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COLLEGE OF BUSINESS AND ECONOMICS
SCHOOL OF PUBLIC MANAGEMENT, GOVERNANCE AND PUBLIC POLICY**

ASSIGNMENT COVER PAGE

MODULE: PUBLIC MANAGEMENT AND GOVERNANCE 1A

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TOPIC:

Explain the concept of the separation of powers and demonstrate how it has been practised in South Africa

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Concept of the separation of powers and how it has been practised in South Africa

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1. Introduction:

The Constitution of the Republic of South Africa, formed in 1996, validates the Trias Politica principle, known as separation of powers, ensuring injustices from the pre-democratic system is no longer present. The principle prevents the concentration of power from a single entity, promoting the rule of law. Given South Africa's history of centralized governance during Apartheid, the endorsement of the separation of powers was crucial in establishing a democratic system that restricts abusive powers. The principle introduces three distinct spheres: legislative, executive, and judiciary, promoting cooperation and unity (Thabo and Odeku 2021, pp. 547–550). The 1996 Constitution labels this principle, ensuring independency of each sphere, maintaining a secure system of checks and balances. Like other democratic nations, such as the United States, South Africa embraces this structure, preventing abusive power. This assignment will first define key terms before providing a comprehensive breakdown of the foundation and importance of the separation of powers. It will also analyse the role of each branch of government, demonstrating how they function to maintain balance within the constitutional framework. Furthermore, it will examine modern applications of the principle, noting the challenges this system faces. Finally, the conclusion will assess whether South Africa effectively upholds the Trias Politica principle and recommend improvements.

2. Definition of Key Terms:

In validating the concept of separation of powers, four fundamental key terms is required allowing accurate determination of its practice in South Africa:

Executive:

The executive is responsible for the implementation and formulation of policies, led by the President, both Head of State and Head of Government. Additionally, the President is supported by his cabinet – Deputy President and Ministers.

Legislative:

The legislature forms the foundation of the Republic, as this division is accountable for the passing of laws. This function is executed by Parliament, consisting of National Assembly (NA) and the National Council of Provinces (NCOP). Furthermore, the division also plays a pivotal role in administrating the Executive, ensuring that accountability is considered on not just a national level, as well as both provincial and local legislatures.

Judiciary:

The judiciary is accountable for the interpretation and upholding the Constitution. Operating independently, from the legislature and executive, it maintains the protection of the basic human rights.

Constitution of the Republic of South Africa:

The Constitution is the supreme law that governs a country of the fundamental principles of structure of government, further outlining the rights and responsibilities of its citizens. The constitution is also the highest level of authority, meaning that all laws passed out should align with its conditions.

3. Theoretical Foundation of Separation of Powers:

The political theory behind the separation of powers is rooted in the works of early constitutional frameworks whereby fundamental practices is ensuring that the core government functions are divided among the three distinct branches. Developed in preventing the concentration of power while maintaining a system of checks and balances within the democratic system of South Africa.

According to Akhtar (2023, pp. 552–553), the most influential early framework on the separation of power created by Baron de Montesquieu, who argued that political power is to be divided into three broad categories in which the author believes that all the branches are to act independently to prevent dictatorship. The legislature – law maker. The executive – Law-enforcement. Judiciary – Law interpretation. A practical example includes the United States constitution, whereby the veto power lies within the constitution. If the president abuses power, the legislature, can remove the active president, provided that his actions goes against the constitution.

Furthermore, the application of a presidential democracy lays the foundation in separation of powers, whereby the executive branch operates independently from the legislative branch. This model proposes the strict separation of powers. However, it is believed that the presidential democratic system has caused friction in some countries such as the case with Zimbabwe where Robert Mugabe ruled despite the presence of democracy (Winter, 2019). Moreover, the United States has thrived with its presidential democracy, whereby the United States has the authority to veto a president which demonstrates a strong check on executive power. Although South Africa, which is not a fully presidential system, adopts the strong elements between branches in preventing unchecked power as seen during Apartheid.

The parliamentary democracy where the executive – prime minister is liable to the legislature. This model does not constitute the complete separation of powers compared to the presidential system, but only oversees that checks coexist through a hybrid system. The most reliable framework of a parliamentary system is that of the United Kingdom, whereby it limits the power of the monarchy and strengthens the authority of parliament. In this framework, the monarch cannot pass laws without parliamentary approval, ministers are liable to parliament, ensuring that the executive does not act independently. Through this process, the judiciary gains greater

independence, limiting government intervention. South Africa demonstrates this model where the president is elected by parliament, still operating within the separation of powers.

Through the foundation of Baron de Montesquieu's theory and the application that South Africa comprises of both a parliamentary and presidential democracy in ensuring the secure system of balance and checks, the theory behind separation of powers coexists in the constitution of South Africa.

