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EDUCATION

MY REVISION NOTES
AQA A-level
US POLITICS

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A-level

POLITICS

US AND COMPARATIVE POLITICS

SECOND EDITION

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My revision planner

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1 The constitutional framework of US government

The US Constitution is:

- + the supreme authority in all aspects of US government: it has **constitutional sovereignty**
- + codified and also hard to amend formally
- + based around the separation of powers and checks and balances
- + federal, with power shared between central/federal government and individual states, but federal law always has ultimate authority over any state laws (supremacy clause in the Constitution).

Constitutional sovereignty Ultimate power (sovereignty) lies in the Constitution, not with the legislature as is the case in the UK.

It established a republican form of government, i.e. a president, not a monarch, as head of state.

The nature and significance of the US Constitution

Key principles

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The US Constitution was influenced by the ideas of the French philosopher Montesquieu (1689–1755). It was drawn up in 1787 in Philadelphia and ratified in 1788, replacing the much weaker **Articles of Confederation**.

- + It was designed to avoid tyranny, especially by the leader, and so power is both separated and overlapping between the different branches of government: executive (presidency), legislature (Congress) and judiciary (Supreme Court).
- + Each branch also **checks and balances** the other. For example, the president may veto an act of Congress, but Congress can impeach (remove) the president and override the veto. There are also checks and balances within Congress. For example, all legislation needs to pass through both chambers before going to the president for signing into law.
- + The main original document sets out the respective powers of each branch of government and also aspects of the political process, such as indirect election of the president and representation rules for Congress.
- + Most aspects dealing with the protection of individual rights and freedoms are found in the amendments starting with the **Bill of Rights**.

The US Constitution was essentially a compromise between:

- + those who wanted a stronger central government (**Federalists** such as Alexander Hamilton and John Adams) and those who wanted most power to rest with the states, e.g. Thomas Jefferson
- + large states such as Virginia and small states such as Rhode Island – hence, small states had equal representation in the Senate (two senators per state irrespective of population size), while the number of seats in the House of Representatives is determined by population
- + slave and non-slave states – slave states were allowed to count enslaved people as three-fifths of a free person for the purposes of calculating the size of a state delegation in the House of Representatives.

Articles of Confederation The original constitution of the USA drawn up in 1777 and ratified in 1781. It had a weak central government and soon proved unsuited to the fledgling nation.

Checks and balances The process by which different branches of government are limited or checked by the others, thus ensuring no one branch becomes too powerful. This principle is analysed in greater depth on p. 14.

Bill of Rights The first ten amendments to the constitution passed in 1791. They are discussed more fully on p. 16.

Federalists Those Founding Fathers who wanted a stronger central government. Arguably the first example of party and faction in the United States.

The nature of the US Constitution envisaged by its framers

The framers had a clear vision for the Constitution:

- + The different branches would co-operate and make compromises with each other.
- + No one branch of government would become too powerful. The desire was to avoid an over-powerful 'tyranny', as many Americans perceived the British monarchy to be in the late eighteenth century.
- + The emphasis was on representative government, not democratic government. See below.
- + There was a suspicion of democracy which was associated with mob rule. Nowhere in the original Constitution was the right even of 'one free (White) man, one vote' laid out. Nor were the president or Senate to be elected directly. Originally, senators were to be chosen by state governments; the Senate switched to direct elections only in 1913 (Seventeenth Amendment).
- + It would be permanent and lasting, hence it was made deliberately difficult to amend/formally change.

The separation of powers in the US Constitution

Power is separated by the US Constitution in the ways laid out in Table 1.1.

Table 1.1 Separation of powers in the US Constitution

President	<ul style="list-style-type: none"> + Is commander-in-chief of the armed forces. + Oversees foreign policy and relations with foreign powers. + Is in charge of the federal bureaucracy and chooses secretaries of state (ministers). + Can issue pardons to individuals. + Nominates federal judges including to the Supreme Court when vacancies occur. + Can suggest laws to Congress and can also veto them. + Cannot sit in Congress, nor can members of their cabinet.
Congress	<ul style="list-style-type: none"> + Passes laws and raises taxes. + Must confirm most presidential appointments (Senate only). + Ratifies foreign treaties and formal declarations of war. + Can impeach the president and judges. + Cannot serve in government, so must resign if appointed to the executive by the president. Hence Deb Haaland had to resign as a congresswoman for New Mexico when appointed by Joe Biden as Interior Secretary in 2021.
Supreme Court	<ul style="list-style-type: none"> + Interprets the Constitution. + Ensures the actions of Congress and the president are in accordance with the Constitution. + Can 'strike down' laws/actions it sees as unconstitutional.

