



# Case Study

*Theoretical bases of  
democracy*



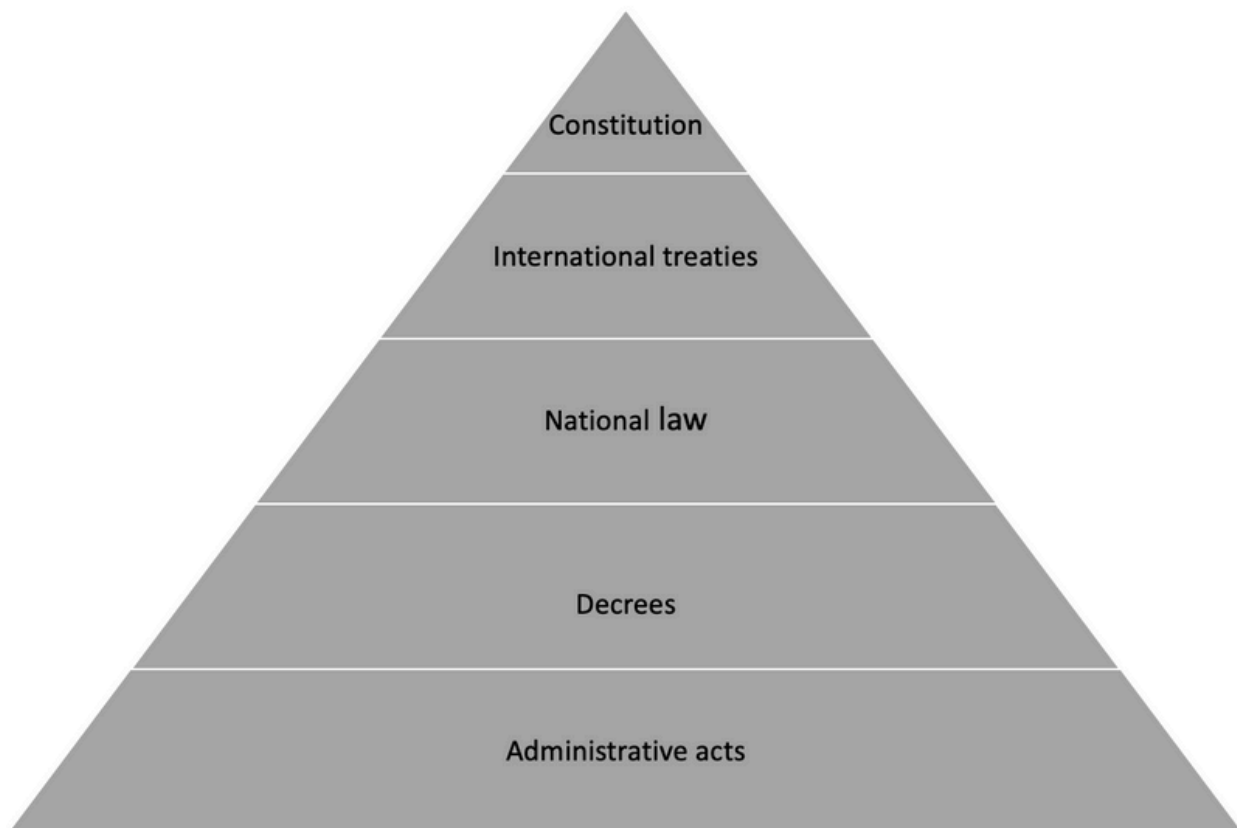
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*Democracy no longer seems self-evident, so this article recalls its major theoretical principles as objections to the promoters of authoritarianism.*

## I- A political regime based on the respect of its own rules

Hans Kelsen (1881-1973) is the theorist of the hierarchy of norms. This concept aims at picturing legal standards within a pyramid: **inferior norms must meet superior norms**. The supreme legal rule should be the Constitution to which every inferior norm – from classic law to administrative acts – must obey. Therefore, democracy is a political regime ensuring that **the author of the norm** (the government, the parliament of the courts) **is also the recipient of the same norm**. That is basically the principle of autonomy (from Greek *auto* – oneself and *nomos* – norms) which means respecting the rules we address ourselves.



The functioning of such a political regime **ensures freedom as it prevents arbitrary behavior**, which means imposing one's will or whim notwithstanding the respect of the established rules.

## II- A political regime blessing the division of powers

Therefore, the notion of control is fundamental towards norms. We can also find it more globally in the concept of division of powers. The main theorist of the division of powers is Montesquieu (1689-1755) who claims that **“by the arrangement of things, power shall stop power”** (*The Spirit of the Laws*). This thinking takes place in a world where monarchy is the main political regime in which the king used to concentrate all powers in his hands.

Thus, the three powers (legislative, executive and judiciary) meet two rationales: specialization and independence. **Specialization** implies that **we assign a function to an institution**. As a result, modern democracies set up the classic division of powers in its institutions:

- Legislative power (parliament): votes laws;
- Executive power (government): executes and makes sure that the enacted laws are well respected;
- Judiciary power (courts): sanctions the violation of the enacted laws.

**Independence** enables that **all institutions exert their own functions without being influenced by the others**. For instance, no authority should influence the composition of another authority.

For Montesquieu this separation should lead to a **mechanism enabling a balance between powers**: power stops power, and individual liberties are preserved. The idea is to constrain institutions; we do not expect that they behave correctly by themselves.

**A strict separation of powers might not be desirable**, not even achievable. Nowadays, this is **not even enacted properly** in modern democracies.

Indeed, most of them adopt institutional dispositions **blurring the borders between powers** (ex: in the United Kingdom, the parliament chooses the government).

### III- An unrealistic political regime?

A lot of constraints weigh on democracy and we can wonder whether democracy can be achieved or not. That is what Jean-Jacques Rousseau (1712-1778) seems to think regarding the British parliamentary democracy (in which power is exercised by delegates elected by the people).

He concluded that **direct democracy** (in which there are no delegates) **is the only best solution** to express “general willingness”.

However, it seems that this type of government is **unreachable to men**: “If there was to be a nation of Gods, they would rule themselves democratically.

Such a perfect government does not suit men” (Social Contract). In a more realistic perspective, **direct democracy might suit for the Greek city states**. Nowadays it is **less obvious in countries with millions of people**.

## IV- A political regime serving the people

We have seen how fragile democracy can be regarding its subtle mechanisms. We can also see it as an utopia and we cannot agree on a simple definition. Abraham Lincoln (1809-1865) sums up the gist of democracy as it should be pictured. Therefore, democracy is **“the government of people, for the people, by the people”**.

Hence, democracy should be a political regime in which the people is the object (of public policies, laws), the **subject** (electing delegates) and the **purpose** (the democratic state acts for the well-being of its population) all at once. We can clearly see the very first origins of “democracy”: *demos* – the people and *kratos* – the power.

This way of thinking should be qualified. Indeed, in modern democracies, **the “people” is the “majority”** (government or delegates elected after elections are elected by a majority of the people, and all the citizens might not agree with the individuals at the head of the state). This conception might be perceived as **imperfect but desirable**: too many totalitarian or authoritarian regimes have been justifying their undemocratic acts through this rhetoric.

What really makes democracy is the **opportunity given** (right to vote) or the **imposed constraint** (equality before the law) **to everybody – no matter the individual characteristics of the citizens**.