

UK Politics and Government – Relations Between the Branches

Politics Edexcel and AQA – revision notes – based on Hodder Education revision guides

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The Supreme Court

- Set up under the Constitutional Reform Act 2005.
- Established in 2009 aiming to broaden separation of powers and reducing the fusion between the branches of government.
- It is the final court of appeal in England, Wales and Northern Ireland.
- Focus on appeals on issues of public and/or constitutional significance.
- In civil cases, anywhere in the UK, and for criminal cases excluding Scotland.
- There are 12 Supreme Court judges, called justices, one of them is designated as the president.
- Before 2009, the final court of appeal sat in the Lords as the Law Lords whereas today justices have no legislative role.
- When there is a vacancy, the judicial appointment committee elects a new judge that is then formally confirmed by royal prerogative.

Key principles of the Supreme Court

- **Judicial independence** = prominent in the separation of powers and the minimising of fusion.

Judges are appointed by an independent panel and serve until they retire either at 70 or 75 depending on when they became a judge.

Judges can be removed only if they have broken the law and both chambers of parliament decide in agreement.

Judges sit in the Supreme Court and not within the parliament.

- **Judicial neutrality** = judges should be kept independent and they should keep neutral, with no political involvement or any form of bias whatsoever. The problem is, of course, how much neutrality is possible?

The Supreme Court and the Legislature

- Parliamentary sovereignty means that the Supreme Court should not be able to override or restrict decisions made by parliament.
- In practice, the Human Rights Act 1998 challenges this separation. If an Act of Parliament is deemed to violate the Human Rights Act, then courts including the Supreme can issue a Declaration of Incompatibility. While such a measure is not binding on the Commons it is nevertheless reflecting negatively on the political system and its institutions, if only by forcing the parliament to reconsider its Acts.
- There have been a few such declarations, and in each one of them the relevant issue has been either amended or repealed, except when the government successfully managed to appeal against the decision.
- For example: anti-terrorism legislation that passed in 2001 and was deemed to breach the Human Rights Act because it discriminated against people based on nationality or immigration status.
- The Human Rights Act increased judicial activism by engagement in judicial review.

The Supreme Court and the Executive

- Most legislation is proposed by the executive, and the Supreme Court can influence the executive branch in a number of ways.
- For example: *Miller vs Secretary of State* for Exiting the European Union 2017. Theresa May's government wished to use royal prerogative to invoke Article 50 that begins the formal process of exiting the EU, known as Brexit. Gina Miller, a member of the public took the government to the High Court and argued that the decision to trigger Article 50 should be made by the parliament and the court agreed with the applicant. The government then appealed to the Supreme Court which then upheld the decision made by the High Court.
- This case illustrates the difficulty in maintaining the separation of powers especially in divisive cases when it is mostly needed. The court was perceived to act beyond its constitutional powers in a bias that favours the 'Remain'.

Judicial Review

- Occurs when judges conduct a review into government ministers or other public officials to examine the legality of their actions.
- The review examines whether governmental decisions and actions went 'beyond the powers' (*ultra vires*).
- Reviews are conducted when a person or a group applies to the court, and often cases are triggered by pressure groups that can afford the funding and the resources for the process.

- The government wins the vast majority of the reviews and yet some significant cases have won over the government.
- Critics of the judicial reviews argue that the increasing extent of reviews is by definition politicising the judiciary and eroding the separation of powers.
- The coalition government 2015 reformed the principles to reduce the number of reviews conducted.

Parliament and the Executive – balance of power

Parliament holds the executive to account

- MPs can defeat the government in the parliament by forcing it to make changes.
- MPs are able to ask questions to the PM and ministers that sometimes can ‘push them to the corner’ and they acknowledge errors of judgement; followed sometimes by changes to policy.
- Select committees with its various aspects of scrutiny, often forensic and relentless in its manner.
- Parliament can hold a motion of no-confidence in the government, thus potentially bringing the government down, leading to a general election.

The executive dominates parliament

- The government usually enjoys a majority in the parliament and combined with its whip can impose its legislation in the Commons, regardless of the differing opinions over the legislation.
- The government has a large payroll vote of MPs that are bound by collective responsibility and must vote in accordance with the government. Many other MPs are dependent on the PM for future promotion and are therefore less likely to rebel by voting against.
- The Lords enjoys a greater degree of independence, but even the government can use its majority, the Parliamentary Act and the Salisbury Convention to override the Lords.
- The government is a mammoth system with a vast array of resources and personnel at its disposal; it provides it with an edge.

