

EFFECTS OF SEPARATION OF POWER ON AMERICAN FEDERAL GOVERNMENT

Mehmet BOZTEPE

Dr. Pazarcık Kaymakamı

Makale Gönderim Tarihi: 02.12.2013, Makale Kabul Tarihi: 29.04.2014

Abstract: This study will analyse the twin doctrines of the separation of powers and checks and balances system which characterize American Federal government system. The main objective of the twin principles is to limit the power of the national government and force separate branch to share power. Since the framers of the America wanted to protect system from possible misuse of power, they constructed a constitution by separating the parts of the government, and by balancing them against each other. Indeed, there are three separate branches of the American Government system; legislative, executive and judicial and each of them has its own district power in decision-making process. Under this system, it is difficult to enact a new policy unless that policy has enough support of each branch. As a result no branch of government has unchecked power and is able to be dominant on American political life concurrently.

Key Words: American Government System, Separation of Powers, Checks and Balances System, Federalism.

GÜÇLER AYRILIĞI İLKESİNİN AMERİKAN FEDERAL YÖNETİM SİSTEMİ ÜZERİNE ETKİLERİ

Özet: Bu çalışma güçler ayrılığı ilkesi ve checks and balances sistemi olarak adlandırılan “control ve denge” mekanizma ilke veya uygulamalarının American Federal Yönetim sistemi üzerine olan etkilerini analiz etmektedir. Belirtilen ilke ya da uygulamalar American Federal Yönetim sistemini karakterize eden en önemli etkenlerdir. Öyle ki bu sistemde yeni bir politikanın yeterli desteği bulmadan yürürlüğe girmesi imkânsızdır ve hiçbir yönetim organı Amerikan politik yaşamına baskın olamadığı gibi kontrol edilmeyen bir güce de sahip değildir.

Anahtar Kelimeler: Amerikan Federal Yönetim Sistemi, Güçler Ayrılığı İlkesi, Kontrol ve Denge Mekanizmaları

INTRODUCTION

This article attempts to explain “the effect of separation of power on US Federal Government Administration”. To understand the character of the American government system and the relationship between main American institutions, it is essential to look beyond the conflicting interest and forces before the Constitutional Convention of 1787. Political conflicts between the colonies and England, and among competing groups within the colonies are the most important sources of the American political framework. Under Articles of Confederation in America, the central government, composed of solely Congress, had few powers and no means of enforcing its will. It was clear that national government had weakness and the states retained their sovereignty.

The framers of the America faced difficult challenges when they prepared the new constitution because of the colonies’ experience under the British monarchy. Firstly, the framers wanted to avoid giving any person or group absolute control in government. Although they wanted to ensure that no individual or small group in the government would become too powerful, they also sought a new central government that would be strong enough to promote commerce and protect property from radical state legislatures. Since the government had lacked centralization under the Articles of Confederation, the framers didn’t want to have that problem again. Secondly, according to Lowi and Ginsberg, “they sought to bring an end to the ‘excessive democracy’ of the state and national governments under the Articles of Confederation (1998:24).” As a result, two important expectations were emerged. On the one hand the framers sought to create a powerful central government, on the other hand, they supported that government shouldn’t exercise this power alone. Due to these expectations, two incorporated key principles were created into the Constitution of 1787- ‘the separation of the powers’ and ‘checks and balances.’

THE EFFECT OF SEPARATION OF POWER ON AMERICAN FEDERAL GOVERNMENT SYSTEM

The doctrine of separation of power was identified firstly by French Political theorist Montesquieu. He believed that political liberty for the ordinary citizen can only be ensured if government is organized on the principle of separation of power. Therefore, legislative, executive and judicial powers should be exercised by three separate branches of government and each branch should be confined to the implementation of its power, and personnel who operate these powers should be different (Montesquieu, 1949:16). According to Farrand,

Montesquieu's major work *The Spirit of the Laws* 'were taken as political gospel' at the Philadelphia Convention in America (1962:49).

