



# POLITICS

Our first topic in UK Government will be the constitution.

Complete the work that follows to best prepare you for the start of the course.

An **overview of the topic** can be found in [this video](#).

## What is a constitution?

Broadly, what these sources suggest is that a constitution establishes the **rules and principles** that govern an organisation, be it a church group, national sports league, political party or indeed an entire state.

## **Constitutions and the state – what is the function of constitutions?**

State constitutions set out the following:

- The aims, beliefs and goals of the state. Benedict Anderson (1983) has argued that for a nation to exist it must be an 'imagined community' in which millions of people, who have never met nor are ever likely to, nonetheless share the same fundamental values and culture. As he writes, 'the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.' These values are usually set out in the preamble of written constitutions, for instance that of the US.
- There are usually three *branches of government*: the **executive** (responsible for directing the affairs of state and enacting laws and policies; e.g. the prime minister, cabinet and civil service), the **legislature** (responsible for discussing and passing *legislation*, or laws; e.g. the UK Parliament) and the **judiciary** (in charge of interpreting and enforcing laws; e.g. the UK Supreme Court). Constitutions usually determine what powers these branches have.
- Linked to this, constitutions set out the processes of government: how laws are made, for example, or how the Prime Minister is chosen.



- Constitutions also set out the power relationships between each branch of government, emphasising when and where one branch is dependent on, or independent of, the other. For example, in the UK the executive is drawn from the majority party (or parties) in the legislature; in the US the legislature (Congress) and executive (the Presidency) are elected separately and are independent of each other.
- The limitations of the powers of government and the rights of individuals. These often list the freedoms and benefits that a citizen can expect (the 1689 Bill of Rights, the 1789 French Declaration of the Rights of Man and Citizen, the first ten amendments to the US Constitution).

## **The purpose of constitutions**

Constitutions have several important roles in the state.

Often, as is the case with Magna Carta (1215), the British Bill of Rights (1689), the US Constitution (1787) and the French Declaration of the Rights of Man (1789) constitutions are drawn up after times of enormous political upheaval or even revolution. The victors in such a conflict are afterwards charged with thinking about how the political system should be changed, hence constitutions arise.

As well as providing a new political system, constitutions also:

- Provide legitimacy to government. Even undemocratic states have constitutions to give them an air of legality and legitimacy.
- Protect freedom of individuals by defining the rights of citizens and limiting the power of government.
- Encourage political stability by drawing up rules that allow everyone to understand the powers, roles and responsibilities of the various branches of government, and government itself.
- Draw attention to the values and goals that define a state. For example, the preamble to the US Constitution (1789) begins:

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

- Set out the powers of the various branches of government. In federal states like the US, they also set out the relative powers of central, state and local power. Indeed, in the US, each state has (and must have in order to be a member of the union) its own constitution.
- Create a fresh start after a period of turbulence (e.g. the UK Bill of Rights, 1689, marked the end of over half a century of division between the monarchy and parliament, civil war and constitutional flux; similarly, the US Constitution marked the end of Revolutionary War and conflict).

## **What is a constitution?**

1. What is meant by the term 'constitution'?
2. What are the functions of political constitutions?

- 

- 

- 

-

3. What are the main **purposes** of constitutions?

- 

- 

- 

- 

- 

- 

- 

-

## The characteristics of constitutions

Constitutions are often classified according to their characteristics.

### **Codified or uncoded**

The term 'unwritten' is often used to classify the UK constitution, but this is inadequate as almost all of its component parts (the Magna Carta of 1215, the Bill of Rights in 1689, a variety of Parliament Acts and constitutional laws and so on) are written. What the UK constitution emphatically is not is *codified*.

A codified constitution is like that of France (1958) and the US, which contain all the main provisions in a single place and is the ultimate test of government and civilian conduct. Rather than an *unwritten* constitution, Britain's may be better classed as *uncodified*; one where much of it is written down, but it has not been gathered together into a single authoritative document. Sources of the UK's uncoded constitution include Acts of Parliament, conventions (things that have always happened), judicial precedent (court decisions), royal prerogative (executive powers derived from the monarch) and international agreements.

