

3. Separation of Powers and its Role in Preventing Authoritarianism.

Outline:

1. Introduction

Thesis: "Separation of power is a necessary but insufficient barrier against authoritarianism. It creates structural obstacles that raise the cost of tyranny, yet these obstacles can be overcome through partisan capture, judicial co-optation, or constitutional manipulation. The doctrine's effectiveness depends less on institutional design than on the political culture, civil society, and elite norms that strengthens it."

2. The Doctrine and its Logic

2.1. Montesquieu's insight shaped modern constitutional design.



2.2. Separation creates structural obstacles against tyranny.

2.3. Multiple veto points raise authoritarian costs

3. Modes of Failure - How Separation is Overcome

3.1. Partisan capture neutralizes separated institutions entirely.

3.2. Judicial co-optation disables the critical check.

3.3. Constitutional manipulation legalizes authoritarian consolidation

4. Case Studies - Separation under Attack

4.1. Pakistan demonstrates separation's fragility under pressure



4.2. Hungary shows a model for legal authoritarianism

4.3. Turkey reveals how elected autocrats hollow institutions

5. What Actually Prevents Authoritarianism

5.1. Norms and culture strengthens institutional skeleton

5.2. Civil society provides extra-constitutional resistance

5.3. Elite commitment determines institutional survival

5.4. International pressure raises cost of authoritarian capture.

6. Synthesis: Separation necessary but insufficient for liberty

6. Conclusion

ESSAY:

Constitutions that guarantee separation of powers are being used to dismantle it. Since Montesquieu's eighteenth century warning that concentrated power breeds tyranny, the division of government into competing branches has been democracy's foundational safeguard. The logic is intuitive: distribute power among separate institutions, and no single actor can accumulate enough to dominate. Yet recent decades tell a different story. Hungary, Turkey, and now Pakistan have demonstrated that separation can be legally hollowed out — branches captured through partisan control, courts co-opted through political appointments, constitutions amended to remove constraints — all while formal structures remain intact. Separation of power is necessary but insufficient barrier against authoritarianism. It raises

the cost of tyranny without making it impossible, and its effectiveness depends less on institutional design than on political culture, elite norms, and international pressure that strengthens it. Understanding this requires examining the doctrine's logic, the methods by which it fails, the contemporary cases that depict its vulnerability, and the factors that distinguish resilient democracies from captured ones.

The doctrine of separation of powers originates in a simple observation that concentrated power invites abuse. Writing in 18th century, Montesquieu argued that liberty survives only when legislative, executive, and judicial functions rest in different hands. If the same person or body makes laws, enforces them, and judges disputes, nothing restrains arbitrary rule. This insight shaped modern constitutionalism. Madison embedded it in the American Constitution,

and countries around the world followed. Pakistan's 1973 Constitution, like most others, distributes power among President, Parliament, and Supreme Court. The insight was not that power corrupts but that unchecked power corrupts inevitably — and only power can check power. This checking mechanism works through specific structural features.

Separation works by making authoritarian consolidation structurally difficult. A would-be autocrat cannot simply seize power; he must capture multiple institutions, each with its own personal, people, procedures, and interests.

The executive proposes; the legislative must approve; the judiciary can strike down. Each branch has incentive to guard its turf. This structure has worked. In Watergate, Congress investigated and courts enforced subpoenas; Nixon resigned rather than face impeachment.

The branches checked the executive



because they had independent power to do so. Separation does not make tyranny impossible but it makes it expensive. The expense is measured in veto points.

Veto points are the institutional stations where authoritarian projects can be blocked. Each branch holds the power to obstruct others. The legislature can refuse enabling laws; the judiciary can nullify unconstitutional actions; the executive can veto legislation. Each refusal forces the autocrat to exhaust political capital and or find an alternative route. Brazil's judiciary demonstrated this from 2016 to 2018, investigating corruption across the political spectrum despite executive hostility. Courts blocked what presidents wanted because courts had independent powers to block. Every veto point is a trench, the autocrat must cross, and some battles are lost in the trenches. Yet benches can be overrun if the defenders

abandon them.

Separation fails when one party controls all branches. Formal divisions mean nothing if every branch serves the same master. The legislature rubber-stamps executive orders. The judiciary defers to government preferences.