It can be said that separation of power has mainly four effects on the American Federal Government System. These effects will be analysed in separate subheadings below.

Divided Governmental Power and Federalist Structure

Governmental power is divided among several institutions in American Government system. There are three separate branches of the government; legislative, executive and judicial and each of them has its own district power in decision-making process. The main objective of this principle is to limit the power of the national government and force separate branch to share power. At this point, DiClerico pointed out, "each has a strong sense of its own responsibilities and importance in the scheme of things; each has powers that, if exercised, can frustrate the will of the other. So, it is not surprising that an institutional rivalry develops between the three branches." (1995:65) Therefore, according to Lowi and Ginsberg, "this system is not separated powers but, is separated institutions sharing the power to diminish the change that power will be misused." (quoted in Neustadt 1960:33)

As a result of federal government system, separation of powers can also be seen between the Federal government and the governments of the several states. Since federalism created a division of powers and functions between the national government and the state governments, the power of national government was to be limited by recognizing a second layer of the state governments in opposition to it. In this system, each state has to have right to make so many important policies according to wishes of their citizens whereas they are obliged to act in concert on most questions involving the nation as a whole. The Federal Constitution safeguards the rights of the states by reserving all powers not specifically delegated to the Federal government. Indeed, federalism allowed state to implement the rights enjoyed by citizens and to define the crime and its punishment.

In addition to divided governmental power, the framers of the Constitution also separated the legislative or law-making branch of government in to two branches. Heale underlined that the main aim of separating legislative was to replace the old Congress with a bicameral legislative, in which each house would act a watchdog on other. (1977:58) This bicameral Congress consists of two chambers - a House of Representatives, which represented the people in proportion to population, and a Senate, which gave equal representation to the states.

BOZTEPE: Effects of Separation of Power on American Federal Government

This character of legislative branch was directly related to the framers' major goals. This system provided checks and balances within the legislative branch. The House of Representatives was designed to be directly responsible for the people in order to encourage and help to enhance the power of the new government. However, the powers of the House of Representatives was checked by the senate, whose members were to be appointed for long terms rather than elected directly by the people for short terms. Moreover, Senate were indented to make that body even more resistant to popular pressure. Since only one-third of the senators would be selected at any given time, the compositions of this institution would be protected from changes in popular preferences transmitted by the state legislatures.

As a result of division of Congress, the President is expected to gain the support of two separate and distinct groups of legislators. According to DiClerico, "since the President must deal with a large number of independent power centres within Congress, it is difficult to gain acceptance for his legislative proposals." (2000:65) Therefore, if the President wants to gain favourable consideration of his legislative proposals, he must make a special effort to cultivate the relationship between members of Congress and make them aware of his legislative priorities. At this point, the President's persuasive capacity to negotiate and bargain in his relations with Congress is important because the separation of powers grants Congress autonomy and rejects Presidents authority over them. Neither the president nor his staffs, neither his cabinet colleagues nor his political appointees within the federal bureaucracy, are members of legislature. There is no requirement that the legislature should respond affirmatively to his request or, indeed an obligation upon them to make any response at all. Because of these reasons, Presidents need to use some tools and tactics to persuade Congress and to win their support. The most used tactics by presidents are status conferral, legislative assistance and Presidential assistance. In addition to these tactics, presidents are armed with several inducements, such as economic assistance, military projects, federal contracts, and courthouses, all of which may be channelled into a congressional district in return for its representative's support.

The framers of the American Government rejected the system of Cabinet government as a result of principle of the separation of powers. According to Vile, "They saw the Cabinet as a means of the maintenance of a royal dominance over the legislature and they did not wish to put such a weapon into the hands of the President." (1987:179)

Different Methods of Selecting the Governmental Personnel

Another important effect of separation of powers in the American political system is different methods of selecting the top personnel. The framers believed that people who manage different power should be different. Therefore, direct popular election for the members of the House and Senate and indirect election of the President have been created so that each branch is responsible to different constituency. Lowi and Ginsberg pointed out that “this is supposed to produce a ‘mixed regime’ in which the personnel of each department will develop very different interest and outlooks on how to govern, and different groups in society will be assured some access to governmental decision-making.”(1998:31)

Since the President is elected by the entire nation, he represents the national interest and tries to overcome problems and policies in terms of their national implications. However, because members of Congress are elected from districts or states, they see themselves as people representing primarily the interests of these smaller geographical entities rather than the nation as a whole. Therefore, they bring a more local perspective to the evaluation of problems and policies.

