

Law essay

Structural features

Communication features

Discuss how appropriate the roles and relationships between the Prime Minister and the Cabinet are as a means of checking and balancing the power of Parliament.

When considering the Prime Minister's role, it is important to remember that it is not stationary nor written in statute. Instead it is convention based and depends a lot upon how much responsibility and power the individual Prime Minister wishes to take. The amount of decisions the Prime Minister makes for himself influences the role of the Cabinet, but essentially the Cabinet is the decision-making body in government.¹ Government's involvement in Parliament **could be seen as** excessive, especially as the link between the executive and legislature results in Parliament's ability to hold the executive to account being limited. **However**, it could be contended that it is important for government to have an influence in Parliament because they do need some discretion in implementing policies they wish.²

As leader of the government, the Prime Minister is responsible for any decisions made or policies published in government, and thus is ultimately accountable for the success or failure of his government. He also has a number of other roles such as chairing the Cabinet, deciding on who to appoint/dismiss as Minister (although the Queen actually does the appointing/dismissing,) and persuading Ministers to act in accordance with his party's intentions.³ However, not many of the roles of the Prime Minister are based in statute, instead most of them lie in conventions.⁴ **Though it could be argued here that this lack of legal basis could lead to a limit on powers, this essay will show how this is not, in fact, the case. Instead** it puts the Prime Minister in a position where he decides the extent to which he takes on the roles afforded to him; the Prime Minister takes responsibility for the decisions that he wants to decide.

Key facts about the issue are made clear at the outset

Language showing the two sides to the argument

Development of the ideas given in the opening paragraph.

Language showing the stance of the writer

Use of a real-world example to clarify and strengthen the argument.

Footnotes used as the Referencing system (see Chapter 8, Referencing with Accuracy)

¹Elliot and Thomas, *Public Law* (Oxford 2014)

²Elliot and Thomas, *Public Law* (Oxford 2014)

³'Ministerial role, Prime Minister,' <<https://www.gov.uk/government/ministers/prime-minister>

⁴Elliot and Thomas, *Public Law* (Oxford 2014), p113

For example, Tony Blair lead a strong, ‘command and control’⁵ government in which he took on a lot of the powers and made decisions. Some other Prime Ministers take a more back seat approach, leaving more of the decision-making powers to the Cabinet.

The Cabinet is the decision-making body of government, which brings together all the different departments within government in order to **‘make the most important policy decisions and to resolve differences within government.’**⁶ The relationship between the Prime Minister and the Cabinet is greatly influenced by their roles. In the case of a so-called ‘sofa government,’⁷ the Prime Minister makes a lot of decisions, leaving less decision-making powers to the Cabinet. In other words, a strong Prime Minister results in a less power Cabinet, and vice-versa. Due to this correlation, it could be argued it is difficult to precisely describe the role of both the Cabinet and the Prime Minister, because it changes between governments.⁸ Ultimately though, it is the Prime Minister who has control over how much power the Cabinet has, as well having control over the Cabinet itself, as for example, he sets the agenda of discussions and decides who is appointed and dismissed from the body.⁹

Within the UK constitution, to some extent, we can see the existence of the separation of power doctrine which refers to the separating of powers between three different institutions, the executive, legislature and judiciary. A separation of powers **should**, superficially, stop any of the above branches from abusing their power, as power is not concentrated in one branch alone. The division between the three institutions allows for each branch to hold the other in check and to regulate their use of power.¹⁰ For example, the legislature can **keep check** on the executive when it wishes to bring out a new piece of legislation, as it will need the approval of Parliament, which provides the legislature with a means of **keeping check** on the executive. By not allowing the policy to become law without

Use of a direct quotation to give emphasis to a point
See Ch 8 Referencing with accuracy

Use of modal verb ‘should’ to show theoretical likelihood.

Ideas are developed whilst using language from the title to demonstrate relevance

⁵Hennessy, *The Prime Minister: The Office and Its Holders Since 1945* (London 2000), chapter 18

⁶Cabinet Office, ‘Ministerial Code’ (London 2010),[2.2]

⁷*Review of Intelligence on Weapons of Mass Destruction* (HC 898 2003–04), p148

⁸Keith Syrett, *The Foundations of Public Law: Principles and Problems of Power in the British Constitution* 2nd Edition (Palgrave Macmillan 2011), p155

⁹Hilaire Barnett, *Understanding Public Law* (Cavendish 2009), p90

¹⁰Elliot and Thomas, *Public Law* (Oxford 2014), p89

going through a series of debates in both Houses, it could be argued that the legislature is preventing the government from **abusing their powers**.

