

UDC 336.225.2(477)  
DOI <https://doi.org/10.32851/tnv-pub.2021.3.21>

## THE SEPARATION OF POWERS IN THE WORKS OF JOHN ADAMS AND THE CONSTITUTION OF FRANCE: COMPARATIVE ANALYSIS

**Khomyk Kh.R.** – Postgraduate Student at the Department of European Integration and National Security Management  
Educational and Scientific Institute of Public Administration and Civil Service  
of Taras Shevchenko National University of Kyiv  
ORCID: 0000-0003-4833-5806

*John Adams is one of the main contributors to the structure of the US government. He focuses on a model of a republic and, on the contrary to other philosophers, provides specificities according to his vision. The Constitution of France has the same reasoning at its core. As far as it aims to establish democracy in a country with monarchic tradition, more attention is devoted to the establishment of institutions and mechanisms of checks and balances, in comparison to states with democratic tradition. Both works are similar in what they planned to achieve; therefore, Adams can become a great source of knowledge for the system of public administration in France. The article discusses main ideas of John Adams related to the separation of powers and the system of checks and balances and looks for corresponding articles in the Constitution of France to identify similarities and differences in both models. The first part of the article describes Adams' reasoning why a republic is an ideal form of government and necessity for the separation of powers. Later, it moves to the detailed analysis of each branch of authority separately and its connections to others. After the elucidation of Adams' ideas, there is a comparison section with the Constitution of France for better visualization of both models. In the end, the author provides the reasoning for differences and explication how potential issues are avoided. The article demonstrates that there are differences between the models; nevertheless, one cannot regard them as a shortcoming because they provide alternative ways of how to keep the equilibrium between branches of authority. From the analysis follows that the Constitution of France is more elaborated than the works of John Adams. Consequently, even though all aspects of Adams' vision of the mechanism of checks and balances are implemented in France, the author tries to focus on how they build a unified system and what are the potential gaps in it.*

**Key words:** separation of powers, checks and balances, state, government, rule of law.

### **Хомик Х.Р. Поділ влад у працях Джона Адамса та Конституції Франції: порівняльний аналіз**

*Джон Адамс є одним із головних авторів структури уряду США. Він зосереджується на моделі республіки і, на відміну від інших філософів, акцентує увагу на деталях, відповідно до свого бачення. В основі Конституції Франції – те саме міркування. Оскільки вона спрямована на встановлення демократії в країні з монархічною традицією, то тут більше уваги приділяється створенню інститутів та механізмів стримувань і противаг, ніж у державах із демократичною традицією. Обидві роботи схожі в тому, чого вони планували досягти; тож Адамс може стати чудовим джерелом знань для системи державного управління Франції. У статті розглядаються основні ідеї Джона Адамса, пов'язані з поділом влади та системою стримувань і противаг, які автор дослідження порівнює з відповідними статтями в Конституції Франції для виявлення подібностей та відмінностей між моделями. У першій частині статті описано міркування Адамса, чому республіка є ідеальною формою правління та погляди щодо необхідності поділу влади. Згодом автор переходить до детального аналізу кожної гілки влади окремо та її зв'язків із іншими. Після огляду ідей Адамса щодо певного аспекту автор описує, як це питання відображене в Конституції Франції, та робить порівняння для кращої візуалізації обох моделей. Наприкінці автор визначає відмінності та пояснює, як можна уникнути потенційних проблем у системі публічної адміністрації. У статті розкрито, що між моделями є відмінності; проте не можна вважати це недоліком, оскільки вони розкривають альтернативні способи збереження рівноваги між гілками влади. З аналізу виходить,*

*що Конституція Франції є більш детальною, ніж праці Джона Адамса. Отже, незважаючи на те, що всі аспекти бачення Адамсом механізму стримувань і противаг реалізовані у Франції, автор намагається зосередитися на тому, як вони будують єдину систему та які потенційні прогалини в ній наявні.*

