a regime Or certain ideas, as this situation prevailed during the reign of European kings with absolute rule during the seventeenth and eighteenth centuries, and liberal principles have emerged calling for the limitation of the individual authority of kings to secure the rights and freedoms of individuals and called for some thinkers to formulate new or opposite ideas For the image of the absolute rule they are experiencing from the arbitrariness and tyranny of the other authority, <sup>[1]</sup>therefore they have always made sure that the error does not recur and that the authority is not combined with the hands of an individual or organization, so we see thinkers (Luke, Montesquieu, Rousseau) point to the idea of separating the powers, As there is no wide scope for a power that includes one of the three pillars of the authorities to stand, because its interest is less than if it was in the hands of the entire authority to practice it to reach any purpose it has <sup>[2]</sup>

The emergence of the principle of separation of powers dates back to ancient times when he referred to that Greek philosopher (Plato) in writing (laws), where he stressed the need to distribute state functions to multiple entities and the importance of a kind of balance and cooperation between these bodies in order to prevent tyranny and achieve the public interest <sup>[1]</sup>

The same principle was confirmed by the Greek philosopher (Aristotle) in his book (Politics), where he exceeded his teacher (Plato), so he divided the state's functions into three basic functions: the legislative function, the executive function, and the judicial function. Many thinkers also dealt with the separation of powers. Like (Aristotle, Cicero, Ulysses, Lyzon) and other Greek and Roman philosophers have demonstrated the functions of a multi-state, so that it becomes difficult for a person alone to hold the reins of power <sup>[2]</sup>

## II. THE IMPORTANCE OF THE TOPIC

Even the ancient Greek philosophers thought about how to protect people and state residents from abuse of power, and then came up with the idea that power should be divided between rulers, and later, the theory of the separation of powers was developed by the French philosopher Montesquieu and the English philosopher John Locke, hence the importance The issue is to consider the mechanism for implementing the principle of the separation of powers.

### Research goals and objectives.

- 1). Consider the concept of separation of powers.
- 2). Analyze how the principle of separation of powers applies in developed countries.
- 3). Conclusion and conclusion about the system of checks and balances in the system of separation of powers.

### Scientific importance.

The scientific significance lies in the fact that it analyzes the theory of separating the powers developed by philosophers and the practice of applying and implementing them in the system of the state in developed countries of the world.

#### ➤ The first topic: The principle of separation of state powers

The governmental concept of separating forced powers came through a series of checks and balances to ensure that there is no single person or branch of government that can at any time become very powerful, and the system of checks and balances aims to emphasize that there is no branch or section of government that can allow It exceeds its limits, to prevent counterfeiting, and allow errors to be corrected in a timely or oversight manner, in fact that the system of checks and balances is intended to serve as a kind of guarding over the separation of powers, and to achieve balance in the powers of separate branches of the government in practical use<sup>[3]</sup>

The theory of the separation of powers It is the theory and practice according to which state authority must be divided into three branches of government: legislative, executive, and judicial; In order to guarantee law and justice in the state, as well as to prevent abuse of power by senior officials <sup>[4]</sup>, in fact the theory of separation of powers consists of two basic principles: <sup>[5]</sup>:

The first: specializing in the performance of constitutional functions, which means that administrative, judicial and legislative jobs are assigned to each of them to a specific body.

The second: the independence of the existing bodies with these functions in front of each other.

A great development was achieved in this field thanks to two prominent philosophers: John Locke, Charles Louis de Montesquieu, in the time of ancient Rome, and after the overthrow of kings, the principle of dividing the authority of the state was established, and this principle was established in constitutions that were not written in character And power in ancient Rome was divided between the Senate, the consuls,

and the Comitia, in political life, as the Senate performed important functions: issuing laws, resolving war and peace issues, setting the budget for the Senate, pastors were commanded to control financial matters, and members led the city's system Developing trade in the country or disposing of taxes and finances; Also in Rome there were government positions that were elected by the people - judges, consuls, commanders of the army, and sometimes during campaigns the consuls were replaced, censors set up lists of members [6] where after establishing such a system to organize public authority, the republican system of government reduced The population was free from abuse of power and tyranny and was not able to completely usurp power [7] and further development of the principle of separation of powers was received at the end of the seventeenth and early nineteenth centuries by two philosophers: Charles Louis Montesquieu and John Locke, and this was recognized The principle is later in many European countries, [8], both the English writer (John Locke) and the French writer (Montesquieu), are credited with articulating this principle and developing it, since (Locke and Montesquieu) are the first to find the initial definitions of state powers, as they distinguished In their definitions between the executive function that is limited to implementing laws and assigning them to the government, the legislative function that is limited to developing laws and assigning them to Parliament and the judicial function that is limited to resolving disputes that arise when applying laws and assigning them to Judges, and emphasized the need for each authority to be independent from the other [9].