Impeachment The power of Congress to remove either the president or a member of the judiciary. It requires a simple majority in the House to formally begin the process; the actual trial is held in the Senate, with a two-thirds majority required for conviction. Only three presidents have been tried for impeachment. Donald Trump was tried twice and acquitted by the Senate both times.

Exam tip

Although we often talk of the separation of powers in the USA, it is actually more accurate to refer to shared powers and separate personnel. For example, law making involves the co-operation of both president and Congress.

Exceptions to the principle of the separation of powers

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Exceptions include:

- ✦ The vice president is also president of the Senate and has the casting vote in the event of a tie.
- ✦ The president's power of pardon is a judicial rather than executive power.
- ✦ Control and deployment of the armed forces: the president is commander-in-chief but Congress must authorise any declaration of war.

Exam tip

The three-fifths clause was purely a means of calculating the number of representatives each state could send to the House. It did not give any enslaved people the vote, nor did it mean that a Black enslaved person was 'worth' three-fifths of a free person.

Now test yourself

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- 1 Is the US Constitution unitary or federal?
- 2 When and where was the US Constitution drawn up?
- 3 How was the Constitution a compromise between slave and free states?
- 4 Which branch of government has the power of impeachment?
- 5 Which branch of government is in charge of foreign relations?

Answers available online

Checks and balances

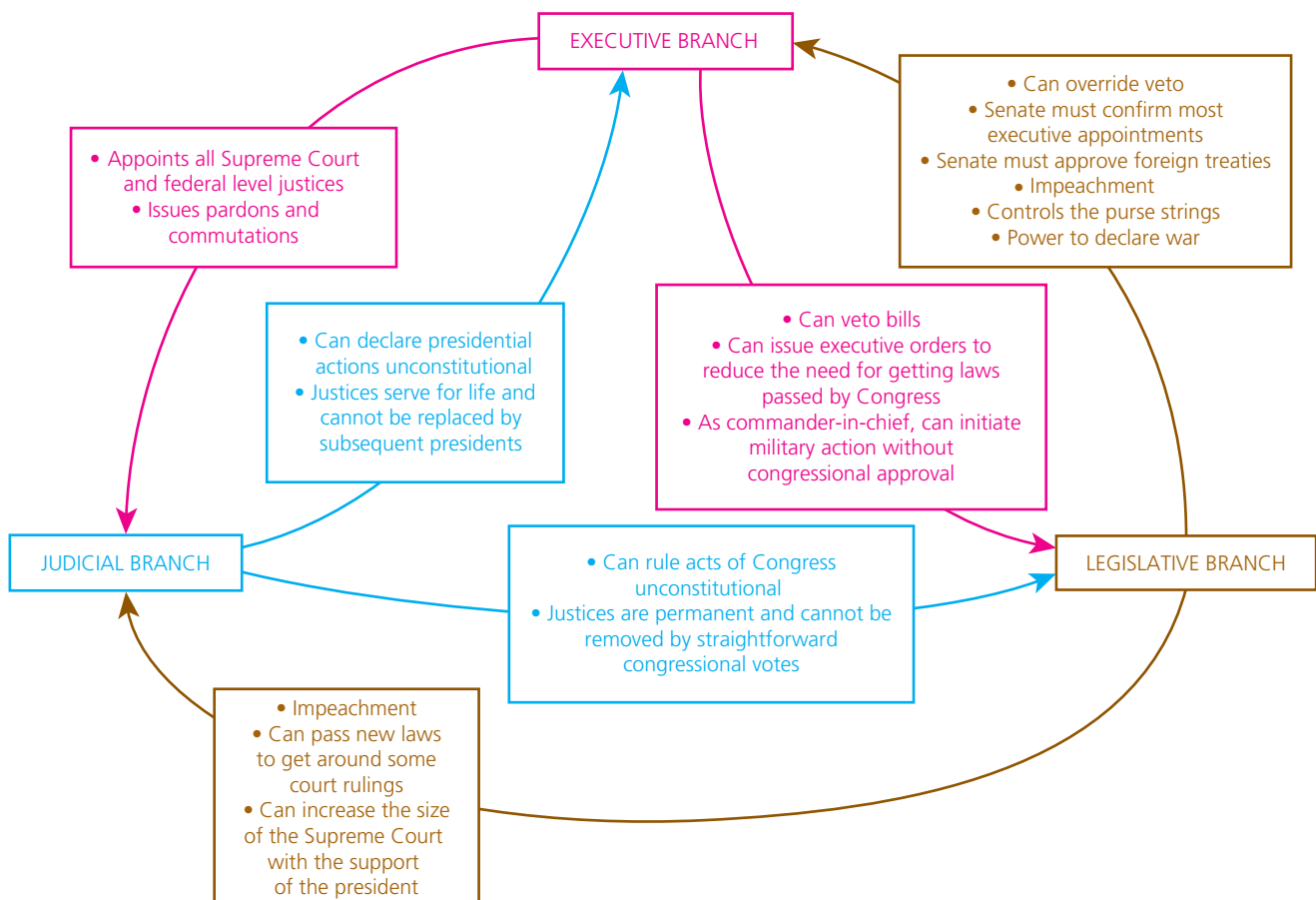


Figure 1.1 Checks and balances in the US federal government

Power in the US Constitution is checked and balanced in the ways outlined in Tables 1.2–1.4.

Table 1.2 Checks and balances – powers of the president

Powers of president	Example of checking power
Vetoes acts passed by Congress	In January 2021, Congress overrode Trump's veto of a defence spending bill.
Appoints heads of government departments and federal judges	In 1987, the Senate rejected President Reagan's nominee Robert Bork as a Supreme Court justice.
Has charge of the armed forces (commander-in-chief)	In 2002, Congress voted through the Iraq Resolution to allow President George W. Bush to undertake military action in Iraq. Without it, he and subsequent presidents would have been on dubious legal/constitutional ground.

Table 1.3 Checks and balances – powers of Congress

Powers of Congress	Example of checking power
Passing laws and making resolutions	President Trump vetoed a resolution to end the declaration of a national emergency on the US Mexico border declared a few months earlier.
Impeachment	The Senate failed to impeach Trump on two occasions: 2019 and 2021. It had previously failed to impeach Clinton in 1999.
Ratifying foreign treaties	The nuclear deal with Iran in 2015 was made by President Obama without congressional approval. In 2018, President Trump withdrew America from the deal, again without recourse to Congress.

Table 1.4 Checks and balances – powers of the Supreme Court

Powers of Supreme Court	Example of checking power