As a natural result of the horizontal separation, the Constitution forbids members of one branch belong to other at the same time. Neither the President nor any of his Cabinet Secretaries might be members of the Senate or the House of Representatives. Similarly, Congress is entirely separate and politically independent from the Presidency and political leaders of governmental departments.

Control Mechanism: Checks and Balance System

The other important effect of separation of powers is Checks and balances system. Under this system, each branch of government is able to participate in and influence the activities of the other branches. By means of the principle, each of branches has some power over the others, and different governmental agents are balanced against one another. The main aim of the check and balance system is to protect system from the danger of anarchy and popular passion.

As a result of the check and balance system, one of the most important legislative powers over the executive is that Congress can impeach and remove the President. According to Constitution, “the President, Vice President and all civil officers of the United States shall be removed from the office on impeachment for and conviction of, Treason, Bribery, or other High Crimes and Misdemeanours.” The impeachment power of Congress has effects on the American government system. According to DiClerico, “during the impeachment process a president is severely weakened politically and is unable to exert necessary leadership over national affairs. Like during the final year of

BOZTEPE: Effects of Separation of Power on American Federal Government

Nixon, who was impeached, department heads not only complained about being unable to see the President, but also pointed to lack of directions from the White House in important policy areas.“ (2000:99)

Another important power of Congress's authority is to investigate and oversee the executive branch and its agencies, such as the Department of Defence and the Department of Justice. As part of this responsibility, which is known as oversight, Congress summons senior officials to get answers' of members, and orders audits of agencies. Moreover, Congress has also been given some control over the executive appointments, which have had to be filled with advice and consent of the Senate.

As a reflection of the checks and balance system, executive has also control over Congress. The most important executive power over legislative is veto power. Veto power of the President has two important results. Firstly, the presidency plays key roles both at the beginning and at the conclusion of the legislative process. Secondly, the President may employ the threat of a veto as a means of persuading Congress to make changes in legislation that is clearly unacceptable to him. Nevertheless, Congress is not powerless to thwart the use of the presidential veto. Although no bill vetoed by the President can become law, Congress can override a presidential veto by two-thirds votes of each chamber in favour of the bill. However, in the case of a pocket veto, Congress does not even have the option of overriding the veto. But, it is not forgotten that Congress can reintroduce the bill in the next session in order to overcome problem of pocket veto which is a legislative manoeuvre in law-making that allows a president or other official with veto power effectively to exercise that power over a bill by taking no action. Indeed the Constitution grants the president 10 days to review a measure passed by the Congress. If the president has not signed the bill after 10 days, it becomes law without his signature. However, if Congress adjourns during the 10-day period, the bill does not become law. In addition to overriding a veto, Congress can also make use of another tactic that is called rider mechanism which allows the senate to attach an amendment that the President is against to a bill that he supports. According to DiClerico since the President's veto power does not permit him to veto only those parts of a bill he dislikes, he is faced with a dilemma: Either he must veto the entire bill, including those provisions he supports, or he can veto none of it (2000:91).

