

AQA
A-level

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with Anthony J. Bennett

Politics

- Government and Politics of the UK
- Government and Politics of the USA
and Comparative Politics

A decorative graphic at the bottom of the cover featuring the Union Jack and the US flag. The flags are depicted as if they are made of smoke or are blowing in the wind, creating a dynamic and artistic effect. The colors are vibrant, with the red, white, and blue of the flags standing out against the dark background.

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Get the most from this book

This textbook has been tailored explicitly to cover the content of the AQA specification for the A-level course. The book is divided into three parts: the Government of the UK, the Politics of the UK, and Government and Politics of the USA and Comparative Politics. The text provides the foundation for studying AQA Politics, but you will no doubt wish to keep up to date by referring to additional topical sources of information about political events. This can be done by reading the serious newspapers, visiting key sites on the internet and reading magazines such as *Politics Review*.

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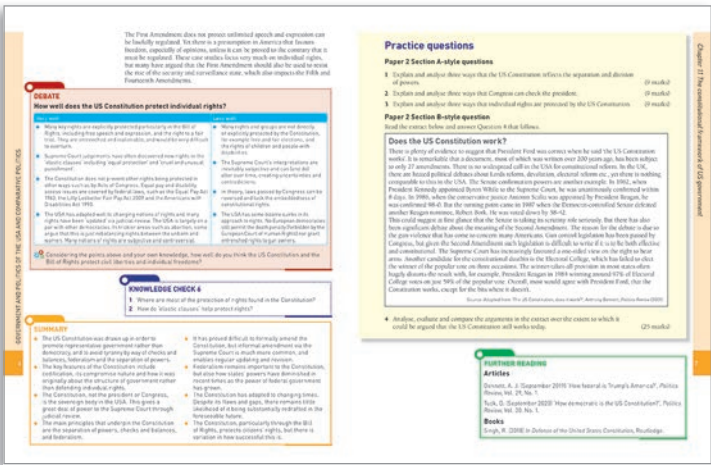
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The constitutional framework of US government

KEY QUESTIONS ANSWERED

- What are the key features and principles of the US Constitution?
- What is the significance of the main principles in the US Constitution?
- What framework of government is set out in the US Constitution?
- How can the US Constitution be amended both formally and informally?
- What does the US Constitution say about federalism?
- What is the current balance of power between individual states and federal government?
- Is the US Constitution still suited to twenty-first-century America?
- How well does the US Constitution, and especially the Bill of Rights, defend civil liberties and freedoms?

BACKGROUND INFORMATION

One of the most important things to understand when studying the US Constitution and American politics is that it is easy to assume too many similarities with the political structure and culture of the UK. America is different. Consider the way both countries reacted to the COVID-19 pandemic. In both countries, social distancing was prominent, health systems struggled to cope and the usual patterns of life were significantly disrupted. Yet beneath the apparent similarities, there were marked differences in tone and emphasis.

On 3 April 2020, President Trump stressed how wearing face masks to prevent the spread of Coronavirus was a voluntary action. He stated:

‘You do not have to do it...I don’t think I’m going to be doing it. Sitting in the Oval Office...I somehow don’t see it for myself.’

Even by early April 2020, around ten states had still stopped short of asking all residents to remain indoors or imposing lockdown orders. Iowa Governor Kim Reynolds argued: ‘I can’t lock the state down...I can’t lock everybody in their home.’ At the same time, Governor Andrew Cuomo of badly hit New York state, along with the city’s mayor, issued stay-at-home orders and stressed the deadliness of the virus. The response was rather a long way from Britain’s national lockdown and the initial simple and universal mantra of ‘Stay at Home, Protect the NHS, Save Lives’. This illustrates one of many differences between the UK and the USA in political structure and culture. But like other nations around the world, much of modern-day American political culture and diversity stems from its historic roots.

