

US Politics and Government – Constitution

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

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- Under British control the colonies were ruled by a unitary-central government of Great Britain.
- **From 1781** = they were ruled under a **confederation government** where all political power rests in the hands of individual states with little to no central authority.
- The compromise emerged in the form of a **federal political system** = some political powers rest within the national-federal government, while other powers rest within the state governments.
- **The arrangement**

Large-population states wanted representation that is proportional to the size of the population of the state.

Small-population states wanted equal representation; denoting shared and equal power.

- **The compromise**

The Congress is composed of 2 chambers/assemblies:

The House of Representatives = representation is in proportion to the size of the population.

The Senate = equal representation for all individual states regardless of the size of their respective population.

- Regarding the Presidency – see the compromise next section.

US Constitution

The constitution was written in 1787 and ratified in 1789.

= a body of political principles and provisions by which the political system is governed.

Features

1 – Codified = written in one document, unlike the UK.

2 – Entrenched = protected by law and can be amended only under strict formal conditions.

3 – Vague = while some principles are specific, others are vague and require interpretation that is contingent upon contemporary life in the USA.

4 – Sovereignty = all political authority is in the hands of the constitution, and all governmental bodies are regulated by its rules.

The constitution in the first place was aimed to offer a balance between rigidity and flexibility and therefore the amendment process involves:

The amendment process

1 – 2/3 of both houses of Congress agree to a proposal, and then it is ratified (to sign and give official consent) by 3/4 of the states' legislatures (happened 26 times).

2 – 2/3 of both houses of Congress, and ratifying conventions in 3/4 of the states (happened only once, Twenty-First Amendment).

3 – Legislatures in 2/3 of the states call for a national constitutional convention, and then it is ratified by 3/4 of the state legislatures (never used).

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The Bill of Rights and later amendments

- Only 27 successful attempts to amend, and 15 of them since 1805.
- Of the 27 amendments, the first 10 were proposed together by the Congress in 1789 to become known as the **Bill of Rights**.

Including:

First Amendment = Freedom of religion, speech, the press and assembly: provide the legal basis for separation between the state and religion.

Second Amendment = Right to keep and bear arms.

Fifth Amendment = Rights of accused persons.

Eighth Amendment = Prohibition of cruel and unusual punishments.

Later Amendments included:

Thirteen Amendment 1865 = Prohibition of slavery.

Twenty-Second Amendment 1951 = Two-term limit for the president.

Twenty-Six Amendment 1971 = Voting age lowered to 18.

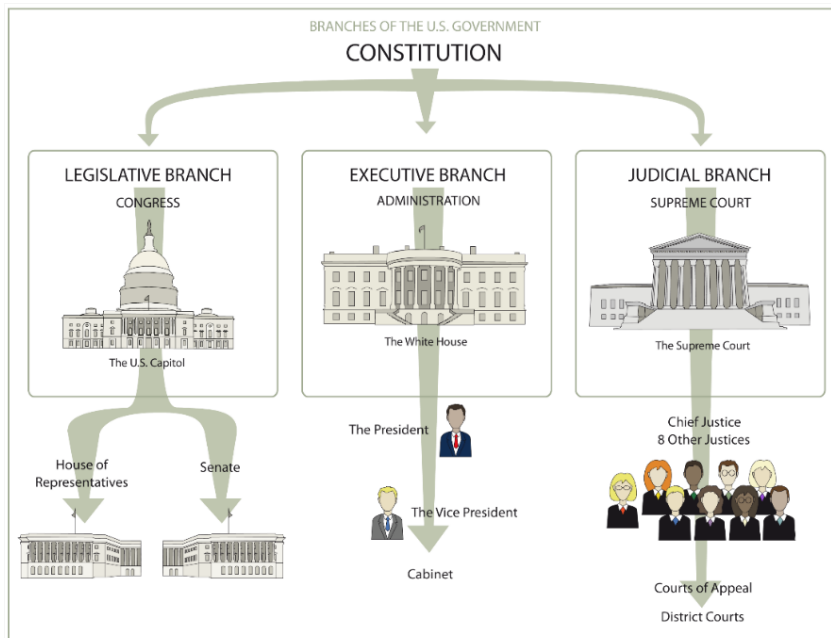
- **Interpretative amendment** = the ability of the Supreme Court to provide interpretation to the Constitution, effectively changing the meaning of the words used and their implications.
- The Founding Fathers deliberately made the process of amendment challenging.
- The constitution is deliberately vague in some sections and clear on others.
- The Supreme Court holds power for judicial review.
- Americans in general are reluctant to 'play' with the constitution. Partly because it is the source of sovereignty.

