

**T1.1.**

The United Kingdom is a highly heterogeneous nation comprised of numerous ethnic, linguistic, and cultural groupings, each with their own political and social identities. The UK has a unitary constitution, but it also has some federal elements, particularly in terms of devolution of authorities to Scotland, Wales, and Northern Ireland. Let's talk about how realistic such a system would be. The establishment of devolved institutions in Scotland, Wales, and Northern Ireland began the devolution process in the late 1990s. Devolution was intended to give these regions more authority and allow them to govern themselves while remaining part of the United Kingdom<sup>1</sup>. Devolution was achieved through PA 1994<sup>2</sup>, including the SA 1998<sup>3</sup>, the GWA 1998<sup>4</sup>, and the NIA 1998<sup>5</sup>.

The UK Supreme Court was questioned to interpret the Scotland Act 1998<sup>6</sup> in issues established in *AXA General Insurance Ltd and others v The Lord Advocate and others* (2011)<sup>7</sup>. This case emphasized the complexity of devolved powers and the need for a unitary body (the UK Supreme Court) to maintain consistency in legal interpretations across the UK.

Moreover, the devolution process has been extremely fruitful in advancing the interests of the United Kingdom's various regions. It has made government responsive as well accountable, and it has given previously marginalized communities a voice. Concurrently, the United Kingdom continues to be a unified, cohesive state with a unified constitution<sup>8</sup>.

On the other hand; the unitary the UK's constitution is founded primarily on the idea of parliamentary sovereignty, which has mentioned that the UK's Parliament has the absolute right to establish or abolish laws. The fact that the UK Parliament can legislate on any subject, including those evolved to Scotland, Wales, and Northern Ireland, contributes to the country's unity. This ensures a unified legal system throughout the United Kingdom. Referring to the UK Supreme Court when clarified in the case *AXA General Insurance Ltd v The Scottish Ministers*<sup>9</sup> that the UK Parliament's ultimate authority permits it to legislate on devolved matters in exceptional circumstances. This demonstrates the unity of the UK's constitution<sup>10</sup>.

In conclusion, the United Kingdom's model of a unitary constitution with federal ideologies is practicable for balancing regional autonomy and national unity. It accommodates diverse legal systems within the United Kingdom while ensuring that a unified entity, such as the UK Supreme Court, upholds overarching legal principles. Legal cases and provisions demonstrate the viability of this approach, demonstrating that it can effectively address the complexities of a pluralistic society such as the United Kingdom<sup>11</sup>.

**T1.2.**

The debate over whether the flexibility combining the United Kingdom's 'unwritten' constitution with the transparency and assurance of codified constitution is a long one. Looking forward to discuss the advantages of both written constitution and unwritten constitution based in the UK.

Starting with the advantages of written constitution, a written constitution provides clear and precise rules and principles, making it simpler for citizens and government officials to comprehend and apply the law. There is no ambiguity regarding fundamental liberties and principles. Moreover;

---

<sup>1</sup> Le Sueur A, Sunkin M and Murkens J, *Public Law: Text, Cases and Materials* (4th edition, OUP 2019) chapters 1 and 2

<sup>2</sup> Parliamentary Acts [1994]

<sup>3</sup> Scotland Act 1998

<sup>4</sup> Government of Wales Act 1998

<sup>5</sup> Northern Ireland Act 1998

<sup>6</sup> Ibid

<sup>7</sup> *AXA General Insurance Ltd v HM Advocate* [2011] UKSC 46

<sup>8</sup> Ibid

<sup>9</sup> Ibid

<sup>10</sup> Bradley A W, Ewing KD, Knight C J S, *Constitutional and Administrative Law* (17th edition, Pearson 2018)

<sup>11</sup> Ibid

a written constitution could include a Bill of Rights<sup>12</sup> analogous to the HRA 1998 in the UK, which incorporated human rights treaty from the European Union. This ensures that certain basic liberties will be safeguarded<sup>13, 14</sup>.

In Addition to that a written constitution can expressly list and defend fundamental rights and liberties. This is especially crucial for protecting individual liberties. The Supreme court reviewed the compatibility of bulk interception powers under the IPA 2016<sup>15</sup> with human rights in the matter of R v Investigatory (2019)<sup>16</sup>. A written constitution could provide a more robust framework for privacy rights protection<sup>17</sup>.

Last but not least, a written constitution frequently permits the judiciary to engage in rigorous judicial review and more effectively enforce constitutional norms. The UK Supreme Court ruled on the proroguing of Parliament in R v The Prime Minister, stating that it was a justiciable subject. In such cases, a written constitution could provide clearer guidelines<sup>18</sup>.

On the Other hand, the benefits of unwritten constitution, as in the UK, the UK's constitution, which is not codified, offers a higher degree of flexibility and adaptability. Conventions, laws, and judicial decisions can all help it evolve over time to meet the changing demands of society. A cornerstone of the British constitution is the notion of parliamentary sovereignty, which has a firm footing in the fluid, 'unwritten' constitution. Parliament can make new laws or get rid of old ones in response to changing circumstances thanks to this idea<sup>19</sup>.

The need for frequent and complicated modifications is also eliminated with an unwritten constitution, which can grow and change organically over time. It can more easily adapt to shifting social norms, reducing the likelihood of political gridlock. Evans v. Attorney General was a significant case in which the Supreme Court considered whether or not to order the release of the Prince of Wales's letters, showing how the 'unwritten' constitution can change in light of competing values (in this case, transparency and monarchy).<sup>20</sup>.

The 'unwritten' constitution's flexibility ensures a high level of political accountability. It empowers elected officials to develop and adapt the constitution in response to public sentiment. The FTPA 2011<sup>21</sup>, for example, is an example of a statute adopted to fix the schedule of general elections, demonstrating how the UK constitution can be changed to political requirements<sup>22</sup>.