### **Flexible or rigid**

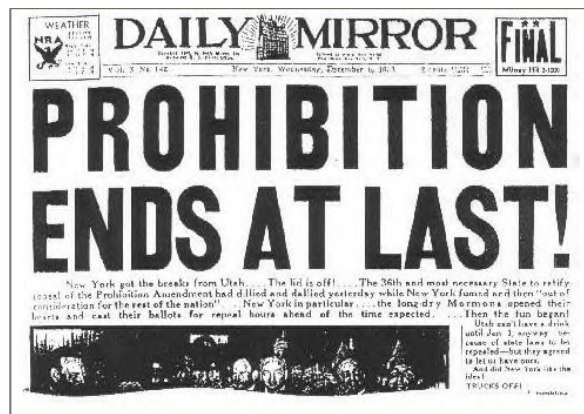
A *flexible* constitution is one that can be simply and efficiently altered by a simple majority (i.e. 51%) in the legislature. No laws are regarded as fundamental and, in reality, it is difficult to distinguish such constitutions as anything more solemn or nation-defining than an accumulation of laws and reforms. Flexible systems are rare, but include such states as the UK and New Zealand.

More common are rigid constitutions, which are held in countries like the US as sacred documents betraying fundamental laws held up as solemn and undeniable truths. In the US, for example, no provision in the constitution can be removed; they can be made obsolete or explicitly rescinded by subsequent amendments but they remain in the Constitution forever.

Similarly, in *rigid or entrenched* systems the process of amending (or adding to) the constitution is deliberately made extremely difficult. The US is once again informative. To pass an amendment to the US constitution one needs:

- A 67% majority vote in favour from both Houses of the legislature.
- A 67% majority vote in favour from both Houses in the legislatures in 75% of states (38 at present) or, rarely, by a special state convention.

There is the additional possibility of a convention of states, rather than the federal legislature, proposing an amendment but this has never happened in practice.



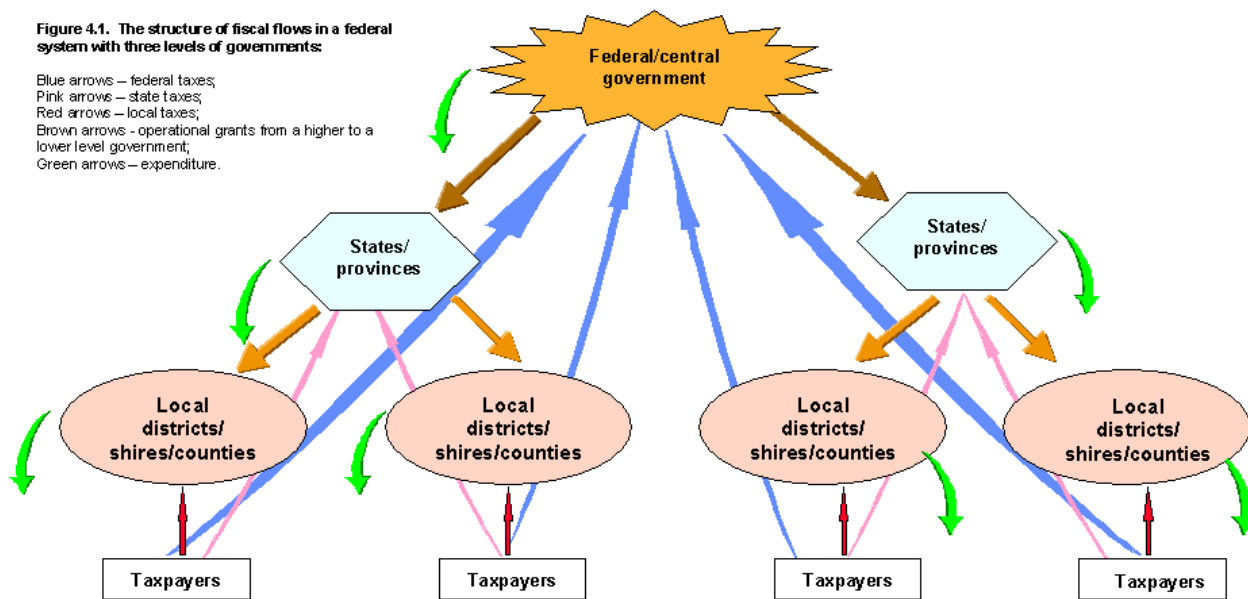
## Unitary or federal

In small countries lacking significant socio-economic or religious differences like the UK (though note post-1997 attempts at devolution and expanded local government), Israel, France and Ireland all of the power is concentrated in the central government. This is a *unitary* system.

