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CONSTRAINED PARLIAMENTARISM VERSUS SEMPRESIDENTIALISM IN THE CONTEXT OF THE PRINCIPLE OF THE SEPARATION OF POWERS

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KUVVETLER AYRILIĞI İLKESİ BAĞLAMINDA YARIBAŞKANLIĞA KARŞI SINIRLANDIRILMIŞ PARLAMENTARİZM

Öz

Bu makale, yarı başkanlık sistemine karşı sınırlandırılmış parlamentarizm sistemi ve bu sistemlerin kuvvetler ayrılığı prensibi ile ilişkisine odaklanmıştır. Kuvvetler ayrılığı ilkesinin kaynağı ve bu ilkenin tarihi gelişimi de makalede ayrıca ele alınmıştır. Daha özeldir ise idarenin zorbalığına ve keyfi yönetime karşı koruma sağlayan kuvvetler ayrılığı prensibince ileri taşınan demokratik değerlerin başarıyla gerçekleştirilip gerçekleştirilmediğinin incelenmesi bu araştırmanın esas konusunu oluşturmaktadır. Bununla beraber, parlamenter sistemde kuvvetler ayrılığı prensibinin hizmet ettiği temel demokratik değerler, sınırlandırılmış parlamentarizm ve yarı başkanlık teorisi çerçevesinde değerlendirilmiştir.

Anahtar Kelimeler: Kuvvetler ayrılığı, demokratik değerler, sınırlandırılmış parlamentarizm, yarı başkanlık, yargı odaklı kuvvetler ayrılığı, anayasal otonomi, anayasal diktatörlük.

Abstract

This paper “focuses on the systems of the constrained parliamentarism versus semipresidentialism and linkage with the principle of the separation of powers. Additionally, what the genesis of the principle of the separation of powers is and brief survey the historical development of the theory handled in this article. More specifically, whether it is possible to achieve successfully the democratic values advanced by the principle of the separation of powers that prevent from government tyranny and arbitrary government is the main question of this inquiry. Furthermore, these core democratic values served by the principle of the separation of powers be achieved in parliamentary” systems in the framework of the theory of constrained parliamentarism and semipresidentialism have been evaluated.

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1.Introduction

One of the main topic of this article is the separation of powers, conceived as a political principle for evaluating the constitutional and legal arrangements of a modern state. What is this principle and why is it important? The concept of separation of powers, generally accepted, associated two important principles. These principles are, first, the principle of the division of power and second, the principle of checks and balances.¹¹

There is, “unsurprisingly, no agreement on the definition and the main purpose of separating powers (*see, e.g.*, Albert 2010: 215). No doubt, M.J.C. Vile is right to say that the separation of powers “represents an area of political thought in which there has been an extraordinary confusion in the definition and use of terms” (Vile 1967: 2). However, some argue that we should identify most important purpose of separated powers over all others (Barber 2001: 59-88). The “separation of powers serves various valuable purposes in a liberal democracy. However, constitutional theory also presumes that those purposes may be realized only by separating governmental powers. In this point, “conventional constitutional theory” is “mistaken in my view. For instance, “the political process itself” contains the promise of achieving important objectives “that could otherwise be achieved through the separation of powers. Especially in a recent articles that has *reshape* the structure of separation of powers theory. For example, Daryl Levinson and Richard Pildes draw attention that the spotlight of separate powers should shine not only on government branches but, equally, on political parties because political competition is as valuable in the effort to defend against the concentration of power as is the separation of powers (Levinson and Pildes 2006: 2311-386).¹²

Levinson and Pildes’s significant approach is useful for two reasons. First, “it has a distinguished importance insofar as it applies the significant theory of famous political theorist William Jennings to the American context of presi-

¹¹ The principle of “division of power” avoids us to excessive concentrations of political power in the hands of any one person, group, or agency. The principle of “checks and balances” holding that the exercise of power by any one power-holder needs to be balanced and checked by the exercise of power by other power-holders.

¹² Therefore, Levinson and Pildes advise to ensure that political parties to effectively discharge their respective roles as government and opposition (Levinson and Pildes 2006: 2368-385).

dentialism (Jennings 1959: 303-304). Like Jennings, Levinson and Pildes emphasize the superseding importance of political parties in waging the battle against tyranny (Levinson and Pildes 2006: 2314).¹³ In the light of two theories, constitutional or structural safeguards against tyranny are good but not enough. Both theories identify the fundamental value of political safeguards to prevent tyranny and advocate empowering political parties to discharge a checking function similar to the institutional function that the constitution would otherwise require one branch of government to exercise against another (Ackerman 2007: 1809).

The second important point of this approach is that it is possible to obtain the values of the separation of powers in parliamentary system because there exist several forms of parliamentary systems, each of which might be receptive, to different degrees, to the values of separated powers. There are several institutional designs that would help not only to sustain political competition but also to frustrate the concentration of powers. There are many secondary forms of parliamentary systems, primarily, Westminster parliamentarism, constrained parliamentarism, and semipresidentialism.¹⁴ The essential differences among these systems have substantial consequences for the promise of achieving the values of separated powers.

We concentrate in this study the constrained parliamentarism versus semipresidentialism and linkage with the separation of powers. I will survey constrained parliamentarism and semipresidentialism, and try to assess whether it is possible to achieve successfully the democratic values advanced by the separation of powers that prevent from government tyranny and arbitrary government. If my analysis reveals that parliamentary systems can indeed attain the values served by the separation of powers, then we can conclude that the conventional wisdom—which holds that separated powers are an indispensable specialty of democracy—is misguided. By the way, I focus on the constrained parliamentarism and semipresidentialism in the context of separation of powers. My analysis will in fact demonstrate just that.

Separation of power is peculiar to presidential government systems and incompatible with parliamentary ones.¹⁵ Parliamentary systems may

¹³ According to some constitutional scholars, the separation of powers serves the important purpose of thwarting the rise of tyranny (*See, e.g.*, Murphy 2003, 1114; Friedelbaum 1998, 1421-22).

¹⁴ For detailed information on the concept of semipresidentialism, *see* (Skach 2007: 93-121).

¹⁵ Parliamentarism and presidentialism are generally set in opposition as discernible systems (*See, e.g.*, Issacharoff 2007: 1405-67; Cox 2007: 361-413). However, the

sometimes function as presidential ones on the other hand presidential systems might sometimes function as parliamentary ones. It is the question that the separation of powers is incompatible with parliamentary government system and whether the democratic virtues of the separation of powers are achievable in parliamentary systems. Presidential systems desire to core democratic values, and they deploy the separation of powers to achieve them. However, these core values "served by the separation of powers be achieved in" parliamentary systems in the framework of the theory of constrained parliamentarism and semipresidentialism? That is the question that will handle chiefly in this article.

