



THE PRESIDENTIAL INSTITUTION AND EXECUTIVE POWER IN THE THEORY OF THE SEPARATION OF POWERS: DOCTRINAL INTERPRETATIONS AND THE UZBEK MODEL

<https://doi.org/10.5281/zenodo.21966980>

Alimov Botu Bobirovich

*Independent Researcher, Academy of Public Policy and Administration under the
President of the Republic of Uzbekistan; PhD in Legal Sciences*

Abstract: *This article analyses the constitutional-legal essence of the presidential institution and of executive power within the theory of the separation of powers, drawing on historical-genetic, conceptual-legal and comparative-legal methods. It compares the Uzbek, post-Soviet and Western scholarly schools, introduces the concepts of the 'unitary executive' and 'articulated governance' into national scholarly discourse, and advances the author's own theoretical and practical conclusions.*

Keywords: *separation of powers; the presidential institution; executive power; articulated governance; unitary executive; bicephalous executive; head of state; constitutional-legal status; checks and balances; the Constitution of Uzbekistan.*

Although the first theoretical foundations of the idea of the separation of powers took shape in the seventeenth and eighteenth centuries, the precise place of the presidential institution within that theory remains one of the unresolved questions of constitutional doctrine. The classical tripartite model — legislative, executive and judicial power — assigns the presidency no definite 'niche', since the President may be construed simultaneously as the head of the executive, as an arbiter standing above the branches, or as a distinct branch of power in its own right.

This theoretical ambiguity has been raised as a question of principle in contemporary public-law scholarship.

Waldron notes that, while modern constitutionalism accepts the separation of powers as necessary, it does not adequately explain why it is necessary [16, p. 434]. That very justificatory gap emerges still more sharply in the case of the presidential institution: the institution occupies a firm place in constitutional practice, yet its theoretical status within the system of the separation of powers has not been clearly defined.

This question is of significance for Uzbekistan's legislation and its experience of public administration, for Article 11 of the Constitution of Uzbekistan, in its new redaction, introduces a system of checks and balances. At the same time, national legal



scholarship has not sufficiently elaborated the modern transformation of the theory of the separation of powers, and the newer concepts of international doctrine — in particular ‘articulated governance’, the ‘unitary executive’ and the ‘bicephalous executive’ — have not been introduced into national discourse.

The aim of this article is to clarify, in conceptual terms, the constitutional-legal essence of the presidential institution and of executive power within the theory of the separation of powers, and to lay the theoretical foundation of the Uzbek model. The analysis proceeds on the basis of historical, comparative-legal and formal-legal methods. The source base encompasses the works of the Western, Russian and Uzbek scholarly schools, the constitutional legislation of Uzbekistan and of foreign states, and the findings of international institutions.

It is expedient first to identify the conceptual core of the theory — that is, its classical formation and its modern transformation — along a brief historical line. The theory of the separation of powers acquired its present-day form in the seventeenth and eighteenth centuries within two national scholarly schools: the English empirical-liberal school (John Locke) and the French rationalist school (Montesquieu).

In his *Two Treatises of Government* (1689), John Locke was the first to introduce the term ‘executive power’ into scholarly discourse [18, p. 67]. Krasnov, observing that the term is conventional, judges it to be less than precise [24, p.

405]. In our view, the historically conventional character of the term does not diminish its theoretical value. Locke’s genuine contribution lies not in the term itself but in his having been the first to identify two constitutional features of executive power: its subordination to the law and the continuity of its activity.

In *The Spirit of the Laws* (1748), Montesquieu developed Locke’s approach in two respects: he separated judicial power as an independent third branch [15, p. 64] and, in Mansfield’s formulation, laid the foundations of a model of executive power that was strong yet constitutionally constrained, and therefore incapable of degenerating into despotism [6, p. 215]. In this approach, the separation of powers for the first time acquired the status of a safeguard against tyranny — that is, of a constitutional-legal principle. The American school, in turn (within the framework of the 1787 Philadelphia Convention and the *Federalist Papers*), grounded the theory in a realistic conception of human nature: as Madison stressed, institutions must be constructed so that the interest of one power checks that of another. In this way the separation of powers was transformed from an abstract philosophical idea into a concrete institutional design [16, p. 437].