In larger, more heterogeneous countries *federal* constitutions are the norm. Here there is a division of power between the federal (or central) government (in the case of the US, based in Washington, D.C.) and various regional units (states in the US, *lander* in Germany). The relative powers of the federal and regional branches of government are clearly defined in the constitutions of federal governments.

Figure 4.1. The structure of fiscal flows in a federal system with three levels of governments:

Blue arrows – federal taxes;  
Pink arrows – state taxes;  
Red arrows – local taxes;  
Brown arrows – operational grants from a higher to a lower level government;  
Green arrows – expenditure.



## Monarchical or republican

In the 21<sup>st</sup> century 'monarchical' rarely has the connotations of autocracy that it had, say, 400 years ago. Many democracies, for example the UK, Sweden, Denmark, Belgium, Holland and Norway have a *constitutional monarch* while some countries have *absolute* monarchies where the monarch has near-total political power (the Sultan of Brunei, King of Saudi Arabia etc.). In monarchies, the monarch is the head of state and is chosen by heredity (e.g. Charles III or

William V will succeed Elizabeth II as the UK's head of state). A map of existing monarchies is shown above.



In republics, as in the US, France and Germany, the

head of state is an elected figure.

## Presidential or parliamentary



In certain states, like the US, the executive (the presidency) is elected separately from the legislature (Congress). This is an example of a *presidential constitution*. This is much truer to the doctrine of the separation of powers, a key feature of 18<sup>th</sup>-century political thought and one which greatly influenced America's founding fathers. Montesquieu, the father of Enlightenment separation of powers theory and a key influence on America's Founding Fathers, is to the left.

In *parliamentary systems*, much less heed is paid to the separation of powers (in the UK, indeed, the legislature, executive and senior judiciary spent most of their time in the same building voting on the same laws until autumn 2009) as the executive (the Prime Minister and his Cabinet in the UK) is drawn from the majority party in the legislature. The executive is never elected in such systems and the leader of the majority party in the House of

Commons automatically becomes the Prime Minister; hence Boris Johnson became Prime Minister as soon as he was elected leader of the Conservative party in 2019; he did not need to be elected to that office.

## Parliament or the people

In the UK, as in most parliamentary systems, parliament is said to hold the supreme power. In the US, this resides formally with the people, though in practice it is a matter of constitutional semantics and there is little, if any, practical difference between the two systems.

## The UK constitution

So, in short the UK constitution is, in theory, an **uncodified, flexible, unitary, parliamentary monarchy**.

Although lacking the authority of a codified constitution, as in the US or France, there are three broad principles underlying the UK Constitution. These are:

1. The **sovereignty of parliament**. In other words, parliament has the sole and absolute law-making power. Only parliament can make, amend or unmake law, and no other institution can override its decisions; however, no single parliament is more sovereign than another, and therefore the laws made by one parliament are not binding on another. This is a fundamental feature of a flexible constitution.

It is worth bearing in mind that the courts can *interpret* the law and apply meaning to it, leading to judicial precedent that is applied throughout the law. For example, the Court of Appeal interpreted the meaning of a person having a bladed instrument 'with him' under the Criminal Law Amendment Act 1988 as to '*knowingly* have with him', emphasising a mental state of criminal intent which the original act rather glossed over but surely intended to include. Nonetheless, the fundamental articles of the legislation remained unchanged, as parliament has **legal sovereignty**. No appeals judge could



alter *precise* wording in the Act which, for example, specifies that a folding pocket knife has to have a 'cutting edge exceeding 3 inches' to fall under the terms of the Act; the court would have absolutely no authority to, say, reduce this set criteria to 2 inches or to include 'any' pocket knife.

