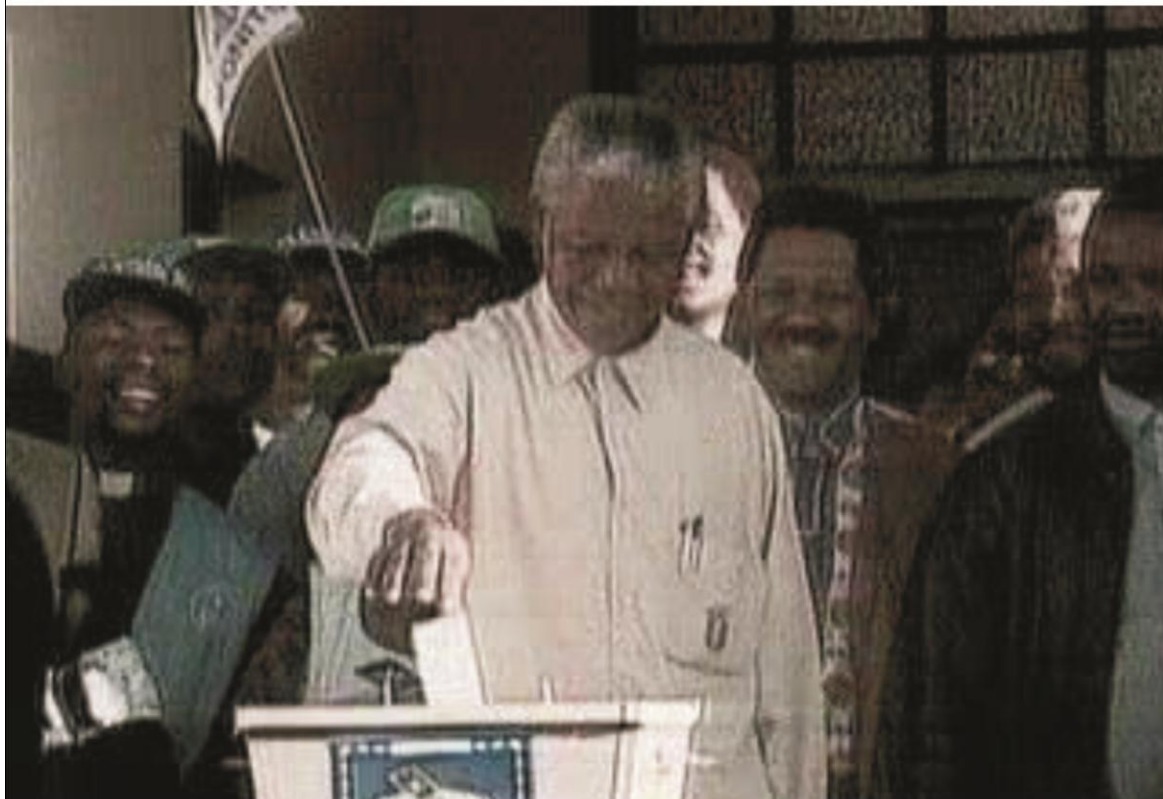


**Conference of Young Nigerian
Democrats**

**DEMOCRACY
DIGEST**



Compilation of E-Books on Democracy

**Compiled by:
Wole Adedoyin**

Separation of Powers

I INTRODUCTION



Declaration of War Against Japan

President Franklin Roosevelt addresses Congress on December 8, 1941, the day after Japan attacked U.S. forces at Pearl Harbor. Under the U.S. system of separation of powers, the president commands the armed forces but only Congress can declare war.

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Separation of Powers, the doctrine and practice of dividing the powers of a government among different branches to guard against abuse of authority. A government of separated powers assigns different political and legal powers to the legislative, executive, and judicial branches. The legislative branch has the power to make laws—for example, the declaration of what acts are to be regarded as criminal. The executive branch has the authority to administer the law—primarily by bringing lawbreakers to trial—and to appoint officials and oversee the administration of government responsibilities. The judicial branch has the power to try cases brought to court and to interpret the meaning of laws under which the trials are conducted.

A government of separated powers is less likely to be tyrannical and more likely to follow the rule of law: the principle that government action must be constrained by laws. A separation of powers can also make a political system more democratic by making it more difficult for a single ruler, such as a monarch or a president, to become dictatorial. The division of powers also prevents one branch of government from dominating the others or dictating the laws to the public. Most democratic systems have some degree of separation of powers, but the United States stands as the preeminent example of the practice.