Modern theory is re-evaluating this classical heritage. Although Waldron criticises Montesquieu’s premises as largely tautological, he offers in their place, as a constructive solution, the concept of ‘articulated governance’ [16, p. 446]. On his account, the separation of



powers embraces three independent principles: a genuine separation of functions, the dispersal of power, and a system of checks and balances. In our view, it is appropriate to regard this concept not as an alternative to Montesquieu's theory but as a modern development that complements it, for it is precisely this tripartite approach that serves as the principal methodological basis for interpreting Article 11 of the Constitution of Uzbekistan.

The position that the theory is obsolete cannot, however, be accepted. Although Posner and Vermeule have declared the Madisonian system to be outdated [13, p. 17], that system continues to perform its original function — namely, preventing the concentration of power in a single organ. Even Howell, who has modelled executive absolutism, concedes that, absent institutional constraints, self-limitation by the executive is impossible [5, p. 42]. The system of the separation of powers is thus not obsolete; rather, it must be understood more broadly, as the unity of an institutional mechanism and a political-legal culture.

Once the general core of the theory of the separation of powers has been identified, the need arises to delimit, in theoretical terms, its central element — the concept of 'executive power'. The difficulty of this task stems from the fact that the term was introduced in the seventeenth century in a narrow sense, as the authority to execute the law [11, p. 1289], whereas in modern theory — in

Posner and Vermeule's definition — it has become an immense aggregate of institutions belonging to neither the legislative nor the judicial branch [13, p. 4].

Three national schools stand out in the theoretical interpretation of the concept. Within the Russian school there are three internal approaches. Kozlov's approach equates executive power with the activity of public administration [21, p. 8]. Belsky's 'residual' approach defines executive power negatively, through exclusion: on this view, executive power is all state power that remains once the powers vested in the President, the parliament and the judiciary have been subtracted [19, p. 15]. Rossinsky's constitutional-functional approach registers a shift in modern constitutional language: the Russian Constitution abandoned the older term 'organs of state administration' in favour of the broader concept of 'executive power' [29, p. 24]. The Uzbek school is distinguished by one important feature: in the definitions of Rakhmonov and Akhmedshaeva, executive power is understood — proceeding from Uzbekistan's unitary state structure — as an integral system founded on vertical subordination [28, p. 14].

The most successful approach to elucidating the concept in constitutional-legal terms is, in our view, McConnell's threefold typology: he shows executive power manifesting itself simultaneously as an agent that gives effect to the will of the legislature, as a check upon that



body's excesses, and as an energetic executor [8, p. 22]. This triad may be applied directly to Article 114 of the Constitution of Uzbekistan: The Cabinet of Ministers acts at once as the organ that executes the laws, participates in the work of the Oliy Majlis, and conducts public administration.

The sharpest debate within the Western scholarly school unfolds around the theory of the 'unitary executive'. At one pole stands McConnell's view, according to which the Executive Power Clause of the US Constitution absorbed the royal prerogatives of the eighteenth century [8, p. 237]. At the other pole is Mortenson's objection: at that time, executive power denoted no more than the authority to execute the law [10, p. 1169]. The most recent research is resolving this dispute in favour of a pluralist approach: Chabot shows that the historical evidence accords not with unitary-executive theory but with a pluralist understanding [2, p. 1045], while Heba identifies the theory's principal danger as its slide into justifying other executive actions [4, p. 51].

In our view, the pluralist approach is to be preferred for the Uzbek context, since unitary-executive theory may serve to justify the uncontrolled concentration of executive power in the President's hands — which, in states with a strong presidential institution, poses a threat to the system of the separation of powers. This leads to the methodological conclusion that the constitutional limits of

executive power must be defined clearly and in documented form.