Taking everything into account, there are trade-offs when deciding between a written and an 'unwritten' constitution. While a written constitution might provide clarity and solid rights protection, it may lose flexibility and adaptability to changing circumstances. An 'unwritten' constitution allows for evolution and adaptability but may not provide as much clear rights protection. The decision is ultimately determined by a society's beliefs, priorities, and political climate. Legal cases and provisions underscore the advantages and disadvantages of each method, laying the groundwork for this ongoing discussion<sup>23</sup>.

### **T1.3.**

The doctrine of parliamentary sovereignty, commonly known as parliamentary supremacy, is a crucial concept in the UK's constitution framework. It states that Parliament holds ultimate

---

<sup>12</sup> Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (4th edition, Routledge 2019)

<sup>13</sup> Human Rights Act [1998]

<sup>14</sup> Ibid

<sup>15</sup> Investigatory Powers Act [2016]

<sup>16</sup> R v Investigatory [2019] UKSC 22

<sup>17</sup> Ibid

<sup>18</sup> R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland [2019] UKSC 41

<sup>19</sup> Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (4th edition, Routledge 2019)

<sup>20</sup> R (Evans) v Attorney-General 2015 UKSC 21

<sup>21</sup> Fixed-Term Parliament Act [2011]

<sup>22</sup> Ibid

<sup>23</sup> Bradley A W, Ewing KD, Knight C J S, *Constitutional and Administrative Law* (17th edition, Pearson 2018) chapter 4.

authority in the legal realm and possesses the power to establish or revoke any legislation. This indicates that no other entity, including the judiciary, has the authority to overturn or invalidate an Act of Parliament. Let's delve into the doctrine of parliamentary sovereignty and explore its implications through the lens of significant case law.

Initially, *R v Secretary of State* (2017), in this landmark case the UK Supreme Court rendered a significant verdict in this pivotal case, determining whether the government had the authority to initiate Article 50 of the TEU<sup>24</sup> without explicit consent from Parliament. The court ruled that the initiation of the process of exiting the European Union<sup>25</sup> necessitated an Act of Parliament. This case upheld the premise of parliamentary sovereignty. The clarification said that although the government has prerogative powers, these powers could not be employed to supersede an Act of Parliament. The judiciary intervened to safeguard the supremacy of Parliament<sup>26</sup>.

Additionally, the case of *R (Jackson) v Attorney General* (2005); in this instance, the House of Lords was tasked with evaluating the legality of the HA 2004<sup>27</sup>. There were others who contended that the Parliament Acts of 1911 and 1949<sup>28</sup>, which granted the House of Commons the authority to circumvent the House of Lords under specific circumstances, were in violation of the UK's constitution. The House of Lords finally confirmed the legality of the HA 2004<sup>29</sup> and underlined that despite limiting their own powers, these Acts were legally binding. The case highlighted the fact that no judicial institution, even the House of Lords, had the authority to question the legitimacy of a parliamentary law<sup>30</sup>.

Considering, *Factorization Ltd v Attorney General* (2010) case, in this case, the appellant claimed that the CCA 2008<sup>31</sup> was not compliant with European Union law. The Court of Appeal rejected this argument, confirming the authority of the UK Parliament in establishing and repealing legislation. The court highlighted that, while European Union law had a considerable impact on UK law, it did not impair the idea of parliamentary sovereignty. If the UK Parliament so desired, it may seek to overrule or modify EU law.<sup>32</sup>

The notion of parliamentary sovereignty was essential in all of these situations. While accepting that the UK Parliament may be constrained by international responsibilities such as EU membership or human rights conventions, the judiciary has always maintained that only Parliament may ultimately set the legal framework of the UK. These cases demonstrate the idea of parliamentary sovereignty's actual applicability and persistence in the UK's constitutional system<sup>33</sup>.

## T2.1.

The 'rule of law' concept articulated by A.V. Dicey in the nineteenth century remains a major component of the British legal and constitutional system. This principle emphasizes the importance of the rule of law in ensuring fairness, accountability, and the security of personal liberty. Key legal cases and laws demonstrate its enduring importance in the present UK context<sup>34</sup>. The principle of legal equality enshrined in the Dicey is a bedrock of British law. Everyone, regardless of their socioeconomic situation, should have equal protection under the law and

---

<sup>24</sup> Treaty European union [2016] Article 50

<sup>25</sup> *R. (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5

<sup>26</sup> *Ibid*

<sup>27</sup> Hunting Act [2004]

<sup>28</sup> Parliament Acts of 1911 and 1949

<sup>29</sup> *Ibid*

<sup>30</sup> *Ibid*

<sup>31</sup> Climate Change Act of [2008]

<sup>32</sup> *Factorization Ltd v Attorney General* (2010)

<sup>33</sup> *Ibid*

<sup>34</sup> A.V.Dicey, *Introduction to the Study of the Law of the Constitution* (1885; 10th edn 1959)

access to legal remedies, and this idea guarantees just that. Legal protections for victims of discrimination on the basis of gender, religion, or race are included in the EA 2010<sup>35</sup>. It lays forth the regulations that must be followed to guarantee fair treatment in the UK. *R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* was heard by the UK Supreme Court, and it was there that the constitutional guarantee of due process was upheld<sup>36</sup>. The case hinged on a school's dress code rules regarding students' religious garb, and it demonstrated the value of treating all students fairly<sup>37</sup>.

The importance of Dicey's insistence on the need for public officials and authorities to act within the law rather than arbitrarily remains unchanged. This idea serves to safeguard the rights and freedoms of its citizens. Because of its emphasis on legality, British law mandates that all governmental actions be explicable in terms of existing statutes. It's an important safeguard against tyranny in positions of power. In *R (on the application of Miller) v. The Prime Minister (2019)*<sup>38</sup>, the Supreme Court of the United Kingdom ruled that the Prime Minister's proroguing of Parliament was done without proper justification. The need to curb the abuse of authority as demonstrated by this instance is clear<sup>39</sup>.

