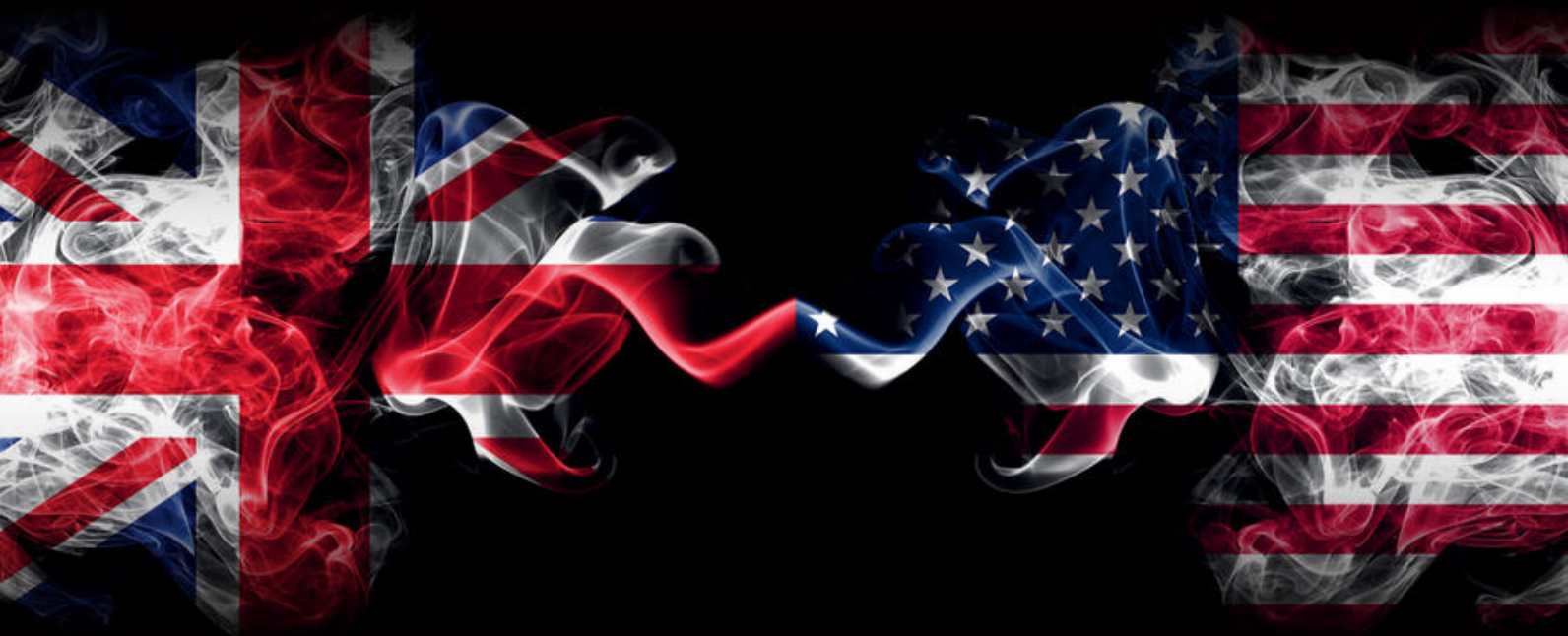




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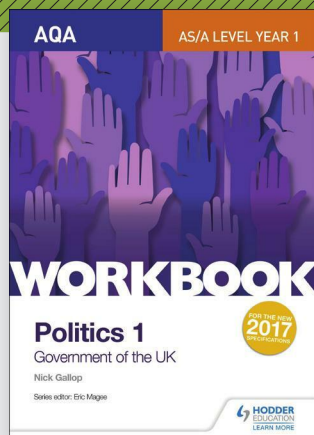
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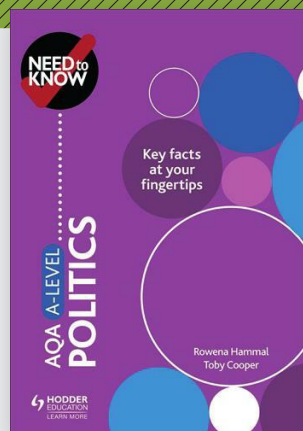


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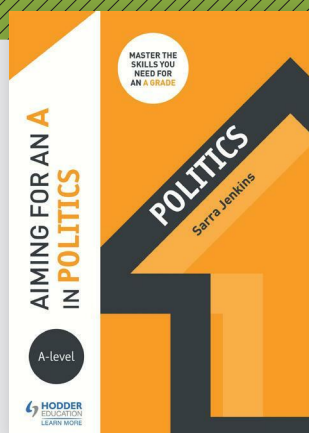
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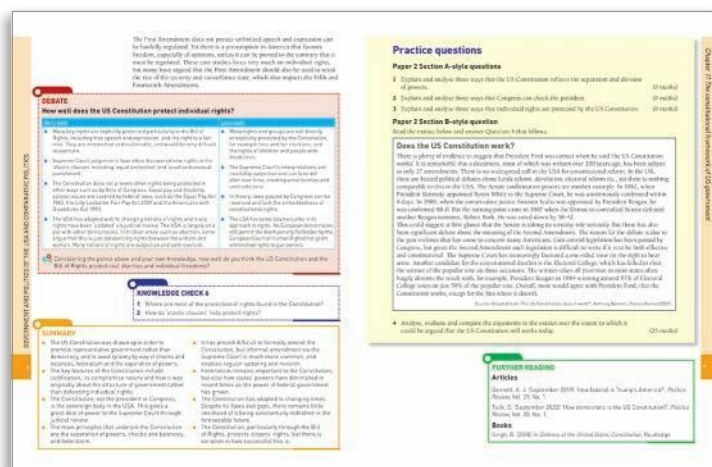
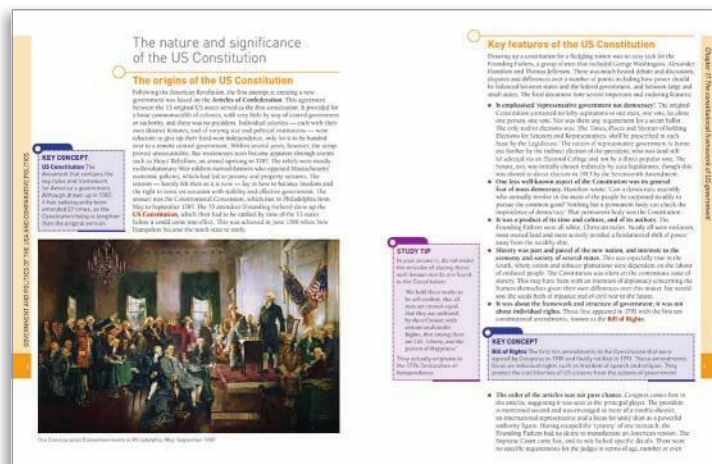
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Contents

Get the most from this book.....	iii
Part 1 The government of the UK	
1 The nature and sources of the British Constitution.....	2
2 The structure and role of parliament.....	25
3 The prime minister and cabinet.....	64
4 The judiciary.....	103
5 Devolution.....	125
Part 2 The politics of the UK	
6 Democracy and participation.....	144
7 Elections and referendums.....	164
8 Political parties.....	205
9 Pressure groups.....	228
10 The European Union.....	248
Part 3 Government and politics of the USA and comparative politics	
11 The constitutional framework of US government.....	263
12 Comparing constitutional arrangements.....	290
13 The legislative branch of government: Congress.....	302
14 The executive branch of government: the president.....	328
15 Comparing the US and UK executives.....	357
16 The judicial branch of government.....	371
17 Comparing the judiciaries.....	395
18 The electoral process and direct democracy.....	406
19 US political parties.....	448
20 Comparing electoral and party systems.....	470
21 Pressure groups.....	498
22 Comparing pressure groups.....	520
23 Civil rights.....	532
24 Comparing civil rights.....	548
Index	558



1

The government of the UK

The nature and sources of the British Constitution

KEY QUESTIONS ANSWERED

- What is a constitution?
- How do we evaluate a constitution?
- What are the general features of the British Constitution?
- What are the main sources of the British Constitution?
- What are the main milestones in the history and development of the British Constitution?
- What have been the main changes to the British Constitution since 1997 and how effective have they been?
- How well does the British Constitution and recent legislation protect citizens' rights?
- What are the differences between individual and collective rights, and how can they both clash and coincide?

BACKGROUND INFORMATION

It might seem a strange way to begin a study of politics, but if you go to a sporting event, what do you see? Well, you can see players in a competitive game aiming to win and you can see supporters cheering on their team. We can observe politics in a similar way — politicians are competing for power (to win) with supporters and opponents also taking part (cheering on their team). But look more closely and you should also notice that the players are observing a **set of rules**, like the offside rule, a set number of players in a team etc. In politics, this role is fulfilled by a constitution — the set of rules by which politics is conducted. And what happens in parliament (or the US Congress or the European Parliament for that matter) and in the national media is the 'match'. Therefore, to understand how politics runs, you need to study and understand each country's constitution. As the nineteenth-century political journalist Walter Bagehot (whom we shall encounter later on in this chapter) stated, 'On all great subjects ... much remains to be said and of none is this more true than of the English Constitution.'

The nature and sources of the British Constitution

Evaluating a constitution

Constitutions come in all shapes and forms, and many — especially those of authoritarian states and dictatorships — may not reflect the reality of politics in that country. For example, in 1936, Article 125 in the Constitution of the

KEY CONCEPTS

Individual rights Rights that belong to each citizen, e.g. the right to free speech or to practise their religion or lifestyle choice without discrimination.

Collective rights Rights that lie with groups of people, e.g. members of a trade union or people with disabilities.

Rule of law The principle that the law is enforced and that it is applied equally to everyone, including the government.

USSR promised ‘freedom of religious worship’ when in reality Stalin’s regime saw intense persecution of all religions.

So how should a constitution in a Western liberal democracy be judged and evaluated? Key points could include the following:

- A guarantee of free, fair and democratic elections
- Respect for individual human rights, individual consciences and promotion of tolerance
- Balance of **individual rights** with broader **collective rights**
- Lays out clearly where power and decision-making lies, and addresses the notion of sovereignty, i.e. where final power and authority lies
- Has clear mechanisms for resolving problems and conflicts when conventional decision-making proves problematic, e.g. in 2016 and 2019 in relation to Brexit
- Is easy to understand and encourages citizens to participate in the political process
- Can be adapted and is flexible to changing circumstances while retaining core values and a sense of national identity (although the latter is likely to evolve over time)
- Upholds the **rule of law** through an independent judiciary, which ensures that everyone is treated equally irrespective of position, privilege or wealth

More widely, a well-functioning constitution promotes a wider sense of political stability and shared prosperity.

The nature of the British Constitution

If you venture to Washington, DC you will be able to view the US Constitution. The original parchment document along with subsequent amendments is on display to the public in the National Archives, behind a formidable bulletproof set of glass display cabinets. No such equivalent exists for the British Constitution. ‘Have you got a copy of the British Constitution?’ the journalist Woodrow Wyatt once wrote to Prime Minister Margaret Thatcher. ‘I would like to see one.’ The question was of course ironic. The British Constitution is actually found in multiple places and in various forms. It is not a single **codified** document. It does, however, have several distinguishing characteristics:

- The British Constitution is **uncodified**, meaning it is not found in one single document or place.
- It is defined as unitary, meaning most power lies with the centre, namely the Westminster Parliament. This contrasts with states such as the USA and Germany, which have federal systems of governments in which considerable power lies with individual regions or states. The Tenth Amendment of the US Constitution expressly states that ‘Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States.’ Arguably the development of devolved assemblies in the UK regions has weakened this aspect of the British Constitution in recent years, leading some political commentators to define the current Constitution as ‘quasi-federal’.
- It is characterised by **parliamentary sovereignty**. In other words, parliament has the final say on what the Constitution contains. This is sometimes phrased as ‘No parliament can bind its successor’, meaning what one elected parliament enacts as legislation a later parliament can change or revoke. A classic example is UK membership of the European

KEY CONCEPTS

Codified A constitution in which all provisions are written down in a single set of documents, e.g. the US Constitution.

Uncodified A constitution that is not contained in a single set of documents, e.g. the British Constitution.

Parliamentary sovereignty The principle of the British Constitution that makes parliament (as opposed to the courts or prime minister) the ultimate authority.



The 'twin pillars' of the British Constitution are parliamentary sovereignty and the rule of law

Union. Parliament voted to join what was then termed the EEC through the European Communities Act 1972. This Act was later repealed by the laws that enabled Brexit, namely the European Union (Withdrawal) Act 2018 and the European Union (Withdrawal Agreement) Act 2020.

- In addition, like the constitutions of all liberal democracies, the British Constitution operates under the rule of law. This means that the law applies equally to everyone, including those who make the law. For example, the prime minister and ministers must not exceed their lawful powers, even though they themselves made the law in the first place. If they do, their actions can be challenged in the courts and they can be found guilty of acting *ultra vires* (beyond the law). The nineteenth-century political writer A. V. Dicey referred to parliamentary sovereignty and the rule of law as the 'twin pillars' of the British Constitution.

SYNOPTIC LINK

Parliamentary sovereignty is significant as it allows for the British Constitution to be flexible and adaptable. It can be changed simply by an Act of Parliament. By contrast, the US Constitution is sovereign, hence all laws passed by Congress must comply with the Constitution. Formal amendment of the US Constitution is complex and therefore rare. You can find out more about the US Constitution in Chapter 11.

