



RESEARCH ARTICLE

# Separation of Powers: A Philosophical Analysis in Democratic Systems

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**ABSTRACT**

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The holistic concept of democracy is a key incentive for its promotion, given its complex nature and significant role in the development of human societies. Distinguished philosophers and influential figures from various social fields have become ardent proponents of the democratic system, providing diverse definitions that underpin modern democratic governance. The separation of powers has been recognized as a critical concern for democracy since antiquity. Aristotle emphasized the importance of separating powers to prevent conflicts and balance the interests of individuals and society. During the European Renaissance, the French philosopher Charles Montesquieu underscored the necessity of separating powers to avert arbitrariness and the usurpation of power by an individual or group. This paper aims to investigate the importance of maintaining harmony among the separation of governing powers in a democratic system and the dangers associated with the monopolization of power by a usurping individual or group. This paper explores the philosophical foundations of democracy, emphasizing the importance of the separation of powers as a cornerstone of democratic governance. By examining historical and contemporary perspectives, including the contributions of Aristotle and Montesquieu, it highlights the role of balanced governance in safeguarding democracy and preventing tyranny. The study also addresses a brief analysis of how the separation of powers is implemented in Albania, assessing its effectiveness in safeguarding democratic governance.

## INTRODUCTION

Democracy, in a narrow sense, refers to a political system where the majority governs or is represented on behalf of the people. This system provides citizens with the genuine opportunity to participate directly or through their representatives in the political life of a country, as outlined by its laws and constitution. However, in a broader sense, democracy encompasses not only the governance of the majority within a pluralistic political system but also the establishment of democratic relations across all areas of social life. This includes functioning laws and institutions with equal rights and freedoms for all citizens. Given contemporary society's universal and all-encompassing interests, democracy continues to be treated as a philosophical, ideological, political, and economic concept. Nevertheless, the theoretical and philosophical foundations of democracy, including the issues of governance, power implementation, and its separation and control, represent only a small part of the broader picture.

Among those who have significantly contributed to the concept of democracy, Abraham Lincoln stands out. He defined democracy as: "Democracy is something that belongs to the people, comes from the people, and serves the people." (Richard A. Epstein, 2011), Democracy is not merely a system of ideas and principles of freedom but also a set of practices shaped by a long and often complicated course of history. In brief, democracy is the institutionalization of freedom.

The emergence of the initial system of democracy in ancient Athens is not coincidental, given the political, philosophical, and economic development of Greek city-states during the 5th to 4th centuries B.C. Moreover, the concepts and formulations of various authors from that period draw our attention, including terms such as antique democracy, polis democracy, classical, horizontal, and direct democracy—terms that describe the historical period related to the early structures of antique society's organization. Solon's reformative ideas (595 B.C.) for the right to vote in the people's assembly of all Athenians prevail. Initially, there was direct representation, as evidenced by the history of ancient Greece. However, other European Renaissance philosophers, such as Montesquieu, Diderot, Rousseau, and others, emphasized the need for implementing a Republican democracy emanating from the will and free elections of the people. The paper aims to explore the philosophical underpinnings and practical implications of the separation of powers in democratic systems. Thus, the following issues will be addressed in the discussion.

- Democracy and separation of powers
- Principles of governance
- Separation of powers in Albania

## METHODOLOGY OF THE STUDY

The methodology employed in this study's design is grounded in collecting scientific materials, utilizing relevant literature, and consulting selected bibliography. Following the selection of scientific materials, these were translated into Albanian and systematically organized to filter only the necessary information. The final stage involved processing this material, leading to the crystallization of the entire content. The literature analysis focused on understanding the nature of governance in a free democratic society from a philosophical perspective. For the preparation of this paper, emphasis was placed on selecting original materials to enhance the content with scientific concepts and facts.

## DEMOCRACY AND SEPARATION OF POWERS

Since ancient times, democracy has developed its own forms of governance and, in our era, embodies the values of genuine human freedom. Democracy's meaning and content are interconnected, shaping and being shaped by its manifestations throughout human history. Aristotle highlights: "*all communities aim at some good. The state (polis), by which he means a city-state such as Athens, is the highest kind of community, aiming at the highest of goods*" Amadio, (Anselm H. and Kenny, Anthony J.P. 2024). Polis refers to the city-state, considered the highest and most important form of social organization. Aristotle emphasizes the need for the individual's connection with the state of law, particularly when he asserts: "*He who is unable to live in a state, or he who does not need it because he is self-sufficient, must be either a beast or a god*" (Aristotle, 2003.12). This definition also underscores the state's function to create material goods and human happiness at the highest level.

