ISSN NO. 2320-5407

Journal homepage: http://www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH

RESEARCH ARTICLE

The Constitution and Tripartite System of Government: From the Mutiny for the Limited Government through the Interbranch Subtlety.

Kiyoung Kim, SJD. Professor of Law and Public Policy

College of Law, Chosun University, Kwang-ju, South Korea

Manuscript Info

Manuscript History:

Received: 18 July 2014
Final Accepted: 29 August 2014
Published Online: September 2014

Key words:

constitutionalism, separation of powers principle, public agency, administrative state, social legislation, limited government, judiciary, branches of government.

***Corresponding Author**

Kiyoung Kim

Abstract

The modern form of government resort their legitimacy to democracy and Republican concept. In any viable way, the political power no longer entertains the dynasty or any divinity from the religion. Then who are responsible to make us fateful if we are any kind of citizen in a polity. Often it is true that the government has to be an amalgam of power elites, and divided for a limited government. The modern democratic constitutionalism considered this aspect any most in primacy to defend or promote their privileges or vision. This root context of civil interaction around 17th and 18th centuries has underlain the modern form of democratic state. Within the concern of these two points, the paper has explored the main feature of limited government in the liberal constitutionalism, which deals with the separation of powers principle, distribution of governmental powers and some of controversies involving the social legislation and role of public officers. I hope that it could be a lesson for the public officer of both camps, one as realistically and the other in the context of analogical insights. Hopefully, I may expect that the following research may be bred in socialist tension of states about how the public officers are structured to act and could liberate themselves to progress.

Introduction

The query of government is conventional, but delicate to recur constantly on the kind of questions, "Who actually rules?" "How the interbranch operation was spelled out?" and "How do we deal with the kind, values, liberty and social justice?" The modern government is responsible as a neutral umpire for the private sector, defends the classic liberty, and promotes the general welfare of citizen in which the gradual pace of reform and new understanding about the paradigm of governmental role has been historically charted. The theme of government and rule of law often would be the concern and interest shed normatively or politically. The administrative state and system of agency, however, are one other relational factor that needs to be briefed. The public agencies are one of important parties to interplay within the constitutional basis of rule, which typically are demanded of the responsibility for the social justice (Rosenbloom, D., Kravchuk, R., Clerkin, R., 2008). In this context, we may explore several basic elements from the standpoint of constitutional rule for the modern public agencies and tripartite branches. It begins with the characteristic of constitutionalism, and survey our thesis, which covers the distribution of governmental powers, interbranch encroachment, judicial control and public agencies in system, as well as the implications of social legislation. We finally draw upon a concluding insight in view of the international plane of contemplation.

