

# [Can the british separation of powers adapt to societal change?](https://assignbuster.com/can-the-british-separation-of-powers-adapt-to-societal-change/)

#### To what degree is the British Separation of Powers adaptable to societal changes?

## Introduction

Theseparation of powersintroduces an important concept to the functioning of a civil society in modern day with the legislative, executive and judicial branch all playing a vital role to protect and prevent one branch from obtaining too much power. The separation of powers also provides a series of checks and balances where each branch has the power to limit or check the other two, which creates a balance in the three separate powers. In this essay, I will attempt to answer my research question by studying the degree to which “ British separation of powers is adaptable to societal changes?” To examine whether the British system of separation of powers is adaptable I have carried out in-depth research on the historical foundations and origins of the separation of powers as well as the Acts of Parliament. Across political science, with a notable mention to the political theory of realism and egoism. The separations of powers has long been a very prominent political theory that is essential in keeping a balance of power in states. Throughout this essay I will explore the concept of legitimacy and if one system is more legitimate because of its ability to be more adaptable to societal changes. With the United Kingdom holding an unwritten constitution it makes the case for more flexibility in contrast to many strong constitutions which can be argued to lack this flexibility which will all be examined throughout this investigation.

This topic holds much importance as the ability to change and adapt tosocietal changes in order to preserve the spirit of democracy. This concept ofdemocracy and the spirit of democracy is essential to preserve the interestsand needs of the minority while following the will of the majority.[1]The fundamental theory of democracy isevident in day to day life and functioning of any democratic state includingthe United Kingdom. This makes the ability to adapt to societal changes throughdemocratic means very important as much like human society democracy isconstantly changing with the advancement of each state and transformations ofpublic opinions.  This area of globalpolitics is also very interesting to investigate and whether the Britishseparation of powers is adaptable to societal changes today because of itsunique differences, structures and constitutions it holds and how it hasevolved over time due to these societal demands.

## Constitution

To first understand the degree to which the British separation of powersis more adaptable to societal changes, there must be an understanding of theUnited Kingdom’s unwritten constitution which is fundamental to itsflexibility. This unwritten constitution is based on Acts of Parliament, courtjudgements and conventions.[2]Inother words, the British constitution is often referred to as ‘ uncodified’ downto the fact that many of the laws are of constitutional nature. The British constitutionis frequently described in an abstract sense as it encompasses a collection ofdiverse laws, practices and conventions which have advanced and developed overhundreds of years.[3]Thepinnacle of the British unwritten constitution is the Bill of Rights in 1689, which fundamentally established the supremacy of Parliament over the Crownfollowing the replacement of King James II (r. 1685-88) by William III(r. 1689-1702) and Mary (r. 1689-94) in the Glorious Revolution of 1688.[4]Britain’s uncodified constitution has many features which include those in thelaw Parliament is sovereign in the sense of being the supreme legislative body.[5]Conventions hold a significance to the unwritten constitution which primarilyruns the relationship between the ancient institution of states.[6]Today unwritten rules ofconstitutional practices are fundamental to British politics in the presentday, especially with the workings of government.[7]However, none of this is officially presented in any kind of written format. The Prime Minister, executive branch and head of the government are simply onlyconventional.[8]The Magna Carta 1215 essentially meaning ‘ Great Charter’ has an ironic presencein that although there is no British constitution it represents the foundingblocks of democracy and rights at the time for nobles.

With democracy playing a fundamental role in the creation of the United Kingdom’s unwritten constitution it can be assessed that the separation of powers is based upon a stable foundation of democracy which in the United Kingdom’s case is based on the Magna Carta. From this it poses a strength for British democracy as the ability to be interchangeable as a result of an unwritten constitution. From this, it holds a strengthened case for the United Kingdom to be adaptable to societal changes more easily than other states with the ability to be able to stay more grounded and true to the nature of democracy.

