

SEPARATION OF POWERS IN JOHN LOCKE'S POLITICAL PHILOSOPHY

A SEPARAÇÃO DE PODERES NA FILOSOFIA POLÍTICA DE JOHN LOCKE*

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Abstract: Separation of powers is one of the ideas with profound theoretical and practical significance, especially in the field of political science. The birth of the theory of separation of powers marked the transition from the barbaric use of power in authoritarian societies to the exercise of civilized power in democratic societies. Therefore, separation of powers is considered an objective necessity in democratic states, a condition to ensure the promotion of liberal values, and a criterion for assessing the existence and development of the Rule of Law where people's sovereignty plays a paramount role. On the way to perfecting political thinking, the theory of separation of powers has developed into a complete system in the main philosophy of John Locke. Within the scope of the article, the author focuses on analyzing Locke's ideology of separation of powers in terms of the nature of separation of powers, the basis and some principles of power division, and the roles of the different parts of government power and the relationship between them.

Keywords: Executive. Federative. John Locke. Legislative. Separation of powers.

Resumo: A separação de poderes é uma das ideias com profundo significado teórico e prático, especialmente no campo da ciência política. O nascimento da teoria da separação de poderes marcou a transição do uso bárbaro do poder nas sociedades autoritárias para o exercício do poder civilizado nas sociedades democráticas. Assim, a separação de poderes é considerada uma necessidade objetiva nos Estados democráticos, uma condição para assegurar a promoção dos valores liberais, e um critério para avaliar a existência e o desenvolvimento do Estado de direito, onde a soberania dos povos desempenha um papel primordial. No caminho para o aperfeiçoamento do pensamento político, a teoria da separação de poderes desenvolveu-se num sistema completo na filosofia principal de John Locke. No âmbito do artigo, o autor concentra-se na análise da ideologia de Locke da separação de poderes em termos da natureza da separação de poderes, da base e de alguns princípios de divisão de poderes, e dos papéis das diferentes partes do poder governamental e da relação entre eles.

Palavras-chave: Executivo. Federativo. John Locke. Legislativo. Separação de poderes.

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1. Introduction

In the history of Western political thought, Aristotle (384-322 BC) was the first person who introduced the idea of separation of powers in his book "The Politics" (BARNETT, 2017, p. 80). Although it is not a complete system of doctrine, it is the foundation for the next generation to build and develop. It developed into a complete doctrinal system in the political philosophy of John Locke (1632- 1704)(BOOKMAN, 2019; TUCKNESS, 2020; UZGALIS, 2018). He was the first to draft a complete theoretical system of the theory of separation of powers (FAIRLIE, 1923; GENCER, 2010; HOANG, 2017; RATNAPALA, 1993; SALZBERGER; VOIGT, 2009; TUCKER, 2019; WALDRON, 2013), and is shown in the work "Second Treatise of Government" (LOCKE, 2010; 2016a; b). Acquiring and developing the idea of a liberal and anti-autocratic political institution, Montesquieu (1689-1755)(BOK, 2014)built the theory of separation of powers with the aim of creating political institutions that guarantee freedom for citizens. Following Montesquieu, Jean Jacques Rousseau (1712-1778) (BERTRAM, 2017) in his work "The Social Contract" gave very new and progressive views on the decentralization of authority in the organization and operation of the state apparatus.

The core point of Locke's thought on separation of powers in particular and modern Western philosophers in general is the assertion that the People are the subject of state power, the state must stand under the law and manage society by law. Each state has its own legal system, the constitution holds the highest position. The laws of the state must obey the laws of nature (HANCEY, 1976; WEST, 2012). Natural law is seen as something that precedes the state, stands above all states, is recognized by reason play a role in leading social life and regulating people's behavior. On the other hand, the control of power is an objective requirement in the organization of state power. Historically, this was the inevitable development, against feudal tyranny, building a newly controlled state power. Restraining power is not only an objective requirement but also comes from the characteristics of power itself.