Institutional jealousy disappears because there is nothing left to fight over, as all branches belong to one team. Hungary illustrates this. When Fidesz won a two-thirds parliamentary majority in 2010, it controlled constitutional amendments, judicial appointments, and legislative output simultaneously.

Separation existed on paper; in practice, Orbán faced no institutional resistance.

Separation of powers assumes the branches will fight, but what if they choose to surrender? The branch most dangerous to surrender is the judiciary.

The most dangerous path to authoritarianism runs through constitution itself. A two-thirds majority can amend the document meant to constrain it. Courts can be restructured, terms extended, checks removed - all through legal process. Critics are silenced because the procedure was followed. The form of legality masks tyranny. Weimar Germany's Enabling Act of 1933 legally transferred all legislative power to Hitler. Venezuela created a parallel constitutional assembly to bypass its opposition-controlled legislature. The most effective tyrannies amend constitutions rather than violate them - legality becomes the mask of authoritarianism. Contemporary case studies reveal these methods operating in real-time.

Pakistan's 26th and 27th Amendments illustrate constitutional manipulation in real time. The 26th Amendment (October 2024) gave Parliament



The judiciary is separation's last line of defense and therefore the autocrat's primary target. Courts can declare executive actions unconstitutional and legislative acts void. No other branch has that power. Neutralize the judiciary, and the constitution loses its enforcer. The methods are well established: pack courts with loyalists, change appointment rules, force early retirements, intimidate through disciplinary proceedings. In 2011, Orbán lowered Hungary's judicial retirement age from 70 to 62, forcing out 300 senior judges - over ten percent of judiciary - and filled their seats with allies. Capture the courts and you capture the constitution, for who will decide your capture unconstitutional? But the most sophisticated capture requires no judges at all - only amendments.



control over judicial appointments and removed the Supreme Court's *suo-moto* powers. The 27th Amendment (November 2025) created a Federal Constitutional Court above the Supreme Court and granted Army Chief lifetime immunity as Chief of Defense Forces. Two Supreme Court judges resigned in protest, calling it "abolition of Supreme Court". Pakistan's constitution still proclaims separation, but the amendments have made it fiction in constitutional clothing. Hungary achieved the same result more gradually.

Hungary demonstrates that authoritarian capture need not be sudden. Since 2010, Orbán has amended the Fundamental Law fifteen times, each change removing another constraint. Judicial retirement ages were manipulated, appointment rules rewritten, constitutional court's jurisdiction narrowed. Formal institutions remain; their independence



~~The most dangerous path to~~
~~death~~

does not. Orban did not abolish
 separation; he hollowed it from within,
 leaving the shell while emptying the
 substance. Turkey combined both
 methods - speed and legal process.

Turkey shows how electoral
 legitimacy can accelerate institutional
 capture. Erdogan used his popular
 mandate to justify sweeping changes.
 After the 2016 coup attempt, he purged
 thousands of judges, prosecutors, and
 civil servants. A 2017 referendum
 replaced parliamentary government with
 an executive presidency, concentrating
 power constitutionally. The judiciary
 now defers; parliament rubber-stamps;
 opposition faces prosecution. Erdogan
 proved that ballots can destroy what
 bullets once attempted - elected autocracy
 is still autocracy. If institutions can be
 captured, what actually prevents



authoritarianism?

Institutions are rules on paper; norms are rules in practice. Separation requires actors who respect boundaries they could legally cross. ~~Self-restraint~~, acceptance of losing, respect for opposition's legitimacy - these unwritten rules make written ones work. The UK has ~~no~~ formal separation - executive and ~~legislature~~ are fused - yet remains democratic because conventions substitute for constitutional text. Constitutions do not enforce themselves, they are enforced by people who believe in them. When belief dies, text is just paper. When institutions ~~fail~~, civil societies provide the next line of defense.

When formal institutions are captured, civil society becomes the last check. Lawyers, journalists, activists, and ~~professional associations~~ operate ~~outside~~



government control. They document abuses, mobilize opinion, and impose reputational costs that capture courts cannot. Pakistan's 2007 lawyer's movement restored the Chief Justice and forced Musharraf's retreat - civil society succeeded where institutions had failed. When branches of government collapse, civil society becomes the fourth branch - unelected but indispensable. Yet civil society depends on elites willing to defend it.