THE CHARACTERISTICS OF CONSTITUTIONALISM

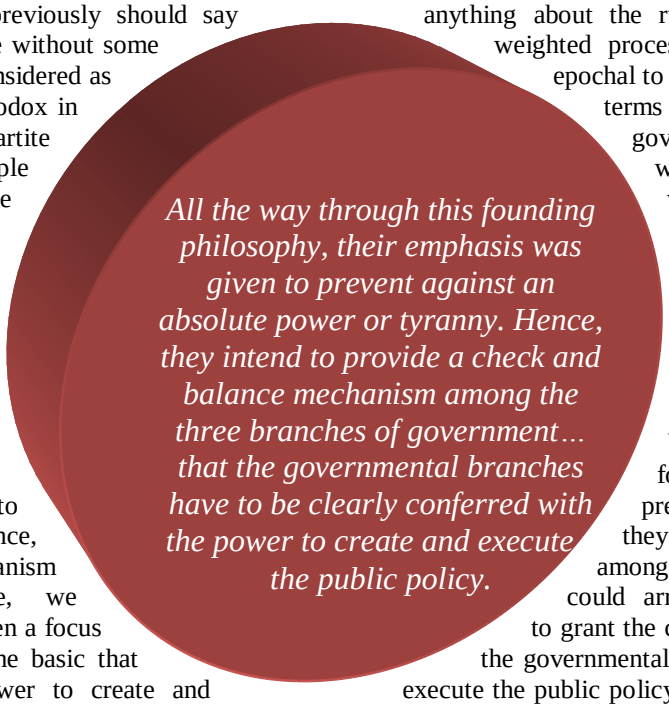
We can elicit several points to note basically. First, the Constitution is qualified to govern public issues, hence, conceptually classed as public law. This means that the law receiver will be a public agent, including three separate branches if broadly. This classic document would not be a norm to directly touch on the civil matters, albeit indirectly concerned, for example, of federal jurisdiction about diversity. The state action theory was designed to lift this deep curtain in order to expand the constitutional value for the powerful actors of society and as non-state. Second, the Constitution has to found a power distribution since the King would be dead to surrender to the civil power (Alexander, L., 2001; Kirwan, K. A.,1995). We can likely take an inside look into the intrinsic of King's power, which however, should be dissected to derail a very probability of arbitrariness within the difficult humanity. The Founders further advanced to the distrust of politics beyond the human availability of evils with the ambit to divide and rule. Only the Constitution, generally abstract or publicly notorious and objective, could be final for the public matters (Harrington, C. B. & Carter, L. H., 2009). This would never be thought to be any lengthier. Nonetheless, it would be a center of contest for the national politics and community about the centuries enduring. The tripartite branches then could be assigned from this monstrous and hypothetical King about its space of chapter, yet never be perfect to rule, but partial to collaborate and check to balance. A theme of "workable government" would be reflexive, perhaps, of the former. The *Chadha* court's, "all the cost could be gladly borne despite its untidiness, delay and possible flaws…" perhaps would be a judicial conviction to curb the legislative or executive despotism (2009). The criticism from the *Southmay* also would highly tilt on the latter ideals if he eagerly attributed the Court in US v. Nixon that it eventually brought a consequence that trivialized the Executive, imperialized the judiciary and marginalized the legislature. This never connotes an encouraging experiment from R. Dworkin on his treatise, "Empire of Law," whilst critiquing the judiciary intruded a necessary and proper space for the unique office in the nation. His argument advocated from a failed balance among three branches for the high time of pro- presidentialism (Amar, A. R., 1999). The context could be highlighted in any sharp contrast if we get to face with the testimony of St. Clair, Nixon's attorney, "the President wants me to argue that he is as powerful a monarch as Louis XIV, only four years at a time, and is not subject to the process of any court in the land except the court of impeachment." Nixon was finally condemned to be divested of arguably must-be safeguarded privileges or immunities. The areas could well be said as peculiar and chaotic since the war situation and foreign policy would be less definite to make it in any fine normative frame (King, K. L. & Meernik, J., 1999). The tendency corroborated over history under which circumstances the President generally pursued a higher extent of prerogative. A Vietnam war for Nixon, Truman administration in Youngstown, Roosevelt in the World War II and G. Bush in Iraq would be adequate so as to be embroiled with such controversy or public criticism from the normative challenge (Conkle, D. O., 1998). Perhaps Roosevelt might get not so audacious to transform the national paradigm for the ethos of social justice unless he was situated in any turbulence or emergency between the atrocities of two Wars. The views might not be false if G. Bush would properly be subjected as the kind of modern monarch if to be sensible with the new term "political justice" or "national administrators" Third, the level playing field would be delicate in dualism, i.e., collaboration and check and balance, so that the grassroots of civil society would not collapse, in which we would be resilient to evolve for the interactive dynamism. There would be no definite say about what the Constitution speaks. The views of strong presidency and weak one could be framed to make it perceptive of the difficulties about the constitutionalism. The presidents, in some cases, may not readily surrender to the judicial rule-making on the basis that he or she would be an independent authority to make it constitutional. Generally, the Congress is an essential branch to interpret the Constitution since they enact the laws under the ideals and goals of Constitution (Harrington, C. B. & Carter, L. H., 2009). It also is generally uncontested that they are politically accountable to oversee the Executive branch, which must be, and can be entertained as grounded on the Constitution. The part of Executive would be more difficult when we attempt to gauge its proximities with the Constitution. A first priority of theirs would be to execute the laws, in which case, however, the laws often would be a public statute and their own rules. No focus could be imagined readily if they must be constitutionally sensitive. The practical chances would but be

the Constitution is qualified to govern public issues, hence, conceptually classed as public law. This means that the law receiver will be a public agent,… the level playing field would be delicate in dualism..the grassroots of civil society would not collapse….

high if the litigation would arise from their implementation where we can note the kind of judicial dealings, "….rendered void on its face…..or as applied." They may be brought to respond with the challenges to make their rules or programs discarded, which may alarm to redirect their work commitment. Prudent bureaucrats may maturate themselves with the case law in their specific expertise. Beyond this, we hardly flourish given the conflict of two branches in pursuit of the right way of constitutional understanding. The war and foreign policy areas could be encased and to muddy any definite virtue of constitutionalism (King, K. L. & Meernik, J., 1999).

