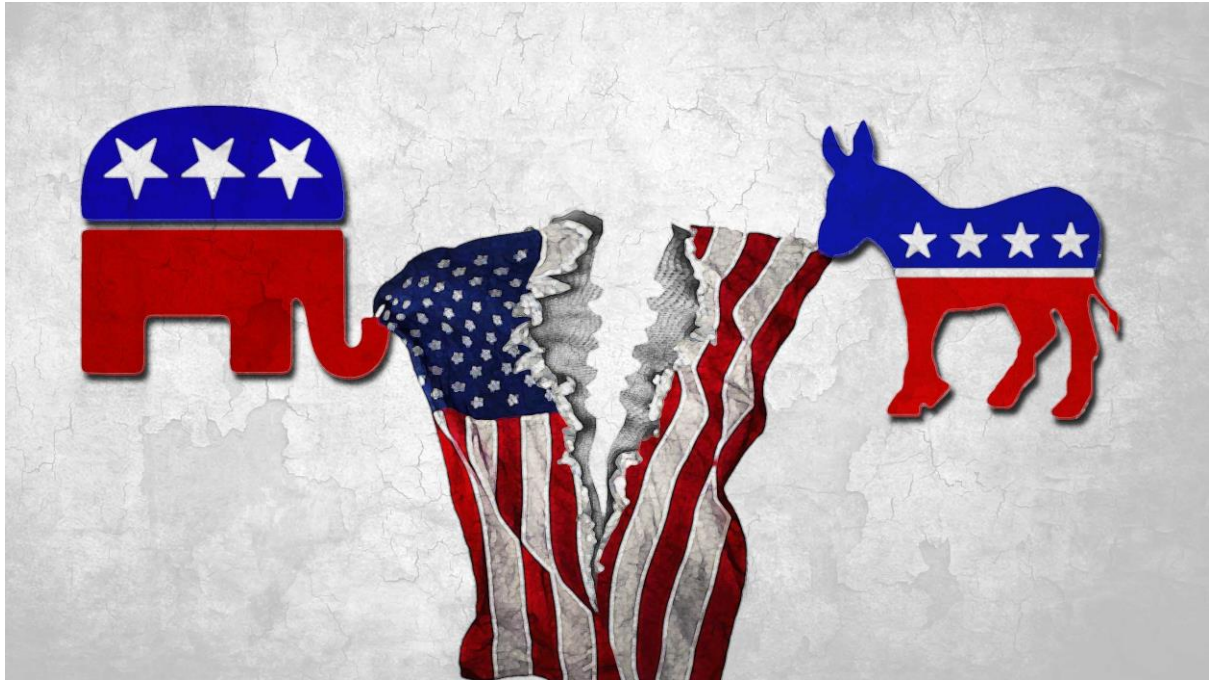


# US Politics



## Revision Guide

- 1. The Constitution**
- 2. Federalism**
- 3. Electoral system**
- 4. Parties**
- 5. Congress**
- 6. Interest / Pressure Groups**
- 7. The Presidency**
- 8. Supreme Court and Civil Rights**

## **Paper 3: Comparative Politics – USA**

**Time: 2 hours / Marks: 84**

You need to know the following:

- The Constitution
- Federalism
- Electoral systems
- Political Parties
- Pressure Groups
- Congress
- The Presidency
- The Supreme Court and Civil Rights
- The 3 Comparative Theoretical Explanations for each section

### **Section A: Comparing UK and USA**

#### **Question 1 – 12 marks**

- Short answer question
- Similarities v differences
- NOT an argument or an essay
- Choose ONE from two options
- 12 marks / 15 min

### **Section B: Analysing UK and USA**

#### **Question 2 – 12 marks**

- Short answer question
- Similarities v differences
- PLUS application of at least one comparative theory
- No choice of question
- 12 marks / 15 min

### **Section C: Essays**

#### **Question 3 – 30 marks x 2**

- 2 x essays
- Choose TWO from three options
- 2 x 30 marks / 2 x 45 min

## Q1 & Q2: UK v USA Comparison

### Three Theoretical Approaches

When comparing UK and American politics, we will use 3 theories to help us UNDERSTAND WHY there are such similarities and differences.

#### 1. The Structural Approach

Focuses on the institutions in a political system and the processes within them. It suggests that political outcomes are largely determined by the formal processes laid out in the political system. Structures create particular relationships between:

- The government and the governed
- Employers and employees
- Party establishment and party members
- Pressure groups and their members

Consequently, the lives of individuals and groups within a society are largely determined by their position within a structure.

In a narrow sense this approach will focus on institutions such as legislatures, executives and judiciaries.

In its broader sense it focuses on things such as constitutions, class structure, electoral systems, political parties, pressure groups and the media. All of which are important 'structures' and 'processes' within a representative democracy.

#### 2. The Rational Approach

Focuses on INDIVIDUALS, who it assumes act in a rational, logical way in order to maximise their own self-interest. They choose what rationally will be best for themselves.

It presumes that each individual will have their own set of political goals and they will make decisions based on the best way to achieve those goals. So individuals will act rationally, choosing to act in a particular way so as to give them the most beneficial outcome.

This approach would be especially appropriate in studying voting behaviour and the way people operate within political parties and pressure groups.

1980: Reagan's appeal to voters

Critics believe this approach overestimates human rationality.

### **3. The Cultural Approach**

Focuses on the IDEAS - the prevailing political, social, economic and religious ideas within each nation.

**Culture** can be defined as a shared, learned and symbolic system of values, beliefs and attitudes that shapes and influences people's perceptions and behaviour. It tells us who we are collectively, what is important to us and how we should behave – as Americans or UK citizens.

Culture must be collective so must be shared among members of a community, therefore a cultural approach to politics suggests that shared ideas, beliefs and values determine the actions of individuals and groups within them.

Critics argue that while we can usually identify the majority of these national values and expectations, we must realise that any country as large and socially complex as the USA or USA will contain a number of sub-cultures that will be much more difficult to identify.

## **Exam Questions**

### **Section A: Comparing UK and USA**

#### **Question 1 – 12 marks**

- Short answer question
- Similarities v differences
- NOT an argument or an essay
- Choose ONE from two options
- 12 marks / 15 min

### **Section B: Analysing UK and USA**

#### **Question 2 – 12 marks**

- Short answer question
- Similarities v differences
- PLUS application of at least one comparative theory
- No choice of question
- 12 marks / 15 min

## Section A: Comparing the UK and USA

- Do not write an introduction and a conclusion – it is NOT an argument
- Write three paragraphs.
- In each paragraph, you must talk about the UK and US System.
- This is because the question is requiring you to make direct comparisons.

In each paragraph:

Point of difference/similarity

Example

Explain

Whereas / Similar

Point of difference/similarity

Example

Explain

## Structure and Model Answer

### **Examine the ways in which the US and UK Constitutions are different (12 Marks)**

One way in which the UK and US Constitutions are different is over their degree of flexibility. In the US the Constitution is less flexible, the Founding Fathers made sure the US Constitution was very heavily entrenched and needs a super majority in both houses. For example it has only been amended 27 times in almost 250 years. **This means that the US Constitution is very difficult to change and is therefore not very flexible. Whereas**, the UK Constitution is remarkably flexible. There is no special mechanism through which the UK constitution is amended. For example, the House of Lords Act (1999) removed all but 92 hereditary peers, a significant constitutional change, but was passed through the normal legislative process. **This means that Parliamentary Sovereignty, can dramatically simply by passing a statute law and shows how the UK Constitution is more flexible.**

Another way in which the US and UK constitutions are different is the difference in how power is distributed. The US Constitution creates a clear separation of powers, so the legislature and executive branches have separate powers. For example Congress used its power of veto on George Bush 4 times during his presidency. **This means that power is not centralised and is spread across the different branches of government. Whereas**, in the UK there is a fusion of powers. - the Executive is formed from the Legislature, meaning its members are part of both branches. For example, Theresa May is Prime Minister, but also MP for Maidenhead. **This means that fusion of powers can lead to the UK Prime Minister having significant powers, leading to an 'elective dictatorship' where power is concentrated in the hand of one individual.**

A final way that the US and UK constitutions differ is over the power given to the judiciary. The United States has a clearly codified constitution - ever since the Marbury vs. Madison case of 1803 judicial review has been an established principle in the United States. For example, in May 2018 the Supreme Court struck down a congressional law which banned Sports Gambling in most states. **This means that there is a benchmark against which governmental and legislative actions can be held and therefore it is not unusual for the US Supreme Court to strike down Acts of Congress or Executive Actions. Whereas** in the UK Parliament is sovereign and there is no codified constitution for the UK Supreme Court to arbitrate over. For example, the British or European Courts could not force Parliament to change their policy on votes for prisoners. **This means that although the Supreme Court may rule that the Government has acted Ultra Vires, it cannot force the UK Government to change any decisions it has made – because these decisions have been mandated by Parliament.**

## Section B: Analysing the UK and USA

- You use exactly the same structure as above with just ONE addition in ONE paragraph only
- 
- Do not write an introduction and a conclusion – it is NOT an argument
- Write three paragraphs.
- In each paragraph, you must talk about the UK and US System.
- This is because the question is requiring you to make direct comparisons.
- In ONE of your three paragraphs you must use one of the three theories to explain the similarity or difference

In each paragraph:

Point of difference/similarity

Example

Explain

Whereas / Similar

Point of difference/similarity

Example

Explain

Theoretical explanation (one theory in EACH paragraph)



## Structure and Model Answer

### **Analyse how the US and UK Constitutions are different (12 Marks)**

One way in which the UK and US Constitutions are different is over their degree of flexibility. In the US the Constitution is less flexible, the Founding Fathers made sure the US Constitution was very heavily entrenched and needs a super majority in both houses. For example it has only been amended 27 times in almost 250 years. **This means that the US Constitution is very difficult to change and is therefore not very flexible.** **Whereas**, the UK Constitution is remarkably flexible. There is no special mechanism through which the UK constitution is amended. For example, the House of Lords Act (1999) removed all but 92 hereditary peers, a significant constitutional change, but was passed through the normal legislative process. **This means that Parliamentary Sovereignty, can dramatically simply by passing a statute law and shows how the UK Constitution is more flexible.** This difference is best explained by structural theory which would argue that codified nature of the US constitution ensures that it is deliberately hard to change and therefore inflexible, whereas the UK constitution is more flexible because it is uncodified, meaning it is a structure that allows it to change and evolve more organically.

Another way in which the US and UK constitutions are different is the difference in how power is distributed. The US Constitution creates a clear separation of powers, so the legislature and executive branches have separate powers. For example Congress used its power of veto on George Bush 4 times during his presidency. **This means that power is not centralised and is spread across the different branches of government.** **Whereas**, in the UK there is a fusion of powers. - the Executive is formed from the Legislature, meaning its members are part of both branches. For example, Boris Johnson is Prime Minister, but also MP for Uxbridge and South Ruislip. **This means that fusion of powers can lead to the UK Prime Minister having significant powers, leading to an 'elective dictatorship' where power is concentrated in the hand of one individual.** This difference is best explained by structural theory, which would argue that the US Constitution specifically structured the government in a way that avoided concentration of power, whereas the organic nature of the UK Constitution has evolved over time that is tradition that these two branches have become fused.

A final way that the US and UK constitutions differ is over the power given to the judiciary. The United States has a clearly codified constitution - ever since the Marbury vs. Madison case of 1803 judicial review has been an established principle in the United States. For example, in May 2018 the Supreme Court struck down a congressional law which banned Sports Gambling in most states. **This means that there is a benchmark against which governmental and legislative actions can be held and therefore it is not unusual for the US Supreme Court to strike down Acts of Congress or Executive Actions.** **Whereas** in the UK Parliament is sovereign and there is no codified constitution for the UK Supreme Court to arbitrate over. For example, the British or European Courts could not force Parliament to change their policy on votes for prisoners. **This means that although the Supreme Court may rule that the Government has acted Ultra Vires, it cannot force the UK Government to change any decisions it has made – because these decisions have been mandated by Parliament.** This difference is best explained by cultural theory, as the US, as a culture, accept the view that the Supreme Court should have final say, whereas in the UK the shared value, as illustrated by the YE referendum, is that Parliament, not the Supreme Court or the constitution, should be sovereign.

## Essay Structure

### ALL questions are NON-source based

**Para 1: Introduction** – at end clearly state conclusion (use wording of the Q)

**Para 2: First counter**

- Some would argue that.....  
**THIS MEANS THAT...**

- Example  
**THIS MEANS THAT...**

**Para 3: Trash it! (therefore showing why YOUR argument is stronger)**

- However they are wrong because.....

**THIS MEANS THAT....**

- Example  
**THIS MEANS THAT...**

- Re-state your conclusion - ‘therefore...’

**Para 4: Second counter**

- (Also) Some would argue that.....  
**THIS MEANS THAT...**

- Example  
**THIS MEANS THAT...**

**Para 5: Trash it! (therefore showing why YOUR argument is stronger)**

- However they are wrong because.....

**THIS MEANS THAT....**

- Example  
**THIS MEANS THAT**

- Re-state your conclusion – ‘therefore...’