STUDY TIP

In an exam answer, avoid the error of referring to the British Constitution as 'unwritten'. It is 'uncodified'. This contrasts with most modern constitutions.

The main sources of the British Constitution

The British Constitution is derived from a variety of sources, including:

- constitutional statute law
- common law
- the royal prerogative
- conventions
- works of authority
- international agreements

Statute law

Statute law refers to Acts of Parliament, which form the most important source of the British Constitution. Constitutional statute law includes laws that define who can vote (e.g. the Representation of the People Act 1969, which lowered the voting age from 21 to 18) and human rights (e.g. the Human Rights Act 1998, which incorporated the European Convention on Human Rights into UK law). In addition, before the UK left the European Union in January 2020, European law indirectly formed part of the British Constitution. This meant that European laws and treaties (such as the Lisbon Treaty signed in 2007) automatically took precedence over any laws passed by Westminster and were binding on the UK government. This represented a clear if ultimately temporary limit on parliamentary sovereignty.

KEY CONCEPT

Statute law Any law that has been passed by both houses of parliament and has received the royal assent.

STUDY TIP

Most statute law is not constitutional statute law. For example, education acts or the annual finance act that passes the chancellor's budget do not affect the Constitution. Additional examples of constitutional statute law include the Constitutional Reform Act 2005, which set up the UK Supreme Court, and the Wales Act 2017, which devolved further powers to the Welsh Parliament/Senedd Cymru.

KEY CONCEPTS

Common law The body of legal precedent resulting from the rulings of senior judges. Sometimes referred to as case law or judge-made law.

Royal prerogative The formal powers of the monarch that are, in practice, exercised by the prime minister and the government. The modern monarchy must be above party politics and plays only a ceremonial role. Important prerogative powers, such as appointing ministers, making international treaties and calling general elections, lie with the executive and not the legislature.

Common law

Common law comprises laws or rights passed down over the years by legal judgements in the courts, a process known as judicial precedence. Examples include freedom of expression and the criminality of murder. Common law can be and often is modified by statute law. For example, while there is not one specific law that makes murder a criminal offence, there is the (obvious) notion that it is a crime and has always been viewed as such by the state. Many statute laws over time have dealt with the punishments for murder, such as abolishing the death penalty in 1965.

The royal prerogative

The **royal prerogative** is the residual or remaining powers exercised in the name of the Crown. They range from high-profile powers, such as the power to seek a dissolution or prorogation (suspension) of parliament, to less well-known ones, such as the issuing of UK passports. For example, in August 2019 Prime Minister Boris Johnson sought the Queen's permission to prorogue parliament for a longer than usual period of 5 weeks, a move seen by his critics as an attempt to avoid full scrutiny of the government's Brexit proposals. The date set for withdrawal was changed to 31 October. Prorogation was duly granted, but then subsequently ruled illegal by a unanimous 11-0 judgement of the UK Supreme Court in September 2019, which was of the opinion that the action was unlawful.

When it comes to issuing passports, the relevant government guide states:

'There is no statute law governing the grant, refusal of British passports, which are issued in the United Kingdom...passports are issued in the UK at the discretion of the Home Secretary. They are issued in exercise of the Royal Prerogative, which is an executive power that doesn't require legislation.'

In its modern incarnation, the royal prerogative could be seen as a key factor in boosting the powers of the prime minister and the executive.

SYNOPTIC LINK

The controversy over Prime Minister Johnson's efforts to prorogue parliament is a good example of the courts getting involved in party politics. To Brexiteers, including the prime minister, this was portrayed as a deliberate attempt by the courts to frustrate the task of 'getting Brexit done'. To others, it was the judiciary acting properly to uphold parliamentary sovereignty and to rein in an excessive power grab by the executive. You can find out more about the power and function of the British judiciary in Chapter 4.

KEY CONCEPT

Conventions Unwritten rules and procedures mostly concerned with parliament that facilitate the smooth running of the Constitution. When conventions are broken it can often lead to problems and deadlock.

Conventions

If laws are the ‘nuts and bolts’ of the British Constitution, then **conventions** are the ‘oil and grease’ that enable politics and particularly parliament to function efficiently and smoothly. Conventions are not written down anywhere but are generally agreed rules and procedures. One good example is the Salisbury-Addison Convention of 1945. Following Labour’s landslide election victory, the then Tory-dominated House of Lords agreed not to delay any of the manifesto promises of Clement Atlee’s new Labour government, which included the establishment of the NHS.

Another important convention is that after a general election, the monarch formally invites the leader of the largest single party to form a government. When one party has won an overall majority, as in the 2019 general election, this is straightforward. However, when there is a ‘hung parliament’, i.e. no single party has won an overall majority, as happened in the 2010 general election, the leader of the party with the most seats is invited to be prime minister. In 2010, this was David Cameron. Had he not secured a coalition agreement with the Liberal Democrats, the Queen would then have appointed Labour’s leader, Gordon Brown, to be prime minister.

Perhaps the most important convention in terms of legislation is that the monarch gives royal assent to all bills that have been passed by both houses of parliament. The last time royal assent was withheld was in 1707, when Queen Anne refused to sign the Scottish Militia Bill. Denial of royal assent today would create a constitutional crisis.

Works of authority

Works of authority are arguably the least visible and clear sources of the British Constitution. They generally comprise a variety of books and documents that deal with areas including parliamentary procedures and the responsibilities and duties of government and ministers. Among the most important are:

Walter Bagehot’s *The English Constitution* (1867)

Bagehot sought, among other things, to distinguish between ‘dignified’ and ‘efficient’ aspects of the Constitution. For example, the monarch was clearly the dignified part of the Constitution, having no real political power by the time the book was written, while the cabinet (memorably defined by Bagehot as ‘A combining committee — a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state’) held most of the real power, emerging as it does from the House of Commons, the ‘ultimate authority in the English Constitution’.

A. V. Dicey’s *Introduction to the Study of the Law of the Constitution* (1885)

Dicey was an Oxford law professor and sought to explain and identify the main characteristics of the British Constitution. This included identifying not only his ‘twin pillars’ of democracy, but also conventions such as ‘The King must assent to, or (as it is inaccurately expressed) cannot “veto” any bill passed by the two Houses of Parliament.’ He also strongly asserted the notion of parliamentary sovereignty, commenting that parliament was ‘an absolutely

sovereign legislature' and that under the English Constitution it possessed 'the right to make or unmake any law whatever'. He memorably reinforced this point by quoting from the eighteenth-century Swiss political theorist Jean-Louis de Lolme, that 'parliament (in England) can do everything but make a woman a man and a man a woman'.

Erskine May's *Parliamentary Practice* first published in 1844

May's book, the most recent update of which was published in 2019, is often referred to as 'the Bible of parliamentary procedure' and is regularly referenced by the speaker of the Commons when making rulings about the conduct of parliamentary business and debates. It includes the standing orders of each chamber, historical precedence and key rulings by the speaker. While this might all sound arcane and technical, it does spring to public prominence on occasion. For example, in March 2019 then speaker John Bercow cited a 1604 convention to prevent Prime Minister Theresa May from bringing her Brexit withdrawal deal before the Commons for a third time in that particular parliamentary session.

STUDY TIP

Be clear that authoritative opinions are just that — opinions. They do not have the same power or authority as laws and indeed can be easily overruled by parliamentary statute. They are akin to conventions in this respect.

KEY CONCEPTS

Authoritative opinions

Views and definitions that are important and regarded as the final word or authority on an issue.

International agreements

The UK is a signatory to a number of international agreements, such as the European Convention on Human Rights and protocols dealing with areas such as climate change. While these are in place, the government is obliged to abide by their terms or face legal challenges in the courts.

The Cabinet Manual (2010)

This was produced by the Cabinet Office at the start of the coalition government (the first such government for over 60 years) to offer a guide as to how the British government and parliament would work. It covers a wide range of topics in its 110 pages, including ministerial conduct, cabinet composition and the scrutiny of government by parliament. The project was initiated by former prime minister Gordon Brown. In the Foreword to the document, David Cameron explained its purpose as follows:

'The Cabinet Manual sets out the internal rules and procedures under which the government operates. For the first time the conventions determining how the government operates are transparently set out in one place. Codifying and publishing these sheds welcome light on how the government interacts with the other parts of our democratic system.'

During a speech in 2011, then cabinet secretary Sir Gus O'Donnell, who was mostly responsible for the first draft, described the manual as:

'A guide to laws, conventions and rules on the operation of government. It is to guide but not to direct. It will have no formal legal status and it is not meant to be legally binding...It is not intended to be a written constitution.'

In addition, **authoritative opinions** and **international agreements** make up the British Constitution.

KNOWLEDGE CHECK

- 1 What is the significance of the 'twin pillars' of the British Constitution?
- 2 What role does the royal prerogative still play in the British Constitution?

Milestones in the history and development of the British Constitution

A number of key laws and documents have contributed to the development and evolution of the British Constitution over time.

STUDY TIP

What is important when studying historical constitutional milestones is not so much the details and historical context, but their overall significance in contributing to how the Constitution looks today.

Magna Carta 1215

This was a royal charter of rights agreed between King John and his barons in response to the political crisis the king was facing, namely baronial rebellion. Among its 63 clauses the most important remaining to this day is the right of all 'free men' to justice and a fair trial. The relevant clause reads, 'To no one will we sell, to no one will we deny or delay right or justice.' On the one hand, Magna Carta represents the first formal attempt to try and limit the powers of the monarch and place him or her under the rule of law. This principle of equal access to justice for all remains central to the UK's judicial system.

Magna Carta was reissued on several occasions by medieval monarchs. Some of its clauses have also heavily influenced later documents, such as the American Declaration of Independence, the Universal Declaration of Human Rights and the European Convention on Human Rights. Its real importance lies as a starting/reference point for the future.

On the other hand, some people believe that Magna Carta's importance should not be exaggerated. Many of its terms were specific and particular to that period in history. It was also essentially a peace treaty, and an unsuccessful one at that, and not intended as a major turning point either in universal human rights or the balance of power in the realm. Only four of its clauses, including the one concerning the right to justice, remain unrepealed today. Most importantly, perhaps, it was silent on the rights of ordinary subjects. Later documents and laws proved more significant in the development of the British Constitution.



Magna Carta, the 'Great Charter', was signed by King John at Runnymede near Windsor on 15 June 1215

Bill of Rights 1689

Following the 1688 Glorious Revolution and the flight of James II, who was accused of undermining the role and independence of parliament and trying to return the country to Roman Catholicism, parliament invited William and Mary from Holland to assume the Crown. As part of the 'deal', the newly crowned monarchs had to accept the Bill of Rights, which was subsequently passed into law in December 1689. Among its key terms were frequent parliaments, free elections and freedom of speech within parliament, otherwise known as parliamentary privilege. Crucially, the Bill of Rights also included the principle of no taxation without parliament's agreement. Taken together, these clauses could be said to represent the establishment of parliamentary sovereignty and the parliamentary state.

SYNOPTIC LINK

Parliamentary privilege allows members of parliament (MPs) to debate freely and raise important issues in parliament. You can find out more about parliamentary privilege in Chapter 2.

The Bill of Rights is clearly significant, as parliament has continued to meet every year since 1689 — before this time it was more an event than a permanent institution. The Bill also established the dominance of parliament over the monarchy, meaning the latter would now exist only on the terms set by parliament. This was built upon by further measures, such as the **Act of Settlement 1701** (see below). In addition, the principle of free speech for MPs and peers when speaking in parliament without being subject to laws of libel and slander (parliamentary privilege) prevails to this day. Finally, the creation of a parliamentary state is an enduring feature of the British political system.

Equally though, we should not overestimate the importance of the Bill of Rights. Despite its title, the Bill did not cover the rights of ordinary men, let alone women. Nothing in the document relates to, for example, freedom of expression and belief for all members of society. We also need to treat the notion of a parliamentary state very carefully. Britain was far from being a democracy in 1689, and this was a parliament almost entirely composed of wealthy male landowners. Such democratic developments would not occur until a succession of reform acts from 1832 onwards, reaching a conclusion only in 1928 when women were granted the vote on a fully equal basis to men.

Act of Settlement 1701

This measure was largely a follow-up to the Bill of Rights. The main aim of this legislation was to ensure a Protestant succession to the throne. It achieved this by directly conferring the line of succession on the descendants of Electress Sophia of Hanover, a somewhat distant relative of James I, all closer descendants either having died childless or being Roman Catholic. The Act of Settlement could be viewed as a key milestone in the development of the British Constitution as, again, this was a case of parliament 'calling the shots' and laying down the criteria for British monarchy. Lineage and bloodline, key features of a hereditary institution, mattered less than meeting parliament's requirements for a Protestant heir. On the other hand, this Act did nothing to propel England/Britain towards a modern democratic state. Indeed, settling the throne on one religious group strikes the twenty-first-century reader as a retrograde step in terms of equality and fairness.

Parliament Acts 1911 and 1949

These Acts severely reduced the power of the House of Lords. In 1909 the unelected and Conservative/Unionist-dominated Lords broke with parliamentary convention and rejected the Liberal government's 'People's Budget'. The result was, unsurprisingly, a constitutional crisis, which, after two inconclusive general elections in 1910, resulted in a law that ended the absolute veto of the Lords over legislation and restricted their power to delay a bill for 2 years. They were also prevented from delaying 'money bills', or budgets. In 1949, the Act was modified to reduce the delay to just 1 year. Both Acts significantly increased the democratic accountability of Westminster. No longer could the unelected chamber (the Lords) frustrate the will of the elected house (the Commons). In effect it meant that any bill passed by the Commons would now automatically become law after a year.

