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The first constitutional documents covering the principle of separation of powers in the historical process

Abstract: This study aimed the historical emergence and constitutionalization of the principle of separation of powers through an analysis of the earliest constitutional documents in which this principle was explicitly or implicitly articulated. Focusing on key milestones in constitutional history, the article first evaluated the English experience through the 1689 Bill of Rights and the 1701 Act of Settlement, which limited monarchical authority and laid the groundwork for legislative supremacy and judicial independence. It then analyzed the American constitutional tradition, beginning with the 1776 Virginia Declaration of Rights and the Constitution of Virginia, and culminating in the 1787 Constitution of the United States, where the separation of legislative, executive, and judicial powers was institutionalized within a strict system of checks and balances. The study further explored the continental European dimension by examining the 1789 French Declaration of the Rights of Man and of the Citizen and the 1791 French Constitution, which explicitly defined the separation of powers as a prerequisite for constitutional existence. In addition, the 1791 Constitution of the Polish–Lithuanian Commonwealth was assessed as one of the earliest modern European constitutions embodying this principle. Finally, the 1814 Netherlands Constitution wass analyzed as an early constitutional monarchy that contributed to the diffusion of separation of powers in Europe. The article demonstrated that the separation of powers evolved through diverse political contexts into a foundational principle of modern constitutionalism. This study was prepared by benefiting several papers protected by copyrights using a qualitative research method using document analysis technique

Keywords: Constitution; France; England; Lithuania; Poland; Separation of Powers; USA.

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[1] Falus O. (2014): Az iszlám alapítvány-a "waqf". *Jogtörténeti Szemle,* 16., (3.), pp. 1–7.

[2] Falus O. (2011): Lepra: Stigma a XXI. században. *Orvosi Hetilap,* 152., (7.), pp. 246–251.

[3] Falus O. (2015): *Ispotályos keresztes lovagrendek az Árpád-kori Magyarországon.* Pécs: Publikon Kiadó.

[4] Komlos J.–Falus O. (2023): Van-e jogunk stresszmentes élethez?: A stressz egyes gazdasági és jogelméleti aspektusairól. *Civil Szemle,* 20., (3.), pp. 145–156.

[5] Jóźwiak, P.–Falus, O. (2022): Legal Regulations on Autonomous Vehicles in Poland and Hungary: The Issue of Criminal Liability In: Balázs L. –Rajcsányi-Molnár M. –András I. (Eds.): *Elektromobilitás és társadalom.* Dunaújváros: DUE Press, pp. 125–136.

Összefoglalás: A jelen kutatás a hatalmi ágak szétválasztása elvének történelmi megjelenését és alkotmányosodását vizsgálja a legkorábbi olyan alkotmányos dokumentumok elemzésén keresztül, amelyekben ez az elv explicit vagy implicit módon megfogalmazódott. Az alkotmánytörténet kulcsfontosságú mérföldköveire összpontosítva a cikk először az angol tapasztalatokat értékelte az 1689-es Bill of Rights (Jogok Nyilatkozata) és az 1701-es Örökösödési Törvény értékelésével, amelyek korlátozták a monarchikus hatalmat, és lefektették a törvényhozási felsőbbrendűség valamint a bírói függetlenség alapjait. Ezt követően górcső alá került az amerikai alkotmányos hagyomány, kezdve az 1776-os Virginiai Jogok Nyilatkozatával és Virginia Alkotmányával, az Egyesült Államok 1787-es Alkotmányában csúcsosodva ki, ahol a törvényhozó, a végrehajtó és az igazságszolgáltatási hatalmi ágak szétválasztását szigorú fékek és ellensúlyok rendszerében intézményesítették. A tanulmány tovább vizsgálta a kérdés kontinentális európai dimenziót az 1789-es francia Emberi és Polgári Jogok Nyilatkozatának és az 1791-es francia Alkotmány elemzésével, amelyek explicit módon meghatározták a hatalmi ágak szétválasztását az alkotmányos létezés előfeltételeként. A Lengyel-Litván Köztársaság 1791-es Alkotmányát az egyik legkorábbi modern európai alkotmányként értékelte, amely megtestesíti ezt az elvet. Végül az 1814-es holland Alkotmány analízise során megállapította, hogy ez a korai alkotmányos monarchia maga is hozzájárult a hatalmi ágak szétválasztásának elterjedéséhez Európában. A kutatás bemutatta, hogy a hatalmi ágak szétválasztása különböző politikai kontextusokon keresztül a modern alkotmányosság alapelvévé fejlődött. A jelen tanulmány számos szerzői joggal védett mű felhasználásával készült, kvalitatív kutatási módszerrel, dokumentumelemzési technikával.

Kulcsszavak: Alkotmány; Franciaország; Anglia; Litvánia; Lengyelország; hatalmi ágak szétválasztása; USA.

Introduction

As is well known, the concept of separation of powers is found in constitutions. Therefore, before defining separation of powers, it is necessary to focus on the concept of the Constitution. An examination of the constitutionalism movements clearly shows that, in terms of binding state administration to rules and protecting citizens' rights – from classic, "first generation" rights as the right to assembly and to establish non-profit organizations [1] to modern rights such as the right to physical [2, 3] and mental [4] health, as well as the right to an unpolluted environment [5],

education [6], and informational self-determination [7] – constitutions are closely related to the concept of «classical democracy», which developed particularly during the nineteenth century [8]. The constitution is the fundamental norm of a society's domestic law and domestic politics, and other institutions and rules related to democracy derive from it [9]. Constitutional law, on the other hand, is part of the field of knowledge generally referred to as law [10]. Briefly, the Constitution is the fundamental source of written law that forms the basis of a state's legal structure, regulating the fundamental rights and freedoms that determine the powers, limits, and relationships between institutions authorized on behalf of the people [11].

The concept of separation of powers, which is the subject of our study, refers to the division of state power among different branches so that they can check and balance each other. In this context, it can be said that the theory is based on the idea of sharing power among the legislative, executive, and judicial branches in order to prevent the monopolization of state power. The separation of powers has become one of the indispensable principles of modern democratic states today and forms the basis of presidential, parliamentary, and semi-presidential government systems, which are considered democratic systems.