THE DISTRIBUTION OF GOVERNMENTAL POWERS

The United States is an original state which embodied the constitutional scheme of government. The trace may be alleged in the earlier countries of Germany where the fragments of constitutional nature of rule were practiced. However, the prevailing views support that the US guides a modern form of constitutional democracy. That is true since the US context heralded the demise of despotism or abusive monarchy, systemic institution of democratic government, incorporation of bill of rights, unique form of laws titled in this great name and with different steps to repeal or amend (Great Neck Publishing, 2009; Jefferson, T. Washington, G. & Second Continental Congress, 2010). It is harder in aspects than the statutes, common laws, and decrees or orders of executive. If a simple majority rule in the Congress previously should say anything about the rule of nation or state, the constitution is inviolable without some weighted process of amendment. The US constitution could be considered as epochal to adopt the presidential system of government and orthodox in terms of the separation of powers principle and tripartite government. The ideals enshrined in this principle were to ensure the liberty of people and safeguard the virtue of limited government (Bernstein, D. E., 2003). The concept of limited government offers a paradigm to protect the wealthier class and should be pivotal for realizing the plutocracy in this new Republic. Bicameralism and dual sovereignty between the federal and state government are another point of deliberation exercised by the founding fathers. All the way through this founding philosophy, their emphasis was given to prevent against an absolute power or tyranny. Hence, they intend to provide a check and balance mechanism among the three branches of government. Therefore, we could arrive that the separation of powers principle had been a focus to grant the constitutional powers of each branch. This leads to the basic that the governmental branches have to be clearly conferred with the power to create and execute the public policy. For example, the power to tax, coin, and raise the army was provided as the responsibility of Congress. The power to approve the treaties with foreign nations exclusively would be vested within the Senate which would be same as in the unreviewable approval of an appointment of major public offices by the President. The suit against the ambassadors or foreign nations and between the different states falls exclusively within the federal judiciary. We could identify a scope of explicit language which prescribes clearly the can-do and cannot-do within the document itself.



The twilight zone certainly exists to blur if one or other branch can or cannot create or implement the public policy (Bailey, M. A. & Maltzman, F., 2008; Funk, W. F., 1997; Hamilton, L., 2006). As a matter of nature, the constitutional document is basic and principled which generally deals with the elements and fundaments in organizing the national government. It provides the structure of government which is pivotal and with their organization, roles and key constitutional responsibilities. For example, the Senator must reach the age over thirties if eligible to be elected. The Executive is empowered to execute the laws, and assumes the role as a chief of commander. The power to declare war is vested within the Congress. If not surfaced leading to express dealings, we would face a tough work of constitutional interpretation. For example, we have to complement the scope of appointment power whether the Postmaster is an office to require the approval of Senate. The lower ranks of executive officer fall outside the constitutional ambit so that no approval of Senate has to be prerequisite. Nonetheless the scope of lower ranks would not be certain which brings a need to examine. Two other notorious

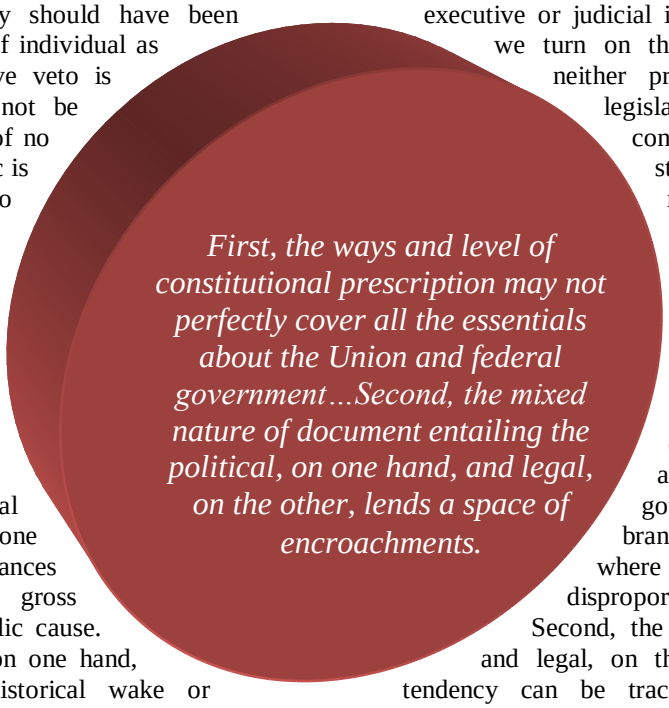
examples can be presented. The legislative court is one and the judicial review of federal statute would be the other. The Constitution provides a national judiciary in the Article III in terms of qualification and requirements. The Article III court judge, for example, would enjoy his lifetime tenure, and the judicial power was vested in terms of case or controversy requirements. Other elements had also been spelled out to cover the due context of constitutional command. This militates against the creation of other tribunals which could deal with the need of adjudication. As we see, the modern administrative state requires exercising an adjudicatory power in response with the complication and diversification of public rights or interests. In some cases, they have to adjudicate whether a person should be deported or confined within the mental hospital (Harrington, C. B. & Carter, L. H., 2009). This role is now often undertaken by the legislative court which is based on the Article I of legislature. In this case, we consider it does not encroach upon the judicial power since it falls within the sphere of congressional power. We term this nature of court or tribunal as Article I Court to distinguish from the Article III Court. The other example involves the court precedent, entitled *Marbury v. Madison*, which enabled the legitimacy of judicial review. The Constitution provides no express provision to ground the judicial review of federal statute. The creation of this judicial theory is still debated involving its anti-majoritarian nature.