**Para 6: Third counter**

- (Lastly) Some would argue that.....  
**THIS MEANS THAT...**

- Example  
**THIS MEANS THAT...**

**Para 7: Trash it! (therefore showing why YOUR argument is stronger)**

- However they are wrong because.....

**THIS MEANS THAT....**

- Example  
**THIS MEANS THAT**

- Re-state your conclusion – ‘therefore...’

**Para 8: Conclusion**

## Model Answer

### Assess the view that the Electoral College is no longer fit for purpose

The Electoral College is the final stage of the US electoral process, where the president is decided. Each state is awarded a number of votes, based on state representation in Congress. This system was established at the writing of the constitution in 1787 and was intended to ensure the fair representation of all citizens and states. Despite the arguments that it protects the rights of smaller states, the benefits of a winner takes all system and the promotion of a two-horse system, the view that smaller states are over-represented, that the winner takes all distorts the result and the unfairness to smaller parties all suggest that **the electoral college is no longer fit for purpose.**

Some would argue that the electoral college preserves the rights of smaller states, who were concerned that their citizens' voices would be lost and would not count. For example, in the 2016 election a large state such as California had 55 electoral college votes, whilst very small population states such as Wyoming had just 3. This shows how small states do still get representation under this system, their voices are still being heard, despite their size. However, they are wrong because many argue that the reverse has happened, that smaller states are now being over-represented. For example, California's ratio of people to votes is far larger than Wyoming despite it being a far bigger population state. California has 55 electoral college votes, so a population of 39 million has 1 vote per 713,000 people. Whereas Wyoming has 3 electoral college votes, so a population of 500,000 has 1 vote per 195,000. This shows how smaller states are now getting far more representation than much larger population states, which would appear very unfair. **Therefore, the electoral college is no longer fit for purpose.**

Some would also argue that the electoral college continues to be fit for purpose because the winner takes all system ensures that the victor will get more than 50% of the vote. For example, in two thirds of all presidential elections, the winner has gained over 50% of the vote. This shows how the electoral college continues to produce a clear outcome, which also serves to provide symbols of unity, such as a president who is both chief executive and head of state. However, they are wrong because this winner takes all system distorts the result as in more recent elections there have been huge differences between the outcomes of the popular vote and the electoral college. For example, in 1996 Clinton won 70% of the electoral college but just 49% of the popular vote. Similarly, in 2016, Trump won 56% of the electoral college vote but just 46% of the popular vote. This shows how while historically it may have been the case, the electoral college no longer accurately reflects the wishes of the US electorate and **therefore it is no longer fit for purpose.**

Lastly, some would argue that the electoral college promotes a two-horse race, always producing a clear winner. For example, every winner of the presidential

election has been either a Democrat or Republican. This shows how the two parties dominate, winning every state under the electoral college system. In turn this shows how the victor will always be from one of the two main parties, giving the nation clarity over who their leader is, there is never a risk of a coalition. However, they are wrong because the electoral college is systematically unfair to third parties. For example, in 1992 Ross Perot won 19% of the popular vote, a fifth of the entire electorate, but did not win a single state and therefore not a single electoral college vote. This shows that the electoral college, due to the winner takes all system, does not accurately represent the views and wishes of the US electorate and actively prevents them from every gaining any electoral success. It is notable that no third party has made a serious attempt to win the presidency ever since, because of how the system operates, and **therefore the electoral college is no longer fit for purpose.**

In conclusion, while there are arguments in favour of the electoral college, most of those appear to be ones that would have been more relevant earlier in the history of the US, such as the protection of smaller states against under-representation and the promotion of a two-horse race, thus providing national unity. However, in more recent times it would suggest that the electoral college is less applicable in modern times – it no longer appears to represent the views of the US electorate as well as preventing third parties from gaining any success. **Therefore, as it appears to be less relevant to modern society, the electoral college is no longer fit for purpose.**

# 1. The Constitution

## The nature of the US Constitution

1. A codified constitution
2. A blend of specificity and vagueness
3. All provisions are entrenched

## Constitutional amendments

Stage 1: Proposal

Stage 2: Ratification

## The Bill of Rights

**1<sup>st</sup> – freedom of press, religion, speech, assembly**

**2<sup>nd</sup> – the right to bear arms** - Gun control

**4<sup>th</sup> – the right against unreasonable searches** - person or property

**5<sup>th</sup> – the right to silence**

**8<sup>th</sup> – cruel and unusual punishments should not be inflicted**

**10<sup>th</sup> – powers reserved to the states and the people**

## Why has the constitution been amended so rarely?

1. Deliberately difficult process
2. Deliberately unspecific document
3. Supreme Court's power of judicial review
4. Caution over tampering

# Checks and Balances

## Executive

### Checks by the EXECUTIVE on the LEGISLATURE (2)

- (i) To recommend legislation to the Congress
- (ii) Veto bills passed by Congress

### Checks by the EXECUTIVE on the JUDICIARY (2)

- (i) Nominates all federal judges, most significantly Supreme Court
- (ii) The power of pardon

## Legislature

### Checks by the LEGISLATURE on the executive (8)

- (i) Congress can amend, block or reject legislation recommended by president
- (ii) Congress can override president's veto
- (iii) 'power of the purse'
- (iv) Foreign Policy: President may be 'commander in chief' but is it Congress that has the power to declare war
- (v) The Senate has the power to ratify or reject treaties negotiated by the president
- (vi) The Senate has the power to confirm/reject appointments president makes to the executive AND judiciary branches
- (vii) Power of investigation
- (viii) The power of impeachment

### Checks by the LEGISLATURE on the JUDICIARY (2)

- (i) Power of impeachment of members of the judiciary
- (ii) Power to overturn a Supreme Court decision

## Judiciary

### Checks by the JUDICIARY on the LEGISLATOR (1)

- (i) The power of judicial review

### Checks by the JUDICIARY on the EXECUTIVE (1)

- (i) The same power of judicial review over the executive branch

## Consequences of checks and balances

### (i) **Bipartisanship and Compromise**

This was a deliberate, intended consequence, encourage cooperation between the two major parties. Crucial to political success, the business of government gets done

However, checks and balance can result in gridlock

### (ii) **Divided Government**

When each house is owned by a separate party, this can lead to gridlock

## US v UK

The US and UK have hugely different constitutional arrangements, so here the structural approach is the most useful form of analysis as constitutions are structures that affect the rest of the political system.

### Similarities and Differences

#### 1. Codification and sources

The main function of a constitution is to set out the rules, regulate the powers, roles and limits of all individuals and institutions involved in the political processes. One fundamental difference is that **the US Constitution is codified**, the UK's is not.

The UK Constitution has a range of sources, such as statute and common law, conventions, authoritative works and treaties, **whereas the US has a single source**, which could give it greater clarity and enable people to appreciate the rules more easily.

The UK Constitution does not have the same power over individuals and politicians, and it is less apparent what the rules are. **This may mean that the US Constitution is a better guide to political practice**. However, it is still ambiguous.

#### 2. Separation of powers

The UK has 3 separate branches but they overlap/fuse power, **whereas in the US power is separated between the three branches – no one can be part of two branches at the same time**

At elections, in the UK people vote for the legislature only (parliament). The government is then drawn from and sits in parliament. **Whereas in the US there are separate elections for the legislature (both houses) AND the executive (president)**.

The fusion of power in the UK provides the basis for **greater** executive domination. The parliamentary system means that the PM must command a majority in the Commons, which they can deploy to achieve their policy goals. **Whereas in the US presidents are often in a situation where they lack a congressional majority, so they are more subject to legislative opposition than a PM.**

Also, the awarding of a mandate in the UK is usually claimed by the winning party, so the PM claims the right to implement their manifesto, **whereas in the US Congress and the president claim an equal mandate and right to govern, which creates a struggle for power.**



### 3. Checks and balances

In BOTH countries a system of checks and balances exists between the three branches.

In the UK:

- Parliament can check the government by voting on government proposals and using a vote of no confidence
- The Lords is unelected and therefore cannot reject decisions made by the Commons
- PM, as head of government, is able to command a majority on the Commons

**Similarly**, in the US

- The president can propose and veto legislation, nominate to the executive and judiciary and is commander in chief
- Congress can propose, amend and pass legislation, ratify treaties and appointments and declare war.
- BOTH houses provide powerful checks on the executive and each other

The UK's fusion of power **limits the effectiveness** of checks and balances due to how the executive is able to dominate the legislature, **whereas** the US the checks and balances are **more effective** because president and Congress are interdependent – each finds it difficult to act without agreement from the other.

In the while UK parliament can vote against the government, checks and balances are not particularly powerful. Power tends to be concentrated in the hands of the government or PM who makes effective use of the powerful whip system and patronage, both of which ensure the executive is able to have a control a loyal majority in the Commons. **Whereas in the US the Constitution provides extensive checks and balances, which prevent the type of executive domination seen in the UK. The presidents lacks the power of patronage and members of Congress, even within the president's own party, are often more loyal to the constitution that their own leader.**

### 4. Location of sovereignty

This has a major impact on the relative power of both judiciaries. In the UK, the Supreme Court is **much weaker** because UK justices have no codified constitution to uphold and cannot declare acts of parliament to be unconstitutional. **Whereas** in the US the Supreme Court can and does overturn acts of Congress and therefore has **much more power**.

## 5. Rights protection

BOTH have strong mechanisms for rights protection, but it could be argued that the **US provides much stronger protection**. This is because the entrenched, sovereign power of the Constitution means that individuals can and do challenge powerful institutions that restrict liberty. There are many cases of individuals and groups protecting their rights in the US, particularly through the Bill of Rights and the 14<sup>th</sup> amendment. The Supreme Court is very active in upholding the rights of citizens, and Congress cannot amend or overturn their decisions, only a constitutional amendment can do so (which is very rare). **Whereas** in the UK those **rights are more vulnerable** to attack from both the executive and parliament, partly because they can simple be overturned or amended by a new act of parliament.

**However**, some argue that **rights are better respected in the UK than the US**. Despite the lower level of structural protections, the UK has shown a relatively high level of rights protection – through both the Human Rights Act 1998 and via membership of the European Convention on Human Rights, which the UK joined in 1951. **Whereas** in the US there has been a number of rights concerns, including over the extent of the power of the US security state after 9/11 (as shown by the creation of the Guantanamo detention camp) and continuing major concerns about the rights of racial minorities.

## 6. The amendment process

This provides a **much stronger structure** in the US than in the UK as it restricts politicians more because they find it harder to change the rules of the political game. This is because the constitution is entrenched, very difficult to change and to do so amendments need two-thirds super majorities in both houses, thus requiring cross-party support, which is very difficult to achieve. **Whereas** in the UK any judicial interpretation can simply be overturned by a new act of parliament. In contrast, in the US the courts have the power of judicial review, through which they CAN overturn the actions of any institution, including Congress. The entrenched Constitution means that their decisions are unlikely ever to be overturned by politicians.

## Theoretical explanations

### Rational

This can be used where the constitution is limited in regulating individuals, so showing the different extents to which individuals can operate rationally by being able to pursue their own interests.

Justices in the US have a strong ability to act according to their own ideology – the vagueness of the constitution provides them with much room for discretion. This allows self-interested judges to apply their own interpretation.

**Whereas** in the UK judges apply detailed parliamentary acts rather than a vague constitution, so they are less able to use their own views.

### Cultural

Here we can examine the way in which the attitudes of group culture rather than the constitution determines political behaviour.

When regulating the actions of individual politicians, in the UK there is no single document and fewer clear guidelines, so the constitution has less impact and there is a greater reliance on convention. Therefore cultural expectations play a bigger role in regulating the activities of individual politicians.

When considering the level of rights protection, the US has strong structures to protect rights than the UK, although they are still well protected, this is because there are strong cultural expectations of rights protection within UK political parties and the country. For example, when proposing the right to gay marriage, David Cameron was responding to a dominant cultural belief of equality.

## Structural

This is a particularly helpful theory in explaining the similarities and differences, especially in the US, where the Constitution is laid out in one single document, whereas the UK takes its constitution from different sources, so there is less of a structure to follow.

### 1. Separation of powers / checks and balances

Firstly, the executive in the US is far more restricted than in the UK. This is because there are very effective structures laid out in the constitution that limit the president because:

- He may lack a congressional majority
- He has limited power of the patronage power of members

**Whereas** in the UK the PM is restricted by the structure of parliament BUT **less so** than in the US because:

- The PM has a majority in parliament, as well as
- The power of patronage

Which means that parliament is less able to check the power of the PM.

Secondly Congress is **more powerful than parliament in restricting the executive** because of the powers given to them by a codified constitution, which awards specific powers to Congress – such as ratifying treaties and appointments. These powers are used to limit the president. **Whereas** in the UK parliament has none of this power, where the PM can become an elected dictator.

Thirdly, the creation of checks and balances in BOTH countries mean that both have structures in the form of legislatures, that can restrict the executive branch

## 2. The location of sovereignty

Firstly, constitutional sovereignty in the US has created a strong structure that significantly **limits the power of the executive and legislature.**

- The courts have a high degree of power
- This is a structure that can be used to overturn the President and Congress

**Whereas** in the UK parliament **is NOT limited by this structure** because IT is sovereign, which means that the court cannot overturn its actions.