4. Importance of Separation of Powers:

In a democratic system, the separation of powers is of utmost importance in ruling out that no branch which falls under the Trias Politica system holds excessive power, preventing dictatorship such as the case with Afghanistan, in which the Islamic movement holds the control of government (Simpson 2021). Separation of powers promotes accountability, which clearly describes the responsibilities of each branch, creating a balanced system of checks and balances.

Firstly, the key aspect of separation of powers is that it restricts the concentration of power that could lead to a dictatorship. The inclusion of dividing powers into separate divisions, implies that no single entity can dominate the other. The Apartheid era highlights the instability of power, in which the pre-democratic government abused its role in oppressing most of the population. With the formulation of the Constitution in 1996, the distribution of power, prevents the recurrence of the previous unjust system. Secondly, the inclusion of the system of balance and checks, ensures that each branch has the authority to observe the other branches, an example is that the judiciary has the authority to declare laws unconstitutional on the condition that it violates the constitution. Additionally, the NA has the authority to accuse the head of state if it is deemed necessary. Thus, this system keeps all branches under control.

Furthermore, it enables the validation of the rule of law, securing that government officials are in line within legal boundaries. Moreover, the principle of law certifies fairness and justice, safeguarding government actions. The protection of the basic human rights is enshrined by the separation of powers, in which the judiciary protects this through equality and freedom of expression. In some where branches violate these rights, the other branches have the control for intervention. The principle of separation also promotes government transparency and accountability, where the executive is liable when reasoning policies before the NA, allowing the citizens to cast their votes, voicing their concerns before policies are introduced, fostering government trust and individual participation in the democratic system. Finally, the system strengthens the democratic system in enhancing specialisation of each sphere, ensuring each branch only focuses on its core roles. This specialisation reduces conflicts.

5. Three branches of the Republic of South Africa:

South Africa adheres to the Trias Politica principle ensuring authority is divided into three branches: Legislative, Executive and Judiciary. However, each branch has specific responsibilities in helping in maintaining the democracy.

Legislative Branch:

Legislative branch is liable for the creation and withdrawing of laws. Consisting of Parliament, comprising of two houses; the NA – made up of elected representatives who pass laws, ensuring that the needs of the people of the country is met. Additionally, the NCOP, represents the nine provinces, making sure that provincial interests are considered. Moreover, the branch observes the executive authority, verifying that the President and his Cabinet, acts within the constitution. The revoking of former South African President Jacob Zuma in 2018, is an example in which the NA held him accountable for violating the constitution, whereby he was forced to resign as President (BBC News, 2018).

Executive Branch:

Executive Branch is responsible for the implementation and running of laws in the country. Led by the President, both head of State and Government, supported by his deputy president and Cabinet, responsible for different departments. However, the executive has limited power. For Instance, the Covid – 19 crises, managed by the President and his cabinet, implemented social relief grants.

Judiciary Branch:

Judiciary Branch is responsible for interpreting laws, ensuring justice. Operating independently from the legislative and executive branches, it protects political interference in permissible proceedings. The judiciary is created through the Constitutional court, Supreme Court of Appeal, High court, and the magistrate's court. Each court is independent and deals with matters relating to specific laws regarding the courts. The most noteworthy example of the judiciary is the constitutional court veto of former President Jacob Zuma in 2016, in which he violated the Constitution in personal upgrades at his personal residency (BBC News, 2014).

All three branches are essential in maintaining the democracy constituted in 1996. In maintaining this, the powers remain separate, the country prevents dictatorship. Overall, a relationship is present between all three branches shown in the figure below.

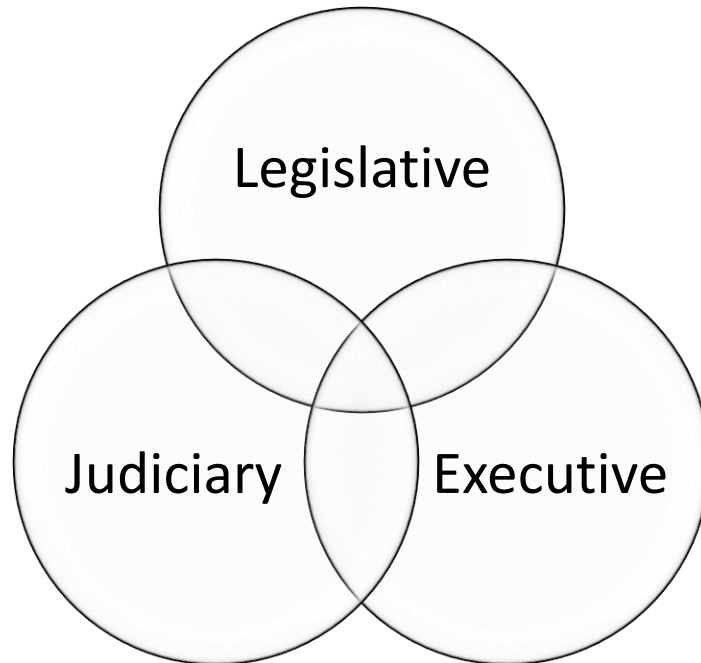


Figure 1 Relationship between three spheres

6. System of checks and balances among the three branches of the state in

South Africa:

The checks and balances system in South Africa is crucial for ensuring that no single entity becomes too powerful. This principle is laid out by the Constitution and intends to promote transparency, enhancing the rule of law. The methodology is based on the Trias Politica system where each branch can check the others.

