

*Civilization Boundaries
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THE THEORY OF INTERACTION BETWEEN THE GOVERNMENT AND PARLIAMENT IN THE HISTORIOGRAPHY OF THE TWENTIETH CENTURY

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Abstract. The article is devoted to the analysis of interaction between government and parliament in historiography of the XX century. This period is characterized by deepening of research the separate aspects of cooperation between government and parliament. At the same time there is a change of accents in the study of this theme. It was related to increase of volume of government work, complications of functions of state administration and strengthening of role of executive power at the beginning XX of century. Special attention was paid to the analysis of the evolution and evaluation of the effectiveness of the delegated legislation in European countries. It is also needed to mark that this period is presented mainly West-European and American historiography, because for researchers of socialist countries this theme was not actual.

Keywords: separation of powers; legislative power; executive power; executive-legislative relations; historiography

Initial studies of the interaction between government and parliament took place within the learning the theory of the separation of state powers that arose in the XVII century. An important place among the philosophers of that time took John Locke, who in the work “Two Treatises of Government” (1690) considered in detail the three varieties of power: legislative, executive and judicial, gives them a detailed description and notes that legislative power cannot be absolute, executive and judicial power should limit it (Lokk, 1988: 351). French political philosopher Charles-Louis de Montesquieu, distinguishing three branches of power, does not yet come to the idea of their equality, considered like John Locke, that the legislative power is higher, and the executive is “limited in its nature” (Montesk’e, 1999: 292). However, he went further from John Locke and worked out another important principle – must be not only the separation of power, but also their mutual control (Montesk’e, 1999: 289). The executive power has the right (first of all, in the person of the monarch) to veto the decision of the

legislative assembly, establishes the rules of their work, dissolves it. Legislative power controls the implementation of laws by the executive, bring ministers to responsibility for defiance of the law (Montesk'e, 1999: 295).

The principle of the separation of powers in the interpretation of Montesquieu received widespread support among thinkers of the XVIII-XIX centuries. Among them the founder of the German classical philosophy Immanuel Kant, who gave the philosophical interpretation of this principle. The founder of French liberalism Benjamin Constant developed the doctrine of four types of power for the purpose of revising and developing ideas about the separation of powers in the constitutional monarchy (Konstan, 2000: 38).

The English philosopher John Stuart Mill made a significant contribution to the study of interaction between the government and the parliament. He described the category and essence of the political responsibility of the government even more consistently and detailed than Montesquieu. In his work "Considerations on Representative Government" (1861) Mill states that "the true function of the representative assembly is to supervise, control and request reports from the government, as well as the removal from governing incompetent people" (Mill, 1897: 46).

Studies of the XVIII – XIX centuries witnessed, firstly, the emergence and scientific development of the concept of the separation of power, in which the research of interaction between government and parliament was initiated; secondly, in the context of this concept the dominant idea was to strengthen the role of the parliament in the government of a state.

The beginning of the twentieth century is characterized by a deepening of the studies of the interaction between governments and parliaments. The emphasis in the research of this topic was changing. Because of increasing the state work and the complication of public administration functions the role of executive power growth. The discovery of the dynamism of this power lies in its functions, which are conventionally called law-enforcement, executive and administrative. The executive branch of power organizes the implementation of laws, solves the specific issues of governance. In a situation where the executive power does not have a legislative basis for solution actual problems of public administration, it issues normative acts or advances the legislative initiative. In the interwar constitutions of European countries there is consolidation of the institution of delegated legislation, which is now widely used in many countries. The trend towards the introduction in constitutions norms aimed at strengthening the role of governments in the states has also intensified in the postwar period.

For the first time, the idea of reducing the role of legislative bodies was introduced by English researcher James Bryce in 1920 and later became the dominant paradigm for the next seventy years. This idea implied that once in the

past there was a “golden time” of parliaments when they played a major role in governance. At the beginning of the twentieth century legislatures are gradually losing their role, even in such an important area as law-making. In essence, power has become the competence of executive bodies (Bryce, 1921: 204). As a result, many researches of this period was devoted to the analysis of the decline of the role of parliaments and reduction their powers in the legislative field. The fall of the parliament’s authority analyzed in the work of Robert Gooch “The Antiparliamentary Movement in France” (1927). The author claims that there is almost no doubt that the parliamentary system in France discredited itself. The attitude of people to the parliamentary system has become a form of rigid antipathy and criticism (Gooch, 1927: 553).