The birth of the idea of separation of powers has marked a remarkable development on the way to perfect political thinking in general and the organization of the state apparatus in particular. It contributes to the fight against autocracy, authoritarianism and represents progressive, democratic ideas in the field of state organization. Separation of powers became the complete doctrine of Locke's political system. He clarified the idea of separation of powers in terms of the essential aspects, the basis and some principles of the division of

power into three branches: legislative, executive and Federative Power of the Commonwealth. Although Locke has not mentioned judicial power as a third branch of state power, his outlines have really created a separation of powers in the organization and operation of the state apparatus. Besides, he pointed out the role of branches of power and the relationship between them to outline the unity of state power. It can be said that the development of ideology on separation of powers in the history of philosophy is the product of the development of material production as well as the class struggle in society. It is a continuation of philosophical principles on the nature of the state and law and is an indispensable element of state development with economic and political bases and their changes according to the social development. The thought of separation of powers in John Locke's political philosophy contains many great values that still have topical significance up to now. Today, separation of powers has become popular and widely applied in the state apparatus of many countries around the world.

2. Research Methods

John Locke is one of the major names of Western philosophy in the Early Modern period. His theory of separation of powers is a continuous continuation of the human thought flow and a reflection of the complete step in the establishment of state institutions. Therefore, when studying Locke's separation of powers, it is necessary to clarify the inheritance in thought as well as its inevitable development trend. That requires the author to use many different research methods at the same time. In this article, the author has stood on the stance of Marxist-Leninist philosophy, using the materialistic worldview and dialectical materialism methodology (MILLS; DUREPOS; WIEBE, 2009, p. 292) to solve the problem.

The thought of separation of powers is one of the basic contents of Locke's political thinking; therefore, it itself has a close relationship with his other socio-political ideas. When studying Locke's separation of powers thought, an interdisciplinary scientific approach is required; including: philosophy, politics, law, sociology, etc. It is impossible to fully understand his separation of powers thought without putting it in relationship with other socio-political ideas. So, it is necessary to use the comprehensive and objective principles when considering the matter. These principles help us understand more deeply the nature of the problem.

In order to clarify John Locke's thought on separation of powers, the author used the literary method, based on his famous work "Second Treatise of Government" (LOCKE, 2016a) as a basis. for problem analysis. Besides, for serving the research process, the author has used research methods such as analysis, synthesis, comparison and contrast, the unified method between logic and history. Especially, it is necessary to thoroughly grasp the practical point of view, derived from the necessity of separation of powers in the organization and operation of the state apparatus. Thereby, it is possible to clarify the contributions that J. Locke has made to humanity on the way to perfecting state institutions. The above methods are used at the same time, have a dialectical relationship with each other, and support each other, helping the author to approach and solve the problem in a more comprehensive, objective and scientific way.

3. The essence of separation of powers

"Second Treatise of Government" (LOCKE, 2010; 2015; 2016a; b) is a typical work, showing the concentration of Locke's political thought. Studying the entire work highlights his exploration of issues related to government, especially the issue of separation of powers. The core content of Locke's theory of separation of powers states that state power always tends to expand and strengthen its own role. Wherever there is power, there is a tendency to abuse and autocracy, no matter to whom it belongs. Therefore, in order to ensure the basic liberties of citizens and prevent abuses of power by the Government, it is necessary to establish legislation to limit the state power. The best way to combat the abuse of power is to limit power by legal means and to do so by separation of powers. A liberal political institution is a political institution in which the supreme power is divided into three branches: the legislative, the executive, and Federative Power of the Commonwealth (CAHN; FORCEHIMES; TALISSE, 2021, p. 89; LOCKE, 2010, p. 75; 2015, p. 100; 2016b, p. 73). These branches must be vested in independent divisions. The division of power here must be expressed on the basis of law, that is, the legislative and executive branches can only exercise the rights prescribed by law. The law must be objective, must recognize individual liberties, and its essence must be the expression of the general will (FARR, 2015) of the people.