Charles Lewis Montesquieu wrote the famous work "The Spirit of Laws," and in his opinion, there are always three types of powers in a state: legislative, executive depending on the power of things, and still a law based on executive power [10]

First, the emir adopts the laws for a certain period, as it repeals previous legislative laws.

Second, the prince identifies and resolves issues of war and peace, and diplomatic relations with other countries, and guarantees state security from foreign invasion.

Third, the Emir decides to judge, that is, to judge his subjects. The last branch of power is called the power of judgment [11]

According to Montesquieu, each branch of power must fulfill only its powers and functions, but if the branches of power are united, evil will be against the people and citizens of this state and will necessarily lead to abuse of power, Montesquieu wrote: "If the legislative and executive powers are combined, then no People have freedom, because the Senate or the King will be able to pass authoritarian laws to comply with it." [12].

If the legislature and the judiciary are combined, this may lead to judicial arbitrariness, because the judge will also be the legislator, and if the judiciary and the executive are combined, the judge can also be persecuted, but at the same time, Montesquieu believes that if he is one person, Or one body, which combines three powers: the adoption of a law, the enforcement of general laws, and the imposition of a penalty for crimes, this body will be able to usurp the authority at the same time, the French philosopher believed that the legislative authority would appoint the executive or the judiciary, and there would be no separation between Powers, because they will control the rest of the branches, [13] In this case, the executive power must be in the hands of the king, since the executive power must be in the hands of one person, independent of the legislature, if the executive authority is appointed by the legislature, It will also lead to the end of freedom, as these people will have multiple branches of government [14]

The most consistent principle has been applied to the separation of powers in the formation of a new state - the United States of America, here the separation of powers occurs horizontally to the legislative, executive, judicial, and vertical powers to the federal, regional, and local authorities, too, the American "founding fathers" c. Madison, J.J., A. Hamilton also developed a system of checks and balances. The US Supreme Court's decision in Marbury v. Madison was largely developed when the judiciary began possessing powers such as monitoring the constitutionality of laws in the United States. (15th).

#### ➤ **The second topic: application of the principle in the state system of modern countries**

##### **United State:**

The state authority is divided into three branches.

The legislative power is represented by two parliaments - the Congress. The American Congress consists of two chambers: the Senate is the Senate, and the lowest is the House of Representatives. To Congress. The Senate expresses the interests of the states, as it consists of representatives from each state, [16]. The laws were first adopted by the House of Representatives, then by the Senate; After that, the bill is sent for consideration by the American President, the President of the United States has the right of veto, that is, the right to reject the bill submitted to him. In the event that the bill is adopted, published and put into effect, the US Congress has a mechanism to overcome the president's veto, in the event that 2/3 of all chambers of parliament actually voted in favor of this bill, in the United States of America, Congress adopts joint decisions - these Decisions in the field of constitutional amendments, in the field of foreign policy: in international organizations, in the field of

war and peace, and finance and budget issues. Here, the procedure for adopting a joint resolution is complicated because it is necessary to obtain the approval of at least 3/4 of the US states, only after obtaining the approval of the states, the US Congress can take a decision on this matter.

The Executive Authority is represented by the President of the United States. The President of the United States is elected by holding indirect elections for a period of four years, first the American people elect the electoral college, then the electoral college elects the President of the United States. The American President has significant powers in the field of foreign policy, and also determines the main political path for the nation's internal politics. There is no prime minister in the United States, but the government is led by the American Vice President.

The US Supreme Court takes the lead in the American judicial system. The United States Supreme Court has the power to isolate the President, resolve all supervisory lawsuits, as well as disputes between countries involving foreign ambassadors. Judges are appointed by the President of the United States, after which they are subject to the approval process by the U.S. Congress. Also, the authorities are separated vertically to the federal and regional authorities. Likewise, as is the case at the federal level, at the regional level, there are their own supreme legislative, judicial and executive bodies. Their responsibility is to manage the policies within the United States <sup>[17]</sup>.

### The Federal Republic of Germany:

In Germany, the principle of separation of powers into the legislative, executive, and judicial branches of government has been applied very actively, in Germany as well, the vertical division of power into a federal authority is actively taking place - it solves national issues: international relations, war and peace, etc., and the regional government, which resolves issues Land, structure and implementation of policies in this area.