Moreover, Dicey's insistence that public officials and authorities must operate within the law and not arbitrarily has not lost any of its relevance in Dicey's insistence that discretion must be employed within the bounds of the law is still relevant in modern UK law. Accountability for actions taken by public authorities and government agencies is ensured<sup>40</sup>.

Legal precedents in the field of administrative law, such as the APA 1947<sup>41</sup> and subsequent judicial review cases, define and assess the scope of administrative discretion. Important to determining whether or not an administrative decision is within the bounds of the law is the "Wednesbury unreasonableness" standard, first articulated in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223. It stresses the importance of exercising judgment reasonably and not arbitrarily<sup>42</sup>.

Dicey's insistence that public officials and authorities must operate within the law and not arbitrarily has not lost any of its relevance in sum, A.V. Dicey's 'rule of law' doctrine is still highly relevant in the modern legal landscape of the United Kingdom. Its principles of equality before the law, prevention of arbitrary power, supremacy of law over discretion, due process and natural justice, legal certainty, and judicial review are all still in effect today. Legal systems are founded on these concepts, which serve to protect people's liberties and hold governments accountable for doing what's right. Dicey's influence can be felt in the modern British legal system through the precedents and statutes that safeguard the rule of law<sup>43</sup>.

## T2.2.

The notion that absolute power corrupts absolutely and therefore people should be governed by the rule of law as opposed to the whims of an individual or the discretions of a select few has existed in the popular realm since the time of Aristotle; however, it was AV Dicey who popularized this notion in modern legal literature through the use of the term rule of law, which is so commonly used in political and legal discourse today. As the question requires, I will endeavor to analyze AV Dicey's conception of this principle, its flaws, and the extent to which the current conditions in the

---

<sup>35</sup> Equality Act of [2010]

<sup>36</sup> *R (on the application of Begum) v. Headteacher and Governors of Denbigh High School* [2006] UKHL 15,

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*

<sup>39</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/60641/cabinet-manual.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf), accessed on 21 October, 2021

<sup>40</sup> A. V. Dicey, *An introduction to the study of the law of constitution* (1959)

<sup>41</sup> *Administrative Procedure Act of [1947]*

<sup>42</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223

<sup>43</sup> *Ibid*

UK adhere to his ideals. The concept of "rule of law" as articulated by A.V. Dicey has significantly influenced the legal and constitutional framework of the United Kingdom. His beliefs are based on three fundamental tenets<sup>44</sup>.

In the first instance, supremacy law, the idea of the Supremacy of Law underscores the notion that no individual, be it a government official or public authority, is exempt from legal regulations, hence ensuring equal treatment under the law. In *R (Miller) v. Secretary of State for Exiting the European Union* (2017)<sup>45</sup>, the UK's highest court upheld the idea that the government must act within the law and cannot use its authority to violate the rights of its citizens. In the light of Brexit, this case demonstrated the significance of the rule of law. U.K. citizens have the ability to sue their government in domestic courts for human rights abuses according to the HRA 1998<sup>46</sup>, which codified the ECHR<sup>47</sup>.<sup>48</sup>

Secondly, Dicey emphasized the importance of equitable treatment under the law, which means that everyone should have equal access to justice and enjoy the same legal rights and protections. Rule of law relies on Dicey's insistence that all men—whether wealthy or poor, weak or powerful, and most importantly, part of the executive or the common masses—should be treated equally. It specifies the fundamental stance of legal system in any liberal representative government. The UK generally adheres this concept; government ministers are brought to legal accountability; the most recent example being the home secretary's contempt of court conviction in *M v. Home Office*<sup>49</sup>. The denial of due process was on full display under case *R (on the application of Begum) v. Secretary of State for the Home Department* 2019, which included the removal of a British citizen's citizenship. The court stressed the need of a neutral process and equal access to the law. The purpose of the LASPOA 2012<sup>50</sup> is to confirm that individuals who cannot otherwise afford legal assistance are able to do so<sup>51</sup>.

Last but not least, the protection of civil liberties and personal freedoms is central to how Dicey sees the legal system, which rests on an impartial judiciary able to prevent violations of these principles by the state. As Jennings notes, the adoption of HRA is only one example of how the law has been used to recognize and protect a variety of rights and liberties. Many traditional rights, for instance, would never have been imposed by courts in this way if not for the mechanisms made available by HRA<sup>52</sup>. False descriptions that seek more freedoms and rights are not so it. In addition, the rule of law can never be adequately protected by the court alone. Although it has been argued that the courts may one day intervene and disregard the law and refuse to comply with it, this argument has no authority, and the courts have thus far supported the idea of parliament's ultimate authority and accepted their part in carrying out parliamentary directives (Lord Irwin)<sup>53</sup>. One case that highlights the importance of the judiciary in protecting individual privacy rights is *R (Privacy International) v. Investigatory Powers Tribunal* (2019)<sup>54</sup>. Data privacy and rights in the digital age are safeguarded by the DPA 2018<sup>55</sup>, which includes (GDPR)<sup>56, 57</sup>.

---

<sup>44</sup> Dicey AV, *Introduction to the Study of the Law of the Constitution* (Roger E Michener ed, Liberty Fund 1982).