However, the content of the theory of separation of powers does not stop at assigning functions to branches of power, but also moves towards a higher purpose. It is a mechanism of mutual control between branches of power, also known as a mechanism of

restraint and balance. Resilience and balance is a set of rights and responsibilities prescribed by law as the basis for branches of power to exercise control over each other. It establishes a political-legal relationship between the branches of power so that the branches can independently carry out their tasks with their own legal powers, and at the same time, it can prevent the abuse of power by any branch. According to this theory, the mechanism of separation of powers and power balancing is demonstrated through: 1) Legislature enacts laws, supervises the implementation of laws enacted by it, and prosecutes law enforcement officials when they violate their responsibilities. 2) The executive is responsible for enforcing the law, preventing arbitrary intentions of the legislature. 3) The independence of the judiciary and judges to protect citizens from harm by laws of the legislature as well as from arbitrary conduct by the executive. Through free elections, the people will be the ones to implement the separation of powers, and these powerful institutions must respect the law and be accountable to the people.

The theory of separation of powers in the state apparatus is expressed in the works of three famous Western philosophers in early modern times, namely Locke, Montesquieu, Rousseau. In *Second Treatise of Government*, Locke only stopped at the legislative power, the executive power and Federative Power of the Commonwealth. Locke stated that in order to establish Federative Power of the Commonwealth, the first thing to do is to establish a legislative power. He argued that “This legislative is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it;” (CAHN; FORCEHIMES; TALISSE, 2021, p. 86), is the basis for all citizens to determine the limits and scope of their power. Although the legislature has supreme power, it is not unlimited. The enactment of laws is one of the most important conditions for the legislative body to manage society, but it does not mean that it is not limited by the law. It also has to obey its own laws. Parliament passes laws but does not interfere in their implementation. The executive, i.e. executive power, is vested in the king. The king appoints ministers, chief justices and various other officials. The king is still subject to the rule of law (FATOVIC, 2004), without the privileges of a parliament. This is to prevent the king from acquiring all powers, infringing upon the natural rights of the citizens. The executive also exercises foreign affairs, war, and peace, which Locke calls "federative power" as a third kind of power. Law making and law makers need to be separate from law enforcers and defenders. Putting all three of these powers into the hands of an individual or an agency has been surpassed by history. This idea of separation of powers aims to give parts of state power to different socio-political forces, namely the bourgeoisie and the feudal social class. The

loosening of power from the legislature as well as the tightening of power on the part of the executive is harmful. John Locke's theory laid the foundation for the birth of the theory of the bourgeois rule of law.

4. Basis and some principles of separation of powers

In order to ensure the basic liberties of citizens and prevent abuses of power by subjects holding state power, it is necessary to establish legislation to limit state power. The best way to combat the abuse of power is to limit power by legal means, and the way to do it is not to centralize power, but to divide it. In order to limit state power, it is necessary to first decentralize powers, and then make the assigned branches of power only allowed to operate within the scope prescribed by law. Separation of powers does not only take place in a horizontal direction, but is also necessary in the vertical, and in any area of the state.

According to Locke, state power is the power of the people. The people ceded part of their power to the state through contracts, and to fight dictatorships, separation of powers had to be implemented. Locke divided powers into legislative, executive and federative powers and people have a great role in Locke's concept. They are seen as a restraining force against abuses of power by the state. They are the final arbiter of disputes between the legislature and the executive, between them and the legislature or executive. The tool for dealing with these problems is the right to rebel (FINLAY, 2008; TUNICK, 2014). In Locke's view, people did not "cleanly" transfer their natural rights to the absolute power of the state, but by reason they still retained their share. He argued that the transfer of power from the state of nature to civil society was the transfer of power by peaceful means. Locke demanded that this agreement be approved by a majority of the people. And this new authority must fully guarantee human rights.

For Locke, legislative power is still limited by some certain conditions. Below are the limits that social credibility and natural law have placed on the legislative power of each state in all forms of government.

First, legislature cannot be absolutely autocratic over the people's right to life and their destiny. The people empower the legislature for the preservation of their lives and property as well as for the common good (public good)(HUSSAIN, 2018) of society. Therefore, legislation has no other purpose than the preservation of the subordinates. It cannot destroy, enslave or intend to impoverish those under it. Its statutes must be established entirely for no other purpose than for the benefit of the people.