The most prominent constitutional model for the idea of separation of powers was the Roman Republic, with its system consisting of consuls, the Senate, and the tribunes of the people. In the 18th century, another clear example of the Roman model was added. Meanwhile, although the theory of separation of powers is associated with Montesquieu, the theory is much older and was first presented in a comprehensive manner by Aristotle. However, Aristotle and Montesquieu were not the only influential figures in the formation of this idea [12]. Other than these two, John Locke also states that legislative and executive powers should not be held by the same individuals, and that if the same people make and enforce the law, this would result in a system of government that serves the interests of those in power rather than the political community.

According to Değirmenci, Aristotle, a strong advocate of the separation of powers, emphasized the supremacy of the constitution and the rule of law; and separated the functions of the state into legislative, executive, and judicial branches.

[6] Falus, O. (2020): *The Legal Institutions of Charity in the Traditional Islamic Law.* Sarajevo: Dobra knjiga.

[7] Falus O.–Jóźwiak P.–Kővári A. (2022): "Gólyakalifa" a 21. században: Joghézag és analógia a virtuális valóság jogában. *Jogelméleti Szemle,* (2.), pp. 20–32.

[8] Sosyal, M. (1979): *The Meaning of the Constitution in 100 Questions.* 5th Edition. Istanbul: Gerçek Publishing House Publications.

[9] Parla, T. (1971): *Constitutions in Türkiye.* Istanbul: İletişim Publications.

[10] Esen, B. N. (1979): *Constitutional Law.* Ankara: Resimli Posta Publications.

[11] Tunç, B. (2020): The Place and Importance of the 1961 Constitution in The History of Turkish Constitution. *Black Sea Studies,* 17., (67.), pp. 657–692.

[12] Çelik, İ. (2011): Separation of Powers: A Reduction and Transformation. *Liberal Thought Journal,* (64.), pp. 135–159.

[12] Çelik, İ. (2011): Separation of Powers: A Reduction and Transformation. *Liberal Thought Journal,* (64.), pp. 135–159.

[13] Değirmenci, R. (2023): Separation of Powers, Freedom And Judicial Power in Montesquieu's Thought. *Akdeniz University Faculty of Law Journal,* 13., (1.), pp. 239–257.

[14] Karaağaç, Y. (2019): Socio-Economic Background of the Principles of Unity of Powers and Separation of Powers. *Black Sea International Scientific Journal.* (44.), pp. 76–83.

[15] Urhan, V. (2016): Justice, Equality, Freedom in Political Philosophy. Anxiety. *Bursa Uludağ University Faculty of Science and Literature Philosophy Journal,* (26.), pp. 103–119.

Aristotle also emphasized groups and powers within society, pointing out the benefits of including them in power. In contrast, Baron de Montesquieu, within the framework of the theory of separation of powers, sought to institutionalize the desire for freedom while preserving the privileges of the aristocracy, intending to make this class a bridge between the king and the people [13]. He also believed that the constitutional status of the nobility should be preserved as a point of resistance between the people's unlimited and excessive demands and the absolute regime.

The first person to address the separation of powers was J. J. Rousseau in his work The Social Contract. According to Rousseau, neither the legislative nor the executive branch should be left to the arbitrary discretion of the people. He believed that legislative power resides with the people; executive power, however, cannot be in the hands of the majority due to its legislative or sovereign nature [14]. One of the individuals who, like Rousseau, places serious emphasis on the theory of separation of powers is John Stuart Mill. The solution he suggested in the context of the separation of powers is stronger representation of the views of the minority. Otherwise, there is a danger that democracy will result in a new form of tyranny; that is, the unlimited sovereignty/tyranny of the majority will prevail, where the rights of the minority are disregarded or eliminated [12]. For this reason, John Stuart Mill believes that the principle of separation of powers should prevail.

It is known that the American contemporary political philosopher Rawls, who gained fame with his work Theory of Justice, also drew attention to Kant's moral principle from time to time and worked on a concept of justice that essentially accommodates both human freedom and equality. Rawls believes that this can only be achieved through the genuine implementation of the separation of powers [15]. For this reason, Rawls became one of the strongest advocates of the separation of powers theory in the 20th century.

One of the most ardent defenders of the separation of powers in the 20th century was Friedrich August von Hayek. Hayek believed that in order to successfully limit state power, the principles of the rule of law and the separation of powers must be strictly applied in society. He took his idea of separation of powers to the point of completely separating the legislative and executive branches. He clearly stated this in the constitution he proposed.

Hayek developed a unique constitutional model for a liberal state in his book "The Political Order of a Free People." According to this constitution, the government is formulated as a second chamber elected separately from the legislative assembly. This would eliminate the organic link between the two chambers. In addition, the duties of the two institutions are clearly separated from each other. The legislative assembly will determine the basic framework within which the government will operate and the general principles of its activities. The government, on the other hand, will enact and implement laws related to the executive branch within this clearly defined framework [16].

Until this point, the theory of separation of powers and the views of the scientists and philosophers who pioneered this theory have been briefly discussed. With the emergence of the idea of separation of powers, states gradually began to adopt this system. The state that pioneered this was England. As outlined below, this system, which was later adopted by other states, is now used by many states today. This study aims to highlight the chronological development of the idea of separation of powers. Prepared using document analysis techniques, this article aims to contribute to the scientific work of scholars in this field.

The 1689 Bill of Rights and the 1701 Act of Settlement

The principle of separation of powers essentially emerged as a solution that explains the relationship and conflict between the governed and the governing, and the manner in which the governing body legitimately obtains and exercises its power. There are significant differences between the 18th century, when the principle was developed and began to be applied, and the present day. The implementation process initially emerged as a period of transition from monarchies to constitutional monarchies or the beginning of the use of direct democratic methods, albeit limited. During this process, it was envisaged that the supreme power, defined as sovereignty, would be divided into three functions, shared among different organs, and used separately and within its own sphere, with balance maintained, in order to ensure that power could be used appropriately, effectively, and within certain limits, and that the accountability mechanism would function [17]. In this context, the first document related to this idea was the Declaration of Fundamental Rights, published in England in 1869.

