

Can the british  
separation of powers  
adapt to societal  
change?



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

## **Introduction**

The separation of powers introduces 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 to societal changes in order to preserve the spirit of democracy. This concept

of democracy and the spirit of democracy is essential to preserve the interests and needs of the minority while following the will of the majority. [1] The fundamental theory of democracy is evident in day to day life and functioning of any democratic state including the United Kingdom. This makes the ability to adapt to societal changes through democratic means very important as much like human society democracy is constantly changing with the advancement of each state and transformations of public opinions. This area of global politics is also very interesting to investigate and whether the British separation of powers is adaptable to societal changes today because of its unique differences, structures and constitutions it holds and how it has evolved over time due to these societal demands.

## **Constitution**

To first understand the degree to which the British separation of powers is more adaptable to societal changes, there must be an understanding of the United Kingdom's unwritten constitution which is fundamental to its flexibility. This unwritten constitution is based on Acts of Parliament, court judgements and conventions. [2] In other words, the British constitution is often referred to as 'uncodified' down to the fact that many of the laws are of constitutional nature. The British constitution is frequently described in an abstract sense as it encompasses a collection of diverse laws, practices and conventions which have advanced and developed over hundreds of years. [3] The pinnacle of the British unwritten constitution is the Bill of Rights in 1689, which fundamentally established the supremacy of Parliament over the Crown following 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 the law Parliament is sovereign in the sense of being the supreme legislative

body.[5] Conventions hold a significance to the unwritten constitution which primarily runs the relationship between the ancient institution of states.

[6] Today unwritten rules of constitutional practices are fundamental to British politics in the present day, 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

only conventional.[8] The Magna Carta 1215 essentially meaning ' Great

Charter' has an ironic presence in that although there is no British

constitution it represents the founding blocks 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 be found as far back to the philosopher Aristotle.[9] However, the separation of powers

is most commonly associated with the French political philosopher, Baron de <https://assignbuster.com/can-the-british-separation-of-powers-adapt-to-societal-change/>

Montesquieu who drew up the three main separate institutions of a state; legislative, executive and judicial branches. This ideal structure of a constitution evolved from Montesquieu's curiosity of the English constitution.

[10]The United States holds a strong constitution while the United Kingdom does not possess a codified constitution, but an unwritten one formed from Acts of Parliament, court judgements and conventions.[11]Both states here hold a varied approach to the separations of powers. But does that make one more adaptable to societal changes? The United Kingdom's separation of powers is divided up with Parliament known as the House of Commons and House of Lords representing the legislative branch, His/ Her Majesty's government led by the Prime Minister and their Cabinet represent the executive branch and the judicial branch with the Supreme Court.

[12]Through this essay the idea of the spirit of democracy can come into relevance as stated by professor Jeffrey Stout that " modern governmental structures are democratic only to the extent that they are *actually responsive* to a public discussion and an electoral process in which members of the society in question *actually participate* ."[13]The United Kingdom's House of Commons is directly representative of the British people and therefore each Member of Parliament is accountable to the public.

The United Kingdom's separation of powers has evolved over time and set a doctrine for the world to follow. Similarities follow, like the United States' separation of power structure and the United Kingdom where both apply the same organisation to the legislative branch, executive branch and judicial branch. However, the executive branch of the United Kingdom is viewed as equally as its counterpart branches with each branch working simultaneously

to keep each other in check. The American constitution was the first to mention of any sort of system of separation of powers and was devised for one purpose, to prevent a ruling majority doing exactly as they please. The American constitution was designed deliberately to be inefficient, however, the constitution was created in order to represent and defend the principles of the American people, which leaves room for an inefficient nature. This is contrary to the United Kingdom's separation of powers which lacks the rigid structures in place allowing these evolving policies to keep up with modern day societal changes.

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

The executive branch in the United Kingdom is made up of the Queen's servants which are government Ministers including the Prime Minister.[14] We can see that in the United Kingdom the executive and legislative appear to have a "close union (a) nearly complete fusion of the executive and legislative powers"[15] which in Walter Bagehot regarded as the "efficient secret of the English Constitution".[16] The checks and balances therefore held by the executive branch in the United Kingdom appear to be much more intertwined than in the other states. This provides a closer relationship between both branches which could lead to better cooperation and the mobility to effectively move with the British societal changes.

The majority of the legislative proposals are made by the executive branches this is down to the original structure of the British political parties and the overall workings of the British electoral system.[17] The government must be supported by an elected majority in the House of Commons in order to be

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able to pass the legislation they wish during their term in government. With the legislative and executive branches, both being closely intertwined in the United Kingdom, it presents the fact that the executive branch is essentially at the heart of the Parliament and plays a much more prominent role in the legislative.<sup>[18]</sup> With the laws proposed by the British Government and then ratified by Parliament in both Houses it allows the government to check over Parliament. These are key to the functioning of the state in order for new laws to be passed through and keep the country moving effectively and efficiently. The close-knit relationship between both branches provides a balance and thus leeway for the case being argued “to what degree is the British system adaptable to modern and the evolving changes of the state?”