**Ключові слова:** поділ влад, система стримувань і противаг, держава, уряд, верховенство права.

The separation of powers has a direct influence on the quality of public administration due to providing a specific structure. However, currently, liberal democracies encounter countless issues with the system that may be connected to the separation of powers or mechanisms of checks and balances. As far as John Adams focuses on the relationship between the government and society, his theory is useful for the identification of existing gaps. France is one of the leading EU countries that has a similar structure of public administration to the one proposed by Adams; therefore, there is a high level of commensurability between these systems. Consequently, this comparison will offer an understanding of how to increase the effectiveness of public administration.

**Available research.** There is no available research on the topic. The works of John Adams were studied by H. Williamson, B. Allen, A. Trees, B. Miroff, and R. McGlone. G. Dwivedi, R. Saleilles, R. Faux took their interest in the Constitution of France and its history.

**Novelty.** The works of John Adams and the Constitution of France have attracted attention of the researchers; however, this article is the first try of their comparison.

**Present-day relevance.** Currently, the tendency that citizens lose faith in their governments becomes global. As far as, support of society is directly linked to the quality of public administration, one should focus on its inside changes. Reforms in modern society can have various motivations; therefore, corruption could play a great role in shaping the separation of powers in favor of personal interests. Consequently, there is a need to look at the core of public administration and compare it with a theoretical perspective to identify and resolve the existing problem.

**Objective.** The objective of the article is to describe a model of the separation of powers and mechanisms of checks and balances as proposed by John Adams and compare it to the model of public administration in the Constitution of France to identify potential gaps and opportunities for the improvement of the later.

Adams continues the tradition to consider public administration from the legal perspective. Inspired by Blackstone's ideas, he envisions the implementation of the system of checks and balances in a democracy and advocates it in the U.S. Adams develops not only the spread of responsibilities between the branches but also devotes attention to the creation of separate bodies within them to prevent the concentration of power [1, p. 149]. Consequently, he presents the idea of how the democratic government built on the principle of the separation of powers should look to ensure its stability and effective functioning.

To begin a philosophic discussion of underlying principles, Adams emphasizes the relationship between the structure of the government and the happiness of society. He evaluates the quality of a government by the quality of administration it provided; therefore, one that "communicates ease, comfort, security, or in one word happiness to the greatest number of persons, and in the greatest degree, is the best" [2, p. 3]. From this relationship, it is not evident what form of government Adams talks about because, in both a republic and a constitutional monarchy, public administration can be organized efficiently. However, the important factor for him is to establish the dependence of the government on society, to clarify that the main task of government is to serve people and satisfy their needs [3, p. 47].

The government based on virtue is the most suitable to promote the happiness of society, according to Adams [4, p. 396]. He sees the republic as the best form of government but emphasizes different possibilities of its variation. Therefore, even though the philosopher does not describe one ideal form of government, he considers specific features necessary for its quality. Adams shares similar reasoning to Montesquieu that people led by virtue are more likely to act according to the law and principles of morality rather than individuals pursuing their personal interests and seeking power.

Republic is the most suitable form of government because individuals get a possibility to contribute with their virtue to the process of political decision-making. When the monarchic regime collapsed in France during the French Revolution, two priorities of new authority were constitutionality and popular sovereignty that are explicitly stated in Article 1 of the Constitution of France: “France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis. Statutes shall promote equal access by women and men to elective offices and posts as well as to the position of professional and social responsibility” [5, p. 4]. Therefore, both Adams and the authors of the Constitution of France saw access of all citizens to decision-making and equality of individuals before the law as a fundament of a state.

After establishing a necessity for popular sovereignty, Adams focuses on the delegation of power as a critical element of the representation of the interests of the majority. He calls the body of elected representatives the Representative Assembly and emphasizes that prevention of “unfair, partial, and corrupt elections” [2, p. 4] is essential for its functioning. Adams believes that people should themselves call for the implementation of this regulation based on their experience because they understand that favoritization of someone’s friends would have a negative impact on their lives [6, p. 412]. Thus, Adams considers the importance of the link between people and their representatives in his government theory.