[16] Kalfa Ataay, C. (2016): Hayek and Friedman's Understanding of the State. *Marmara University Journal of Political Sciences*. 4., (1.), pp. 129–151.

[17] Akgül, ME (2010): The Transformation of the Principle of Separation of Powers and its Meaning in Today's Democratic Regimes. *Ankara Bar Association Journal,* (4.), pp. 79–101.

According to Gözler, until the 1400s, Parliament in England had no law-making authority, i.e., no legislative power. Parliament only had the authority to consent to the collection of taxes. Therefore, Parliament was not initially a legislative body. Legislative power belonged solely to the King. Members of the House of Lords and the House of Commons did not have the right to propose laws. Parliament obtained the power to propose laws through the "right to consent to taxation" and the "right to petition." The House of Commons and the House of Lords had long had the right to submit "petitions" to the King. Members of the House of Lords or the House of Commons would petition the King for a law or decree they wanted to be drafted, asking the King to issue that law or decree. In this context, the King would submit the petition sent to him by one of the Houses to the other House for review and then decide on the appropriate action. This demonstrates that, until 1689, the King was very powerful in England and Parliament had very little authority [18]. This situation changed with the publication of the Bill of Rights in 1689, creating the necessary environment for the establishment of the separation of powers.

The fundamental reason for the publication of the Bill of Rights in England was the struggle for rights between Parliament and the king. In this context, a revolution took place in 1688 in the Kingdom of England, which led to the emergence of the separation of powers. During this process, the monarchy, the established church, and the House of Lords lost their power due to pressure from the people. After the Glorious Revolution, a series of legal and institutional reforms were implemented to curb the monarch's absolutist tendencies, and the Kingdom of England came under the control of a parliament dominated by the landed oligarchy [19]. Immediately after this event, the Bill of Rights was published in 1689 to establish a separation between the legislative and executive branches.

Following King James II of England's escape from the country, Parliament sought to reassert its power and prevent the King from acting as an absolute monarch. As a result, the Bill of Rights was introduced by Parliament in 1689. Thus, the King's powers, or more accurately, his arbitrary authority, were limited. "The Bill of Rights" essentially stated that no law could be repealed by the King, that taxes and troops could only be raised with Parliament's approval, and that arrests could only be made after due process of law. With the Bill of Rights, the balancing of legislative and executive powers resulted in the British Monarchy, already weaker than other states in Europe, suffering a further loss of power [20]. The Bill of Rights has also ensured the necessary environment for the separation of powers by establishing a balance between the legislative and executive branches.

[18] Gözler, Kemal (2009): "How and Why Did Parliament Emerge in England? An Essay on the Antiquity of Financial Law over Constitutional Law". A Gift Book for Prof. Dr. Mualla Öncel. *Ankara University Faculty of Law Publications,* (3.), pp. 365–374.

[19] Doğan, K. C.–Şentürk, S. H. (2017): Budgetary Rights in the Era of Revolutions and The Development of Parliamentarism in the Seventeenth Century in England. *Karadeniz Technical University Social Sciences Institute Social Sciences Journal,* 7., (14.), pp. 353–373.

[20] Erkul, İ. Ç. (2015): Analysis of the Process of Gaining Power of the British Parliament against Absolute Monarchy. *Uludağ University Journal of Faculty of Economics and Administrative Sciences,* 34., (2.), pp. 131–151.

The declaration, an important document in the context of the theory of separation of powers, first and foremost deemed it unlawful for the king to repeal laws without Parliament's consent and to consider himself above the law or the enforcement of laws. Similarly, the Declaration of Rights deemed it unlawful to establish special and extraordinary courts and to collect money for the benefit of the throne without Parliament's consent. The declaration, which guaranteed the right to petition the king, permitted the establishment or maintenance of a standing army in peacetime without the consent of Parliament.

According to Sencer, while the Declaration of Rights grants the right to bear arms to ensure the safety of those of different faiths, the freedom of parliamentary elections is enshrined in law. Among the rights and freedoms guaranteed by the Declaration, freedom of speech is particularly emphasized, specifically that discussions held in parliament shall not be subject to investigation. While other provisions of the Bill of Rights prohibit excessive security measures and extraordinary penalties, the rule that members of the judiciary must be appointed through legal means and not interfere in trials has been adopted. Finally, it has been made legal for Parliament to meet frequently for the purpose of amending and protecting laws. We believe that this is also an extremely important issue in terms of the separation of powers [21].

According to Şahingöz, the 1689 Bill of Rights stipulates that the king cannot enact laws or collect taxes without parliamentary approval, that individuals can petition the king, that petitioners will not be subject to any investigation or prosecution, that punishments will be proportionate, and that individuals can demand their fundamental rights and freedoms. Most importantly, the king could no longer declare war or even leave England without parliamentary approval. Therefore, this important document has become a significant step towards the separation of powers by establishing a balance between the legislative and executive branches [22]. In addition, the fundamental rights and freedoms recognized by international documents, including the 1689 Bill of Rights, began to be clearly defined, and thanks to the parallel development of the parliamentary system and democracy, these fundamental rights and freedoms found effective application.

Another important document that entered British constitutional documents as a manifestation of the principle of separation of powers is the Act of Settlement of 1701.

[21] Sencer, M. (1987): "The American Revolution from a Human Rights Perspective". *Human Rights Yearbook,* 35th Year. Ankara: T.O.A.I.E. Publication. (9.), pp. 3–21.

[22] Şahingöz, A. (2022): Historical Development of Human Rights in Europe. *EURO Politika,* (17.), pp. 90–98.