The city's and the community's important role in the Polis's development of democracy, conceived as a community of politically organized citizens. Aristotle states that: "*a strong argument for majority rule among the citizens, in so far as their collective decisions in an assembly are based on a greater quantity of wisdom than that of a few experts*" (Lintont. A.1992). Democracy signifies constitutional governance, democratic legitimization of political power, the separation of state powers, and the recognition and respect of political and civil rights. It is a system of government rooted in constitutional principles, a belief in the continuous improvement of society, and the protection of human rights. Democracy must be understood and implemented as a vital and ongoing process that encompasses all aspects of social life. It thrives when citizens actively defend it, participate in meaningful societal debates, and engage in free elections, which foster a conducive environment for preserving the independence of the powers guiding the country's political, economic, and social life.

The people are the ultimate source of power, and maintaining active, unbroken connections with citizens remains the most reliable guarantee of effective governance. In our era, the term democracy is used to describe the political relations within a society and assess and define its form of governance under the rule of law. For Immanuel Kant, "*The so-called transcendental philosophy is almost completely permeated by the idea of the necessity of ensuring the freedom of the individual in the face of political power*" (Kant, 2004.12).

The progressive thought of the time aimed to prevent the phenomena of the uncontrolled exercise of state power. It was imperative that both the individual and society as a whole develop within the framework of the rule of law. In every legal discussion and formulation, the standard of acting solely based on the law and through the law was emphasized. The German jurist Robert Von Mohl underscores that *"the rule of law as a legal concept includes a number of elements and principles that are closely related and mutually condition each other. These include the separation of powers, the activity of state bodies in accordance with the law, the independence of the judiciary, the creation of legal security for citizens, etc."* (Zaganjori, 2002.74).

Among the philosophers who defined the anatomy of a country with a developed democracy is Charles Montesquieu, whose ideas are summarized in his renowned work *The Spirit of Laws* (1748). Montesquieu's concepts, articulated with remarkable courage for his time and still resonant today, emphasize the necessity of respecting the separation of powers. *"In every government there are three sorts of power, the legislative; the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law."* (M.J.C. 1998). Fundamentally, his ideas on the balance of powers serve as a robust safeguard for human rights and freedoms against abuses of power—whether legislative, executive, or judicial. On a superficial level, the proportional distribution of powers and the checks they impose on each other might suggest that his theories could be grouped under a simplistic label, such as the "Theory of Powers Preclusion." However, a more detailed philosophical, juristic, and organizational analysis reveals their unity and "obstructive" or limiting role in a democratic state, functioning effectively only when they operate in harmony and mutual reciprocity. Montesquieu theories, which also explore the relationship between citizens and the legal system, contributed significantly to the development of "Civil Law."

Montesquieu observes that through legislative power, the prince or magistrate enacts temporary or permanent laws, through executive power, they make decisions on peace or war and establish public safety, and through judicial power, they punish crimes or adjudicate disputes among individuals. He argues that when the prince or body of magistrates controls all three legislative, executive, and judicial powers, there is no freedom, only fear; the state is thereby led toward tyranny. Moreover, freedom cannot exist if judicial power is not separated from legislative and executive powers. If judicial power were to merge with legislative power, the control over citizens' lives and freedoms would become arbitrary, as the judge would also be a legislator.

These obstructive phenomena in the separation of powers are still evident today in countries with underdeveloped democracies. In such states, the people suffer the consequences of majority rule and endure a regime that is democratic in name only, imposed through the "dictatorship of the majority," which seeks to extend its rule to benefit a particular group or clan. This leads to the usurpation of the legislative power first, followed by the executive and judicial powers. Montesquieu insights remain astute, particularly in highlighting the dangers of concentrating both legislative and executive powers in the hands of a single person or body. According to him, the independent functioning of powers, as defined in the constitution of a democratic country, is a testament to the existence of freedom itself. Part of the legislative power should be entrusted to a body of nobles, with the rest allocated to those elected to represent the people, each having their own assembly, delegation, and consequently, distinct views and interests. However, in matters where the temptation to corrupt the law is significant, the nobility should only obstruct this tendency, not participate in decision-making.

The executive power is best suited to be held by a single monarch, as this branch of governance, which often requires immediate action, is more effectively managed by one individual rather than many. Conversely, legislative matters are typically better handled by a majority rather than a single person. If the legislature fails to convene for an extended period, there would be no freedom, as there would be no legislative decisions, leading the country into anarchy. These powers must, or rather, are obligated to coexist. The painful experiences of countries with underdeveloped democracies, where power usurpation or the blending of powers is observed, stand in contrast to the experience of the United States Constitution, which is founded on the principle of separation and balance of powers, confirming Montesquieu's valuable ideas and contributions. The existence of democracy in a country today is strongly dependent on building powers based on their separation.