<sup>45</sup> *Ibid*

<sup>46</sup> *Ibid*

<sup>47</sup> *European Convention of Human Rights*

<sup>48</sup> *Ibid*

<sup>49</sup> *M v. Home Office* [1994] AC 377

<sup>50</sup> *Legal Aid, Sentencing and Punishment of Offenders Act* [2012]

<sup>51</sup> *Ibid*

<sup>52</sup> *Ibid*

<sup>53</sup> <https://www.healthaffairs.org/doi/10.1377/hlthaff.2019.01324>

<sup>54</sup> *R (Privacy International) v. Investigatory Powers Tribunal* [2019] UKSC 22

<sup>55</sup> *Data Protection Act* [2018]

<sup>56</sup> *General Data Protection Regulation*

<sup>57</sup> A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (Macmillan and Co, 1885)

Although modern British law still adheres to Dicey's conceptualization of the Rule of Law, it has developed and advanced in new ways. Dicey's description was quite rudimentary and dated, as pointed out by HW Arthur and Jennings. On this foundation, attempts to provide greater clarification were made. So, while Dicey's goals are generally upheld, it would be inaccurate to say that this is the status of rule of law under the UK's constitutional system. There are many new legal foundations in place. The current ideas of Rule of Law in the UK are laid out in great detail in Bingham's eight points. Dicey's concepts are incorporated, but with refinement and expansion. Dicey's writings notably lacked the fundamentals of rule of law, such as judicial scrutiny of ministry and administration, inclusion of human rights, judicial independence, and total separation of power. The current system in the UK calls for openness, clarity, stability, independence of the judiciary, respect for natural justice principles, accessibility to courts, and so on<sup>58</sup>.

In conclusion, A.V. Dicey's definition of the rule of law is still widely used in the UK today. The rule of law continues to provide out the statutory and constitutional framework landscape, as evidenced by precedents and clauses that guarantee limits on government power, equitable access to justice, and the security of fundamental freedoms. However, current difficulties have necessitated adjustments and reinterpretations of these principles in light of things like the impact of technology on privacy and government acts in the context of international agreements like Brexit<sup>59</sup>.

## **T2.2.**

In the United Kingdom, the monarch's residual powers and privileges are known as the "prerogative powers of the Crown" and are currently the government authority ministers on the behest of the monarch. Foreign policy, the military, and decoration are all examples of areas where these constitutionally-guaranteed prerogatives shine in the United Kingdom. However, these authorities are not unchecked and must be exercised in accordance with political and legal checks<sup>60</sup>.

Parliamentary supervision is an important political check and balance. Parliamentary processes such as debates, questions, and select committees can be used to investigate and challenge the use of prerogative powers. The Prime Minister's discretion on this topic is limited by legal provisions such as the FTPA 2011<sup>61</sup>, which created specified procedures for dissolving Parliament and calling elections. Moreover, when ministers use their prerogative authority, they bear both collective and individual responsibility before Parliament. They will be answerable for any abuse of authority on their part. These legal requirements; though not explicitly written into law, the notion of ministerial accountability has served as an important vehicle for political oversight for decades. Furthermore, prerogative powers can be challenged in court if they are being utilized arbitrarily or inappropriately. The rule of law relies heavily on this system of checks and balances. According to recent case law, the UK Supreme Court determined that Prime Minister's recommendation to monarch to Parliament was prorogued justiciable and that the prorogation was unlawful because it frustrated or prevented the capability of Parliament to discharge its responsibilities (R (Miller) v. Prime Minister, 2019)<sup>62</sup>. These are all controlled by political<sup>63</sup>.

On the other hand, discussing what is controlled by the Judicial, in the first instance; in accordance with extreme jurisdiction; actions that go beyond the scope of a prerogative power are considered ultra vires (beyond the scope of one's power) by the courts. Common law and precedents from the courts, rather than any one piece of legislation, form the basis for this regulation. In the second instance, prerogative powers can be challenged in court if they were used improperly, irrationally,

---

<sup>58</sup> Ibid

<sup>59</sup> Ibid

<sup>60</sup> Grace J, *Constitutional and Administrative Law* (Routledge 2016)

<sup>61</sup> Ibid

<sup>62</sup> Ibid

<sup>63</sup> Le Sueur A, Sunkin M and Murkens J, *Public Law: Text, Cases and Materials* (4th edition, OUP 2019) chapter 10

or illegally<sup>64</sup>. Prerogative powers can be challenged in court for well-established reasons. The HRA 1998<sup>65</sup>, which enacts the ECHR into UK legislation, lays out the basic grounds for judicial review<sup>66</sup>.

In conclusion, the political and judicial safeguards in place to limit the authority of the crown in the United Kingdom are sufficient to guarantee their rightful exercise. The supremacy of Parliament, or the Rule of Law, and judicial and legislative checks and balances are all safeguarded by these mechanisms. The Miller case and the concepts of ministerial accountability and judicial review are only a few examples of legal cases and laws that show how these checks and balances work in the real world<sup>67</sup>.

### **T3.1.**

The conception of the separation of powers is a cornerstone of contemporary governance; it maintains that the functions of government should be delegated to several branches or levels to avoid any one entity from amassing too much authority. Many people believe that the UK's government system accurately reflects the division of powers, but this is debatable<sup>68</sup>.

The reason behind having three separate but equal parts of government is to prevent any one of them from becoming too powerful. The legislative branch, for instance, can limit the executive's power by enacting laws, and the judicial branch, by interpreting and implementing those laws, can limit the power of both the executive and the legislative branches. The UK's separation of powers appears to be obvious on paper, but in practice, things are more complicated. There is a lot of overlap between the Prime Minister and Cabinet, who are all also legislators, and the rest of the legislature. The Prime Minister and Cabinet can utilize their influence over the legislature to push through laws that further their agenda, which could lead to a consolidation of power in the executive<sup>69</sup>.

In a similar vein, Montesquieu thought; there can be no freedom when the legislative and executive branches are merged into a single entity. Likewise, there cannot be freedom if judicial authority is not independent of legislative and executive branches. A judge who also serves as a lawmaker would have unchecked authority over the lives and freedoms of the governed. The judge would have the power of an oppressor if he or she also held executive authority<sup>70</sup>.