Secondly BOTH countries have a relatively independent judiciary, which provides structural limits on other political institutions.

## 3. The amendment process

**The US Constitution is hard to change** as amendments need cross party super-majority support in both houses – history tells us these are very rare (27). As a result the **power of politicians is more restricted.** **Whereas** the **UK constitution is more easily changed**, simply by passing an act of parliament, so there are **less restrictions on the power of the politicians.**

## 2. Federalism

### Definition

A theory of government where political power is divided between national and state government, there is jurisdiction for each. It was a striking of middle ground between strong central government AND the rights of states.

Central government was needed to give the nation unity and protect itself from outside intervention (ie: the return of the British). State government was needed to allow states to pass laws that more accurately represented ITS people. So, Federalism involves some **decentralisation**, power is given to both federal state government.

### Limited Government

The scope of federal government should be limited to that which is necessary for the common good of the people. So the government would only do what was essential, leaving the citizens fundamental rights and freedoms as untouched as possible.

At the Philadelphia Convention, there was considerable disagreement between:

- The Federalists
  - Who wanted to create a more centralised, federal government

And

- The Anti-federalists
  - Who wanted the states to remain more sovereign

The principle of limited government remains central to political debate in the US today about the scope of the federal government, for example what should its role be in:

- The level and range of public health care provision, education, immigration, gun control

## The changing relationship between Federal and State government

**Increased** role for federal government, **therefore a reduced role for states.**

1. Westward Expansion
2. Population growth
3. Industrialisation
4. Communication
5. Great Depression
6. Foreign Policy
7. Supreme Court decisions

**However**, this changed from the mid 1980s, findings began to swing back in favour of the states, increasing their power, and against Federal government, reducing their power.

The court took more a more restrictive view of the power of Federal government. Therefore this led to a more limited role for Congress and therefore federal govt

## Constitutional Amendments

**14<sup>th</sup>** was the most significant – it was the first time it imposed prohibitions on state government.

- School segregation
- Racial discrimination

**16<sup>th</sup>** amendment allowed federal government to impose income tax, hence means to launch huge national programmes such as

- New Deal (Roosevelt)
- Civil Rights (Kennedy & Johnson)

## 3. Phases of Federalism

**1780s – 1920s – Dominance of state law - Crow laws**

**1930s – 60s – Increase in federal power**

- **However**, the inability of states to deal with the Wall Street Crash and Great Depression in the 1920s saw the need for federal intervention grow

**Final 3 decades of 20<sup>th</sup> C – New Federalism**

- Big shift to decentralisation and therefore an increase in state power.

## Federalism under George W Bush (2001-09)

The assumption was that Bush would continue to shrink the size of the federal government and decentralise. However, he presided over the largest overall increase in federal government spending since Johnson's Great Society programme – economic

**Education** - 'No child left behind'

**Medicare** - Federal government scheme, introduced in 1965, to provide America's over 65s with basic health insurance, covering medical and hospital care.

**Homeland security and defence** - Between 2001 and 2009, Department of Defense spending increased from \$290m to \$650m, up by 125%.

**Economy and jobs** - Increased federal intervention followed the Wall Street and banking collapses of 2008.

## Federalism under Barack Obama (2009-17)

Obama's administration was more focused on domestic policy as a way of delivering his 'change' agenda. Whereas war and security have always been exclusive areas of federal government, domestic policy is increasingly the domain of the states.

- By 2012 there were significant increases in federal employees compared to state
- Federal govt assistance to states increased from 3.7% to 4.65 GDP
- Under Bush's economic stimulus package (2003), just \$20bn went to the states, whereas under Obama (2009) that rose to \$246bn, as a result of programmes such as:
  - The re-authorisation of the State Children's Health Insurance (CHIP) 2009
  - The expansion of Medicaid (a health insurance programme for the poor)
  - Race to the Top – education programme

However, the policy that came in for the most criticism, especially regarding its implications for the federal-state relationship, was his **healthcare reform legislation – 'Obamacare'**.

Most Republicans opposed it, a number of states sued the federal government, arguing that this was a violation of the principles of federalism and therefore unconstitutional. By the close of the Obama presidency, Americans' views on the federal government were decidedly negative.



## **Consequences of federalism**

### **Legal**

Huge variety in state laws.

### **Policy**

This can be seen in areas like healthcare reforms (Massachusetts) and Immigration reform (Arizona)

### **Elections**

All elections are state-based, run under state law, even the presidential election is really 50 separate state-based elections.

### **Parties**

Political parties are decentralised, and state-based. So Texas Democrats are more conservative than Massachusetts Democrats, Vermont Republicans are more liberal than South Carolina Republicans.

### **Economic**

Income tax is levied by both federal and state governments, sales taxes also vary between cities and states.

### **Regionalism**

The South, Midwest, Northeast and the West have distinct cultures and accents, as well as religious and ideological differences. There is a distinct difference between the conservatism of the Deep South and the liberalism of the Northeast.

Although some Americans believe that the federal-state relationship at times goes too far in one or other direction, most also believe that its strengths far outweigh its weaknesses.

# US v UK

## 1. Division of power

In **both** countries, power is divided between central government and regions. In the UK these regions include devolved nations and local government. In the US these regions are the state.

## 2. Levels of power

In the UK regional power is given in the form of devolution. Parliament can give power to regions, but this power is NOT constitutionally guaranteed and therefore the power of the devolved nations can be reduced or removed without their consent. **Whereas** in the US regional power is ALSO created, but here through the provision of federalism. The power of the states is provided by the Constitution and cannot be reduced without their consent – unless there is a 75% vote to amend the constitution.

In the UK, different regions have different levels of power. The Scottish Parliament holds the highest level, and England has no devolved power at all. **Whereas** in the USA regional power is even, each state has the same powers. Additionally regional power of states is more extensive than in the UK.

Regions in the UK tend to have less power over determining policy, which is often still decided by central government, whereas in the US there are higher levels of regional power, with states having more power to determine policy.

## 3. Attempts to increase regional power

In **both** countries there have been attempts to increase regional power in recent years. In the UK this has been due to more power being handed down to devolved nations, as well as more democratically elected city mayors. In the US this has been due to ideological views of central government and the Supreme Court, which tends to favour state rights as opposed to those of central government.

However, regional power tends to remain more uniform in the US but tends to vary more in the UK.

#### 4. Protection of regional power

Federalism is supposed to ensure greater protection of regional power, but whether it succeeds is open to question. In the US, the federal government and the Supreme Court have gradually allowed significant erosion of state power. **Similarly**, protection of regional power is weak in UK, perhaps even more so. The structure of parliamentary sovereignty has always allowed for the reduction of the power of devolved regions.

However, regional power is constitutionally protected in the US, but not in the UK.

### Theoretical explanations

#### Rational

US voters are more able to pursue their own rational self-interest than UK voters because they have greater choice in regional elections. The separation of powers and short electoral terms means more voting and greater sensitivity to public opinion.

#### Cultural

In **both** countries there are high levels of expectation of strong regional power. This may deter central government from attempting to restrict regional power.

It is possible for the UK government to reduce the power of the regions but it is unlikely to do so for **cultural** reasons – as each of the main parties agrees that devolution is highly desirable. **Whereas** in the US the ideologies of the two main parties mean there is a clash over the desirability of regional power. There is a stronger culture of states' rights protection among Republicans and therefore greater desire to respect state power among Republican governments. However, the culture of states' rights in the US is very dominant, so most politicians conform to this cultural expectation.

#### Structural

Devolution and federalism BOTH provide structures that determine power is shared between central and regional government.

The structure of the US Constitution imposes a **much more even sharing of power** between central and regional government. **Whereas** in the UK while devolution DOES provides a structure, the power levels of the regions are much lower and could be reduced by parliament as a sovereign body.

## 3. Electoral system

### Primaries and caucuses

#### Primary

State based election to choose party candidate for presidency.

#### Caucus

State based meeting for selection of party's candidate for president.

### Increased importance of primaries

Now the primaries are the only route to securing party nomination.

- 1950s/60s – most states didn't hold primaries. Back then **parties controlled selection** through State Party Conventions where only selected party members participated
- System deemed undemocratic, elitist, non-participatory and potentially corrupt

### Strengths of primaries

- Increased participation by ordinary voters
- Increase in choice of candidates
- Process opened up to outsiders
- Abolition of party boss power
- Appropriately demanding test for a demanding job

### Weaknesses of primaries

- Turnout varies hugely- incumbent president running – turnout lower
- Too long
- Very expensive
- Dominated by media
- Bitter personal battles
- Lack of peer review
- Voters unrepresentative
- Super-delegates

### How to improve the process

- Timing
- Increased role for professionals

### Reasons for choosing a VP

- **Balanced ticket**
- **Potential in government**
- **Party Unity**

## National Party Conventions

### Three formal functions

It has been argued that all three formal functions are no longer relevant, and that therefore the convention has diminished in importance.

#### **Choose party's presidential candidate**

'Convention confirms rather than chooses candidate. Foregone conclusion, rarely in doubt

#### **Choosing VP**

This role lost in last 30 years, done before convention

#### **Deciding Party Platform**

Presented to delegates at Convention. Heated debates avoided at convention - media portrays this as evidence of a divided party.

**So, instead, the importance of conventions can now be found in:**

### Informal, hidden functions

- **Promoting party unity**
- **Enthusing Party Faithful**
- **Enthusing ordinary voters**

### Importance of Conventions

To voters, increasingly seems unimportant - Scripted events, devoid of political content, TV coverage has declined

BUT – significant as it celebrates glorious past, chance to identify rising stars

Millions who shun entire campaign tune in for key moments, so less newsworthy but still important

## Campaign Finance

There has long been concerns about the amount of money spent by candidates in attempt to win the election.

### **Federal Election Campaign Act 1974**

Introduced as a result of Watergate – end of Nixon. Aim was to reduce candidate reliance on ‘fat cats’ – few but very wealthy donors, and equalise money spent by both parties

Only partially successful, loopholes found:

1976: removed limitations on what individuals or PACS (political action committees) could spend to either support or OPPOSE a candidate infringed

1979 –parties can raise money by ‘soft money’

### **Matching funds**

Federal money given to candidates who met certain criteria and agreed to certain limitations. In the 1976 Election the FEC paid out \$72m, by 2000 it had risen to \$240m.

In 2012 neither Dem or Rep took federal funding – end of era and in 2014 Obama signed legislation to end the public financing of party conventions. By 2016 total FEC payouts were just \$1m – the days of public funding of presidential campaigns appear over.

### **Bipartisan Campaign Reform Act (2002)**

Significant further reform to control finance

### **PACs**

Because of these growing number of restrictions, new organisations came to be formed. Political Action Committees raised and spent money for the express purpose of electing, or defeating, specific candidates.

They either gave money to candidates they supported, or spent money against candidates whom they opposed. Most PACS represent business, labour groups, ideological groups or single issue groups.

### **Citizens United v Federal Elections Committee (2010)**

In a landmark ruling, the Supreme Court gave corporate and labour groups the same rights of political free speech as individuals, giving them the right of unlimited independent political expenditure.

- Crucial outlet for political speech.
- Allowed for independent calls for election or DEFEAT of specified candidates
- Another outlet for unlimited money.
- May be ‘independent’ but still effectively and extension of a campaign

## Presidential Debates

Huge hype, but rarely a game changer. Only 2 have truly shaped the outcome

- **1980: Carter v Reagan**
- **1984: Reagan v Mondale**

## 2016: Trump v Clinton

- Viewership reached record numbers.
- By all impartial measures Clinton outperformed Trump in all 3 debates, most dramatically the first one.
- That a candidate could perform so badly in the debates yet still win the election should make future candidates question the supposed importance of the debates.

## Factors determining how US electorate vote

- The incumbency factor
- Party Affiliation
- Gender
- Race
- Religion
- Age
- Wealth
- Geographic Region
- Population Area
- Policies

**Have comparative data – 2016, 2012, 2008**

## The Electoral College

Each state awarded certain number of Electoral College votes. Equal to state representation in Congress

- 2 senators per state, plus
- number of representatives – bigger the state, bigger the number

### - 2016 final result

Candidate	Popular Vote	Popular % Vote	Electoral College votes
Trump	62,984,825	46.1	304
Clinton	65,853,516	48.2	227

- Preserves voice of small population states
- Promotes two horse race
- Out of date
- Small state over representation
- Winner takes all distorts result
- Unfair to national third parties
- Rogue Electors

## Possible Reforms

### 1. Congressional District System

Used by just 2 – Maine and Nebraska. Award vote per congressional district they win, plus two EC votes for state wide winner

BUT, results only marginally different and sometimes LESS proportionate

### 2. Proportional System

Allocate EC votes proportional to vote in each state so more equal spread of votes. Fairer to national third parties.

BUT would encourage more people to vote for third parties. Therefore less likely any candidate would gain a majority

### 3. Direct Election

Recent polls show support for move to directly elected president. Seen as fairer – 72% in favour

BUT only a constitutional amendment would create this reform.



## US v UK

### The UK Party System

#### The party system in Westminster

The UK remains a **two party system in terms of seats**, because the two main parties win 90-95% of them in every election since 1979.

**However, it is a multi-party system in terms of votes** as smaller parties are increasingly winning more votes but have yet to translate that into winning SEATS.