Advantages

- **Flexible and rigid.**
- **Protects rights:** all rights are entrenched.
- **Protects federalism.**
- **Prevents abuse of power:** the need for a super-majority for amendment prevents ruling parties from changes that fit party agenda.
- **Avoiding federal or executive dominance on governance:** federal power is not over-dominant, and states retain a great degree of independence.

Disadvantages

- **Tyranny of the minority:** the need for a super majority means that some states or Congressmen can block positive proposals.
- **Rigidity:** difficulty to add/remove provisions in the constitution; few amendments, too rigid, the debate on gun control.
- **Increased dominance to the executive and federal level:** presidents can issue executive orders.
- **Provides excessive power to the Supreme Court:** interpretive powers; especially given the rigidity for amendments.
- **Negative amendments still passed:** the 18th amendment for the prohibition of alcohol that was later repealed.



Types of powers in the constitution

1. **Enumerated/delegated powers** = powers given to the federal government by the US Constitution; such as the vice-president is also president of the Senate and has the casting vote in case there is a tied vote.
2. **Implied powers** = powers that are delegated to the federal government, generally those that are enumerated in the first three Articles of the constitution; such as the power to draft people into the army may be implied by the Congress's enumerated powers.
3. **Reserved powers** = powers that are not delegated to the federal government, or are prohibited to it by the Constitution, because they are 'reserved' for the states or to the people; such as marriage and divorce laws that differ from one state to another.
4. **Concurrent powers** = powers in the hands of both the federal and the state government; such as highway management and maintenance.

Key principles of the constitution

(1) **Separation of powers**

Each branch was allocated **enumerated powers**:

The Executive = President = executes the laws, commander-in-chief, nomination of federal judges, negotiation of treaties, vetoes on legislation, international relations and pardons.

The Legislature = Congress = makes the laws, borrows money and collects taxes, ratification of appointments and treaties, declaration of war, trade regulations.

The Judiciary = Supreme Court = enforces and interprets the laws, judicial review that was formalised later.

- No one can be part of more than one of these branches at the same time: Senator Obama had to resign from the Senate when elected a president.
- It is not the 'powers' that are separated but in fact the institutions themselves.
- Thus, separated institutions with shared powers: all branches play a role on legislation for example.

(2) Checks and balances

While separation of powers is concerned by separating the enumerated powers of each branch from one another, the checks and balances pertain to how the system grants the means for each branch to partially control the power that is exercised by the branch, given its enumerated powers within the separation.

- Each branch exercises some power to check on the others.
- The Supreme Court can rule out legislation or executive actions deemed unconstitutional.
- The president can veto legislation, and congress can override a veto.
- Congress can reject or approve various treaties, executive and judicial appointments.
- The main difficulty of checks and balances is that while they function to prevent dominance of other branches, their 'fight' might result in a gridlock that can paralyse the system exactly at divisive issues that require much needed resolutions: the federal shutdown of 2018/19 lasted over a month and cost billions; the abortion debate and gun control.

(3) Federalism

Power sharing between the federal government and individual states' governments.

Concurrent powers = powers that are held by both federal and individual governments: taxation, legislation, etc.

The Tenth Amendment reserves powers for the states

- States can pass laws relating to their citizens: legal age for drinking alcohol.
- States can control their own elections.
- States can control local police and law enforcement: death penalty.

(4) Bipartisanship

Bipartisanship = refers to an agreement or cooperation between two different political parties that are practically opposing.

- While the constitution does not directly mention political parties, it clarifies that it seeks to ensure parties cooperation; it is implied by the clarity about separation of powers and checks and balances.
- The process of both constitutional amendments and veto, together with its need for a super-majority aims to guarantee cooperation.
- The constitution framework reflects the hope for necessary cooperation by establishing the mechanisms for such cooperation through defining the separation and the relationships between the branches, especially president and congress.