Striking down laws passed by Congress as unconstitutional (judicial review)	In 1913, the Thirteenth Amendment permitted a federal income tax following an earlier Supreme Court case (<i>Pollock v Farmers' Loan & Trust Co.</i>) that declared federal income tax unconstitutional.
Judges cannot be removed and have life tenure	FDR tried to 'pack' the Supreme Court in the 1930s when it struck down some of his New Deal programmes. Congress refused to back him though.

Judicial review The power of the Supreme Court to review laws and actions to judge whether they are compatible with the Constitution. Not specifically mentioned in the Constitution itself, the practice emerged from the 1803 *Marbury v Madison* case.

Making links

For a judicial and thus supposedly neutral institution, the Supreme Court is very politicised. For example, when a president makes an appointment, they can have a considerable impact on the balance of the Court and thus its rulings. President Trump was able in just four years to tilt the Court in a decidedly more conservative direction. Chapter 4 has more information on presidential power.

Now test yourself

TESTED 

- 6 What majority is needed in Congress to overturn a presidential veto?
- 7 How can a president bypass formal treaties that require congressional approval?
- 8 Why is judicial review such an important power of the Supreme Court?
- 9 Give an example of a presidential nominee for the Supreme Court being rejected by the Senate.
- 10 How can Congress check the power of the Supreme Court?

Answers available online

Revision activity

Use Tables 1.2–1.4 and any other resources/notes to create a diagram that shows more visually how each branch of government is checked and balanced by the other branches.

The federal nature of the US Constitution

Power in the USA is also restricted by a division of powers between federal (central) government and the states. This is known as **federalism**.

- + The Tenth Amendment states that powers not held by the federal government shall reside with individual states.
- + States retain a considerable number of powers, including:
 - + power over local taxes including sales tax and local property taxes
 - + aspects of their election process, including whether to use primaries or caucuses to select candidates, or have term limits for elected state officials
 - + whether or not to have the death penalty.
- + Since the 1930s and President Franklin Roosevelt's New Deal, power has clearly shifted towards federal government and away from the individual states.
- + There is often a clash between policies/laws made in Washington DC and individual states. For example, in the 1950s and 1960s, many conservative states in the Deep South strongly resisted efforts to desegregate. More recently, liberal states and cities such as San Francisco opposed President Trump's demands to round up and deport illegal immigrants (the sanctuary cities movement). Under President Biden, some Republican-controlled states such as Florida sought to pass bills restricting the discussion of LGBTQ issues in schools, e.g. 'Don't Say Gay' bills. Florida's Republican governor, Ron DeSantis, signed this law in March 2022.
- + There is sometimes a direct clash between state and federal law. For example, federal law prohibits the cultivation and sale of marijuana. Yet the drug has been legalised in a number of states, including California. Although federal law in theory has the last word, on the ground it is very difficult to enforce.