This document, which has the force of law and was prepared to determine the details of the process of succession to the British throne, contains important provisions regarding the application of the principle of separation of powers. The purpose of the regulation is to prevent the King from dismissing judges who do not make decisions in accordance with his wishes. As can be seen, at a certain stage in history, the guarantee of judicial independence gained a basis in positive law in limiting the King, who had centralized his political power and the judicial system. In order to conceive of an institution that played a role in limiting absolute monarchy, it was first necessary to reach the stage of absolute monarchy [23]. In an environment where public offices can be transferred within the framework of feudal relations, one can speak of trust in personal and feudal contracts rather than trust in public office. We believe this is an important development in terms of facilitating the process of separation of powers.

Ultimately, within the context of the separation of powers, the principle of judicial independence, although its practice in England dates back further, was formally adopted as a legal rule through the 1701 "Act of Settlement" [24]. Finally, since this law aims to prevent a Catholic from ascending to the throne, the power that Parliament has gained over the Crown is clear. The principle becoming the supreme principle of the English Constitution occurred in the last century, encompassing England's transition from an empire to a democratic state after the two World Wars [25]. This situation indicates that the king no longer has the power to do everything and that there are legal rules that limit him. This has gradually become an important sign of the separation of powers in the world.

1776 Virginia Declaration of Rights and 1776 Constitution of Virginia

The American Revolution and the Virginia Declaration of Rights, which encompassed a period of political turmoil in early American history, began in 1765 with the British Parliament's imposition of the Stamp Act on the American colonies and ended in 1789 with the ratification of the United States Constitution. The American War of Independence, which began between England and its thirteen colonies in America due to the economic pressures imposed by England and its forced taxation policies, spanned the years 1775–1783.

[23] Saçar, A. (2016): *The Emergence of the Institution of Judicial Security.* International Congress on the History of Turkish Law, May 13–14. Istanbul. pp. 535–557.

[24] Dursun, H. (2009): Separation of Powers and Judicial Independence. *TBB Journal,* (80.), pp. 29–104.

[25] Kama Işık, S. (2023): The British Constitutional System As a Sui Generis Example With Its Changing Aspects and the Future of the Unwritten Constitution. *Ankara Hacı Bayram Veli University Faculty of Law Journal,* 27., (2.), pp. 399–441.

While the war was ongoing, on July 4, 1776, the thirteen colonies adopted the Declaration of Independence, proclaiming their freedom from England to the world [26]. As a result, the Declaration of Rights, an extremely important document, was published.

After the first Continental Congress in the United States, the meetings held in Philadelphia on May 15, 1776, encouraged the states to draft their own constitutional texts. As a result, Virginia adopted its own state constitution in June 1776, even before the American Declaration of Independence. The Constitution of Virginia is considered the first constitution to be drafted. For this reason, it holds a very important place in both world history and the history of the United States [27].

The aforementioned declaration proclaimed the colonies to be independent and free states. The people of Virginia regarded this declaration, known as the Virginia Declaration of Rights, as the foundation and legal basis of their government. Comprising 16 articles, this declaration is significant in terms of constitutionalism, separation of powers, democracy, and the development of human rights. Furthermore, the Virginia Declaration of Rights is also very important because it served as a source for the French Declaration of the Rights of Man and of the Citizen, which was presented in a cleaner and more developed form.

Acording to Civelek, the Virginia Declaration of Rights, which accelerated the formation of the separation of powers that came to the fore in the context of the development of constitutionalism movements, can be said to be the most important document prepared in America regarding human rights. It reflects the concept of natural law and lists fundamental rights, albeit with some shortcomings. The first article of the Declaration states: " All men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." In essence, this article guaranteed human rights at the constitutional level through a legal document [28].

On the other hand, in order to emphasize the separation of powers in the state administration system, Article 2 of the Declaration clearly states that power belongs to the people and originates from the people. According to this definition in the Declaration, the people, who are the owners of sovereignty, exert their sovereignty through their representatives. In other words, they actually transfer this sovereignty to the government through the free elections regulated in Article 6 [29].

[26] Çoban Döşkaya, F. (2025): Background and Analysis of the American Declaration of Independence. *Academic History and Thought Journal,* 11., (6.), pp. 4727–4745.

[27] Atçalı, A. (2022): *Fundamental Rights and Freedoms in the United States Constitution. (Unpublished Master's Thesis).* İzmir: Dokuz Eylül University, Institute of Social Sciences.

[28] Civelek, J. (2011): The 1789 French Declaration and the 1948 Universal Declaration of Human Rights. *Bulletin of International Law and Private International Law,* 9., (1.), pp. 1–9.

[29] Kaya, B. (2019): *The Historical, Sociological, and Philosophical Background of the American Constitution as the First Constitution. Unpublished Master's Thesis.* İstanbul: Istanbul University Institute of Social Sciences.

Thus, this provision can be considered a significant development in the context of constitutionalism, as it clearly transfers sovereignty from the monarch, who is the absolute ruler in England, to the people.

The 1776 Virginia Declaration of Rights and the 1776 Constitution of Virginia, one of the few documents in world political history that established the separation of powers, proclaimed the principle of individual rights and freedoms in very broad and general terms. Not only that, but they also listed these rights and freedoms one by one and declared them to be supreme legal rules. In this way, these rights were intended to be subject to the control of an independent institution such as the judiciary. This paved the way for the emergence of the judiciary as a separate branch of government.

According to Beyazıt, the guarantees introduced by the Declaration regarding the right to a fair trial, which is part of the separation of powers, can be summarized as follows: the right to be informed of the charges, the right to confront the accusers and witnesses, the right to present evidence in one's favor, the right not to be compelled to present evidence against oneself, and the right to a speedy trial by an independent jury. These rights, included in the Virginia Bill of Rights, were also protected in the Sixth Amendment to the United States Constitution, adopted in 1787. The Constitution guarantees that in all criminal trials, the defendant has the right to a speedy and public trial by an independent jury from the state where the crime was committed and from a legally defined district [30].