#### The party system outside Westminster

Very much a multi-party system, the smaller parties win more votes AND seats locally.

Devolved assemblies are also multi-party, even more so than locally, as the 'national' parties have significant success, and power.

### The US Party System

#### (i) It IS a two party system

##### Popular vote

The two parties regularly win vast majority of votes, In the 13 elections from 1968-2016:

##### Seats in the legislature

The electoral results are the same in congress: in 2012 there were only 2 members of congress who were not Democrat or Republican.

##### Control of the executive

Every president since 1853 has been either Democrat or Republican - 41 elections over 160 years.

##### State government

Same picture – Jan 2017 49/40 state governors were either Democrat or Republican.

## **(ii) The USA is NOT a 2 party system**

### **1. Ideologically Indistinct**

Meaningless to talk of 2 party system, because both adopt policies of the other:

- Dem: Clinton end 'era of big gov'
- Rep: Welfare reform

### **2. More a 50 party system**

Parties still decentralised and state based - natural consequence of Federalism. Every election run under state laws

Florida 2000 - state laws & preferences decided national result

Both parties have power at same time. One controls White House, other controls one or both houses of Congress. Two party system with no-party rule.

## **Theoretical explanations for these similarities and differences**

In the USA, **theories of party systems** tend to distinguish between 3 overlapping formats – dominant, two party and multiparty. The dominant system applies to the politics of some states, like Wyoming or Massachusetts, where the same party wins every election.

### **The two-party system suggests some significant similarities:**

- Two fairly equally balanced large parties dominate the party system
- They alternate in power

America has, and pretty much always had, a two-party systems in which third parties attract very small proportions of the vote and rarely win office at any level of government.

**Whereas** the UK is harder to characterise – 50 years ago the two party system would have applied – Conservative and Labour alternating in government and control of the Commons.

## **Structural explanations**

In the UK, the past 6 decades have seen huge structural changes, principally the increase in support for nationalist parties. By 2015, 6/8 of the new parties in the Commons were nationalist parties from Scotland, Wales and NI, plus UKIP. Nationalism, spurred on by devolution, has changed the structure of the party system, from a two-party system to one that is much harder to categorise.

The structure of the UK has changed, with the ending of direct rule in NI and the creation of the Welsh Assembly and Scottish Parliament. The structure will change again as Britain exits the EU and would change yet again were Scotland ever to vote for independence.

### **Whereas in the US:**

- No such structural changes have taken place. In Washington the party system works under a structure that allows one party to control the presidency while at the same time the other party controls Congress.
- So, the British style divide between government and opposition is absent.
- Also, the two party system in the US exists due to the nature of the presidency, the biggest prize, which can only be won by either of the two parties who enjoy broad, national support.

## **Rational Choice**

This UK structural shift towards nationalism is as a result of the choices and therefore a result of the electorate choosing parties they feel would best reflect and represent their interests.

**Similarly** in the USA, the two party remains dominant because the electorate consistently vote for the two main parties because they believe that, as umbrella parties, they can also best represent their interests.

## **Cultural explanations**

The changing cultures in the UK explain why they now have a different party system to the USA:

- First there were the troubles in NI, which boosted support for nationalist parties.
- Then came devolution in Scotland and Wales and the increase in support for nationalist parties in both countries
- Third came the debate about the UK's status in the EU, which gave rise to UKIP and its surge of support during the referendum, which was won by the Leave campaign

Whereas in the US there have been none of these cultural changes, which would explain why the two-party system remains dominant.

## Internal Party Unity

Harder to maintain in systems where two major parties dominate, they have to appeal to a broad support base, not so easy to keep the peace than one issue parties (SNP, Greens..), hence **factions in both countries**

These differences are often a product of an era

- Reaganites/Thatcherites

Or possibly of an ideology:

- Neo-conservatives / compassionate conservatives

Or of traditionalists v modernists

- Old v New Labour

## Negative effects of factions

These can make the whole party appear disunited and can become a negative issue in an election.

### USA: 1992 Republican Primaries

- President George HW Bush the establishment, fiscally conservative but moderate on social issues

V

- Challenger Pat Buchanan – the more socially and religious conservative

### USA: 2016 Democrat Primaries

Similar situation with ‘establishment’ Clinton and ‘further left’ Sanders

**Similar to the UK** - main two parties divided into factions:

Conservatives divided over Europe (1990s and now)

Labour divided over traditionalist and modernists (1980s)

- Lead to the departure of the Social Democrat faction to form the SDP

**In most cases, these negative impacts led to electoral defeats for parties in BOTH the UK and the US.**

## Positive effects of factions

**Firstly, some factions can be constructive**, keeping people within the party that might otherwise leave. – either for the other major party or for a third party.

## **USA**

**Blue Dog Democrats** - Played an important role in the first decade and a half of this century in keeping conservatives IN the party – both politicians AND voters.

**Tea Party** – Kept the further right conservative element within the Republican party

## **Similar to the UK**

### **One Nation Conservatives**

Key faction during the Thatcher-era when the further right Thatcherism faction was the dominant group within the party, again it kept both politicians and voters onside.

**Secondly, it is also true that what is a minority faction one moment can quickly become the party leadership the next**

Trump's 'America First' is a good example

**Similar to the UK, but a reverse switch...**

Cameron's 'Notting Hill elite' became a minority faction after he was replaced by Theresa May in 2016

## **Theoretical Explanations**

### **Structural**

Issues concerning internal party unity can be understood as working out structural factors, so relationships:

- within parties
- Between the party establishment and its grassroots membership

### **Rational Choice**

Both politicians and members pursue policies that advance the political goals THEY seek as it advances/protects their interests

## 4. Parties

### Social and Moral Issues

#### Democrats

- Support greater protection of individual liberty and prevention of discrimination
- Modern Democrats support stronger rights for racial minorities and the LGBT community

#### Republicans

- Resistant to such changes
- Promote more traditional values
- Sometimes arguing for religious choice or state's rights Civil rights movement, partial birth abortion, LGTB rights

### Economic policy

#### Democrats

- Greater intervention in the national economy, as a way of providing social justice
- Greater protection for lower socio-economic groups who have little control over the economic situation they find themselves in.

#### Republicans

- More restricted view of government intervention in the national economy
- Emphasise personal responsibility and personal freedom from government control

Taxation, minimum Wage

### Social Welfare

#### Democrats

- Long favoured government provision of social welfare
- Higher levels of benefits and funding for social programmes to help those who are less well off, and resolve social problems.

#### Republicans

- Emphasise personal responsibility
- Criticise the government's role as an infringement on personal freedoms

Affordable Care Act, food stamps

## **Factions within the Democrat Party**

### **Moderates**

Sometimes known as centrists, they identify with compromise, most typically in areas such as the economy and welfare, where they take a middle ground approach. Moderates are the dominant force in the Democratic Party.

Greater restrictions on abortion, acceptance of anti-terror laws

### **Liberals**

Also known as progressives, they represent the more radical, left wing elements of the party. They want to:

- use the federal, national government to achieve social justice by:
  - providing welfare, health and education to the disadvantaged
  - increasing taxes on the wealthy
- They support more government intervention in the economy and less military intervention abroad.

### **Conservatives**

Also known as 'Blue Dogs' – a dying breed - conservative on moral issues such as religion and guns, while disagreeing with Republican conservative views on trade and tax.

**Iraqi and Syrian refugee** - In 2015, 47 House Democrats voted in favour of a Republican led measure to have additional screening of these refugees, despite Obama's opposition.



## **Factions within the Republican Party**

### **Social Conservatives**

The religious right, ultra-conservative religious response. Promotes family values, opposes abortion (anti 'Roe v Wade). Also oppose same sex marriage, civil partnerships and anti-discrimination laws

Focus on **morality**, generally negative view of:

- Illegal immigration
- Gay rights
- Abortion rights

This faction has grown to be the dominant force in the Republican Party,

### **Fiscal Conservatives**

Conservative **economic** agenda, smaller government, laissez-faire economic policy. Most support:

- The abolition of estate (inheritance) tax
- Other tax reductions
- Cuts in federal expenditure

### **Moderates**

Low taxation and small government but typically more socially liberal than social conservatives

- Civil rights issues, such as gay rights and abortion
- Higher taxes or more government programmes in order to support greater social harmony.

Moderates have gained positions of power in the party. For example **President George W Bush** horrified conservatives **with major increases in government expenditure** and his push for **more liberal immigration reform**.

RINOs (Republican in Name Only).

## **Party Decline v Party Renewal**

### **Party Decline**

In the last three decades party membership, functions and importance has declined in America, for the following reasons:

#### **Candidate Selection**

#### **Communications with voters**

#### **Candidate and Issue-centred voting**

#### **Emergence of Movements**

### **Party Renewal**

#### **Party Decline Was Exaggerated**

#### **Increased Party Involvement in Presidential Nominations**

#### **Increased Congress Partisanship**

#### **Nationalisation of Campaigns**

## Coalitions of support for each party

### 1. Race

Most polarised being **black voters strongly support Democrats**. This core voting group emerged in 1960s. When Democrat Johnson created the Civil Rights Act and Voting Rights Act.

For many black people, the Republican Party is a toxic brand that has slowed the fight for equality.

#### **The Hispanic vote**

More volatile and unpredictable – in 2004 Republican Bush secured 44% of the Hispanic vote, BUT generally most Hispanic voters support the Democrats because of their stronger stance for **equality and against discrimination**.

With the recent focus on **illegal immigration**, Democrats have been far more supportive of immigration reform, while Trump's comments have angered many Hispanics.

However, many Hispanics are social conservatives and **support Republican views on abortion and gay marriage**.

#### **The White vote**

More evenly split, although most always select the Republican Party. Even when the Democrat candidate takes the White House, they do not get a majority of the white vote.

### 2. Religion

#### **Jewish**

Clear division – Jewish voters typically strongly support the Democrats. However, Jews make up only 2% of the population.

#### **Christian Protestants**

Stronger support for Republicans, especially among white Evangelicals. Many Republicans, such as Senator Ted Cruz, strongly oppose gay marriage and attack immigration reform.

### 3. Gender

More men support the Republicans and more women support the Democrats. This is broadly for ideological reasons: men have a more conservative outlook than women.

### 4. Education

A clear trend – the less educated a voter is, the more likely they are to vote Republican.

## The Polarisation of American Politics

Over time, American politics has become increasingly polarised and more ideologically driven, with greater partisanship.

### The breakup of the solid south

#### 50-50 nation / red v blue

##### Red (Republican) v Blue (Democrat)

- Male, white, religious, wealthy, rural, suburban, CONSERVATIVE
- Too much interference from Federal government, better left to private individuals. Reduced taxes, even if this means reduced services
- Female, rainbow coalition of white, black, Asian, Hispanic, less wealthy, urban, LIBERAL
- A federal government that should do more to solve problems in society, especially inequality.
- Taxes should be increased, especially on wealthy – to protect services

### Shades of purple

It is possible to be a red state but with blue senators (W.Virginia), or a blue state (Maine) but no blue senators. So, many states are more **shades of the two**, so not so polarised.

### Why the red/blue divide?

#### Less Bipartisanship - four main reasons for the divide:

- a): Reagan (81-89) - drew conservatives from Democrats, sent moderates away to Democrats
- b): End of the Cold War – no need to foreign policy consensus
- c): Rise of 'partisan presidency' – no longer do they govern from the centre. Presidents now more divisive:
- d): Technology – New media replacing old media as shaper of opinions, so no longer hear spectrum of opinion

## US v UK

### Democrats/Labour

UNLIKE the Democrat party, the British Labour Party came out of the trade union movement and has been a truly socialist party for most of its life.

**Whereas**, the Democrats, despite the complains of the Republicans during the Obama years, has never been a socialist party

- **Culturally**, the appeal of socialism within the USA has never been widespread which has often been associated with communism.

### Republicans/Conservatives

The UK Conservative party came out of the British 19thC politics as a party dominated by the landed aristocracy and established church. **Whereas** nothing in the Republican Party resembles that history, which was born out of the Civil War.

## Theoretical explanations

### Cultural

All 4 parties emerged out of the shared ideas and values of two very different societies, which makes it dangerous to offer simple parallels.

## Policy Agreements

However, the right/left divide does provide some matches for parties:

**Republicans/Conservatives** broadly agree on the following as they BOTH:

- Dislike big government
- Favour low taxation when the economy permits it
- Talk of being strong on law and order
- Stress high levels of defence spending
- Equality of opportunity as opposed to equality of results

**Democrats/labour** broadly agree on the following as they BOTH:

- Put great stress on the rights of minorities: gender, race, etc
- Stress the rights of workers
- Want equality of opportunity, leading to equality of results
- Higher levels of tax on more wealthy to fund services for less well off

## Policy Differences

Crucial to remember that ideologically the centre of gravity in US party politics is further to the right than the UK.

**Republicans sit further right** **whereas** UK Conservatives are more centre right.

Likewise, Labour sit further to the left, **whereas** the Democrats sit further to the centre left.

In some policy areas, the UK Conservative Party has more in common with the Democrats than the Republicans.

