

UK Politics and Government – Constitution

Politics Edexcel and AQA – revision notes – based on Hodder Education revision guides

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A constitution = an aggregated body of fundamental rules and principles, or established precedents, according to which a state determines the organisation of its political institutions and the distribution of power within the political system.

Functions

- 1 – Establishes the boundaries and distribution of power.
- 2 – Establishes the relationship between various institutions.
- 3 – Asserts the rights of citizens and formalise how they would be protected.
- 4 – Establishes when and how the constitution can be amended, and when it cannot.

In other words = it is a formal and binding reflection of the social covenant.

Organic constitution, as in the UK = one that developed naturally and gradually to match sociopolitical changes, as opposed to a constitution that was created at one specific historical moment, like in the USA.

Stages in the development of the UK constitution

- 1- **Magan Carta 1215** = an agreement between King John and the nobles that established **the principle of the rule of law**: everyone is equal before the law, including the monarch. It can be considered to be the first constitutional check imposed on executive power. It included the right to trial by jury that is still a fundamental right in the contemporary political system in the UK and is associated with *habeas corpus* = people cannot be unlawfully detained or punished.
- 2- **Bill of Rights 1689** = an agreement between the King and Parliament. It established the principle of the **sovereignty of parliament** over the monarch in terms of legislation. It is considered to be the inception of UK being a constitutional monarchy and marked the transfer of royal prerogatives to the hands of the prime minister.

- 3- **Act of Settlement 1701** = established **the monarch** as the ruler of England, Scotland, Wales and Ireland, together with **further restrictions** imposed on the powers of the monarch in favour of transfer to the parliament.
- 4- **Act of Union 1707** = dissolution of the Scottish Parliament and the establishment of **United Kingdom of Great Britain**.
- 5- **Parliament Act 1911, 1949** = limits on the House of Lords and stripping it of its power over financial matters, thus, establishing the **primacy of the House of Commons** instead (the source of sovereignty).
- 6- **European Communities Act 1972** = established the **entry of the UK into the EU**; initially to the European Economic Community = the common market, that later became the EU. Legally it meant that the EU law is binding in the UK and could not be amended or repealed by the UK government unless the European Act in itself is being repealed. The EU withdrawal Act of 2018 included the repeal of the former European Act that was binding the UK.
- 7- **European Union Act 2020** = confirmed the **UK withdrawal from the EU** following the 2016 referendum.

Features of the UK constitution

1 – Uncodified = **not written in any one single document** (unlike the codified in the US) and consists instead of aggregate sources.

2 – Unentrenched = any part of the constitution **can be amended by a single act** by a simple majority in the parliament. Thus, constitutional laws are not with superior status to other laws.

3 – Flexible = can be easily amended, because **it is not rigid**.

4 – Unified = **parliament is the supreme source of decision-making**; sovereignty lies within one source, the Parliament, and its centre of power is in one geographical location = **Westminster**. While devolved assemblies have legislative powers they are granted by the parliament. This is in contrast to a federal constitution where the legal sovereignty is divided between the central and regional governments, and the powers of the regional bodies are protected by an entrenched constitution.

5 – Parliamentary sovereignty = the parliament is the **supreme decision-making** body. A Legal sovereign.

6 – Rule of law = **equal justice is applied to all**, no one can be punished without a trial, no individual or institution is above the law, and the government is accountable by an independent judiciary that can hold ministers to account.

7 – Evolutionary = was developed over **a long period** of time without a single historical moment.

Concepts

Forms of sovereignty

Legal sovereignty = refers to formal power that is usually resting in the hands of UK laws themselves; parliament is considered to have a legal sovereignty.

Political sovereignty = refers to the body, institution or group that in practice holds the most significant influence over the processes and outcomes of decision-making. In the UK, mostly the governing party, the cabinet and the PM.

Popular sovereignty = is considered to be in the hands of the electorate which votes in elections and referendums; the outcome of the vote is binding the political institutions.

Devolved sovereignty = the Parliament extended other bodies the power/sovereignty to make certain decisions. These powers potentially could be 'taken back' by parliament.