Legal and political sovereignty

Legal sovereignty = refers to the body, or person, that creates the laws that must be obeyed, are recognised by the courts, and are enforced.

Political sovereignty = who actually holds the power in practice, whether they are officials who possess the legal sovereignty or not.

The difference between these two dimensions illustrates the debate in the UK regarding parliamentary sovereignty, and in broader terms, democracy and its representation and legitimacy.

The key challenges on parliamentary sovereignty

1 – The executive = often the dominant branch in the political life of the UK, often enjoys a majority in the Commons, and utilise the parliament as its own rubber stamp.

2 – The people = divisive issues can call for a referendum, and while parliament can legally ignore the result of the referendum, it is politically imprudent.

3 – Devolution = the existence of other parliaments and assemblies is posing a certain degree of competition by making their own decisions and bypassing Westminster.

4 – Human Rights Act = led to the judiciary being capable of restricting the will of the parliament, and by implication, the will of the people because MPs are the elected representatives of the will of the citizens. While parliament can ignore judicial reviews and repeal the Human Rights Act, it refrains from doing so, for various political considerations.

The European Union

- Since Brexit, it is composed of 27 member states.
- It was developed from the EEC and established by the **Treaty of Rome** in 1957.
- UK joined in 1973 under the Conservative PM Edward Heath.
- Two referendums in the UK: 1975 'Yes' to stay and 2016 to 'Leave'.
- The EU consists of various key bodies, developed significantly and the **Euro** is used by 20 countries.

The European Union Institutions

1 – The European Parliament = a directly elected body with co-legislative powers.

2 – The Council of the European Union = ministers from the executives of the member states, with co-legislative powers with the Parliament.

3 – The European Commission = consists of commissioners appointed by member states' governments, has executive powers, proposing legislation and issuing directives.

4 – The European Court of Justice = the judiciary in the EU.

5 – The European Council = summits of heads of states.

6 – The European Central Bank = primarily the Euro and the **Eurozone countries**, those that are using the Euro currency.

Key aims of the EU

- Economic and monetary union.
- A single market.
- Economic growth and stability.
- Environmental protection.
- Peace and security.
- Promotion of scientific, technological and academic progress.
- Economic, social and political integration.

The four freedoms related to the single market, already in the original Treaty of Rome in 1957:

1 – Freedom of movement of goods = free trade of goods between the states, thus, states do not charge tariff on imports.

2 – Freedom of movement of services = free trade in services within the market, not restricted to goods.

3 – Freedom of movement of capital = no restrictions on capital flow between the states, easy transfer of money.

4 – Freedom of movement of people = EU citizens can live and work anywhere in the EU countries.

Social policy in the EU

- While the key areas of interests are regarding trade, industry and agriculture, increasingly there is also a shift towards employment rights.
- The Social Chapter introduced as part of the Maastricht Treaty in 1992. John Major secured an opting out for this section in the treaty thus it applied to 11 out of the 12 members. He argued the matters that are covered should remain by national parliaments.
- The issues covered related to several aspects of minimum workers' rights such as rights for part-time workers and parental leave.
- Blair's government opted back into the Social Chapter in 1997.

How successful has the EU been in achieving its aims

- EU members have never been at war with one another.
- The EU was expanded to incorporate most former communist Eastern bloc states.
- The Single Market is a fundamental feature of Europe, and it is characterised by a significant degree of cooperation between the countries across various domains.
- On the other hand, there were some critically divisive issues emerging like during the Greek debt crisis in 2010, and Brexit; that reflects some resentment and rethinking of the arrangement with its costs and benefits.

The impact of the EU on the UK

- Caused internal divisions within political parties, especially the Conservatives, and in public opinion.
- A debate over the impact of the EU on the national sovereignty of the UK, as of other nations.
- It impacted attitudes towards immigration and the conflicting views.
- It also touches on the wider debate over the survival of the nation-state in the current global world.
- One consequence is the increase in national sentiments and far-right arguments, and not only in the UK.