



The Principle of Separation of Powers in Light of the Algerian Constitutional Amendment of 2020.

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ABSTRACT:

Democratic countries tend to adopt the principle of separation of powers due to its impact on strengthening the rule of law and protecting citizens' fundamental rights and freedoms. Different approaches have developed around this principle, all emphasizing the importance of preventing power from being held by one person alone. The British and American systems are among the most important political models.

Like other political systems, Algeria's constitutional founders adopted the principle of separation of powers, seeking to strike a balance between parliamentary and presidential systems in order to manage state interests more flexibly.

Keywords: Judiciary, Separation of powers, Legislation, Independence, Oversight.

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Introduction:

The division of governmental powers is a fundamental principle underlying modern democracies, playing a crucial role in ensuring the full implementation of the rule of law. Concentrating power in one place can lead to tyranny and despotism, whereas distributing it creates harmony and flexibility in governance.

This principle has evolved significantly throughout history, with numerous legal scholars advocating its implementation. Its application has differed from one political system to another. Some have viewed it as the division of state functions into three branches, enabling the legislative, executive and judicial arms of government to perform their duties without interference from one another and establishing clear boundaries that should not be crossed. However, some scholars disagreed, arguing that absolute separation would hinder state interests. The three powers must be able to work together in a way that promotes flexibility in the political system, where each power maintains its function while cooperating with and overseeing the others.

Like other countries, Algeria has experienced the gradual implementation of the separation of powers principle due to the stages of development it has undergone since gaining independence, up to the latest constitutional amendment.

This study aims to examine the various legal aspects of applying the separation of powers principle, particularly within the Algerian political system. The problem addressed in this study is therefore as follows:

To what degree did the Algerian constitutional framers incorporate the principle of separation of powers? Answering this requires first defining the concept of separation of powers, followed by examining the position taken by the Algerian constitutional drafters.

Section I: The Content of the Principle of Separation of Powers

Worldwide governance systems vary from dictatorships to democracies, with dictatorships being marked by power concentrated in the hands of one individual or group. In democratic systems, however, power is distributed among three bodies: the legislative, executive and judicial authorities. In democratic systems, the law serves as an impartial authority that holds everyone accountable.

A key characteristic of these systems is the adoption of the separation of powers principle. However, the way this separation is applied varies among different countries.¹

In this section, we will first define the principle of separation of powers in the first subsection, before highlighting its most important practical applications in some of the world's most well-known political systems in the second.

A / Definition of the Principle of Separation of Powers

Although Montesquieu is often credited with introducing the principle, others also played key roles in developing the concept. Earlier philosophers and thinkers, such as Aristotle and Plato in Greece and John Locke, author of *The Civil Government*, had similar thoughts. Against the backdrop of despotism and unchecked power, the notion of limiting and dividing power gradually took shape, ultimately being articulated by Montesquieu in his book *The Spirit of the Laws*².

In ancient times, the idea of separating powers first emerged, as some philosophers, including Plato and Aristotle, discussed the importance of preventing the concentration of authority in one place.

Plato distributed the functions of the state among specific bodies, limiting them to:³

- a Council of States responsible for governance, consisting of ten members chosen for their sound judgement
- a Council of Senior Legislators and Wise Men responsible for overseeing the constitution
- a Senate responsible for legislation, consisting of 360 elected members
- a judicial authority responsible for resolving disputes, consisting of courts of various levels. Additionally, bodies such as the police were established to maintain internal security, the military to safeguard external security, and an educational body to oversee governance affairs, while the executive authority managed public facilities.

As Aristotle believed that the expansion of state functions necessitated their division into sub-functions, he classified them as deliberative, commanding and judicial. While the commanding and justice functions correspond to the modern concept of executive and judicial powers respectively, the deliberative function does not directly correspond to the modern concept of legislative power. However, the fundamental difference between Aristotle's approach and that of Montesquieu is that Aristotle called for the separation of functions according to their legal nature, whereas Montesquieu not only divided the functions but also assigned them to independent authorities.⁴

Although early philosophers highlighted the need to prevent power from being held by a single entity, it was jurists in the seventeenth and eighteenth centuries who advanced and reshaped the concept to reflect the broader changes happening worldwide.