Yet before we can answer this question, we must first explain in this article what the genesis of the separation of powers is and survey the historical development of the theory. Secondly, I will present briefly that the values of the separation of powers in parliamentary systems. Thirdly, we mentioned separation of powers at Westminster parliamentarism. Fourthly, I will explore the values served by separating governmental powers in the lights of constrained parliamentarism versus semipresidentialism. Finally, I will conclude with a few additional observations.

2.Genesis of the Separation of Powers

At the beginning, the question is how the idea of the separation of powers arose around the world would be explained. The choice to separate power into three branches in this manner was largely a result of centuries of struggle in many nations to construct a successful and stable government (Polybius 1922-1927; Machiavelli 1882; Montesquieu 1914).¹⁶ Though certainly influenced by this long history, the Framers' most immediate inspiration came from the prevailing model in eighteenth century England (Martin 2013: 1099). In general accepted, the concept of the separation of powers has occurred in America. The "American concept of the constitutional separation of powers had its origins in seventeenth and eighteenth century English and colonial American constitutionalism (Vile 1967; Gwyn 1965). American colonists were believed that their constitution was the best all around the" world. Englishmen generally thought they had inherited what ancient Roman and Greek philosophers had named a "Mixed Regime" (Bederman 2008:

structural dissimilarity between them do not necessarily give rise to functional differences (Albert 2009: 531).

¹⁶ Polybius prescribed a blended form of government that mixed democratic, monarchical, and aristocratic principles. Machiavelli struggled with how to apply classical political theory to a modern state. Montesquieu argued that England, with its republican form of monarchy, is the closest thing to an ideal government [autor's note].

220-21; Richard 1994, 123-57). “A Mixed Regime was one that integrated components of aristocracy, monarchy, and democracy in order to acquire the best characteristics of each of those pure regime types while avoiding the worst (Vile 1967; Gwyn 1965).

A Mixed Regime, government by “One” person had an advantage and disadvantage. The advantages of this type rule “rendering for foreign policy, in the waging of war, and in the fighting of powerful domestic special interests. However, the government by one person had the disadvantage that it commonly degenerated into tyranny (Aristotle 1944: Section 1286a and 1289a; Polybius 1922-1927: 283). On the other side, government by” a “Few” people had an “advantage that the virtuous and wise would rule. Nevertheless, it had some disadvantages that it could easily degenerate” into a self-interested and corrupt oligarchy (Aristotle 1944: Section 1286a; Polybius 1922-1927: 283). Government “by all of the people had an advantage that it advanced liberty and brought popular common sense into public policymaking, but it had a disadvantage that it could degenerate into crowd rule, which is a” tyranny of the “Many”.¹⁷

Mixed Regime that “united the powers of the One, the Few, and the Many was that the three social classes represented by the monarch, the aristocrats, and the commoners. These classes could check and balance each other by means that increasing the possibility that each social class would rule justly (Polybius 1922-1927: 291). Power was scattered in a Mixed Regime rather than collected in the hands of only one social class. Accordingly, for the renowned philosophers, for instance, Aristotle (Aristotle 1944: Section 1265b, 1266a, 1293b, 1294b, 1309b and 1310a), Polybius,¹⁸ St. Thomas

¹⁷ Aristotle has accepted the first constitutional theorist to argue normatively for the idea of a Mixed Regime. Aristotle classified constitutional arrangements according to which social class held power (*See* Aristotle 1944: Section 1286b, 1295a and 1296b). A government of one person is a monarchy or a tyranny, a government of a few people is an aristocracy or an oligarchy, and a government of all the people is a commonwealth democracy or a situation of mob rule (*See* Aristotle 1944: Section 1289a). Aristotle identified a Mixed Regime where power was shared by “the One”, “the Few”, and “the Many” as being the best regime that would often be pragmatically obtainable (*See* Aristotle 1944: Section 1293b and 1294b).

¹⁸ Polybius claimed that governments follow an inevitable cycle of constitutional decompose (*See* Polybius 1922-1927: 283-85). Anarchy would drive people to support a king out of necessity. Finally, the King would misuse his power, and a group of elites would take over the throne in order to establish an aristocracy (Polybius 1922-1927: 283). Polybius supported the Mixed Regime since he believed it would slow this cycle by making it difficult for one class to abuse the power of the government on its own (Polybius 1922-1927: 295-97). Wilfried Nippel has noticed that Polybius’s conception of mixed government did not involve “normative ideas of

Aquinas,¹⁹ and Machiavelli²⁰ extolled the values of separated powers enclosed the idea of a Mixed Regime. With reference to the commentators and their opinions, it was the idea of a Mixed Regime which a system of checks and balances that was to be based on the thought of the separation of powers. Both systems put forward the same proposition that “[p]ower tends to corrupt and absolute power corrupts absolutely” (Acton 1949: 364).

In the eighteenth century, many Englishmen thought that England was a kind of Aristotelian Mixed Regime and the King (the One), the House of Lords (the Few), and the House of Commons (the Many) represented the three major classes of English community (Gwyn 1965: 24-26; Vile 1967: 38). Sovereignty remained in the King-in-Parliament since when the three major classes of the realm spoke together, society entirely had made a decision. Consequently, both the King and his judges could judicially review, suspend or question an Act of Parliament because the King-in-Parliament was sovereign when that act was adopted.²¹

Americans believed that they lived in a colonial version of the Mixed Regime as well in the seventeenth and eighteenth centuries. All of the colonies actually came to have a royal governor, appointed by the King of England, who represented the interests of the One. The Governor’s Council appointed by the Governor with the King’s permission to recommend him, who represented the interests of the Few. And finally a popularly elected lower House of the Colonial Legislature, which represented the interests of

a necessary differentiation of governmental functions” (Nippel 1994: 9). Its main purpose was to ensure that the exercise of political power reflected the “natural” balance of the different social classes and interests within the “political body”, and to provide mechanisms whereby each could check the other (Nippel 1994: 8-10).

¹⁹ St. Thomas Aquinas modified the former definition of the Mixed Regime to explain the superior status of “the One”. St. Thomas claimed that a Mixed Regime structure would provide more stability for monarchies by reducing the likelihood that “the Few” or “the Many” would revolt (*See* Aquinas 1957: 181). St. Thomas also restored the idea of Mixed Regime with his Christian belief (Aquinas 1957: 86-92).

²⁰ Opposite to the St. Thomas’ approach, Machiavelli defended for a form of the Mixed Regime where the power of “the Many” was supreme rather than the power of “the One” (*See* Machiavelli 1882).