Federalism The notion that power is shared between central (federal) government and the 50 individual states.

The formal amendment process

There are only 27 formal amendments to the US Constitution. The last major one was in 1971, which lowered the voting age to 18.

- + Formal amendments are difficult to pass. They require a two-thirds majority in both houses of Congress and then ratification by three-quarters of states, often within a set time limit.
- + Over the centuries, thousands of amendments have been proposed, but most have failed. Among notable failures is the Equal Rights Amendment, which would have guaranteed gender equality. Passed by Congress, it then failed to secure ratification by enough states in time (1982), falling three states short of the required number.

Exam tip

When answering a question about federalism, aim to demonstrate an awareness of how power has shifted towards the federal government since the 1930s, under both Republican and Democrat presidents. This is despite efforts in the 1980s and 1990s to push back the role of 'big government', a movement often known as 'new federalism'. Events such as the 'war on terror' and the Covid-19 pandemic have further increased the power of federal government in recent years.

The Bill of Rights 1791

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The Bill of Rights comprises the first ten amendments to the US Constitution. It contains most of the key individual rights of American citizens found in the Constitution.

- + Key rights include the First Amendment right to freedom of expression and the Sixth Amendment right to a fair and speedy trial.
- + It has been the basis for much debate and interpretation since its adoption, for example the death penalty and the Eighth Amendment that bans 'cruel and unusual punishment'.

The informal amendment process

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As the US Constitution is so problematic to amend formally, in practice many changes are made informally, above all via rulings of the Supreme Court. In these cases, new rights are 'discovered' within the existing wording.

Examples include:

- + *Roe v Wade*, which granted American women some access to abortion using the 'due process clause' of the Fourteenth Amendment in 1973
- + the *Citizens United* case in 2010, which extended First Amendment rights to corporations and other groups so that they could spend money more freely on election campaigns.

Debates on the importance and suitability of the US Constitution for the twenty-first century

Although it was the founding document of the USA, there has been much debate over the effectiveness of the US Constitution for modern times. Some of these issues are summarised in Table 1.5.

Table 1.5 The US Constitution: criticisms and defences

Criticisms of the US Constitution	Defences of the US Constitution
It is too difficult to amend and change easily.	It provides stability and continuity. It is also relatively easy to amend and update informally.
Some of its terms are vague and imprecise.	Lack of precision in its wording enables interpretations to adjust to changing times and cultures.
Some powers overlap and conflict, e.g. over foreign policy.	Such an overlap should encourage the different branches to work together. When clashes or gridlock occur (as with government shutdowns in 2018), blame partisan politicians, not the Constitution itself.
Not all rights are equally protected, e.g. race but not gender or disability.	Blame politicians and law-makers again. The provision is there to make such amendments. Also, rights are protected in other ways, such as by acts of Congress and Supreme Court rulings.
Specific clauses are outdated and/or unhelpful, e.g. biennial elections to the House and the right to gun ownership.	Again, blame politicians. Unhelpful/outdated sections of the Constitution can be removed, such as the one dealing with Prohibition when, in 1933, the Twenty-First Amendment repealed the Eighteenth Amendment.
Too much political power is given to the unelected Supreme Court: 'The US Constitution is what the Supreme Court says it is.'	These criticisms are normally made by the losing side in any major controversy. In reality, perhaps it is better to leave contentious and divisive issues such as gun rights, abortion and LGBTQ rights in the hands of legal experts rather than those of partisan politicians open to all kinds of influences.
It has become a focus for division and disunity in modern America.	The Constitution itself is still revered by nearly all Americans, even among those who disagree over what it means in places. Rewriting or substantially changing it would provoke more, not less, division in the States.
No other country has copied the US Constitution.	No other country is quite like the USA!

- 11 Look at the following statements about the US Constitution. Which are criticisms and which are statements in support of it?
- (a) It has lasted for over 200 years and witnessed huge changes in American society and culture.
 - (b) The powers of the president are often too great in reality – for example, US presidents often undertake military action without congressional approval.
 - (c) The justices of the Supreme Court are not really that impartial – after all, they are political appointees.
 - (d) There are often clashes between the executive and the legislature that lead to the partial shutdown of federal government – for example, a record 35-day shutdown in December 2018–January 2019, when there was no agreement over funding for a border wall on the US-Mexico border.
 - (e) American citizens have the individual right to own guns.

Answers available online

How well does the US Constitution protect civil liberties and rights of US citizens?