At the federal level, there is also a division of power into three branches:

1). The legislature in Germany is represented in the country's parliament. The German Bundestag or the "Federal Congress" is the Lower House of the German Parliament, elected by the population according to a mixed system and formed according to the principle of the Bunderstratom Party or the "Federal Council" - the Supreme Council of the German Parliament is formed through representation from the territory of Germany, the Parliament mainly performs legislative functions, Also at the regional level, there are their own legislative bodies that pass laws within their territories - Landtagi.

2) The executive branch consists of the President of the Federal Republic of Germany and the Federal Chancellor and Ministers. The head of state is elected from the Federal Assembly for a period of five years, whose functions are to represent the state in international relations, to sign laws and orders necessary as an institution to sign a counter, and to appoint federal judges and ministers. The advisor is a leading figure in the executive. He is elected at the proposal of the President of the Bundestag and outlines the main directions for the internal and external policy of the Federal Republic of Germany. Federal ministers are appointed on the proposal of the German chancellor.

3) The judicial system in Germany is very multi-level, and it consists of five main subsystems. There is a system of constitutional, administrative, labor, financial, social and general courts. Each state has its own primary courts, which handle cases in the first place, and federal courts already review cases upon appeal and supervision <sup>[18]</sup>

### Great Britain:

Great Britain has a number of distinctive features in the state system: the absence of a unified written constitution, the existence of special powers for the king, a unitary state that provides some autonomy for its suburbs: Wales, Scotland, and Northern Ireland.

The Legislative Branch consists of Parliament: the House of Lords and the House of Commons, and the House of Lords consists of the life peers, the spiritual lords, and others. Legislative.

The executive branch consists of the king, the head of government, and ministers. Moreover, the king's role in the state is considered private, as it is a symbol of the nation, and is the guarantor of stability and prosperity of the state. The government is appointed by Parliament and approved by a decision of the king / queen.

The judicial system consists of several types: the Crown Court, the Supreme Court and the Court of Appeal, the lower court system consists of international courts, and the intermediate level consists of district court <sup>[9]</sup>

Montesquieu was affected during his visit to Britain by its political system, and for this reason his idea of the functions of the authorities can be considered a reflection of what is present in the parliamentary system at that time. This system was reviewed in the fourth section of the sixth book of his author (Spirit of Laws) in 1748 AD <sup>[2]</sup>

### France:

France also applies the principle of the separation of powers.

The legislature consists of Parliament, and Parliament consists of two chambers: the House of Representatives - the National Assembly, elected by all residents of France through direct elections, the Senate - the Senate is elected from every region of France.

The executive branch consists of the president and the government, and the president is elected by direct election for a period of 5 years, since 2000 AD, he has greater authority than before. The government is formed by the president, but at the same time it is responsible to both the President of France and the French Parliament.

The judicial system in France is very complex, there are several types of courts in France: public courts - conflict resolution with the help of independent representatives - mediators, general jurisdiction courts - hearing criminal and civil cases etc., special courts (for minors, and military), the administrative court system, and trials Jurors <sup>[10]</sup>.

#### **Italia:**

In Italy, the principle of the separation of powers is enshrined in the Constitution.

The state legislature is represented in Parliament. The state parliament consists of two chambers: the House of Representatives - represents the interests of all Italian residents, and the Senate - represents the interests of the regions. Issues resolved by Parliament include: publication of laws, ratification of international treaties, resolution of issues of war and peace, amnesty and amnesty.

According to the Italian constitution, the executive power is concentrated in the hands of the head of state and government, the head of state is elected in a joint meeting of the rooms, the president of the state performs representative functions, and he has the right to pardon and issue international laws. The Italian government consists of the prime minister and the cabinet, the government has been approved in Both houses of Parliament are working to develop the main thrusts of domestic and foreign policy.

The judicial system in Italy consists of several levels, there is a system of public courts for criminal and civil cases, and there is a system of special courts for administrative cases, the Italian Constitutional Court occupies a special place in the Italian court system, whose powers include consideration of disputes over the compatibility of normative laws with the Italian constitution.