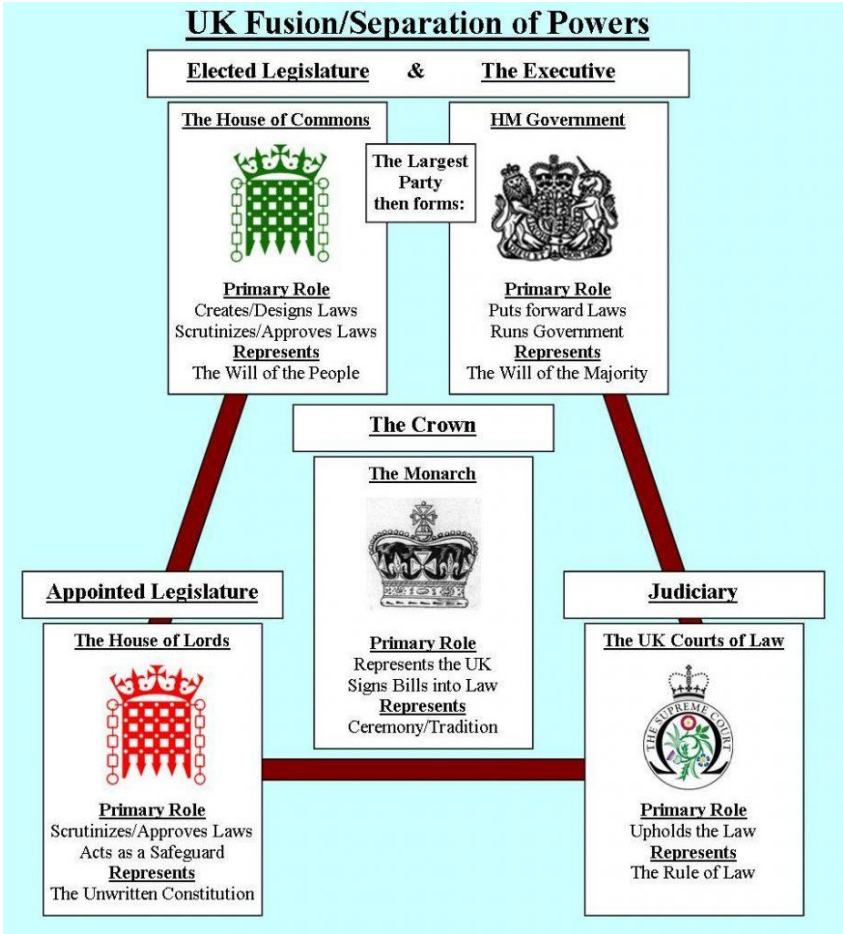
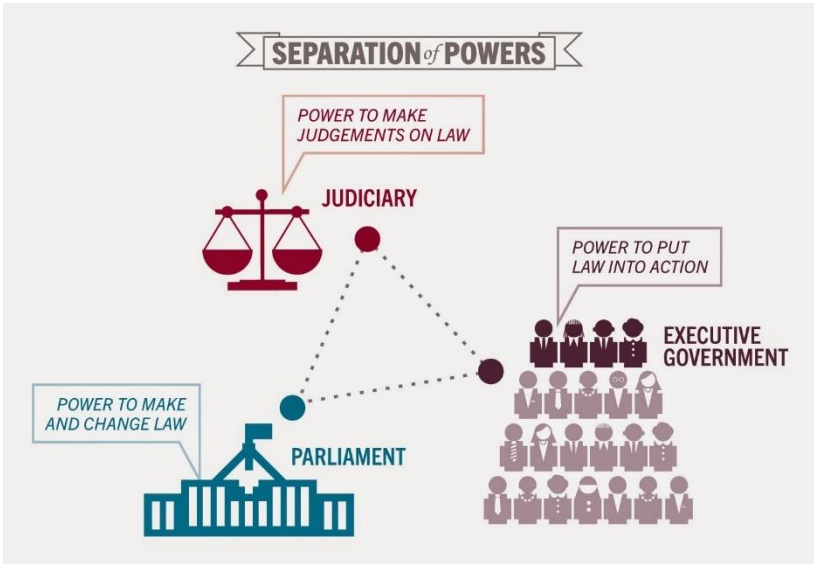
Fusion of powers = the government is made up of individuals who are members of either the House of Commons or the House of Lords.

Separation of powers = the powers of different branches of the government are defined and divided, as are the members of each branch.