Therefore, it can be said that while most people think the President as the most powerful and influential person in the United States government because of the separations of power, his effect on the law-making process is limited. According to Bowles, the main reason of this situation is that legislating in America is an imprecise and uncertain process. The rise of the Presidency to

permanent prominence in the twentieth century and the resulting popular expectations of it, have confirmed the role of the president as chief legislator, but have not equipped the president to perform it. (1998:131)

The checks and balance system should not imply an equality of power and authority between the institutions. There is no doubt that the framers intended the Congress to be the key source of policy. (McKay, 2001:46) According to Bowles, indeed, by comparison with the powers of legislatures elsewhere, Congress autonomy from the executive grants it powers over public policy and a role in national politics much greater than those of legislatures in all other advanced liberal democracies. (1998:180)

The second key role of the President over the legislative in the Constitution is that “he shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient.” As a result of Presidential leadership of Congress, this power to recommend provides the strategic and tactical senses for the President, and enables the President to choose between options and to decide upon the order of priorities. However, the legislative branch has complete constitutional freedom to ignore, reject or re-order the agenda of the White House. The President has also the power to convene both Houses of Congress in emergency session. However, unlike the parliamentary systems of government, he does not have the power to dissolve Congress.

While each of legislative and executive branches has some power over the other, in some situation, they share some powers together such as, framing U.S. foreign policy and control over the military. While the President negotiates treaties, they are only put into effect once the Senate approves them. Also, while Congress can declare war and approve funds for the military, the president is the commander-in-chief of the military. Therefore, it is claimed that separation of powers in America has negative effect on foreign affairs. According to Maidment and McGrew, ‘the American system of separation of powers was not designed for the conduct of foreign affairs’ (quoted in Rubin, 1985:251) On occasion, the resolution of international issues demands secrecy, decisive action and political flexibility, qualities which are hardly encouraged by the separation of power. This structural division of power and sharing of responsibilities between the two branches of government can have catastrophic consequences for the conduct of foreign policy. Perhaps the most famous example is the senate refusal to ratify the Versailles Peace Treaty in 1919 (Maidment and McGrew, 1997:142)

As a result of separation of power and checks and balance mechanism, in addition to legislative and executive branch, the judicial branch (Supreme Court) was given powers to resolve any conflicts which might emerge between state and federal laws and to decide conflicts between citizens of different states. The Court has the final word on cases heard by federal courts, and it writes

BOZTEPE; Effects of Separation of Power on American Federal Government

procedures that these courts must follow. All federal courts must abide by the Supreme Court's interpretation of federal laws and the Constitution of the United States.

In order to protect judges from popular politics and from interference by the other branches, they were given lifetime appointments. However, judges would not be totally immune to politics or to the other branches. Indeed, the president has the right to appoint the judges and the senate approves the appointment. Congress would also have the power to create inferior (lower) court, to change the jurisdiction of the federal courts, to add and subtract the federal judges, even to change the size of the Supreme Court.

Moreover, like Federal government, power of state governments is distributed among the executive, legislative, and judicial branches. In some situation, the governor has powers to fill the office and to veto legislative acts. However, the power of governor has been limited by elected officials- treasures, auditors and secretaries of state.

Fragmented Weak Political Party Organization

Finally, one of the most important effects of separation of powers can be seen on the party systems of American political life. According to Vile, as a result of institutional division of governmental power, each of the major political parties themselves has been divided into a Presidential wing and a Congressional wing. Each has its own institutional patterns and ideology, representing a different style of politics. (1987:57) Compared with the Parliamentary system, separation of powers leads to weakness of political parties in American federal government. Bowles points out while Members of Congress and the President may share party membership, the separation of power renders unity of purpose between them which is weaker than in Parliamentary systems. Party is the only bridge across the gulf between President and Congress, but it is alarmingly rickety (1998:46).

Since the separation of powers and the structure of the federal system destroy control of the national party leaders over their party, power of the President over his own party is very limited. Therefore, the President cannot use role of party leader to centralize his authority and persuade Congress. In addition, American political parties are absent from party discipline and political loyalty. This contributes to the weakness of party system. Therefore, the President's political effectiveness in party depends on the congressional co-operation. Indeed, in 20th centruy, presidents generally have faced a Congress in which his party colleagues are in the minority. Therefore, the President must work with Senators and Representatives who disagree with his agenda. For example over the past five decade, every Rebuglican President has had to work

with a Congress in which at least one of the two chambers has been in the control of Democrats. As a result, Republican Presidents have had to accustom themselves to the politics of divided party control, and have been obliged to adjust their tactics accordingly. For example Reagan repeatedly used veto power to threat spending bills passed by a democratic congress. However, it should be emphasized that even though the President's party has majority of congress, this advantage is no guarantee by itself that a President will gain approval for his legislative proposals. For example, according to DiClerico, from the period 1962 to 1968, the average support among Senate Democrats for Johnson's legislative programs was 59 percent; among House Democrats it was 72 percent even though Democrats controlled both the house and the Senate (2000:76). This interesting example shows that the President may not pass a legislature because that separation disables party and denies him stable support.