Although both stress the need for a clear divide, it is evident that in the UK, however, this is not the case. 'The concept of separation of powers has never been a component of the constitution in UK,' says Parpworth. When the three legal authorities are broken down, it becomes clear that in practice they are often exercised by the same individuals. What gives? For what reason is there not a clear divide? To paraphrase Saunders, "every constitutional system that purports to be based on a separation of powers in fact provides, deliberately, for a system of checks and balances under which each institution impinges upon another and is impinged upon." Our form of government could not be moved if there were was a strict division with no overlapping responsibilities or checks and balances. It has been argued that "...complete separation of powers is possible neither in theory nor in practice," because failure to cooperate across branches would lead to constitutional impasse<sup>71</sup>.

---

<sup>64</sup> <https://www.theguardian.com/commentisfree/2019/sep/06/boris-johnson-britain-constitution-reform>

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Cabinet Office, *The Cabinet Manual: A guide to the laws, conventions, and rules on the operation of government* (1st ed Cabinet office, October 2011)

<sup>68</sup> Statute Book: Robert G Lee, *Blackstones Statutes on Public Law and Human Rights 2019-2020* (29th edition, OUP 2019). Chapter 4

<sup>69</sup> Ibid

<sup>70</sup> Primary Source: Montesquieu, *The Spirit of the Laws* 1748

<sup>71</sup> [https://blackwells.co.uk/extracts/9780199232857\\_parpworth.pdf](https://blackwells.co.uk/extracts/9780199232857_parpworth.pdf)

In recent times, the Lord Chancellor role has been the most common overlapping one. This function has frequently used as evidence that the UK is a democracy lacks a separation of powers. When looking back over time, the Lord Chancellor unique among government officials because he had access to and authority over all three departments of government. He was a minister of Justice and/or Leader of the Executive Branch (judicial function), plus the legislative role of speaker of the House of Lords. Changes to the position of Lord Chancellor in the United Kingdom were announced after the HRA 1998<sup>72</sup> and the *McGonnell v. UK* (2000) case. According to the ECHR' because to the interconnected nature of his judicial, legislative, and executive activities, including his ruling in *McGonnell*, the Royal ECHR in 1950<sup>73</sup>. The post of Lord Chancellor of Britain, who served a similar function, was affected by this<sup>74</sup>.

Which comes first, the power of the legislature or the power of the courts? In accordance with the Constitution, members of parliament are constitutionally barred from commenting on the conduct of judges unless and until a request is made to dismiss a superior judge. According to the idea of legislative supremacy, judges can examine executive acts to make sure they comply with the law, but they cannot examine the constitutionality of laws approved by legislators. Parliamentary statutes are binding and must be followed. If a higher court decides that a law passed by Parliament is in violation of the European Convention on Human Rights, it can declare the law to be incompatible with the Convention under the (HRA 1998)<sup>75</sup>. Only Parliament, in accordance with the concept of separation of powers, can make or unmake laws, hence this does not render the act null and void<sup>76</sup>.

There are apparent linkages between the several parts of government in the UK, showing that the country does not properly adhere to the idea of the separation of powers. The court system, on the other hand, adheres to a rigid separationist philosophy. As a characteristic of the uniquely British concept of the separation of powers, Parliament, the administration, and the judiciary each have their own distinct and, in most cases, exclusive area of influence. As long as the courts maintain this view, and the three branches are recognized as distinct from one another despite their many areas of overlap, we can say that there is at least a partial separation of powers in the United Kingdom. Given that it would be unable to employ authority, Parpworth is correct in his opinion that such a wall would be counterproductive. No government could function if that were the case. To show that the idea should not be "lightly dismissed," the states of Munro ratified modifications to the Constitution in response to the Constitutional Reform Act in 2005<sup>77</sup>, even though it is rarely respected<sup>78</sup>.

#### T4.1.

Parliaments around the world serve three primary purposes: to represent public interests, to enact laws, and to oversee executive branch performance. They serve in a legislative capacity since they can alter, adopt, or reject government-drafted laws in addition to submitting their own bills. Since the parliament in democracies derives its authority from the will of the people, this function is inextricably tied to the representation function. Parliament's duty as a lawmaking body includes speaking up for the people's best interests. Members of Parliament are accountable to the voters they represent and are so expected to take their constituents' needs into account when making

---

<sup>72</sup> Ibid

<sup>73</sup> Royal European Convention of Human Rights [1950]

<sup>74</sup> *McGonnell v. UK* [2000] EHRR 289

<sup>75</sup> Ibid

<sup>76</sup> 'The rule of law' (2007) 66 Cambridge Law Journal 67, 69(the published version of the lecture); *The Rule of Law* (2010, London: Allen Lane)

<sup>77</sup> Constitutional Reform Act in [2005]

<sup>78</sup> *Constitutional and Administrative Law*, Neil Parpworth, Oxford University Press, 2020 (11<sup>th</sup> Ed)



laws. Therefore, the wishes and concerns of the public, rather than those of the incumbent administration, will be considered in the writing of law<sup>79</sup>.

The role that Parliament plays in the lawmaking process, by providing a forum for debate and discussion of new laws, cannot be overstated. There is room for many voices to be heard and considered in the legislative process. This could lead to rules that are more sensitive to the ways in which they might affect different people. After legislation has been studied and debated, its weaknesses and unanticipated effects can be identified, and the legislation can be revised to address them<sup>80</sup>.

It is important to keep in mind, however, that the executive branch's role in legislation varies from one system to the next. Some parliamentary systems allow for more involvement from the executive branch in the legislative process than others. In a few countries, the head of state can make laws simply by issuing an executive order or a new set of regulations. The balance of power between the executive and legislative branches has a significant impact on the efficiency of the legislative process<sup>81</sup>.