Similar to the Democrats, UK Conservatives

- oppose the death penalty & same sex marriage
- Support a central government run healthcare system

**Whereas** the Republicans differ from both UK Conservatives and Labour as they:

- The death penalty
- Oppose same sex marriage
- Oppose Obamacare as too centralised (large government)

**Also, whereas** Conservatives are not as far to the left as the Democrats, they are certainly not as far to the right as Republicans, so they differ in terms of their views on:

- Abortion
- Renewable energy
- The role of central government in education

### Policy comparisons between US and UK major parties

Policy	UK Labour tends to	US Democrats tend to	UK Conservatives tend to	US Republicans tend to
Abortion	Support	Support	Support but with limits, seen as a personal conscience issue	Oppose
Death Penalty	Oppose	Oppose	Oppose	Support
Same sex marriage	Support	Support	Support	Oppose
Renewable energy	Support	Support	Support but with limits	Oppose
National healthcare	Support	Support	Support	Oppose
Role of central govt in education	Support	Support	Support but with limits	Oppose

### Third and minor parties

**Whereas** support for third parties in US elections, presidential OR congressional, is minimal, in the UK support for third parties in Parliamentary, local and European elections has been substantial, with third parties winning up to one third of the votes in recent elections.

## Theoretical explanations

### Cultural

The issues that third parties reflect are mostly those associated with the four constituent parts of the UK:

- England: UKIP, with some support elsewhere
- Scotland: SNP
- Wales: Plaid Cymru
- Northern Ireland: Sinn Fein, SDLP and the unionist parties

So the culture and history of the UK affects its party structures.

### Rational Choice

On the issue of Britain's relationship with the EU (The UKIP issue), both the major parties were taking a mainly pro-EU stance, forcing those opposed to the EU to make the only rational choice of seeking a third party. **Whereas** the US has no such issues drawing votes away from its major parties.

### Structural

Firstly, minor parties in the USA face significant problems because of the central position that the presidential election holds in the structure of American politics. Only four times in the 20<sup>th</sup> C, and the most recent being over 25 years ago (Ross Perot 1992), did a third party mount a serious challenge in the presidential race.

Secondly, the structures of the major parties in the USA are more flexible and responsive than those in the UK. The use of more direct democracy through the primaries makes the US major parties more responsive to ordinary voters. They therefore see less reason to seek out third parties for a protest vote in the general election. **Whereas** in the UK, voters do not choose their candidates for parties so they are more likely to exercise their protest vote – for a third party.

Finally, elections in the USA are so much more expensive and organisation on a national scale is so much more challenging than in the UK. So **whereas** third parties can afford to compete in UK general elections, it is far harder to them to do so in the US.

## 5. Congress

### Structure of Congress

1. 'Bicameral' – made up of two houses
2. House – always directly elected

### The election cycle

Congressional elections take place every two years in November. All members of the House are up for election, and one third of the Senate. Some congressional elections occur at the same time as presidential election. **Mid-terms** take place in the middle of a presidential term and occur every 4 years.

### Distribution of powers of Congress

Legislate  
Representation  
Amend the Constitution  
Declare war

#### Exclusive Powers

##### Exclusive powers of the House

- To initiate money bills
- Impeachment
- House can elect President IF the Electoral College deadlocked - twice – 1800 & 1824. Rare and unlikely.

##### Exclusive powers of the Senate

- Confirm executive appointments
- Ratify all treaties negotiated by president
- Try cases of impeachment
- If Electoral College deadlocked – again rare and unlikely

#### Concurrent Powers

**In many ways, two houses are co-equal**

- Passage of legislation
- Override presidential veto of a bill
- Initiating constitutional amendments
- Declaration of war
- Confirm new VP -

#### Which house is more important?

- **Senators represent an entire state**
- **Longer terms of office**
- **Greater chance of a leadership position**
- **Launch pad for Presidential campaign**
- **Recruitment pool for VP candidates**
- **Significant exclusive powers**



## Congressional elections

### Trends

#### Significant power of incumbency

- Proven track record in office
- Financial advantage
- Incumbents attract more money, so can run more successful campaigns than opponents
- 
- Safe seats and gerrymandering
  - Winner takes all system – safe seats
- Gerrymandering
- Pork-barrelling

Evidence of the highly representative nature of Congress, others see it as over-representation, where financial benefits are not evenly spread around the country or even the constituency.

#### Limited coattails effect

#### Declining split-ticket voting

#### Fewer competitive districts

#### President's party tends to lose seats in mid-terms

#### Losses by the president's party in mid-terms

Year	Party holding presidency	House	Senate
1994	D	-52	-8
1998	D	+5	0
2002	R	+5	+2
2006	R	-30	-6
2010	D	-63	-9
2014	D	-13	-9
2018	R	-35	+2

## Functions of Congress

### 1. Representation

Frequency of elections means voter's voices heard every 2 years – high levels of representation.

Members vote frequently on legislation and legislative amendments, constitutional amendments, military action and, in the Senate, ratifying presidential appointments. These politicians are subject to the following pressures which determine how they vote:

- Public opinion/constituency
- Party/party leaders
- Congressional caucuses
- Interest/pressure groups and professional lobbyists

### Congress IS representative

- **Separate elections for president and Congress**
- **Two elected chambers – complimentary representation**
- **Frequent elections and short House terms**

### Congress is NOT representative

- **FPTP and gerrymandering**
- **Social representation**
- **Influence of PGS**

Elite theory suggests that Congress is not at all democratic because it responds only to the wishes of a small group in society.

### 2. Legislative

- House or Senate, and individual members, regularly initiate policy.
- Separation of powers and checks and balances like the co-equal legislative power of the House and Senate, make compromise between parties or chambers necessary.
- Many congress members listen to the 'folks back home' and prioritise the concerns of their own state or district over national agenda.
- High levels of partisanship can cause **gridlock**.

### Obstacles to success

- Senate and House roughly share power and have equal law making powers - also different legislative priorities - all lead to conflict.
- Legislation has to pass through several committees
- Overriding a presidential veto requires a super-majority on two-thirds in BOTH houses – needs often unlikely bi-partisanship.

## Strengths and weaknesses of the legislative process

Checks and balances

Quality policy

Individual and states' rights

Inefficiency/low output

High levels of partisanship

Poor-quality legislation

## Power Centres in Congress

- House Speaker
- Majority and Minority leaders
- Congressional Committees

### Committees

Type	Function
House Rules Committee	<ul style="list-style-type: none"><li>• Timetabling of legislation in House of Representatives</li></ul>
Standing Committees	<ul style="list-style-type: none"><li>• Legislation and scrutiny of the executive branch (both houses)</li><li>• Begin confirmation of appointments</li></ul>
Conference Committees	<ul style="list-style-type: none"><li>• Reconciling differences in legislation (joint)</li></ul>
Select Committees	<ul style="list-style-type: none"><li>• Special ad hoc investigative committees (both houses or joint)</li></ul>

## The Legislative Process

First Reading

Committee Stage

Timetabling

Second Reading

Third Reading

Conference Committee

Presidential Action

## **Congress' scrutiny of the Executive**

- Congress votes/decides on presidential proposals
- Overturn Presidential veto
- Declare war
- Senate ratification of appointments
- Impeachment and removal of members of the executive
- Scrutiny by Committees

## **Congress's limits on the Supreme Court**

- Overturn a SC decision by using an amendment to the Constitution. Congress can reverse or amend a court ruling – with two thirds majorities in both houses
- The Senate also ratifies presidential nominations to Supreme Court, but cannot check the Court, nor does it have control over a justice.

## **Is congressional scrutiny effective? Watchdog or lapdog?**

### **Divided Government**

- Only really effective when Congress not controlled by the president's party.
- Almost all modern-day Senate rejections happen here, whether they are to the executive or the judiciary.

### **United Government**

#### **George W Bush**

For the first 6 years of his presidency Bush controlled both houses - this coincided with high approval ratings due to 9/11. As a consequence scrutiny by Congress was very light, at times non-existent even by the standards of united government.

However, in 2006 the Democrats win control of both houses and now it is all change. Bush is now facing hostile committee chairs

#### **However...**

- Scrutiny is just a way of embarrassing a president - it is political posturing - the reality is it doesn't change anything.
- Also questions whether it produces EITHER wiser policies or more effective implementation.
- Limited ability of Congress to reverse the course of a determined President

Supporters of Congressional scrutiny argue that it

- keeps an administration on its toes, and
- lack of it leads to complacency arrogance and poor administration

Ironically, the Republican Congress was arguably at fault for the failings of the Bush administration because they didn't criticise him enough.

## US v UK

### **BOTH Parliament and Congress:**

- Can initiate and amend legislation
- Have the power to vote on legislation to determine whether or not it is enacted
  
- Place similar checks on their executives
  - *By voting against their proposals*
  - *Scrutiny, mostly via committees*
  
- Have a high degree of control over foreign policy
  - *Including military action*
  - *Typically voting on executive proposals in these areas*
  
- Have a role in determining constitutional rules
  
- Are accountable to the public
  - *which might force politicians to respond to public opinion, and...*
  - *reject executive proposals*

## Arguments for Congress being more powerful than Parliament

### Separation and fusion of power

- Congress is not dominated by the executive, which is elected separately.
- The president lacks the power of patronage and also may lack a congressional majority
- So Congress is a more active law maker than parliament.
- Whereas parliament is dominated by the executive branch
- So is less able to control legislative outcomes or restrict the executive branch

However, much depends on which party is in power. Congress may be more aggressive or very passive, depending on whether the president has a majority in both chambers

### Checks and balances

- The US Constitution gives Congress stronger checks than parliament has over the executive
- *Ratification of treaties and appointments and the ability to declare war ALL rest with Congress, not the president*
- Whereas the royal prerogative, in theory, gives these powers to the PM
- Parliament does not have the power to ratify any executive appointments

However, it is unlikely that a PM would sign a treaty or declare war without a Commons vote, again much would depend on party majorities.

### Power of second chambers

- Congress has a lot of power of the executive.
- It has two equally powerful chambers that can BOTH provide significant checks on the president
- Making restrictions in the executive branch much more successful
- Whereas the House of Lords is a relatively weak legislative body
- It can delay but not make, amend or repeal legislation
- It can only delay, by a year

However, the Lords has been resurgent of late, a more aggressive chamber based on greater legitimacy after the removal of hereditary peers

## Arguments for parliament being more powerful than Congress

### Location of sovereignty

- Parliamentary sovereignty means parliament is far more powerful than Congress
- Parliament can make constitutional laws at will
- So it can more easily project its power throughout the UK system
- Parliament can also make constitutional changes
  - *Leaving the EU*
  - *Removing the HRA*
  - *Reducing the power of devolved bodies*
- Whereas Congress is constrained by the Supreme Court and the Constitution
- It cannot overturn judicial decisions
- It cannot alter fundamental constitutional practices unilaterally (on its own)

### Imperial presidency

- Cabinet (part of parliament due to fusion of powers) can limit the power of the chief executive – the PM
- Although the PM has the ultimate decision, he/she cannot afford to alienate their cabinet as they need their support
- As Mrs Thatcher discovered over the Poll Tax in 1990
- Whereas an imperial president, who controls both houses and is very popular personally, is able to operate with very little constraint from Congress
- An imperial president uses executive orders, signing statements and executive agreements
- All have the effect of bypassing Congress, thus allowing the president to act unilaterally

### Bicameralism

- The Commons has supremacy over the subordinate Lords
- It means that parliament can act decisively and exercise its power
- Whereas the equal, bicameral nature of the two US legislative chambers can weaken rather than strengthen their power
- When there is conflict within Congress (House and Senate disagreeing over policy), it is often unable to act

## Theoretical approaches

### Rational Approach

#### Role of individual politicians in both countries

Politicians in Congress are less subject to pressure from the executive than those in parliament. This allows them to act more rationally when pursuing their own beliefs or self interest

#### Difference between Senate and Lords

Senators are limited by expectations from both their parties and constituents and therefore find it harder to express their own personal judgements. **Whereas** The Lords are not elected and there is little use of the whips, so little party unity/loyalty. This leads to a high number of independent crossbenchers, who are more able to use their own judgement.

### Cultural Approach

#### High levels of party unity

BOTH have a desire to work together despite opposition (and in the states partisanship) reflects broader shared common values within each society.

#### The importance of historical conventions

Another **similarity** here. The Lords is governed by cultural expectations about roles. It is unelected which often means they are restrained in opposing government policy. **Similarly** in the US, there is ALSO a culture of deference – here to the president especially in foreign policy areas, where members of Congress are less aggressive than in domestic policy areas.

### Structural Approach

#### Differences between two legislatures

Congress is generally far more powerful than parliament when checking the executive. The US constitution (separation of powers and high levels of checks and balances) means that Congress cannot be dominated by the executive in a way that parliament (under fusion of powers and lower level checks) can.

#### Rules regarding elections

The constitutional requirement for elections in the Senate and life appointments in the Lords

It allows the Senate to be more powerful than the Lords and also means that Senators tend to be far more aggressive in the desire to check the executive than peers are



## 6. Pressure Groups

### Types of Pressure Groups

**Policy Groups** that attempt to influence a whole area of policy

AIPAC: American Israel Public Affairs Committee

LCV: League of Conservative Voters

**Professional Groups** that represent the economic interests of its members

AMA – American Medical Association

AFL-CIO: American Federation of Labour and Congress of Industrial Relations

**Single-interest Groups** – that advocate policy surrounding a limited, specific issue

NRA – National Rifle Association

ACLU: American Civil Liberties Union

### Significance of PGs

1. Group's rights are protected
2. Politicians are open to persuasion
3. There are many access points
4. Elections are numerous and more frequent.