The philosopher sees the Representative Assembly as the primary institution in a state; nevertheless, he argues that it should not combine all powers in itself due to a list of reasons. These concerns are also addressed by the Constitution of France. First, a single Assembly cannot be rational due to individuals who make decisions; therefore, it requires the supervision of a controlling power that should correct errors and defects [2, p. 4]. In France, the corresponding institution to the Representative Assembly is called the National Assembly that has 577 members elected by direct suffrage. The National Assembly is the lower chamber of the Parliament and has the Senate, the higher chamber of the Parliament, as the primary controlling power [5, p. 11–12]. Any bill has to be voted with the majority in both houses to be passed.

Secondly, over time, the Assembly might delegate its responsibilities to its constituents without their consent [2, p. 4]. This problem does not exist in France due to the division of responsibilities between levels of government. It is primarily a highly centralized state that started a decentralization reform in 1982 [7, p. 39]; however, currently, the level of decentralization is not yet high enough to call it decentralized. On the contrary, regions call for the expansion of their competencies and their delegation from the central government. Consequently, France faces the issue that the federal government has too much control over regions while further delegation is highly welcomed.

Thirdly, the Representative Assembly tends to become overambitious and willing to vote itself perpetual. As a result, citizens would lose their control over the institution because the Assembly would function in its self-interest [2, p. 4]. This concern is

addressed in France through an established term of service and number of elected representatives. The elections to the National Assembly take place every five years while the chances that 577 deputies get reelected are extremely slim. Even though some parties encourage their elected representatives to run multiple times, there is always a share of individuals who won the elections for the first time. In addition, there is no legal mechanism to postpone the elections for another term. Thus, a renewal of the list of representatives is guaranteed every term.

Fourthly, the Assembly is not fit to exercise the executive powers due to the lack of secrecy and dispatch [2, p. 4]. The National Assembly does not possess any executive powers as the list of its functions includes passing statutes, assessment of the public policies, and monitoring the government [5, p. 12]. Nevertheless, it exercises control over the executive for the implementation of its programs. The Prime Minister can call for a vote of confidence concerning the governmental program or policy after the deliberation with the Council of Ministers. In this case, a resolution of no-confidence should be signed by one-tenth of the members of the National Assembly to be put to vote. In addition to the decision of the National Assembly, the Prime Minister may ask for the approval of a policy from the Senate. If the National Assembly passes the resolution of no-confidence to the governmental program or a policy, the Prime Minister shall present the resignation of the government to the President of the Republic [5, p. 21]. As a result, the National Assembly provides political direction in the various sectors while the executive works on actual proposals on how to reach these directions. The Parliament does not have to officially approve governmental programs, but this approval takes place informally.

Similarly, the Assembly cannot act as the judiciary because it is “too numerous, too slow, and too little skilled in the laws” [2, p. 4]. This issue is also well addressed by the Constitution of France because the National Assembly is separated from the judiciary. Besides, members of the Parliament cannot be persecuted based on their opinions or votes. However, they enjoy some privileges. In case, they have committed a crime, the Bureau of the House should give its permission to take measures. In case such permission is not granted, members of the Parliament cannot be brought to responsibility until the end of their term [5, p. 12]. Therefore, the National Assembly is strictly limited to being a part of the legislative and does not have a possibility to interfere in the functioning of other branches except cases that are foreseen by the mechanisms of checks and balances.

At last, “a single Assembly, 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 favor” [2, p. 4]. Consequently, Adams explains that even a body of representatives could turn away from people if it would possess all the authority in a state without any other institution to check it. Therefore, according to him, the separation of powers is necessary to preserve the link between the elected and their electorate.