## The Separation of Powers

This concept of a separation of powers holds a vast history that can befound as far back to the philosopher Aristotle.[9]However, the separation of powers is most commonly associated with the Frenchpolitical philosopher, Baron de Montesquieu who drew up the three main separateinstitutions of a state; legislative, executive and judicial branches. Thisideal structure of a constitution evolved from Montesquieu’s curiosity of theEnglish constitution.[10]The United States holds a strong constitution while the United Kingdom does notpossess a codified constitution, but an unwritten one formed from Acts ofParliament, court judgements and conventions.[11]Both states here hold a varied approach tothe separations of powers. But does that make one more adaptableto societal changes? The United Kingdom’s separation of powers isdivided up with Parliament known as the House of Commons and House of Lordsrepresenting the legislative branch, His/ Her Majesty’s government led by thePrime Minister and their Cabinet represent the executive branch and thejudicial branch with the Supreme Court.[12]Throughthis essay the idea of the spirit of democracy can come into relevance asstated by professor Jeffrey Stout that “ modern governmental structures aredemocratic only to the extent that they are actually responsive to apublic discussion and an electoral process in which members of the society inquestion actually participate .”[13]TheUnited Kingdom’s House of Commons is directly representative of the Britishpeople and therefore each Member of Parliament is accountable to the public.

The United Kingdom’sseparation of powers has evolved over time and set a doctrine for the world tofollow. Similarities follow, like the United States’ separation of powerstructure and the United Kingdom where both apply the same organisation to thelegislative branch, executive branch and judicial branch. However, theexecutive branch of the United Kingdom is viewed as equally as its counterpartbranches with each branch working simultaneously to keep each other in check. The American constitution was thefirst to mention of any sort of system of separation of powers and was devisedfor one purpose, to prevent a ruling majority doing exactly as they please. TheAmerican constitution was designed deliberately to be inefficient, however, theconstitution was created in order to represent and defend the principles of theAmerican people, which leaves room for an inefficient nature. This is contraryto the United Kingdom’s separation of powers which lacks the rigid structuresin place allowing these evolving policies to keep up with modern day societalchanges.

## Checks and Balances within the United Kingdom’s Separation of Powers

The executive branch in the United Kingdom is made up of the Queen’sservants which are government Ministers including the Prime Minister.[14]Wecan see that in the United Kingdom the executive and legislative appear to havea “ close union (a) nearly complete fusion of the executive and legislativepowers”[15]whichin Walter Bagehot regarded as the “ efficient secret of the English Constitution”.[16]The checks and balances therefore held by the executive branch in the UnitedKingdom appear to be much more intertwined than in the other states. Thisprovides a closer relationship between both branches which could lead to bettercooperation and the mobility to effectively move with the British societalchanges.

The majority of the legislative proposals are made by the executive branchas this is down to the original structure of the British political parties andthe overall workings of the British electoral system.[17]Thegovernment must be supported by an elected majority in the House of Commons inorder to be able to pass the legislation they wish during their term ingovernment. With the legislative and executive branches, both being closelyintertwined in the United Kingdom, it presents the fact that the executivebranch is essentially at the heart of the Parliament and plays a much moreprominent role in the legislative.[18]Withthe laws proposed by the British Government and then ratified by Parliament inboth Houses it allows the government to check over Parliament. These are key tothe functioning of the state in order for new laws to be passed through andkeep the country moving effectively and efficiently. The close-knitrelationship between both branches provides a balance and thus leeway for thecase being argued “ to what degree is the British system adaptable to modern andthe evolving changes of the state?”

The executive branch prior to The Constitutional Reform Act 2005 allowedthe Lord Chancellor to be a part of the Judicial system and to be speaker ofthe House of Lords.[19]ThisAct reformed this tradition and showed the government to be continuallychanging the constitution practices and separation of powers.[20]This reform essentially formed judicial independence from the government withno political biases. These changes fundamentally created more checks andbalances for the branches throughout time. This can be seen as a positive forthe United Kingdom unlike France and the majority of other states across theworld as it gives more freedom to change and evolve over time. However, theargument could be made that the United Kingdom’s system of separation of powersis more susceptible to these societal changes.

## British System of Separation of Powers and Societal Changes

Aftertaking into account the historical perspective of the British unwrittenconstitution it is necessary now to evaluate to what degree is the Britishseparation of powers adaptable to societal changes. As previously stated throughout theinvestigation the United Kingdom’s uncodified constitution plays a veryimportant role especially as the world is changingfaster than ever today with instant and infinite feeds of information availableat our fingertips. This can be seen as a result of the effects of globalisationand with the need to adapt more quickly than ever today especially with theworld becoming arguable smaller. This poses the question that a constitutionwith much more flexibility would be suitable, legitimate and represent thegeneral public more rather than something written hundreds of years ago whichcan appear to be out of date and touch with modern society. As part of thisinvestigation the many ways in which the United Kingdom’s constitution appearsto be more fitted and increasingly reflect a changing world today will bedeveloped and evaluated.