Parliamentary sovereignty has been heavily debated and criticized, especially in light of the United Kingdom's membership in the European Union. In *Factortame Ltd v Secretary of State for Transport (No 2)* [1991]<sup>82</sup>, the House of Lords concluded that EU law took precedence over UK law and that courts might strike down acts of parliament that were in odds with EU law. There is a limit to the authority of parliament, and the courts play a significant role in the interpretation and application of laws, as evidenced by the present scenario. It is up to the courts to guarantee that the laws passed by Parliament are read and enforced equitably, in conformity with other sources of law and basic ideas of justice and fairness<sup>83</sup>.

Taking everything into account, parliament's participation in lawmaking is vital because it ensures that laws are fair and relevant to all, promotes open debate and discussion, and represents the interests of the people. It is important to assess Parliament's role in the legislative process in conjunction with the other branches of government and the opposition. The strength of the opposition and the balance of power between the arms of government can have a significant impact on the efficiency of the legislative process<sup>84</sup>.

#### **T4.2.**

The defense of individual rights is a fundamental tenet in the search for a fair and democratic society. The alignment of Article 13 of the 1978 Constitution alongside the human rights legislation of 1998 in the United Kingdom is the primary topic of this discussion. In order to ensure that arrest processes are carried out legally and that individuals are quickly notified of the grounds for their custody, both legal measures are essential. In this country, the protection of freedom of speech rests squarely on Article 13 of the Constitution, which dates back to 1978. No one may be detained or arrested outside of the legal framework that has been set up. When someone gets arrested, they must be told why. This constitutional duty stresses the need of following to legal procedures throughout arrests and assures that people imprisoned are quickly aware of the basis for their imprisonment.

The United Kingdom's protection of basic rights is significantly strengthened by the Human Rights Act of 1998<sup>85</sup>. The Act expands the legal foundation for protecting individual liberties by merging

---

<sup>79</sup> R (HS2 Action Alliance Ltd) v Secretary of State for Transport [2014] UKSC 3

<sup>80</sup> Jackson v Her Majesty's Attorney General [2005] UKHL 56

<sup>81</sup> Statute Book: Robert G Lee, Blackstones Statutes on Public Law and Human Rights 2019-2020 (29th edition, OUP 2019). Chapter 3

<sup>82</sup> *Factortame Ltd v Secretary of State for Transport (No 2)* [1991] 1 AC 603

<sup>83</sup> *Ghaidan v Godin-Mendoza* [2004] UKHL 30

<sup>84</sup> *Ibid*

<sup>85</sup> Government of Wales Act 1998

the European Convention on Human Rights (ECHR) into domestic law, providing a holistic approach to rights protection. The Human Rights Act upholds Article 5(1) of the ECHR, which emphasises the right to individual liberty as well as security. This squares squarely with the spirit of Article 13 of the 1978 Constitution, which emphasises that any limitation on an individual's freedom must conform to a legally regulated procedure. Therefore, the Act reaffirms and bolsters the dedication to avoiding unlawful detentions.

The duty to provide immediate explanations for an arrest is a crucial part of Article 13. The Human Rights Act, which guarantees the right to be informed of the reasons for detention, is consistent with this. The Act establishes the need for openness and responsibility during the arrest procedure, ensuring that no individual is ever kept in the dark about the reason for their incarceration. The Human Rights Act of 1998 provides an extensive legal structure that improves and refines the safeguards afforded by Article 13 of the 1978 Constitution, which lays out the basic principles for securing individual rights<sup>86</sup>. As a result of the Act's incorporation of the ECHR, a more sophisticated and granular strategy for protecting individual rights has been introduced. It discusses the nuances of arrest processes, ensuring that they comply with legal demands and stressing the need of prompt information disclosure. As a result, the alignment of Article 13 of the 1978 Constitution with the Human Rights Act of 1998 illustrates the consistent dedication of the United Kingdom to defending individual rights. The Human Rights Act supplements and expands upon the ideas established in Article 13 of the Constitution. Together, they provide a powerful legal framework that assures the protection of basic rights in the framework of arrest procedures, which promotes an equitable and just society.

#### **T4.3.**

In the British government, ministers are accountable for both individual and national concerns. These duties are set and maintained by the provisions of law, constitutional conventions, and judicial decisions. This article, which takes into consideration relevant legislation and judicial decisions, will analyze these obligations and the processes for establishing and enforcing them<sup>87</sup>. Responsibility for the Portfolio; the Ministerial Code is a fundamental piece of legislation that defines ministers' responsibilities. According to the document, each minister is responsible for overseeing a different government department. Consider the case of David Cameron, who resigned as Chief Secretary to the Treasury in 2010 after being found in violation of legislation limiting travel and entertainment charges, to see how these responsibilities can be enforced<sup>88</sup>. Policymaking and Decision-Making; whether they agree with them or not, ministers are compelled by law to support the government's policies. A constitutional convention is now underway. Means of Enforcement; Amber Rudd's 2018 resignation as Home Secretary in protest of government immigration policies is an example of how a breach of collective duty can lead to resignation or dismissal<sup>89</sup>.

Next, the idea of ministerial accountability requires both that ministers be held to account for their actions and policies in front of Parliament and that Parliament have recourse to correct any wrongdoing. *Carltona v. Commissioners of Work* established the principle that an official's conduct within a government department has the same effect as if taken by the minister himself<sup>90</sup>. Commons Resolution (1997) confirmed ministerial responsibility, making it clear that ministers are responsible to Parliament for the acts and decisions of their department<sup>91</sup>. In addition, any minister caught intentionally misleading Parliament would be expected to quit and turn in their resignation

---

<sup>86</sup> Human Rights Act [1998]

<sup>87</sup> *Attorney-General v Jonathan Cape Ltd* [1976] QB 75

<sup>88</sup> [www.gov.uk/government/publications/concordat-between-the-ministry-of-justice-and-the-welsh-government](http://www.gov.uk/government/publications/concordat-between-the-ministry-of-justice-and-the-welsh-government).