For this reason, the lawmaking process in France involves three decision-making bodies: the National Assembly, the Senate, and the President of the Republic. A bill can be registered in any of the chambers; however, as a rule, the majority of legislative pieces are reviewed by the National Assembly in the beginning. If it passes three readings and gets voted, it is transferred to another chamber to follow the same procedure. When both chambers pass a bill, the President of the Republic has to ratify it with his signature; therefore, proposals of the members of the National Assembly get reviewed by two additional institutions [8, p. 410]. Consequently, such a procedure limits the possibility of making laws in favor of representatives.

After the description of the legislative and its necessary limitations, Adams continues his discussion with the explanation of how he sees the effective separation of powers. The philosopher claims that both the legislative and the executive should not be represented through one institution because they would enter the competition for power and constantly oppose each other. The judicial cannot serve as a mediator because of the law-making prerogative of the legislative. Adam's solution is to create another assembly to serve as a mediator between the legislative and the executive called the Council [9, p. 19]. The Council would be elected by the Representative Assembly either from themselves or their constituencies. Thus, Adams supports the two-chamber parliament to prevent competition between branches of authority.

The Council should serve as an integral part of the legislative and together with the Representative Assembly annually elect the Governor. Moreover, all great offices in a state should be assumed the same way to teach the candidates political virtue. The Governor should lose all prerogatives and become a part of the executive to oppose the legislative when it would make laws against the common good [2, p. 5]. Consequently, politicians would have to focus on their achievements all the time because they would require to prove their virtue to be re-elected.

Besides, the legislative and the executive had to cooperate due to the spread of responsibilities. Seven or nine members of the Council united into the Privy Council whose main purpose was to advise the Governor [10, p. 360]. The Governor controlled the army and militia and shared the prerogative to pardon with the Council. In addition, the Governor should nominate and appoint individuals for the offices and representatives of the judiciary with the consent of the Council [2, p. 5]. Therefore, both the legislative and the executive incorporated checks and balances to avoid competition between these two branches.

Adams' idea of the Council does not have a directly corresponding institution in France; however, its role is partially covered by several political bodies. The first of them is the Senate with 348 members appointed to represent territorial communities and protect their interests from potential harm from proposals of the National Assembly. Even though from the institutional perspective, it is a part of the legislative, the Senate also has to vote for the non-confidence for the government to resign [5, p. 13–16]. That is why, on the one hand, it can improve proposals of the National Assembly while, on the other hand, the Senate can provide a second opinion on governmental programs and stop the National Assembly from forcing the executive to shape its policies following personal interests of its members.

However, Adams speaks about the importance of virtue that leads to the discussion of what type of appointment of individuals for political offices is the most likely to bring better results. The Senate is elected by the Senate Electoral College that consists of deputies and senators, regional councilors elected in the department, appointed councilors from the Corsican Assembly, councilors to the assembly of Guyana, councilors to the assembly of Martinique, departmental advisers, and delegates from municipal councils. Delegates from municipal councils represent 95 percent of the whole college while their number is based on the number of inhabitants in local communities [5, p. 13–16]. Such a system differs from universal suffrage through the professional experience of delegates in public administration; therefore, before voting, they are aware of the responsibilities of a senator and can evaluate whether a person will be able to fulfill them. Taking into account the size of the Senate Electoral College of approximately 160 thousand people, the possibility for political manipulations is limited. That is why the electoral system for the Senate is directed at choosing individuals suitable for a position rather than having the support of different social clusters.

As far as, the Senate is only partially aligned with Adams' vision of the Council, the Privy Council, and the Governor also do not have corresponding institutions in the system of public administration in France. The President of the Republic covers the responsibilities of the Governor mentioned above. They are the head of the executive and the most influential person in the country who is responsible for the proper functioning of the government and the continuity of the state. They are "the guarantor of national independence, territorial integrity and due respect for Treaties" [5, p. 5].