Understanding the concepts and correct implementation of the principle of separation and balancing of powers poses an insurmountable challenge to the attitudes of certain party leaders, often lauded

by the masses as "tribunes of democracy," who have shown tendencies to usurp power by accumulating as many competencies as possible, in violation of institutional boundaries and responsibilities. A typical example is the pressure exerted by these party leaders, who set a negative precedent by undermining democracy within their own parties, violating the statutes upon which the democratic life of these political organizations is built. They do so under the guise of the "need" to amend the Constitutional laws justified by deceptive sophisms that aim to establish a new form of tyranny, in which "democracy" would exist in name only. Although the functioning of these principles of separation and balancing of powers in a democratic country is significantly influenced by the country's socioeconomic level and human potential, the foundation of democracy is determined by the theoretical and practical application of the three independent powers, which balance and control each other as defined in the state's fundamental document: the Constitution.

Each of these three powers retains the full strength granted by the system of democracy, which is based on the unity of "all individual wills" expressed through free elections. This ensures the unhindered development of democratic life in a country and the equitable distribution of power among the branches of government. Thus, people elected through free and fair elections form the legislative body that enacts laws. The winning party governs the people during its mandate and ensures all powers and laws are effectively functioning. Familiarity with the theories and concepts of great thinkers in defence of democracy presents a serious and insurmountable obstacle to the usurpatory tendencies of some party despots who, after violating the norms and internal democracy of their parties, exploit the form of representative democracy to present the public with a list of corrupt individuals who are expected to serve their interests.

## PRINCIPLES OF GOVERNANCE

A society cannot survive without governance. For the state to function, it requires political and civil laws, which are expressions of human reason by which people are required to be governed. The people must enforce these laws and, therefore, must be appropriate for their enforcement. Laws created for one nation cannot be universally applied to another; even if this occurs, it can only be due to chance or if the two states or nationalities share similar characteristics. Montesquieu asserts that "*Laws must be a function of the relief of the country, the icy, hot, or mild climate, the quality of the soil, and the position and size of the territory; they must take into account people's way of life*" (Montesquieu, 2001, p. 15).

The idea that political and legal institutions should be critically evaluated, and that there should be scepticism toward the existing structures and operations, was clearly articulated by Montesquieu, who argued: "*Positive laws are variable and the product of different social, political, economic, and legal circumstances, considering the conditions in which different peoples live, and are not subject to a single universal standard*" (Zanaj, 2012, p. 121). It is important to distinguish between the nature and the principle of government. While nature defines what a government is, the principle determines its function. Laws must be aligned both with the principles of government and their nature, necessitating an understanding of the principles underlying different forms of government.

About three centuries ago, Montesquieu declared: "*Important for a republic is the spirit of the laws, that the law is treated as a science, that the political freedom of the citizen is also seen as peace of mind and a guarantee for his security, so that true equality is valued as the soul of the state*" (Pëllumbi, 2013, p. 31). For Montesquieu, in a democracy, sovereign power should belong to the people rather than a single individual. This implies that the people must govern through their representatives. In his work *The Spirit of Laws*, Montesquieu examines the nature of different forms of government. According to him, there are three types of government: republican, monarchical, and despotic. He explains that "*a republican government is one in which the people as a whole, or only a part of them, are clothed with complete sovereignty; a monarchical government is the system where a single individual rules through well-defined and well-established laws; in a despotic government, a single man, without laws and without rules, draws after himself everything according to his will and whims*" (Montesquieu, 2001, p. 17). Montesquieu defined three types of government: republican, monarchical, and despotic.

**The principle of Republican governance** is rooted in the virtue that, according to Montesquieu, signifies love for one's homeland and equality among citizens. By advocating for Republican governance, Montesquieu envisions a system where power resides either with all the people (democracy) or with certain families (aristocracy). Thus, he considers a republic as the most ideal

form of governance for small countries. The principle that enables the republic to function is "political virtue," understood as patriotism and moderation. However, this virtue demands continual self-sacrifice for the country's or general interest's sake, requiring individuals to relinquish selfishness, greed, and personal desires. Why is it necessary to implement these requirements not demanded by other forms of governance in a democracy? This is because democracy, by its nature, is a governance of the majority. If democracy functions poorly and its laws are no longer upheld, it implies that most people have become corrupt. This irreparable harm signifies that "The state has gone to rack and ruin."