However, this is not always the case. As the government's party usually holds a majority in the House of Commons,¹¹ thus creating a direct link between the two branches, Parliament's ability to keep a check on the government can be limited. Due to the pressure from party whips, the Ministers within the Commons are likely to vote in favour of their party,¹² thus in favour with the government. This **'nearly complete fusion [of] the executive and legislative'**¹³ branches of government results in a system in which checks and balances are very hard to maintain, as part of the government is essentially sitting within Parliament. Government is directly interfering with a function that, according to the separation of powers, should be left to the legislature. **Thus**, the legislative branch holding the executive to account can be difficult. **Although** it could be argued that such an involvement is necessary in order to allow the government a level of discretion in policy-implementing,¹⁴ this essay proposes that the government's capacity to pass nearly "any measure"¹⁵ through Parliament does not allow for an effective **system of checks and balances**, suggesting that government's involvement within Parliament is excessive.

Nonetheless, it seems likely that government's involvement within Parliament is at an appropriate level. After all, MPs can vote against their party if they feel strongly enough and this provides a level of legitimate scrutiny by Parliament, allowing them to keep some checks on the government. This is especially the case where government does not hold a strong majority, as they have fewer MPs in their favour. So, if the government only holds 52% of the seats, as they did after the 1922 election,¹⁶ it would not be difficult for a government bill to be refused in the Commons, and thus it could be argued the legislature can perform an adequate amount of checks on government. **Again, there seems to be a correlation**, the stronger the majority in the Commons, the more excessive government's involvement and vice-versa. **Furthermore, this essay contends**

Direct quotation here is used within the sentence and is grammatically accurate.

Linking words to drive the argument forward.

Language showing the stance of the writer

¹¹Cabinet Office, *The Cabinet Manual* (2011), chapter 2

¹²Elliot and Thomas, *Public Law* (Oxford 2014), p107

¹³Bagehot, *The English Constitution* (London 1867), p12

¹⁴Elliot and Thomas, *Public Law* (Oxford 2014), p 365

¹⁵Hailsham, *The Dilemma of Democracy, Diagnosis and Prescription* (Glasgow 1978)

¹⁶Elliot and Thomas, *Public Law* (Oxford 2014), p107

that government should have some involvement in the approval of their policies because, after all, it is their job to produce and implement them. Government's involvement in the process could be argued to be allowing them to complete their job at an appropriate level.

To conclude, the correlation between the Prime Minister's role and the role of the Cabinet results in a difficulty in precisely defining their roles, especially as they are not defined in statute.¹⁷ The Cabinet holds an important role as the main decision making body, and the Prime Minister holds authority to make a lot of significant decisions himself. However, the roles of each body are prone to change depending on who is the Prime Minister at the time. The relationship between the two, for example, the Prime Minister's involvement in chairing the Cabinet and his capacity to decide who sits in Cabinet, suggests that the Prime Minister takes dominance. This essay therefore concludes that the roles of both the Prime Minister and the Cabinet are determined by the Prime Minister himself/herself and depend upon the amount of responsibility and decision making he/she chooses to take on.

The *partial version* of the separation of powers',¹⁸ that appears to have been adopted by the UK gives rise to a system where no clear line has been drawn between the powers and functions of the executive branch and the legislative branch.¹⁹ **It is hard to draw a conclusion as to whether government's involvement in Parliament is excessive or appropriate** due to the changing of governments and thus a changing of majority in the Commons. However, this essay is more in favour of concluding that government holds an appropriate amount of involvement in Parliament's functions in order to allow the executive to do its job without being continuously challenged.

Bibliography

Bagehot, *The English Constitution* (London 1867)

Cabinet Office, 'Ministerial Code' (London 2010), [2.2]

¹⁷Commons Select Committee, 'Issues and Questions: Prime Minister, Prerogative and Power', <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/news/pm-powers-inquiry/discussion-paper-pm-powers/>

¹⁸Vile, *Constitutionalism and the Separation of Powers* (Oxford 1967), chapter 1

¹⁹Vile, *Constitutionalism and the Separation of Powers* (Oxford 1967), chapter 1

Final paragraph that directly addresses the task.

Language showing the complexity of the issue.

Bibliography to complement the footnotes

Cabinet Office, *The Cabinet Manual* (2011)

Committee of Privy Counsellors, 'Review of Intelligence on Weapons of Mass Destruction' (HC 898 2003-04)

Commons Select Committee, 'Issues and Questions: Prime Minister, Prerogative and Power,' <http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/news/pm-powers-inquiry/discussion-paper-pm-powers/> > accessed 7th March 2016

Elliot and Thomas, *Public Law* (2nd ed, Oxford 2014)

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Hennessy, *The Prime Minister: The Office and Its Holders Since 1945* (London 2000)

Hilaire Barnett, *Understanding Public Law* (Cavendish 2009)

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'Ministerial role, Prime Minister,' <https://www.gov.uk/government/ministers/prime-minister> > accessed 2nd March 2016

Vile, *Constitutionalism and the Separation of Powers* (Oxford 1967)

Diana and Tom's comments

The success of this essay lies in its clear focus on the task. There is a reasoned argument, showing how the issue is complex and difficult. Examples are used to show the real-world significance of the arguments. A good range of sources are drawn on to demonstrate an appropriate level of scholarship, and the use of direct quotations is limited (which is a good thing) but where used, serve to strengthen the point. Improvements would be possible, as there is some repetition of ideas, and these are not always evaluated critically.