In the UK, there is a fusion of powers between the government and the parliament. Thus, the government is drawn from the legislature, and therefore members of the government must also be MPs or peers. The prime minister is also an MP and all cabinet members are either MPs or peers.

The fusion of powers is in stark contrast to the separation of powers that is more common in presidential systems wherein the executive (Government), legislature (Parliament) and judiciary (Courts) are separate from one another with separate personnel. In the UK, the executive comprises of the Crown and government, including the prime minister and cabinet ministers; there is no classical separation of powers.

Be aware: this fusion of powers in the UK does not imply there is no 'classical' separation between the three governmental branches with the necessary checks-and-balances. Separation of powers is a feature of democratic systems because it denotes that power is shared rather than being concentrated as in non-democratic systems.



Sources of the UK constitution

- (1) **Statute law** = any law that has been passed by the UK parliament and has received a royal assent, thus, **Acts of Parliament**.
- (2) **Common law, legal precedence** = unwritten laws that have not been passed by the parliament but passed down the history as **judicial precedents**. Much of the UK judicial system is predicated on precedence based on previous decisions made by judges. Senior judges such as Supreme Court justices will make decisions often with relevance to constitutional difficulties and their judgement guides future situations.
- (3) **Conventions** = **unwritten political rules and practices** that are considered to be binding, without having a formal status, such as the monarch appointing for a prime minister the person that is most likely to command the confidence of the House of Commons.
- (4) **Authoritative works** = **historical books and documents** that clarify various aspects of constitutional principles, especially given the uncodified constitution. Including Parliamentary Practice (1844) by Erskine May and The English Constitution (1867) by Walter Bagehot.
- (5) **Treaties** = **agreements between the UK and external bodies that are binding**, especially the treaties with the EU. Because the EU law takes precedence over the statute law, some argued that it erodes the principle of the Parliament as supreme sovereign.

Constitutional reforms 1997-2010

1 – Devolution

Devolution = a process whereby power, but not legal sovereignty is distributed away from the government centre of power into regional centres; thus, decentralisation of power = devolution to Scotland, Wales, Northern Ireland and London. Elected mayor in London.

The devolution to the three national regions in the UK is asymmetric, not identical, and based on the **Barnett formula** = a mechanism used by the Treasury in the UK to automatically adjust public expenditure allocated to devolved regions in how they calculate the annual block grants, thereby determining the total funding for their public services.

The powers of devolved administrations are primarily rooted in various policy domains such as education, transport, culture, employment and taxes.

+Makes governments more sensitive to specific regions.

+Power sharing reduced violence in Northern Ireland.

+The electoral systems to elect the devolved bodies, AMS and STV, are more proportional thus create greater legitimacy and prevent the domination of a particular party.

-The Lothian question: raised by Labour MP Tam Dalyell in 1977. It is a UK constitutional anomaly that asks why MPs from Scotland, Wales and Northern Ireland can vote on English-only issues at Westminster, whereas English MPs cannot vote on devolved issues. This demonstrates unequal voting rights pertinent to devolution.

-While power sharing is greater, it can create governments that are less stable.

2 – Human Rights Act 1998

This act brought the **European Convention on Human Rights into UK law**.

It is binding all bodies with the exception of the parliament, because of its sovereignty.

Brought UK closer to other democracies with codified constitutions.

+Allowed UK citizens to appeal in UK courts instead of abroad.

+The act limits the power of the government because the Supreme Court can issue incompatibility statements.

-Conservatives argue that it has given unelected judges too much power over an elected government. Judges as lawmakers without being elected.

-Many liberals argue that it is not sufficiently strong and lacks entrenchment.

-Parliament, and the government, can ignore incompatibility statements.

3 – House of Lords Act 1999

Before 1999, most members of the House of Lords were hereditary.

The act **abolished the automatic hereditary right**. The act reduced the number of peers from 1330 to 669 by removing mostly the life peers, and only 92 hereditary peers, elected by and from all hereditary peers, remain.

All Lords appointments are now made by an independent commission instead of the prime minister.

+The hereditary principle, the most undemocratic of all, largely removed.

+De-facto the Labour ended the inbuilt Conservative majority in the chamber.

+Independent body to approve appointments limits the government to 'fill' the chamber with its supporters.

