

Q.2)

Introduction

The theory of the "separation of powers", proposed by Montesquieu in his seminal work 'The Spirit of Laws' (1748), represents a key concept in the development of modern governance. He proposed dividing governmental power among 3 distinct branches - legislative, executive, and judiciary. This division was devised so that no branch could dominate the others. Contemporary political systems have interpreted and implemented this doctrine in various ways, adapting it to address modern complexities.

What is "Separation of Powers"?

(Power to make judgements on law)

Judiciary

Executive

(Power to put law into action)

Parliament

(Power to make and change law)

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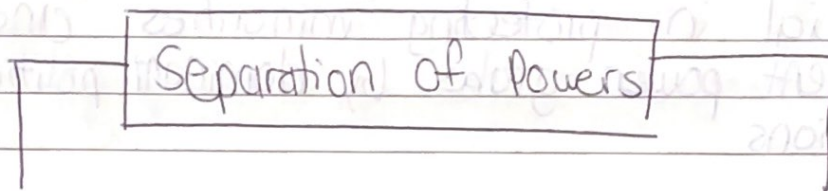
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Advocates dividing functions of government into 3 distinct branches:

- ① Legislative - responsible for making laws
- ② Executive - tasked with enforcing laws
- ③ Judiciary - charged with interpreting laws

~~Pros + Cons~~

Pros + Cons of Separation of Powers



Pros

- ① Prevents Tyranny and Concentration of Power
- ② Encourages Accountability and Transparency
- ③ Protects Individual Liberties

Cons

- ① Inefficiency and Gridlock
- ② Ambiguities and Power Struggles
- ③ Inflexibility in Modern Governance

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Pros of Separation of Powers

① Prevents Tyranny and Concentration of Power

- by ensuring that legislative, executive, and judiciary operate independently, each branch can serve as a check on others
- e.g. executive cannot arbitrarily create laws without legislative approval
- crucial in protecting minorities and prevent power grabs by dominant political factions

② Encourages Accountability + Transparency

- fosters accountability by distributing responsibilities among different branches, each with oversight mechanisms
- creates a culture of responsibility, where officials know their actions will be scrutinized, enhancing public trust in government institutions

③ Protects Individual Liberties

- by preventing any one branch from becoming omnipotent, doctrine ensures that governments are less likely to infringe on personal rights
- thus creates a government structure that prioritizes the rule of law, ensuring citizens are protected from arbitrary actions

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Cons of Separation of Powers

① Inefficiency and Gridlock

- disagreements between branches can create legislative or administrative gridlock, where essential policies are delayed/blocked
- becomes problematic during crises, when swift action is needed but hindered
- E.g. in the US, partisan divisions between Congress and President frequently stall budgetary decisions

② Ambiguities and Power Struggles

- can lead to disputes over jurisdiction and authority, as the boundaries between branches are not always clearly defined
- in cases where constitutional provisions are vague, power struggles can destabilize governance and erode public confidence in institutions