The US Constitution could be said to protect civil liberties and rights since:

- + there are entrenched and **inalienable** rights found within, especially in the Bill of Rights
- + these rights include: freedom of expression, the right to a fair trial, equal protection under the law and no bar to having the vote due to race or colour
- + the Supreme Court in its decisions has often extended and expanded these rights, for example ending segregation (*Brown v Topeka* 1954) and allowing same-sex marriage (*Obergefell v Hodges* 2015).
- + having rights and liberties enshrined in a single document makes them easy to access and understand. Most Americans have a clear idea of their individual rights and defend them fiercely.

The US Constitution could be said to be a poor defender of civil liberties and rights since:

- + some rights are much better protected than others – gun owners have their right to bear arms entrenched in the Second Amendment, while no entrenched rights exist for women and children
- + the Constitution is difficult to update and modernise – too much therefore relies upon informal amendment by the Supreme Court
- + the Supreme Court can and does change its opinions, for example over racial segregation and homosexuality. Thus, many rights are not permanent and entrenched but are at the mercy of the Supreme Court, which is itself unelected and unaccountable to the people
- + sometimes the Supreme Court can deliver judgments that restrict rights. For example, in 2021 it ruled in favour of tighter voting restrictions passed by Republicans in Arizona (*Brnovich v Democratic National Committee*) which critics argued weakened the 1965 Voting Rights Act
- + much of the Constitution is not concerned with protecting individual liberties so much as with setting out the workings of government. It is no substitute for a comprehensive and modern human rights charter that is fully inclusive and reflective of modern America.

Inalienable Permanent, cannot be taken away.

Making links

The topic of civil rights in the US is covered more fully in Chapter 13. You should be aware, though, that the US Constitution is only one source of advancing civil rights. Congressional legislation and pressure groups also play important roles.

Exam tip

When referring to rights and liberties protected in the US Constitution, either formally or informally, aim to include the specific amendment number or the relevant court case and year.

Point for the US Constitution being outdated	Evidence from the extract	Evidence from wider knowledge	Counter-argument
Many rights are not protected under the Constitution.	'It has failed to protect key rights.'	Women, children, the disabled and LGBTQ Americans lack embedded rights.	All these groups are indirectly protected via acts of Congress and landmark cases, e.g. Obergefell and Bostock cases.
It is hard to amend formally.	'It has proved fiendishly difficult to amend.'	The high threshold required for constitutional amendments, e.g. requirement for three-quarters of states to ratify amendments. Lack of any major amendments in the last 50 years.	Informal amendment is relatively straightforward. The role of the Supreme Court has led to updating and adaptation to changing times.
Point against the US Constitution being outdated	Evidence from the extract	Evidence from wider knowledge	Counter-argument
The blame lies with politicians/hyper-partisanship, not the document itself.	'Many would apportion blame here to politicians on both sides, not to the Founding Fathers.'	Evidence of plenty of hyper-partisanship in Congress that has prevented much meaningful reform recently in areas such as healthcare and immigration.	The structure of the Constitution gives too many opportunities for veto and the power to a minority of politicians to prevent change, e.g. the over-representation of small states in the Senate.
In practice, groups not explicitly mentioned in the Constitution, including the Bill of Rights, are protected in the USA.	'In reality the rights of many minority groups such as LGBTQ Americans are protected in the States.'	Congressional measures such as the Equal Pay Act (for women) and landmark court cases that have introduced same-sex marriage, etc.	Relying on Congress and court judgments is not as strong as inalienable rights set out formally in the Constitution. The political balance of the Supreme Court can and has shifted over time, and Congress can also change its mind.

Summary

You should now have an understanding of:

- ✚ the key principles enshrined in the US Constitution
- ✚ the importance and significance of the separation of powers
- ✚ the importance and significance of checks and balances
- ✚ the balance of power between the individual states and the federal government
- ✚ how the US Constitution can be amended both formally and informally
- ✚ the importance of the Bill of Rights
- ✚ the debate over how well the US Constitution works in contemporary America
- ✚ how well civil liberties and rights are protected by the US Constitution.

Exam skills

When answering a Section B extract question such as the one above, first decide for yourself which pair of arguments you find most convincing. It can be very useful to identify the arguments on both sides using different colour highlighter pens and plan your answer perhaps using a table like the one below. Ensure that you bring in wider knowledge to reinforce your analysis and evaluation for each point and use mini-quotes to give evidence from the extract. It can also be helpful to include counter-arguments where appropriate. Note that the table below does not include all the arguments on both sides of the debate cited in the extract.