The conceptual delimitation of executive power gives rise to the need to determine what theoretical status attaches to its leading element — the presidential institution. It is precisely this point that constitutes the central theoretical knot of the present analysis. In the Western tradition, the earliest answer to this question was given by Constant. In his view, the head of state is a fourth, moderating (neutral) power standing above the executive, legislative and judicial branches, whose task is to balance and coordinate their activity [22, p. 138]. Within the modern Russian scholarly school no single position has crystallised on this matter. Kotovoy, for example, distinguishes four views: that the President is not a fourth branch (Baglai); that presidential power is an independent branch (Avakyan); that the President occupies a distinct place but without subordination (Kozlova); and that the branches of power interpenetrate one another, with the President possessing the characteristics of several branches at once (Chirkin) [23, p. 34]. The very existence of these four views shows that the theoretical status of the institution is an unresolved question.

The sharpest debate concerns whether the executive is monocephalous (single-headed) or bicephalous (two-headed) in structure. The traditional Russian school applied the monocephalous model — a position associated with A. Nozdrachev and set



out in F. Shkhagapsoev's study of the legal regulation of the executive [31, p. 29]. Nechkin, by contrast, in his 2023 doctoral dissertation, draws on the experience of the CIS states to show that the status of Presidents as heads of state may be construed as a 'bicephalous' branch of executive power [26, p. 101].

In this debate the author's own position must be stated clearly. Nechkin's observation can be accepted in part: the Uzbek model does indeed contain elements of bicephalism, for the President (Article 105) and the Government (Article 114) participate as two constituent blocs in the exercise of executive power. Yet there is also a point on which we must dissent: the term 'bicephalous branch' does not fully capture the Uzbek model, because under the Constitution of Uzbekistan the President holds, first and foremost, the status of 'head of state' and stands outside the branches of the separation of powers — ensuring the coordinated functioning and cooperation of the organs of state power [32, Art. 105]. It is precisely this formula of 'coordinated functioning' that constitutes the constitutional basis of the coordinating function. In our view, it is more accurate to define the Uzbek model not as a 'bicephalous executive' but as 'a single executive under the coordination of the head of state'.

In disclosing the functional essence of the President's status, Nechkin's concept of a threefold function — arbitration, guarantee and coordination —

is to be preferred [26, p. 18]. It corresponds in substance to the 'head of state' formula in Article 105 of the Constitution of Uzbekistan. It is noteworthy that the national school articulated this idea independently, and indeed earlier: Abboskhojaev showed that the President, without forming part of the branches of the separation of powers, performs the function of ensuring the unity of purpose and content of state power [17, p. 137].

At the same time, Nechkin himself advances a critical observation of principle: the actual powers of the presidents of the CIS states correspond less to a function of arbitration, guarantee and coordination than to the function of an organ of executive power [26, p. 412]. In our view, this observation applies fully to Uzbekistan as well: although Article 105 designates the President as 'head of state', the powers set out in Article 109 (forming the composition of the Government, establishing the organs of public administration, and so forth) make the President, in practice, the leading subject of executive power. This very asymmetry between theoretical status and actual powers is one of the questions that national constitutional doctrine must resolve.

New conceptual tools relating to the presidential institution are taking shape in contemporary international theory, and it is appropriate to introduce them into national discourse. Grimaldi analyses presidential power on two levels — formal authority and informal legitimacy



[3, p. 658]. Meyer and Sitaraman propose a three-tier analysis of authority (maximal authority, a zone of uncertainty, and a lowest point) [9, p. 803]. Musella and Rullo, for their part, identify as a contemporary tendency the personalisation of politics — that is, the shift of power from collective to individual subjects [12, p. 4]. In our view, these approaches make it possible, in the Uzbek context, to capture not only the formal-constitutional but also the informal-political dimensions of presidential power, and they explain still more precisely the status–power asymmetry noted above.

The theoretical status of the presidential institution must be considered in the context of the practical experience of various states. In modern states the principle of the separation of powers is not static. As Ackerman observes, the modern President — as a result of the historical expansion of executive power — differs markedly in his powers from the Presidents of earlier eras [1, p. 4].

An analysis of foreign experience yields the following. In the United States and South Korea, executive power belongs to the President but is firmly checked through the legislature and the judiciary. South Korea's 1987 Constitution forestalls the emergence of super presidentialism through a single five-year term [33]. In France, while the President stands outside executive power as 'head of state', its actual head is the Prime Minister. In Germany, the Federal

President holds a ceremonial status, and the mechanism of the 'constructive vote of no confidence' under Article 67 ensures the stability of the Government. In the Russian model, although Article 80 of the 1993 Constitution places the President outside the branches, the 2020 reforms expanded his powers. The Turkish model merits particular attention: the 2017 referendum replaced the parliamentary system with a presidential one and abolished the office of Prime Minister. The Venice Commission sharply criticised this reform, noting that it created a presidential regime lacking the necessary checks and balances [34, paras. 130–132].