The English jurist John Locke was the first to write about the separation of powers in his book *The Civil Government* following the Glorious Revolution of 1688. He divided state powers into four: legislative, executive, federal (responsible for declaring war, establishing peace, concluding treaties and managing foreign affairs) and Crown (encompassing royal rights and privileges). While Locke recognised the importance of separating legislative and executive powers, Montesquieu became synonymous with the principle of separation of powers, putting it into practice following the American and French revolutions⁵.

'Montesquieu is closely linked to the principle of separation of powers because of his unique approach in the 1748 work *The Spirit of the Laws*. He proposed that the functions of the state should be split into three

distinct branches: making laws, enforcing them, and resolving legal conflicts. The central idea of his work is to establish a balance between these powers, ensuring that none can paralyse the others when exercising their respective functions. He emphasised the necessity of cooperation by granting each authority the power to govern and the power to prevent, meaning they had the means to stop erroneous decisions made by another authority being implemented, thus achieving balance and cooperation among the authorities.⁶

Montesquieu did not envisage the three state powers operating completely independently of one another as, in his view, this would hinder the movement of the state. Contrary to the interpretation of some of his followers, Montesquieu did not intend the separation of powers to be absolute; rather, he aimed to establish balance and harmony in their operations⁷.

Thus, the principle of separation of powers has evolved from the traditional concept of absolute separation to the modern concept of flexible separation, embracing cooperation and harmony between the powers. The principle has taken on both traditional and modern meanings, carrying two interpretations: one political and the other legal. Politically, the principle aims to prevent power from being concentrated in a single person's hands. Legally, it involves dividing state responsibilities among different institutions, allowing each branch to oversee and limit the others if they exceed their authority.⁸

B / Applications of the Principle of Separation of Powers in Various Political Systems

Various political systems have implemented the separation of powers principle, with the British and American models standing out as the most well-known.

England has adopted the parliamentary system, which balances legislative and executive powers, encouraging their cooperation without favouring one over the other. This system is also known as a representative system and can be found in both monarchies and republics. It strikes a balance between the legislative and executive powers, making it a prime example of the separation of powers principle as envisioned by Montesquieu⁹.

A key characteristic of the parliamentary system is that executive power is divided between two distinct roles: the head of state (whether a monarch or president) and the prime minister. Consequently, the cabinet holds actual power, while the head of state plays a purely ceremonial role: they reign but do not govern. The head of state is completely independent of parliament and the cabinet, meaning he is not politically accountable. It is worth mentioning that, in republican systems, the head of state's lack of accountability is limited to the political sphere; in monarchies, however, it extends to both the political and criminal spheres.¹⁰

'The second executive body is the government or ministry, which bears the burden of governance as the main axis of executive power. Therefore, it bears full political responsibility before parliament, which may be collective or individual. Collective responsibility means that the cabinet is collectively accountable to parliament for the public policy it follows and must obtain its support. If parliament objects to this policy, this implies a vote of no confidence in the cabinet, which leads to its total dissolution. Individual responsibility means that a single minister is accountable for their actions in managing their ministry, and a vote of no confidence against them necessitates their resignation from the cabinet.¹¹

Another characteristic of this system is the flexible separation of executive and legislative powers, established through mutual oversight, which provides each power with the means to influence the other. In the parliamentary system, the executive power undertakes tasks that may extend into the legislative domain, impacting the formation of the legislative authority by overseeing the electoral process, for example, or by having the right to summon parliament or postpone its sessions. The executive power may also participate in legislative work by proposing bills, and it allows for a member to combine parliamentary work with holding a ministerial position. Finally, the most significant intervention is the possibility of dissolving parliament¹²

By contrast, the legislative authority influences the executive authority through its oversight functions, known as political oversight. This type of oversight is significant because it represents the will of the people and expresses their desires. This includes various mechanisms such as the ability to question, interpellate, carry out investigations, and hold officials politically accountable¹³

While the parliamentary system allows for flexibility in the exercise of powers to ensure the continuity of the state, the American political system takes a different approach to implementing the principle of separation of powers, known as the presidential system.