Exam practice

- 1 Explain and analyse three ways in which the US Constitution reflects the separation of powers. [9]
- 2 Explain and analyse three ways in which the Bill of Rights protects the rights of US citizens. [9]
- 3 Analyse, evaluate and compare the arguments in the passage below for and against the view that the US Constitution is outdated and needs replacing. [25]

The US Constitution is essentially a product of its time. Drafted by exclusively White, male and Christian groups of property owners, it does little to defend the rights of ordinary citizens in the twenty-first century. There are no real protections of individual rights in the original document and the Bill of Rights likewise failed to protect certain key rights. It has proved fiendishly difficult to amend and many key groups such as women have little or no protection as a result. Compared with other constitutions and documents such as the United Nations' Universal Declaration of Human Rights, the US Constitution is a poor, outdated and occasionally harmful protector of citizens' rights. It also contains major flaws in terms of the political process, such as the need for agreement between the different branches of government. In today's age of hyper-partisanship, it has proved impossible to prevent gridlock. Thus, in October 2013, Americans were treated to the unedifying spectacle of many non-essential public services, such as national parks, being shut down because of the inability of a Democrat president and a Republican-controlled Congress to agree a budget. However, many would apportion blame here to politicians on both sides, not to the Founding Fathers. It is little wonder, then, that many Americans still have a touching reverence for the current constitution and do not want something more modern and formally flexible in its place. Again, in practice, the US Constitution has managed to evolve and adapt over time. While not entrenched, in reality the rights of many minority groups such as LGBTQ Americans are protected in the States. The case for replacement is far from clear cut.

Source: Original material 2021

Answers available online

2 Comparative politics: constitutional arrangements

Key differences

There are various differences between the US and UK constitutions:

- + The US Constitution is codified, while that of the UK is uncoded.
- + The US Constitution is sovereign; in the UK, Parliament is sovereign: constitutional versus parliamentary sovereignty.
- + Constitutional sovereignty gives the US Supreme Court considerable political power as it interprets the Constitution through judicial review.
- + The UK Constitution is more flexible to amend, requiring only an Act of Parliament. The formal amendment procedure in the USA is complex and requires a high threshold of political support.
- + Federalism is embedded in the US Constitution, which is not the case in the UK with devolution.

Areas of similarity

There are also similarities:

- + Both embrace the principles of representative government and democracy.
- + Both in reality have evolved and developed over time.
- + Each provides for an independent judiciary and some separation of powers/institutions.
- + Each seeks to protect the individual rights of its citizens.
- + In neither is power found exclusively in central or federal government. The constitutions of the USA and the UK therefore display considerable contrasts but also share some features.

Areas of difference in more detail

Tables 2.1–2.4 outline the various differences between the two constitutions.

Sources and structure

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Table 2.1 Differences in structure

US Constitution	UK Constitution
Single codified document.	Has several sources, e.g. 1689 Bill of Rights, statute law such as the 1918 Representation of the People Act and common law. Uncoded.
Drawn up at one time (1787) and subsequently formally amended only infrequently.	Evolved over the centuries. Some sources, e.g. Magna Carta, go back to the Middle Ages. Frequently amended.
Formal amendment is difficult and complex.	Easy to alter via Acts of Parliament.
Republican, with an (indirectly) elected head of state. The president is highly active and politically partisan.	The UK remains a constitutional monarchy with an unelected head of state, whose role is ceremonial, not political.

Exam tip

Although this comparative topic is about comparing constitutions, it also requires knowledge from your study of the legislatures in both countries, plus material from the devolution topic studied for the UK paper.

Ensure you are aware of similarities as well as differences in all your comparative topics. It is easy but unwise just to focus on the differences.

Nature and authority

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Table 2.2 Differences in nature

US Constitution	UK Constitution
Is sovereign, ultimate source of authority. Supreme Court has the ultimate power of interpretation: the Constitution is what the judges say it is.	Parliament is sovereign: the Constitution is what the Westminster Parliament chooses it to be. This was reinforced by the 2019 court case concerning the prorogation of Parliament.
Formal system of checks and balances, thus presidents can find it hard to push through legislation in Congress. Frequent gridlock.	Few formal checks and balances, thus prime ministers can often dominate the legislature. Can lead to accusations of an 'elective dictatorship', especially when the government has a large Commons majority.
Embodies a separation of powers, or at least separate personnel and shared powers, e.g. members of the executive cannot be members of the legislature.	Very much reflects a fusion of powers. The executive is drawn entirely from the legislature. However, the judiciary since 2009 has become institutionally separate with the creation of the UK Supreme Court.
Many citizens' rights are entrenched and inalienable and found mainly in the 1791 Bill of Rights (first ten amendments).	Citizens' rights are mainly protected by parliamentary legislation, e.g. Equality Act (2010), and also by common law.
Makes clear provision for a sharing of powers between federal government and the states. Federalism is an inherent characteristic.	No express provision for federalism, favours a unitary style of government. Devolution has created a quasi-federal model, but in theory could be reversed by legislation. Also, devolution in the UK is asymmetrical as it does not exist in England.
Essentially a compromise in many ways, e.g. balancing the rights of small and large states in terms of congressional representation – the Connecticut Compromise.	A product of evolution and development over the centuries as Britain transitioned from a traditional monarchy to parliamentary government in the late seventeenth century and finally to full democracy in the twentieth century.