Therefore, we may summarize (i) expressive provisions and terms of Constitution are the source of creating or implementing a public policy, (ii) vacuum, vagueness, and ambiguities are unavoidable because of the nature of Constitution which makes it amenable to devise and craft to fill for creating or implementing a public policy, (iii) in primacy, such gap-filling work is to never contradict an express mandate of Constitution, (iv) the work also needs to be reasonable and in comport with the design and spirit of Constitution.

ABOUT THE ENCROACHMENTS OF ONE BRANCH OVER ANOTHER

The separation of powers principle generally provides its goodness for the paradigm of limited government and functions as a shield of liberty interest. The founding fathers envisaged a limited government which also works to address their ideal of plutocracy in the new Republic. They laid a foundation of tripartite scheme of national government in which the legislative, executive and judiciary are expected to perform their constitutional role and function. The Constitution prescribed the selection of members within each branch and their constitutional powers as mutually separated and independent. The bicameralism was adopted between the Senate and House to preserve the prudence and against the radical action possibly as arbitrary.

As argued by Rosenbaum, the typology of modern public administration could be viewed in three major perspectives, to say, managerial, political, and legal (1983; Enteman, W.F., 1993). As explained, the Constitution generally is limited, in its dealings and prescriptions, to the key issues and structures of national government. This leads to the vacuum of provisions and ambiguities that the branches, in some sphere, could not be determined about the constitutionally delegated power. We can illustrate one typical area which would be historically grey without any express constitutional language. The war making power of Congress and the role as a Commander in Chief expected about the presidency could overlap or compete precisely because no definite statement was ordained in the document. The nature of wartime nation involving an emergency and speedier responsiveness may well require the President to leapfrog the congressional approval. The legislative veto is another example if the legislature prefers to dispose their responsibilities in convenience and expediency from the burdensome work of prescriptive power. One way to respond with the increasing need of public regulation could be a delegation of rulemaking power to the agencies while the legislative veto is some opposite way to preserve their power to control the agencies and their decision (Kerwin, C. M. & Furlong, S.R., 2011). The *Chadha* case directly concerns that issue, and the Court invalidated the act authorizing the Congress the power to review a deportation decision made by agencies. The rationale is that the source of congressional authority is confined to the Article I of Constitution, hence, only could be legislative in nature which requires a constitutional process about the presentation and presidential veto. The legislative veto actually should have been executive or judicial in function since it disposes concretely the interest of individual as we turn on the nature of executive and judiciary. The legislative veto is neither prescriptive nor abstract or general which should not be legislative, but the Court would see it in that way because of no constitutional ground about other two. Then the logic is straightforward that the Congress is required to respect the constitutional protocol on legislation. The case showed a distinct aspect of the separation of powers principle where one branch is forbidden from encroaching upon other branches. In terms of the public good and rule of law ideal, we can derive some elements in the constitutional practice of encroachments. First, the ways and level of constitutional prescription may not perfectly cover all the essentials about the Union and federal government. This offers a major reason that one branch may encroach upon other branches in the circumstances where the public cause is emergent or ambiguities are gross disproportionately with the needs of action or extent of public cause. Second, the mixed nature of document entailing the political, on one hand, and legal, on the other, lends a space of encroachments. The historical wake or tendency can be traced as embedded on two viewpoints between the strong and weak presidency (Separation of Powers, 2014). In this case, the encroachments may be argued and political aspect could be gauged in consideration of the value of constitutional democracy within the national politics and rule of law ideals. The political doctrine developed by the judicial authority would be presumed on these possibilities and for the consistence of constitutional rule.



