

The Separation of Powers Essay

Discuss

This essay aims to examine the reasons for and why it is important to have a separation of powers, to examine the United Kingdom's constitution, assessing our somewhat unclear separation of powers, and discussing the reasons why we do not have a strict separation, taking into account the overlaps and relationships between each limb of Government and the checks and balances required for it to operate efficiently.

The political doctrine of the Separation of Powers can be traced back to Aristotle, who states: "There are three elements in each constitution ..first, the deliberative, which discusses everything of common importance; second the officials; and third, the judicial element." This highlights the three elementary functions that are required for the organisation of any state. Nowadays, they are defined as the legislature, the executive and the judiciary, and are carried out by Government.

The legislature is the law-making body, and is comprised of the House of Commons and the House of Lords. The legislative function involves 'the enactment of general rules determining the structure and powers of public authorities and regulating the conduct of citizens and private organisations.

The executive is all the institutions and persons concerned with the implementation of the laws made by the legislature. It involves central and local government and the armed forces. The role of the executive '...includes initiating and implementing legislation, maintaining order and security, promoting social and economic welfare, administering public services and conducting the external relations of the state.

The judiciary is made up mainly of professional judges, and their main function is 'to determine disputed questions of fact and law in accordance with the law laid down by Parliament and expounded by the courts and ...is exercised mainly in the civil and criminal courts.'

The question which now arises is whether or not there should be a strict separation of each of the above functions. Locke stated:

..it may be too great a temptation to human frailty..for the same persons who have the power of making laws, to have also their hands the power to execute them, whereby they may exempt themselves from obedience to the laws they make, and suit the law, both in its making and execution, to their own private advantage.

Similarly, Montesquieu believed that:

When legislative power is united with executive power in a single person or in a single body of the magistracy, there is no liberty #46: is there

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