### Access Points

- Elections
- The Legislature
- The Executive
- The Judiciary
- State and Local Access Points

### Why is lobbying so important?

**Federalism**

**Separation of**

**More open govt**

**Citizens' rights**

**Technical innovation**

**Party organisation weak**

**Cynical attitude to politicians**

## Resources available to PGs

Membership

Money

Contacts

Expertise

## Tactics

Electioneering

Candidate Endorsement

Publicity

Lobbying

Organise Grass Root Activities

Legal Methods

## Impact of PGs

### Impact on Congress

- Direct contact with Congress
- Contact relevant Congressional Committees
- PGs organise constituents
- **Publicise voting records**

### Impact on Executive

- Particular focus on regulatory work of federal govt.
- Especially regulations concerning health & safety at work, business, transport and communications industries and the environment

### Impact on the Judiciary

- Keen interest in Presidential nominations to federal courts, especially Supreme Court - nominations for life. SC has very significant power:
- PGs can also play an important role in Senate confirmation process. Also influence courts via 'Amicus Curiae'
- 

### Impact on ISSUES

- Environmental Protection
- Women's Rights
- Abortion Rights
- Gun Control
- Economic Inequality

## **Arguments for PGs enhancing democracy**

Participation

Checks on government

Representation

US politics conducive to PG activity

Federal division of power

Provides legislators with useful information

Increases accountability of Congress and Executive

Enhances two fundamental rights

## **Arguments that PGs restrict democracy**

Violent and Illegal Activity

Restriction of elected government

Inequality of representation

Problems with lobbying

- Expensive
- Revolving door
- Iron Triangles

## **Factors leading to PG success/failure**

- Effective organisation and leadership
- Wealth
- Large Membership
- Status / effectiveness of opposition
- Achievability of PGs goal

## US v UK

### Methods

So in the US, **legal methods** are more attractive than in the UK, because any PG that succeeds in the Supreme Court tends to achieve long-term gains, whereas in the UK legal methods tend to be less successful.

This is because of the differences in the political and constitutional systems – separation of power in the US enhances the role of the judiciary, hence the greater role and significance of the Supreme Court.

In BOTH countries, groups with these fewer resources have to rely on such methods, and in both countries the PGs with the greatest wealth, such as corporations, will use lobbying because they can afford it.

### Power and influence

The US are seen as more powerful than the UK. This is because the categorisation of ‘insiders’ and ‘outsiders’ in the UK does not exist in the US, because most groups can gain influence somewhere.

The **US is a more pluralist system than the UK**, and therefore PGs tend to have more influence because:

#### Access Points

There are more access points for PGs to operate and success in the US system because of the separation of powers and federalism, which creates a multitude of power centres. Whereas in the UK power is concentrated in the hands of the government, so only a handful of insider PGs have a realistic chance of success.

#### Weak Parties

In the UK there is far stricter party discipline, MPs are controlled by the whips and are therefore more accountable to political leaders. So, UK PGs know that it will be very difficult to persuade individual MPs to vote AGAINST the party line. **Whereas**, the lack of powerful party leaders allows US PGs to influence legislative politicians more than those in the UK.

## **Rights Protection**

Higher levels of rights protection help US PGs gain greater influence due to the entrenched nature of their Constitution, **whereas** UK PGs cannot achieve long-term policy success through Supreme Court rulings in the ways those in the US can.

## **Number and frequency of elections**

Electioneering is more intense in the US and is a more highly effective method, **whereas** in the UK it is highly unlikely that an environmental campaign would be able to unseat any of their target MPs in an election in the same way the LCV has successfully done in the US.

## **Are US PGs really more powerful?**

In **BOTH** countries only a small elite has a significant influence, with the majority of PGs and their interests largely ignored.

Wealthy business leaders in **both** countries can donate large amounts of money to politicians and political parties.

Also, in both countries PGs have a network of contacts, allowing power to be concentrated in the hands of the few.

## Theoretical Explanations

### Rational Approach

In the US, individual members of the public have a greater ability act rationally and pursue their own interests than in the UK. Greater number and frequency of elections as well as stronger rights protection.

In **both** countries, we act in a self-interested manner by donating money to gain political influence.

But rational choice best explains why both US donors and politicians act in a self-interested way as it helps them to maintain their power without being restricted by the structures.

### Cultural Approach

Similar in **both** countries is the common value system of a group that influences the behaviour of politicians in **both** Parliament and Congress.

In the UK there is the more dominant culture of party unity (the absence of backbench revolt, which is nonetheless still possible), similarly the concept of rebellion is barely applied to US politicians.

### Structural Approach

Structures such as the constitution determine the difference in the power of US compared to the UK.

Firstly the US has separate elections for the executive and legislature, which gives PGs more access points and more opportunities for lobbying and electioneering. **Whereas** in the UK, fusion of power reduces the number of access points significantly, thus reducing their influence.

## 7. The Presidency

### Formal constitutional sources of presidential power

Head of state  
Head of government  
Commander in Chief  
Chief Diplomat  
Chief Legislator

### Informal sources of presidential power

These can change over time which result in dramatic fluctuations in presidential power.

- The electoral mandate
- Executive orders
- National events
- The Cabinet
- Presidential powers of persuasion
- Executive Office of the President (EXOP)

### Relationships between the presidency and Congress

The most important political relationship in the US, the struggle between the two largely determines the shape of US domestic and foreign policy.

**Separation of powers** - This limits the president for three reasons

- **President and Congress receive separate mandate**
- **Limited power of patronage**
- **Bi-partisan control or divided government**

### Agenda-setting and shaping legislation

Single executive office holder who is nationally elected, the president is in a stronger position than Congress to claim a national mandate to set the policy agenda. Increasingly the case

### Votes and vetoes

The president can also dominate the agenda and further influence legislation through veto power.

## Relationships between the presidency and the Supreme Court

President's only formal power lies with nominations at a time of vacancy, which gives them influence over the ideological balance of the court.

**However**, the extent this gives power to any individual president is very limited.

- Most presidential appointments make little or no difference to the balance of the court, partly because justices choose when to retire and do so when they are ideologically aligned with the current president.
- Also, presidents may influence the COMPOSITION but have virtually no influence over any of the 9 justices who make the DECISIONS.
- Also, justices have life tenure, so there is no threat of removal by the president.
- Lastly, most presidents only make one or two appointments, with limited overall impact during their presidency.

## Limitations on presidential power

The changing nature of presidential power during time in office means that the level of his power is not static but changes, due to the following factors:

- Presidential popularity
- Events
- The Constitution
- Mid-terms
- Lame duck presidency



## How effectively have presidents since 1992 achieved their aims?

Key considerations:

**Separation of powers**

**Increased partisanship**

**Foreign v Domestic Policy**

Arguably the president is able to more easily foreign policy than domestic

**Bypassing constitution**

### Bill Clinton: Democrat – 1992 – 2000

Viewed as a very moderate Democrat, allowing him to gain some support from some moderate Republicans and independents but many on the further progressive left were concerned by his centralist policies.

- Reducing the budget deficit
- Greater gun control
- Greater protection for civil rights
- Health Care Reform
- Foreign Policy

### George W Bush: Republican 2000 – 2008

Elected as a 'compassionate conservative' – attempted to take the centre ground in 2000 election.

- Major tax cuts
- Commitment to public education
- 9/11 and 'war on terror'
- Social security reform
- 9/11 and 'war on terror'

### Barack Obama: Democrat 2008 – 2016

- Economic stimulus package
- Remove troops from Iraq / increase involvement in Afghanistan
- Close Guantanamo Bay
- Immigration reform

## The Imperial Presidency

Where the president stretches the Constitution in the exercise of constitutional roles, like chief executive, etc..., by doing so ignoring the wishes of Congress.

- Executive order
- Signing statement
- Executive agreement
- Unilateral war powers

## The imperilled presidency

President not just restricted but the holder of a weak office, without sufficient power. It also argues that there are excessive limitations on presidential power, which causes ineffectual political leadership. The rise of polarised parties is also an issue – an oppositional Republican party unwilling to co-operate and compromise with an elected Democrat president, such as Obama.

## Who controls foreign policy – president or Congress?

It would appear that the president has greater control, as it enjoys several advantages over Congress in determining foreign policy, although there are also limits to this power over foreign policy

### Constitutional

- The Constitution gives the president significant foreign policy powers, especially in overcoming potential checks from Congress.
- In particular, the **Commander In Chief** role gives the president huge constitutional authority over military policy. Presidents have used this to act unilaterally, initiating military action WITHOUT a congressional vote.
- However the Constitution gave Congress the power to declare war and although some presidents have committed military action without a congressional vote, there are also examples of presidents deferring to congress.
- Clinton was forced to withdraw troops from Somalia and congressional pressure from both parties ended US involvement in 1994.
- However, the act has not generally been able to prevent presidential action, as presidents have successfully argued that it has no constitutional authority.

## Political

- The president, having a national mandate, is best placed to make decisions for the whole of the US and has more authority than Congress
- On the occasions when congressional leaders have attempted to take control of foreign policy they have often received widespread criticism.
- **However**, congress may feel it has a legitimate right to determine foreign policy as an elected body with a collective national mandate.
- Far from being passive, Congress can and will challenge presidential policy. This is particularly the case in divided government, with the president facing a hostile majority in Congress.

## Practical

- Changes in technology have altered the power relationship between the president and Congress. As war has become faster and more deadly, the public and Congress have put more faith in presidential decision making.
- The rise of EXOP and especially the NSC gives the president a key advantage over Congress. He holds information that is classified, so Congress is in a position where it often has to trust the president.
- **However**, the president cannot claim the need for speed and accuracy in all cases. Attacks on Libya, Syria, Bosnia and Somalia cannot be placed in this category – in such cases it is arguably acceptable to consult Congress.
- Congress has its own expertise in foreign affairs, which helps it to question the authority of the president.

## US v UK

The PM is drawn from parliament **after an election**, and is usually the head of the largest party in parliament. Crucially, a PM can take this position without the need for an election (as did May, Brown and Major). **Whereas** presidents are **directly elected** by the whole country. They have a direct mandate from the people.

There is only a vote for the legislature (parliament), NOT the executive (government). Although people legally vote for their local MP, they are strongly influenced by the PM, party or their preference for government. **Whereas** there are SEPARATE elections for Congress (legislature) and president (executive).

**Fusion of power** – the PM and Cabinet are ALSO members of parliament. **Whereas** US has **separation of powers**, where members of the executive and legislature are kept separate. The president CANNOT be part of Congress.

The PM only retains their position as long as parliament has confidence in the govt. Parliament can remove the govt, including the PM, in a vote of no confidence. PMs will typically have a majority in parliament, even if that requires a coalition. **Whereas** the president's position is not dependent on holding a congressional majority. It is common for the president to govern under divided govt.

Cabinet plays a prominent role in restricting the PM's power. The PM heads the executive branch, but their power relies on support from their parliamentary base. If leading members of that base withdraw support, it is hard for the PM to retain office. The constitutional convention is for Cabinet government, in which Cabinet and the PM collectively make decisions and cabinet members may act as rivals to the PM. **Whereas** the Constitution gives the president SOLE AUTHORITY to head the executive branch. The people's direct mandate and the Constitution's wording mean that the president's position in the executive should go unchallenged. Everyone in the executive branch serves at the president's pleasure, always giving the president the final say within the executive.

## Role of the PM and president

**Both** are head of their executive branch, **however** there are significant differences in their constitutional position and power within the executive.

### Head of state

Held by the president in the US, The presidency combines a larger set of roles and responsibilities, **whereas** this role is held by the monarch, not the PM and also the PM has far less scope of responsibility.

**Therefore**, this gives the president a stronger ceremonial role in the US and arguably greater authority as a symbol of their nation.

### Chief Diplomat

**Both** PM and president are main negotiators with other countries, **both** taking a lead in international relations.

Also, in **both** countries this power is limited by the legislatures:

- The unwritten UK constitution makes this relationship unclear. Parliament holds power to reject all treaties with financial implications and PMs often want to consult parliament on all treaties, out of political necessity
- **Similarly** the Senate has a strong role, holding power to reject treaties negotiated by the president.

### Commander in Chief

In **both** countries there is a lack of clarity over who has final say – parliament and Congress can both assert some control:

- Through the Royal Perogative, the PM effectively has this role, and can order military action
- The US Constitution gives this role to the president, allowing him significant control over military matters.

### Chief legislator

In **both** the head of the executive branch has assumed a major role in the legislative process, with **BOTH** arguably acting as the dominant force.

In the UK this is based on the PM's position as the head of the party with a majority (usually absolute) of seats in parliament AND their ability to use patronage and a whip system to control that majority. **Similarly**, in the US, the president has been able to use their national mandate and superior resources to become known as the chief legislator.

## Powers of the PM and president

The reality is that the power of both is limited, but often for different reasons. A common argument, accepted by many, is that **the PM is more powerful than the president** in determining policy priorities.