Second, legislative power cannot have in itself the power to rule by arbitrary orders, but it must spread fairness, decide on the people's rights by enacted and effective laws and has undergone judicial review. Because, people transfer all their natural power to the society to which they have joined. Society then gives legislative power to those it deems fit, in the belief that they will be governed by the promulgated laws by which property and individuals are protect. If they are governed by arbitrary orders and unclear decisions, their security and assets remain in a state of insecurity and mankind will be in a much worse situation than the state of nature. Therefore, in order for the legislative power to exist for the benefit of society, the laws enacted by the legislature must be widely publicized among the people. Those laws could not be arbitrarily changed and had to be the same for everyone, rich and poor, court favorites, and peasants alike.

Third, the supreme power cannot deprive any person of the property without the consent of the owner. Because the preservation of property is the government's purpose of existence, and it is for that purpose that people establish civil society. People in society must have property, they have the right to claim it and it must be stipulated by the law of society that no one has the right to take away their property without their consent. Without this regulation, no one has any property at all because it can be taken away by other people or the government. Although the king or the senate has the power to make laws to regulate the property relations between the subjects, they do not have the right to take the property of the people (LOCKE, 2010, p. 74). One thing is for sure, governments cannot exist without great charge, and it makes sense for each person to pay a portion of his or her property in order to enjoy state protection. But in all cases the consent of the protected person must still be obtained, that is, the consent of the majority of the people raised either by themselves or by representatives selected by themselves. Locke's implication is that the true government has no right to deprive or infringe upon the people's legitimate property. Specifically, he emphasized that if any man claims a power to impose and collect taxes on the people by his own authority without the consent of the people, then "he thereby invades the *fundamental law of property*, and subverts the end of government" (LOCKE, 2010, p. 74).

Fourth, legislature cannot transfer the power to make law to any other person. Since it exists as a representative power for the people, those who possess it cannot transfer it to others. Only the people have the right to choose the form of state by establishing legislative power and delegating it to the right people. He stated that "The power of the legislative, being derived from the people by a positive voluntary grant and institution, can be no other than what that positive grant conveyed, which being only to make laws, and not to make

legislators, the legislative can have no power to transfer their authority of making laws, and place it in other hands.”(LOCKE, 2010, p. 75).

In Locke’s view, in well-organized, well-ordered states, where the interests of all are inherently taken into account, legislative power must belong to many different groups of people who can legally meet and only those who have the power to make laws. But after the laws were made, they themselves had to submit to those laws. It is a new and intimate bond that reminds them that they make laws for the common good. In such states, legislation should be left to the synergy of three actors. First, a person who is truly hereditary, has supreme executive power, has the power to summon and dissolve the remaining two subjects within a certain time (the king). Second, a hereditary noble council. Third, a council of representatives elected by the people for a certain period of time. These three actors will meet at a specific time to draft the law, and when the work is done, they will separate again, become a member of the community and be governed by the laws that they make it, thus ensuring that their law-making is for the common good of the whole community.

Regarding the executive power, Locke pointed out “it is not the *supreme executive power*, that is exempt from *subordination*, but the *supreme executive power* vested in one, who having a share in the legislative, has no distinct superior legislative to be subordinate and accountable to, farther than he himself shall join and consent; so that he is no more subordinate than he himself shall think fit, which one may certainly conclude will be but very little.” (LOCKE, 2010, p. 79). At the same time, in order to avoid the tendency to seize the power and for the law to be widely enforced, it is necessary that a power be present to observe the enforcement of laws that have been made and maintained by force. And so the legislative and executive powers are often separated. The executive branch includes both law enforcement and oversight duties. It is perpetuated and reinforced by the coercive power of the law. If the legislative body passes the Parliament to make the law, the executive body plays the role of the actual implementing law. An executive who wants the people to obey the law must first voluntarily obey the law himself. The executive branch has the power to convene the legislature, to set a direction to change the existing law when it is no longer in the interests of the people.