The nature and significance of the US Constitution

The origins of the US Constitution

Following the American Revolution, the first attempt at creating a new government was based on the **Articles of Confederation**. This agreement between the 13 original US states served as the first constitution. It provided for a loose commonwealth of colonies, with very little by way of central government or authority, and there was no president. Individual colonies — each with their own distinct features, and of varying size and political institutions — were reluctant to give up their hard-won independence, only for it to be handed over to a remote central government. Within several years, however, the setup proved unsustainable. But weaknesses soon became apparent through events such as Shays' Rebellion, an armed uprising in 1787. The rebels were mostly ex-Revolutionary War soldiers-turned-farmers who opposed Massachusetts' economic policies, which had led to poverty and property seizures. The tension — keenly felt then as it is now — lay in how to balance freedom and the right to resist on occasion with stability and effective government. The answer was the Constitutional Convention, which met in Philadelphia from May to September 1787. The 55 attendees (Founding Fathers) drew up the **US Constitution**, which then had to be ratified by nine of the 13 states before it could come into effect. This was achieved in June 1788 when New Hampshire became the ninth state to ratify.

KEY CONCEPT

US Constitution The document that contains the key rules and framework for America's government. Although drawn up in 1787, it has subsequently been amended 27 times, so the Constitution today is lengthier than the original version.



The Constitutional Convention meets in Philadelphia, May–September 1787

Key features of the US Constitution

Drawing up a constitution for a fledgling nation was no easy task for the Founding Fathers, a group of men that included George Washington, Alexander Hamilton and Thomas Jefferson. There was much heated debate and discussion, disputes and differences over a number of points including how power should be balanced between states and the federal government, and between large and small states. The final document bore several important and enduring features:

- **It emphasised ‘representative government not democracy’.** The original Constitution contained no lofty aspirations to one man, one vote, let alone one person, one vote. Nor was there any requirement for a secret ballot. The only nod to elections was: ‘The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature.’ The notion of representative government is borne out further by the indirect election of the president, who was (and still is) selected via an Electoral College and not by a direct popular vote. The Senate, too, was initially chosen indirectly by state legislatures, though this was altered to direct election in 1913 by the Seventeenth Amendment.
- **One less well-known aspect of the Constitution was its general fear of mass democracy.** Hamilton wrote: ‘Can a democratic assembly who annually revolve in the mass of the people be supposed steadily to pursue the common good? Nothing but a permanent body can check the imprudence of democracy.’ That permanent body was the Constitution.
- **It was a product of its time and culture, and of its authors.** The Founding Fathers were all white, Christian males. Nearly all were enslavers, most owned land and most actively avoided a fundamental shift of power away from the wealthy elite.
- **Slavery was part and parcel of the new nation, and intrinsic to the economy and society of several states.** This was especially true in the South, where cotton and tobacco plantations were dependent on the labour of enslaved people. The Constitution was silent on the contentious issue of slavery. This may have been with an intention of diplomacy concerning the framers themselves given their own differences over this matter, but would sow the seeds both of injustice and of civil war in the future.
- **It was about the framework and structure of government; it was not about individual rights.** Those first appeared in 1791 with the first ten constitutional amendments, known as the **Bill of Rights**.

STUDY TIP

In your answers, do not make the mistake of stating these well-known words are found in the Constitution:

‘We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.’

They actually originate in the 1776 Declaration of Independence.

KEY CONCEPT

Bill of Rights The first ten amendments to the Constitution that were agreed by Congress in 1789 and finally ratified in 1791. These amendments focus on individual rights such as freedom of speech and religion. They protect the civil liberties of US citizens from the actions of government.

