



Separation of powers

Curriculum link: Legal Studies

Learning outcomes

Students will be able to understand the concept of Separation of powers.

Students will be able to explain the importance of the separation of powers in a democratic regime.

Students can describe what the separation of powers looks like in the Australian and Tasmanian contexts.

Engage

- Montesquieu, *De l'Esprit des Lois* (1748) [The Spirit of the Laws], Book V, Chapter 14.

Democratic and aristocratic states are not in their own nature free. Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. **But constant experience shows us that every man invested with power is apt to abuse it,** and to carry his authority as far as it will go. Is it not strange, though true, to say that virtue itself has need of limits?

To prevent this abuse, it is necessary from the very nature of things that **power should be a check to power.** A government may be so constituted, as no man shall be compelled to do things to which the law does not oblige him, nor forced to abstain from things which the law permits.

Ask students if they agree with the quote, in particular the parts that are in bold.

New Information:

The theory of separation of powers. Watch the video or read the fact sheet available on the Parliament of Tasmania website education zone.

Complete and discuss the following questions:

How many branches exist in the Australian and Tasmanian governments?

What are the names of each of the three branches?

Who makes up the legislative branch?

Who makes up the executive branch?

Who makes up the judicial branch?

What are the roles of each branch?

Activity: The power game

To win the game, a student must accumulate the greatest number of tokens.

Scenario 1:

A student, picked randomly, is given all of the tokens. He then decides how to distribute them amongst the class.

Who wins?

Scenario 2:

Select a group of 5 students from the class who will form the Legislative group. They must choose 4 of the following rules to apply to this round.

If you are a good student, you get 2 tokens.

- If you study a language, you get 2 tokens.
- If you are a teenager, you get 2 tokens.
- If people like you, you get 2 tokens.
- If you live on a small island, you get 2 tokens.
- If you are from the best State in Australia, you get 2 tokens.
- If you are nice, you get 2 tokens.
- If you are talented, you get 2 tokens.
- If you are short, you get 2 tokens.

Then, they need to create 2 more rules and count how many token they each get.

Next, the rest of the students must calculate how many tokens they get according to the rule. If students disagree with each other, the members of the Legislative group will decide who is right.

(This should provoke discussion amongst students concerning the interpretation of the rule. E.g. How short do you have to be to get tokens? Does English count as a language or is it only foreign languages ?).

Debrief with students. How does this activity illustrate the concept of separation of powers? Which power would be in charge of resolving conflicts concerning the interpretation of the law?

You can do this activity as a whole class or separate the class and run two games at the time to help with discussions.

Review

Can students identify recent stories in the news that illustrate the separation of powers, showing how the various branches of powers influenced an issue.