A clear constitutional-legal lesson follows from this comparative material. The German 'constructive vote of no confidence' keeps executive power under parliamentary control while ensuring the Government's stability, and South Korea's term limit prevents the emergence of super presidentialism, whereas Turkey's experience in 2017 shows that a presidential regime lacking the necessary checks and balances may be created. In our view, the conclusion for Uzbekistan's combined model is clear: consolidating the institutional mechanisms of restraint — parliamentary oversight, judicial independence and internal balance — in a real and effective form is the decisive factor in securing the model's democratic stability.

In the post-Soviet scholarly school, this transformation has given rise to distinctive theoretical debates. Martyniuk



has characterised the designation of the President as ‘the state’s highest official’ as a rudiment of monarchism surviving within a republican form of government [7, p. 62]. This position cannot be accepted, and there is a clear constitutional-legal basis for rejecting it. Martyniuk’s conclusion rests on the experience of Ukraine and certain post-Soviet states, and to transpose it mechanically onto the Uzbek model would be methodologically unsound. This example illustrates an important rule of comparative-legal analysis: foreign theoretical conclusions must be adopted only when measured against the precise wording of the national constitutional text.

In our view, a combined model has taken shape in Uzbekistan, uniting elements of a superpresidential line (the President’s extra-branch status and broad powers of appointment) and a semi-presidential line (the President–Prime Minister dualism and the Oliy Majlis’s confirmation of the candidate for Prime Minister). Such a combination is neither negative nor positive in itself; its effectiveness depends on the operation of concrete institutional mechanisms. Thus, while Turkey’s experience in 2017 serves as a cautionary example, the restraining mechanisms of the South Korean and German models are worth studying with a view to refining Uzbekistan’s constitutional system.

At this juncture it is appropriate to appraise separately the distinctive contribution of the national scholarly

school to these questions. The Uzbek constitutional-legal school took shape in the 1990s, and two generations may be distinguished in its development. The first generation comprises the founders who created the methodological foundation of national doctrine. Saidov’s comparative-legal research provided a basis for analysing the theory of the separation of powers [30]; Islomov studied it in the context of the strategy of national modernisation [20]; and Odilqoriev carried out one of the first fundamental studies of this subject within the national school [27]. What distinguishes this generation is that it interpreted the theory of the separation of powers not merely as the structure of state organs but as the constitutional foundation of the relationship between state and citizen.

The second generation deepened national legal scholarship with respect to particular institutions. Mirakulov systematised the presidential institution as an integral legal phenomenon — that is, as a body of constitutional-legal norms [25, p. 19]. Akhmedshaeva, for her part, advanced a conclusion of principle: the constitutional-legal norms relating to executive power cannot fully disclose its concept and meaning [18, p. 211]. In our view, this conclusion can be fully accepted, for it points to the need to clarify the theoretical limits of executive power — which is the central task of the national school at present.

This task of national doctrine is of not only theoretical but also practical significance. If Saidov’s comparative-



legal methodology, noted above, is combined with Islomov's modernisation-oriented approach, the methodological basis needed to define the theoretical limits of executive power is obtained. In our view, it is precisely this synthesis — the union of comparative-legal breadth with the specificity of the national context — that should become the leading direction of the Uzbek constitutional-legal school at its present stage.

The present stage of the national school is bound up with the constitutional reforms of 2023. As Sever notes, the 2023 reforms deepened the system of the separation of powers [14, p. 51]. At the same time, the Constitutional Law 'On the Cabinet of Ministers of the Republic of Uzbekistan', adopted in 2024, retains certain theoretical lacunae — in particular, it does not set out in detail the mechanisms of constitutional-functional cooperation between the Cabinet of Ministers and the President. The present task of the national school is therefore to synthesise the tradition of a comprehensive approach with modern international theory.