²¹ The meaning of the notion “King-in-Parliament” is the King confirming a bill that has been passed by the House of Commons and the House of Lords (*See* Goldsworthy 1999: 9). The idea refers to the King acted together with the aristocracy and the common people. The King-in-Parliament was sovereign because it represented the three great classes of society.

the Many and especially the taxpayers. The English Mixed Regime formation was duplicated in the American colonies from 1607 until 1776.²²

The demise of feudalism and the appear of the American Revolution put an end to the idea of the Mixed Regime for all time. The American Revolution was postulated on the idea that all human are created equal, and it did not allow an inherited monarchy, aristocracy, or other differences of social class²³ that means all powers in the hands of the Many. After the English Civil War, an effort was made by political philosophers especially the writings of John Locke²⁴ and Montesquieu²⁵ whose *locus classicus* to come up with a replacement for the Mixed Regime whereby the Many ruled. However, the power would not be accumulated in any one institution that could be easily corrupted.²⁶ The idea revealed from this attempt that it was desirable to separate functionally the legislative, the executive, and the judicial power.²⁷

²² A number of American colonists extolled the British Mixed Regime government throughout this period and supported efforts to replicate it in the colonies. By the middle of the eighteenth century, the theory of the balanced constitution established in America as it was in England (*See Vile 1967: 125*).

²³ When colonies began to move towards revolution, the theory of mixed regime as applied in “England was first criticized on the grounds that corruption had so warped the Constitution that it no longer represented a truly balanced structure but was a disguised tyranny” (*Vile 1967: 125-26*).

²⁴ He arguing both that government rests on the consent of the people and for a functional separation of powers (*Locke 1948; see also, Waldron 2013: 445-47*).

²⁵ He maintained that a functional separation of powers is necessary to avoid tyranny (*See Montesquieu 1914*).

²⁶ Some commentators argued that functional separation of powers with different personnel in each branch of the government. However, in one major respect it adhered to the theory of mixed government by giving the King broad powers (*Vile 1967: 47*). The execution of Charles I at the end of the English Civil War facilitated efforts to create a constitutional system rooted in the sovereignty of “the Many” (*Vile 1967: 50*).

²⁷ Aristotle may have expected the separation of powers when he wrote that all constitutions have three parts. First considers public affairs, the second concerns the offices, and the third is what decides lawsuits (*Aristotle 1944: Section 1297b and 1298*). John Locke envisioned a doubled division of government powers between the executive, which had the executive and foreign affairs powers, and the legislature, which had lawmaking power (*Locke, 1948: 72-73*). John Locke’s seminal book outlined a go forward for the functional separation of powers doctrine. Locke asserted both for the rule of “the Many” and for the independence of judges (*See Vile 1967: 60-63*). Locke also supported bring about the supremacy of the legislature in constitutional theory, as opposed to the monarch or executive. Locke, along with other eighteenth-century writers, transformed the demand that the King be the sole executive into the very different demand that he be solely concerned with execution

This kind of separation named “functional separation of powers” would thus replace the Mixed Regime’s division of powers among the three social classes. Tyranny, oligarchy, and mob (commons) rule would be avoided as a result of the functional separation of legislative, executive, and judicial powers.

The second “president of the America, John Adams, who had been a supporter of the British Constitution’s Mixed Regime, conducted a triumphant campaign to persuade Americans to accept the idea of separation of powers and bicameralism. He thought it would go to a new democratized form of the Mixed Regime.²⁸ Governors and popularly selected presidents would replace the King as the voice of the “One”; the Supreme Court and the Senate would replace the House of Lords, the Privy Council, and the Court of Star Chamber as the voice of the oligarchic (aristocratic) “Few”; and finally the popularly elected House of Representatives would replace the House of Commons as the people’s special branch with the Power of the Purse (Calabresi, Berghausen and Albertson 2012: 534-35). In the United States (U.S.) Constitution of 1787, there was a functional separation of legislative, executive, and judicial powers. However, it was completed by a Madisonian “system of checks and balances” in accordance with some powers with Mixed Regime ancestors were merged jointly in order to check and balance power. In these system, the President was bestowed a role in the lawmaking function by virtue of his possessing the veto power. The Senate was specified a role in the implementation of the law through its power to approve or refuse presidential nominees for high office and through its power over treaty ratification. The Supreme Court and the inferior federal courts were given some executive power because of their power to issue “writs of mandamus” to federal executive officials. All the power of all the institutions of the U.S. government based on officials who are picked, either directly or indirectly,

(Vile 1967: 43). Montesquieu has offered the first articulation of the separation of powers doctrine as it is understood today. Although Montesquieu’s approach the legislative and executive powers as the two major branches of the government, he contented for a politically independent judiciary whose staff would not be involved in the legislative or executive branches of the government (Montesquieu 1914: 163-65; Vile 1967: 88-89). Montesquieu stated that individual liberty depends on a separation of both powers and persons (Montesquieu 1914: 163-65).

²⁸ John Adams wrote that a bicameral legislature was obligatory since, “if the two powers will oppose and enervate upon each other, until the contest shall end in war” (See Adams 2000: 287-91). In support of the separation of powers, Adams claimed that the legislature, “possessed of all the powers of government, would make arbitrary laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favour” (Adams 2000: 287).

by all of the” people. The “Many,” get to pick “the One” and “the Few” in our democratized version of the English Mixed Regime in the U.S. (Calabresi, Berghausen and Albertson 2012: 536).

The concept of the “separation of powers doctrine and the Mixed Regime are widely related, the system of checks and balances is nearly related to the Mixed Regime. The doctrine of separation of powers by itself is incompatible with the Mixed Regime since it would entrust each of the legislative, executive, and judicial powers in three separate institutions. The theorists who developed the Mixed Regime were concerned not only with dividing the power of the government, but also with securing that no single group would dominate mere control over an important government function. The tripartite structure of government prescribed by the Mixed Regime remained after the American Revolution made social classes” immaterial, but this connection to the Mixed Regime is “more indirect than the system of checks and balances. The interest connected to the Mixed Regime that no one part of the government should” obtain excessive power was the main force behind the system of “checks and balances, which ensures that the Supreme Court, each house of Congress, and the President do not have exclusive control over certain” important government functions (Calabresi, Berghausen and Albertson 2012: 535).

The answer “to our first question mentioned above is that the separation of powers appeared to substitute the Aristotelian and English Mixed Regime as a way of spreading power once the fall of feudalism had made the English Mixed Regime not” viable in the U.S.

3.Values of the Separation of Powers

Following the brief “survey on the theory of the separation history, it is necessary to explain the value of this theory put” forward. In “his classic study, Vile has identified the following three components of what he named” the “pure” doctrine of the separation of powers (Vile 1967: 13-18).²⁹ First, “it

²⁹ He formulated the separation of powers in this way: “It is essential for the establishment and maintenance of political liberty that the government be divided into three branches or departments, the legislature, the executive, and the judiciary. To each of these three branches there is a corresponding identifiable function of government, legislative, executive, or judicial. Each branch of the government must be confined to the exercise of its own function and not allowed to encroach upon the functions of the other branches. Furthermore, the persons who compose these three agencies of government must be kept separate and distinct, no individual being allowed to be at the same time a member of more than one branch” (Vile 1967: 14-15).

argues that a functional distinction exists between legislative, executive and judicial acts. Second, it suggests the division of government into three corresponding agencies, and maintains that they must be reserved distinct from each other. Third, it insists that there should be no overlap amongst the personnel who staff these agencies (Bellamy 1996: 437).