<sup>89</sup> <https://www.bbc.co.uk/news/uk-politics-43944988>

<sup>90</sup> *Carltona v. Commissioners of Works* [1943] 2 All ER 560

<sup>91</sup> Commons Resolution (1997)

to the Prime Minister. Information provided by ministers to Parliament should be complete and honest; information should be withheld only when doing so would be against the public interest. Access to governmental records is guaranteed by Section 3 of the Freedom of Information Act of 2000<sup>92</sup>. The Falklands War in 1982 led to Lord Carrington's resignation, and in 1986, Leon Britton resigned for releasing secret advice<sup>93</sup>.

A new threat to ministerial authority emerged with the advent of New Public Management (NPM), which resulted in "a further truncation of ministerial responsibility as governmental activities is transferred to the private sector" (Turpin). Accountability issues arose when government functions were transferred to executive entities. This was demonstrated by the Howard-Lewis affair. Howard claimed he had no involvement in the prison's daily operations and had merely issued policy guidelines to the private prison agency, so he forced Lewis out of his position. Separating "policy making" from "administration" was a primary goal. The participation of private companies multiplies the number of actors involved in governance, thus clouding the lines of accountability<sup>94</sup>. Though individual and collective ministerial accountability rules have had some success, this essay has demonstrated that they are not being adequately implemented and are growing more out of date. Regrettably, the treaty and the NPM, government ministers are shielded from political responsibility for their actions so long as they were taken in a decentralized agency. The principle of ministerial responsibility is separated from its practical implementation<sup>95</sup>.

#### **T4.4.**

The Prime Minister of the United Kingdom plays a significant role as the head of government in the parliamentary system that is in place in the country. Constitutional conventions, legislative rules, and historical practices govern the nomination, tenure, powers, and duties of the Prime Minister. This paper will examine the Prime Minister's responsibilities and powers in detail, using precedent and statutory language from the law to do so<sup>96</sup>.

Selecting a new Prime Minister; constitutional norms, rather than a specific legal provision, underpin the selection of the Prime Minister of the United Kingdom. After a general election, the Prime Minister usually comes from the party that won the most seats in Parliament. Registration of political parties with the Electoral Commission is mandatory under the Political Parties, Elections, and Referendums Act of 2000<sup>97</sup>, further establishing the function of political parties in representative government<sup>98</sup>.

Although constitutional conventions and electoral outcomes play significant roles in determining who would serve as Prime Minister, there have been no reported cases involving the appointment of the Prime Minister in court. Nonetheless, there have been court proceedings that dealt with questions of party leadership and election results<sup>99</sup>.

The Prime Minister's term in office is not guaranteed, but rather depends on a number of circumstances, such as the approval of the House of Commons and the whim of the monarch. The Fixed-term Parliaments Act of 2011<sup>100</sup> set the term of the House of Commons at five years, although it has since been abolished. At any time, the Prime Minister might resign or call for snap elections. Although *R (Miller) v. Prime Minister* (2019) does not directly address the Prime

<sup>92</sup> Freedom of Information Act of [2000] Section 3

<sup>93</sup> Falklands War in 1982 led to Lord Carrington's resignation, and in 1986, Leon Britton

<sup>94</sup> Statute Book: Robert G Lee, Blackstones Statutes on Public Law and Human Rights 2019-2020 (29th edition, OUP 2019).Chapter 2

<sup>95</sup> Ibid

<sup>96</sup> D. Oliver, 'Regulating Politics in Government', in J. Jowell, D. Oliver, and C. O'Conneide (eds) *The Changing Constitution*, 8th edn (2015, Oxford: OUP), ch. 11

<sup>97</sup> Political Parties, Elections, and Referendums Act of [2000]

<sup>98</sup> Statute Book: Robert G Lee, Blackstones Statutes on Public Law and Human Rights 2019-2020 (29th edition, OUP 2019) chapter 9

<sup>99</sup> Cabinet Office, *The Cabinet Manual*, 1st edn (2011, London: Cabinet Office) (footnotes omitted)

<sup>100</sup> Parliaments Act of [2011]

Minister's term in office, it does show how judicial rulings on issues like prorogation can have a knock-on effect on the length of a government's term<sup>101</sup>.

The Prime Minister has broad authority, which is based on constitutional and legislative provisions. The Ministerial and Other Salaries Act of 1975 specifies the Prime Minister's pay and other emoluments. Some cases, such as *R (Privacy International) v. Investigatory Powers Tribunal* (2019)<sup>102</sup>, have urged the courts to rule on executive power issues, such as the scope of government surveillance<sup>103</sup>.

Among the Prime Minister's many responsibilities are the management of government, the formulation of official policy, and the promotion of Britain's interests abroad. The Prime Minister has the authority to carry out the monarch's will in accordance with the Royal Prerogative. Although not explicitly stated in law, this is a crucial part of the Prime Minister's responsibilities. Although not a direct legal case, the notion of *Wednesbury* unreasonableness was established in the landmark *Associated Provincial Picture Houses v. Wednesbury Corporation* (1948) decision, and this has an indirect effect on the executive's duty to act reasonably and logically<sup>104</sup>.

In summary Various constitutional conventions and statutory laws govern the nomination, term, powers, and duties of the Prime Minister of the United Kingdom. While precedent and statutory requirements provide the Prime Minister with a framework within which to function, much of the Prime Minister's responsibility continues to be firmly anchored in custom and precedent. Because of the constitution's fluidity, these norms and protocols can and will alter throughout time to reflect shifts in British politics<sup>105</sup>.