II ORIGINS OF THE CONCEPT

The doctrine of separation of powers developed over many centuries. The practice of this doctrine can be traced to the British Parliament's gradual assertion of power and resistance to royal decrees during the 14th century. English scholar James Harrington was one of the first modern philosophers to analyze the doctrine. In his essay *Commonwealth of Oceana* (1656), Harrington—building on the work of earlier philosophers Aristotle, Plato, and Niccolò Machiavelli—described a utopian political system that included a separation of powers. English political theorist John Locke gave the concept of separation of powers more refined treatment in his *Second Treatise of Government* (1690). Locke argued that legislative and executive powers were conceptually different, but that it was not always necessary to separate them in government institutions. Judicial power played no role in Locke's thinking.

The modern idea of the separation of powers was explored in more depth in *The Spirit of the Laws* (1748), a study by French political writer Baron Montesquieu. Montesquieu outlined a three-way division of powers in England among the Parliament, the king, and the courts, although such a division (he did not use the term "separation") did not in fact exist at the time.

Montesquieu followed earlier thinkers in arguing that there was a necessary relationship between social divisions and these different powers. In particular, Montesquieu contended that executive power could be exercised only by a monarch and not by an elected administrator—a view wholly discarded in the Constitution of the United States. Harrington, Locke, Montesquieu, and other writers saw the

concept of the separation of powers as a way to reduce or eliminate the arbitrary power of unchecked rulers. Separation of powers thus became associated with the closely related concept of checks and balances—the notion that government power should be controlled by overlapping authority within the government and by giving citizens the rights to criticize state action and remove officials from office. See British Political and Social Thought.

III SEPARATION OF POWERS IN THE UNITED STATES



Robert Bork

Robert Bork's actions while serving as solicitor general in the administration of President Richard Nixon highlighted the need for separation of powers. In the midst of the Watergate Scandal, Nixon dismissed both of Bork's superiors in the Justice Department because they refused to fire the special prosecutor who was investigating the White House. Bork agreed to fire the special prosecutor, and in the wake of the episode Congress passed the Independent Special Counsel Act of 1978 to insulate investigators from executive branch pressure.

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In the United States the separation of powers is a fundamental constitutional principle. Articles I through III of the Constitution of the United States place each of the basic powers of government in a separate branch. The legislative power is vested in Congress, the executive power in the president, and the judicial power in the Supreme Court and other federal courts.

An important aspect of the separation of powers is that the power of one branch should not be exercised by anyone who also holds a position in another branch. Under Article I, Section 6, no one elected to Congress may simultaneously serve as a member of the executive branch. In other words,

a lawmaker may not also administer the laws. Another important feature of the separation of powers in the United States is judicial review. The courts, not Congress or the president, say what the law means when a case is before them. In appropriate cases, the courts may even strike down a law enacted by Congress, or order the executive branch to halt enforcement of a law or government policy, if they determine that the law or policy conflicts with the Constitution.

But the three branches are not completely sealed off from each other. For example, the president shares the lawmaking power with Congress because the president can veto any law, although Congress may then override the veto with a two-thirds vote in each house. The major exceptions to separation of powers are federal regulatory agencies, such as the Securities and Exchange Commission, which can write regulations, bring lawsuits, and decide certain kinds of cases. The president's power to issue executive orders in some areas is another major exception to the separation of powers because the orders do not need congressional consent, and they have the same effect as laws.

IV SEPARATION OF POWERS IN OTHER COUNTRIES

All democracies separate governmental powers to some degree, in practice if not in their constitutions. Italy, for example, has a separate constitutional court to review cases that raise constitutional issues. Most democratic countries create such mechanisms to ensure judicial independence from legislatures and executive officials. But some scholars argue that creating an extreme separation of powers on the United States model can make government less effective because it increases the possibility of governmental paralysis. If the leaders in different branches of the government disagree about basic objectives, the country's official business can come to a standstill.

The critics of the doctrine of separation of powers also point to countries such as the United Kingdom as examples of strong democracies without a separation of powers. In the United Kingdom the prime minister and members of the cabinet are all members of Parliament. The courts, although they function independently, have no ultimate power of judicial review as in the United States, and the highest appeal is to the House of Lords, a branch of Parliament.

A total absence of a separation of powers, however, often figures prominently in extremely repressive governments. Countries such as China, Czechoslovakia, Poland, and Russia were ruled by Communist governments for part of the 20th century, and an absence of a separation of powers in these regimes made it easier for leaders to abuse their authority. In these countries political party leaders held virtually all authority, which was concentrated in a few very powerful ministries and other executive agencies. Courts and legislatures in these countries did not have enough power to prevent the military, police, and other executive officials from repressing citizens. When the Communist parties fell in many of the countries of Eastern Europe in the early 1990s, one of the first political reforms was to break up the concentration of government power and allocate responsibility to separate branches. See Government.

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