5. The role of the organs of state power and the relationship between them

In Locke's views on separation of powers, it can be seen that he identified state power with legislative power. The legislature is the only body that has the power to make laws.

Besides, Locke also pointed out the boundaries that the legislature is not allowed to cross, for example it cannot be an autocratic power, cannot give legislative power to someone else, etc.

The executive branch was created due to the need for a permanent body to carry out and manage the general affairs while the legislative body should not exist on a regular basis. The main duties and powers of the executive body are to implement as well as supervise the implementation of laws enacted by the executive body.

According to Locke, legislative power belongs to parliament. Parliament must meet periodically to pass laws, while the implementation must be delegated to other agencies to take care of. It is the executive body, the government. In addition, the executive branch has certain prerogatives (MATTIE, 2005). That privilege is shown when there are new social problems that arise but the legislative body has not yet promulgated laws to adjust. of the community comes first. Since the executive branch is established by the legislature and is accountable to the legislature, the legislature has the power to abolish the executive. The executive branch includes both law enforcement and oversight duties.

Existing alongside legislative and executive power is the federative power. The federative power is the guarantee of security and interests of individuals as well as the entire community in external relations with other individuals and communities. Although executive power and federative power were two different types of power, they were only concerned with the internal and external affairs of the country respectively, operating under the control and authority of the monarch (ERVIN, 1970). In fact, executive power and federative power are usually assumed by one agency. Today, the right to union is very important in the organization and operation of the state apparatus.

Locke believed that where legislative and executive power belong to separate hands, the protection of all members of society can be as high as possible. The exercise of power for the benefit of the community and in accordance with the mandate and purposes of the government is a prerogative to act with integrity and should never be questioned. Since the people never consider this privilege of action when it is used to the extent tolerable, their interests are secured, because “power to act according to discretion, for the public good, without the prescription of the law, and sometimes even against it” (FATOVIC, 2004; FRIEDRICH, 1972; LOCKE, 2010, p. 84; POOLE, 2017).

In the relationship between the legislature and the executive, each department has a different function, which is irreplaceable in the political system because the legislature has the power to make laws to govern. In the state power apparatus, the executive branch is

subordinate to the legislature but not passively. On the one hand, the person holding executive power joins the legislature to draft laws and must rely on the general legal framework of the society. On the other hand, the executive power is not only to execute the law, to regulate all activities of society, but also to contribute to the making of specific laws and to regulate those laws. The legislature cannot always hold all the power in society, but that power also has the support of the executive. However, promulgated laws are not immutable but must also be changed in accordance with practical conditions. Locke asserts that the executive branch, even if it has the power to summon or dissolve the legislature, has no higher position than that, it is always only the power delegated to execute the laws of the body. And the executive was given “The power of assembling and dismissing the legislative, placed in the executive, gives not the executive a superiority over it, but is a fiduciary trust placed in him, for the safety of the people,” (LANGSTON; LIND, 1991; LOCKE, 2010). But it is not always that the executive is bound to abide by the decisions and laws of the legislature, and in some cases it can deal freely with its own will. Locke calls it the prerogative of law enforcement. Having this privilege because it is not always possible for the legislature to foresee social problems that need to be adjusted in the future to have an appropriate law, so then the executive body must act according to its will but the ultimate goal to be achieved is the people's highest interests. Also for this purpose, in some other cases, the executive agency can handle cases that are different from the provisions of the law, even contrary, because the harshness of the law is not always the case. Locke gives an example to prove this case “as not to pull down an innocent man's house to stop the fire, when the next to it is burning” (LOCKE, 2010, p. 84). Therefore, this action is contrary to the provisions of actual law but in accordance with the supreme law, which is the interests of the people, as the Roman jurist Ciceron (106–43 BC) (WHITE) said, “*Salus populi suprema lex esto*” (HANCEY, 1976).

When the legislature places the enforcement of the law on the executive branch, but they themselves are not capable of carrying out the task, the legislature has a reason to deprive the executive branch of its power. The executive branch has the supreme power, but it is still not allowed to exceed the scope of its powers, but must comply with the regulations that depend on the legislature. Locke emphasized the role of the people. Only the people, who are the supreme subjects in society, can remove or change the legislative government, when these agencies operate against their interests. At that time, the people regained power to put in the hands of new legislators to ensure their interests.