Particular attention was paid to the analysis of the evolution and assessment of the effectiveness of the delegated legislation in European countries. Some part of researchers in 1920-1930 criticized this institute. The negative assessment of the delegation the legislative powers to the government gave the English researcher Lord Hewart. He accepted its necessity but speaking about the establishment of a “new despotism” of the executive power (Hewart, 1929: 63). American researchers John Gaus (1932), John Willis (1933), Chin-Mai Chen (1933) and Kenneth Cole (1939) spoke about the insufficiency of parliamentary control over the delegated legislation and need to increase it. Some authors, such as Paul Duez, believe that the using of delegated legislation may lead to the establishment of uncontrolled totalitarian power or its usurpation, as in the case of Italy and Germany (Duez, 1936: 932 – 933).

Somewhat changed assessment of the institution of delegated legislation during and after the Second World War. In the research paper of Otto Kirchheimer (1940), S.A. de Smith (1949), Marguerite Sieghart (1950) and some others, we can observe the idea of the need to use this mechanism in emergencies and by way of the quickly solving of the state problems. At the same time, Professor Alf Ross after the detailed analysis of the application the delegated legislation in France, England and Denmark argued that this problem requires a broad scientific discussion of constitutional problems of delegation (Ross, 1958: 19).

Features of the functioning of the executive branch of power in general and governments in particular are actively considered by researches in the 20 – 30’s of the 20th century. It was associated with government instability in many European countries. Among the variety of scientific papers in this area we should mention the works of Charles Beard and John Lewis (1932), Carl Friedrich (1933), W. Middleton (1933), Frederick Ogg (1934), Ivor Jennings (1937), Walter Sharp (1939), Lindsay Rogers (1931), Charles Martin (1923). The strengthening the role of government in its interaction with the parliament is being paid more and more attention. Thus, Ivor Jennings, referring to the responsibility of the British government to the House of Commons, argues that it “should be understood in a

special sense”, because in fact “the government controls the House of Commons” (Jennings, 1937: 468-469).

Particular attention is paid to strengthening the role of the executive branch of power in connection with crisis management during the Second World War. It should be noted the works of Clinton Rossiter “Constitutional Dictatorship: Crisis Government in the Modern Democracies” (1948) and Lindsay Rogers “Legislature and Executive in Wartime” (1941). The authors attribute the strengthening of governments to the fact that parliaments cannot have a session in wartime, but society needs prompt and effective decisions that are more likely to be adopted and implemented by a single state authority.

The period of 20 – 40-ies of the twentieth century is a period of the appearance of totalitarian and authoritarian regimes in the countries of Europe. Therefore, it is natural for researchers to pay close attention to the functioning of public authorities in this states. The research papers of Charles Wilson (1937), Arthur Steiner (1939), H. Heneman (1941) analyzed formation of a new structure of public administration, in which there is no clear division of legislative and executive power, there is a concentration of power in the hands of one person or the sole governing body. Charles Wilson in his work “The Separation of Powers under Democracy and Fascism” (1937), emphasizes that “the supreme legislative and executive power is now in the hands of the leader of the party and his cabinet and is not restrained by any control or neutral authority” (Wilson, 1937: 492). Researchers are also considered countries that have established pro-fascist regimes, such as in France. American researcher H. Heneman notes that after the adoption in France of the Constitutional Law of July 10, 1940, there was a rigid concentration of power in the hands of the executive bodies. Not only legislative, but all power in the state was transferred to the government. The Senate and the House of Representatives continue to exist, but have no real powers. The government is free from the control of the legislature (Heneman, 1941: 90).

