

AMERICAN MODEL OF THE PRESIDENTIAL REPUBLIC

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Abstract: created as the result of the war for independence of North American colonies, the United States was not only the first independent state in the new continent, but also the first presidential republic in the world. Now many states of the world have adopted the American model of the presidential republic. Critics of the American model of the presidential republic believe that this system is ineffective, since the power is in hands of two competing branches – the legislative branch and the executive. However, the American model does not represent a system of mechanical connection of three branches of power. The power is one and for the effective functioning of which, a mechanism of interrelated bodies was created, which were considered to bear legislative, executive and judicial powers.

Keywords: the Presidential Republic, the system of checks and balances, the principle of separation of powers.

АМЕРИКАНСКАЯ МОДЕЛЬ ПРЕЗИДЕНТСКОЙ РЕСПУБЛИКИ Кокебаева Г.К.¹, Мырзахмет Г.Т.² (Республика Казахстан)

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Аннотация: созданные в результате войны за независимость североамериканских колоний США были не только первым независимым государством на новом континенте, но также и первой президентской республикой в мире. Сейчас многие государства мира переняли американскую модель президентской республики. Критики американской модели президентской республики считают, что эта система неэффективна, поскольку власть находится в руках двух конкурирующих между собой ветвей – законодательной власти и исполнительной власти. Однако американская модель не представляет собой систему механического соединения трех ветвей власти. Власть едина и для действенного функционирования этой власти создан механизм взаимосвязанных органов, которые считались носителями законодательной, исполнительной и судебной власти.

Ключевые слова: президентская республика, система сдержек и противовесов, принцип разделения властей.

In history, there are two main types of republican forms of government – the presidential and parliamentary republics. The United States of America can be considered as the classical form of the presidential republic. Created as the result of the war for independence of the North American colonies, the United States was not only the first independent state in the New World, but also the first presidential republic in the world. Now many states of the world have adopted the American model of the presidential republic, the institution of presidency that arose on the American continent more than two centuries ago gradually gained new spaces for itself. The presidential republic is now the main form of new independent states of the post-Soviet space, so it is extremely important for them to investigate the specifics of the emergence and evolution of the presidential form of government in the United States.

The historiography of this problem covers a considerable numbers of studies. Among them a monograph by Gary L. Gregg “The Presidential Republic: Executive Representation and Deliberative Democracy” should be noted. This monograph is devoted to the theory of presidential representation. The book analyzes important questions on the influence of the institute of presidency on the advisory democracy, how the Founding Fathers of the American state understood the place of presidency in the Republic [2]. The problem of the separation of powers in the presidential republic is analyzed in the book by M.J.C. Vile [9]. The features of the American model of the presidential republic are also examined in the book by J.-E. Lane, which is devoted to a comparative analysis of constitutional mechanisms in different states [3]. The history of the creation of the United States of America and the formation of the presidential republic, the American Constitution are studied in

the works of V.V. Sogrin, A.A. Mishin, V.A. Vlasikhin, V.I. Lafitskii [4, 5, 6]. Among the newest publications, there is a monograph by J. Blondel "The Presidential Republic", dedicated to the comparative characteristics of the presidential republics. The book analyzes the national mechanism and practice of creating presidential republics in various countries [1]. The sources of our research were the texts of the Constitution and other US legislative acts.

After gaining independence, the political elite of the American society faced a question of organizing the power, bringing order to the state, creating a uniform state law for all states, which should become a constitution. The Convention started to work on 25th of May in 1787 in Philadelphia, which was to develop a new constitution. Subsequently, the delegates of this Convention – outstanding American politicians, lawyers, philosophers and scientists – entered the history of the United States as "Founding Fathers". At the time of its writing, the US Constitution was virtually unparalleled. The "Basic Laws" of the State of Connecticut, adopted in 1639, as well as constitutions of Virginia and Pennsylvania, ratified in 1776, were adopted as a basis for writing the Constitution of the United States. Some principles (the need for respect for the rule of law, the rule of law and the rights of the people) were borrowed from the British "Magna Carta" of 1215 and some other British laws.

Republicanism was considered by the Constitutional Convention as the cornerstone of the American political system. The election and control of all the authorities were assigned to them as the main American political value. The Constitution enshrined the basic principles of the presidential republic.

