

# STRONG INSTITUTIONS FOR GOOD GOVERNANCE

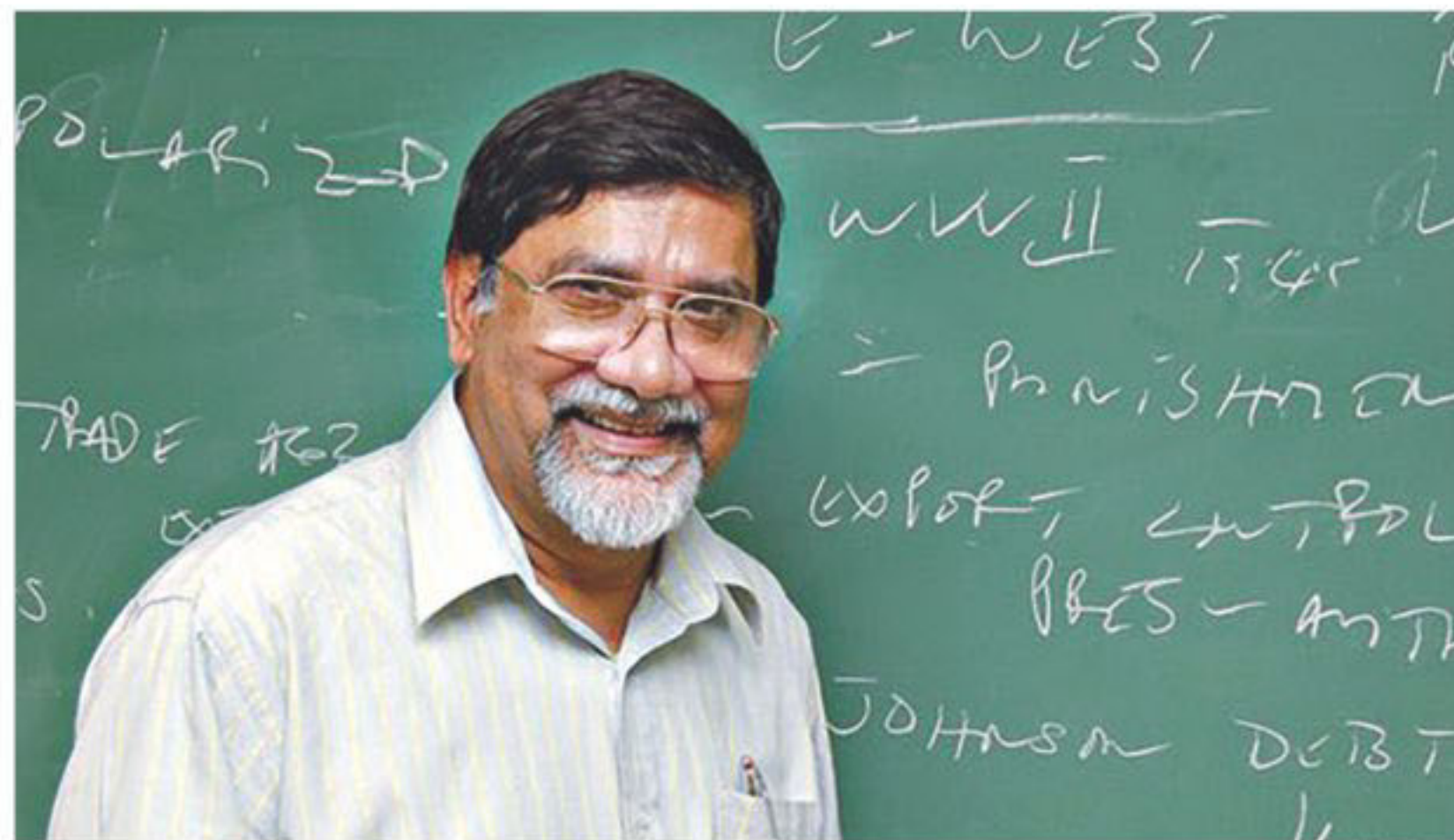
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## Human rights and civil liberties must take precedence above all else

*Professor Ahrar Ahmad, former freedom fighter and member of the Crack Platoon, has taught political science at the University of Dhaka, and in US universities, retiring as Professor Emeritus, Black Hills State University, South Dakota. He is currently the Director General of Gyantapas Abdur Razzaq Foundation in Dhaka. In an interview with The Daily Star, Professor Ahmad speaks to Eresh Omar Jamal about the model of separation of powers for the governance of a state and why it is so important.*

Can you describe how the idea of separation of powers evolved in the history of political thought? Aristotle had never invoked this phrase, but his argument about the efficacy of a Mixed Regime captures some of the concerns and issues that the notion seeks to address. He had suggested that the government of "the one" (i.e., monarch) may degenerate into a tyranny, of "the few" (i.e., aristocrats) to a self-serving and corrupt oligarchy, and of "the many" (i.e., commoners) into mob-rule. Hence, he had proposed a government that combined elements of all social classes so that they could balance each other and the three regime types could avoid becoming their worst.

Cicero and Polybius had echoed similar sentiments, as did Enlightenment theorists like Hugo Grotius and John Locke. However, since governments were becoming more complex and organisationally varied, the focus of later thinkers shifted from maintaining social-class equilibrium in the exercise of political power to thinking about securing a balance in the various institutions of government that were emerging. The common fear



Professor Ahrar Ahmad

which they all shared was that the concentration of power in any form would be a threat to the efficiency and obligations of the government and the rights and well-being of the governed.