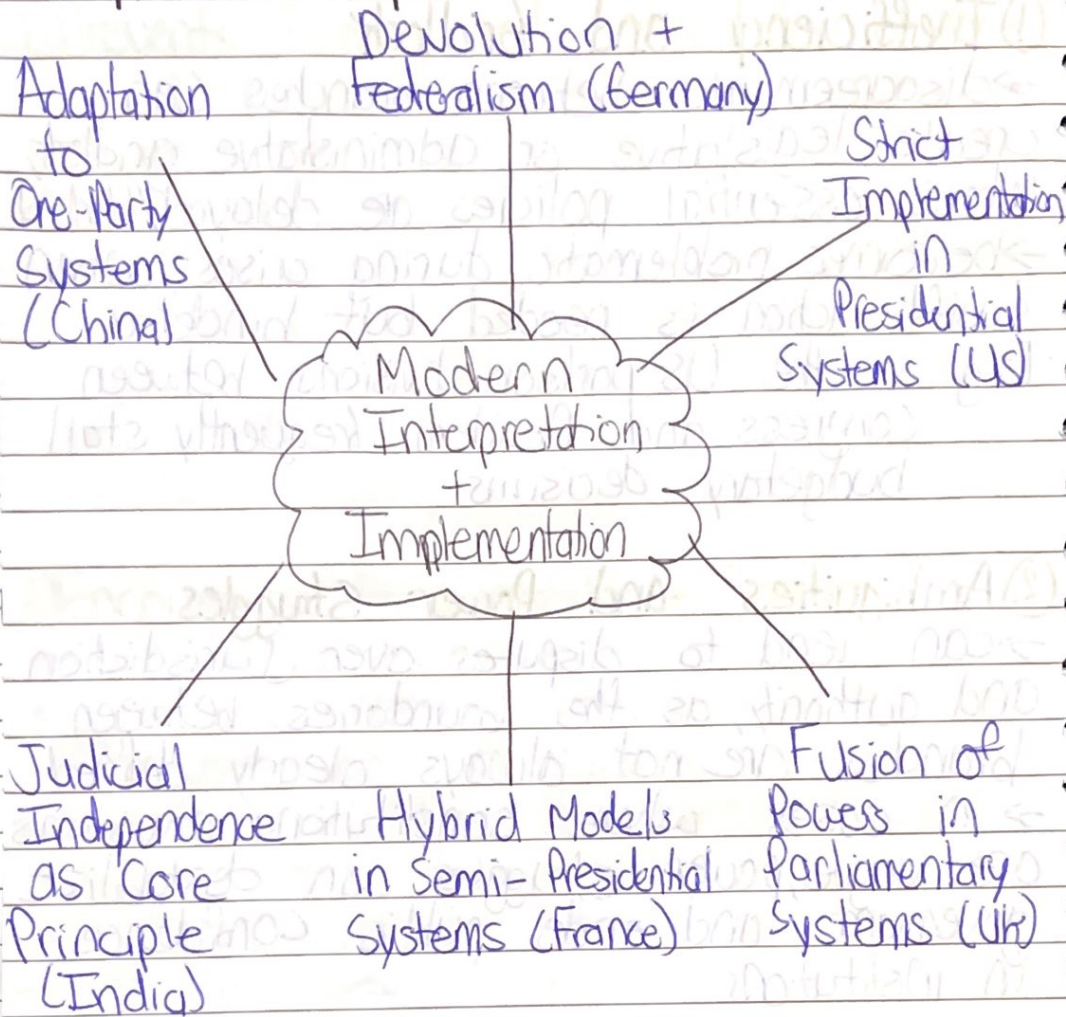
③ Inflexibility in Modern Governance

- while visionary, the doctrine was designed for simpler governance structures and may not fully account for modern complexities
- many contemporary governments operate on principles that blend the functions of different branches

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How Modern Political Systems Have Interpreted + Implemented This Doctrine:



① Strict Implementation in Presidential Systems (US)

→ US Constitution explicitly assigns legislative powers to Congress, executive powers to President, and judicial powers to Courts

→ strict separation has helped maintain accountability

E.g. Congress has power to pass laws but President can veto them

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② Fusion of Powers in Parliamentary Systems (UK)

→ executive (PM and Cabinet) is drawn from the Legislature (Parliament), creating a close relationship between 2 branches
↳ E.g. PM is the leader of the majority party in the House of Commons and is accountable to Parliament through mechanisms like PM's Q's

③ Hybrid Models in Semi-Presidential Systems

→ combines elements of both (France)
presidential and parliamentary models

↳ E.g. PM and President share executive powers.

→ legislature has oversight functions but the Executive can dissolve the National Assembly

④ Judicial Independence as Core Principle (India)

→ judiciary serves as the guardian of the Constitution and fundamental rights, often intervening in legislative and executive matters through judicial review

→ Courts frequently challenge executive actions, such as striking down Section 66A of the IT Act in 2015 for violating free speech

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⑤ Devolution and Federalism (Germany)

→ Germany's Basic Law (Grundgesetz) incorporates the separation of powers within a federal framework, balancing authority between central government and 16 federal states (Länder)

↳ E.g. bicameral legislature, with the Bundestag representing the people and the Bundesrat representing the states

⑥ Adaptation to One-Party-Systems (China)

→ doctrine not formally implemented in its governance structure

→ however, certain elements of functional separation exist:

→ judiciary functions under control of Communist Party but has recently been granted limited autonomy

Conclusion

Montesquieu's theory of separation of powers has profoundly influenced the structure of governance in many modern political systems, serving as a guiding principle. While it has its pros and cons, it undoubtedly serves as a critical framework for fostering accountability, upholding rule of law, and preserving democratic values.