The division between three branches aim at to warrant that those who devise the laws are distinct from those entrusted with their application, enforcement and interpretation. Thus, those who make the laws are themselves made subject to them. They have an inducement to avoid self-interested legislation and to enclose it in order to be equally applicable to all. These rules also guide the decisions of the executive and judiciary, because they are similarly under the law also have good reason to perform in an impartial manner. Despite the fact that three agencies of government are autonomous within this scheme, therefore, the legislature has a certain "logical priority" (*primus inter pares*) over the other two (Bellamy 1996: 438).

We may mention about several benefits of this system. Firstly, arbitrariness with the meaning of either using public power for private ends or acting founded upon a momentary impulse is replaced with the stability of relatively fixed, open, clear and prospective laws that are impartially administered and made to promote the common good. Secondly, individual freedom is advanced by the resulting ability to plan within a relatively secure and foreseeable surrounding. Thirdly, separating functions means to bring the efficiency gains associated with the division of labour. Especially, the activity of the legislature is made less unwieldy as a result of devolving more short-term decisions to an executive branch capable of acting with greater coherence. Fourthly, it ensures the reciprocal accountability of the powers (Gwyn 1965: 127-28).

However, the concept of separation of powers suffers from a number of infamous problems. There is the conceptual and practical difficulty of distinguishing the different functions (Vile 1967: 318-21). For example, when judges adjudicate on which rules do or do not apply in particular cases, they also often finish setting precedents that in effect constitute new rules. Likewise, officials regularly have to create rules in the course of implementing a given law that in turn come to take on a life of their own. Legislators, additionally, are naturally interested in how the laws they enclose will be interpreted and applied to specific cases. Therefore, each branch of government will find itself engaged in all three activities to one degree or another. The more complicated the actions of government, the more interrelated they are probably become. To the extent, similar kind of functional separation is probable, its aptitude to restrict the power of those

controlling the various agencies will be undermined if all symbolize similar groups or interests (Bellamy 1996: 439).

There are several classifications on the division of powers; in generally accepted, governmental powers would be divided along three axes: (i) Horizontal, (ii) vertical, and (iii) diagonal. “Horizontal separation” refers to the division of powers among government branches that are part of the same order of government. The leading explanation of horizontally separated powers is the “tripartite division” of federal powers in the U.S. Constitution.³⁰ In contrast, “vertical separation” refers to the division of powers between two or more orders of government. Governmental powers may also be separated diagonally, coherent with “the principle of subsidiarity” (Vischer 2001: 103).

The horizontally separated powers divided powers mainly between the executive and legislative branches. However, the modern theory of horizontally separated branches generally divides powers among three main component of government and holds that the legislature should create laws, the executive should enforce those laws, and the judiciary should interpret the laws. This separation rests, in large measure, on the perceived comparative advantages of each branch of government; for instance, the ability of the judiciary to apply rules of general application to specific cases, or the capacity of the executive to move “swiftly to respond to public needs, or the competence of the legislature” in balancing diverse and often contrary interests (Campbell 2004: 18-25).

The most crucial observation that constitutional scholarship considers democracy and the separation of powers as almost synonymous, and the second regarded indispensable to the first.³¹ However, this conventional narrative holding that democracy demands the separation of powers extends also to scholarship about non-presidentialist constitutional traditions (Albert 2010: 209). Separation of powers can serve also democratic value that guarding against government tyranny (*see, e.g.*, Murphy 2003: 1075-163; Friedelbaum 1998), defending against legislative supremacy, preventing arbitrary government, and promoting governmental efficiency (Barendt 1995: 601-605). This is a helpful point of departure for assessing the values of separated powers “because constitutional scholars generally argue that the separation of powers advances one or more” of these values (Albert 2010:

³⁰ *See* Constitution of the United States, Article 1, 2 and 3. <http://www.wdl.org/en/item/2708/>, Accessed Date (22.6.2015).

³¹ However, some argue that we must identify one overriding purpose of separated powers over all others (*See* Barber 2001: 88).

211). In this stage of the article, these core democratic values of the separation of powers will evaluate in short.

3.1.Protecting from Government Tyranny

For Montesquieu, who explained “tyranny” “as an unconstrained compelling authority that retains the power to limit popular choice, tyrannical rule challenges the essence of democracy, which folds into itself the terms of liberty. Liberty, for the Montesquieu’s view, demands the capacity to govern one’s self, with the meaning of having a free spirit, and to govern one’s state via representative democracy (Montesquieu 1914: 220-21). These two parts of liberty form the centres of Montesquieu’s approach” of the separation of powers” as a structural tool that hampers the tyrannical desires of rulers.³²

3.2.Prohibiting Arbitrary Government

The other “value of the separated powers is preventing arbitrary government. The significance of this value comes from the fundamental democratic principle of the rule of law, whose two commonly understood features are predictability in the exercise of official power and fairness in the administration of the law (Holmes, 2003: 25). This principle assists to obtain these objectives because its formulation complicates the arbitrary exercise of power. It promotes predictability in the release of governmental “responsibilities and facilitates popular accountability” in the activity of public duties. The “separation of powers replaces arbitrary government” with a more stable state that “administers an impartial legal system constituted of prospective laws (Bellamy 1996: 438). Separated powers therefore set up borders among the organs of the state. Although, those organs have a certain margin of discretion in using their powers, that discretion is itself bounded by the rule of law (Murphy 2003: 1143). Thus, the separation of powers is thought to prevent arbitrary government and to force the branches of government to adopt a rational, non-arbitrary, and public-regarding” approach to governance (Albert 2010: 214).

³² Separating powers was answer of the Montesquieu to tyranny. In order that achieve liberty and the “tranquility of spirit” that comes from the ease and safety of choice, the legislative, executive, and judicial powers should reside in different stations. The tyranny is probably outcome when legislative power is united with executive power in a single person or in a single body of the magistracy, there is no liberty, because one can fear that the same monarch or senate that makes tyrannical laws will execute them tyrannically. Therefore, Montesquieu deployed the separation of powers as a constitutional structure to prevent the law-making, law-enforcing, and law-interpreting functions from resting in a single seat (*See generally* Montesquieu 1914: Book XI, Chapter 6).