The executive branch prior to The Constitutional Reform Act 2005 allowed the Lord Chancellor to be a part of the Judicial system and to be speaker of the House of Lords.<sup>[19]</sup> This Act reformed this tradition and showed the government to be continually changing the constitution practices and separation of powers.<sup>[20]</sup> This reform essentially formed judicial independence from the government with no political biases. These changes fundamentally created more checks and balances for the branches throughout time. This can be seen as a positive for the United Kingdom unlike France and the majority of other states across the world as it gives more freedom to change and evolve over time. However, the argument could be made that the United Kingdom's system of separation of powers is more susceptible to these societal changes.

## **British System of Separation of Powers and Societal Changes**

After taking into account the historical perspective of the British unwritten constitution it is necessary now to evaluate to what degree is the British separation of powers adaptable to societal changes. As previously stated throughout the investigation the United Kingdom's uncodified constitution plays a very important role especially as the world is changing faster than ever today with instant and infinite feeds of information available at our fingertips. This can be seen as a result of the effects of globalisation and with the need to adapt more quickly than ever today especially with the world becoming arguable smaller. This poses the question that a constitution with much more flexibility would be suitable, legitimate and represent the general public more rather than something written hundreds of years ago which can appear to be out of date and touch with modern society. As part of this investigation the many ways in which the United Kingdom's constitution appears to be more fitted and increasingly reflect a changing world today will be developed and evaluated.

With this uncodified constitution, it is able to evolve with time and enables it to be amended to keep up with societal changes. Dissimilar from a codified constitution, which can be known for being a less adaptable system as it is written and often therefore not fitted with any special procedure for somewhat amendment to be made which could be needed with present day changes.[21] The unwritten constitution is changed to any statute law, contrasting the United States as an example where there needs to be a two-thirds majority in Congress and three quarters' of the states needs to favour



the choice.[22]With the United Kingdom's case, the unelected judiciary as the House of Lords has no significant political constitutional role and that the House of Commons which is elected can only decide 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 take action when needed in important circumstances and can be much more dynamic and able to compile with modern laws and regulations better. The example can be taken of the Scottish Referendum on the 18<sup>th</sup> of September 2014 where the United Kingdom's governments had to amend the section 30 of the Scotland Act of 1998 which temporarily lifted any restrictions the Scottish Parliament to hold the referendum legally.[24]With this case, it provides an insight to the fact that as a result of Britain having an absence of a strict constitution it was able to adapt to the societal change of Scotland's desire for self-determination and for statehood and leave the United Kingdom. Although Scotland did not actually in the end vote for a majority to leave the United Kingdom the temporarily lifted restrictions from the Scotland Act of 1998 was returned to its original form. Through this prime example an absence of a written constitution was able to benefit the Scottish people giving them a legitimate referendum, an essential part of democracy. This on the other hand has been seen to be a problem for the region of Spain known as Catalonia as previous referendums held there have been categorised as illegal because of its nature to go against the Spanish Constitution. Making the case clear and more prominent that the United Kingdom's separation of powers are adaptable to societal and political changes.

To evaluate the whole perspective whether the British separation of powers is adaptable to societal changes, it is interesting to observe factors that counteract this argument. Although the nature of the United Kingdom's unwritten constitution is fairly flexible it does come with some disadvantages. These include those of no formal protection of rights, constitutional crises and constitutional rights of a government or Prime Minister's powers being abused.[25] With the separation of powers, it also does not provide a firm position of roles for the three branches allowing room for abuse of power and overall a far more complex understanding is needed. The United Kingdom's uncodified constitution does hold its limitations in that due to the characteristics of this constitution there is a reliance on outside influence as for example the European Court of Human Rights. This agreement becomes evident to this investigation through the Human Rights Act of 1998, although an Act of Parliament of the United Kingdom was designed to incorporate European Conventions on Human Rights into UK law.[26] From this example, it can be argued that this can not only highlight the downside of Britain's constitution but the impact on British sovereignty and the lack of ability for there to be no adaptability to modern societal changes of human rights. An additional issue would be the abuse and attack of the sovereignty of the electorate from the governments or Prime Minister's ability to alter an unwritten constitution by just passing an Act of Parliament with their majority in the House of Parliament. This can be seen with controversial decisions made by the former Prime Minister Tony Blair, bypassing of multiple laws but frequently amounts of statutory instrument which is essentially subordinate legislation.[27] Although many of these laws can be argued to be a response to the demands of a changing society it sheds a light on the sheer