The scholarly-theoretical analysis of the presidential institution and executive power within the theory of the separation of powers thus yields the following conclusions.

First, the modern form of the theory of the separation of powers is the unity of the three independent principles expressed in the concept of 'articulated governance' — the separation of

functions, the dispersal of power, and checks and balances — and this tripartite approach constitutes the principal methodological basis for interpreting Article 11 of the Constitution of Uzbekistan.

Second, in the theoretical interpretation of the concept of 'executive power', the pluralist approach is to be preferred. Defining the constitutional limits of executive power clearly and in documented form is the safeguard that prevents the uncontrolled concentration of presidential power.

Third, the Uzbek model may be defined not as a 'bicephalous executive' but as a single executive under the coordination of the head of state. This definition preserves at once the President's extra-branch status and the integrity of executive power.

Fourth, the asymmetry between theoretical status (a head of state standing above the branches) and actual powers (the primacy of executive power) is the central problem of national doctrine; it must be resolved by clarifying the mechanisms of constitutional-functional cooperation.

Fifth, although the principle of the separation of powers is universal, its national expression depends on the political and cultural context of each state. For Uzbekistan's combined model, Turkey's experience offers a cautionary lesson, while the mechanisms of South Korea and Germany provide positive comparative material.



REFERENCES:

1. Ackerman B. The Decline and Fall of the American Republic. — Cambridge, MA: Harvard University Press, 2010. — P. 4.
2. Chabot C.K. Rejecting the Unitary Executive // Utah Law Review. — 2025. — No. 5. — P. 1045.
3. Grimaldi S. The Elephant in the Room in Presidential Politics: Informal Powers in Western Europe // Political Studies Review. — 2023. — Vol. 21, No. 4. — P. 658–675.
4. Heba D. The Unitary Executive Theory: Benefits and Dangers. M.A. Thesis. — New York: CUNY Bernard M. Baruch College, 2023. — P. 51.
5. Howell W.G., Shepsle K.A., Wolton S. Executive Absolutism: A Model // MPRA Paper No. 98221. — 2020. — P. 42.
6. Mansfield H.C., Jr. Taming the Prince: The Ambivalence of Modern Executive Power. — New York: The Free Press, 1989. — P. 215.
7. Martyniuk R., Datsiuk O., Romanov M., Khomych T. Post-Soviet Presidentialized Republics // Journal of Public Policy and Administration. — 2023. — Vol. 7, No. 2. — P. 62.
8. McConnell M.W. The President Who Would Not Be King: Executive Power under the Constitution. — Princeton: Princeton University Press, 2020. — P. 22–23, 237.
9. Meyer T., Sitaraman G. Presidential Regulation // Yale Journal on Regulation. — 2025. — Vol. 42. — P. 803–871.
10. Mortenson J.D. Article II Vests the Executive Power, Not the Royal Prerogative // Columbia Law Review. — 2019. — Vol. 119, No. 5. — P. 1169.
11. Mortenson J.D. The Executive Power Clause // University of Pennsylvania Law Review. — 2019. — Vol. 167. — P. 1289.
12. Musella F., Rullo L. The Personalization of Government: Concept and Comparative Analysis // Democratization. — 2024. — Published online. — P. 4.
13. Posner E.A., Vermeule A. The Executive Unbound: After the Madisonian Republic. — Oxford: Oxford University Press, 2010. — P. 4, 17.
14. Sever M. Constitutional Amendments and the Rule of Law // Cornell S.E. (ed.). Constitutional Reform in Uzbekistan: A Symposium. — Singapore: ISDP, 2022. — P. 51.
15. Vile M.J.C. Constitutionalism and the Separation of Powers. — 2nd ed. — Indianapolis: Liberty Fund, 1998. — P. 64–66.
16. Waldron J. Separation of Powers in Thought and Practice // Boston College Law Review. — 2013. — Vol. 54, No. 2. — P. 434, 437, 446.
17. Abboskhojaev Sh.A. Demokratik davlat qurish sharoitida prezidentlik institutining huquqiy asoslari [*The Legal Foundations of the Presidential Institution in the Context of Building a Democratic State*]: Cand. of Legal Sciences dissertation. — Tashkent, 2008. — P. 137.