3.3.Protecting from Legislative Supremacy

“The separation of powers “also serves a defending against legislative supremacy. The threat of legislative tyranny is slightly disguised because democratic rule through the legislature conveys a certain” popular appeal (Albert 2010: 212). Although legislative supremacy may be coherent with a pure understanding of “procedural democracy”, it may concurrently disagree with the ideals of “substantive democracy”. The “majoritarianism that symbolizes legislative supremacy could violate on fundamental rights when politically convenient or when times of crisis come into view propose” no other alternative. Legislative “supremacy appears the problem of legally unlimited majoritarianism, which suffers no limits on legislative authority, be those limits conventional, cultural, statutory, moral, or derived from the common” law (Gardbaum 2001: 739).

The separation of powers would “help thwart not only the rise of legislative supremacy but also of judicial and executive supremacy (Paulsen 1994: 300-302). It is not only legislative supremacy that citizens should fear, and also worrying regarding the probity of democratic processes would move from judicial supremacy and executive supremacy (Tushnet 1999; Waldron 2006). As a result, we can say that the separation of powers assist to control the risk of all three supremacies, which is similar to the work” that the separation of powers achieves in inhibiting the focus of power explained above.

3.4.Advancing Efficiency of the Government

Separated powers are also help to advance “governmental efficiency”. Theoretically, “the division of labour among governmental departments release one department of government to manage its interests without excessive interference from another. The separating powers serves the affairs of governmental efficiency by allocating define public functions to the branches best appropriated to attain the stated objective of those functions (Posner 1987: 12). Some scholars argue that efficiency is the principal purpose of separated powers (*See, e.g.*, Barber 2001: 59-88) and most of all connect it with the prevention” of tyranny. On the contrary, “some commentators argue that separated powers are inefficient since they built barriers to the legislative process and helps prevent the concentration” of power (*see, e.g.*, Rossi 1999: 1185; Gwyn 1989: 475; Morrissey 1989: 978-79).

4.Westminster Parliamentarism: A Brief Survey

In this part of the article, firstly, I will examine the distinction Westminster parliamentarism and constrained parliamentarism. Secondly, to explain what

are the differences between the constrained parliamentarism and the semipresidentialism and to show how they actually separate governmental powers within their own regimes, and what is the specialities.

There is more than one “type of parliamentary system on the surface of the World. The Westminster “parliamentary government system that operates purely in the United Kingdom. Similar to presidential systems, it is ordered into the three traditional branches of government and Westminster model separates governmental powers too. However, it differs from the customary understanding of separated powers.³³ Instead, it fuses powers between the various branches of government. Rather than separating powers among the legislative, executive and judicial branches of government, the Westminster model separates powers between two organs of the state: the Crown, which includes the judiciary, and the Parliament (Jenkins 2002: 3). Perhaps the most illustrative example is the office of the Lord Chancellor, an office that until recently occupied functions that were not only executive and legislative in nature but also judicial. The Lord Chancellor was a head of the judiciary, a member of the legislature and speaker of the House of Lords, and a senior cabinet minister in the executive branch. The Lord Chancellor no longer exists within that unconventional structure. It remains to be seen just how closely the new Westminster model of constitutionalism will approach American presidentialism.³⁴ The deep structural transformation in the “United Kingdom, it is unlikely that the state will manifest the results of those transformative changes in the near term.

The first advocate of “implementing separation theory in the United Kingdom was Edmund Burke (Bogus 2007: 411). The separation of powers between the Crown and Parliament appeared as part of the Revolution Settlement, legally enshrined in the Act of Settlement (1701) that founded the priority of parliamentary democracy (Joseph 2005: 249). The Act of Settlement, which tried to restrict the reach of the Crown in parliamentary affairs, and the abuses of the Long Parliament and the restoration of the monarchy and the House of Lords (Shane 1999: 693-710). In the Westminster model, the separation of powers does not exist horizontally among the executive, legislative, and judicial branches. This division was also aimed to empower Parliament to hold the Crown accountable (Albert 2009: 535). Eventually, the main point of the separation of powers in England is Crown-Parliament separation.

³³ For detailed information about “Unconventional separation of powers”, *see* (Albert 2010: 218).

³⁴ For a discussion of the recent changes to British constitutionalism, *see* (Bogdanor 2009).

In the Westminster model, Crown-Parliament “separation using three examples: (i) Acts of Parliament, (ii) ministerial responsibility to Parliament, and (iii) the authority of courts.”³⁵ First, parliamentary acts become law because of the agreement of the Queen, the House of Commons and the House of Lords. The Queen represents the Crown and the Parliament covering both Houses. This is a pivotal tripartite covenant since it captures the legal moment of coincidence between the two sovereign bodies named the Crown and the Parliament. A bill cannot become an Act of Parliament without the consent of both the Crown and the Parliament. Each, therefore, holds veto power. Second, Cabinet ministers represent the Crown insofar as they counsel the Crown and exercise powers on behalf of the Crown. Parliament is able to perform its supervisory function over the Crown by demanding ministers of Parliament and to appear regularly in Parliament to answer for the decisions and actions of the Crown. Thus ensuring that the Crown neither attributes powers to itself contrary to the public will nor executes its functions without failure. Finally, The Crown-Parliament separation relates to the judiciary. The courts and the judges, derive their authority from the Crown, and are consequently agents of the Crown (Albert 2009: 535). The Crown-Parliament separation of powers is maintained by the theory of parliamentary sovereignty which means that authorises Parliament to override judicial decisions (Goldsworthy 1999: 232-35). This refers the capacity of the Parliament to check the powers that³⁷ the Crown exercises through its courts. These mentioned three examples display that Westminster model can separate governmental powers while it departs from the traditional model of legislative-executive-judicial separation.

Nevertheless, the separation of powers theory may not be dominant in British parliamentarism. There are “overlaps between the executive, legislative and judicial powers in British parliamentarism.”³⁶ Yet some have questioned whether the presidential separation of powers has protected liberty more³⁷ successfully than parliamentary “systems one of the greatest dangers of tyrannical rule. The fusion of executive and legislative powers in parlia-

³⁵ Instead of trying to fit the English polity into the classic model of a tripartite division of powers, Adam Tomkins has described the English separation of powers on its own terms. According to Tomkins, the British model embodies a different theory of the separation of powers. It does not match either to the classic approach of separated powers or to other models of parliamentarism (Tomkins 2003: 44-54).

³⁶ There are self-imposed restrictions on taking advantage of those intersections. For examples, law lords and the judicial agents are endowed with legislative powers but do not freely exercise them. The House of Commons and the House of Lords are legislative agents and have penal powers but do not typically discharge this executive responsibility (Albert 2010: 221).

mentary systems provides a much weaker defence against the misuse of political power than the separation of powers in presidential systems (Issacharoff 2007: 1454). While the British parliamentary system fuses executive and legislative personnel, it keeps a separation of executive and legislative functions because the executive must retain the confidence of the legislature, which must approve the executive's plan for governing. This is an important characteristic of British parliamentarism since it prevents the arbitrary exercise of government powers. It obtains these purposes by clearly identifying the own responsibilities of the executive and legislative branches in a manner that is reasonable to the citizenry.