Conversely, the Acts left much undone. Neither addressed the fundamental issue of the upper chamber, namely that it was almost entirely comprised of unelected members who owed their place to the accident (or good fortune) of birth. Life peers were only introduced in 1958 with the Life Peerages Act. Even the 1999 Blair reforms to the upper house, which removed most hereditary peers, failed to introduce any elected element. While 'Mr Balfour's poodle' (as the Liberal politician and future prime minister David Lloyd George termed it) may have been neutered, Lords reform remains unfinished constitutional business.

European Communities Act 1972

This measure enabled the accession of the United Kingdom to the European Economic Community (EEC), the forerunner to the modern European Union. It was negotiated by the Conservative prime minister Edward Heath. Although only 12 clauses long, the Act consumed some 300 hours of debate in the Commons. It narrowly passed in its second reading by just 309-301 votes, a reminder that Euroscepticism has a long history in UK politics.

This measure was undoubtedly important in the development of the British Constitution. Under the terms of UK membership, all legislation had to conform with European law, which represented an incursion into the hallowed doctrine of parliamentary sovereignty. In addition, the Act was added to by further measures, such as the Single European Act 1987 and the Lisbon Treaty signed in 2007. During the UK's period of membership, the EEC/EU became a major part of the British political scene and, indirectly, of the British Constitution too. As the EU grew larger in membership and greater in scope, 1972 could certainly be viewed as the starting point for the UK's often problematic relationship with Europe.

On the other hand, although there have been many criticisms of the erosion of parliamentary sovereignty, both in 1972 and subsequently, as events between 2016 and 2020 showed, loss of sovereignty was purely temporary. This Act was a classic example of 'what one parliament giveth, another taketh away'. With the EU Withdrawal Acts of 2018 and 2020, the 1972 Act was repealed.

It is also worth noting that European law and EU membership, although very important in certain areas such as agriculture, fisheries and trade, had far less impact on other key policy areas such as defence and education. One could argue, therefore, that the European Communities Act 1972 did not fundamentally change the way the UK 'does' domestic politics.

SYNOPTIC LINK

The European Communities Act 1972 has clear links with the European Union topic. The impact Europe had on domestic politics is relevant for the section on political parties, especially the recent history of the Conservative Party, which was riven by divisions over Europe, especially in the last 30 years. You can find out more about the European Union in Chapter 10 and UK political parties in Chapter 8.

ACTIVITY

After reading through the key historical developments in the British Constitution, create a mind map that reflects the relative importance of each development, for example writing out the most important in larger text. Give a brief justification for your choices.

KNOWLEDGE CHECK

- 3 Why should the importance of Magna Carta as a constitutional milestone not be exaggerated?
- 4 Which pre-1997 constitutional changes have helped the development of a democratic state?
- 5 Why are the 1911 and 1949 Parliament Acts unfinished constitutional business?

Issues and debates around recent constitutional changes

Politicians, especially those in opposition, often promise bold and dramatic action if elected to power. In a speech at the 1994 Labour conference, then party leader Tony Blair did just that with regard to constitutional reform, promising ‘The biggest programme of change to democracy ever proposed’. Elected by a landslide in 1997, he duly delivered most of what he had promised, and 12 constitutional bills were introduced in the first parliamentary session. The main themes of his reforms included the following:

- **Modernisation** of political institutions such as the House of Lords and the top rung of the judiciary.
- **Greater democracy** in the political system, for example elected mayors, more use of referendums and some degree of electoral reform.
- The **devolution** of many powers away from the centre (i.e. London and the Westminster Parliament) to the regions, especially Wales, Scotland and Northern Ireland, a move known as devolution.
- An emphasis on **human rights**, especially those of minority groups.

Under Conservative prime minister David Cameron, the coalition government of 2010–15 pursued a more modest programme of ongoing constitutional changes, including a referendum on replacing the electoral system for general elections, limiting the power of the prime minister to dissolve parliament and increasing the powers of the devolved administrations in Scotland and Wales. Since 2015, constitutional reform has been mostly consumed by the issue of Brexit.

Key measures have involved:

- the modernisation of political institutions, including changing the composition of the House of Lords
- greater democracy in the political system
- the establishment of devolved legislative bodies in constituent countries of the UK
- the adoption of the Human Rights Act
- the introduction of a Freedom of Information Act

STUDY TIP

If you are answering an essay question that requires an evaluation of recent constitutional developments, it is much easier to approach it thematically and not chronologically.

The modernisation of political institutions

In recent years several constitutional developments have helped modernise UK political institutions.

- **House of Lords Act 1999:** removed from the Lords all but 92 hereditary peers and allowed for the introduction of more nominated life peers, including so-called ‘people’s peers’. It did not, however, allow for elected members of the Lords.

SYNOPTIC LINK

As the Supreme Court is the highest court in the land it has the final say in most legal matters. Its powers of judicial review are particularly important in deciding if the judgements of lower courts or of other individuals and institutions are lawful. You can find out more about judicial review in Chapter 4.

- **Constitutional Reform Act 2005:** created a separate Supreme Court, which became the highest court in the land. It replaced the Law Lords, who, as their name implies, sat in the Lords. It therefore generated a greater sense of judicial independence and separation of powers.
- **House of Lords Reform Bill 2012:** proposed that a reformed Lords should comprise 80% elected members and just 20% nominated, removing hereditary peers completely. The Bill was abandoned after 91 Conservative backbenchers voted against it.
- **Succession to the Crown Act 2013:** enabled the eldest child of the monarch to ascend to the throne irrespective of gender, although it only applied to royal offspring born after October 2011. It also allowed an heir who married a Roman Catholic to retain their right of succession to the throne.
- **House of Lords Reform Act 2014:** gave existing peers the right to resign or retire from their seats in the Lords, as well as enabling the removal of peers convicted of serious criminal offences or non-attendance. By early 2020, six peers had been removed for non-attendance, including the business person Baron Wolfson in 2017, and 106 had retired, including Lord Lloyd Webber, who also left in 2017, and former Liberal Democrat leader Lord Steel, who left in early 2020.

Greater democracy in the political system

In recent years several constitutional developments have brought greater democracy to the UK political system.

- **Referendums (Scotland and Wales) Act 1997:** allowed referendums to be held in Scotland and Wales over the creation of devolved assemblies. ‘Yes’ votes in both countries, although by a very slim margin in Wales, meant that devolution could now take place.
- **Greater London Authority Act 1999:** allowed for the setting up of a directly elected mayor for London. The Local Government Act 2000 contained provisions for elected mayors in other cities following local referendums.
- **European Parliamentary Elections Act 1999:** changed the electoral system for European Parliament elections in England, Wales and Scotland from first-past-the-post to a form of proportional representation — the regional closed list system.
- **Police Reform and Social Responsibility Act 2011:** allowed for the direct election of Police and Crime Commissioners. The first ones took place in 2012.
- **2011 Fixed-term Parliaments Act (FTPA):** required the prime minister to secure the support of at least two-thirds of MPs to call an early general election, instead of just doing it unilaterally.
- A national referendum was held in May 2011 to change the electoral system for Westminster to the alternative vote in place of first-past-the-post. The move was defeated by a margin of 68%–32%.

SYNOPTIC LINK

These recent constitutional developments link with both the topic of electoral systems and devolution. First they show how different electoral systems can produce different outcomes, for example devolved governments are often coalition or minority administrations. You can find out more about different electoral systems in Chapter 7. Second, they tie in with devolution and how devolved assemblies can be different to Westminster. You can find out more about the devolved assemblies in Chapter 5.

Establishment of devolved legislative bodies in constituent countries of the UK

In recent years the establishment of devolved legislative bodies in Scotland, Wales and Northern Ireland has led to further powers in these countries.

- **Scotland Act 1998, Wales Act 1998 and Northern Ireland Act 1998:** set up elected devolved assemblies/parliaments in these countries. Further powers were transferred in subsequent Acts, including to both Scotland and Wales in 2006, and to Scotland in 2016 and Wales in 2017.
- In November 2004, a regional referendum was held in the north-east of England on the creation of an elected regional assembly. The proposal was decisively rejected 78%-22%.

Human rights

Human rights has been a core issue in recent constitutional developments in the UK.

- **Human Rights Act 1998:** incorporated the European Convention on Human Rights (ECHR) into UK law. This enables UK courts to take the ECHR into account when judging cases involving human rights, therefore sharply reducing the number of cases referred to the European Court of Human Rights in Strasbourg.
- **Freedom of Information Act 2000:** gave individuals greater access to information held by public bodies including local and national government.
- **Equality Act 2010:** brought together around 116 individual measures into a single Act to combat discrimination and promote a fairer society. Among the areas and characteristics protected were race, gender, disability and sexual orientation.
- **Protection of Freedoms Act 2012:** offered citizens greater protection from the state by enhancing scrutiny of the security services, including MI5 and MI6.
- **Data Protection Act 2018:** this is the UK government's implementation of the **General Data Protection Regulation** (commonly known as GDPR). All EU member states were obliged to implement the regulations. It placed strict controls on the handling and saving of all personal data by both government and private bodies including businesses, schools and local councils. It was intended to enhance citizens' rights to personal privacy over their personal details.

The following case studies provide more insight into two of the most significant modern constitutional changes, the **Freedom of Information Act 2000** and the **Fixed-term Parliaments Act (FTPA) 2011**.

CASE STUDY

Freedom of Information Act 2000

The Freedom of Information (FOI) Act 2000 highlighted transparency of government and institutions. The 1997 White Paper 'Your Right to Know' stated:

'Openness is fundamental to the political health of a modern state. This White Paper marks a watershed in the relationship between the government and people of the United Kingdom. At last there is a government ready to trust the people with a legal right to information.'

The Act applies to most public bodies including local councils, police forces, the BBC and universities, as well as central government. Under its terms public institutions have two main obligations:

- 1 They are obliged to publish and make freely available (for example via free online access) certain information about their activities, e.g. minutes of meetings, public policy documents etc.
- 2 Members of the public and pressure groups are able to make requests via the Information Commissioner's Office (ICO) for information and data. The institution must normally reply to such requests within 20 days and is only able to withhold information under certain circumstances.

Examples of FOI requests have included a request by the BBC for local councils to reveal how many individuals they recorded sleeping rough at any stage in 2019, and the infamous MPs' expenses scandal in 2009, which resulted in five Labour MPs and two Conservative peers being jailed.

But how effective has the FOI Act been? It is certainly popular: in the period July to September 2020 alone, some 11,042 requests were received. A total of 86% were responded to in time, and around three-quarters

were deemed 'resolvable', i.e. the information could be gathered. However, only 40% were answered in full, 35% were denied in full and the remainder were answered in part. There are several grounds for legitimately denying requests, for example on the grounds of national security, commercial confidentiality, or that to collect the information would be disproportionately expensive.

The Act has been invaluable for investigative journalists, pressure groups and ordinary people seeking information that public bodies might otherwise prefer not to reveal. In that sense, it has provided a major boost to open and transparent government.

It is perhaps telling that in his memoirs published in 2010, former prime minister Tony Blair reflected on passing the Act:

'I look at those words (freedom of information) as I write them and feel like shaking my head till it drops off my shoulders. You idiot. You naive, foolish, irresponsible, nincompoop.'

Back in 1996 he was more positive, noting:

'Information is power and any government's attitude about sharing information with the people actually says a great deal about how it views power itself and how it views the relationship between itself and the people who elected it.'

Perhaps he became disenchanted with how journalists and political hacks frequently make use of FOI requests, and also how it could restrict candid confidential discussions in government departments. Or perhaps the Act revealed too many skeletons in Labour's own cupboard, and not just those of the party's opponents?

ACTIVITY

Research one of the FOI requests mentioned in the case study, or another of your own choice, in more detail. What were its key points and what impact did the disclosure have?

CASE STUDY

Fixed-term Parliaments Act 2011

The Fixed-term Parliaments Act (FTPA) 2011 was created at the beginning of the Conservative–Liberal Democrat coalition government. It essentially removed the traditional right via the royal prerogative for the prime minister alone to seek a dissolution of parliament and call an early election simply by asking the Queen's permission, which by convention she was obliged to grant. Prior to the Act, it was a common tactic of prime ministers to 'go to the country' early, often around a year in advance of a proposed general election, when the polls looked favourable. Margaret Thatcher did this in 1983 and Tony Blair in 2001.

So why did the coalition government pass this Act? Several explanations have been suggested, including the desire to create stability and permanence for the first coalition government since 1945. Other motives include it being a long-term Liberal Democrat policy and also to protect that party from being ditched by their Conservative partners when the polls looked favourable.

The two main terms of the Act are as follows:

- 1 The prime minister cannot unilaterally go to the monarch and seek a dissolution of parliament and an early election.
- 2 The only exceptions to this rule are when the government loses a vote of no confidence in the House of Commons and this is subsequently confirmed by another vote 2 weeks later, or when two-thirds of MPs (i.e. 434 or more) vote to hold an early election.

How well the Act has worked is open to debate. On the one hand it fulfilled its initial aim of guaranteeing a 5-year term for the coalition government and ensuring political stability.