- **The order of the articles was not pure chance.** Congress comes first in the articles, suggesting it was seen as the principal player. The president is mentioned second and was envisaged as more of a trouble-shooter, an international representative and a focus for unity than as a powerful authority figure. Having escaped the ‘tyranny’ of one monarch, the Founding Fathers had no desire to manufacture an American version. The Supreme Court came last, and its role lacked specific details. There were no specific requirements for the judges in terms of age, number or even

STUDY TIP

A common error is to misunderstand the three-fifths clause. The clause wasn't intended to grant enslaved people part of a vote. Rather it was solely included to aid in the calculation of numbers of seats in the House of Representatives — enslaved people would count for three-fifths of a freeman. The three-fifths clause was repealed by the Fourteenth Amendment (1868).

USEFUL CONCEPTS

Implied powers Powers of federal government implied by, or read into, its roles and responsibilities as laid out in the US Constitution.

Enumerated (delegated) powers Powers explicitly spelt out in the US Constitution.

nationality. Nor was there any mention of their role as interpreters of the Constitution or of judicial review.

- **It was a compromise in several important ways.**
 - The Connecticut Compromise dealt with the clash between small and large states, both of which feared being dominated or held to political ransom by the other. The upper chamber, the Senate, would have equal representation from every state, while the lower chamber, the House of Representatives, would have representation based on population size.
 - There was also compromise between states with large populations of enslaved people, such as Virginia, and others via the **three-fifths clause**.
 - Finally, there was compromise between those Founding Fathers such as Hamilton, who wanted a strong central government, and those such as Jefferson, who wanted most power still to lie with individual states.
- The Constitution was also based on the premise that political relations, especially between executive and legislature, would be based around **negotiation and cooperation, not confrontation and competition**.
- **There was an implicit fear of power.** The framers accepted that some power was required for a nation to flourish and prosper, but that power was also dangerous. Thomas Jefferson wrote in his autobiography that good governance came 'not by the consolidation or concentration of powers, but by their distribution'. Power was separated and shared between the states and federal government, and between the different institutions of federal government. **Limited government** was a key principle, both in the balance between individual rights and those of government, and between the federal government and individual states. The US Constitution was also to be a codified document, unlike the UK Constitution.
- **The Constitution left much unsaid and plenty that was vague.** Powers that are only outlined vaguely are termed **implied powers**. For example, Congress was given the power to 'provide for the common defence and general welfare of the United States.' What does this mean in practice? For example, can that be used to justify the military draft (conscription) or a national healthcare programme? Yet in places it is remarkably specific, such as setting the minimum age for the president (35), senators (30) and members of the House of Representatives (also known as congress(wo)men) (25). It also sets out certain key powers such as Congress's power to 'coin money' and the president acting as Commander-in-Chief. These are **enumerated (or delegated) powers**. The Constitution is, according to Anthony Bennett, a 'blend of specificity and vagueness'. It was also designed to be **long lasting and enduring, and not to be easily changed or overturned**. Therefore, the process for formal amendment was complex and required a high threshold for approval.
- Despite huge differences over what it means in places, and a deep polarisation in US politics generally, the Constitution itself **acts as a focus of loyalty and attachment** for the majority of Americans.
- Finally, and perhaps most crucially, the **Constitution was to be sovereign**, the ultimate source of authority. As stated in Article Six, 'This constitution...shall be the *supreme Law of the Land*'. Neither president nor Congress could override its provisions.

KNOWLEDGE CHECK 1

- 1 What does codification mean?
- 2 In what ways was the Constitution a compromise?
- 3 What is the difference between implied and enumerated powers?

The protection of civil liberties and rights

The extent to which the Constitution protects civil liberties and the rights of US citizens is another keenly debated topic. To help you arrive at a judgement, you should keep the following points in mind. First, the bulk of individual rights are found in the 1791 Bill of Rights and a few of the later amendments, and not the original document. Second, not all rights are equally well entrenched and thus inalienable. Finally, the protection of rights is, to a large extent, dependent on interpretation by the Supreme Court.