The presidential system gets its name from the president of the republic, as the US Constitution's framers intended to reinforce the president's role by centralizing executive powers under their control. The presidential system is based on the separation of public powers within the state, enabling each to operate independently in the performance of its duties. This system is characterized by a head of state who gains authority directly from the people and fulfills both the roles of head of state and head of government.¹⁴

In contrast to the parliamentary system, which features a dual executive and relies on cooperation and checks between the legislative and executive branches, the presidential system is characterised by unified executive power and separation of powers¹⁵.

Considering the individuality of executive power to be a defining feature of the presidential system, all executive functions are embodied in one person: the head of state. Ministers assist the head of state in implementing their policies. Unlike in the parliamentary system, they do not form a collective cabinet as a second part of the executive power. In the American system, the head of state also leads the administrative structure and carries out responsibilities defined by the constitution. They appoint aides, including ministers and high-ranking officials, who operate under their direction and oversight.¹⁶

Another key feature of the presidential system is the separation of powers, reflecting how the US Constitution's framers interpreted Montesquieu's theory as advocating for a clear division between branches. This approach is therefore the most effective way to protect individual rights and prevent despotism. Based on this understanding, they structured the constitution, whose articles clarify the independence of the legislative authority and ensure that no relationship exists between the head of state and this authority. The head of state cannot summon parliament or dissolve it, nor can they interfere in the appointment of its members. It is also not permissible to be a member of parliament and a minister at the same time.¹⁷

'Just as the head of state cannot influence the legislative authority, the latter cannot intervene in the actions of the executive authority either. As a general rule, the legislative authority does not have the right to withdraw confidence from the head of state or ministers, remove them or hold them accountable; it can only enact legislation that the executive authority must implement.¹⁸

Ministers are not permitted to enter parliament to explain, defend or discuss the president's policies, and the president cannot propose laws to parliament. The executive authority is not permitted to prepare the budget; parliament prepares the state's general budget through its technical committees by discussing and approving it. The only role for the executive authority is to present an annual report detailing the state's financial situation, government expenditure in the past year and its requirements for the new year. The president is not politically accountable to parliament.¹⁹

Section II: The Constitutional Founder's Stance on the Principle of Separation of Powers

Analyzing the perspective of the Algerian constitution's architect regarding the division of powers shows his aim to blend the advantages of both parliamentary and presidential models to achieve balance and coherence within government bodies. Initially, the focus will be on how the independence of each branch is demonstrated, then attention will shift to the ways in which the three branches collaborate and supervise one another.

A / Manifestations of the Independence of Authorities

The concept of dividing governmental powers has seen considerable evolution within Algeria's constitutional history. The 1989 Constitution was the first building block in its establishment, despite not explicitly stating this principle. It defined the authority of each of the three branches and organized their functions, a development continued by the 1996 Constitution. However, the 2016 constitutional amendment clearly acknowledged the separation of powers in its preamble and Article 15 affirmed this principle. Subsequently, the 2020 constitutional amendment sought to strengthen the division and equilibrium of powers alongside the fundamental principles of the rule of law. An examination of the amendment's preamble shows that paragraph 15 clearly affirms the separation and balance of powers, judicial independence, legal safeguards, oversight of public institutions, and democratic and legal security. Furthermore, Article 16 reinforces these ideas by declaring that the state is founded on democratic representation, the separation of powers, and the protection of rights, freedoms, and social justice.

The third chapter of the 2020 constitutional amendment, titled "Organization of Authorities and Their Separation," focuses on applying the principle of separation of powers and is divided into four parts. The first part concerns the President of the Republic, the second addresses the Government, the third covers Parliament, and the fourth pertains to the Judiciary. In examining the independence of these branches, it is important to first consider their formal structural separation, followed by the functional division of responsibilities. A key aspect of this separation is the restriction preventing any one branch from influencing the appointment processes of another, as well as forbidding overlapping memberships across different branches.

As the President of the Republic is the highest authority in the executive branch, the first feature ensuring his independence is that he is elected by the people. This status is further enhanced by the fact that he is elected by the general public. The 2020 constitutional amendment affirmed this independence, as stipulated in Article 85, which established direct, secret and universal suffrage as the means of exercising this right. The election results are determined by obtaining an absolute majority of the votes cast.

The same principle applies to Parliament, where, according to Article 121, members of the People's National Assembly are chosen by direct, secret, and universal voting, whereas two-thirds of the Council of the Nation's members are selected through indirect and secret ballots.