Separation of powers

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Table 2.3 Separation of powers

US Constitution	UK Constitution
A fundamental principle, e.g. each branch is outlined in separate articles of the Constitution. A tendency towards regarding power with suspicion and thus a desire to spread it around institutions and individuals.	Not a fundamental principle and in part reflects a monarchical system of power being concentrated in the hands of the few, not the many. Existence of the royal prerogative conveys considerable power to the prime minister, such as the appointment and removal of ministers.
Formal separation of institutions, though in reality many powers are shared, e.g. legislation.	Less separation of institutions. The executive also sits in the legislature, though the judiciary is now completely separate.
Federalism also enhances a separation and dilution of powers. Power is shared, albeit unevenly, in many areas of policy between federal and state government.	Changes since 1997 have led to greater powers for the regions and a loss of power at Westminster (devolution), but it is debatable how far this constitutes an inalienable transfer of power.

Checks and balances

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Table 2.4 Checks and balances

US Constitution	UK Constitution
Again, a fundamental principle; plenty of scope for one branch of government to check another, e.g. presidential veto.	Fewer formal checks and balances. Main threats and limits to a prime minister's powers come from opposition within their own party (e.g. Margaret Thatcher and the poll tax) or lack of an overall parliamentary majority (e.g. Theresa May's government elected in 2017).
Supreme Court can strike down executive actions or federal laws as unconstitutional, e.g. in 2020 rejecting Trump's attempts to end an immigration programme (DACA) created by his Democratic predecessor Barack Obama. (<i>Department of Homeland Security v Regents of the University of California</i> .)	No such provision, but the UK Supreme Court can declare laws and executive actions as 'incompatible' with the Human Rights Act, e.g. the government denying civil partnerships to opposite sex couples, ruled as incompatible with the ECHR by the Supreme Court in 2018.
Provides for biennial elections to Congress (whole of the House and a third of the Senate). Makes Congress more accountable to voters and thus acts as a frequent check on both the executive and the legislature. Voters often use mid-term elections as a verdict on presidential performance.	The 2011 Fixed-Term Parliaments Act in theory meant there should normally be a five-year gap between general elections. In reality, this can be easily bypassed, as in 2017 and 2019. The act itself was repealed in March 2022, again demonstrating the flexibility of the UK Constitution.
Congress cannot directly override a Supreme Court ruling without passing a constitutional amendment. This is usually very difficult to achieve – no major amendments have been passed since 1971.	The government can overturn a ruling that it has acted illegally (<i>ultra vires</i>) by passing fresh legislation. This is usually straightforward.

Mid-term elections Biennial elections for Congress that take place midway (i.e. two years) through a presidential term. They often result in losses for the president's party (protest vote) and losing control or influence in Congress, thereby making it harder for the president to push through controversial legislation.

Now test yourself

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- 1 Name an act of Congress ruled unconstitutional by the Supreme Court.
- 2 How do the two constitutions differ over the power of the judiciary?
- 3 Which constitution is easier to amend formally?
- 4 Which constitution makes it easier to check and make accountable the legislature?
- 5 Do both constitutions provide for elected bicameral (two-chamber) legislatures?

Answers available online

Revision activity

Reading through the material and your own notes, create an essay plan or spidergram that tackles the issue of which constitution best defends individual rights.

Federalism vs devolution

While both constitutions now seek to limit the power of central government, the US model is arguably more successful and certainly better established. Federalism is also embedded in the US Constitution in a way that devolution is not.

Similarities

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- Neither constitution originally embraced universal suffrage, so democracy has evolved over time – in the USA via amendments (e.g. the Nineteenth Amendment, enfranchising women), in the UK via statute law (e.g. in 1969 the voting age was lowered to 18).
- Both systems allow for many powers to be exercised and public services to be delivered at state/regional level. These include some local taxation, transport and education.