Executive power rests on a person who also participates in the legislature, obviously

dependent on it. Therefore, the supreme executive power is not a place free from dependence on the legislature, but that executive power is vested in a person who has a share in the legislature, there is no legislative body, which is superior, to depend and be accountable, instead of the person who has executive power must enter the legislature, so that he may not depend more than he thinks fit, which one can certainly conclude to be very little. Other rights, such as those of ministers or other subordinates within the national community, are limited according to differences in customs and constitutions among nations.

In state power, John Locke also introduced “another power in every commonwealth, which one may call natural,”, and namely “may be called federative” (LOCKE, 2010, p. 76). When people join civil society, it is necessary to have a connection between this community and another community outside the country to preserve peace for everyone. Accordingly, the right to union is the establishment of socio-political organizations to perform the function of national unity and at the same time an alliance between nations to fulfill international commitments and laws. Locke’s notion of federative as stemming from his own life and ups and downs on his political path. He was The Lord Ashley's (1621-1683) political advisor and sided with parliament against the autocracy of Charles II of England (1630-1685), therefore, he found it necessary to link the state government with other socio-political forces to consolidate power. It is not possible for a state to exist in isolation from communities outside the state. Locke asserted the important role of the right to union but cannot be separated from the relationship with legislative and executive power. Although the right of federative is directly related to war and peace, even leading to the risk of government dissolution, this power still depends on the legislative and executive branches. The dependence of other powers on legislative power is the unification according to the decentralized system from the agency with higher power to the agency with less power. The federative power has the same influence as the legislature, which together with the legislature both directs specific activities and is subordinate to the legislature. Locke also drew a comparison between executive power and federative power. “the executive might redirect the federative power inward to manage affairs within the civil society and act upon its members”. Executive and federative power have different characteristics, but “the boundaries between external and internal security become blurred.”(JENKINS, 2011).

In short, for Locke, the essence of state power belongs to the people and is delegated by the people. People's happiness is always the goal that any political mechanism must aim for. It can be said that Locke's concept of the state has spawned the idea of a rule of law state embodied in the concept of the supremacy of law in society and separation of powers

into three branches. Locke's concept contained a progressive thought when emphasizing the subject role of the people in the state and on natural human rights. Locke denied the existence of an absolute monarchy because there was no guarantee that the King would not infringe upon the liberties of property and other rights of the people.

6. Conclusion

If Aristotle is credited with laying the groundwork for decentralization, early modern Western philosophers have brought the idea of separation of powers to its zenith; in which John Locke was the first to formulate the theory of separation of powers becoming a system. He has brought to mankind a new perspective on how to organize state power in which power is not concentrated in the hands of the head of the state, but rather clearly delineated branches of power to control and balance each other. The advantage of the idea of separation of powers is to avoid autocracy and authoritarianism in the exercise of state power. The formation and development of separation of powers theory is associated with the process of fighting for equality, freedom and social progress. The thought of separation of powers in John Locke's political philosophy has taken the law as the supreme and secured the civil liberties as the ultimate goal. In addition, with the mechanism of restraint and balance, mutual checks and balances between the three branches of power have eliminated the risk of concentrating all state power in the hands of an individual, a group of people or a single authority - the main cause of corruption in the exercise of power. Thanks to this mechanism, no state agency can dominate or completely overwhelm the activities of other agencies. At the same time, no agency or organization stands outside or above the law; outside the control and supervision of other state agencies. Thus, the clear division of functions and personnel together with the mechanism of restraint and counterbalance both limits the possibility of abuse of power and at the same time promote personal responsibility. Although there are limitations, John Locke's separation of powers is one of the progressive and democratic ideas in the field of state apparatus organization. It has a powerful effect against autocratic and authoritarian regimes. Today, the idea of separation of powers still has great historical significance that needs to be applied to build a modern state apparatus.

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