#### **Soviet Union:**

The prevailing view in the USSR was that the principle of separation of powers was bourgeois, as it was rejected in the Soviet political doctrine. There was one

principle, all power to the Soviets, for the first time in Russia, the principle of separation of powers was enshrined in the declaration of state sovereignty in the RSFSR, as it was enshrined in the Constitution of the RSFSR <sup>[10]</sup>, but it is also necessary to recognize That the separation of state power occurred in the Soviet Union horizontally to the Supreme Soviet of the USSR - Parliament of the country, the government of the USSR - the executive branch, as well as the Supreme Court of the USSR - the highest judicial body in the state, moreover, it was a feature of The political system of the USSR is the leadership center of the CPSU, which pursued a unified internal and external policy of the state. It is also necessary to emphasize that the USSR and USSR were of a federal nature, and there was a vertical separation of power between the authorities of the USSR The Soviet Union and the republican authorities, as well as within the Russian Federation Soviet Rakiya on the governing boards of regions, regions and autonomous regions <sup>[16]</sup>

As a result, the emergence of the principle of separation of powers occurred with the period of the collapse of the Soviet Union and the creation of a new constitution for the Russian Federation, which enshrines this important principle in the foundations of constitutional order.

The legislative authority is represented in the Federal Assembly, where the Federal Council consists of two chambers: the State Duma - represents the interests of all residents of the state, the Federation Council - the highest room and represents the interests of Russian citizens, and this body performs legislative and representative functions.

The executive branch consists of the prime minister and federal ministers, and the prime minister is approved by the president with the approval of the State Duma.

The judicial system in Russia is represented by the Constitutional Court, which occupies a special place in the court system in the Russian Federation, and is also the Supreme Court and the lower court system in the Russian Federation <sup>[17]</sup>.

The very important question, what place does the President of Russia take in the system of separation of powers? He is the head of state, and he identifies the main directions of domestic and foreign policy, and he is the guarantor of the constitution, where some scholars believe that the president is part of the executive branch, where he issues decrees and orders and appoints the government of the Russian Federation and federal ministers, where many people consider the president's position, stipulated in The Constitution of the Russian Federation is the "fourth" presidential branch of power <sup>[18]</sup>

In the context of the foregoing, I would also like to point out that there are many models in the modern government that will apply the principle of separation of powers. Such a model exists as a presidential republic, where there is a separation of all power between the legislature and the president, there is a model of the parliamentary republic where parliament has the main authority, but there is a separation of power between it and the government, the president, and the mixed republic, where the merits of separating the authority are combined, where there is Usually a strong president and strong parliamentary power [19]

The principle of separation of powers develops under the conditions of the republican system, which includes election and change of power, as well as the separation of power between the main branches, and the role of the multi-party system provides the development of a system to separate powers into branches of government.

It is also necessary to emphasize that sometimes the fourth branch of government is identified - these are the media; In democratic countries and in a free political and economic community, where the media has general control by society of the activities of state and local government powers [19]

### III. RESULTS

The authority can be divided into three main branches: legislative, executive and judicial.

In practical terms, the theory of separation of powers is applied through a system of checks and balances, and this system, like measures, is balanced by the powers that exercise these three branches of government.

1) The Legislative Authority, according to Locke, is the leader among all three branches of government, as a general rule, elected by the people and representing their interests, and therefore has great powers and a great legal center, with the legislative authority assuming the following major tasks:

Law-making, which is the development and dissemination of laws that govern the most important social relationships, and is generally binding on all participants in these relationships.

✓ Actor. Since the legislature of most of the modern world is elected by holding democratic elections, deputies and representatives must defend and uphold the political interests of those segments of the population who have supported them in the elections, otherwise, the people have democratic

rights to call a deputy from exercising their powers.

- ✓ Appointment of the government. It is the legislative body that in most countries appoints the head of government and approves the Council of Ministers.
  - ✓ Finance. It is the legislative body that determines the tax policy in the country, and determines the main expenses of the state in the future. Resignation of the government or dismissal of the head of state.
  - ✓ Appointing and resigning the heads of the supreme courts in the country.
- 2) The executive authority, represented by the government, will assume the current management of state affairs, the main authorities:
- ✓ Current policy - problem solving in politics, economics, and the social and cultural sphere.
  - ✓ Internal Regulations - This is a publication based on the laws of internal regulations and their regulation, and organizing relationships.
  - ✓ Dissolution of Parliament - The Legislature. This authority is not always appointed in legislative terms for the executive, but in a system of checks and balances it is necessary to equal the two branches of government.

3) The Judiciary - administers justice, that is to say, a fair legal solution to a case on the basis of facts. The Judicial Authority has the following powers:  
Administration of justice - Resolution of the dispute on the merits.

Judicial oversight of the other two branches of government, legislative and executive.

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