A significant part of scientific research, within which some aspects of the interaction between the government and parliament were analyzed, devoted to the role and functions of the legislative bodies of European countries. The researchers’ attention is paid to the participation of governments in the legislative process, such as in studies by Richard Spencer (1940), William Foster (1956), Gilbert Campion and D. Lidderdale (1955), G. Keeton (1953), J. Griffith (1951), Gerhard Loewenberg (1967), R. Pakenham (1970), M. Mezey (1979), P. Norton (1984), J. Blondel (1970), A. del Moral (1986). Investigating the legislative procedure in Sweden, William Foster notes that the development of legislation is an essential function of government ministries. For example, he is noted that 32 employees of the Ministry of Social Affairs of Sweden in 1953 were engaged with the matters related to the drafting of government bills or made the

necessary research for it (Foster, 1956: 62). J. Griffith in his research "The Place of Parliament in the Legislative Process" said: "...legislation today is more of a government than a parliamentary function". But at the same time, the parliament plays an important role in this process, investigating, criticizing and endorsing the part of the bills that it considers necessary for the state (Griffith, 1951: 291-292). The issues of government participation in the legislative process through parliamentary committees and commissions were considered in the studies of Neil Elder (1951), Lindsay Rogers (1923), Alan Rosenthal (1981), M. Shaw (1979), Ch. Kim (1984).

Considerable attention of authors in this period was paid to certain aspects of government-parliamentary interaction, in particular to the parliamentary control of the government. The general issues of parliamentary control devoted the works of the German scientist Peter Gerlich (1978) and the French researcher J. Siwek-Pouydesseau (1969). The effectiveness of deputy queries and questions to the government in the British House of Commons was analyzed in Robert McCulloch's paper. The author considers this mechanism as the most effective and acceptable way of controlling state policy and government administration, which, if properly applied, contributes to the stability of the system of public administration (McCulloch, 1933: 975). Mechanisms of government control carried out by parliamentary committees and commissions in European countries studied in the works of Robert Keith Gooch (1935), Joseph Harris (1957), and K. Wheare (1956). They are noted that the ministerial responsibility to the parliament plays an important role for the government-parliamentary interaction in the United Kingdom. The leadership of both parliamentary parties is united in order to prevent any parliamentary dictation of administrative decisions or interference that would impede the work of government departments or weaken the ministerial responsibility. This practice is in France, Germany, Sweden and the Netherlands, although, according to Joseph Harris, the effectiveness of the ministerial responsibility is lower than in the United Kingdom (Harris, 1957: 466). Professor K. Wheare have classified parliamentary committees, separates "supervisory and control committees", while pointing out that control is too categorical to describe their functions. Their influence on the representatives of the government and civil servants is significant, however, it is impossible to speak of control in the full sense, because the doctrine of ministerial responsibility protects them from possible unjustified pressure from parliamentary committees (Wheare, 1956: 371).

In the 70 – 80 years of the twentieth century Robert Jackson, Michael Atkinson, Kenneth Hart (1977) and Bert A. Rockman (1984) did the important attempts to analyze the governmental-parliamentary interaction during realization certain functions by state authorities in some countries. The models of interaction between government and parliament in Britain, France and West Germany are devoted to

Anthony King's research article, where he notes that the system of government-parliamentary interaction is a rather complex subject of research, which requires a special methodology for each individual country (King, 1976). The peculiarities of the system of checks and balances between the branches of power and separate problems of their interaction considered the works of Ernst Haas (1953), Don K. Price (1943), Carl Friedrich (1948), and Charles Haines (1922).

It should be noted that the listed tendencies concerned only Western European and American historiography, because issues of interaction of legislative and executive power in Soviet historiography and historiography of the socialist countries were almost not studied. Exceptions were some researches devoted to the analysis of the systems of state power in foreign countries (Lukovnikov, 1967; Zakrzewski, 1959; Krutogolov, 1980). This was due to the fact that the Soviet doctrine absolved the view of Marxism on the idea of the separation of state power and opposed to it the theory of "All Power to the Soviets". Soviet constitutionalism denied the need of the separation of power in a socialist state, since this principle established restrictions on the representative power of the people. These restrictions overcome by the concentration of power in the assembly of people's representatives and the distribution of functions between the subordinated state authorities. In accordance with this, the political basis of state power was Soviet of People's Deputies. In fact, this was only the theoretical cover of the usurpation of state power by the party-state bureaucracy and the totalitarian essence of the Soviet regime.

Thus, the analysis of the historiography of the 1920s – 1980s testifies to the interest of scientists in the following topics: first, increasing the role of government in the legislative process; secondly, parliamentary control of the government; and thirdly, the features of the interaction of branches of power in extraordinary times. The researches of this period represented of Western European and American historiography, because this topic was not actual for the scholars of the socialist countries.

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