On the other, there are strong grounds for assessing it as much less successful. It was easily overridden by then prime minister Theresa May just 2 years into her government, when the Commons voted 522-13 in favour of calling an early election. Labour leader Jeremy Corbyn also favoured an election, as few opposition leaders want to be seen as 'political cowards'. The only MPs to vote against it were a handful of Labour rebels, one Social Democratic and Labour Party MP from Northern Ireland, and three independents. The Scottish National Party abstained.

In 2019, Prime Minister Boris Johnson tried three times to call an early election to find a way out of the Brexit impasse, but failed to get the two-thirds majority. The Act was eventually circumvented by a new piece of legislation, the Early Parliamentary General Election Act, which only required a simple majority. It passed at the end of October 2019 by 438-20 votes with 181 abstentions of mostly Labour and Liberal Democrat MPs. The Act was fast-tracked through parliament and became law within 2 days of getting through the Commons.

However, by 2020 the future of the FTPA looked grave. In 2019, both Labour and Conservative manifestos promised repeal. Labour argued that the Act 'stifled democracy and propped up weak governments' while the Conservatives stated it 'led to paralysis at a time the country needed decisive action'. A draft bill for its abolition was introduced in December 2020.

The ease with which the FTPA could be both passed originally and overridden on two occasions within 2 years is a good example of both parliamentary sovereignty and the relative simplicity with which constitutional changes can be implemented but also reversed.

SYNOPTIC LINK

The FTPA is a good example of parliament not necessarily scrutinising or debating legislation that deeply, although scrutiny of legislation is one of its key functions. You can find out more about the structure and role of parliament in Chapter 2.

Evaluating post-1997 constitutional changes

While there is little doubt that there have been many changes to the Constitution since 1997, it is much more debatable how successful and significant they have been. By examining a number of key areas we can review the arguments for and against the success of constitutional change.

Modernisation of political institutions

Successes

- The House of Lords has undergone a substantial transformation since 1997. It is smaller, more diverse and far less Conservative-dominated, and it is now easier to remove peers for misconduct or non-attendance.
- The creation of the Supreme Court has enabled a clear separation between the executive and judiciary and given it a sense of corporate identity and a higher public profile. It has remained politically neutral and apolitical, unlike its US counterpart.
- The notion of gender equality has reached even the traditions of the royal family.

Failures

- Reform of the House of Lords remains incomplete and unfinished. Attempts to build upon the 1998 measure, most notably in 2012, have come to nothing. The UK remains virtually unique in the democratic world in having an entirely unelected second chamber.
- The creation of an independent Supreme Court has arguably led to too much power residing with unelected and unaccountable justices and has therefore undermined parliament.
- In regard to the royal family, the alteration to the line of royal succession is a very minor tweak. It still remains illegal for the monarch to be Roman Catholic.

Democratisation

Successes

- There is greater autonomy in some large cities, and the post of Mayor of London has attracted high-profile incumbents such as Ken Livingstone, Sadiq Khan and Boris Johnson. Several other cities have also embraced the idea, with prominent Labour politician Andy Burnham elected as Mayor of Greater Manchester in 2017.
- The reform of European Parliament elections has over the years enabled a greater variety of parties to be represented, including UKIP/Brexit Party and the BNP, along with proportionately more Greens and Liberal Democrats.
- The direct election of police and crime commissioners (PCCs) has also enhanced opportunities for political participation and local democracy.

Failures

- While the Mayor of London may be considered a successful reform, in the regions the picture is much more mixed. Where referendums have been held on whether or not to establish mayoral elections, the majority of cities have rejected the proposal. In 2016, Torbay even voted to get rid of the position of elected mayor having approved it in 2005. Turnout in many mayoral referendums and PCC elections has often been abysmal even by local government election standards. Just 15% of the electorate voted to retain Middlesbrough's elected mayor in 2013 and an even more meagre 11.6% turned out in 2012 to elect the PCC for Staffordshire, although this number did almost double for the 2016 election.
- Lack of enthusiasm for reform of the voting system for national elections is shown by the outcome of the 2011 alternative vote referendum.
- The provisions of the FTPA were easily overcome in both 2017 and 2019 to bring about early general elections.

Human rights

Successes

- The renewed emphasis on and landmark legislation in the area of human rights has increased awareness and visibility of rights, especially those of minority groups.
- Laws concerning privacy and access to information have also enhanced the rights of everyone and made public bodies and other powerful institutions such as employers more accountable and responsible for the information they hold.
- The important role of the UK Supreme Court in interpreting this legislation has increased protection of citizens' rights.

Failures

- It could be argued that the expansion of rights has led not only to the rise of '**identity politics**' but also to a clash between individual and collective rights (see pages 21–23).
- The growing role of the courts in human rights cases has led to much controversy, for example when the Supreme Court ruled aspects of anti-terror legislation (such as the freezing of the assets of suspected terrorists in 2010) incompatible with the Human Rights Act.
- With regard to the Freedom of Information Act many requests for information are declined for various reasons (see case study, page 14).

Devolution

Successes

- Devolution has worked well especially in Scotland and Wales, and the number of powers devolved has increased.
- Popular support for devolution has also increased. Originally in 1997 Wales backed the plan by the slimmest of margins: 50.3%–49.7%. Another vote in 2011 to expand law-making powers was backed by 63.5% of voters.
- Some argue that it was only a devolved parliament that stopped Scotland backing full separation from the UK in the 2014 independence referendum.
- In Northern Ireland, the devolution process, although more problematic, has helped to end the violent period known as 'the Troubles'.

Failures

- Devolution has not succeeded everywhere. In Northern Ireland policy disagreements and a scandal over a failed renewable energy scheme meant that the Assembly was suspended between January 2017 and January 2020.
- Support for devolution in England itself has not increased. A 2004 proposal to create a North East regional assembly was emphatically rejected by 78% of voters.

USEFUL CONCEPT

Identity politics A relatively new term used to describe the phenomenon of people of a particular religion, race, sexuality etc. campaigning on particular issues and moving away from traditional broad-based party politics.

ACTIVITY

Using the arguments outlined in this section, and others you have researched, write a concluding paragraph on whether or not you consider changes to the British Constitution since 1997 to have been a success.

Could the British Constitution be reformed still further?

In short, the answer is yes. There are a number of areas that many would consider vital and/or desirable for change. These include:

- Lowering the voting age to 16 across the UK (as already occurs in Scotland and Wales)
- Making voting compulsory, as it is in Australia

ACTIVITY

Research and note down both the potential benefits and drawbacks of each of these suggested changes to the British Constitution. A good place to start your research would be the House of Commons Political and Constitutional Reform Committee document on the British Constitution, which you can find online at <https://publications.parliament.uk/>.

- Introducing an elected component to the House of Lords
- Reforming the voting system for Westminster elections to one that is more proportional
- Making more use of e-democracy such as online voting
- Extending devolution to England
- Widening public participation in candidate selection by political parties, for example by using a US-style primary system
- Requiring photo ID when voting to prevent voter fraud

However, while at first glance the issues in this list may seem attractive, they all carry possible pitfalls.

KNOWLEDGE CHECK

- 6 In what ways have recent constitutional reforms enhanced democracy in the UK?
- 7 Which changes to the Constitution have bolstered citizens' rights?
- 8 What are the main limitations to the Freedom of Information Act 2000 and the Fixed-term Parliaments Act 2011?

Current debates about the extent of rights and the effectiveness of recent legislation

The effectiveness of recent UK legislation is a complex but important debate. Some would argue that the rights of citizens are well protected in the UK, especially via recent statute law and the UK's links with Europe, not least as a signatory to the European Convention on Human Rights (ECHR). An independent, non-politicised judiciary also serves to defend citizens' rights. Others would note that the lack of entrenched rights makes them more vulnerable to the whims of parliament.

Much depends on the following:

- Whose rights and which rights are most important?
- How far are certain rights inalienable and permanently protected, and how far can a democratically elected parliament play a key part in the process?
- Are rights better protected in other countries, such as the USA?
- Are there ways in which rights could be better protected?

Most discrimination-related rights, such as pay equality, equal access to services and employment rights, are currently found in the Equality Act 2010. Most human rights issues, such as the rights to privacy and to freedom from torture, are protected by the Human Rights Act 1998. As both Acts are statute law, in theory they could be vulnerable to weakening or alteration by parliament, since parliamentary sovereignty, unlike US **constitutional sovereignty**, makes it easy to add new rights but particularly to amend many existing rights. In that sense, there is more trust placed in the UK's elected politicians than the Constitution or the courts to protect our rights. That being said, as the UK is a signatory to the ECHR there is a constitutional 'double lock' to protect certain rights.

USEFUL CONCEPT**Constitutional sovereignty**

When a codified constitution has ultimate authority. No parliament or government can pass laws or undertake actions that are ruled by the courts to be unconstitutional.

SYNOPTIC LINK

Constitutional sovereignty is a bedrock of the US Constitution. You can find out more about the US Constitution in Chapter 11.

The protection of human rights in the British Constitution

The following debate summarises some of the key points concerning human rights in the UK today.



Protesters gather at a national anti-racism rally in London

DEBATE

How well does the British Constitution protect rights?

It protects them well

The UK's constitutional culture values civil liberties (at least in the abstract). There is formal support of human rights by the government. For example, every parliamentary Act contains a declaration that the Act complies with the Human Rights Act (HRA) 1998.

Current legislation provides a strong legal protection for core rights via the interlinked HRA and European Convention on Human Rights (ECHR) mechanisms. The HRA incorporates the ECHR into UK law. EU law also provided additional protection, for example in the area of workers' rights.

The UK has a relatively strong institutional framework for protecting rights, which extends beyond the courts, including the Equalities and Human Rights Commission, which often brings cases under the Equality Act 2010.

It does not protect them well

Little political consensus exists between parties as to the actual substance of human rights guarantees. The existing framework of UK legal rights protection (based on the HRA and ECHR) is vulnerable to political attack, with Conservative calls for a 'British Bill of Rights'. European judgements that go against UK policies regularly spark media attacks on the European Court of Human Rights or, more frequently nowadays, UK courts.

Brexit is removing the safety net for certain non-discrimination, migrant and labour rights formerly provided by EU law.

UK governments have been repeatedly able to introduce and pass legislation diluting rights protection, especially in areas like national security with recent anti-terror laws, and measures that seek to reform immigration and entitlement to social benefits and housing.

Social and economic rights, for example to receive appropriate healthcare, are seen by some as poorly established and weakly protected. International human rights law has had a very limited impact in practice on government policy.

 Individually or in groups, draw up a policy paper arguing either for or against the notion that the British Constitution adequately defends citizens' rights.

ACTIVITY

Research some of the key rights protected by the ECHR. A good place to start your research would be to access the Official Texts on the ECHR website, which can be found at www.echr.coe.int.

STUDY TIP

The ECHR is nothing directly to do with the European Union. It was drawn up in 1950 by a completely separate body, the Council of Europe. It is the case, however, that all EU members must also be members of the Council of Europe and so must sign up to the ECHR.

Unlike many other countries such as the USA, where rights are entrenched in the Constitution and are very difficult to alter or remove, in the UK the vast majority of human rights are protected by the ECHR and the Human Rights Act 1998. In theory, the latter could be repealed by parliament. Also, now that the UK has left the EU, it could withdraw from the ECHR. Many Conservative politicians in particular have from time to time argued for the UK to withdraw from the ECHR and to draw up a 'British Bill of Rights' instead. However, any attempt to do so would create considerable political and legal opposition. It is also worth noting that currently only the Vatican City and Belarus are not members of the Council of Europe, the body behind the ECHR.

Concerning the measurement of the protection of citizens' rights, a 2012 British Academy report stated that from 1966 to 2010 there had been around 14,460 applications by UK citizens to the ECHR in Strasbourg. Yet only in 1.3% of cases was the UK government found to have breached the convention. Admittedly, some of these cases — and, indeed, later cases too — concerned major issues such as votes for prisoners. Therefore, perhaps UK citizens' rights on the whole are relatively well protected under an uncoded constitution relying largely upon statute law and its ties to European bodies.

Should the British Constitution be codified?

There has been much discussion over the years as to whether or not there should be a complete overhaul of the British Constitution, with reformers arguing for a modern, codified constitution. In times of political crisis, there have been renewed calls for such a change. For example, during the protracted struggle over Brexit between 2017 and 2019 parliament and the government appeared incapable of finding a way forward despite the various options of a second referendum, a Brexit deal, a no-deal Brexit or calling another election. For once, the rules of the game were not allowing 'play on the pitch'. In the event, the December 2019 election returned a government with a strong majority, Brexit was achieved, in principle if not in detail, and the parliamentary match resumed play. But the argument for a codified constitution lingers on.

USEFUL CONCEPT

Osmotherly Rules Drawn up in 1980 and revised in 2014, these rules give guidance to civil servants and other government officials when appearing before select committees.

KNOWLEDGE CHECK

- 9 How does the European Court of Human Rights help protect citizens' rights?
- 10 What are the benefits of an uncoded constitution?
- 11 What is meant by the term 'elective dictatorship'?

DEBATE

Should the British Constitution be codified?