Finally, the word “power” appears twelve times in the Virginia Constitution. Article 2 states that “all power is vested in, and consequently derived from, the people,” while Article 5 states that “The legislative and executive powers of the state should be separate and distinct from the judiciary.” Although “power” appears sixteen times in the 1787 Constitution of the United States, the separation of powers is not expressed in a clear and pure form in this Constitution, which is still in force [31].

1787 Constitution of the United States

After the American Revolutionary War of 1775–1783, the states had certain obligations, such as enforcing laws and order, collecting taxes, regulating trade among themselves, and conducting negotiations with other governments. In this context,

[30] Beyazıt, İ. H. (2013): *On Defending Oneself in One's Native Language.* Young Lawyers' Legal Readings and Accumulations -IV-. (Editor: Muharrem Balcı). Istanbul: Law Foundation Publications. pp. 137–148.

[31] Kaya, E. (2022): On the Misconceptions of the Term "Separation of Powers". TYB Academy Journal of Language, Literature and Social Sciences. (35), pp.31-57.

prominent statesmen such as George Washington and Alexander Hamilton argued for the need to establish a strong national government under a new constitution. Representatives from five states met in Annapolis in 1786 and proposed that a commission be formed in Philadelphia to review the Articles of Confederation and that the states appoint members to this commission.

The aforementioned proposal was accepted, and it was decided that the states would elect delegates to the Constitutional Convention. On May 25, 1787, the Constitutional Convention began deliberations in Independence Hall, chaired by George Washington, with a total of 55 delegates from 12 states participating Subsequently, the U.S. Constitution was drafted. In this context, the US Constitution, written in 1787, ratified in 1788, and in force since 1789, is considered the oldest constitution in the world still in use today [32]. It also stands out for its simplicity, a distinctive feature, as its original version contained approximately 4,400 words, making it shorter than all subsequent constitutions.

The 1878 Constitution, based on the separation of powers, establishes a presidential system. The US presidential system is a republican form of constitutional monarchy. The most successful example of a presidential regime is implemented in the United States [33]. The presidential system, one of the representative government systems, is based on the strict separation of powers. In this system, the executive branch and the legislative branch exercise their functions independently of each other. In the presidential system, the government and the legislature are two completely independent and distinct branches.

The executive branch, which is politically very powerful and has broad powers, namely the head of government, is also the head of state. Because of this feature, it can be said that the presidential system combines democracy with personal power. In the presidential system, the legislature and the executive are two completely separate organs. The independence of powers underlying the presidential system is concentrated in three areas: the structure, function, and relations of the organ [34].

According to Göksel and Tunç, the United States, a country where the separation of powers was strictly enforced with the 1787 Constitution, continues to uphold this principle. The U.S. Constitution is an agreement between the federal units, and its amendment requires high participation and approval from the federal units. The federal system has continued to exist since its establishment [35]. In the Constitution in question, the independence of the organs within the framework of the separation of powers is ensured by each organ having a distinct structure.

[32] Vile, J. R. (2006): The Critical Role of Committees at the U.S. Constitutional Convention of 1787. *American Journal of Legal History,* 48., (2.), pp. 147–176.

[33] Schlesinger Jr., A. M.(1987): The Constitution and Presidential Leadership. *Maryland Law Review,* 47., (1.), pp. 54–74.

[34] Büke, A. (2016): The Effect of The Separation of Powers on the Activities Of Political Parties In The Parliamentary System. *International Journal of Scientific Research (IBAD),* 1., (2.), pp. 225–239.

[35] Göksel, K., Tunç, A. (2022): Factors that Made the Presidential System Successful in the USA. *Turkish Journal of Public Administration,* 2., (2.), pp. 116–134.

The election mechanism is used separately for each organ. The legislative organ is elected by popular vote, and the president, who exercises executive power, is also elected by the people.

In a presidential system, unlike a parliamentary system, the executive branch does not emerge from the majority of the legislative body. The independence of the functions of the organs is manifested by the fact that the activities of each organ are limited to a specific area. Parliament makes laws but does not participate in their implementation. The government implements laws but does not participate in their creation. Courts carry out judicial activities but do not participate in the creation or implementation of laws [34]. This clearly indicates the existence of a strict separation of powers in the US Constitution.

According to the 1787 Constitution, which strictly enforces the separation of powers, the terms of the legislative and executive branches are fixed, so there is no concept of early elections in the US system. The US congressional election system is a single-member district two-round system; the party that receives one more vote gets the representative from that district. This element, which brings stability, can cause disappointment among people for an executive branch that they dislike, except in cases of impeachment. Another feature of the system is that the executive branch consists of a single person. The offices of Prime Minister and President are held by one person. The President appoints and dismisses ministers at will; ministers are accountable only to the President. Fundamental rights and freedoms are guaranteed in the United States [36].

According to the information provided above, independence in the functioning of organs within the context of separation of powers is ensured by the fact that each organ does not have the means to influence the other [37]. The president, elected by the people, does not need to obtain a vote of confidence from the parliament. Similarly, the ministers he appoints do not need a vote of confidence from the parliament to take office. During their term of office, the president and ministers cannot be removed from office by the parliament. There is no oversight mechanism in the form of a vote of confidence, nor does the president have the authority to dismiss parliament.

As can be seen, there is a clear separation between the activities of the legislative and executive branches. The principle of the Cabinet's accountability to parliament, which is a key feature of the parliamentary system, cannot be applied in a presidential system. This is because, unlike in a parliamentary system, the legislative and executive branches do not need to obtain a vote of confidence either when taking office or during their term [38].

[34] Büke, A. (2016): The Effect of The Separation of Powers on the Activities Of Political Parties In The Parliamentary System. *International Journal of Scientific Research (IBAD),* 1., (2.), pp. 225–239.

[36] Ünal Açıkgöz M.–Fendoğlu H. T.–Güller A. S. (2020): Regulatory Actions of the Presidency in the United States. *Turkish Bar Association Journal,* (149.), pp. 225–252.

[37] Grabenwarter, C. (2011): *Separation of Powers and the Independence of Constitutional Courts and Equivalent Bodies.* 2nd Congress of the World Conference on Constitutional Justice. Rio de Janeiro.16 January 2011. pp. 1–11.