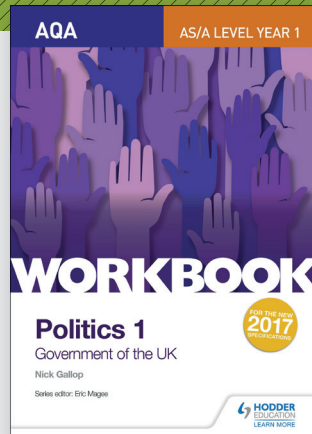
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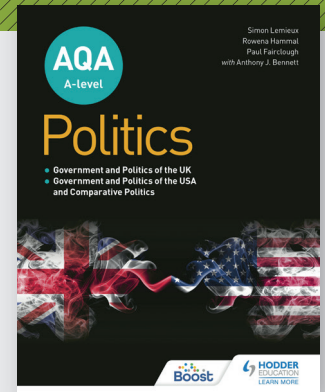


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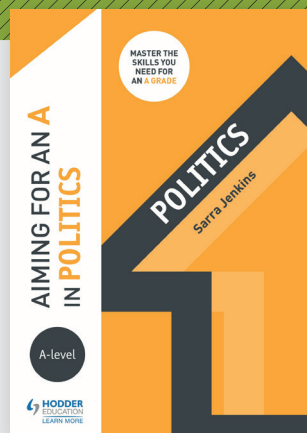
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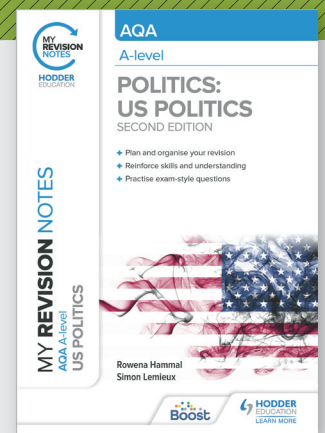


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Build quick recall with **bullet-pointed summaries** at the end of each chapter

Improve subject-specific skills with an **exam skills checkbox** at the end of each chapter

Understand **key terms** you will need for the exam with user-friendly definitions and a glossary

Plan and manage your revision with our **topic-by-topic planner** and exam breakdown introduction

US and UK judiciaries

- The US system of presidential judicial nominations gives the president the ability to pack the courts with justices who share their political ideology.
- In *Trump's case*, this was helped by Senate Republicans, who refused to confirm Obama's nominations at the end of his presidency.
- Trump appointed 54 appellate court judges in four years, one fewer than those appointed by Obama in eight years.
- He appointed more Supreme Court justices (three) than any one-term president since the 1930s.
- Boris Johnson speculated about introducing some political 'accountability' over appointments, similar to that used in the US. His attorney general, Sadiq Khan, had previously criticised judges' interpretation of the Human Rights Act and said that Parliament must 'retrieve power' from the courts.

Now test yourself

- 1 Which theoretical approach would be best used to analyse the differences in the powers given to the two supreme courts by their constitutions?
- 2 Which theoretical approach is helpful in analysing the divisions between liberal and conservative attitudes to the judiciary?

Answers available online

Summary

You should now have an understanding of:

- How the US Supreme Court enjoys greater power than its UK equivalent, as it can strike down laws and rule executive actions unconstitutional and can be overridden only by constitutional amendment.
- The UK Supreme Court being less powerful as it can be easily overridden by Parliament, which is sovereign.
- How the US Supreme Court has had the most significant impact on government and politics, making dramatic changes to public policy on civil rights, abortion and same-sex marriage.
- How, as political appointees, US Supreme Court justices are perceived as conservative or liberal in a way that UK justices are not, though this does not necessarily affect their independence.
- How public criticism of both judiciaries has become both more widespread and more aggressive, leading to fears that their independence may be compromised.
- The three theoretical approaches – structural, rational and cultural theory – which can be used to analyse the two judiciaries.

Exam skills

One of the most common errors students make when comparing the judiciaries is muddling up the meaning of key terms. The following terms mean different things, but are sometimes wrongly used by students interchangeably.

- **Judicial independence** – judges are free of external influence, so can make decisions freely.
- **Judicial neutrality** – judges are politically neutral when making decisions, rule purely on the law and not their personal opinions.
- **Judicial politicisation** – judges are drawn into politics, which can compromise their neutrality or even their independence.

UK justices are supposed to be neutral and independent. US justices are more politicised because they are political appointees, so are less likely to be neutral. However, they have security of tenure. This means that they are independent of external influence once appointed.

Understanding these three terms will help you to express yourself accurately when writing about the judiciaries.

Exam practice

- 1 Explain and analyse three ways in which cultural theory could be used to study the impact of the US and UK supreme courts. [9]
- 2 'The US Supreme Court can better hold the government to account than its UK equivalent.' Analyse and evaluate this statement. [25]
- 3 'Citizens' rights are better protected by the judiciary in the USA than in the UK.' Analyse and evaluate this statement. [25]

Answers available online

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