The legislative branch, led by Parliament oversees both the executive, particularly with veto rights whereby the National Assembly can remove the president through a vote and the judiciary. Moreover, the National Assembly of Nigeria exercises a notable power in reviewing the executive's budget, holding regular hearings on government spending, ensuring accountability. Furthermore, the executive branch, has notable powers in observing the legislature and judiciary branches, having the ability to veto a legislation if deemed necessary. However, if parliament insists on passing a law, the president has the authority in delaying implementation, but parliament can override this veto. When observing Kenya, the president has the similar benefit power of veto, such as when the parliament passes laws, the president may refuse to sign them for further investigation. However, if parliament passes another bill, it can veto the bill, creating such a balance between the two branches. Finally, the judiciary carries the role of checking the actions of both the legislative and executive branches. Similarly with the case of Kenya in 2017 where the supreme court abolished the election results due to irregularities of the constitution deeming the election as controversial as many individuals boycotted the election due to violence in the voting process (BBC News, 2017). Thus, highlighting that the judiciary can function as a check on executive actions, stabilising each branch.

7. Challenges associated with the doctrine of separation of powers in South Africa:

Despite the fundamental principle of separation of powers in South Africa, where each branch has their independence, several challenges impact the effectiveness of the Trias Politica System. These challenges emerge through political interference, entity overreach and disproportionate power.

Political interference is occurring of one branch whereby government has the influence on another branch, hence, weakening the independence of branches. This is particularly problematic between the executive and legislative branch, in which sovereignty dominates parliamentary decision, such as the president which is elected by parliament is at risk of controlling the legislature. A notable example is the case of the Marikana Massacre, which occurred in 2012, when then Deputy President Cyril Ramaphosa, whose role in the executive branch, having interests in the mining sector, influenced the police response killing mine workers (Davies, 2017). This case is worthy due to it raising concerns on the independence of the rule of law, where executive interference compromised the separation of powers.

Moreover, entity overreach also plays a significant role in exceeding constitutional power, impeding the functions of the Trias Politica system. This often leads to conflicts whereby; more than one branch may be accused of overstepping their functions. The strong example of the termination of the Tshwane Municipal council in 2020, when the NCOP, terminated their power due to political instability (NCOP approves dissolution of City of Tshwane Metropolitan Municipality - Parliament of South Africa, 2020). The decision ruled out by high court was noted as unlawful (Njilo 2021). The decision of the constitutional court labelled this action that the executive had indeed overstepped his authority. However, this case raises concerns about the judicial role in political matters, noting that branches had intervened, confusing the lines between decision making of branches of government.

Finally, the disproportionate separation of powers whereby one branch has significant power of more than one branch, leading to conflicts of unequal distribution of powers within South Africa. The crisis of Eskom is a notable example, whereby the executive branch control has led to the corruption over State- owned enterprises (SOEs). This

has shown corruption, known as nepotism, where individuals loyal to the ruling party the African National Congress (ANC) were placed in leadership roles, lacking management skill. The failure in which parliament ineffectively held the executive accountable, led to poor governance, resulting in the ongoing load-shedding crisis. This case demonstrates the imbalance of power, where legislative overreach remains weak.

Through these challenges of political interference, entity overreach and instable separation of powers in South Africa, raises concerns whether the Trias Politica system is indeed effectively considered in the Democracy of South Africa.

8. Conclusion:

The principle of the separation of powers plays considerable role in South Africa's democratic framework, governed by the division of the legislative, executive and judiciary, preventing abuse, enforcing accountability. Through the exploration of various aspects of this principle including the theoretical foundation, significance, practical applications in South Africa, system of balance and checks and the challenges that South Africa imposes on the Trias Politica ideology. Thus, South Africa, has indeed ensured that the principles of separation of powers within the democratic framework, despite the challenges the country faces.

In further strengthening of this system, it is essential that the government supports the independence of each branch of government, through the enhancement of legislative supervision and ensuring that judicial appointments remain on excellence, free from political influence. Additionally, the executive dominance of the state should be reduced, greater accountability measures should be introduced, restraining further abuse of power. Through this, South Africa safeguards its democratic processes, ensuring that the Trias Politica ideology functions as intended.

(2500 Words)

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