A SOCIAL LEGISLATION: CONSTRAINED POWER?

The social welfare legislation schemed by Roosevelt in 1930's could be one example that the court attempted to constrain the Presidential initiative and Congressional followers, which was counteracted to make it fruitful eventually (Harrington, C. B. & Carter, L. H.; Samuels, D. J. & Shugart, M. S., 2003). In that context, the murky nature of floor interaction among the three branches could be defined in terms : (i) strategy and tactics of respective branch and pattern of power struggle (court packing plan) (ii) the dominant ethos and compassion of nation (depression and needs to save the national economy) (iii) intelligence wave and prevalence (surging quest of social justice) (iv) tradition and reform of public structure (classic, but rising profile of administrative government) (v) normative understanding of Constitution (redistribution and regulatory or classic and liberal). This would not be the case of conflict among the political branches, but showcased that even collaborative steps could be constrained.

BOWSHER V. SYNAR : THE STRUCTURAL CONSTRAINTS AND JUDICIAL CONTROL

Let me illustrate the *Bowsher v. Synar* decided in 1986. The question presented by these appeals is whether the assignment by Congress to the Comptroller General of the United States of certain functions under the Balanced Budget and Emergency Deficit Act of 1985 violates the doctrine of separation of powers (Stone, G.R., Seidman, L.M., Sunstein, C.R., Tushnet, M.V., 1991). The Comptroller General is the head of the GAO, and his office was created by the Budget and Accounting Act of 1921, which vested him with the duty, inter alia, of investigating all matters relating to the receipt and disbursement of public funds and of reporting to Congress and President about these matters. Although the Comptroller General is nominated by the President from a list of three individuals recommended by the Speaker of the House of Representatives and the President pro tempore of the Senate, he is removable only at the initiative of Congress (1991). He may be removed by impeachment, or by a joint resolution of Congress on the basis of permanent disability, inefficiency, neglect of duty, malfeasance, or commission of felony or conduct of involving moral turpitude. The act required that he exercise independent judgment in evaluating the estimates and reduction of spending budget, and that, based on his finding, the President issue a "sequestration order. Congressman *Synar* brought the action and National Treasury Employees Union. *Synar* voted against the act, and NTEU claimed that its members were injured because the automatic spending reduction provisions suspended certain cost of living benefit increases (1991). The district court ruled the act as unconstitutional on the ground that the CG exercised executive function under the act-functions that could not be constitutionally exercised by an officer removable by Congress. Appellants argue (i) that the CG performs his duties independently and is not subservient to Congress (ii) that the duties assigned to the CG in the act are essentially ministerial and mechanical so that their performance does not constitute execution of law in a meaningful sense (1991). The Court ruled that (i) once the appointment has been made and confirmed, the Constitution explicitly provides for removal of officers by Congress only upon impeachment by the House of Representative and conviction by the Senate (ii) Congress cannot reserve for itself the power of removal of an officer charged with the execution of the laws except by impeachment. (iii) to permit an officer controlled by Congress to execute the laws would be, in essence, to permit a congressional veto (iv) it is clear that Congress has consistently viewed the CG as an officer of the legislative branch (v) under the statute, the CG must exercise judgment concerning facts that affect the application of the Act. He must also interpret the provisions of the Act to determine precisely what budgetary calculations are required. Decisions of that kind are typically made by officers with the power of executing a statute; (vi) As *Chadha* makes clear, once Congress makes its choice in enacting legislation, its participation ends (1991).

In terms of law and public policy, I consider that the judiciary and public agencies function in dual context; (i) independence in office and responsibilities (ii) check and balance…There are aspects of constitutional institution among the three branches ideated to facilitate the intent of founding fathers, who gravitated on these two folds of consideration….

THE JUDICIARY AND PUBLIC AGENCIES IN SYSTEM

In terms of law and public policy, I consider that the judiciary and public agencies function in dual context; (i) independence in office and responsibilities (ii) check and balance. They are independent since the president is elected on a different basis of election. The executive offices are not filled by the judicial branch even if the inauguration of presidency is carried symbolically in the face of Chief Justice. The president can exercise an appointment power about the constitutional status of higher rank officers. The Senate can constitutionally intervene with the approval power, which could be understood from the check and balance scheme. For other ranks of executive officers can be staffed solely within the discretion of President. They are also independent in responsibilities partly because the executive power is explicitly conferred in provisions of constitution, and also because it could be a residue, in one viewpoint, from a more defined scope of two other powers. It generally would encompass the scope of powers in realizing the specific justice vastly in ways of execution of laws. This means that the public agencies do not assume the adjudicatory role, which is quite contrary in this modern administrative state.