For codification	Against codification
It would provide greater clarity on what is and what is not constitutional and so lawful. A problem with conventions, as constitutional expert Vernon Bogdanor remarked, is that 'The understandings are not always understood.' Removing the vagueness of custom and tradition would represent a desirable modernisation of the political process. It would provide further and more easily understood rights for all citizens, as the Constitution could entrench key rights as opposed to leaving them to the mercy of parliament. It could reduce the concentration of power in the hands of the executive. It would enable local government and the regional assemblies outside England to enjoy proper constitutional protection and permanence. It would end the process of piecemeal codification such as the <i>Cabinet Manual</i> and the Osmotherly Rules. Conventions can and are broken, for example with the Lords and the 1909 Budget, or when Boris Johnson sought to prorogue (suspend) parliament for 5 weeks in 2019. Only a unanimous ruling by the Supreme Court stopped this attempt. By convention, prorogation lasts for a much shorter period. The UK is one of only three countries (the others are Israel and New Zealand) not to have a codified constitution.	The current constitution encourages flexibility and adaptability, e.g. in regard to the calling of early elections. Codified constitutions are by nature far more rigid. Codification would go against the tradition of UK politics, which is one of constitutional evolution not revolution. Parliament would struggle to come to a consensus on much of the content of a codified constitution. Should it stipulate a particular voting system, and if so, which one? It would give unaccountable judges greater power, as they would be required to make rulings on what Acts or measures were constitutional, much as they do in the USA. It would also in all likelihood considerably politicise the judiciary. The issue of education and awareness about the British Constitution is best met by better political education in schools. There is a marked lack of popular demand for such a reform. The alternative vote referendum of 2011 is a case in point. It would seriously undermine parliamentary sovereignty, which has served the country's politics well over the centuries. Philip Johnstone, writing in the <i>Daily Telegraph</i> in January 2020 after the Brexit bill was passed, commented that 'It turns out our system wasn't broken after all.'



Individually or in pairs, decide which arguments on each side of the debate are most convincing.

Individual and collective rights

So far, the term 'rights' has been applied generally. We must also be aware that citizens' rights are often categorised as either collective or individual rights. Individual rights, as the term suggests, are the rights held by an individual citizen, such as the right to a fair trial or the right not to face discrimination. Collective rights are those that belong to groups ranging from formally organised groups such as trade unions to those that are faith based, or those that reflect a certain characteristic such as gender, disability or sexuality. Collective rights can also be applied to the population as a whole, such as the right to protection from acts of terrorism and the safeguarding of national security.

These two sets of rights are often seen to conflict with each other. An obvious example is that all individuals have the right to practise any (or no) religious faith, which often involves following a particular moral code such as refraining from drinking alcohol or a disapproval of homosexuality. Yet, such a stance could be at odds with the collective rights of wider groups such as drinkers or the LGBTQ+ community.

CASE STUDY

Can religious faith be used to justify refusing to serve members of the LGBTQ+ community?

In a case involving Ashers Baking Company Ltd in Northern Ireland, the owners were prosecuted for refusing to bake a cake for a gay rights activist who had asked them to incorporate the slogan 'Support gay marriage' along with a picture of Bert and Ernie from *Sesame Street* and the logo of the Queerspace organisation in the decoration. In October 2018, the Supreme Court overturned the judgements of lower courts that the bakery was guilty of discrimination. The argument was that the bakery did not discriminate against the customer who happened to be gay, but

against the message on the cake, which they would have objected to regardless of the customer's sexual orientation. Therefore, the issue was not about sexuality but what is termed 'forced speech'. For example, can a Labour-supporting printer refuse to produce Conservative Party publicity or vice versa? The answer is probably yes.

This case is an example of how the individual right to free speech or expression can prevail over the collective rights of a particular group. A similar case but with a different outcome occurred in 2013 when the Christian owners of a Cornish guest house lost a court case over refusing to allow a same-sex couple to share a double bedroom.

CASE STUDY

Female circumcision

A particularly sensitive topic concerns traditional cultural practices illegally practised by some minority groups in the UK. Although illegal in most countries, female circumcision (FGM) is a common practice among certain (but by no means all) communities in parts of Africa and the Middle East. It is, however, a practice clearly at odds with most countries' cultural norms and values. Under UK child safeguarding rules, schools and social services are required by law to report immediately to the police any suspected cases of FGM, which is illegal under the

Female Genital Mutilation Act 2003. This results in a potential clash between the individual rights of a citizen to follow cultural practices, and the collective rights of wider UK society, who rightly see the practice as a form of child abuse. There are also, of course, the important individual rights of the child to consider. In this instance, the solution is clear in UK law. The individual rights of the child are uppermost, and the lack of informed consent makes it straightforward to ban the practice, despite it being a collective tradition in certain communities.

CASE STUDY

Uber drivers

In 2016, two Uber drivers sued the firm claiming that they were employees and not, as Uber claimed, self-employed. By claiming to be employees, the drivers would gain entitlement to benefits such as holiday pay and the minimum wage. They were therefore fighting for the collective rights of all Uber drivers, and were supported in their court case by the Independent Workers' Union of Great Britain. However, they were opposed not only by Uber, but also by some of their fellow Uber drivers who enjoyed the freedom of being self-employed and asserted their individual rights regarding employment status. Ultimately, Uber lost its case and the collective rights of all its workers were protected at the expense of some individual drivers.



The 2016 court case involving Uber is a classic example of the potential for a clash between individual and collective rights

There are undoubtedly times when these two categories of rights conflict with each other. The outcomes follow no particular pattern in terms of which set of rights usually prevails — these contrasting case studies resulted in a victory for both collective over individual rights and vice versa. In addition, several clauses of anti-terror legislation designed to protect the collective right of public safety have been successfully challenged in the courts. For example, in 2004 the courts ruled that indefinite detention of suspected terrorists broke human rights laws, seemingly favouring individual rights to a fair trial over collective rights to protection from terrorist outrages.

Much depends on the individual context, the interpretation of the judges and public opinion. The latter can often persuade the government to pass legislation to tilt the balance of rights in one or other direction. Yet, there are times when the conflict can also be between competing sets of either individual or collective rights within each category, such as in the case of the Uber drivers. The issue of citizens' rights is, therefore, a dynamic rather than fixed aspect of the British Constitution.

KNOWLEDGE CHECK

- 12 What is the difference between individual and collective rights?
- 13 Does one set of rights always prevail over the other?

SUMMARY

- The main purpose of a constitution is to ensure how politics and government are conducted.
- The effectiveness of a democratic constitution can be judged in several ways including how well it upholds civil liberties, promotes democracy and enables stable government.
- The British Constitution is unitary/quasi-federal, uncodified and flexible.
- The main sources of the British Constitution are statute law, common law, works of authority, the royal prerogative, conventions and international agreements.
- The British Constitution has evolved from 1215 to the present day through several key milestones, such as laws determining who can vote.
- Changes since 1997 to the British Constitution, such as the Freedom of Information Act 2000 and the Fixed-term Parliaments Act 2011, have had mixed results.
- The British Constitution defends citizens' rights primarily through statute law and the European Court of Human Rights, and there is debate over how effectively citizens' rights are protected.
- There are differences between individual and collective rights, and they both clash and coincide for individuals.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three different ways in which the British Constitution upholds citizens' rights. (9 marks)
- 2 Explain and analyse three ways in which any two constitutional changes since 1997 have affected the British Constitution. (9 marks)
- 3 Explain and analyse the significance of three sources of the British Constitution. (9 marks)

Paper 1 Section C style questions

- 4 'The British Constitution provides very weak protection for citizens' rights.' Analyse and evaluate this statement. (25 marks)
- 5 'The British Constitution has stood the test of time extremely well and needs no major reform.' Analyse and evaluate this statement. (25 marks)
- 6 'Individual and collective rights inevitably and always conflict with each other.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Bogdanor, V. (2016) 'The UK Constitution: do we need a constitutional convention and a codified constitution?', *Politics Review*, Vol. 26, No. 1, pp. 23–25.

Fairclough, P. (2014) 'UK democracy: how could it be improved?', *Politics Review*, Vol. 24, No. 2, pp. 30–33.

McNaughton, N. and Magee, E. (2015) 'The 2010–15 fixed term parliament act: how has it worked?', *Politics Review*, Vol. 24, No. 4, pp. 31–33.

Milford, A. (2018) 'The UK Constitution: how successful have recent reforms been?', *Politics Review*, Vol. 28, No. 2, pp. 30–33.

Norton, P. (2017) 'UK Constitution: is it a sufficient check on executive power?', *Politics Review*, Vol. 27, No. 1, pp. 31–33.

Websites

Cabinet Manual — this is written accessibly and provides an up-to-date overview of the British Constitution: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/60641/cabinet-manual.pdf

House of Commons Political and Constitutional Reform Committee document on the UK Constitution: <https://publications.parliament.uk/>

2

The structure and role of parliament

KEY QUESTIONS ANSWERED

- How is parliament structured?
- What are the main functions of parliament?
- How is legislation passed and how effective is the process?
- What are the main theories of parliamentary representation?
- How well do committees function in parliament?
- What is the role of the opposition in parliament?
- What is the nature of the relationship between parliament and government? Who is the dominant force?
- How well does parliament scrutinise the executive?

BACKGROUND INFORMATION

Parliament is the beating heart of UK government. Despite the growing importance of the devolved regional assemblies in Scotland, Wales and Northern Ireland, most high political drama still takes place in Westminster. It is where debates take place over issues as diverse as coronavirus, terrorist outrages, Brexit and the annual budget. It is where national laws are passed, and where the public is represented by 650 elected representatives (MPs). Although occasionally direct democracy is practised in the UK, as with the 2016 EU **referendum** (Brexit), nearly all major political decisions are decided within parliament's hallowed walls. Even those decisions made elsewhere — for example in Whitehall departments or by the prime minister in 10 Downing Street — are usually discussed and pored over in parliament at some stage. For example, during the height of the coronavirus crisis, while Prime Minister Boris Johnson was delivering daily bulletins and addressing the nation on television, parliament was debating emergency measures and passing a special law to deal with the pandemic, the Coronavirus Act 2020.

KEY CONCEPT

Referendum A direct public vote on a policy measure, the opposite of representative government.

SYNOPTIC LINK

Since devolution has been passed for parts of the UK, many laws are now made by the regional assemblies, e.g. the Scottish Parliament in Edinburgh. You can find out more about devolution in Chapter 5.

KEY CONCEPTS

House of Lords The unelected and least powerful chamber in parliament.

House of Commons The elected portion of parliament and where most power lies.

Member of parliament (MP) Person formally and directly elected by voters to sit in the House of Commons.

The structure and functions of parliament

The UK Parliament, like nearly every other legislature in the world, is bicameral. That is to say it comprises two chambers, the **House of Lords** and the **House of Commons**. However, unlike virtually every other world legislature, one chamber, namely the Commons, holds virtually all real power. By convention, all prime ministers and most government ministers in modern times sit in the Commons. The last member of the Lords to become prime minister, Sir Alec Douglas-Home in 1963, resigned his peerage, and fought and won a by-election so that he could sit in the Commons as an MP instead of remaining in the Lords.

The second chamber, the Lords, is largely advisory and can only really ask the Commons to ‘think again’ about a proposed law.

SYNOPTIC LINK

Sir Alec Douglas-Home provides another good example of a modern-day constitutional convention. There would have been nothing strictly illegal or unconstitutional about Douglas-Home sitting in the Lords while being prime minister, but in the modern age, it would have been widely viewed as unacceptable as he might have lacked democratic legitimacy. You can find out more about constitutional conventions in Chapter 1.

In terms of membership, the Commons comprises 650 **members of parliament (MPs)**, each of whom is directly elected by single-member constituencies using the first-past-the-post electoral system. Plans were drawn up in 2010 to reduce the number of MPs to 600 after the infamous MPs’ expenses scandal but these have yet to be implemented.

Each MP represents an average of 68,000 voters, although despite the best efforts of the independent Boundary Commission, some significant differences remain in constituency size. The most populated seat in the 2019 election was the Isle of Wight with an electorate of 113,000, while Na h-Eileanan an Iar (Western Isles) in Scotland had just over 21,000 voters.

Nearly all MPs are members of a political party, although a handful of independents have been elected over the years, including the former war correspondent Martin Bell, who represented Tatton from 1997 to 2001, and health campaigner Dr Richard Taylor, who represented Wyre Forest from 2001 to 2010 for the Independent Kidderminster Hospital and Health Concern party. In Northern Ireland, Lady Sylvia Hermon sat as an Independent Unionist MP from 2010 until her retirement in 2019. In the 2019 election, a handful of independents made strong showings, including Claire Wright in East Devon, though none managed to win a seat. Overall, the Commons is dominated by party politics, which has important implications for the scrutiny of government. Table 2.1 shows party allegiances in the House of Commons in 2021.

Table 2.1 Party allegiances in the House of Commons, January 2021

Party	Number of MPs	Men/women
Conservative	365	Men: 278 Women: 87
Labour	200	Men: 97 Women: 103
Scottish National Party	47	Men: 32 Women: 15
Liberal Democrat	11	Men: 4 Women: 7
Democratic Unionist Party	8	Men: 7 Women: 1
Sinn Féin	7	Men: 5 Women: 2
Independent, including the speaker	5	Men: 3 Women: 2
Plaid Cymru	3	Men: 2 Women: 1
Social Democratic & Labour Party	2	Men: 1 Women: 1
Alliance	1	Men: 1
Green Party	1	Women: 1

Source: adapted from <https://members.parliament.uk/parties/Commons>

KEY CONCEPTS

Lord Members of the House of Lords, unelected and chosen for life or until they decide to retire.

Peer Another term for Lord.