5. Constrained Parliamentarism

It has been "an eternal search to limit the powers of the executive. The theory of the separation of governmental powers put forwards that each governmental section must not surpass its previously determined institutional limits and must respect the authority of other branches. Since the Montesquieu, states have designed their governing authority compatible with this theory. For example, the U.S. and the France both separated government powers in their own constitutions, both among the first written constitutions in the history of the world (Howard 2007: 30). Since then, the separation of governmental powers has accepted" as a fundamental feature of democracy, some scholars even regarding it as a necessary feature (Albert 2009: 533).

The traditional account explains "that presidential regimes separate governmental powers and divide public power across autonomous sections of government that the executive, legislature, and the judiciary. However, parliamentary systems do not separate powers in the same fashion (Massey 2005: 333). Nevertheless, these classical accounts of parliamentarism and presidentialism fail to appreciate that parliamentary systems may separate and presidential systems may sometimes fuse" their governmental powers.

In the modern parliamentary systems, "the separation of powers is distinguishable in ways that oppose the traditional understanding of separated powers. First, it is reflected in the role of opposition parties to publicly challenge and critique the ruling party and to present itself as a applicable alternative (Kommers 2006: 116). Second, the judiciary plays a central role in monitoring the actions of the executive and legislative departments. The second element is the most important characteristic of constrained parliamentarism. In the modern parliamentary democracies, a strong and independent judiciary whose mission is to serve as a counterbalancing weight to the majoritarianism (Gardner 2005: 315). Paradoxically, given their" ancestry in British "parliamentary supremacy, constrained parliamentary

systems embrace judicial review as a defensive shield against the rise of tyranny (Albert 2010: 223).

The term of constrained parliamentarism is labeled by Bruce Ackerman. In addition to the U.S. and Westminster models, Ackerman has argued of a third model of democratic governance in the aftermath of the Second World War that called constrained parliamentarism. This model relays between the parliamentary sovereignty that affords the British executive a near elective dictatorship and the presidentialist American form of Montesquieu. Constrained parliamentarism "... rejects "the US separation between executive and legislature and grants broad powers to the governmental coalition that gains parliamentary support. It rejects Westminster by insulating sensitive functions from political control" (Kumarasingham and Power 2011: 189).

After the Second World War, in Japan, the drafters of the new constitution "did not propose an American-style separation of powers. There emerged instead of distinctive regime type that called "constrained parliamentarianism". As in Great Britain, Japan's Prime Minister and his Cabinet must retain the confidence of the Diet³⁷ to remain in office. However, oppose to the Westminster model, the Japanese Parliament is not fully sovereign. Its legislative powers are limited by a written constitution, a bill of rights, and a supreme court (Ackerman 2000: 635). The "story appears almost the same in German and Italy. The constrained parliamentarism also operates especially in Australia, New Zealand, South Africa, Canada, etc.

The main "question is "separating power on behalf of what?" According to Ackerman, there are "three legitimating ideals" informing his approach to constrained parliamentarism: "The first ideal is democracy. In one way or another, separation [of powers] may serve (or hinder) the project of popular self-government. The second ideal is professional competence. Democratic laws remain purely symbolic unless courts and bureaucracies can implement them in a relatively impartial way. The third ideal is the protection and enhancement of fundamental rights" (Ackerman 2000: 640). Lacking of these three "legitimating ideals democratic rule and professional administration can easily become apparatus of tyranny.

Ackerman "argues against the export of an American style separation of powers to the rest of the world, preferring the model of "constrained parliamentarism" that "operates in countries such as Germany and South Africa (Ackerman 2000). Ackerman comments that, "... since 1989, American jurists have become big boosters of the American Way at

³⁷ Diet means House of Councillors of the Japan [autor's note].

constitutional conventions everywhere” (Ackerman 2000: 636). Steven Calabresi claiming that “Bruce Ackerman is absolutely right to say that presidentialism is now the toast of the world” (Calabresi 2001: 53). However, “analysing the new democracies around the world today, the constitutional model rapidly being imported by these newly democratic states is neither the American style presidentialism advocated by Calabresi, nor the constrained” parliamentary model defended by Ackerman (Skach 2007: 93).³⁸

Ackerman refer to “systems that are similar to Westminster parliamentarism with the five remarkably exceptions. First, it has a written constitution and a bill of rights, second, a supreme or constitutional court endowed with the power to annul duly passed acts of the legislature, third, bicameral legislature that does not hold conclusive authority, fourth, an upper house of the legislature that is not as powerful as the lower house, and five, independent agencies, for example an independent electoral commission or an” auditory body (Ackerman 2000: 718-20).

One of the “countries is India that operates constrained parliamentarism. India is a parliamentary state that fuses its executive and legislative powers but separates its parliamentary and judicial powers. The Indian Supreme Court has repeated the opinion that the separation of powers is necessary for judicial independence and the Court has accepted that the separation of powers protects the” legislative branch from undue judicial intrusion (Albert 2009: 536).

Additionally, the “separating governmental powers between the Parliament and judiciary, constrained parliamentarism reduces the potential hazard raised by merging the executive and legislative branches in the Parliament. Constrained parliamentarism provides independent agencies with significant powers to help the legislative branch scrutinize the action and inaction of the executive Cabinet (Albert 2009: 538). The independence of the agencies is

³⁸ On the other hand, semipresidentialism has rapidly gained ground. After the collapse of communism, the most common constitution chosen was semipresidentialism. For example, Belarus, Croatia, Poland, Romania, Russia, and Ukraine, among many other countries in the post-Soviet space, adopted semipresidentialism. Throughout the 1990s, semipresidentialism was also evaluated for import by countries in Africa and Asia. In more than fifty countries across the European, Asian and African continents, semipresidentialism has become the “newest” separation of powers. Despite its growing popularity across the world, semipresidentialism has not been attract from scholarship in both political science and constitutional law. Semipresidentialism has been dismissed by leading scholars either as a “type of one” or on the ground that it is not a third type at all but rather “an alternation of parliamentary and presidential phases” of government (*See Lijphart 1992: 8*).

established in constitutionally or statutorily way that which permits independent agencies to discharge their delegated duties without intrusion from the executive (Elmendorf 2007: 978). This type executive-legislative separation represents the second dimension of the separates powers of the constrained parliamentarism. For example, the Indian Constitution creates an independent Election Commission³⁹ that is responsible for the management of elections. These institutions “are instruments through which the Parliament may hold the executive accountable and with particular respect to independent electoral commissions. In addition, it provides the legislature with a significant tool to ensure the fairness of parliamentary elections. Canada and South Africa has also a number of these independent agencies, whose chief officials are designated as Officers of Parliament. These kind independent agencies are recent additions to the political³⁷ and constitutional instrument of parliamentary democracies in search of new ways to confer authority upon the legislative power (Albert 2009: 538-40).