2. **The rule of law** or the principle that no one is above the law. The 19<sup>th</sup>-century constitutional lawyer, A.V. Dicey, saw it as the fundamental function of a democratic government to secure equitable and equally applied justice. In practice, this means:
  - Everyone, regardless of class, race, gender or religion is subject to one law to be administered by the courts. (This has obvious implications for, say, those advancing the case for sharia law).
  - No one shall be punished except for breach of the law, as proved by a trial of one's peers in the courts. Once again, this should have implications for extending the detention periods of crime suspects without charge.
  - The laws of the constitution derive from both parliament and, especially in the case of civil liberties, decisions handed down by the courts.
3. **Parliamentary government**, which entails the fusion, rather than the separation of powers. Where the US Constitution is explicitly governed by a separation of powers, especially between the executive and legislative branches, the UK executive is drawn from the majority party (or parties) in parliament and votes on the legislation it proposes and enacts.

To the 19<sup>th</sup>-century English political theorist, Walter Bagehot, this is a virtue that enables government to be properly co-ordinated and effective. The flip side of this is, of course, that 'effective' and efficient governments are not necessarily good governments (after all, dictatorships are generally anything but ineffective legislators) and there is the guarantee that the executive has an in-built majority in the legislature, meaning that its laws are almost always passed, and in the case of large majorities the laws proposed by the executive are rarely substantially challenged (in a 2003 vote on raising autonomy for NHS trusts, 45 Labour MPs rebelled but the executive still passed its proposals by over 130 votes, owing to its massive in-built majority).

In a presidential system with a separation of powers, such as the US, law making may be slower and less efficient, as well as often subject to partisan bickering and deal-making that waters down legislation, but the legislature has the opportunity to act as a check against the executive and fully scrutinise laws; this is particularly aided by the mid-term elections (the President is elected every four years, there are Congressional elections every two) where voters can check the power of an unpopular or over-powerful executive by voting for opposition candidates to sit in the legislature and apply greater scrutiny and/or opposition to his legislative proposals.

Moreover, until 2009, the senior judges in the country sat in Parliament and were therefore members of both the judiciary and legislature; until 2005 the Lord Chancellor was a member of the legislature (as member of the House of Lords), the executive (as a secretary of state) and head of the judiciary in charge of the courts and appointment of judges.



4. **Constitutional monarchy.** Although parliament is sovereign, the UK retains a monarch as its Head of State bound by the principles of the Constitution. Therefore, although possessing considerable theoretical powers (the right to veto legislation, headship of the Church of England, the right to appoint Prime Ministers and dissolve parliament etc), in practice she is strictly bound by convention (Royal Assent was last refused in 1709, the leader of the majority party in the Commons is automatically asked to form a government, parliaments have clear annual sessions and so on).

It all seems a bit like inserting toy steering wheel in a child's booster seat, though there is nothing in the constitution to stop the Queen *ignoring* convention and, say, refusing to assent to an act of parliament; perhaps giving a child a loaded gun on the condition that they on no account touch the trigger would be a more apt analogy.

### The characteristics of constitutions

#### **Codified or uncoded**

1. Why is it inadequate to call the UK Constitution 'unwritten'?
2. Define and exemplify:
  - a. A **codified** constitution
  - b. An **uncodified** constitution
3. Give some examples of the sources of the UK's uncoded constitution.

#### **Rigid or flexible**

4. Define and exemplify:
  - a. A **rigid** constitution
  - b. A **flexible** constitution.

5. Think about our definitions of constitutions. How far is it proper to label flexible constitutions as constitutions at all?

### **Unitary or federal**

6. What is a federal constitution and how does it differ from a unitary one?
7. Which countries are most likely to have federal constitutions? Why do you think this is?

### **Monarchical or republican**

8. What is the difference between a monarchical and republican constitution?
9. Give examples of
  - a. Modern monarchies
  - b. Modern republics
10. How important is the distinction between monarchies and republics in the 21<sup>st</sup> century?