[38] Albert, R. (2010): Presidential Values İn Parliamentary Democracies. *International Journal of Constitutional Law,* 8., (2.), pp. 207–236.

The legislative and executive branches are completely and strictly separated from each other. Montesquieu's principle of separation of powers was one of the most influential principles in the drafting of the US Federal Constitution.

This is because the separation of powers, whereby the legislative, executive, and judicial powers are held by separate bodies, is considered the most important principle for guaranteeing fundamental rights and freedoms, as it acts as a check and balance. In accordance with this principle, which forms the basis of the current US Constitution, the legislative, executive, and judicial powers are completely separate from one another [34].

The 1789 French Declaration of the Rights of Man and of the Citizen and the 1791 French Constitution

There were many reasons behind the French Revolution of 1789. For example, prior to 1789, political struggle in France took place between the Third Estate, led by the Great Bourgeoisie, and the landed nobility. This struggle intensified due to the increasing impoverishment of the provincial nobility and their desire to increase the tax burden on peasants in order to maintain their standard of living. In addition, the intellectual foundation for the revolution was laid by the ideas of thinkers such as John Locke, Baron de Montesquieu, and J. J. Rousseau [39]. Furthermore, political, economic, social, and military reasons have also been fundamental factors in the occurrence of such a major revolution.

On August 26, 1789, a 17-article text adopted by the French National Assembly "in the presence of God and under His protection" immediately achieved success. The extraordinary fate of the text did not end there; it was incorporated into the preamble of the 1791 Constitution, revived by the 1946 Constitution, preserved by the 1958 Constitution, and its eternal principles inspired the authors of the 1948 Universal Declaration of Human Rights [28]. Furthermore, the 1791 Constitution, adopted immediately after this event, introduced a new dimension to the separation of powers and ensured its widespread adoption.

According to Yıldırım, prior to 1789, when there was no separation of powers, the French were divided into various levels of social strata. With the revolution, all privileges and differences were to be abolished, and the French were to be united under

[28] Civelek, J. (2011): The 1789 French Declaration and the 1948 Universal Declaration of Human Rights. *Bulletin of International Law and Private International Law,* 9., (1.), pp. 1–9.

[34] Büke, A. (2016): The Effect of The Separation of Powers on the Activities Of Political Parties In The Parliamentary System. *International Journal of Scientific Research (IBAD),* 1., (2.), pp. 225–239.

[39] Arslan, A. (2018): The French Revolution and the 1789 French Declaration of the Rights of the Citizen and of Man. *Law Readings for Young Lawyers,* 4., (1.), pp. 9–27.

the principle of equality before the law. Essentially, the phenomenon called the revolution represents a decisive break from absolute monarchy, which granted individuals no autonomous sphere and imposed no obstacles on the sovereign other than moral constraints regarding the lives and property of his subjects, with the aim of effectively establishing the separation of powers. Behind this idea lies the creation of a new human being and the rebuilding of France on new foundations—the initiation of a nation-building process [40]. These ideas were one of the fundamental factors in the drafting of the 1791 Constitution, which would enable the transition to a republican system of government in France and allow for the separation of powers.

One of the greatest contributions of the French Revolution of 1789 in the context of constitutionalism was in the area of fundamental rights and freedoms. In this context, the "classical rights" expressed in the 1789 Declaration have been incorporated into the constitutions of many Western states with the spread of constitutional thinking. However, human rights did not gain full prevalence in this century, namely the 19th century, known as the "age of ideologies," due to the influence of ideological approaches [41]. Furthermore, Article 16 of the Declaration of the Rights of Man and of the Citizen, published after the French Revolution of 1789, states that "Any society in which no provision is made for the separation of powers, has no constitution", thus expressing the principle of separation of powers Özer–Iskandarov [42].

According to Tezcan, following the developments in the context of this statement in Article 16 of the Declaration of the Rights of Man and of the Citizen, the 1791 Constitution, which was the first constitutional document in France, had an original and remarkable form and content in terms of both the separation of powers and the constitution itself. The 1791 Constitution established a democracy in which the monarchy was preserved and limited suffrage was granted. This undoubtedly points to the separation of powers.

In this context, although the members of the Constituent Assembly who served between 1789 and 1791 were royalists and preserved the monarchy, the 1791 Constitution limited the powers of the King. On the other hand, the members of the National Assembly, who limited the powers of the King, were representatives elected through a limited suffrage system available only to wealthy citizens [43]. This will change over time, and attempts will be made to grant the public many more rights.

[40] Yıldırım, Y. (2019): An Evaluation of Citizenship and Its Effects in the French Revolution. *Trakya University Journal of Social Sciences,* (21.), pp. 251–271.

[41] Birinci, G. (2017): A Brief History of the Universal Declaration Of Human Rights I: From the League of Nations to the United Nations. *Nevşehir Hacı Bektaş Veli University Journal of Social Sciences,* 7., (2.), pp. 50–81.

[42] Özer, M. A.–Iskandarov, S. (2022): Government Systems in the Context of Separation of Powers: The Case of Turkey. *Journal of Economics, Business, Politics and International Relations,* 8., (2.), pp. 300–332.

[43] Durmuş, T. (1997): (Translated into Turkish by. (Author: Prof. Dr. Jacques SOUBEYROL) T*he Birth and Death of a Revolution: The Constitutions of 1791 and 8th Century.* (Naissance et mort d'une révolution: Les constitutions de 1791 et l'an VIII). A Gift Book to Prof. Şükrü Postacıoğlu. İzmir: Dokuz Eylül Üniversitesi Hukuk Fakültesi Yayınları, pp. 391-397.

What is important here in terms of our topic is that, within the framework of the separation of powers, a clear distinction has been made between the duties of the king and those of parliament.