In the Republican system, Montesquieu identifies two opposing yet complementary aspects: on the one hand, when people act as monarchs, they manifest the will of a sovereign by exercising their right to choose their leaders according to their will and aspirations; on the other hand, they perform their duty as citizens. Montesquieu believes that people are capable of electing the most proficient and virtuous candidates to lead them. However, he also notes a weakness or incapacity of the people concerning their lack of self-governance. According to him, this occurs "because the people always show too much or too little action; sometimes with a hundred thousand wings they overturn everything and other times with a hundred thousand feet they cannot progress, even as much as an insect." For this reason, Montesquieu values the republic as virtuous, as no society can exist without it. He saw in the Republican form of governance the presence of two categories: democratic and aristocratic.

Indeed, Montesquieu identifies three forms of governance: democracy, aristocracy, and monarchy. However, he warns that if the principles and balance among these forms of governance are violated, they may lose their democratic function and role in defending citizens' freedom, thereby transforming the system and government into an arbitrary one. When virtue ceases to exist, ambition fills the souls of those susceptible to it, and avarice becomes a general characteristic: what people once desired, they no longer crave. The virtue indispensable to popular governance is also necessary in aristocratic governance, although its presence is not absolutely essential. The spirit of aristocratic governance is characterized by prudence and the flourishing of individual virtues. Montesquieu devotes special attention to the corruption of aristocratic governance, asserting that aristocracy becomes corrupted when the nobility's power turns arbitrary, leading to the absence of democracy both for those who govern and for those who are governed. The violation of democratic principles on both sides transforms governance into a despotic one.

**The principle of monarchical government** is rooted in honour. In this form of governance, there is a single leader who is the source of all power, but he governs according to firm and verified laws, which form the foundation of the kingdom. The existence of these specific laws restrains the "instantaneous will and whim" of the monarch. In a monarchical government, politics accomplishes all deeds, both great and small, with minimal reliance on virtue. The monarchical state can survive without virtues, as laws take their place. "*In the monarchical governing form, there is only the notion of honor, which by its very nature requires the principle of selection and social distinctions. This condition is in the very soul of this form of government*" (Montesquieu, 2001, p. 42).

Intermediate powers and a comprehensive set of laws also exist in a monarchy. Intermediate powers are "inferior and subordinate" authorities limiting royal power and moderating its momentum. Montesquieu formulated the foundations of monarchical governance, which relies on the respect for hierarchical degrees, ranks, and the nobility of large families. According to him, social differences are enacted through the notion of honour, a prerequisite of this form of governance. Acknowledging the detrimental nature of ambition in Republican governance, he identifies a similar phenomenon within monarchical governance. Montesquieu devotes particular attention to the corruption of monarchical governance, asserting that monarchies become corrupted when the rights or privileges of the privileged citizens are gradually removed, thereby preparing the conditions for the rise of a single despot.

**The principle of despotic governance** is rooted in fear. According to Montesquieu, "*the prince's infinite power is entirely delegated to those whom he trusts. The presence of skilled individuals, who might value themselves highly, could lead to revolutions*" (Montesquieu, 2001, p. 44). In the despotic state, fear serves to suppress the courageous and those with personal ambitions. Montesquieu also

addressed the inherent instability of despotic governance, highlighting its tendency toward perpetual disruption due to its despotic nature.

Montesquieu observed that while other forms of governance decline when a particular phenomenon violates their principles, despotic governance collapses due to its intrinsic instability. This form of governance persists only when supported by external factors, such as climate, religion, specific circumstances, or the nature of the people, which allow it to adhere to certain rules without altering its fundamental cruelty. For Montesquieu, weakness represents the degradation of human nature. As a liberal nobleman who admired ancient republics but remained loyal to the French monarchy, he perceived the transition from moderate governance to despotism as a genuine threat. Intermediate powers, defenders of laws and privileges, were institutions designed to prevent the French monarchy's descent into the devastation of despotism.

In addition to formulating the principles for the functioning of democracy, which he likened to the broad avenues of democratic life, Montesquieu identified the dangers that could lead to the erosion of these principles. One issue he specifically examined was the potential corruption of democracy's principles. He observed that democracy could be threatened not only when the spirit of equality is violated but also when extreme equality is pursued, with everyone demanding to be equal to those chosen by the people to lead. Montesquieu identified two polarizing phenomena equally detrimental to democracy: the spirit of inequality, which leads to aristocracy or the rule of a single individual, and the spirit of extreme equality, which leads to despotism. In contrast to other forms of governance, honour is not a principle in the despotic system. In such a state, where all people are considered equal, no one is permitted to stand out from others. Montesquieu concludes: *"Just as a republic requires virtue and a monarchy requires honor to survive, so a despotic form of government can only survive through fear; in this form of government, virtue is unnecessary and honour would be dangerous"* (Montesquieu, 2001, pp. 43-44).