With thisuncodified constitution, it is able to evolve with time and enables it to beamended to keep up with societal changes. Dissimilar from a codifiedconstitution, which can be known for being a less adaptable system as it iswritten and often therefore not fitted with any special procedure for somewhatamendment to be made which could be needed with present day changes.[21]The unwrittenconstitution is changed to any statute law, contrasting the United States as anexample where there needs to be a two-thirds majority in Congress and threequarters’ of the states needs to favour the choice.[22]With the United Kingdom’scase, the unelected judiciary as the House of Lords has no significant politicalconstitutional role and that the House of Commons which is elected can onlydecide on the constitutionality of laws and actions.[23]Through this key part of this investigation, I may argue that this gives the British government the powers needed to takeaction when needed in important circumstances and can be much more dynamic andable to compile with modern laws and regulations better. The example can betaken of the Scottish Referendum on the 18 th of September 2014 wherethe United Kingdom’s governments had to amend the section 30 of the ScotlandAct of 1998 which temporarily lifted any restrictions the Scottish Parliamentto hold the referendum legally.[24]With this case, itprovides an insight to the fact that as a result of Britain having an absenceof a strict constitution it was able to adapt to the societal change ofScotland desire for self-determination and for statehood and leave the UnitedKingdom. Although Scotland did not actually in the end vote for a majority toleave the United Kingdom the temporarily lifted restrictions from Scotland Actof 1998 was returned to its original form. Through this prime example anabsence of a written constitution was able to benefit the Scottish peoplegiving them a legitimate referendum, an essential part of democracy. This onthe other hand has been seen to be a problem for the region of Spain known asCatalonia as previous referendums held there have been categorised as illegalbecause of its nature to go against the Spanish Constitution. Making the case clearand more prominent that the United Kingdom’s separation of powers are adaptableto societal and political changes.

To evaluate the wholeperspective whether the British separation of powers is adaptable tosocietal changes, it is interesting to observe factors that counteract thisargument. Although the nature of the United Kingdom’s unwritten constitution isfairly flexible it does come with some disadvantages. These include those of no formalprotection of rights, constitutional crises and constitutional rights of agovernment or Prime Minister’s powers being abused.[25]With the separation ofpowers, it also does not provide a firm position of roles for the three branchesallowing room for abuse of power and overall a far more complex understanding isneeded. The United Kingdom’s uncodified constitution does hold its limitationsin that due to the characteristics of this constitution there is a reliance onoutside influence as for example the European Court of Human Rights. This agreementbecomes evident to this investigation through the Human Rights Act of 1998, although an Act of Parliament of the United Kingdom was designed to incorporateEuropean Conventions on Human Rights into UK law.[26]From this example, it canbe argued that this can not only highlight the downside of Britain’sconstitution but the impact on British sovereignty and the lack of ability forthere to be no adaptability to modern societal changes of human rights. Anadditional issue would be the abuse and attack of the sovereignty of theelectorate from the governments or Prime Minister’s ability to alter anunwritten constitution by just passing an Act of Parliament with their majorityin the House of Parliament. This can be seen with controversial decisions madeby the former Prime Minister Tony Blair, bypassing of multiple laws butfrequently amounts of statutory instrument which is essentially subordinatelegislation.[27]Although many of these laws can be argued to be a response to the demands of achanging society it sheds a light on the sheer amount of legislation that wasbeing put through Parliament and that would in theory have allowed less debatetime for Members of Parliament so therefore less scrutiny on these newimplemented legislations.[28]Parliament checking overand passing legislation is essential for keeping the checks and balances in theseparation of powers. This factor highlights that the executive branch’s powerhere can be interpreted to have been abused or taken advantage of which is arealist approach even though the intention was to keep up with the demands ofsocietal changes.  A realist opinion canbe argued to look at the situation as it can appear not to exhibit much of aduty to others and the view of egoism which can be argued to be seen by TonyBlair as political behaviour driven by self-interests. A more current issue canbe put forth with the current need to pass legislation as a result of theUnited Kingdom decision to vote to leave the European Union on the 23 rd June 2016. With this case in hand the United Kingdom needs an efficient andeffective way of transferring European Union laws into British laws. However, with the vast amount of laws which have come from the European Union some isbeing argued to not be relevant for use in Britain and will need to be amendedor removed. For a quicker way to integrate these changed laws the UnitedKingdom’s government has proposed to use what are known as Henry VIII powers.[29]The Henry VIII powersessentially are “ the use of secondary legislation to amend the text of primarylegislation (and) are used all the time in sensible, non-despotic ways.”[30]As a result “ Gettingparliament to go through the whole process of approving an updated bill wouldtake up an unnecessary amount of time, on matters of principle that parliamenthas already approved.”[31]Throughoutthe investigation it can been seen in this case as well as with the executive branchthat there is room for some bypassing of the legislative branch in order topass laws. Like with the case of Tony Blair these Henry VIII powers enable thegovernment to quickly pass through legislation in order to keep up with thedemands and societal change of the British people who wish to leave theEuropean Union. As thus without this unwritten constitution it could be arguedthat there would greater complications in order to keep up with the public’sdesire and would be a much lengthier process which essentially would causegreater uncertainty. Moreover, although this can be viewed as an abuse ofpowers from the executive branch. The realist view is where it can also be seento be essential for keeping up with the attitude changes within Britain andtherefore societal changes.