As we see, we can group three basic types of federal administrative agencies (i) independent regulatory commissions; (ii) agencies housed within a cabinet level department; and (iii) agencies outside the formal structure of a cabinet department (Harrington, C. B. & Carter, L. H., 2009). From this, we can identify a scope of independent agencies or regulatory commissions to review and be adjudicative. They stand on an independent footing from the line of bureaucracy and make a resolution on a quasi-judicial process and in the adversary argument. The legislative court on Article I often would fall within this class. The justices of Supreme Court are nominated by the President, but with the approval of Senate. This process of appointment serves a dual role in terms of separation of powers principle. In this way, the judiciary can be checked by both organs and independence can increase since two branches collaborate, as not staffed solely by President. The constitutional power of judicial branch was set forth principally in the article III, and the legislature complements with the constitutional mandate by enacting an organizing and enabling statutes. The Judiciary Act in 1789 provides a basic system of national courts which later fueled the controversy involving a possibility of judicial review and leading to the unconstitutionality of the Act. The judicial review of legislation or administrative decrees and rules can be received as an avenue to realize the check and balance for the ideals of limited government and safeguard of civil liberties. There are aspects of constitutional institution among the three branches ideated to facilitate the intent of founding fathers, who gravitated on those two folds of consideration (Separation of Powers, 2014).

THE JUDICIARY, LAW AND RULEMAKING

In history and current practices, the judiciary has been an important peer in creating and executing the law and public policy, who checks, defers, and supports the exercise of power by the administrative branches.

First, the judiciary checks or controls a creation and execution of law and public policy. The arbitrary power of agencies could be invalidated and ordered null as a matter of law, which is concerned of the rule of law ideals. It may be struck down on its face and in the context of application to a specific case if it involves a rulemaking in any general context. If the administrative court is engaged in a disposition or decision specifically addressed to a damaged party, the application of law or rules could be denied. The due process concept of law requires the judiciary to give a fair reason published to the public, which informs the citizen and agencies of what is the law. The basis of judicial control could be grounded on the Constitution, statutes, and common laws. Given the federal system of union, the federal constitution is a principal source of contention between the disputed parties. This is particularly so since the dual sovereignty between the federal and state government had long been an entrenched issue in the Constitution and administrative laws. The constitutional rule influenced, in terms of legal acculturation, the unitary system of government, who would be a protégé of American ways of constitutional state. This leads to the prosperity of constitutional culture where European thinkers generally consider the rule of law as one ingredient for the modern democracy (Rosenfield, M., 2014). They may also practice a separate authority, say, dual or multiple supreme courts to specialize. The German and Korean constitutional court would be some examples. In this system of interaction, the public agencies often are well-versed not only with the constitution or statutes, but also with the case laws concerning the law and public policy. The article from Rosenbloom argues on the three dimension of public policy in strands and characteristics, i.e., managerial, political, and legal, which denotes the importance of legal aspect within the public policy (Rosenbloom, D. H., 1983). The public policy is not to be arbitrary nor usurp the political delegation where the spirit of trusteeship and concept of social contract could entertain any primacy. They respect the concept of inviolable or inalienable human rights and are entrusted to rule in foundations of the sanctity of property rights, freedom of contract and due limitation on civil liability. It is considered that they are accountable to the elected officials, which implies the political dimension of public policy. This indirectly ensures the rule of law ideals. Most importantly, however, judicial review of administrative action comes as the central niche to control the agencies and as directly, which signifies the importance of judicial branch in creating and executing the law and public policy.

Second, the judiciary, in the fair extent of ambit, tends to defer to the administrative decision or policy-making. The court practices in this focus could be explored in several perspectives. The statistical analysis based on empirical data guides that the judiciary often would be highly disposed with the laws rather than public policy. The research outcome from Bailey & Maltzman elicited that legal factors play an important role in the Supreme Court decision making (2008). It also supports the tendency that the effect of legal factors varies across justices. This research finding corroborates with the views of judicial scholars, which likes to disentangle the effects of law and policy