The House of Lords by contrast consists almost entirely of unelected members and lacks any democratic mandate, which is correspondingly reflected in its lack of powers. The size of its membership varies over time as there is no number fixed in law, but in 2021 it comprised around 800 peers. Since the 1999 Blair reforms (see page 11), the **Lords** have consisted of:

- **Life peers**: those who are appointed to a peerage for their lifetime only. This was made possible by the Life Peerages Act 1958. Before then, the Lords comprised just hereditary peers, bishops and the Law Lords, the latter group's presence ending in 2009 with the creation of a separate Supreme Court. Most peers in the Lords today are life peers, often nominated by the leaders of political parties.
- 92 hereditary peers (prior to the 1999 reforms, there were around 700 sitting in the Lords): chosen from among the wider number of hereditary peers, so when a vacancy occurs among this group through death or resignation, the ensuing 'election' has a very small and select electorate. It is indeed one of the ironies of the Lords that the only elected component is the hereditary part. Life and hereditary peers are known as the **Lords temporal**.
- 26 Church of England bishops: selected mostly on the basis of seniority, although the bishops of five dioceses (Canterbury, Durham, London, Winchester and York) automatically get a seat. Collectively, they are known as the **Lords spiritual**.
- In contrast to the Commons, a large number of independents (often known as crossbenchers) sit in the Lords. No one party since 1999 has enjoyed a majority (see Table 2.2).

Table 2.2 Party allegiances in the House of Lords, January 2021

Party	Number of peers	Men/women
Conservative	264	Men: 196 Women: 68
Crossbench	184	Men: 137 Women: 47
Labour	178	Men: 118 Women: 60
Liberal Democrat	87	Men: 55 Women: 32
Non-affiliated	48	Men: 39 Women: 9
Bishops	26	Men: 21 Women: 5
Democratic Unionist Party	5	Men: 5
Green Party	2	Women: 2
Ulster Unionist Party	2	Men: 2
Conservative Independent	1	Men: 1
Independent Labour	1	Men: 1
Independent Social Democrat	1	Men: 1
Independent Ulster Unionist	1	Men: 1
Labour Independent	1	Women: 1
Plaid Cymru	1	Men: 1

Source: adapted from <https://members.parliament.uk/parties/Lords>

Trends and developments in parliament since the nineteenth century

Britain has effectively been a parliamentary state since the Glorious Revolution of 1688 and the passing of the Bill of Rights in 1689. Parliament, and not the monarchy or military, is where laws are made, policy is debated and the government is brought to account and scrutinised. In the UK system, the government is also part of the legislature (unlike the US system, which has a separation of powers). All ministers by convention must also be in parliament either as MPs (most) or peers in the House of Lords. Although parliament itself has been around for centuries, it has remained neither static nor unchanging:

- **Democracy:** parliament's membership was increasingly chosen by **all** of the people as the UK moved towards a parliamentary democracy. This process was achieved via a number of parliamentary reform Acts, culminating in 1928 when full female suffrage was achieved.
- **Balance of power:** the balance of power between the two chambers, the Commons and the Lords, shifted considerably in the twentieth century to the extent that real political power now lies only with the Commons. The Parliament Acts of 1911 and 1949 brought about this change.
- **Diversity:** the growth of democracy has made membership of the Commons increasingly diverse. The first female MP, Nancy Astor, took her seat in 1919, whereas the December 2019 election returned a record

220 women MPs. Racial diversity has also increased in modern times even if ethnic minorities remain proportionally underrepresented in Parliament. In 1987, just three black MPs were elected, but there has since been a growing number of elected representatives from BAME communities, including the first Chinese MP in 2010 and the first South Asian woman MP, also in 2010. Following the 2019 election, 65 MPs were BAME. There has also been an increase in LGBTQ+ elected representatives and people with disabilities.

- **Checks and balances:** there has been a growing trend towards centralised control and discipline via the political parties, with less scope for independent voting and policy-making. This has meant that the governing party has been able to dominate parliament with the resultant reduced scope for scrutiny and checks on the executive. However, in more recent times backbench MPs have become increasingly rebellious — recent prime ministers have been confronted by and sometimes constrained by significant revolts from their own MPs. For example, Theresa May (prime minister from 2016 to 2019) was unable to get her Brexit deal through parliament.
- **Committees:** there has been an increased use of committees as a forum for discussion and debate in place of the main chambers. This development makes the often very heated and adversarial atmosphere of the Commons, especially during Prime Minister's Question Time (PMQs), untypical of much parliamentary business, which is considerably less lively and entertaining, although arguably more effective.
- **Broadcasting:** parliament has been televised since 1989, which has arguably raised its profile and enabled the electorate to become more familiar with its procedures, personalities and tone. Effective parliamentary debaters as well as less distinguished contributions are readily available for all to see.
- **Devolution and EU membership:** the advent of devolution (in Scotland, Wales and Northern Ireland) and EU membership (until 2020) has meant that many policies and laws have been decided outside Westminster, for example in Edinburgh or Brussels. This was particularly true for those areas in which the EU held sway, such as trade and agriculture.

SYNOPTIC LINK

The development of democracy and extension of the vote was an evolutionary and gradual process beginning with the 1832 Great Reform Act, so it took nearly a century to achieve a fully democratic parliamentary state. You can find out more about the development of democracy and extension of the vote in Chapter 6.

KEY CONCEPT

Opposition Those parties not in government. After the 2019 election this comprised Labour, the Liberal Democrats, the Green Party, the nationalist parties and the Northern Irish parties.

Yet despite these developments, parliament retains many ancient, quaint (some might say outdated) traditions. Formality and ritual still play a large part in Westminster, the 'mother of all parliaments'. For example, MPs do not vote electronically but file into the division lobby and then walk through two doors, the Ayes and Noes, and are manually counted. The government and **opposition** sit facing each other, traditionally separated by a distance calculated as two sword lengths apart (3.96 metres). They may not cross these lines during sittings. Finally, the speaker starts each day of parliamentary business with a short, formal procession preceded by a gold mace (staff) and accompanied by the chaplain.

Key positions in parliament

Before analysing in more depth the main functions of parliament, it is worth understanding some of its key roles.

The prime minister

The prime minister is the most important person in parliament. As leader of the largest single party, they nearly always command an overall majority in the Commons (although the periods 2010–15 and 2017–19 were something of an exception), and therefore can command and control most of the business and

outcomes of the Commons. Although in theory parliament is meant to scrutinise and check the government, in reality a prime minister with a large majority can normally rely on getting the House of Commons to vote the way he or she wants. This is because the executive (government) dominates the legislature.

The speaker

If we think of the Commons as one big debating chamber, then the speaker is the chair, trying to keep order and ensuring as many MPs as possible from across the range of parties are allowed to speak in debates. They also administer the rules of the House of Commons and can suspend MPs who break these rules for varying periods of time. Among the rules is a ban on calling a fellow MP a liar, or insinuating that they are lying or corrupt. For example, then-speaker John Bercow suspended veteran Labour MP Dennis Skinner for calling then prime minister David Cameron ‘Dodgy Dave’, and subsequently refusing to retract or apologise for his comments. The speaker is voted for by their fellow MPs in a series of ballots. Lindsay Hoyle was elected speaker on the fourth ballot in November 2019, and then unanimously re-elected following the general election that December.



Lindsay Hoyle was re-elected as Commons Speaker following the December 2019 general election

By tradition, the speaker renounces any party allegiance on taking up the post, to ensure impartiality. At election time, traditionally the major political parties do not oppose them and they stand as ‘The speaker seeking re-election’. In recent years, however, the post has become more controversial. Michael Martin, speaker from 2000 to 2009, was effectively forced to resign due to the expenses scandal and growing dissatisfaction over his performance in the post. His successor, John Bercow, also faced growing criticism, especially from the government benches, over his alleged favouritism towards opposition MPs and his perceived lack of cooperation on progression of the Brexit bill following the 2016 referendum. He was also accused of bullying by some members of his own staff including his former private secretary Kate Emms, who worked for him between 2010 and 2011 — claims he strongly denied.

Leader of the House of Commons

This cabinet-level post, held by prominent Eurosceptic Jacob Rees-Mogg following the 2019 election, is essentially that of the government's business manager. It is their job to see that from the executive's perspective the Commons runs smoothly, and that its bills are properly timetabled. For example, on Thursdays the leader of the house tells the Commons about the business scheduled for the following week and usually provisional business for the week after that. Their job also involves close liaison with the government's chief whip.

Whips

The term 'whip' derives from fox hunting, where the 'whipper in' is in charge of keeping the pack of hounds in order. This gives a fairly good indication of a whip's role in the Commons. Essentially, whips are in charge of party discipline and ensuring as far as they can that MPs stay loyal and vote the way their leaders dictate. Although TV political dramas often portray whips as the equivalent of a playground bully issuing threats to wavering MPs, the reality is more measured. A lot of their time is spent using rather more gentle persuasive techniques and explaining the reasoning behind the prime minister's stance (although one former chief whip, Gavin Williamson, did keep a fearsome-looking pet tarantula named Cronus in his office — just in case, perhaps?). There are also junior whips, as well as whips in the opposition parties. Each week, whips issue a set of instructions on how their party's MPs should vote. A 'three-line whip' indicates the party leadership expects all its MPs to turn up and vote a certain way.

From time to time the whip may be withdrawn from an MP, which effectively means that the MP is suspended from the party. This is usually a temporary sanction and is much more likely a response to the MP/s in question bringing the party into disrepute as opposed to defying the whip in a particular vote. This was the case in 2012 when Conservative MP Nadine Dorries appeared on the TV reality show *I'm a Celebrity...Get Me Out of Here!* without first informing the party leadership or the whips of her participation, and thereby being absent from the Commons for several weeks. The whip was later restored to Dorries and she later went on to join the government benches.

On rarer occasions, the whip can be withdrawn for political disloyalty. This was the case in September 2019, when Boris Johnson removed the whip from 21 Tory rebels who defied the whips' instructions not to support a motion to take control of parliamentary business from the government during the Brexit bill saga. Ten MPs subsequently had the whip restored and five of the remainder decided to stand as independents or Liberal Democrats in the subsequent general election, although all lost their seats.

A more unusual reason for the removal of the whip took place in July 2020. Conservative MP Julian Lewis had been elected as chair of the Intelligence and Security Committee by securing the support of opposition MPs. In doing so, he defeated fellow Tory MP Chris Grayling, the government's preferred candidate. A government source accused Lewis of 'working with Labour and other opposition MPs for his own advantage'. Clearly collaborating with the political enemy can be seen, on occasion, as a serious crime in politics.

ACTIVITY

The prolonged impasse over Brexit from 2017 to 2019 saw an unprecedented number of backbench rebellions and not just on the government benches. Research the different reasons why many MPs disobeyed their leadership and the impact it had on parliamentary business. A good starting point could be the *Guardian* article 'Growing backbench Brexit rebellion has been months in the making' (see Further reading, page 63).



Former Labour leader Jeremy Corbyn had the party whip withdrawn for at least three months pending an investigation into whether he had broken the parliamentary party's code of conduct

Frontbench

This term is applied to members of the governing party/parties who are also ministers in the government and also to opposition MPs who are shadow ministers. The term derives from the fact that these members sit on the front rows in the Commons chamber.

Backbenchers

These are the ordinary MPs who are neither ministers nor shadow ministers. Some are loyal followers of the party, especially those who are hoping for promotion to the frontbenches. But it is also here that the more independently minded MPs can be found. Several MPs have spent many years criticising and on occasion voting against their own party leadership from the backbenches. During his time as a backbencher, former Labour leader Jeremy Corbyn rebelled frequently against the Labour government and its Blair/Brown leadership, making him the most rebellious Labour backbencher between 1997 and 2010.

KNOWLEDGE CHECK

- 1 What is the main role of the speaker?
- 2 What functions do the party whips perform?
- 3 Why does losing the whip permanently normally spell the end of a political career?

The main functions of parliament

The ancient origins of parliament and often slightly esoteric terminology should not obscure the fact that the twenty-first century incarnation of this institution performs the following vital functions:

- 1 **Legislative:** parliament is where laws are introduced, debated and passed.
- 2 **Representative:** parliament represents people, geographically through constituencies and in terms of political ideas through parties.
- 3 **Scrutiny:** parliament has the vital role of checking and scrutinising the government by questioning its actions and poring over its legislative plans.
- 4 **Deliberative:** parliament has an important role as a forum for debate and discussion. In times of national crisis, whether during wars or during political dramas such as Brexit, all eyes turn to Westminster and its debates, speeches and decisions.

The question to consider is how well parliament performs each of these functions.

Parliamentary debate and the legislative process

KEY CONCEPTS

Legislation Measures put before parliament that, once passed, become law.

Debate Discussions in the main chamber that take place during the passage of a bill, especially during the second reading.

A key role of parliament is to pass **legislation**. The vast majority of laws passed are **public bills** and especially government-backed bills. For example, in the two sessions of the 2015–17 parliament, 55 government bills were **debated** of which 48 were passed. By contrast in the same period, 324 private members' bills were introduced (bills that are presented by individual MPs or peers) of which just 14 were passed.

USEFUL CONCEPT

Public bill Bill that applies to everyone once it becomes law. This applies to most legislation. A small number of bills passed fall into the special category of private bills, which only apply to specific groups of people or public bodies, usually local authorities. One recent example is the Middle Level Act 2018, which regulated navigation in part of the East Anglia Fens.