States such as France, Germany and the USApossess written constitutions that have a much more prominent structure to themcompared to the United Kingdom’s unwritten constitution. These written constitutionshave been argued to be strong and inflexible when it comes to the modern-dayadvancement and changes. This is as a result of the length of time it takes forthese laws to be amended and changed. An example of this can be seen in the United States ofAmerica with the well-known and divisive Second Amendment, “ the right to beararms”.[32]This has often been argued to be not completely relevant in today’s society as weno longer need to protect ourselves physically in that way anymore. Itrepresents an out of date precedent. Although there are many still in theUnited States who believe in this amendment strongly there is a large movementwho perceive it as being out of date and not keeping up with modern andsocietal changes towards gun control. There have been numerous attempts fromPresidents to alter this amendment although they have not progressed anywhereas it very difficult to change due to the nature of the strict constitution andpublic opinion. The case made here in the investigation shows that the UnitedKingdom’s unwritten constitution is able to provide the flexibility to adapteasily to societal changes which other states such as the United States. Without evolution, it can be argued that written constitutions will neverchange at adequate speed or to the required extent because of their embedded nature. The ability to also adapt to these societal changes will be put at risk as wellif it continued to be viewed as untouchable.

## Conclusion

Overall, to conclude “ to what degree is the British separation of powers adaptableto societal changes?” From the investigation carried out, it has become evidentthat the British system of separations of powers is adaptable to these societalchanges as a result of the nature of the British unwritten constitution. Converselyin countries where there is a written constitution fundamental legislation isnot being passed and changes to the constitution are not being made giving theimpression of them being out of date and not effective for modern day issues. Throughthis investigation there can be multiple interpretations. This can often dependon what ones sees as necessary to be changed due to these societal changes andwhat those societal changes actually are and how democracy has played animportant role in influencing them. From the United Kingdom perspective thereare different needs and wants as well as cultural issues which all play a vitalrole in how each separation of power responds to these matters. To aid thisinvestigation the value of first-hand sources such as Acts of Parliament havebeen of value as it has been interesting to view the actual legislation behind thesestructures in which we all should abide by. From seeing this it also allows forone’s own interpretation of this legislation without influence from a thirdparty, through the press or from the experience of others for example. Additionalsources used throughout this investigation although useful, hold limitations inthat articles written about this subject can be giving a prejudiced or biastake on the circumstance as well as from conflicting political points of view. It can also be seen from this essay that questions of sovereignty andlegitimacy behind the system arise as the United Kingdoms’ system of separationof powers may be more flexible to modern day changes the downside is that theycan have an effect on British sovereignty. This is the case as the uncodified constitutionallows for grey areas and therefore abuse from those in the executive or eventhe legislative branches. Whereas in states with codified constitutions thisappears to be much harder to bypass or misinterpret because of its nature andthus are less vulnerable abuses of sovereignty. This investigation brought tolight the term of legitimacy and raised the question from factors discussed “ doesit make one of the two systems more legitimate than the other?” To the questionof “ to what degree is the British separation of powers is adaptable to societalchanges?”. This can only be evaluated by the degree to which the United Kingdomis able to cope with these modern-day advancements. It’s ability to pass legislationearlier and quicker makes it more effective and efficient in keeping up withsocietal changes and not become out of date and non-representative of itscurrent population.

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