The President of the Republic appoints and terminates the Prime Minister and other members of the government on the recommendation of the Prime Minister. They serve as the head of the Council of Ministers. After the consultation with the Prime Minister and the Presidents of the Houses of the Parliament, the President of the Republic can dissolve the National Assembly. The clauses where the consultation is required in the Constitution also require the countersignature of the Prime Minister and in some cases responsible ministers to treat into power. The President of the Republic appoints individuals for civil and military posts of the State, accredits foreign ambassadors, and sends envoys abroad. They are the head of the armed forces and national defense councils and meetings by extension. The President of the Republic has the power to grant individual pardons. They are a responsible person for negotiating and ratifying treaties [5, p. 6–10]. Consequently, there are some similarities between these two positions; nevertheless, the President of the Republic does not have the mediating role between the legislative and the executive.

Adams identifies the judiciary to be a central pillar to ensure the dignity and stability of the government. The judiciary, in the contrast to the legislative and the executive, should not share responsibilities with any other branch. The philosopher defines its role as follows: "the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that". Such placement in the structure of the government is essential to avoid the conflict of interests in judges. According to Adams, judges should be appointed for life with the possibility of their impeachment before the Governor and the Council. Their salaries should be established by the law to prevent their politicization. Thus, the judiciary should not intervene in any political processes in a state but secure the rule of law in it.

In France, the independence of the judiciary is guaranteed by the President of the Republic with the assistance of the High Council of the Judiciary while the judge cannot be removed from office. The President of the Republic also presides over the High Council of the Judiciary while the Minister of Justice is its unofficial Vice-president. The High Council of the Judiciary is comprised of two sections. A section with jurisdiction over judges consists of "the President of the Republic and the Minister of Justice, five judges and one public prosecutor, one State Counselor appointed by the State Council, and three prominent citizens who are not members either of Parliament or the Judiciary, appointed respectively by the President of the Republic, the President of the National Assembly and the President of the Senate" [5, p. 26–28]. The second section with jurisdiction over public prosecutors includes the President of the Republic and the Minister of Justice, five public prosecutors and one judge, and the State Counselor together with the three prominent citizens appointed in the same way as for the previous section. The functions of the section of the High Council of the Judiciary with jurisdiction over judges include recommendations for the appointments to the cassation court, the Chief Presidents of Courts of Appeal, and the Presidents of the High Tribunal, consultation regarding other appointments, acting as a disciplinary tribunal. The section of the High

Council of the Judiciary with jurisdiction over public prosecutors gives its opinion on the appointment of public prosecutors (except for the posts under the jurisdiction of the Council of Ministers) and disciplinary measures regarding public prosecutors [5, p. 26–28]. Consequently, a presence of an institution a role of which is to secure the independence of the judiciary and monitor how individuals trusted with the protection of the rule of law fulfill their function follows Adams' vision.

Adams believes that the constitution built according to the outline mentioned above should stimulate people to take interest in internal developments in a state and engage in politics. Individuals working in the government should serve as an example to promote conscious dignity among the masses. Colonies that desire independence should have full freedom to choose their norms. If they apply the same principles, they would be able to protect themselves from the attacks of European colonists. That is why Adams sees the main strength of such a government in appealing to citizens and increasing their will to be part of the state steering apparatus.

**Conclusion.** From the analysis of the works of John Adams and the Constitution of France, one can see that the majority of elements related to the separation of powers and mechanisms of checks and balances are shared. The system of public administration in France is well-developed structurally because it focuses rather on checks and balances than a general structure. In comparison with the ideas of Adams, one can see that the only major difference is terms in the office. Adams advocates for frequent change of individuals to increase their feeling of responsibility and motive them to demonstrate constant achievements. If the same people hold authority for a long time, they get accustomed to it and are prone to corruption and manipulations to preserve it. In France, this issue was addressed through the difference in election times so that, at least, some part of new people would join an institution. Terms should not be too short because this would negatively affect the quality of decision-making and program implementation. As a result, in addition to the system of checks and balances in the country, a government should also evaluate its results and whether the structure of public administration satisfies the needs of citizens. Therefore, the comparison of the works of John Adams and the Constitution of France demonstrates that relationships between the institutions play the most important role in the separation of powers; nevertheless, there are alternative ways of addressing these issues to strengthen the system of public administration.