A bill becomes law via the following basic process:

- 1 All proposed laws (bills) must pass through both the Lords and the Commons.
- 2 All bills go through certain set stages in order to be passed. The length and opportunities for debate and scrutiny vary depending on the stage.
- 3 Every public bill is debated and can be amended.
- 4 Most government-backed bills become law. By contrast, most bills proposed by backbench MPs or peers do not.
- 5 Every bill must receive the royal assent to become law, but today this is only a formality.

How the legislative process works

On average, around 30–40 public bills are passed by parliament each year, with 31 being passed in 2019. Figure 2.1 shows the number of Public General Acts passed in the UK since 2016.

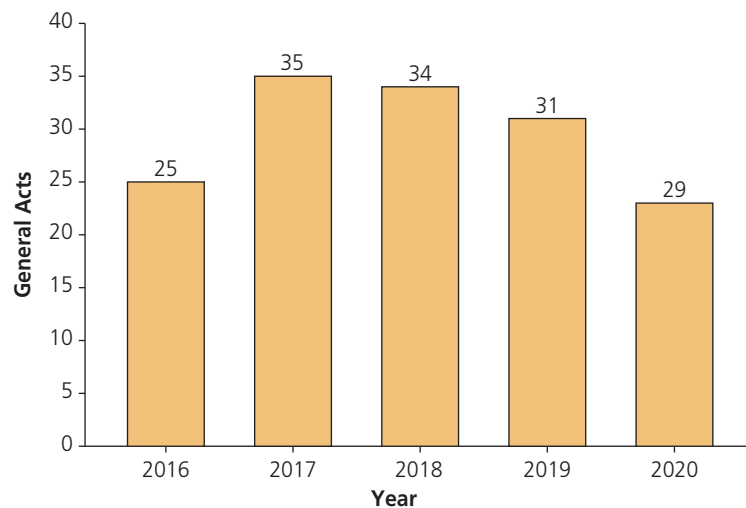


Figure 2.1 UK Public General Acts since 2016

Source: adapted from <http://www.legislation.gov.uk/ukpga/2016>

USEFUL CONCEPTS

Green Paper Government document setting out the issues and options for legislation. A discussion document.

White Paper Government document setting out the detailed plans and proposals for legislation.

Often, a government may first produce a discussion document called a **Green Paper**. One recent example was a Green Paper on adult social care published in September 2019. The government may then go on to produce a **White Paper**. Pre-legislative scrutiny has been increased in recent years and draft bills are sometimes published that are scrutinised by a select committee or a joint committee before they are formally introduced to parliament. For example, an inquiry was launched into the draft Tenant Fees Bill in November 2017 by the Communities and Local Government select committee in advance of its being debated in parliament. Ten draft bills were handled in this way during the 2017–19 parliamentary session.

The government's legislative programme is set out in the Queen's Speech at the start of each parliamentary session. All bills then follow a set pattern through parliament that involves debate, scrutiny and amendment. In more detail, these stages for all bills other than money bills are as follows:

- 1 **First reading:** the formal introduction or reading of the bill's title by the relevant government minister. There is no vote or debate at this stage.
- 2 **Second reading:** this is where the main debate on the principles of the bill takes place in the Commons chamber. Government defeats at the second reading stage are very rare, the last time being in 1986 when a Sunday Trading Bill was defeated 296–282.
- 3 **Committee stage:** bills are then sent on to public bill committees (known as standing committees before 2006), the members of which consider the bill line by line, often suggesting amendments and sometimes calling expert witness to help inform debate. As the government always has a majority on the committee, major changes to bills are unlikely at this stage. Each committee lasts only for the lifetime of the bill it is considering. Although members are appointed by party whips, a 2015 report by Democratic Audit found that nearly two-thirds (63%) of all MPs appointed to bill committees between 2000 and 2010 brought some form of relevant experience or expertise. Furthermore, 87% of amendments accepted by the government came from these specialised MPs. To put things in perspective, though, in the period 2000–10 only 0.5% of non-government amendments in committee succeeded.

STUDY TIP

It is important to recognise that some of these stages are more important than others. For example, the second reading is more important than the first reading.

SYNOPTIC LINK

Devolution is explained further in Chapter 5.

- 4 **Report stage:** during this stage any amendments agreed in the committee stage are considered by the Commons, and accepted, rejected or changed. There is also the opportunity for further amendments to be put to the vote.
- 5 **Third reading:** this is a final debate on the amended version of the bill. No further changes are permitted at this stage.
- 6 **The House of Lords stages:** assuming the bill has got through all its Commons stages, the process is then repeated in the Lords. Any amendments made by the upper house only become part of the bill if they are accepted by the Commons. A bill may go back and forth between the two houses, a process often dubbed 'parliamentary ping-pong'. For example, the Prevention of Terrorism Act 2005 was considered five times by the Lords and four times by the Commons over a 30-hour period until a compromise was reached. Note that if agreement is not forthcoming, the Commons can invoke the Parliament Act, which means their version of the bill becomes law within a year. This was last used to pass the Hunting Act 2004, which banned the hunting of wild mammals with dogs.

Although the passage of most bills follows the process shown in Figure 2.2, there is one slight difference in the legislative steps for bills that are purely to do with English affairs. English votes for English laws (EVEL, as it is commonly known) was introduced in 2015 mainly to deal with the consequences of devolution for Scotland, Wales and Northern Ireland (see case study below).

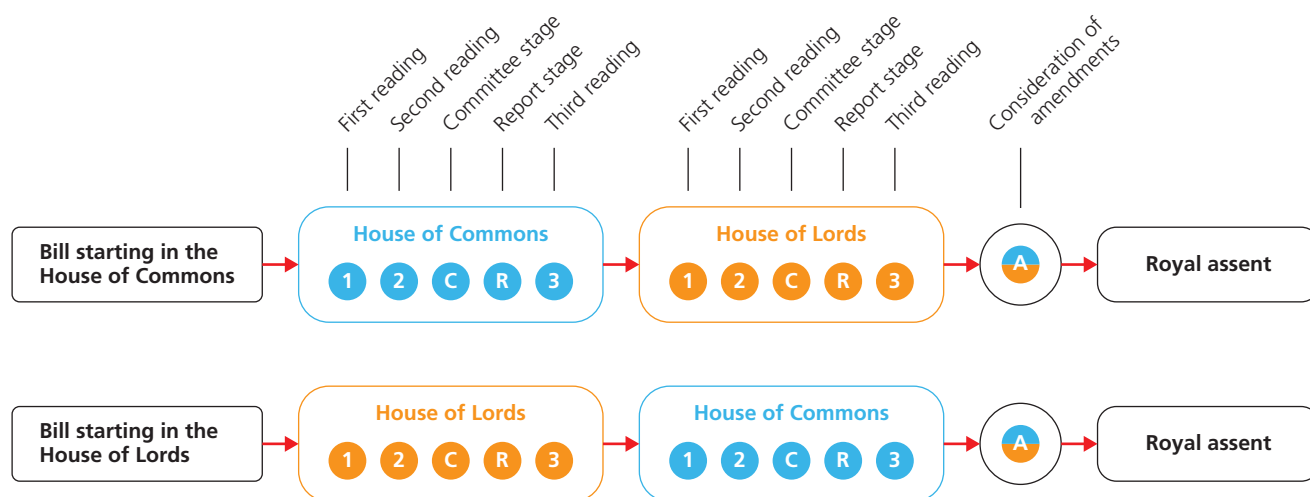
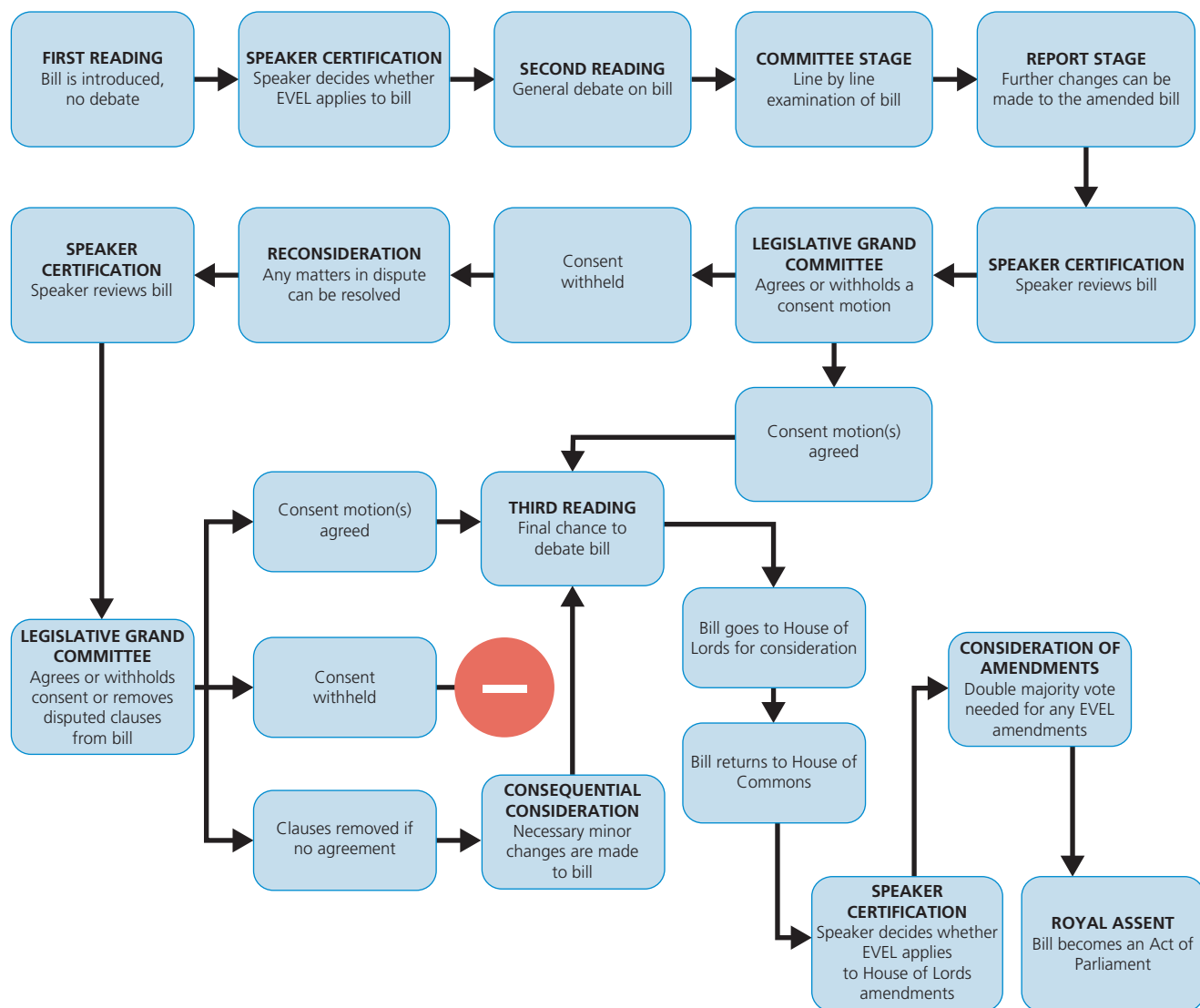


Figure 2.2 The passage of a bill into law

CASE STUDY**English votes for English laws**

The aim of English votes for English laws (EVEL) is to ensure that English MPs can veto bills or parts of bills that only apply to England. First, the speaker decides whether or not a bill or clauses of it are valid for the EVEL procedure. If so, it is given a speaker's certificate. After the report stage, the speaker can decide to refer the bill to the Legislative Grand Committee if it has been amended. All MPs can take part in debates in the Legislative Grand Committee, but only those MPs representing constituencies in England, or Wales, can vote or move amendments. The bill must then be reconsidered by the whole house. If the Legislative Grand Committee again withholds consent, the whole bill falls, or any disputed clauses are removed. Essentially, it means that bills only affecting England must be passed by a majority of both all MPs and English MPs, often known as the 'double veto' system (see overleaf).

Figure 2.3 illustrates the EVEL process.

**Figure 2.3** English votes for English laws process

In the first year of operation, nine bills were certified as requiring the EVEL procedure either in whole or in part. In none of the 14 votes held under the terms of EVEL was the government defeated. The main critics have largely been SNP MPs. For example, in February 2020, they protested against being barred from voting on an EVEL-certified NHS funding bill, claiming that the bill also affected Scotland.

SYNOPTIC LINK

The issue of Europe has proved to be one of the major causes of division within the Conservative Party. You can find out more about Conservative divisions in Chapter 8.

One of the most protracted issues parliament has had to legislate on recently has been the Brexit process. While on the surface it might have appeared straightforward just to repeal the previous Acts that had bound the country ever closer to the EU, the reality was rather different. The whole saga that involved the Commons and the three separate bills to 'Get Brexit done' (or not) between 2018 and 2020 was one of the most confusing, complex yet important examples of the Commons as both a legislative and scrutinising chamber. Due both to Theresa May and then Boris Johnson (until the December 2019 election) having no overall Commons majority, and the deep divisions and high emotions over Brexit, especially within the Conservative Party, the path to legislative success was far from usual or straightforward by Westminster standards (see case study).

CASE STUDY

Brexit bills and the Commons (an abridged and somewhat simplified account)

From the government's perspective, the problem all started when hedge fund manager Gina Miller, dubbed 'Chief Brexit-wrecker' by the Eurosceptic *Sun* newspaper, won her Supreme Court case in January 2017. This forced the government to get parliamentary approval for its Brexit legislation and triggering Article 50, the formal process for leaving the EU. The government would have much preferred to conduct its own negotiations and then reach an agreed settlement without seeking parliament's approval via potentially protracted debates and parliamentary votes.