## SEPARATION OF POWERS IN ALBANIA

The formulation of democracy's foundational principles by philosophers significantly contributed to providing the new governing structure with essential security and longevity. Form and content underwent qualitative changes, closely interrelated. These principles were nurtured by the philosophy of the European Renaissance: *"Liberty, equality, brotherhood."* *The fundamental principles of democracy serve as the lifeblood of a democratic society and state, representing its pillars and values based on equality and justice. True freedom exists only when it is safeguarded by laws, ensuring that citizens of a democratic country live freely and in complete equality. "A free society has to be pluralistic, in the sense of fostering and protecting a plurality of interests"* (Paul Spicker, 2006). Based on the preceding evidence, we can conclude that the relativity of freedom is highly dependent on the historical development of society. Freedom without appropriate laws results in either a degenerate anarchic system of governance or a false illusion of democracy. The essence of democracy is intrinsically linked to the theoretical and practical challenges of governing a collective and balancing powers. *"The separation of powers entails the division of governing directions or areas. The separation of powers so understood is a general feature of constitutional systems, including all constitutional democracies"* (Levy, Jacob. 2024). Its purpose is to prevent the concentration of power in a single person or body and to guard against the arbitrary use of authority. This division is informed by experience, which suggests that any holder of political power can be tempted to misuse it; hence, powers must be separated and constrained.

Albania is now part of a democratic governing system with three main types of power: legislative, executive, and judicial. The legislative power drafts and approves new laws in response to the country and society's political, economic, and cultural changes. The executive power is responsible for implementing the decisions of legislative bodies, with the government as its main institution, ensuring the execution of laws passed by parliament and decreed by the president. Another critical power within democratic governance is the judiciary, which adjudicates administrative problems and conflicts arising in society due to new democratic relations and institutions, or even disputes between institutions under special circumstances. This classic division remains prevalent in the political thought and practice of Western democracies.

Article 7 of the Constitution of the Republic of Albania underscores: *"The system of government in the Republic of Albania is based on the division and balance between the legislative, executive, and judicial*

powers." (Constitution of the Republic of Albania). Governments, represented by the executive branch, can become so powerful that they threaten individual liberties and democracy itself. The tendency of governments to become omnipotent is restrained through the constitutions of democratic countries. Limiting government powers is achievable only through separating powers, checks and balances, and enforcing specific laws. The separation of powers requires the existence of three distinct and independent branches: legislative, executive, and judicial. Parliament enacts laws, the government implements them, and the judiciary determines and verifies whether a law aligns with the constitution or whether the executive branch exceeds its authority.

## CONCLUSION

This paper underscores the indispensable role of the separation of powers in safeguarding democratic values. The study reveals how balanced governance prevents tyranny and upholds individual freedoms, serving as a foundation for sustainable democratic systems. These principles must be upheld universally to protect democracy from erosion, particularly in countries with fragile political structures. Models of democracy based on the principles of individualism often propose a system of democracy confined to political life. From this perspective, democracy aims to establish a framework of laws, through various processes of popular participation, within which individuals can conduct their work and pursue personal interests. Consequently, democratic elections are deemed suitable only for specific community-related issues; in other cases, democracy is viewed as a limitation on freedom. Freedom is regarded as paramount. The process of enhancing democracy is accompanied by its potential deterioration, typically manifested in the corruption of elected rulers and the usurpation of the democratic system by an individual or a select group wielding power. Therefore, the study is significant as it underscores the critical role of balanced governance in maintaining democratic integrity, particularly in fragile democracies.

In countries with limited experience in democracy, there is a pronounced tendency to violate statutory and democratic norms and principles within political parties, which also serve as ruling opposition alternatives for the people. Initial signs of abuse and violations of democratic principles often emerge within the internal functioning of these parties. After these parties seize power, such violations extend to undermining the very pillars of democratic governance. One of the most damaging phenomena is the elimination of elections through the appointment of deputies and representatives by the party leader. Consequently, the parliament no longer consists of true representatives of the people but rather "soldiers" loyal to the party leader. Democracy suffers a significant setback when voters delegate their choice to party representatives, and it faces a fatal blow when the people are further excluded from choosing those they trust. Party leaders appoint their loyal "yes-men" to parliament in this scenario.

In the face of injustices, silence represents a denial of universal democratic values that have sustained, supported, and guided human history and philosophical thought. Remaining silent can have grave implications for recognizing, denying, ignoring, or abusing human values. It also implies complicity in and support for inequality and oppression.

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