### The PM has two key advantages:

#### It is easier to pass legislation through parliament

The PM's party usually holds a parliamentary majority, they can use the whip to control this majority. The PM also has the power of patronage to encourage backbenchers to stay loyal and vote for government bills. **Whereas the president has no such ability due to separation of powers, robbing him of patronage, so congresspersons are more sensitive to public opinion than their president.**

#### PMs have become EVEN MORE powerful in recent years

The govt dominates parliament, so if the PM can dominate the cabinet then that will make them so much more powerful. Any check would come from other members of the executive, but this has been weakened as PMs have strengthened their control over the executive – more spatial leadership and using patronage.

**However**, there is an argument that suggests PMs are **NOT MORE powerful** than presidents, because:

Imperial presidency theory suggests that presidents may have **similar** levels of power as PMs as they can bypass some of the checks by using executive orders, executive agreements and signing statements.

Some PMs will find it difficult to dominate the rest of the executive, because of splits or being unable to claim a personal mandate (Brown and May)

PMs may be heavily curtailed by parliament if that have a small majority in parliament, **similar** to the president having to use others in the executive branch to accept their policy priorities.

Presidents may be **as successful as** PMs if they are popular and have a majority on both chambers (as George W Bush did for most of his presidency).

# Impact of the PM and president on politics and govt

## Similarities

**Both** are the dominant political figure in their respective countries

**Both** act as a driving force using their political leadership as head of govt to set a policy agenda for the country

**Both** are subject to constraints by the legislature, which can reject executive proposals

**Both** are subject to limits from public opinion, given that the basis of their power is derived from elections

## Differences

PM is able to have **more** impact due to their power over the legislature, **whereas** the president is more constrained and has a lower impact, especially during divided govt.

PM is **more** able to have an impact because of the more limited power of the judiciary, **whereas** in the US the courts can use the sovereign power of the Constitution to overturn presidential policy. **Whereas** in the UK parliamentary sovereignty makes this far more difficult where courts cannot overturn acts of parliament, which are a reflection of the will of the PM.

The impact of the PM is limited by their executive team, for example when Cabinet ministers are in conflict with the PM, **whereas** the president has greater control within the executive branch than the PM. The president is elected nationally, unlike the rest of the executive team, AND has more constitutional authority over this branch.

## Accountability to the legislature

**The extent** to which PMs and presidents are **accountable** to their legislatures is dependent on the differing constitutional arrangements.

Parliament is able to remove a government, and therefore a PM through a vote of no confidence, **whereas** the president faces no such threat.

Presidents are **more** accountable in that they find it harder to pass legislation through Congress, **whereas** PMs find it much easier to pass legislation and therefore are less accountable.

The US Constitution allows the legislature to maintain **stronger** scrutiny, such as the need for appointments to be ratified by the Senate, **whereas** the PM is not subject to similar checks when making key appointments.

The US separation of powers means that presidents are **more** accountable. Congress is usually far more determined to hold the executive to account **whereas** parliament is not subject to the same level of accountability.

The extent of accountability depends on the nature of party majorities in **BOTH** countries' legislatures.

**Both** executives face scrutiny and oversight from the legislature. However, the PM has to face parliament directly from PMQs, **whereas** the president does not.



## Theoretical approaches

### Structural

**The PM has a higher level of power than the president.** Much of this comes down to the basic principle of separation of powers versus fusion of powers. This has a dramatic impact on political practice, so this parliamentary system, coupled with FPTP (which typically gives a single party an absolute majority of seats), is what makes the PM **so powerful**.

### Rational

**Both** PMs and presidents are highly motivated to pursue their own self-interest by attempting to achieve their policy goals and use their position to maximise their power. They **both** have the power and ability to act, **but the ability to remove political opponents shows a clear difference between the two.**

The PM has greater patronage power, appointing and dismissing Cabinet members and do so acting rationally in order to improve their own position. **Whereas** presidents have less influence because they do not have the ongoing promise of promotion to members of their party.

### Cultural

**Both** operate as part of a team and a political party, and may feel the need to conform to some of the dominant value systems of their party.

Conservative PMs have been curtailed by the varying events of Euroscepticism in the party and. Regardless of their own views, have had to acknowledge this.

**Similarly,** Hillary Clinton, as a would-be president, adapted her language to the growing culture of progressive ideology in her party. This growth, alongside the relative success of Sanders, caused her to declare herself a 'progressive who gets things done'.

## 8. The Supreme Court and Civil Rights

### The nature and role of the Supreme Court

Central role is to uphold the Constitution, as outlined in article III. It is not trying to ascertain innocence or guilt, instead it determines the acceptability, or otherwise, of actions within the rules of the Constitution.

#### Implied by the Constitution

- **The power of judicial review**
  - The central power of the court
  - Allows it to overturn any other institution because the court declares it as unconstitutional
  - The court gave itself the power – *Marbury v Madison* 1803, when it first overturned an Act of Congress
  - Further defined in *Fletcher v Peck* 1820, in which Congress overturned STATE law for the first time

#### The independence of the Court

The Constitution ensures independence from all other political institutions, which is important because it has the role of determining the constitutional acceptability of the laws and actions of president and Congress.

#### The Judicial Review process

The SC cannot initiate a case, currently opts to hear more than 100 cases per year. It operates in a similar way to a criminal court

They then discuss the case in private in order to reach a majority opinion of 5 or more. A justice in this majority is then tasked with writing the opinion, with input from the other justices. This is a written document detailing how the Constitution has or has not been broken, often at some length,

*NFIB v Sebelius, Affordable Care Act ruling* – 193 pages.

SC rulings help set a precedent for future cases. When writing their opinion, the court could choose to have a narrow and limited impact, or a broad-ranging one. In split-decisions, a minority opinion is also written.

The SC has the power to declare that the actions or laws of other institutions are unconstitutional. This allows it to overturn those actions or laws using this power of judicial review.

## **The appointment process for the Supreme Court**

**Step 1 – A vacancy occurs**

**Step 2 – The president nominates a new justice**

**Step 3 – The Senate decides**

The full Senate votes, with over 50% required for the nominee to be appointed. **However**, nominations are not always successful.

**Robert Bork 1987**

**Harriet Miers 2005**

**Merrick Garland 2016**

### **Strengths of the nomination process**

- Ensures independence
- Ensures judicial ability
- Ensures personal suitability

### **Weaknesses of the nomination process**

- Process is too politicised
- Ratification process is too politicised
- It is ineffective

### **Factors influencing the president's choice of nominee**

- Judicial ability
- Social characteristics
- Ideology
- Political motivations

## The composition and ideological balance of the Court

Periods in the court's history are often defined by the name of the chief justice.

Burger Court – after Warren Burger was chief justice from 1969 – 1986

The Roberts Court is finely divided, with a 5-4 conservative majority. With the retirement of the moderate conservative/swing Justice Kennedy and the controversial but successful nomination of Kavanaugh, the court has arguably shifted further right.

Even before this, the Roberts court was seen as conservative, interpreting the Constitution to give conservative outcomes.

<b>Nominee</b>	<b>Year</b>	<b>President</b>	<b>Senate vote</b>	<b>Ideology of Justice</b>
<b>Thomas</b>	<b>1991</b>	<b>Bush Snr</b>	<b>52-48</b>	<b>Conservative</b>
<b>Ginsburg</b>	<b>1993</b>	<b>Clinton</b>	<b>96-3</b>	<b>Liberal</b>
<b>Breyer</b>	<b>1994</b>	<b>Clinton</b>	<b>87-9</b>	<b>Liberal</b>
<b>Roberts</b>	<b>2005</b>	<b>Bush Jnr</b>	<b>78-22</b>	<b>Conservative</b>
<b>Alito</b>	<b>2006</b>	<b>Bush Jnr</b>	<b>58-42</b>	<b>Conservative</b>
<b>Sotomajor</b>	<b>2009</b>	<b>Obama</b>	<b>68-31</b>	<b>Liberal</b>
<b>Kagan</b>	<b>2010</b>	<b>Obama</b>	<b>63-37</b>	<b>Liberal</b>
<b>Gorsuch</b>	<b>2017</b>	<b>Trump</b>	<b>54-45</b>	<b>Conservative</b>
<b>Kavanaugh</b>	<b>2018</b>	<b>Trump</b>	<b>52-48</b>	<b>Conservative</b>

### The conservative agenda of the Roberts Court

The dominant outcome has been conservative in its impact, as seen by a number of 5-4 cases that have angered liberals. In **DC v Heller 2008**, **Citizens United v FEC 2010**, **McCutcheon v FEC 2014** and **Shelby County v Holder 2013**

**However**, conservatives have been disappointed and in some cases angry at some of the most important decisions made by the Roberts Court. In **NFIB v Sebelius** and **Obergefell v Hodges 2015** the Court issued a landmark liberal ruling by stating that gay rights were protected by the 14<sup>th</sup> amendment.

## The Supreme Court and public policy

### Removes existing policy

- **Citizens United v FEC 2010**
- **Shelby County v Holder 2013**

### Upholds existing policy

- **NFIB v Sebelius 2012**
- **Riley v California 2014**

### Establishes new policy

- **Obergefell v Hodges 2015**

## Judicial Activism

- Justices use their own views and values in order to achieve their own social or political goals
- Involves the court overturning other political institutions or the rulings/precedents of previous courts.

### Warren Court 1953-1969

- Brown v Board of Education 1954
- Miranda v Arizona 1966

## Judicial Restraint

Opposite of judicial activism, an approach to judicial decision making that believes that:

- A justice should defer to the executive and legislative branches
- Because these are politically accountable to the people
- Puts great stress on following the principle established in previous court decisions

# The protection of civil liberties and rights in the US today

## Some major rights protected by the Bill of Rights

Amendment	Rights protected
<b>1st Freedom of religion</b>	Protect people from religious discrimination by the establishment of an official, therefore dominant religion Has been used to prevent school prayer in government schools in order to protect all religion
<b>1st Freedom of speech</b>	Seen as a cornerstone of liberal democracy: freedom of expression – protest/organisation and speech
<b>2nd Right to bear arms</b>	Much disputed meaning, disagreement over whether this gives the individual a constitutional right to a gun Many argue original intent - to promote power of STATES to protect themselves from federal or foreign invasion <b>DC v Heller 2010</b> - Overturned state law banning handguns, - set precedent of applying the right to an individual
<b>4th Free from unreasonable search/seizure</b>	Warrants needed to search private property, grounds must be reasonable and specific - must have probable cause Upheld in <b>Riley v California</b> - unwarranted mobile phone search <b>2001 Patriots Act controversial</b> - Suspends probable cause for some searches
<b>8th Freedom from cruel and unusual punishment</b>	Hard to distinguish what counts – discretion of SC Death penalty currently deemed as NOT Most recent cases focus on death penalty methods <b>Glossip v Gloss</b> - Challenged use of 3 drug method - Argued the first drug did not sufficiently prevent the pain of the other two - SC refused the argument 5-4
<b>10th Reserved rights of states</b>	Designed to protect federalism and state power Any power NOT possessed by federal govt is therefore reserved for the states <b>Successfully used in Printz v US 1997</b> - Protect states from requirement to create gun restrictions under the federal Brady Act 1993.

## Rights protected by SC rulings

This is best illustrated by cases involving **individual v states' rights**, in which some justices have prioritised the individual, and some the states'.

### Shelby County v Holder

- By overturning the section of the Voting Rights Act, the majority is protecting STATES' rights.
- However, the minority of justices see this as unjustified as it ignores the ongoing importance of protecting racial minorities

Therefore, **this ruling gives the states greater control** over their electoral laws, ending the requirement that the federal government scrutinises any changes to ensure there is no discriminatory outcome.

### Roe v Wade 1973

- Protected the right to abortion under the right to privacy under the 14<sup>th</sup> amendment due process clause
- Both of the dissenting judges openly criticised the majority in establishing a right they felt had no constitutional basis

### Obergefell v Hodges 2015

- The 5-4 majority ruled gay marriage bans were unconstitutional under 14<sup>th</sup> amendment due process and equal protection clauses
- Kennedy, in his majority opinion stated that due process should 'extend personal choices central to individual belief'
- He also stated that a ban on gay marriage broke the equal treatment clause because of the discrimination it created

Therefore, **this ruling gives the individual greater control.**

## The effectiveness of the SC in protecting rights

**Power:** How much power does the SC have to protect civil liberties?

- The court is an extremely powerful position due to the entrenched Constitution and its power of judicial review.
- However, the court can be constrained, for example by constitutional amendments that overturn its rulings (which is rare).