18. Akhmedshaeva M.A. Davlat hokimiyati tizimida ijro hokimiyati [*Executive Power in the System of State Power*]: Dr. of Legal Sciences (DSc) dissertation: 12.00.01. — Tashkent: Tashkent State Institute of Law, 2010. — P. 67, 68, 211.
19. Belsky K.S. O funktsiyakh ispolnitel'noy vlasti [*On the Functions of Executive Power*] // Gosudarstvo i pravo. — 1997. — No. 3. — P. 15.
20. Islomov Z.M. Uzbekistan: na puti k modernizatsii [*Uzbekistan: On the Path to Modernisation*]. — Tashkent: Tashkent State Institute of Law, 2005. — 160 p.
21. Kozlov Yu.M. Ispolnitel'naya vlast': sushchnost', funktsii [*Executive Power: Its Essence and Functions*] // Vestnik Moskovskogo universiteta. — 1992. — No. 4. — P. 8–9.
22. Constant B. Printsipy politiki, prigodnye dlya vsyakogo pravleniya [*Principles of Politics Applicable to All Governments*] // Frantsuzskiy klassicheskiy liberalizm [*French Classical Liberalism*]. — Moscow: ROSSPEN, 2000. — P. 138.
23. Kotovoy A.S. Politiko-pravovoy status Prezidenta RF v svete konstitutsionnoy reformy 2020 goda [*The Political and Legal Status of the President of the Russian Federation in Light of the 2020 Constitutional Reform*] // Voprosy rossiyskoy yustitsii. — 2023. — No. 25. — P. 34–48.
24. Krasnov M.A. Prezident v sisteme publichnoy vlasti smeshannoy modeli [*The President in the System of Public Power of the Mixed Model*] // Sovremennaya Rossiya. — P. 405.
25. Mirakulov M.M. O'zbekiston Respublikasi Prezidentining konstitutsiyaviy-huquqiy maqomi (qiyosiy-huquqiy tahlil) [*The Constitutional-Legal Status of the President of the Republic of Uzbekistan: A Comparative-Legal Analysis*]: Dr. of Legal Sciences (DSc) dissertation. — Tashkent: Academy of Public Administration, 2016. — P. 19.
26. Nechkin A.V. Konstitutsionno-pravovoy status pravitel'stv v stranakh SNG [*The Constitutional-Legal Status of Governments in the CIS Countries*]: Dr. of Legal Sciences dissertation. — Moscow, 2023. — P. 18–19, 101–102, 412.
27. Odilqoriev H.T. O'zbekistonning yangi Konstitutsiyasi va hokimiyatlar taqsimlanishi printsiplari [*Uzbekistan's New Constitution and the Principle of the Separation of Powers*]. — Tashkent, 1996. — 124 p.
28. Rakhmonov F. O'zbekiston Respublikasida ijro hokimiyatining konstitutsiyaviy-huquqiy asoslari [*The Constitutional-Legal Foundations of Executive Power in the Republic of Uzbekistan*]: Cand. of Legal Sciences dissertation. — Tashkent, 2008. — P. 14.
29. Rossinsky B.V. Ispolnitel'naya vlast' i gosudarstvennoe upravlenie [*Executive Power and Public Administration*] // Lex Russica. — 2018. — No. 7 (140). — P. 24.



30. Saidov A.Kh. Sravnitel'noe pravovedenie: osnovnye pravovye sistemy sovremennosti [*Comparative Jurisprudence: The Principal Legal Systems of the Modern World*]. — Tashkent: Adolat, 1999. — 480 p.
31. Shkhagapsoev F. Pravovoe regulirovanie organizatsii ispolnitel'noy vlasti [*The Legal Regulation of the Organisation of Executive Power*]. — Moscow, 2007. — P. 29.
32. The Constitution of the Republic of Uzbekistan (new redaction of 30 April 2023). — URL: <https://lex.uz>.
33. Constitution of the Republic of Korea, 1987. Article 70. — URL: <https://constitutionnet.org/country/republic-korea>.
34. Venice Commission. Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017. CDL-AD(2017)005. — 13 March 2017. — Paras. 130–132.