#### **T4.5.**

---

<sup>101</sup> Ibid

<sup>102</sup> *R (Privacy International) v. Investigatory Powers Tribunal* (2019) UKSC 22

<sup>103</sup> Regulation of Investigatory Powers Act [2000] Section 67 (8)

<sup>104</sup> Ibid

<sup>105</sup> Ibid

**References****Acts of Law**

Administrative Procedure Act of [1947]  
 Climate Change Act of [2008]  
 Commons Resolution (1997)  
 Constitutional Reform Act in [2005]  
 Data Protection Act [2018]  
 Equality Act of [2010]  
 European Convention of Human Rights  
 Fixed-Term Parliament Act [2011]  
 Freedom of Information Act of [2000]  
 General Data Protection Regulation  
 Government of Wales Act 1998  
 Human Rights Act [1998]  
 Hunting Act [2004]  
 Investigatory Powers Act [2016]  
 Legal Aid, Sentencing and Punishment of Offenders Act [2012]  
 Northern Ireland Act 1998  
 Parliament Acts of 1911 and 1949  
 Parliamentary Acts [1994]  
 Parliaments Act of [2011]  
 Political Parties, Elections, and Referendums Act of [2000]  
 Regulation of Investigatory Powers Act [2000] Section 67 (8)  
 Royal European Convention of Human Rights [1950]  
 Scotland Act 1998  
 Treaty European Union [2016] Article 50

**Precedents**

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223  
 Attorney-General v Jonathan Cape Ltd [1976] QB 75  
 AXA General Insurance Ltd v HM Advocate [2011] UKSC 46  
 Carltona v. Commissioners of Works [1943] 2 All ER 560  
 Factortame Ltd v Secretary of State for Transport (No 2) [1991] 1 AC 603  
 Ghaidan v Godin-Mendoza [2004] UKHL 30  
 Jackson v Her Majesty's Attorney General [2005] UKHL 56  
 M v. Home Office [1994] AC 377  
 McGonnell v. UK [2000] EHRR 28  
 R (Evans) v Attorney-General 2015 UKSC 21  
 R (HS2 Action Alliance Ltd) v Secretary of State for Transport [2014] UKSC 3  
 R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland [2019] UKSC 41  
 R (Privacy International) v. Investigatory Powers Tribunal [2019] UKSC 22  
 R v Investigatory [2019] UKSC 22  
 R. (Miller) v Secretary of State for Exiting the European Union [2017] UKSC 5

**Other Sources**

'The rule of law' (2007) 66 Cambridge Law Journal 67, 69 (the published version of the lecture);  
 The Rule of Law (2010, London: Allen Lane) <https://www.advisory21.com/wp-content/uploads/2022/04/The-Rule-of-Law-PDFDrive-.pdf>  
 A.V.Dicey, Introduction to the Study of the Law of the Constitution (1885; 10th edn 1959)  
[https://files.libertyfund.org/files/1714/0125\\_Bk.pdf](https://files.libertyfund.org/files/1714/0125_Bk.pdf)  
 Bradley A W, Ewing KD, Knight C J S, Constitutional and Administrative Law (17th edition, Pearson 2018)  
<https://ndl.ethernet.edu.et/bitstream/123456789/57750/1/A%20W%20Bradley.pdf>

- Cabinet Office, *The Cabinet Manual: A guide to the laws, conventions, and rules on the operation of government* (1st ed Cabinet office, October 2011) <https://assets.publishing.service.gov.uk/media/5a79d5d7e5274a18ba50f2b6/cabinet-manual.pdf>
- Constitutional and Administrative Law, Neil Parpworth, Oxford University Press, 2020 (11th Ed) <https://www.oxfordlawtrove.com/display/10.1093/he/9780198847120.001.0001/he-9780198847120>
- D. Oliver, 'Regulating Politics in Government', in J. Jowell, D. Oliver, and C. O'Conneide (eds) *The Changing Constitution*, 8th edn (2015, Oxford: OUP) <https://www.oxfordlawtrove.com/display/10.1093/he/9780198806363.001.0001/he-9780198806363>
- Grace J, *Constitutional and Administrative Law* (Routledge 2016) <http://rguir.inflibnet.ac.in:8080/jspui/handle/123456789/14410>
- Le Sueur A, Sunkin M and Murkens J, *Public Law: Text, Cases and Materials* (4th edition, OUP 2019) chapter 10 <https://www.oxfordlawtrove.com/display/10.1093/he/9780198820284.001.0001/he-9780198820284>
- Ministry of Justice. (2018). *Concordat between the Ministry of Justice and the Welsh Government*. GOV.UK. <https://www.gov.uk/government/publications/concordat-between-the-ministry-of-justice-and-the-welsh-government>
- News, B. (2018, April 29). *Amber Rudd resigns as home secretary*. BBC News; BBC News. <https://www.bbc.com/news/uk-politics-43944988>
- Primary Source: Montesquieu, *The Spirit of the Laws* 1748 <https://constitutioncenter.org/education/classroom-resource-library/classroom/6.5-primary-source-montesquieu-the-spirit-of-the-laws>
- Ryan M and Foster S, *Unlocking Constitutional and Administrative Law* (4th edition, Routledge 2019) <https://doi.org/10.4324/9781315652610>
- Statute Book: Robert G Lee, *Blackstones Statutes on Public Law and Human Rights 2019-2020* (29th edition, OUP 2019). <https://wildy.com/isbn/9780192858634/blackstone-s-statutes-on-public-law-and-human-rights-2021-2022-paperback-oxford-university-press>
- Woodhouse, D. (1994). *Resignations for Departmental Fault*. *Oxford University Press EBooks*, 87–120. <https://doi.org/10.1093/acprof:oso/9780198278924.003.0006>