On occasions their rulings are ignored - **Brown v Board of Education 1954**  
– states failed to desegregate until Congress passed Civil Rights Act 1964

**Will:** How willing is the SC to protect civil liberties?

### **Plessey v Ferguson 1896**

- SC ruled that separate facilities (in this case train carriages for whites and blacks) did NOT break the Constitution.
- This would support the view that at times the SC is not willing to protect civil liberties

The Shelby 2010 ruling could also be seen as a failure to protect racial minority rights – the view taken by the 4 dissenting justices

**Ideology:** What ideological perspective are we adopting?

Liberals and conservatives therefore make competing claims in such areas, according to which rights THEY value. Liberals can, and have, claimed that gay and abortion rights are constitutional (a view currently supported by the majority on the court)



## Race and rights in contemporary US politics

The two key developments in racial rights were:

- The end of slavery after the Civil War (1861-65) and
- The civil rights movement of the 1950s and 60s
  - which saw the end of **legally** supported separate facilities

### Methods used by racial rights campaigners

- Demonstrations and civil resistance
- Legal methods
- Voter registration drives

### The effectiveness and influence of racial rights campaigns

#### 1. Voting rights

- **Civil Rights Acts of 1964**
- **Voting Rights Acts of 1965,**
- **Election of Obama 2008**

**The NAACP** is struggling to score victories at state level and is not receiving support from the Trump administration, significantly reducing its impact on public policy.

#### 2. Representation

Policy and parties - huge increases in representation at both state and federal level.

Positions of power

There has been a **huge change in the representation** of minority groups in terms of holding positions of power.

#### 3. Affirmative Action

A policy of favouring historically disadvantaged members of a community, provides additional benefits to groups who have been historically discriminated against. It is common in areas such as:

- Education
- Employment

## Equality of Opportunity

- *The THEORY of rights and equality*

V

## Equality of Results

- *The PRACTICE of rights and equality*

**However**, the impact of rights groups in protecting AA has started to reduce, as these controversial programmes are being challenged by state governments. Many states, such as California, Texas and Michigan have ended AA. In several states the provision of AA has been challenged by states, often through the courts. See the case study below.

### **The following court cases have undermined AA:**

**University of California v Bakke 1978** – effectively ended the use of quotas

**Fisher v University of Texas 2013** – ordered strict scrutiny of the University of Texas’s use of AA (although the policy was upheld in Fisher II in 2016)

**Schuetz v Coalition to Defend AA 2014** – rejected a challenge to Michigan’s right to end AA using a state initiative

## Arguments FOR AA

It was **needed to improve the socio-economic status of minorities**. It has helped close the gaps in education and income between social groups.

It **helps reduce racist attitudes by helping overcome segregation**. Greater interaction between racial groups CAN overcome prejudice.

**It works**. Where AA been ended, there has been a decline in racial minority enrolment in top colleges.

## Arguments AGAINST AA

It is a form of **racial discrimination** – a cause of racism, not a solution.

Arguably it is **unconstitutional**, breaking the 14<sup>th</sup> amendment.

It has **the wrong focus**, on college education and jobs, NOT on early years. By the time kids grow up their life chances have ALREADY been damaged by poor education and social surroundings.

**AA has NOT worked**. Racial inequality still persists today. Despite this, there is a major gap between racial groups in the top colleges.

## Immigration Reform

Change is hard to bring about and almost inevitably requires the intervention of the Supreme Court.

### Case Study 1: DAPA

**DAPA died at the U.S. Supreme Court**, but the deadly shot came from Texas. The Deferred Action for Parents of Americans and Lawful Permanent Residents program, announced by President Barack Obama's administration in 2014, was a sweeping executive action that would have protected about 4 million undocumented immigrants from deportation.

### Case Study 2 - DACA

Deferred Action for Childhood Arrivals - DACA was introduced by the Obama administration in June 2012.

**However a federal appeals court ruled in November 2018 that President Trump cannot immediately end the program that shields from deportation young undocumented immigrants who were brought to the country as children**

The unanimous decision by a three-judge panel of the U.S. Court of Appeals for the 9th Circuit makes it more likely that the Supreme Court will settle the question. The Trump administration has asked the justices to add it to the docket for this term.

## The extent of Supreme Court power

Judicial Review

- Interpretation
- Independence
- Wording of Constitution
- Limited Jurisdiction
- External Pressure

**Is the Court neutral (judicial) or ideologically motivated (political) when making decisions?**

### Judicial

- Justices decisions have to be based in the constitution
- 9-0 decisions suggest that justices are NOT applying personal values but enforcing constitutional rules

### Political

- Justices apply their own values when applying the constitution
- This can be seen when an individual justice consistently gives rulings that please one ideological group

**Is the court independent from external pressure (judicial) or politically influenced and active (political)**

### Judicial

- Justices can avoid being political because the Constitution protects them from political influence

### Political

- Politicians try to put pressure on justices
- Court rulings do often reflect changes in society's values:

**Does the court have unlimited jurisdiction in policy making (judicial) or is it restricted to enforcing politicians' rules (political)**

### Judicial

- Like political bodies, the SC can deal with any issue it chooses, due to the ambiguity of the Constitution
- SC likened to a policy maker as it appears to use personal values to achieve its policy goals.

### Political

- SC can only apply the law and Constitution

## Living Constitution v Originalism

### In favour of originalism

- It restricts the extent to which justices can force their own personal values on the Constitution
- It gives greater authority to the Constitution, which can be seen as a more objective document
- If new principles or values are to be placed in the Constitution, this should be done through the democratic process, not enforced on society by unelected judges

### In favour of the Living Constitution

- It stops the Constitution becoming an outdated irrelevance, and lets it reflect the values and practical needs of modern society
- It is virtually impossible to work out the exact views and values of the Founding Fathers and how this applies to modern society.
- The Founding Fathers may have been deliberately vague, allowing judicial discretion

## The protection of rights

### Legal and constitutional

Measures created by the Constitution or acts of Congress that try to enforce racial equality

### Political

Actions by politicians, parties and PGs aimed at overcoming inequality. This could include voter mobilisation, publicity campaigns and demonstrations as well as initiatives by the president.

### Socio-Economic

This can involve policies that are targeted at helping racial minorities specifically in social or economic areas, such as AA or funding. There are also many policies that are beneficial to low-income groups, regardless of race, but have a disproportionately positive effect on racial minority groups.

## US v UK

### Basis for and relative extent of powers

Judiciaries in **BOTH** countries have the same role – to uphold the law and constitution through its interpretation.

#### However the BASIS for their power is different:

- The SC in the US derives its power from the Constitution
- It has the role of upholding the sovereign constitution

Whereas in the UK:

- Courts derive their power from parliament
- Through their ability to uphold acts of parliament
- Thus leading to a central difference in the extent of their powers

### Scope

The US judiciary has greater scope than the UK to have major influence.

- In the US, justices uphold a codified sovereign Constitution
- Which allows the Court to overturn even the most powerful (and elected) bodies, including the president, Congress and the states

Whereas in the UK:

- Parliament sovereign – the courts cannot overturn an act of parliament.
- UK judges are far more constrained than those in the US

### Having the final say

It is significantly easier to overturn decisions made by the UK judiciary than opinions delivered by the US Supreme Court. In the UK, overturning a decision made by a UK court involves passing an act of parliament, which can be done relatively easily

- For example the government could use its parliamentary majority to have a new law made by parliament

Whereas in the US:

- It is technically possible to do so, but hard to achieve
- The vast majority of SC rulings remain intact
- Because it is too difficult to achieve the super-majorities needed to amend the constitution

So US judges tend to have the final say, whereas in the UK government and parliament have ultimate power.

## **Independence of the UK and US judiciaries.**

### **The independence of the courts**

Judges in **both** countries have high levels of independence through security of tenure. This allows them to exercise their power freely, without fear of political repercussions. In both countries judges can and do give rulings that undermine the executive in terms of their power or policy priorities.

Once in office a justice is not accountable to the president who picked them. US justices sometimes interpret the Constitution to restrict the power or policy of the president who appointed them.

Arguably the appointment process in the US threatens the independence of the court, as the SC justices are selected by the president and ratified by the Senate. **Whereas** in the UK judges are appointed by an independent body – the Judicial Appointments Committee.

In **both** countries, the high profile nature of constitutional cases means that there is often external pressure on justices.

The US court faces much greater pressure, in part because of the major constitutional issues it deals with - Guns, abortion rights, gay rights.

These are contested issues on which US society is deeply divided, and because court rulings may overturn acts of Congress. As a result US justices face heavier informal restrictions such as protests of presidential speeches. **Whereas** the UK does not face these issues or such heavy informal restrictions.

### **Effectiveness of rights protection by the judiciary**

In **both** countries the judiciary plays a central role in the protection of rights. They **both** uphold laws that safeguard civil liberties.

In the US this is mainly through the bill of rights and key amendments, such as 14<sup>th</sup> – providing equal protection.

Equally, in the UK this protection comes mainly through rulings based on the HRA, where courts are upholding an important piece of statute law.

## Which country more effectively protects rights?

### 1. USA

The sovereign constitution allows US courts to overturn the actions of any institution, including Congress, if it restricts civil liberties.

**Whereas** UK courts do not have the power to overturn acts of parliament even if they restrict human rights. They can issue a statement of incompatibility, which parliament can choose to reject

Because the US has an entrenched Constitution, court rulings cannot easily be overturned by other political bodies. This is important in rights protection because it involves protecting individuals against powerful elected politicians.

**Whereas** in the UK these politicians can overturn a ruling that protects civil rights by passing a new act of parliament.

### 2. UK

The UK has the Human Rights Act, which provides extensive legal protection of civil liberties. However, it is not entrenched, like the US Bill of Rights

UK parliament is unlikely to reject decisions made by the court that have protected civil rights. The HRA can be described as 'quasi-entrenched'. However, Parliament has the legal ability to remove this act

Despite this, it would be politically very difficult to do so without a reasonable degree of cross-party support. Also, if the act was removed, it is highly likely to be replaced with a British Bill of Rights. However, some would argue this would be a watered down version.

### 3. It depends

The extent of protection depends not only on the ability to protect rights but also the willingness of the judges to do so in their interpretations of the Constitution.

In the US there is a conservative majority on the SC, which may not favour civil rights, for example *Shelby County v Holder* (voting rights)

Even so, in a significant number of recent cases, the SC HAS upheld minority rights – *Obergefell v Hodges* (gay marriage)



## The effectiveness of PGs in the protection of civil rights

### US PGs more effective in protection of civil rights

#### 1. Weak Parties

The united nature of UK parties means that civil rights based interest groups (such as Liberty and Stonewall) may have less success in persuading legislative politicians than in the US. In the UK there is a higher tendency to vote in blocks and be subject to the whip system. So the success of a PG may depend more on their ability to persuade party leaders in the UK

#### 2. Access points

US civil rights groups enjoy a greater choice of powerful institutions to lobby, plus more opportunities to find a like-minded majority. In the US, a civil rights group that is troubled by a Republican majority in Congress may find access with a Democratic president. **Whereas** in the UK a civil rights group that fails to convince the government is unlikely to achieve legislative success in parliament.

#### 3. Rights protection

With stronger levels of rights protection in the US, civil rights groups are likely to experience far higher levels of success. This level of rights protection helps to account for much greater prominence of civil rights groups in the US - with groups such as the NAACP and the ACLU. **Whereas** UK groups such as Liberty have a lower profile, possibly because of the lower levels of rights protection in the UK

## UK PGs MORE effective in protection of civil rights

The US political and constitutional system provides much greater opportunities for civil rights to be successful than in the UK. **However**, this does not mean that those rights are better protected in practice than in the US.

### 1. UK tradition of rights protection

The UK arguably has a stronger tradition of respecting civil rights than in the US. The level of constitutional protection does not necessarily explain the difference between the two countries. **Whereas** the practice of slavery and separate facilities in the US continued long after they were banned in the UK. So there are arguably greater concerns about racial rights in the US

- With the Shelby (voting rights) ruling
- the growth of state measures that appear to discriminate
- and the Trump approach to racial issues

### 2. Powers of the state / national security

There have been concerns about the power of the state in matters of national security in **BOTH** countries. A concern that has risen since 9/11, with increased police powers in both countries

Groups such as Liberty and the ASCLU have been unsuccessful in fighting aspects of legislation such as Patriot Act and Freedom Act (US) and Prevention of Terrorism Act (UK)

The Trump presidency has increased these concerns in the US. **Equally** the Conservative plan to remove the HRA suggests a major failure of civil rights groups in the UK

### 3. Which right?

There is debate in **both** countries about which rights should be respected. Liberals then to push ideas of freedom from discrimination, while conservatives might promote other types of rights, such as the right to bear arms.

## Theoretical explanations for the similarities and differences

### Rational

- Can be used to compare the two countries when judges appear to act according to their own beliefs, operating as rational actors, who can pursue their own ideological preferences.

In **both** countries, judges have the scope to direct their own behaviours

Despite the more apparent structures in the US, justices of the SC have much **greater power** as individuals to bring about change. The power given to the judiciary by the Constitution and its vagueness allow US judges greater scope for interpretation, allowing them to have a major impact when delivering their rulings

### Cultural

Suggests that there is a more dominant rights-protection culture in the UK than in the US. **Whereas** in the US there are strong rival cultures based around competing parties and PGs that support or oppose civil rights. There are significant human rights concerns in the US, despite apparently stronger structures to protect civil rights.

### Structural

Particularly useful in helping to understand similarities and differences in the power of judicial bodies of the two countries. The constitution strongly affects the extent to which judges have an impact on the political system as a whole.

This suggests that the US judiciary has a bigger impact on US politics and government by affecting:

- Government policy, usually by overturning it
- The power of political institutions, particularly regulating their power
- The level of rights protection in the country