#### REFERENCES:

1. Williamson, H.P. (1968) John Adams, Counsellor of Courage. *American Bar Association Journal*. No. 54 (2), pp. 148–151.
  2. Adams, J., Wythe, G. (1776) Thoughts on government: Applicable to the present state of the American colonies. In a letter from a gentleman to his friend. Philadelphia : Printed by John Dunlap.
  3. Allen, B. (2002) John Adams: Realist of the Revolution. *The Hudson Review*. No. 55 (1), pp. 45–54. DOI: 10.2307/3852843.
  4. Trees, A. (2001) John Adams and the Problem of Virtue. *Journal of the Early Republic*. No. 21 (3), pp. 393–412. DOI: 10.2307/3125267.
  5. France (1958) The French Constitution, adopted by the referendum of September 28, 1958 and promulgated on October 4, 1958. French text and English translation. New York : French Embassy, Press and Information Division.
  6. McGlone, R.E. (1998) Deciphering Memory: John Adams and the Authorship of the Declaration of Independence. *The Journal of American History*. No. 85 (2), pp. 411–438. DOI: 10.2307/2567746.
  7. Saleilles, R. (1895) The Development of the Present Constitution of France. *The Annals of the American Academy of Political and Social Science*. No. 6, pp. 1–78.
-

8. Faux, R.A. (1906) France. *Journal of the Society of Comparative Legislation*. No. 7 (2), pp. 407–414.
9. Mayville, L. (2015) Fear of the Few: John Adams and the Power Elite. *Polity*. No. 47 (1), pp. 5–32.
10. Miroff, B. (1987) John Adams' Classical Conception of the Executive. *Presidential Studies Quarterly*. No. 17 (2), pp. 365–382.

#### СПИСОК ВИКОРИСТАНОЇ ЛІТЕРАТУРИ:

1. Williamson, H.P. (1968) John Adams, Counsellor of Courage. *American Bar Association Journal*. No. 54 (2), pp. 148–151.
  2. Adams, J., Wythe, G. (1776) Thoughts on government: Applicable to the present state of the American colonies. In a letter from a gentleman to his friend. Philadelphia : Printed by John Dunlap.
  3. Allen, B. (2002) John Adams: Realist of the Revolution. *The Hudson Review*. № 55 (1), pp. 45–54. DOI: 10.2307/3852843.
  4. Trees, A. (2001) John Adams and the Problem of Virtue. *Journal of the Early Republic*. No. 21 (3), pp. 393–412. DOI: 10.2307/3125267.
  5. France (1958) The French Constitution, adopted by the referendum of September 28, 1958 and promulgated on October 4, 1958. French text and English translation. New York : French Embassy, Press and Information Division.
  6. McGlone, R.E. (1998) Deciphering Memory: John Adams and the Authorship of the Declaration of Independence. *The Journal of American History*. No. 85 (2), pp. 411–438. DOI: 10.2307/2567746.
  7. Saleilles, R. (1895) The Development of the Present Constitution of France. *The Annals of the American Academy of Political and Social Science*. No. 6, pp. 1–78.
  8. Faux, R.A. (1906) France. *Journal of the Society of Comparative Legislation*. No. 7 (2), pp. 407–414.
  9. Mayville, L. (2015) Fear of the Few: John Adams and the Power Elite. *Polity*. No. 47 (1), pp. 5–32.
  10. Miroff, B. (1987) John Adams' Classical Conception of the Executive. *Presidential Studies Quarterly*. No. 17 (2), pp. 365–382.
-