The concept of separation of powers had a significant impact during the French Revolution and became influential. Subsequently, Article 16 of the 1789 Declaration of the Rights of Man and of the Citizen stated that "Any society in which no provision is made for the separation of powers, has no constitution." As a result, the 1791 Constitution, one of the revolutionary constitutions of France, adopted the principle of separation of powers and divided the three powers into three separate branches [44].

In the context of the information provided above, with the aim of effectively implementing the separation of powers, the first section of the 1791 Constitution, titled "Fundamental Provisions Guaranteed by the Constitution", states that "The legislative power may not make any laws which infringe upon or obstruct the exercise of the natural and civil rights recorded in the present title and guaranteed by the Constitution, or that impedes the exercise of these rights" [45]. Therefore, the conclusion that can be drawn from this provision in the Constitution is clear: the legislative body may not enact laws that are contrary to these rights or that violate these rights.

According to Gürcan, when examining the preamble and subsequent articles of the 1791 Constitution, it is evident that the political organization envisioned by this constitution is based on two principles: – national sovereignty and – (Montesquieu's) principle of separation of powers. In fact, when the 1791 Constitution is examined from this perspective, it is clear that it draws a clear distinction between the legislative and executive branches. For example, the king cannot participate in the making of laws, nor can he regulate the details of their implementation. Although the king is granted the authority to return laws and parliamentary decisions, this authority is not a veto power, but a suspensive power of refusal. Furthermore, the king's approval is not required for the assembly to convene, nor can the king dissolve the assembly or postpone its convening [46]. We believe that the 1791 Constitution clearly delineates the separation between legislative and executive powers, giving the legislature a slight edge while taking care not to pit these two powers against each other as much as possible.

[44] Gören, Z. (2019): The Principle of Separation of Powers and the Government System Adopted with the 2017 Constitutional Amendment. *İzmir Bar Association Journal,* pp. 469–489.

[45] Bocianowska, J. (2024): The Emergence of Legal Rights in Modern Europe… – the Example of Achievements of the French Revolution. *Prawo i Więź,* 2., (49.), pp. 395–408.

[46] Gürcan, E. C. (2011): A Comparative Evaluation of the 1791 and 1793 French Constitutions. *Gazi University Journal of Faculty of Economics and Administrative Sciences,* 13., (3.), pp. 183–214.

1791 Constitution of the Polish–Lithuanian Commonwealth

Poland remained distant from democratic traditions because it was under occupation for many years and Polish society was subsequently suppressed under the communist system. Nevertheless, constitutionalism and democratic activities in Poland have a long and rich historical background. Indeed, Poland adopted its written constitution in 1791, almost at the same time as France, and embraced the parliamentary system [47]. In this respect, the 1791 Constitution, which formed the union between Poland and Lithuania and was one of the first constitutions in the context of separation of powers, holds an extremely important place in European history.

In the context of the above explanation, the Constitution of May 3, 1791, adopted by the Great Sejm convened between 1788 and 1792, known as the Government Act, is a written constitution for the Polish-Lithuanian Commonwealth. The Commonwealth consists of a dual monarchy comprising the Kingdom of Poland and the Grand Duchy of Lithuania. The new constitution was drafted to address the political questions that arose following the Convocation Sejm of 1764 and the subsequent period of political turmoil and gradual reform that began with the election of Stanisław August Poniatowski, the last ruler of the Commonwealth, in that same year. It is considered the first codified, modern constitution in Europe with checks and balances and the separation of powers, and the second constitution in the world after that of the United States. In this respect, the written constitution adopted in Europe is the 1791 Constitution of the Polish-Lithuanian Commonwealth [48].

The 1791 Constitution, one of the first constitutions to address the separation of powers, marked a significant step forward with this arrangement, which enabled Poland to attain the status of a constitutional state in the modern sense and constituted a first in European history. This new arrangement, which emerged as a result of nearly four centuries of political developments, is considered constitutional in nature in terms of limiting the king's powers and establishing institutions that would serve as the foundation for a constitutional government.

In a comparison between the constitutions of the United States, France, and Poland, it is possible to say that the articles in the Polish Constitution concerning the preservation of personal rights and freedoms are an evolutionary result of Poland's constitutional developments. The 1791 Constitution, which transformed Poland from a feudal society into a modern state, has a structure that embodies the principle

[47] Uğur, Ö.–Doğan, K. C. (2017): Polish Public Administration In The European Union Harmonization Process: The Impact of Europeanization. *ASSAM International Peer-Reviewed Journal,* 4., (8.), pp. 30–50.

[48] Demirci, H. A. (2017): The Effects of the 1921 Polish Constitution on the 1924 Turkish Constitution. Pamukkale University *Journal of Social Sciences Institute,* (26.), pp. 1–11.

of separation of powers between the legislative, executive, and judicial branches, includes provisions on social rights, and allows for a bicameral parliament [49]. Thus, in this constitution, the legislative, executive, and judicial branches are organized as separate organs, and the cabinet is held accountable to the parliament.

The 1791 Constitution remained in effect for less than 19 months. It was declared invalid by the Grodno Sejm convened in 1793, though the Sejm's legal authority to do so was disputed. The Second and Third Partitions of the Polish-Lithuanian Commonwealth (1793, 1795) ultimately ended the sovereign existence of Poland and Lithuania until the end of World War I in 1918. Over the next 123 years, the legacy of the 1791 Constitution helped sustain the aspirations for the eventual restoration of Polish and Lithuanian sovereignty [48].

1814 Netherlands Constitution

Following France's defeat by the Coalition Forces as a result of the Napoleonic Wars (1803–1815), the United Kingdom, Prussia, Austria, and Russia came together prior to the planned Congress of Vienna (November 1814–June 1815) and adopted the London Articles of 1814 [50]. With this agreement, it was decided that the present-day territory of Belgium would be incorporated into the Kingdom of the Netherlands [51]. The main reason for this decision was the United Kingdom's desire to establish a powerful state in northern France, against France.