preferences (Bailey, M.A. & Maltzman, F, 2008). It also helps to strip an illusory impression that the Supreme Court would be a small legislature of nine justices. This implies that the judicial branch is important to provide the basis of laws in consistency, predictability and legal stability. We can say this since the political branches respect the will of constituents and highly malleable with the changing circumstances. Still, however, do the creation and execution of law and public policy suffer from the potential conflict between the demand of public administration and legal requirements provided by the judicial branch. That would be an area of subtlety that the policy makers or administration could apply their expertise and professionalism (Kerwin, C. M. & Furlong, S.R., 2011). The elements of judiciary, in this role and responsibilities, could recourse in terms of political question doctrine, adherence to precedent, judicial restraint and a strict interpretation or plain language rule (Bailey, M. A. & Maltzman, F., 2008). For example, the doctrine of political question would allow a leeway outside the judicial control in creating or executing some limited scope of public policy, such as war authorities, war command, treaty making and foreign policies. The standard of this doctrine had been well-defined in judicial terms, however. Adherence to the precedents fosters the stable creation and execution of public policies. Judicial restraints were developed to connote the lack of immediate political representation within the judiciary. This theory alongside the doctrine of political question could be illustrated in terms of judicial deference. Nonetheless, the deference in the administrative law can be ordained in the *Chevron* rule, which narrowed a judicial intervention in principled ways. Therefore, I consider that the creation and execution of public policies generally survive provided if: (i) they do not infringe with the express language of Constitution and statutes (ii) the discretion of policy makers is neither arbitrary nor grossly failed against the purpose of constitution and statutes.

Third, the judicial branches could support the creation or execution of law and public policies since they invalidate or sustain them (Black, C. L., 1960). The multilayer checking mechanism from the administrative action through the judicial review enables a kind of juggernaut to define the public lives of American citizen. The Federal Register, for example, provides a system of reference in combination with the Constitution and administrative law. This scholastic complexion provides any compounded intricacies increasing the credibility of public authorities. The public agencies can play creatively and judiciously in response with their responsibilities. The case laws could guide them and support the appeal of specific policies for the constituents or policy addresses.

First, the judiciary checks or controls a creation and execution of law and public policy…. Second, the judiciary, in the fair extent of ambit, tends to defer to the administrative decision or policy-making…. Third, the judicial branches could support the creation or execution of law and public policies since they invalidate or sustain them…

A CONCLUDING INSIGHT

The modern form of government resorts their legitimacy to democracy and Republican concept. In any viable way, the political power no longer entertains the dynasty or any divinity from the religion. A twilight of nature may be practiced in some polities, but piecemeal or questioned. To say, a theocracy may be alleged, but formally in the dress of democratic constitutionalism in the least. A communist state may be quasi-religious, but increasingly turned to be ameliorated with the liberal reform as we witness in the east Europe. A modern monarchy can be made a symbol as the center of nation, but practically the political power and responsibilities rests within the parliament. Then who are responsible to make us fateful if we are any kind of citizen in a polity (Rosenfield, M., 2014). Often it is true that the government has to be an amalgam of power elites, and divided for a limited government. The modern democratic constitutionalism considered this aspect any most in primacy to defend or promote their privileges or vision. This root context of civil interaction around 17th and 18th centuries had underlain the modern form of democratic state. The extreme scientists have followed to make a prophecy for their historical orthodoxy about the demise of this liberal democracy and new phase of production relations as well as working class dictatorship. The reality in the trajectory of this new vision actually experienced many variances or local specificity and failed to conform with the originalist's, such as Marx or Lenin. The progenies of this idea diverted their attention to other social issues, for example, feminism, environmentalism or social injustice and even underwent somewhat econo-

political restructuring as illustrated. This corrective path would not fall solely for the socialists, but it is generally true that the liberal states also exerted to find any viable option. For example, the social legislation or redistributive justice obviously would be a notable example. One other may be if the socio-political aspect for new alternative may be eminently explored by Giddens in his ideal of Third Way. Simply, the dichotomy between two camps of thought would allow us to locate the modern practice of democracy, and shed on the fundament of governance structure. In this backdrop, I found two structural implications need to be revisited for the discourse of contemporary regulators.

First, one camp would see or had considered the unwritten ideology as supreme to inculcate the rulers or public officers. It is an absolute science exclusively qualified to rule or govern. One of major counterpart would rely on the written constitution as such equivalent. One other main would consider the hybrid nature of constitutional practices and crucial piece of parliamentary legislation as supreme. In this case, history and constitutional practice would be impressive to characterize their disposition in ideals or intellectual orientation. The flavor may be shared if the classic and antedated precedent would still be weighed as any pertinent source of authority within the courtroom. In this way of simplification, we may state that some nations of theocratic constitutionalism may be said of peer concept with the ideological staticism. In this diversity and major classification, I consider the separation of powers principle would be the kind of discriminatory factor in gauging the realities of government. This does not say that the principle is virtuous, but could be a touchstone to assort or approximate.