The key rights explicitly enshrined in the Constitution are:

- the First Amendment rights to free speech and expression, a free press and the right to practise one's religion freely
- the Second Amendment right to bear arms
- the Fourth Amendment right against 'unreasonable searches'
- the Fifth Amendment right not to incriminate oneself
- the Sixth Amendment right to a swift, fair and public trial
- the Seventh Amendment right to a jury trial in civil lawsuits
- other amendments have protected Americans against slavery, and racial or gender discrimination in voting

Yet it is also important to note some of the many groups not specifically afforded constitutional protection: people with disabilities, children, and LGBTQ Americans.

There is no mention of social rights that feature in more recent human rights charters, including the right to education, healthcare and housing. The American notion of constitutional rights is patchy, selective and often a product of its time. The rights of many groups are instead protected by congressional or state legislation.

In order to analyse the effectiveness of these rights, consider the First Amendment. One of the stranger experiences of visiting many of America's excellent National Parks is to see signs that designate the area as a 'First Amendment area'.

Yet in many ways, these signs sum up the paradox concerning the USA and free speech, which is essentially a mixture of protection and regulation. Free speech does not equate to the ability to say anything, anywhere, at any time. Virtually any opinion, however weird or morally debased, must be protected. Yet views that advocate breaking the law or threaten public order can be regulated and sanctioned. There are a number of test cases that seek to discover where a line can be drawn, as shown in the case study below.



First Amendment expression area at National Park

ACTIVITY

Research some recent developments in this area, such as the Patriot Act and Foreign Intelligence Surveillance Acts, and key cases such as *Rasul v Bush*, *Clapper v ACLU* and *Holder v Humanitarian Law Project*. How well has the Constitution protected citizens' rights in these instances?

CASE STUDY

First Amendment rights: *Morse v Frederick* (2007)

The case found against the protection of free speech. It involved an Alaskan high school student who unfurled a banner reading 'BONG HiTS 4 JESUS' across the street from the school at a school-supervised event during the 2002 Winter Olympics torch relay. He was suspended by his principal for promoting the use of illegal drugs but appealed, claiming his freedom of expression had been violated. The student lost the case on the grounds that schools can indeed regulate speech, 'school speech', where it undermines a school's educational mission or threatens students' safety. Had the banner not been displayed at a school-run event or run contrary to an accepted goal of the school (to dissuade illegal drug use), then the outcome would probably have been different.

The First Amendment does not protect unlimited speech and expression can be lawfully regulated. Yet there is a presumption in America that favours freedom, especially of opinions, unless it can be proved to the contrary that it must be regulated. These case studies focus very much on individual rights, but many have argued that the First Amendment should also be used to resist the rise of the security and surveillance state, which also impacts the Fifth and Fourteenth Amendments.

DEBATE

How well does the US Constitution protect individual rights?

Very well	Less well
<ul style="list-style-type: none"> Many key rights are explicitly protected particularly in the Bill of Rights, including free speech and expression, and the right to a fair trial. They are entrenched and inalienable, and would be very difficult to overturn. Supreme Court judgements have often discovered new rights in the 'elastic clauses' including 'equal protection' and 'cruel and unusual punishment'. The Constitution does not prevent other rights being protected in other ways such as by Acts of Congress. Equal pay and disability access issues are covered by federal laws, such as the Equal Pay Act 1963, the Lilly Ledbetter Fair Pay Act 2009 and the Americans with Disabilities Act 1990. The USA has adapted well to changing notions of rights and many rights have been 'updated' via judicial review. The USA is largely on a par with other democracies. In trickier areas such as abortion, some argue that this is just rebalancing rights between the unborn and women. Many notions of rights are subjective and controversial. 	<ul style="list-style-type: none"> Many rights and groups are not directly or explicitly protected by the Constitution, for example free and fair elections, and the rights of children and people with disabilities. The Supreme Court's interpretations are inevitably subjective and can (and do) alter over time, creating uncertainties and contradictions. In theory, laws passed by Congress can be reversed and lack the embeddedness of constitutional rights. The USA has some bizarre quirks in its approach to rights. No European democracies still permit the death penalty (forbidden by the European Court of Human Rights) nor grant entrenched rights to gun owners.