Canada is also the most important example of a constrained parliamentary system. After the come into force the Charter of Rights and Freedoms,⁴⁰ Canada joins to the “theory of parliamentary sovereignty (Hiebert 2004: 1966). The House of Commons (lower chamber) is the main force in legislative affairs, whereas the Senate (upper chamber) has not an important role in the legislative process (Ackerman 2010: 671-72). In addition, Canada’s new bill of rights authorizes courts to exercise the power of judicial review.⁴¹ Considering the principal positioning of Parliament in Canadian public policy in addition to the increasing effect of the judiciary, Canada is stand between the parliamentarism and presidentialism. Canada, nevertheless, operates to the principle of separation of powers. The Supreme Court of Canada has reiterated several times the principle of powers. Despite the Canadian Constitution does not clearly adopt the separation of powers³⁷ and the “Constitution does not insist on a strict application of the separation of powers, the Court has recognized that Canada performs the principle separation of powers among the three branches of government the executive, the judiciary and the legislature. However, the Canadian Supreme Court has been cautious not to overlook the crucial differences between how the

³⁹ Constitution of India, Article 324. <http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>, Accessed Date (19.7.2015).

⁴⁰ Constitution of Canada (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms), <http://www.justice.gc.ca/eng/csj-sjc/just/05.html>, Accessed Date (20.7.2015).

⁴¹ Constitution of Canada (Constitution Act, 1982) pt. VII (Canadian Charter of Rights and Freedoms), § 52.

separation of powers operates especially in” parliamentary versus presidential systems (Albert 2010: 223-24).

After this helpful context, we can “appraise whether constrained parliamentarism is receptive to the values of separated powers, as mentioned above, preventing arbitrary government, guarding against government tyranny, and promoting government efficiency. Constrained parliamentary systems achieve the preventing arbitrary government and promoting” government efficiency for the same reason that the British parliamentary system succeeds in achieving them.

However, constrained parliamentary systems may also potentially accomplish that “defending against tyranny, something that British parliamentarism does not every times achieve. Constrained parliamentary systems are probably to reach this democratic objective successfully because they subject legislative and executive action to strong judicial oversight. The judiciary have the responsibility of sustaining the written constitution and the entrenched bill of rights. These tasks authorize the judiciary to invalidate the actions of other government departments that opposes to the principles and rules enshrined in the constitution. However, the possible consequence of constrained parliamentarism is judicial tyranny. For these reason we would probably describe the separation of powers in constrained” parliamentary systems is “juricentric separation of powers”. An independent “judiciary possesses definitive authority to resolve disputes on the allocation and distribution” of powers. Whether the powers are separated horizontally, vertically or diagonally, the judiciary exercises a huge amount of power as the arbitrator of jurisdictional disputes (Hirschl 2004).⁴²

6.Semipresidentialism

Semipresidentialism appears its origin to the Fifth French Republic (1958). Following the collapse of communism, almost thirty countries drafted democratic constitutions, the most common chosen was semipresidentialism. For instance, Romania, Croatia, Poland, Belarus, Ukraine, and Russia among many other countries in the” post-Soviet space, adopted semipresidentialism, opposing “the predictions of both Ackerman and Calabresi. During the 1990s, semipresidentialism was also evaluated for import by countries in Africa, Asia, and Latin America. In more than fifty countries throughout the Asian, African, and European continents, semipresidentialism has become the most popular separation” of powers (Huang 2006: 378-79).

⁴² This kind of tyranny named juristocracy [autor’s note]. *See* (Hirschl 2004).

Despite its “rapidly growing popularity across the world, semipresidentialism has been absent from scholarship in both political science and constitutional law. Semipresidentialism has been dismissed” by notable scholars as a “type of one” or on the ground that it is not a third type at all. However, “the semipresidentialism is accepted generally an alternation of parliamentary and presidential phases of government (Lijphart 1992: 8). This is true both in the sense that there is less work on semipresidential regimes than either their presidential or parliamentary counterparts because of the fact that semipresidentialism has” few advocates. Mainly, Juan Linz’s original view of semipresidentialism still dominates” academic thinking on the subject. For Linz, “[i]n view of some of the experiences with this type of system it seems dubious to argue that in and by itself it can generate democratic stability” (Linz 1994: 55). In this context, the main supporter of semipresidentialism in comparative politics is Giovanni Sartori who states that semipresidentialism is the best form of mixed regime type. He claimed that “the case against the two extremes, pure presidentialism and pure parliamentarism, is a strong one. [...] the positive case for ‘mixed systems’ is equally strong” (Sartori 1997: 135).

The two mainstreams in the democratic world are presidentialism and parliamentarism. Regarding to how these “models set out rules for the formation and termination of governments, they are structural opposites. Parliamentarism is characterized by a fusion of powers and a bilateral dependence between the executive and the legislative powers. This is because the head of executive come from the legislature after elections and demands the trust of the legislature in order for his government to survive the duration of the legislature’s term. Nonetheless, presidentialism is characterized by the separation” of powers and a bilateral independence of the executive and legislative powers. This is because the head of executive and the legislature are elected independently of each other for fixed times.

However, since the 1990s, many new democracies met semipresidentialism, this form of separation of powers neither have purely presidential nor parliamentary constitution. Thus, this new democracies have different analytical category and constitutional “type that called semipresidentialism (Duverger 1996: 500-501).⁴³ The most critical characteristic of semipresidentialism is the additional separation of powers that comes with the division of the executive into two independently constitutionally legitimized powerful institutions. First, popularly elected head of state (president) and indirectly selected head of government (prime minister). Executive power in several semipresidential constitutions is divided between

⁴³ Maurice Duverger was the first to use that term. *See* (Duverger 1996).

these two executives. Nevertheless, this type of power sharing prevents clear separation of powers” and often causing to constitutional ambiguity (Skach 2007: 96). Consequently, whenever the disagreement occurs between the prime minister and the president, it is not clear from the constitution which executive has final decision authority.

For instance, “in the Constitution of the French Fifth Republic, the president is commander in chief of the armed forces”.⁴⁴ However, in France, “the Constitution express that the prime minister is responsible for national defence.”⁴⁵ In addition, the times of domestic social unrest or an international threat to the domestic political order, it is possible that the prime minister and the president could issue conflicting orders to the military, and that the military might decide against the government and in favour of the president. In this circumstance, if the country has fragile democracies, could be extended military involvement in politics and the suspension of political rights” and civil liberties. Moreover, the countries that have had a history of military intervention in domestic political affairs are especially vulnerable to this pattern (Skach 2007: 97).