During the development of the Constitution, the American politicians relied on Montesquieu's judgements about separation of powers. Montesquieu was the first to declare the separation of powers as the highest law of the state system, which ensures the political freedom of citizens. The French thinker goes further than Locke and distinguishes three kinds of power: legislative, executive and judicial. However, the fundamental difference between the theories of Locke and Montesquieu lies in the fact that they differently considered the role of the legislative power. If Locke emphasized the supremacy of the legislature power considering it as a guarantor of the unity of the state power as a whole, Montesquieu considered the bad influence of any power, whoever used it: an official or a representative assembly. The ideas of Montesquieu were embodied in reality in the USA, where the executive power was concentrated in the hands of the president. The US Constitution enshrined an American version of the principle of separation of power, based primarily on its own national American experience. The principle of separation of powers was accepted by all the Founding Fathers, however the methods of implementing this principle caused some discussion. M.J.C. Vile wrote about it as follows: "Thus in revolutionary America there were those who adhered to the pure doctrine of the separation of powers, accepting no compromises with the old constitutional theory of checks and balances. But these were relatively few. At the other extreme there were those who wished to make the absolute minimum of change in the old constitution to bring it into line with new conditions. They accepted the ideas of the separation of powers, but only if that doctrine were combined with a thoroughgoing set of checks and balances comparable to those of the British system. John Adams exemplifies this latter group. The vast majority of Americans, however, fell somewhere between these extremes. For many, bicameralism was a sufficient check added to the basic separation of powers, but the various combinations of the two conceptions of government were very numerous. As the Revolution progressed, however, the extreme view of the pure separation of powers found fewer adherents, and by the time of the Federal Constitutional Convention in Philadelphia some form of a constitution of checks and balances was inevitable" [9, p. 168]. Founding Father believed that power is one, but dividing it into three branches (legislative, executive and judicial) prevents the excessive concentration of power in the hands of one of the branches. In the Constitution there was an organizational division between three branches of state power – the Congress, the President and the Supreme Court.

According to the US Constitution, the President with the consent of the Senate (the upper house of parliament) forms an administration members of which bear political responsibility only to the President. The American president can not dissolve the parliament and the parliament can shift the president only in order with the impeachment. In the US, the impeachment is called for president in the event of high treason or posing a threat on the constitution. Impeachment is carried out in the following order: the lower house of parliament must formulate and bring charges and the upper chamber takes charges into consideration and makes decision as a judicial instance. Acts issued by the President are generally binding and are of legal force close to the law. The President represents the state within the country and in international relations, has the right to conclude international treaties, some of which are subject to ratification by the Senate. The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment [8, p. 7]. The presidential term is 4 years long. In order to prevent the usurpation of power, there is a ban envisaged in the US Constitution that prevents the election of the same person to the presidency for more than two times. The functions of the government in the United States are carried out by the presidential

administration, which possesses very broad powers. In the United States of America, the executive departments are executive bodies of the government of the country. In total there are 15 such departments in the US government. The head of the department is the secretary (which corresponds to the post of minister) and the head of the department of justice is the attorney general.

The Constitution established a bicameral Congress consisting of the Senate and the House of Representatives. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives [8, p. 1]. The Senate has the right to approve high-ranking officials represented by the President – ambassadors, ministers, consuls, members of the Supreme Court. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, (Note: changed by the Seventeenth Amendment.) for six Years; and each Senator shall have one Vote [8, p. 2]. The use of the US Armed Forces abroad by the President requires a consent of the Congress. The President addresses the Congress with annual messages about the state of the country, recommends the adoption of certain laws, convenes the Congress for an emergency session.

The judicial system of the USA was also developed more than two centuries ago and has not undergone significant changes since then. The US Supreme Court is at the head of the entire system of federal courts, which at the same time also occupies an exceptionally important position in the whole structure of the supreme bodies of state power alongside with the President and the US Congress. “The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office” [8, p. 8]. The Supreme Court of the United States of America has nine judges. The candidacy of each of them is proposed by the President of the United States and then approved by the Senate. One of the judges is appointed by the President as chairman.

Critics of the American model of presidential republic believe that this system is ineffective, since the power is in the hands of two competing branches – the legislative and the executive. However, the American model does not represent a system of three-power state – three completely independent authorities. The power is one and for the effective functioning of this power a mechanism of interrelated bodies (with the help of “checks and balances”) was created, where each body is considered to bear legislative, executive and judicial powers. This peculiarity of the American model of the presidential republic was also noted by the well-known legal scientist T.O. Sargentich: “One also should question the assertion that a presidential system of checks and balances is unaccountable to the people. This suggestion has been made repeatedly over the past 100 years by parliamentary critics in the United States. In my view, the system that has evolved in the United States is considerably more accountable than the dominant executive model represented by Great Britain. In any event, the system of checks and balances makes factional control of government more difficult. Moreover, a system of separation of powers and checks and balances can make the government more responsive to divergent views in society” [7, p. 592]. The President “holds back” the Congress with the right of veto on the laws passed by chambers. The Congress “holds back” the President with the right to overcome this veto using the opportunity to speak against him as a court by impeachment. *The latter authority extends to all civilian officials in general, including judges.* Thus, the right of impeachment acts a parliamentary counterbalance to the judiciary too. The Supreme Court “holds back” the Congress and the President with the rights to recognize their acts as unconstitutional, resolve disputes between them and interpret the Constitution.

The US Constitution is the oldest of existing constitutions in the world today. It embodied political and legal ideas, which have retained their importance of the foundation of democracy even at the present time. The stability of the Constitution is also facilitated by the American version of the principle of separation of powers enshrined in it, based primarily on own national American experience. The creators of the US Constitution sought to view the President as the highest official in the state. The US President embodies the unity of the state, is the guarantor of the Constitution, the symbol of the nation and law and order, the main representative of the state in relations with other countries. The system of “checks and balances” prevents excessive concentration of power in the hands of one of the branches, thus protecting the state from the possibility of establishing a dictatorship, ensuring the stability of the constitutional system. The American model of the presidential republic was of great importance in the development of republican constitution throughout the world.

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