

Answers to end-of-chapter quick test questions

Chapter 2 – The institutions of government and the separation of powers

1. What are the three institutions of the constitution and what are their main functions and responsibilities?

The three institutions of the constitution are the legislature, the executive, and the judiciary.

The legislature is the law-maker, a role that is fulfilled by the UK Parliament (Parliament also serves to hold the government to account). The executive includes the government and exists to execute policy and make decisions on a full range of matters relating to the UK and UK citizens. Finally, the judiciary refers to the court system. Primarily, the courts resolve disputes and pass judgments, though in so doing they also interpret Acts of Parliament.

2. What is the essence of Montesquieu's conception of the separation of powers?

That the three institutions of the state – legislature, executive, and judiciary – should operate separately from one another, with no overlap of function or personnel. The justification for this, said Montesquieu, was to protect individual liberties and work to prevent any potential abuse of power.

3. What key changes did the Constitutional Reform Act 2005 introduce with regards to the separation of powers in the UK?

The Act introduced three key changes:

- 1) Abolition of the Appellate Committee of the House of Lords and the creation, in its place, of the Supreme Court as the highest domestic court in the UK.
- 2) Alteration to the role of Lord Chancellor. Historically, the Lord Chancellor was a Member of the Cabinet, Speaker of the House of Lords (legislative chamber), and Head of the Judiciary. As a result of the Act, the Lord Chancellor is now just a Cabinet Minister (for Justice), though this is a role that works closely with the judiciary and that involves continued membership of one of the Houses of Parliament.
- 3) The creation of the Judicial Appointments Commission to effect a more transparent and independent process of judicial appointments.

4. Which feature of the UK system did Walter Bagehot describe as the 'efficient secret of the constitution'?

The close fusion that exists between Parliament and the government, evident from the way in which senior members of the government are drawn from one of the Houses of Parliament.

5. What is the distinction between a ‘pure’ separation of powers and a ‘partial’ separation of powers? Which model do you think is most relevant to the UK’s constitutional arrangements?

A pure separation of powers reflects the view that there should be a clear and total separation of functions and personnel between the various institutions of government. A partial separation of powers accepts limited overlap between the institutions of the government, on the basis that such overlaps serve to provide a system of checks and balances on the exercise of power. It is widely argued that the UK subscribes to a partial separation of powers.

6. What is judicial review and how important is it in terms of the separation of powers in the UK?

Judicial review refers to a form of public law action through which the courts can review and scrutinise the acts and decisions of public bodies (particularly government institutions), assessing their legality, reasonableness, and propriety. It is important in terms of the separation of powers because although it reflects a degree of overlap between executive and judiciary, it ensures that governmental power can be checked by the courts.

7. What does Tomkins identify as the bipartite separation of powers?

Tomkins identifies the separation of powers doctrine as relating not to the relationships between legislature, executive, and judiciary but rather between Parliament and the Crown.