(5) Limited government

The idea behind the limited government is anchored in the perception that its job is to be as minimal as possible, to maintain freedom. Link with political ideas.

- Minimal government is possible to achieve and maintain.
- It is also desirable.
- Citizens are protected from the powers granted to the government, and to avoid abuse of such powers while benefiting from what they offer.
- The Bill of Rights with its first 10 amendments, was explicitly and directly aimed to guarantee the protection of citizens' rights from excessive powers granted to the state.
- Judicial review allows the Supreme Court to exercise its powers in protecting citizens' rights against the government.
- There are different opinions about 'who has more and excessive powers', the federal or the individual governments, and with relation to which issues.

Is the USA still a federal government nowadays?

Yes

- **Amendment process:** states' legislatures or constitutional conventions must approve amendments by a 2/3 majority.
- **Legislation:** many laws are passed and enforced by individual states; legalisation of cannabis in California.
- **State courts:** citizens usually take their cases to state courts rather than the Supreme Court, and the Supreme Court may reject a case that is deemed to address local/national matter.

- **10th amendment:** when a power is not granted explicitly to the federal government; it is implied that it belongs to the state.
- All citizens **pay federal income tax**, and the states depend on funding by the federal government.
- **Healthcare** is primarily at the federal funding level, and individual states provide Medicaid.
- Federal government oversees some aspects of the **education policy**.
- **During national crises**, individual states are dependent on the federal government: The Federal Emergency Management Agency.

No

- **Federal mandate and fiscal power:** the federal government provides about a quarter of the state funding (= federal aid) and can issue a mandate relating to how the federal aid is spent.
- **Key states:** states do not hold equal weight in the electoral college for presidential elections or in the House of Representatives: California has 55 electoral college votes compared with Alaska's 3.
- **Growth and federal powers:** increasingly the federal government gains momentum if only because it is forced to deal with large-scale issues that are beyond the concern of individual states; such as national security and terrorism, extreme weather conditions and crises, etc.
- States control the provision of **medical insurance**.
- **During national crises** such as Covid-19, state governors act in the best interests of their own state.
- **Laws vary significantly across states:** death penalty, state taxes and legality of marijuana.

Comparative analysis

USA versus UK constitution

Factors shaping US constitution

- Liberty.
- Individualism.
- Equality.
- Representative government.
- Limited government.
- States' rights.
- Gun ownership.

- Fear of state-organised religion: first amendment, reinforces separation between state and religion.

In the UK, there is a constitutionally established state religion with tolerance to other religions: the British monarch is the supreme governor of the Church of England, and 26 bishops Lords Spiritual sit in the Lords = the upper house.

Factors shaping UK constitution

- An autocratic monarchy.
- The hereditary principle.
- The power of land aristocracy.
- An established Church of England.
- A deferential working class.
- A lack of social mobility.

Similarities and differences

1 – Rational

- Citizens can go to court for violation of their rights.
- The head of government, president or PM, can use its democratic mandate to exercise more power than its enumerated powers.
- However, in the US the President claims its personal mandate, whereas in the UK the PM is the leader of the largest party without claiming personal mandate.

2 – Cultural

- Separation of powers.
- Checks and balances.
- However, in the US, sovereignty rests with the constitution and power is shared between the branches; federalism is a key principle of the constitution with clear checks and balances and limited government. In the UK, sovereignty rests with the parliament, the constitution is unitary rather than federal (compared with later devolution), checks and balances are more limited hence 'elective dictatorship'.

3 – Structural

- Possibility of amendments.
- Both with a Supreme Court.
- Citizens' Rights are protected through the Bill of Rights and the Human Rights Act.
- However, in the US codified, written, entrenched, more separation of powers and checks and balances, federalism,

And also:

- Codified versus uncodified.
- Some unwritten conventions versus much that is written.
- Entrenched versus nonentrenched.
- More direct democratic participation versus emphasis on representative democracy.
- Separation of powers versus fusion of powers.
- Checks and balances versus fewer checks and balances.
- Federalism versus devolution.