The one another “important specialities of this kind of separation of powers system is the unequal legitimacy, accountability, and responsibility of these two executives vis-à-vis citizens and their elected representatives. All of the semipresidential constitutions, the prime minister arise from the legislature after elections. The prime minister is responsible for and dependent on the legislature. However, the president is popularly elected by the voters for a fixed term that generally longer than of the legislature. Thus, the president is relative to the legislature. The president has also an independent and popular mandate and can remain without the legislature’s” consent. This is resulted in a “constitutionalized autonomy” for “one of the executives (the president) as it enables to formulate own” independent agenda. Certainly, there are varieties. For instance, the greater the president has some powers as well decree, veto, and emergency powers and the lower the president is limited some constitutional boundaries.

Because of this type “division of the executive into two unequal components, the constitutional tensions are structural and there” is “always the potential for warring executives. For instance, personality differences between the

⁴⁴ Constitution of the French Fifth Republic, Article 15.

<http://www.france.fr/en/institutions-and-values/constitution-fifth-republic.html>, Accessed Date (20.8.2015).

⁴⁵ Constitution of the French Fifth Republic, Article 15.

<http://www.france.fr/en/institutions-and-values/constitution-fifth-republic.html>, Accessed Date (20.8.2015).

prime minister and the president may cause to disagreements over policy and over who should direct government even if the president and prime minister share the same policy program. Moreover, a president's specific beliefs about his leadership role and his own popularity, direct electoral legitimacy, as opposed to the prime minister's indirect legitimacy, may lead him to completely dominate his prime minister. On the other hand, as happened in France, a president may even decide to dominate politics at the expense of his prime minister "simply because this president doubts the prime minister's capacity to govern effectively and does not want to incur the costs of replacing him (Skach 2007: 98)." For that reasons, after forty years of experience with semipresidentialism, the problem of constitutionalized autonomy is come into question that who makes the decisions.

The fact that the presidents have an advantage of this "constitutionalized autonomy for an extended period transforms their countries from semipresidential democracies" into "constitutional dictatorships" is problematic. Constitutional "dictatorship defines a situation in which executives make extended use of emergency and decree powers to legislate in difficult times (Skach 2005: 347). This enlarged use intended to protect the country when under threat from a present, clear, and immediate dangers. Such circumstance violates fundamental requirements of democratic governance, public inclusion, and the possibility of public contestation of government (Ferejohn and Pasquino 2004: 210). Elected representatives for an extended period and legislating exclusively through decree or emergency powers, executives concentrate decision making in a small group of individuals whom appointed by the president as members" of the presidential administration (Skach 2007: 210). This "group is under the control of the president, rather than being responsible to the legislature. This condition eventually violates critical institutional guarantees for democratic" governance.⁴⁶

In semipresidential systems, "the president has arranged the cabinet with nonparty officers rather than with representatives from the political parties. This nonparty appointees whose called technocrats, appointed for their expertise. These are allies of the president, with little expertise in areas critical to the nation. The nonparty appointees of the cabinet is legal, as most presidents are constitutionally empowered to appoint and even to dismiss individual ministers. In some semipresidential countries, such as France, a specialized court could be empowered by the constitution to intervene during periods of constitutional dictatorship by questioning the actions of the

⁴⁶ Robert Dahl, particularly institutions for making government policies depend on votes and other expressions of preference. *See* (Dahl 1973: 3).

president, such as ministerial appointments or emergency decrees, and proclaiming them invalid. On the other hand, for instance in Weimar Germany, the legislature might have the authority to “cancel constitutional dictatorship by vetoing executive decrees. The fact that the president generally has some degree of influence over the membership of the specialized courts and has the power to dissolve the lower” house (Skach 2007: 100).

7.Overall Conclusion

The first conclusion that is likely be derived from this article is that “the concept of separated powers is an inventive device for achieving important democratic values in parliamentary systems. These democratic values contain thwarting the rise of government tyranny, preventing the arbitrary exercise of government power, and promoting the efficient administration of the state. However, these significant values of democracy are likewise achievable, albeit in varying degrees, in parliamentary systems. Whether parliamentary systems separate powers in an unconventional fashion, for instance in” Westminster system, or in a constrained parliamentary systems or “between two independent executives as in semipresidential systems, the three democratic values mentioned above may be achievable. This is an important point because it suggests that the democratic and structural advantages of separated powers are not intrinsically exclusive to presidential” systems but are also achievable in parliamentary systems.

The second conclusion attained in this article is the “constrained parliamentarism have an advantageous achieve to the values of separated powers that preventing arbitrary government, guarding against government tyranny, and promoting government efficiency. Constrained parliamentary systems achieve the preventing arbitrary government and promoting government efficiency for the same reason that the British parliamentary system succeeds in achieving them. However, constrained parliamentary systems may also potentially accomplish that defending against tyranny, something that parliamentarism does not every times achieve. Constrained parliamentary systems are probably to reach this democratic objective successfully since they subject legislative and executive action to strong judicial oversight. The judiciary have the responsibility of sustaining the written constitution and the entrenched bill of rights. These tasks authorize the judiciary to invalidate the actions of other government departments that opposes to the principles and rules enshrined in the constitution. However, the possible consequence of constrained parliamentarism is judicial tyranny. For these reason we would probably describe the separation of powers in constrained parliamentary systems is juricentric separation of powers. An

independent judiciary possesses definitive authority to resolve disputes on the allocation and distribution of powers. Whether the powers are separated horizontally, vertically or diagonally, the judiciary exercises a huge amount of power as the arbitrator of jurisdictional disputes.

Despite its rapidly growing popularity across the world, semipresidentialism has been absent from scholarship in both political science and constitutional law. The article traces and compares political and constitutional developments in the semipresidentialism briefly. More specifically, the article details when, and why, semipresidentialism can be problematic from the standpoint of democracy, constitutionalism, and the protection of fundamental civil liberties and political rights.

The most critical characteristic of semipresidentialism is the additional separation of powers that comes with the division of the executive into two independently constitutionally legitimized powerful institutions. The president has an independent and popular mandate and can remain without the legislature's consent. This is resulted in a "constitutionalized autonomy" for one of the executives (the president) as it enables to formulate own independent agenda. The presidents have an advantage of this constitutionalized autonomy for an extended period transform their countries from semipresidential democracies into constitutional dictatorships is problematic that the third conclusion of this article. Such circumstance violates fundamental requirements of democratic governance, public inclusion, and the possibility of public contestation of government. This condition eventually violates critical institutional guarantees for democratic governance.

We have, intensively referring to the literature, analyzed the advantages and disadvantages of constrained parliamentary system and semipresidentialism. After the explanation stated above I argued that the constrained parliamentary systems could be prefer semipresidentialism with respect to separation of powers.

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