Institutions survive when elites choose to respect limits they could breach. Separation is a bargain: accept constraints today so constraints protect you tomorrow. When elites defect - prioritizing short-term power over long-term stability - the bargain collapses and institutions follow. Pakistan's history confirms this. Politicians repeatedly invited military intervention against rivals, sacrificing institutional integrity

for temporary advantage. Each invitation weakened the very separation meant to protect them. Separation is a gentlemen's agreement among elites— it collapses when gentlemen becomes pirates. External audiences can raise the cost of piracy.

International scrutiny cannot save democracy, but it can tax authoritarianism. Foreign governments, international organizations, and global media impose costs: sanctions, suspended aid, reputational damage, frozen EU funds. Domestic tyrants must calculate whether consolidation is worth the external price. Poland's PiS slowed its judicial capture partly because EU pressure made further moves costly. Domestic tyrants fear foreign audiences—international pressure cannot save democracy, but it can raise the price of killing it. These factors together determine whether



separation holds.

Separation of power is necessary for preventing authoritarianism but cannot prevent it alone. Without separation, tyranny faces no structural obstacle. Hence, the doctrine is a necessary condition. But with separation alone, tyranny finds ways around — it is not sufficient condition. What distinguishes success from failure is not constitutional text but what complements and strengthens it: democratic culture, vigilant civil society, committed elites, attentive international community. Separation of powers is a skeleton of liberty — but skeletons cannot stand without muscle.

Separation of power offers a structural defense against tyranny — necessary but not impenetrable. It raises the costs of authoritarian



consolidation without making it impossible. Pakistan's 26th and 27th Amendments, Hungary's fifteen constitutional revisions, Turkey's post-coup purges - all demonstrate that separation can be legally dismantled while formal structure remain intact.

The pattern is consistent: separation falls when norms erode, civil society weakens, elites defect, and international pressure fades. The lesson is not that separation is useless, but that it is incomplete.

Constitutions create possibilities; citizens must defend them. Separation of power builds the fortress, but the people must man the walls.



<p><u>"Separation of power and its role in preventing Authoritarianism"</u></p>			
<p>Montesquieu Exec, Jud, Legislative</p>	<p>functional distribution</p>	<p>prevention vs delay vs mitigation</p>	<p>concentrated, unaccountable power</p>
<p>dividing govt. to branches</p>	<p>Necessary? Sufficient? One factor among many?</p>	<p>absolute prevention vs raising costs.</p>	<p>Spectrum, not binary ↓ legal authoritarianism vs coup. based.</p>
<p>horizontal: E, L, J. vertical: Fed, Prov, local</p>			<p>elected advocates vs. military dictators</p>
<p>formal separation vs. functional independence?</p>			<p>gradual erosion vs. sudden capture.</p>
<p>constitutional text vs. Political reality</p>			
<p>Is separation sufficient to prevent Auth?</p>			
<p>Turkey, Hungary, Venezuela → separate but auth.</p>			
<p>Is it necessary? UK fixed Exec + Legislation → still democratic</p>			
<p>what makes it effective vs. merely formal? Pak's → constitution vs reality</p>			
<p>can authoritarian emerge through separation? Yes.</p>			
<p>what complements separation? culture, civil society, media, norms</p>			
<p>Separation is necessary but not sufficient. it raises costs of auth capture but cannot prevent it alone. Effectiveness depends on complementary factors: political culture, civil society, independent media, a elite commitment to norms.</p>			
<p>26th, 29th Amendments, Hungary, Turkey, Pak, US, UK examples</p>			
<p>Doctrinal logic</p>			
<p>• separation = structural obstacles against tyranny (Mont) +</p>			
<p>• Multiple veto pts. raise authoritarian costs</p>			
<p>• Partisan capture neutralizes separated institutions</p>			
<p>• Judicial co-opt = disables checks.</p>			
<p>• Const. manipulation</p>			
<p>• Pakistan example → Turkey</p>			
<p>• Hungary's example.</p>			
<p>• Norms & culture</p>			
<p>• Civil society role</p>			
<p>• Elite commitment</p>			
<p>• Not premise</p>			
<p>• Necessary but inefficient argument</p>			
<p>Synthesis</p>			