-The reforms are supposed to be in two-stages, the second has not yet happened = to turn the chamber into a fully elected body.

-The Lords doesn't have sufficient power to hold the government to account because of the **Salisbury Convention** = it can't block manifesto items, and by the Parliament Act: it can delay for one year and with no say on budget. It is an uncodified constitutional rule that prevents the Lords from opposing, delaying or blocking bills that were embedded in the government election manifesto.

-In reality, party leaders and the PM remain influential in awarding peerages, which can be seen as a channel to reward supporters.

4 – Freedom of Information Act 2000

This law granted the legal right to individuals and organisations to **access official information** held by public bodies except for information related to national security.

+Labour criticised the Tories for 'excessive secrecy', greater opportunities for scrutiny.

+The UK is in line with other Western democracies, such as the USA.

+Allowed the public to understand more about politics.

-It did not prevent cover-ups.

-It is weaker in comparison to similar laws in other countries.

-The government has scope for further restrictions on the law.

5 – The Supreme Court

The Constitutional Reform Act 2005 took the 12 most senior judges out of the House of Lords to establish the Supreme Court. These judges used to act as the highest court of appeal from within the House of Lords. The newly established Supreme Court acts, since the reform, as the **highest court of appeal**.

It also guarantees the **independence of the judiciary** by removing the appointment of judges away from political bodies from the legislature, and replacing the lord chancellor, a cabinet minister, as the head of the judiciary by the lord chief justice, a senior judge.

The reform aimed to foster better **separation of powers** in the UK.

The act brought the judiciary closer with the equivalent court in the US and other European countries with their codified entrenched constitutions.

These 12 senior judges are appointed by an independent appointing panel.

+The Supreme Court is with greater independence and supervision of other branches.

+Senior judges are appointed by the Judicial Appointment Commission, reducing political interference.

-The Supreme Court does not hold significantly more power than the body it replaced, and its power is still granted by parliament.

-Some accuse the Supreme Court of having a Conservative bias if only because justices can be characterised by a privileged background.

Constitutional reforms 2015 +

General objectives

- Further **decentralisation of power** away from Westminster.
- Increase in **political stability** by fixing election dates = measures of modernisation.
- **Increase MPs accountability to voters** = measures of democratisation.
- To guarantee the **UK's withdrawal from the EU** in accordance with the result of the 2016 referendum.
- Address the issue of '**West Lothian Question**'.

West Lothian question = whether MPs from Northern Ireland, Scotland and Wales, who sit in the House of Commons, should be able to vote on matters that affect only England, while neither they nor MPs from England are able to vote on matters that were devolved to their regions/countries.

West Lothian Question was named after the Scottish constituency of Labour PM Tam Dalyell – in 1997 he asked “For how long will English constituencies and English (MPs) tolerate... at least 119 (MPs) from Scotland, Wales and Northern Ireland exercising an important, and probably often decisive, effect on English politics while they themselves have no say in the same matters in Scotland, Wales and Northern Ireland?”

Fixed-term Parliament Act 2011

Setting up the precise date of the next general election, thereby taking the power away from the hands of the prime minister.

It was aimed to ensure that coalition party members are making a long-term commitment to the coalition.

+Reducing the power of the PM; cannot call snap elections to capitalise on political conditions to favour political positions.

+Government can no longer tie a vote on an ordinary segment of legislation with a vote of no-confidence in order to diffuse backbench dissent in their own party.

+Ensuring greater stability.

-It could enable unpopular government to continue in office; thus a question of consent, legitimacy and mandate.

-Government can still manage to engineer outcomes to suit its needs.

-The law has not prevented snap elections from taking place; Theresa May.

Further devolution

Scotland

Scotland Act 2016 **increased the devolved powers of the Scottish government and parliament**, especially around welfare and the payment of some social security benefits. Also, the power to decide the rates of income tax.

The act also made the **devolution final** because its reversal could be done only by a future referendum.

Wales

The Wales Act 2014 rendered the **Welsh government limited powers** to raise new taxes and control the revenues from these taxes.

The Wales Act 2017 allowed the Welsh assembly to **determine its own electoral system**, although **it does not apply for the general elections**.

The Welsh assembly could be turned into a parliament with limited law-making functions, and increased power over public services.