CONCLUSION

While the framers of the America needed to create a powerful national government, they also wanted to protect system from possible misuse of power. They therefore constructed a constitution by separating the parts of the government, and by balancing them against each other. As a result, it can be said that the American Federal government is divided, decentralized and fragmented.

As explain in details in the article, the separation of power principle has different effects on the American Federal Government System.

Firstly, the principle divides the government among several institutions- legislative, executive and judiciary- and locates the President and Congress at different points in American political system. Since each of them has different responsibilities and faces different pressures, they may not always view matters from the same perspective. As a result of separation of powers, powers and functions are also divided between national government and state governments. Limiting national power by creating two sovereigns-the national government and state governments has fundamental consequences in the American system of government. Indeed, federalism contributes to further fragmenting influence by giving state governments independence from the central government. Moreover, Congress is divided inside as a House of Representatives and a Senate. This bicameral structure of the legislative branch is designed to limit popular currents that many of the framers saw as a radical threat to the economic and social order.

Secondly, the personnel of the three branches of government were strictly separated and no member of one branch is allowed to be member of any other branch of the government so that each branch can represent different constituency.

BOZTEPE; Effects of Separation of Power on American Federal Government

Thirdly, checks and balances system was created so that different governmental agents are balanced against one another. Under this system, the President's influence over Congress is limited by the separation of powers. Since the President is granted no legislative powers except for recommending from time to time measures to Congress and qualified right of veto, this principle constitutes a major limitation on the power of the office. However, power of legislative branch over the executive is clear. Indeed, according to Constitution, Congress can impeach and remove the President, and investigate and oversee the executive branch and its agencies. It also can override the President's veto power by two-thirds vote of each chamber.

Finally, the effects of federalism and the separation of powers fragment party organization. Since the division of the structures of the Government results in the division and weakening of the Party system, the conflict between the two wings of a party may be more intense than the conflict between the parties. Therefore, the President's political effectiveness in party depends on the congressional co-operation. Although President is leader of his party, he has to use different tactics and tools to persuade the members of Congress.

BIBLIOGRAPHY

- Bowles, Nigel (1998), **The Government and Politics of the United States**, Mcmillan, Basingstoke.
- DiClerio, Robert (1995), **The American President**, Prentice Hall Inc., New Jersey.
- Farrand, Max (1962), **The Framing of the Constitution of The United States**, Yale University Press, New Haven.
- Heale, Michael, J. (1977), **The Making of American Politics**, Longman, London.
- Lowi, T.J. and Ginsberg, B. (1998), **American Government**, Norton Company, New York.
- Mckay, David (2001), **American Politics & Society**, Blackwell, Oxford.
- Maidment, R. and McGrew, A. (1997), **The American Political Process**, Sage Publications, London.
- Montesquieu, Charles (1949), **De L'Esprit Des Lois**, translated by Nugent, T. and Pritchard F., Appleton, New York,
- Neustadt, Richard, E. (1960), **Presidential Power**, Wiley, New York.
- Rubin, Barry (1985), **Secrets of State- the State Department and the Struggle over US Foreign Policy**, Oxford University Press, New York.
- Vile, M.J.C. (1987), **Politics in the USA**, Richard Clay Ltd, Bungay.
- Wilson, James, Q. (1989), **American Government Institutions and Policies**, Mass D.C. Heath, Lexington.

BOZTEPE; Effects of Separation of Power on American Federal Government