The Constitution of the Kingdom of the Netherlands came into force on August 24, 1814, concurrently with this process. In 1815, with Belgium's official incorporation into the Kingdom of the Netherlands, certain amendments were made to the Constitution [52]. With these changes, the legislative branch became a bicameral one. The newly formed chamber, called the First Chamber, was composed of members appointed by the king, which is why it was nicknamed the "King's Menagerie." Although the constitution granted the States General, the legislative body, certain important powers in lawmaking and financial matters, it was not really possible to describe the Kingdom

[48] Demirci, H. A. (2017): The Effects of the 1921 Polish Constitution on the 1924 Turkish Constitution. Pamukkale University *Journal of Social Sciences Institute,* (26.), pp. 1–11.

[49] Çetinel Çaylı, M. –Kuruloğlu, F. (2025): A Comparison of the Constitutional Development Processes of Turkey and Poland in the Interwar Period (1919-1939). *Istranca History Research Journal,* 3., (1.), pp. 89–111.

[50] Gates, D. (2002): *The Napoleonic Wars 1803–1815.* Lancashire: Pimlico Publications.

[51] Ustabulut, B. (2024): Two Communities and Federalism: The Example of the Constitution Of The Kingdom Of Belgium. *Ankara Social Sciences University Faculty of Law Journal,* 6., (1.), pp. 302–358.

[52] Groot, A. H. D. (1998): *Islamic Studies in the Netherlands. Turkish Religious Affairs Foundation Islamic Encyclopedia. (18).* Istanbul: TDV Turkish Religious Affairs Foundation ISAM Publications, pp. 229–232.

of the Netherlands in its new form as "parliamentary" or "constitutional." Nevertheless, it can be said that this constitution was significant in that it was one of the first constitutions to pioneer the separation of powers.

As explained above, the 1814 Constitution of the Kingdom of the Netherlands, one of the first constitutions to address the separation of powers, is one of the two fundamental documents governing the Netherlands and is the basic law of the Kingdom of the Netherlands' European territories. The constitution, which essentially establishes a constitutional monarchy, is seen as being directly derived from the one enacted in 1815; it is the third-oldest constitution still in use worldwide. This constitution is better known as the 1848 Constitution. This is because major changes were made to the Constitution in 1848, giving it a new identity. For example, in the Netherlands, the 1848 revision led to the transition to a parliamentary system İmga, O. [53]: In particular, in 1983, when the separation of powers was further integrated into the constitution, the Netherlands Constitution underwent a major revision and the constitutional text was almost entirely rewritten. The constitutional text is simple, devoid of legal or political doctrine, and contains a bill of rights.

According to Yazıcı, the separation of powers is one of the most important developments within the constitutional movement toward limiting state authority through legal rules and recognizing and protecting the various rights and freedoms of individuals against this authority. This movement produced its first results in the 18th century; thus, the Netherlands Constitution, one of the first written constitutions in history, prevented power from being concentrated in the hands of a single person by establishing a separation between the legislative and executive branches [54]. This ensured that power was held by different branches within the state system, thereby beginning to make the separation of powers effective.

Conclusion

This study aims to examine the historical development of the principle of separation of powers by analyzing the first constitutional documents that explicitly or implicitly incorporate this principle. The analysis reveals that the idea of separation of powers is not the product of a single historical turning point; rather, it matured through a long process of intellectual accumulation and political struggles before being reflected in constitutional texts.

[53] İmga, O. (2015): Religion-State Relations and the Separation of Church and State in The Netherlands. *Dumlupınar University Journal of Social Sciences,* (29.), pp. 1–5.

[54] Yazici, S. (2012): *"Fundamental Concepts of Constitutional Law". Constitution I.* (Editor: Bülent Yücel). Eskişehir: Anadolu University Publications.

The theoretical background, stretching from Aristotle to Locke, Montesquieu, Rousseau, and contemporary thinkers, reveals a common concern for limiting political power and guaranteeing individual freedoms.

When the constitutional documents examined in this study are analyzed chronologically, it becomes clear that the first concrete manifestations of the principle of separation of powers emerged in England. The 1689 Bill of Rights and the 1701 Act of Settlement were decisive documents in terms of limiting absolute monarchy, establishing a balance between the legislature and the executive, and guaranteeing judicial independence. Although these texts did not envisage a strict model of separation of powers in the modern sense, they laid the foundation for constitutional thinking that limited the arbitrary use of power.

The American constitutional process represents a stage in which the principle of separation of powers acquired a more systematic and institutional framework. Beginning with the 1776 Virginia Declaration of Rights and the Virginia Constitution, the process matured with the 1787 US Constitution; the strict separation between the legislative, executive, and judicial branches was supported by mechanisms of balance and oversight. In this respect, the American model provides the most prominent example of the separation of powers moving beyond a theoretical principle to become a functioning constitutional system.

The 1789 Declaration of the Rights of Man and of the Citizen and the 1791 Constitution, adopted during the French Revolution, are of particular importance in that they define the principle of separation of powers as a prerequisite for the existence of a constitution. The provision in Article 16 of the Declaration stating that "Any society in which no provision is made for the separation of powers, has no constitution" clearly demonstrates the central position of this principle in constitutional thought. Although the French practice was unable to achieve continuity due to political instability, these documents played an important role in establishing the idea of separation of powers as a universal constitutional value.

The 1791 Constitution of the Polish–Lithuanian Commonwealth and the 1814 Constitution of the Netherlands demonstrate that the principle of separation of powers was not limited to the central countries of Western Europe, but was also adopted as a constitutional goal in states with different political and social conditions. The Polish–Lithuanian Constitution, in particular, stands out as one of the earliest examples of a modern written constitutional order based on the separation of powers in Europe.

In conclusion, the principle of separation of powers emerged as a fundamental constitutional principle shaped over the course of history with the aim of limiting absolute power, protecting fundamental rights and freedoms, and establishing the rule of law. The constitutional documents examined demonstrate that this principle has been applied in various forms at different times and in different political contexts. The fact that the principle of separation of powers remains one of the fundamental pillars of the constitutional order in today's democratic states clearly demonstrates the lasting and decisive impact of these steps taken throughout history.