The Algerian political system did not adopt the idea of merging powers and does not allow for the combination of functions. In this regard, Article 125 of the 2020 constitutional amendment affirms that the term of a deputy and a member of the Council of the Nation is national and cannot be combined with other terms or functions.

One of the key pillars supporting and guaranteeing the independence of the authorities is the assignment of oversight of public authorities to a neutral constitutional body. The constitutional founder wisely established the Constitutional Court, which is responsible for ensuring respect for the constitution. Article 185/2 affirms the independence of the authorities by stipulating that the primary responsibility of the Constitutional Court is to oversee the operations of institutions and public authorities.

Accordingly, the election of the President and Parliament is entrusted to the Constitutional Court, as confirmed by Article 191 of the 2020 constitutional amendment. This article designates the Constitutional Court as the body that hears appeals regarding the preliminary results of presidential and legislative elections and referendums, and announces the final results of these processes.

As for the functional separation of powers, this primarily consists of defining the powers of each authority. Within this framework, the Algerian Constitution clearly defines the responsibilities of each branch to avoid interference among them. As the leading figure in the executive branch, the President of the Republic's powers are detailed in Article 91, which include exercising regulatory authority, setting the country's foreign policy, presiding over the Council of Ministers, signing presidential decrees, consulting the public on critical national issues via referendum, and negotiating and ratifying treaties. Article 92 of

the 2020 constitutional amendment also addresses the President's authority to appoint individuals to high-level positions, as well as his power to declare a state of emergency or a state of siege in accordance with Articles 97 to 102.

According to Article 93 of the constitution, the President is not allowed to transfer powers concerning appointments. Additionally, the authority to call for a referendum, dissolve the People's National Assembly, or determine the timing of legislative elections cannot be delegated by the President.

The executive authority in Algeria is characterized by its duality; alongside the President of the Republic, there is the Prime Minister or head of government. The latter exercises several powers as stipulated in Article 112 of the 2020 constitutional amendment, directing, coordinating, and monitoring the work of the government, distributing powers among government members, presiding over government meetings, signing executive decrees, among other powers that fall within the regulatory framework.

When comparing the responsibilities of the President of the Republic and the Prime Minister, it becomes clear that the Algerian constitution has enhanced the President's role and influence within the executive branch, particularly with regard to the powers granted to him and his control over the appointment of the second-highest official in the executive authority. Additionally, the President has the prerogative to appoint government members based on the Prime Minister's proposal.

Regarding the judiciary, Article 163 of the constitution explicitly states that judges are independent and subject only to the law, thereby guaranteeing its functional independence. Article 171 clarifies the functional domain of the judiciary, specifying that judges are responsible for applying ratified treaties, the laws of the Republic and the decisions of the Constitutional Court. To further enhance the status and functional independence of the judiciary, Article 180 of the constitution establishes a key guarantee pertaining to the Supreme Judicial Council.

The functional independence of the authorities also extends to the legislative authority, which is represented by the People's National Assembly and the Council of the Nation. These bodies are responsible for preparing and voting on laws, as set out in Article 114 of the Constitution. Article 139 defines parliament's exclusive legislative areas, of which there are 30, while Article 140 of the constitutional amendment added areas in which parliament is responsible for legislation through organic laws.

B / Manifestations of Oversight and Cooperation Between Authorities

As absolute separation is impractical and there is overlap in competencies and complementarity in functions within the state, it is necessary to establish boundaries between authorities that ensure their independence while enabling cooperation to serve the public interest of the state and enhance the political system's functionality. The aim is to achieve harmony and consensus when performing their functions, with each authority overseeing the others to ensure that each remains within its limits. Correctly understanding the principle involves establishing a balanced separation between the authorities, alongside a degree of cooperation between them²⁰.

For this reason, we conclude that the constitutional founder did not adopt the absolute separation of powers found in some political systems. Instead, he established a balance by incorporating elements of the parliamentary system in line with the requirements of public interest. The effective functioning of the state requires cooperation between its various bodies. A significant outcome of the 2020 constitutional amendment is the mutual influence of public authorities, which is particularly evident in the relationship between the executive and legislative branches.