## **Presidential or parliamentary**

11. What is the separation of powers?

12. Explain how the separation of powers is at the heart of distinction between presidential and parliamentary constitutions?

13. Give examples of:

- a) Modern **presidential** constitutions.
  
  
  
  
  
  
  
  
  
  
- b) Modern **parliamentary** constitutions.

## **Parliament or the people**

14. What is the difference between sovereignty in the UK and the US?

## **The UK constitution**

15. How can the UK's Constitution best be described?

16. Make notes on the four principles underlying the UK Constitution?



17. If parliament is sovereign, how are the courts a source of law in the UK?

18. What are the advantages and disadvantages of the UK's **fusion of powers**?

Advantages	Disadvantages

### **Sources of the UK Constitution**

One major source of the UK Constitution is **historic constitutional documents**. These are key texts from the past that have helped shape the framework of British governance, often placing limits on royal authority and asserting key rights. Although many of their provisions have been superseded, they remain symbolically and legally significant. Notable examples include the *Magna Carta* (1215), which established the principle that the monarch is subject to the law; the *Bill of Rights* (1689), which asserted parliamentary sovereignty and certain civil liberties; and the *Act of Settlement* (1701), which laid out succession rules and further limited royal power.

Another important source is **authoritative opinions or major texts and commentaries**. These are respected academic or legal works that explain, clarify, and interpret constitutional principles. While they are not legally binding, they carry significant weight in constitutional understanding and practice. A key example is A.V. Dicey's *An Introduction to the Study of the Law of the Constitution*, which explains concepts like the rule of law and parliamentary sovereignty. Another is Erskine May's *Parliamentary Practice*, often referred to as the "Bible of Parliamentary procedure".

**Statute law** is perhaps the most important and concrete source. These are laws made by Parliament and are legally binding. As Parliament is sovereign, statute law can overrule other sources of the constitution. Examples include the *Human Rights Act* (1998), which incorporated the European Convention on Human Rights into UK law; the *Parliament Acts* (1911 and 1949), which limited the powers of the House of Lords; and the *Scotland Act* (1998), which established the devolved Scottish Parliament.

The **royal prerogative** consists of the traditional powers historically exercised by the monarch. Today, most of these powers are used by government ministers in the monarch's name. These include the power to appoint ministers, declare war, sign treaties, and grant honours. Although not based in statute, prerogative powers are recognised in law and can sometimes be limited or regulated by Parliament or the courts.

**Rules and customs of Parliament**, often referred to as parliamentary procedure, are another source. These are the established practices that govern the operation of both the House of Commons and the House of Lords. Though not laws in themselves, they are followed rigorously and ensure the smooth functioning of Parliament. Much of this is detailed in Erskine May's works and includes practices like how debates are conducted and how legislation progresses.

**Common law** forms another constitutional source. This refers to legal principles developed by judges through decisions in court cases over time. These judicial precedents help shape constitutional principles, particularly in areas where no statute applies. Common law is responsible for fundamental rights such as habeas corpus and the principle of natural justice.

**Conventions** are unwritten rules of political practice that are considered binding but are not legally enforceable. They guide constitutional behaviour and fill in gaps where law is silent. For instance, the convention that the Prime Minister must be a member of the House of Commons and command the confidence of the House is crucial to the UK's political system. Another is that the monarch gives Royal Assent to all legislation passed by Parliament.

Lastly, **external constitutional agreements** refer to international treaties and legal frameworks that influence the UK Constitution. These may not be binding in domestic law unless incorporated by statute, but they still affect constitutional arrangements. The UK's former membership of the European Union brought EU law into the constitution via the *European Communities Act* (1972), and although Brexit has ended that legal supremacy, international commitments such as the *European Convention on Human Rights* (via the *Human Rights Act* 1998) remain significant.

**What are the sources of the UK's uncoded constitution?**

Source	Explanation	Example(s)
Historic constitutional documents		
Authoritative opinions/ major texts and commentaries		
Statute Law		
The royal prerogative		
Rules and customs of Parliament		
Common law		
Conventions		
External constitutional agreements		