The political thinker who brought clarity and specificity to the notion of separation of powers was the French nobleman Charles-Louis Montesquieu. His book, *The Spirit of the Laws* (1748), emphasised the need for ensuring that the broad functions of

government—legislative, executive and judicial—remain in specialised, distinct and autonomous institutions, and that they must have robust provisions through which they could check and balance each other to provide discipline, accountability and transparency. While some conflict and tensions about boundaries and jurisdictions may result, it would be far better than the alternative, which would endanger people's rights,

jeopardise constitutional rule, and facilitate tyranny.

But it was the American Revolution, and the constitution of 1787, which saw these ideas being embraced, and its mechanics and logistics fleshed out, in full and concrete terms. James Madison, John Adams and Thomas Jefferson in particular had argued that, as a precondition for promoting the principle of "popular sovereignty", protecting the "inalienable rights" of the people, and instituting constitutional supremacy through founding a "government of laws rather than men", the powers held by the three branches of government must be defined, circumscribed, and subject to the scrutiny and oversight of one another.

**Why do modern day nation states focus so heavily on the separation of powers between the different branches of their governments?**

One brief clarification is in order. Montesquieu had referred to a *trias politica*, a tripartite arrangement, regarding the three branches of government. Even though the idea of checks and balances may be pursued in other ways as well, his formulation has

remained the most logical, obvious and popular.

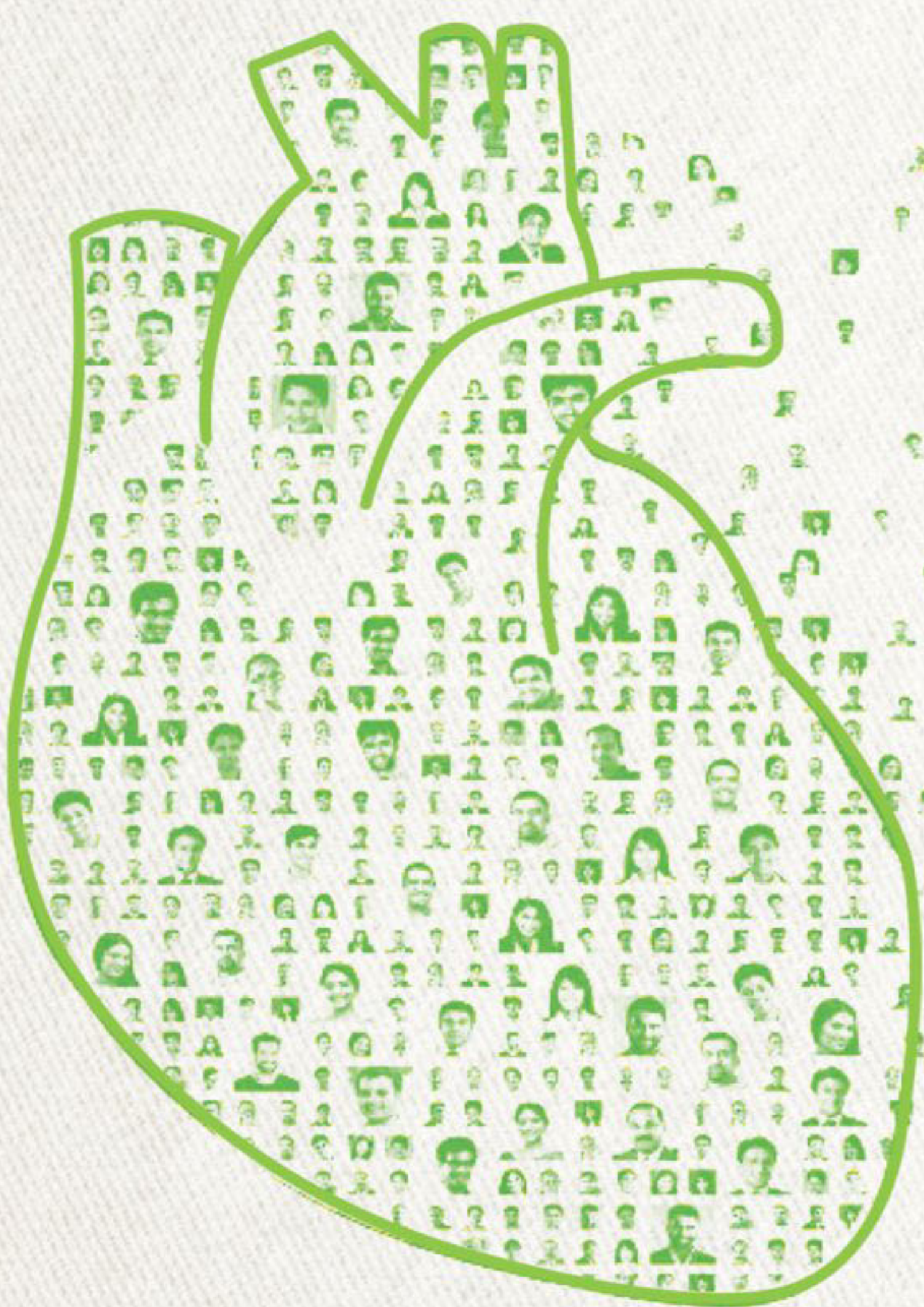
It should also be pointed out that the formation of modern nation states (let us say, between the Treaty of Westphalia in 1648 and the Congress of Vienna in 1815), was almost coterminous with the forward, though staggered, march of democracy in Europe. Discussions about the separation of powers became integral to that historical process of limiting monarchical prerogatives, expanding parliamentary authority, and guaranteeing people's rights through independent judiciaries.

Decolonisation after WWII ushered in many new states aspiring to be democracies. Many of them lacked the traditions, experiences and structures that had facilitated the European evolution. Hence, procedures and instruments relating to the separation of powers, for which there were successful examples, and which could be formalised through constitutional provisions, became all the more relevant in providing the framework for the establishment of democracies in these countries.

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