This relationship is clearly represented in the President of the Republic, who has more powers than other members of the executive, whose roles are limited and subject to various conditions. This can be attributed to the president being elected by the people, in a manner similar to the legislative authority. His election requires an absolute majority, which lends legitimacy, strength and credibility to his actions. As a result, the President participates in shaping the legislative branch by appointing one-third of the

Council of the Nation's members, selecting individuals from prominent national figures and experts across scientific, professional, economic, and social sectors²¹. He also has the authority to oversee parliament's activities by calling for an extraordinary session or summoning its members²².

In terms of the functional nature of the legislative authority's work, we find that the President can legislate through orders, constituting a blatant intervention that strengthens the President's position under this constitution. Although Article 142 links this type of legislation to urgent matters or vacancies in the People's National Assembly during parliamentary recess, this condition is unrealistic. While some interpret this as a limitation on the President's legislative power, he has other powers to ensure the legislative process aligns with his interests, such as the right to a second reading of a law that has been voted on²³. Furthermore, this control extends to his authority to issue laws²⁴.

The President's powers do not stop there: he has the right to exercise regulatory authority outside the areas in which parliament legislates²⁵. The most significant of the President's powers, highlighting his dominance over the legislative process, is his ability to dissolve the People's National Assembly or request early legislative elections²⁶.

By contrast, since the Prime Minister is second-in-command in the executive authority, he has the right to participate in the legislative process. However, this authority is more restricted compared to the broader powers held by the President of the Republic.

The Prime Minister has the authority to suggest new laws, but they only become valid once Parliament gives its approval²⁷. However, the government's powers can increase and parliament's decrease in the case of the approval of financial laws, as the President can issue the government's project by decree if parliamentary approval is delayed beyond the constitutionally specified deadlines²⁸. As the government is more knowledgeable about the country's financial and economic situation, parliament members cannot interfere in this area unless the aim is to increase state revenues or provide financial assistance²⁹.

Despite the significant powers granted to the president with regard to legislative authority, parliament lacks any means of influencing the president and exerts its influence over the government's work. This creates an imbalance compared to the government's weak influence over parliament. Parliament has several means to influence the government, some of which lead to the government's political responsibility, resulting in its resignation, while others fall within the framework of the government's periodic oversight.

Government accountability through responsibility can be divided into two categories. The first starts with the formation of the government and the selection of the Prime Minister, who then begins his work by presenting his plan to Parliament for approval. If the People's National Assembly responds negatively, the Prime Minister immediately submits his resignation³⁰.

The second type of responsibility is periodic and linked to parliament's annual oversight of the government's work. The government must present an annual statement of its general policy, concluding with a discussion of its work during the year. This leads to deputies submitting an oversight request. The People's National Assembly agrees to the motion, the Prime Minister is required to resign to the President of the Republic.³¹ Additionally, the Prime Minister can call for a vote of confidence; failure to gain approval may lead to his resignation³².

Parliament's influence over the government should not be limited to arranging political responsibility; it can also take the form of an oversight procedure aimed at ensuring the government's commitment to achieving objectives in the public interest. Parliamentary committees can summon government ministers³³ to appear before them, and deputies can direct oral or written questions to ministers³⁴. Committees of inquiry can be established to investigate issues of public interest³⁵, and government members can be questioned on any matter of national importance³⁶.

Conclusion:

The Algerian political system has, over the course of various stages, attempted to realise the concept of the rule of law. The change has happened gradually, reaching its peak with the 2020 constitutional amendment, which clearly established the principle of separation of powers in the preamble and recognized it in Article 15. The different sections of this constitution aim to achieve this objective. Notably, the constitutional founder sought to strike a balance between the functions of the authorities by establishing a system of mutual oversight and cooperation between them. However, this flexible approach, adopted by many countries, is governed by the principle of balance, meaning that no authority should dominate the others. The most recent constitutional amendment aimed to foster cooperation among the branches of government, yet it also reinforced the President of the Republic's authority by giving him powers greater than those of the other institutions. This is demonstrated by the presence of a separate chapter specifically focused on the President.

Having previously been categorised under the executive authority in earlier constitutions, the president now occupies a preferential position over the government, as set out in a separate chapter of this constitution.

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