Considering the points above and your own knowledge, how well do you think the US Constitution and the Bill of Rights protect civil liberties and individual freedoms?

KNOWLEDGE CHECK 6

- 1 Where are most of the protection of rights found in the Constitution?
- 2 How do 'elastic clauses' help protect rights?

SUMMARY

- The US Constitution was drawn up in order to promote representative government rather than democracy, and to avoid tyranny by way of checks and balances, federalism and the separation of powers.
- The key features of the Constitution include codification, its compromise nature and how it was originally about the structure of government rather than defending individual rights.
- The Constitution, not the president or Congress, is the sovereign body in the USA. This gives a great deal of power to the Supreme Court through judicial review.
- The main principles that underpin the Constitution are the separation of powers, checks and balances, and federalism.
- It has proved difficult to formally amend the Constitution, but informal amendment via the Supreme Court is much more common, and enables regular updating and revision.
- Federalism remains important to the Constitution, but also how states' powers have diminished in recent times as the power of federal government has grown.
- The Constitution has adapted to changing times. Despite its flaws and gaps, there remains little likelihood of it being substantially redrafted in the foreseeable future.
- The Constitution, particularly through the Bill of Rights, protects citizens' rights, but there is variation in how successful this is.

Practice questions

Paper 2 Section A-style questions

- 1 Explain and analyse three ways that the US Constitution reflects the separation and division of powers. (9 marks)
- 2 Explain and analyse three ways that Congress can check the president. (9 marks)
- 3 Explain and analyse three ways that individual rights are protected by the US Constitution. (9 marks)

Paper 2 Section B-style question

Read the extract below and answer Question 4 that follows.

Does the US Constitution work?

There is plenty of evidence to suggest that President Ford was correct when he said 'the US Constitution works'. It is remarkable that a document, most of which was written over 200 years ago, has been subject to only 27 amendments. There is no widespread call in the USA for constitutional reform. In the UK, there are heated political debates about Lords reform, devolution, electoral reform etc., yet there is nothing comparable to this in the USA. The Senate confirmation powers are another example. In 1962, when President Kennedy appointed Byron White to the Supreme Court, he was unanimously confirmed within 8 days. In 1986, when the conservative justice Antonin Scalia was appointed by President Reagan, he was confirmed 98-0. But the turning point came in 1987 when the Democrat-controlled Senate defeated another Reagan nominee, Robert Bork. He was voted down by 58-42.

This could suggest at first glance that the Senate is taking its scrutiny role seriously. But there has also been significant debate about the meaning of the Second Amendment. The reason for the debate is due to the gun violence that has come to concern many Americans. Gun control legislation has been passed by Congress, but given the Second Amendment such legislation is difficult to write if it is to be both effective and constitutional. The Supreme Court has increasingly favoured a one-sided view on the right to bear arms. Another candidate for the constitutional dustbin is the Electoral College, which has failed to elect the winner of the popular vote on three occasions. The winner-takes-all provision in most states often hugely distorts the result with, for example, President Reagan in 1984 winning around 97% of Electoral College votes on just 59% of the popular vote. Overall, most would agree with President Ford, that the Constitution works, except for the bits where it doesn't.

Source: Adapted from 'The US Constitution, does it work?', Anthony Bennett, *Politics Review* (2009).

- 4 Analyse, evaluate and compare the arguments in the extract over the extent to which it could be argued that the US Constitution still works today. (25 marks)

FURTHER READING

Articles

Bennett, A. J. (September 2019) 'How federal is Trump's America?', *Politics Review*, Vol. 29, No. 1.

Tuck, D. (September 2020) 'How democratic is the US Constitution?', *Politics Review*, Vol. 30, No. 1.

Books

Singh, R. (2018) *In Defense of the United States Constitution*, Routledge.

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