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amount of legislation that was being put through Parliament and that would in theory have allowed less debate time for Members of Parliament so therefore less scrutiny on these newly implemented legislations.[28] Parliament checking over and passing legislation is essential for keeping the checks and balances in the separation of powers. This factor highlights that the executive branch's power here can be interpreted to have been abused or taken advantage of which is a realist approach even though the intention was to keep up with the demands of societal changes. A realist opinion can be argued to look at the situation as it can appear not to exhibit much of a duty to others and the view of egoism which can be argued to be seen by Tony Blair as political behaviour driven by self-interests. A more current issue can be put forth with the current need to pass legislation as a result of the United Kingdom decision to vote to leave the European Union on the 23<sup>rd</sup> June 2016. With this case in hand the United Kingdom needs an efficient and effective way of transferring European Union laws into British laws. However, with the vast amount of laws which have come from the European Union some is being argued to not be relevant for use in Britain and will need to be amended or removed. For a quicker way to integrate these changed laws the United Kingdom's government has proposed to use what are known as Henry VIII powers.[29] The Henry VIII powers essentially are "the use of secondary legislation to amend the text of primary legislation (and) are used all the time in sensible, non-despotic ways." [30] As a result "Getting parliament to go through the whole process of approving an updated bill would take up an unnecessary amount of time, on matters of principle that parliament has already approved." [31] Throughout the investigation it can

been seen in this case as well as with the executive branch that there is room for some bypassing of the legislative branch in order to pass laws. Like with the case of Tony Blair these Henry VIII powers enable the government to quickly pass through legislation in order to keep up with the demands and societal change of the British people who wish to leave the European Union. As thus without this unwritten constitution it could be argued that there would be greater complications in order to keep up with the public's desire and would be a much lengthier process which essentially would cause greater uncertainty. Moreover, although this can be viewed as an abuse of powers from the executive branch. The realist view is where it can also be seen to be essential for keeping up with the attitude changes within Britain and therefore societal changes.

States such as France, Germany and the USA possess written constitutions that have a much more prominent structure to them compared to the United Kingdom's unwritten constitution. These written constitutions have been argued to be strong and inflexible when it comes to the modern-day advancement and changes. This is as a result of the length of time it takes for these laws to be amended and changed. An example of this can be seen in the United States of America with the well-known and divisive Second Amendment, "the right to bear arms".<sup>[32]</sup> This has often been argued to be not completely relevant in today's society as we no longer need to protect ourselves physically in that way anymore. It represents an out of date precedent. Although there are many still in the United States who believe in this amendment strongly there is a large movement who perceive it as being out of date and not keeping up with modern and societal changes towards

gun control. There have been numerous attempts from Presidents to alter this amendment although they have not progressed anywhere as it is very difficult to change due to the nature of the strict constitution and public opinion. The case made here in the investigation shows that the United Kingdom's unwritten constitution is able to provide the flexibility to adapt easily to societal changes which other states such as the United States. Without evolution, it can be argued that written constitutions will never change at an 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 well if it continued to be viewed as untouchable.

## **Conclusion**

Overall, to conclude "to what degree is the British separation of powers adaptable to societal changes?" From the investigation carried out, it has become evident that the British system of separations of powers is adaptable to these societal changes as a result of the nature of the British unwritten constitution. Conversely in countries where there is a written constitution fundamental legislation is not being passed and changes to the constitution are not being made giving the impression of them being out of date and not effective for modern day issues. Through this investigation there can be multiple interpretations. This can often depend on what one sees as necessary to be changed due to these societal changes and what those societal changes actually are and how democracy has played an important role in influencing them. From the United Kingdom perspective there are different needs and wants as well as cultural issues which all play a vital role in how each separation of power responds to these matters. To aid

This investigation the value of first-hand sources such as Acts of Parliament have been of value as it has been interesting to view the actual legislation behind these structures in which we all should abide by. From seeing this it also allows for one's own interpretation of this legislation without influence from a third party, through the press or from the experience of others for example. Additional sources used throughout this investigation although useful, hold limitations in that articles written about this subject can be giving a prejudiced or biased take on the circumstance as well as from conflicting political points of view. It can also be seen from this essay that questions of sovereignty and legitimacy behind the system arise as the United Kingdom's system of separation of powers may be more flexible to modern day changes the downside is that they can have an effect on British sovereignty. This is the case as the uncodified constitution allows for grey areas and therefore abuse from those in the executive or even the legislative branches. Whereas in states with codified constitutions this appears to be much harder to bypass or misinterpret because of its nature and thus are less vulnerable abuses of sovereignty. This investigation brought to light the term of legitimacy and raised the question from factors discussed "does it make one of the two systems more legitimate than the other?" To the question of "to what degree is the British separation of powers is adaptable to societal changes?". This can only be evaluated by the degree to which the United Kingdom is able to cope with these modern-day advancements. Its ability to pass legislation earlier and quicker makes it more effective and efficient in keeping up with societal changes and not become out of date and non-representative of its current population.

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