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Reimagining the Separation of Powers in a Multilevel Pluralist Setting

Inês Neves (*)

Faculty of Law, University of Porto | CIJ - Centre for Interdisciplinary Research on Justice

Email: ineves@direito.up.pt

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The principle of separation of powers remains a foundational pillar of constitutionalism, alongside the rule of law, democracy, and the protection of fundamental and human rights. Yet, like these other structural commitments, it requires renewed theorization in light of governance dynamics extending beyond the State. Contemporary public authority and related forms of normative power are increasingly exercised through complex interactions among national institutions and supranational, international, and private actors.

While the separation and interdependence of powers already pose operational challenges within the State, where constitutional unity provides integrative systemic logic, such challenges intensify in a pluralist, multilevel setting. Beyond the State, constitutional primacy gives way to normative heterarchy, complicating both the identification of clear checks and balances and their effectiveness.

Rather than replicating the classical model of separation of powers, this study identifies ‘functional equivalents’ capable of preserving mutual control, preventing institutional encroachment, and safeguarding accountability. Principles such as conferral, non-interference in domestic affairs, the highest level of protection, national constitutional identity, and the margin of appreciation offer resources for this reinterpretation.

Their operationalisation, however, raises a central question: how is final interpretive authority over the separation and interdependence of powers allocated, exercised, and constrained within a multilevel constitutional order? By examining emerging dynamics of reciprocal influence and constraint among national, supranational, and international institutions, this contribution advances a principled framework for securing the separation of powers within multilevel constitutional pluralism, internalising structural differences

(*) PhD in Law. Invited Assistant Professor at the Faculty of Law, University of Porto. Integrated Researcher at CIJ - Centre for Interdisciplinary Research on Justice, Faculty of Law, University of Porto.

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between levels of constitutionalisation, particularly between the European Union and the broader international legal order.