Second, some extent of congruence would deserve within the above classification when we profile the nature and realities of public administration . That would be true if the Congress or judiciary of one camp would not enjoy their autonomy and be ideologically controlled in a sense. The contrast would be that the liberal constitutionalism tends to leave the ego as bestowed and ideologically, and an ego from the socialism is the kind of hybrid for the liberty of working class and on the concept of liberation. It may, therefore, be an applied understanding of liberty while oneness would be from the social science and historical experience other than some of divine framework. This would be any perverted paradox between the ego and governance structure. I like to use governance other than government since it is some meeker expression, but sensed evolutionary although the prospect for hard transformation would not be strong as we surmise. To say, I like to leave it only slimly provided if the ideological consensus would highly be unlikely. In view of constitutionalism or the structure of government, the policy makers or administrators must be bound by something in both thoughts. In one plane, we may consider that the convergence or corrective path focused on the social welfare and justice we agree to pursue, and the carnage to be contested among the two camps nowadays can be highlighted in those terms. At the center of this progress could the public administration be placed if we see it rather neutral and administrative other than ideological or philosophical.

In this backdrop, I found two structural implications need to be revisited for the discourse of contemporary regulators….. At the center of this progress could the public administration be placed if we see it rather neutral and administrative other than ideological or philosophical….

Within the concern of liberty and social justice, the paper has explored the main feature of limited government in the liberal constitutionalism, which deals with the separation of powers principle, distribution of governmental powers and some of controversies involving the social legislation and role of public officers. I hope that it could be a lesson for the public officer of both camps, one as realistically from his liberal nations and the other in the context of analogical insights from his socialist nations. Hopefully, I may expect that the following research may be bred in the socialist tension of states concerning, for example, “how the public officers are structured to act and could liberate themselves to progress.”

Reference

Amar, A. R. (1999). Nixon's shadow. (Symposium: United States v Nixon: Presidential power and executive privilege twenty- five years later). *Minnesota Law Review*, 1405–1420.

Alexander, L. (2001). Constitutionalism: Philosophical foundations. New York : Cambridge University Press.

Bailey, M. A. & Maltzman, F. (2008). Does legal doctrine matter? Unpacking law and policy preferences on the U.S. Supreme Court. *American Political Science Review*, 102(3), 369–384.

Black, C. L. (1960*). The people and the court: Judicial review in a democracy*
New York. NY : Macmillan. New York.

Conkle, D. O. (1998). Congressional alternatives in the wake of City of Borne v Flores: The (limited) role of Congress in protecting religious freedom from state and local infringement. *University of Arkansas at Little Rock Law Journal, 20,* 633.

Enteman, W.F. (1993). *Managerialism: The emergence of a new ideology*. Madison. WI : University of Wisconsin Press.

Great Neck Publishing (2009). The Constitution of the United States 1787, *Great Neck Publishing*, 18.

Harrington, C. B. & Carter, L. H. (2009). *Administrative law and politics: Cases and comments* (4th ed.). Washington, DC: CQ Press.

Jefferson, T. Washington, G. & Second Continental Congress (2010). *The Constitution of the United States of America, the Bill of Rights & All Amendments, the Declaration of Independence, the Articles of Confederation.* Washington D.C. :Megalodon Entertainment LLC.

Kerwin, C. M. & Furlong, S.R., (2011). *Rulemaking: How government agencies write law and make policy* (4th ed.). Washington, DC: CQ Press.

King, K. L. & Meernik, J. (1999). The Supreme Court and the powers of the executive: The adjudication of foreign policy. *Political Research Quarterly, 52*(4), 801–804.

Rosenbloom, D. H. (1983). Public administrative theory and the separation of powers. *Public Administration Review*, 43(3), 219–227.

Rosenbloom, D., Kravchuk, R., Clerkin, R. (2008*). Public administration: understanding management, politics, and law in the public sector*, New York. NY: McGraw-Hill

Rosenfield, M. (2014). *Constitutionalism, identity, difference, and legitimacy: Theoretical perspectives*, Durham. NC: Duke University Press. (2012).

Separation of Powers (2014). Retrieved Mar. 10, 2014 from http://law2.umkc.edu/faculty/projects/ftrials/conlaw/separationofpowers.htm.