Separability Permissiveness for Separation of Powers

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29 March 2023

Separability & Permissiveness for Separation of Powers:

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Abstract: This paper gives a theoretical proof for a question of constitutional law namely the principle of the separation of powers (SP). By defining a democratic process to be permissive (P) and separable (S) it proves that SP is a democratic, S & P, outcome.

Keywords: constitutional law; separation of powers; separability; permissiveness; α-stability; the Supreme Court of Pakistan

Introduction:

Recently the Supreme Court of Pakistan (SCP) plunged the country into a constitutional crisis, amidst the ongoing political and economic strife in the country, by letting the Chief Justice of Pakistan enjoy an unchallenged power to constitute benches and decide the cases of national import. This prompted divisions among the Justices of the SCP signaling the lack of democratic constraints in the internal rules of procedure. Eventually this stalemate spilled over into a crisis of separation of powers between the Parliament and the Judiciary in a matter of days. The latter got swiftly legislated against its internal rules by the former when it perceived its "turf being trespassed", as remarked by a minister, by an allegedly unrelenting and power hungry Chief Justice of the CJP. This paper sees the *democratization* or lack thereof *within* the branches of government as the determinant of preserving this separation of powers as enshrined in the Constitution of the Islamic Republic of Pakistan and upheld the world over.

Separability enables the separation of powers (SP) but permissiveness makes the separability itself possible. A diffused and democratized political process makes it permissive in a networks' sense yet the SP demands that the process as a whole remains stable such that when a coalition attempts to block the process still it does not make the process biased towards, or as a result of, the blocking coalition. That is, if the process becomes tilted, which means decreased permissiveness and separability, as a result of the effectively blocking coalition then each, one of, or all, of the separate SP components of the process get enabled to override the SP.

Results:

A process is separable if it is additive and additively separable.

Separability (S): Given a process X has its elements $x \in X$ and $Y, Z \subset X$, the set Δ, as $x \in \Delta \subset X$, is separable if the pairs, $\{(xi, xj) \in X\} \Leftrightarrow \{(yi, yj), (yi, xi), (yj, xj), (yi, xj), (zi, yj), zi, xi), (zj, xj),...., y \in Y, z \in Z\}$; such that, $\Delta i = ¶xi + xj(1-¶) = \Delta j = ¶zj + yi(1-¶)$, $1 \geq ¶ \geq 0$, $\forall$ x, y, z; where i, j = 0, 1, 2 ....n.

Permissiveness (P): X is permissive if there is no such $\Delta i'$ with $yi \in \Delta i' : zj \in \Delta j' \Leftrightarrow yi \in \Delta i'$. That is, any particular y or z $\in$ Y or Z respectively do not depend upon each other.

S & P $\Leftrightarrow$ SP: The process X is SP if $Y, Z \subset X$ have α-stable number of yi and zi respectively.

Theorem: SP $\Leftrightarrow$ S $\Leftrightarrow$ P.

Proof: If P does not hold then there is a set $\Delta i' : yi \in \Delta i' : zj \in \Delta j' \Leftrightarrow yi \in \Delta i' : \{yi \notin \Delta i' \Leftrightarrow zj \notin \Delta i'\} \not\Rightarrow$ S because it implies that $\{\Delta i \neq \Delta j\} \not\Rightarrow$ SP. If S does not hold it implies that there is no α-stable number of yi, zi $\in$ Y, $Z \subset X$ respectively. If a particular collection $z' \in Z$ can *matter* for α-stability of Z violating P then it also violates S implying $\Delta i \neq \Delta j$ which means that SP does not hold either : $(X - z') \Leftrightarrow Y|Z \neq \alpha$-stable Y implying a collection $y' \in Y$ having a Lebesgue measure > 0. □