Northern Ireland

The Northern Ireland Assembly and government have the **following powers**:

Passing laws that are not reserved to Westminster, education administration, healthcare, regulating transport, policing, law courts, regulating agriculture.

Mayors

More **elected mayors** and additional **powers to English cities**.

From 2017 onwards, some cities and regions elected mayors, including the Greater Manchester Combined Authority.

Devolution pros and cons

+Hope that greater power will restrict call for independence, Scotland.

+In Wales, devolution was more evolutionary.

+The newly elected mayors in England ensure better representation for their regions and cities.

-Scottish nationalists still argue that Scotland needs to have more control over more matters such as interest rates.

-The power of the devolved bodies is still subjected to approval by Westminster. For example, despite demands to devolve policing and justice in Wales it was declined.

-Some argue the mayors were granted limited powers and they cannot override certain central decisions from Westminster; other regions remain highly centralised.

Recall of MPs Act 2015

This act enables constituents to **force a by-election** if they are unsatisfied with their elected representative. To recall an MP, 10% of the constituents must **sign a petition**.

It also allows the Speaker to call a new by-election under special considerations such as **when an MP is given a prison sentence**.

One main concern with this act is that MPs might avoid unpopular decisions to refrain from being recalled.

+Punishing illegal or inappropriate actions but not in a way that makes it possible to punish MPs when the constituent doesn't like what they say.

+It is applied as it was intended to be used: Labour MP Fiona Onasanya lost her seat after a rejection of her appeal against her conviction for perverting the course of justice.

-A recall attempt does not eradicate corruption or ill-actions nor guarantee punishment: the recall may fail to achieve the necessary signatures in the petition.

-The 'recalled' MP can still stand in subsequent by-election.

The EU Act 2020 (the Withdrawal Agreement)

This law confirmed the **UK's withdrawal from the EU** from 1 February 2020.

It provided the space for a transition period whereby the UK would take part in several EU programmes until the end of 2021.

It guaranteed the right of EU citizens living in the UK to remain in the country.

It included a special provision for Northern Ireland to avoid a 'hard border' with the Republic of Ireland.

+Respected the decision taken by the electorate.

+The difficulty regarding Northern Ireland was addressed by its ability to continue enforce EU rules on goods.

+The transition period enables better preparation.

-Did not assuage the feelings of those who did not wish to leave.

-It seems as if there is a separate set of trading rules for one part of the UK.

-Some pertinent future issues remain, especially trading relationships.

Debates on future constitutional reforms

(1) Devolution for England

In favour

- **Fairness** = England is the only nation in the UK without a devolved parliament or assembly.
- **Solving of the Lothian Question.**
- Moving closer towards a **federal system** that is more suitable.
- Areas with a **strong regional identity**, such as Cornwall and Yorkshire.

Against

- **England is much bigger** compared with other devolved areas.
- What is the **balance or imbalance of powers** like in any federal structure.
- **The public is not very keen** on either an English parliament or regional assemblies.
- **Some parts in England are not really defined by their own regional identity** so regional devolution is less relevant for them.

(2) Replacing the Human Rights Act with a British Bill of Rights

Since the introduction of the Human Rights Act in 1998 there is a **growing debate** from both Conservatives and Labour.

Right-wing argue that the act extends the scope of the ECHR by allowing domestic as well as foreign courts excessive powers over the decisions of elected politicians.

Therefore, a Bill of Rights could reduce this predicament.

On the Left, notably liberal politicians argue that the Act does not effectively protect the rights of citizens against the state. A Bill of Rights can remedy it by being entrenched.

(3) The codification debate

In favour

- **Entrenching** the principles of the constitution.
- Executive powers are too prominent in the UK and a codified constitution would **restrict its excesses**.
- **Citizens' rights** would be entrenched.
- Allows the constitution to be more **consistent and rational** given its evolutionary feature.

Against

- **Uncodified is more flexible** and thus responsive for changing needs.
- Provides **excessive power to judges**, who are unelected and unrepresentative of British society. Leaves constitutional matters in the hands of a privileged elite.
- Constitutions **do not necessarily guarantee the protection of rights**: slavery and segregation took place under the US Bill of Rights, for example. Similarly, the 1936 Soviet constitution incorporated various rights whereas in practice none was upheld under Stalin.