The first Act, the European Union (Withdrawal) Act — proudly dubbed by Theresa May as 'The Great Repeal Bill' — was introduced in July 2017 and passed in June 2018. It repealed the European Communities Act 1972. During the bill's passage through the Commons, an amendment, one of 470 proposed, was inserted (contrary to government wishes) in order to give parliament a legal guarantee of a vote on the final Brexit deal struck with Brussels. This became known as the 'meaningful vote' clause. The focus then shifted to what form this deal would take and, equally importantly, what would happen if no deal with the EU was agreed. Would the UK 'crash out' of the EU with no deal (as some hard-line Eurosceptics wanted in the last resort) or would withdrawal be delayed, possibly forever? The departure day from the EU was set for the end of March 2019.

Between January and March 2019, the Commons twice defeated May's withdrawal agreement or Brexit deal. The first vote was lost by an unprecedented margin of 432-202 votes. In March, a second vote took place with the deal again rejected by 391-242. The European Council offered to extend the Article 50 period until 22 May 2019 if the Withdrawal Agreement was passed by 29 March 2019 but, if not, then the UK had until 12 April 2019 to indicate a way forward. A third vote was held on 29 March following several changes to the agreement, but still the government was defeated by 344 votes to 286. It was clear the Commons were in no mood to accept May's deal, but the UK was also heading for a no-deal Brexit on 12 April. The Commons then passed two votes on consecutive days to take control of the day's business, effectively putting backbenchers, and not the government, in the legislative driving seat. The Commons held four **indicative votes** on 1 April on possible options to progress Brexit, which a majority of MPs could potentially support. These included holding a second referendum or remaining part of the customs union. None of these options won a majority and therefore all were defeated. This suggested that

while MPs could agree on what they *didn't want* (May's deal and a no-deal Brexit), they were not able to agree on what they *did want*.

The saga continued when the European Union (Withdrawal) Act 2019, commonly referred to as the Cooper-Letwin Act, was passed within a few days in April 2019. This Act was strongly opposed by the government but passed its third reading by just 1 vote and required the prime minister to request an extension from the EU to the leaving process. The EU granted yet another extension to the deadline, now set at 31 October 2019.

Boris Johnson steps into the fray

In June, Theresa May resigned as prime minister and was replaced in July by Boris Johnson. He negotiated a revised withdrawal agreement with the EU. This path was then somewhat blocked by the rapid passing in early September of another backbench-sponsored Act, the European Union (Withdrawal) (No. 2) Act 2019, informally referred to as the Benn Act after MP Hilary Benn, who introduced it. This required the prime minister to seek yet another extension to the Brexit withdrawal date beyond 31 October 2019 — in certain circumstances. The main circumstance was if the House of Commons did not give its consent to either a withdrawal agreement or leaving without a deal by 19 October 2019. The Act proposed a new withdrawal date of 31 January 2020, which the prime minister was obliged to accept if the European Council offered an extension of the deadline. Johnson then announced in a speech that he would rather be 'dead in a ditch' than request an extension as required by the Act. There was speculation the government would ignore the Act and talk of prosecuting the prime minister for contempt of court or even impeaching him using an ancient procedure last undertaken in 1806. The traditional method of solving such a stalemate, calling a general election, was thwarted as parliament refused to agree to one. Johnson then attempted to prorogue (suspend) parliament for longer than usual, a ploy many suspected he initiated to avoid thorough scrutiny of his revised withdrawal deal. On 24 September, the Supreme Court ruled that prorogation was illegal.

On 19 October 2019, a special Saturday sitting of parliament was held to debate the revised withdrawal agreement. The prime minister was hoping for a straightforward deal/no-deal vote. He was disappointed! To make life more complicated, MPs passed, by 322 to 306, Tory backbencher Sir Oliver Letwin's amendment that said parliament would withhold approval of the prime minister's deal until the withdrawal bill implementing Brexit was passed. This delay activated the Benn Act, requiring the prime

minister to write immediately to the European Council with a request for an extension of withdrawal until 31 January 2020, against his own wishes. This request was duly granted.

At the same time, showing that backbenchers were not the only ones who could pass legislation in a hurry, the government got its early election. The Early Parliamentary General Election Act 2019 was passed in a couple of days at the end of October, thereby bypassing the Fixed-term Parliaments Act 2011 and setting an election date of 12 December. The result was a convincing win for Johnson, Brexit was back

on track, and the European Union (Withdrawal Agreement) Act 2020 was easily passed on 23 January 2020 by a majority of 99 and no single Tory MP voting against it. Furthermore, no single amendment in the 100-page bill was passed in the Commons and five government defeats in the Lords were swiftly overturned by MPs. The bill was passed with just 11 days' scrutiny. Johnson had got his withdrawal deal and restored unity to the Conservative Party over Brexit. He also removed the provisions made in previous versions of the withdrawal bill for parliamentary scrutiny of future Brexit negotiations.

USEFUL CONCEPT

Indicative vote Rarely used means of 'testing the water' on different options relating to an issue as opposed to instigating a vote that is legally binding. During Brexit negotiations, had one of the options on offer gained majority support in the Commons it would probably have been formally proposed for a full binding vote.

SYNOPTIC LINK

The Gina Miller case is a good example of the courts' involvement in constitutional matters and checking the power of the executive. The Supreme Court argued it was making a legal not political decision and upholding the principle of parliamentary sovereignty. As Gina Miller said herself after the verdict:

'Only parliament can grant rights to the British people and only parliament can take them away...No prime minister, no government, can expect to be unanswerable or unchallenged...parliament alone is sovereign.'

You can find out more about the judiciary and its role in Chapter 4.

ACTIVITY

Using the case study 'Brexit bills and the Commons', compile a list of points on both sides of the argument as to whether or not this episode suggests that parliament is an effective check on the executive.

Secondary legislation

Although all primary legislation is passed via the process outlined above, many laws are derived from what is termed secondary legislation, or statutory instruments (SIs). This refers to provisions within primary legislation for the relevant minister to introduce new clauses or changes. This is mainly for the sake of efficiency and is minister-made law, not parliament-passed law.

For example, the Misuse of Drugs Act 1971 allows the government to more easily add new drugs to the list of banned substances as information about their harm becomes apparent. Around 3,500 SIs are passed annually, far in excess of the number of parliamentary Acts. SIs are scrutinised by the Joint Committee on Statutory Instruments, which is a joint committee of both MPs and peers. Interestingly, it is one of the few committees in which the government does not enjoy a majority. The committee, newly appointed at the start of 2020, comprises only six Conservatives out of a total membership of 14. The role of this committee is purely to scrutinise the SI to ensure it is legal and does not go beyond the powers specified in the parent Act.

Parliament must be asked for approval of all SIs but cannot amend them. Overall, scrutiny of secondary legislation is considerably less than for primary legislation.

Backbench MPs and legislation

As key public bills tend to be created by the government and often implement manifesto pledges, ordinary MPs can often feel like 'lobby fodder', only there to support (or oppose) bills drafted by the frontbench. There are, however, some opportunities for backbenchers to influence legislation beyond voting in the

ACTIVITY

Investigate some other examples of successful PMBs. What areas do they cover, and why in each case do you think they were successful?

division lobby. MPs (and also peers) can and do draft and present their own bills, some of which make it into law. They do this through the use of **private members' bills (PMBs)**.

The system for drafting and presenting PMBs began in its current form in the late 1940s and enshrined the notion that some parliamentary time should be made available for legislation by individual MPs and peers, providing backbenchers with some freedom to respond to public concern or to reflect their own policy concerns. This is especially true for issues that are not primarily party political, or indeed where an MP's own party is divided, making it difficult for the leadership to present a united front. While not a way usually of checking or scrutinising the government, PMBs nonetheless allow individual MPs to influence parliament and indeed the nation. A number of key laws started out life as PMBs, including the Abortion Act 1967 and the abolition of capital punishment in 1965. In part, this was because these were matters of conscience which the government at the time largely backed but was reluctant to propose as official government bills.

PMBs are distinguished largely in terms of when and how they are introduced and can take one of three forms:

- Ballot bills
- Ten minute rule bills
- Presentation bills

Ballot bills

Thirteen Friday sittings (approximately 65 hours) are set aside in the House of Commons each year for consideration of PMBs. Priority for the use of the first seven sitting Fridays is given to **ballot bills**, the best-known form of PMB. These have the best chance of becoming law, or of at least being properly debated in the chamber. As the name implies, backbench MPs can enter a ballot every year with 20 names drawn out. Some MPs may not have a specific bill in mind to introduce, so if lucky in the draw, they are usually approached by pressure groups and others eager to offer suggestions. The Hansard Society guide to PMBs also notes a potential link to the executive in this area. Some MPs, rather than generating their own legislative proposals, may instead choose to adopt a government 'handout' bill. These generally make technical changes or discrete additions to existing laws. They are bills that the government may have been unable to find time for in its own legislative programme, or which for political reasons it does not wish to steer through parliament itself. Such legislation is handed to an MP (or peer) by ministers to take through as a PMB. As handout bills have government support, they have a higher-than-average chance of becoming law.

Ballot bills only stand a chance of getting passed if they are uncontroversial and the government doesn't oppose them. Otherwise they are easy to block via MPs speaking on them until time runs out. For example, this happened to the so-called 'Turing Bill' in 2016, which would have pardoned all men living with UK convictions for same-sex offences committed before the law was changed in 1967. The government withdrew its initial support for the bill for several reasons, and a government minister spoke on the bill for 25 minutes, reaching the time limit allotted for the debate, meaning the bill failed to progress. However, it is not just the government that can block PMBs. In 2018 a single objection from Conservative MP Christopher Chope was sufficient to block a bill that would have outlawed 'upskirting' — taking pictures under someone's clothes without their consent. His move was widely criticised (understandably) by MPs from all parties, and a government-backed bill on the same topic was subsequently introduced and passed.

Just four ballot bills were passed in the 2017–19 parliamentary session, including the Assaults on Emergency Workers (Offences) Act 2018 introduced by Chris Bryant, which increased penalties for those attacking emergency workers such as nurses, paramedics and firefighters. By contrast, eight ballot bills were passed in the 2016–17 session.

Ten minute rule bills

Ten minute rule bills are essentially policy aspirations put into legislative language in order to secure a 10-minute speaking slot during ‘primetime’ in the House of Commons Chamber after Question Time (see pages 51–53) on Tuesdays and Wednesdays. They are therefore mostly important as an opportunity for backbenchers to raise issues of concern often relating to their constituencies as opposed to passing actual legislation. Party whips decide the slots, which somewhat undermines the independence of individual MPs in the process.

A rare exception to their usual failure was the Guardianship (Missing Persons) Act 2017, which created a new legal status of guardian of the affairs of a missing person, allowing someone to act in the missing person’s best interests after they have been gone for 90 days or more. It was originally introduced as a ten minute rule bill by Conservative MP Kevin Hollinrake and subsequently passed into law.

Presentation bills

Any MP is permitted to introduce a bill of their choice, having given prior notice to the Public Bill Office. Presentation bills are formally ‘presented’ during a Friday sitting only, and only after all the ballot bills on the **order paper** have been presented.

The MP presenting the bill does not give a speech and there is no debate on the proposals. Presentation bills can be used to address discrete, non-controversial policy issues and to resolve anomalies in the law. However, with no speech or debate attached to them, they are less useful to MPs than ballot or Ten minute rule bills. However, the Brexit saga once again broke the rules in this regard. Both the Cooper–Letwin and Benn Acts referred to in the case study on page 37 were implemented by this device essentially because MPs took control of parliament’s agenda from the government in order to prevent a no-deal Brexit.

In conclusion, there are clear opportunities for MPs to propose and, less frequently, to pass legislation but these depend on the following factors:

- Being uncontroversial.
- Getting lucky in being one of the 20 MPs successful in the ballot bills draw.
- Having government backing.
- Exceptional circumstances, such the 2018–19 Brexit debates, when the government temporarily lost control of the parliamentary agenda.

Indirect backbench pressure on government legislation

One lesser known way especially for backbenchers from the governing party to influence government legislation is by applying pressure before a bill ever reaches the floor of the House of Commons. Governments are often keen to ‘buy off’ rebels in advance and may make changes to the bill before it is first debated. On occasion, as in 2011 with the plans to privatise some English forests, major crossbench opposition (as well as a wider public outcry) forced the government to abandon its plans entirely. Sometimes, the government introduces legislation specifically as a result of pressure from its own backbenchers. For example, in 2006, Labour backbenchers successfully persuaded Tony Blair’s government to bring in the Corporate Manslaughter Bill.

USEFUL CONCEPT

Order paper List indicating the order in which business is to be conducted during that day’s sitting of the House of Commons.

KNOWLEDGE CHECK

- 4 Which stages of a bill offer the most chance to alter or block a bill?
- 5 What factors can make a private member's bill more likely to get passed?
- 6 What examples are there of presentation bills becoming law?

SYNOPTIC LINK

The independent drawing up of constituency boundaries by the Boundary Commission is in stark contrast to the 'gerrymandering' that afflicts many US states, where the boundaries for House districts are manipulated for party advantage by partisan state governments. You can find out more about gerrymandering in the USA in chapters 16 and 18.

Theories of representation: Burkean, delegate and mandate theories

Aside from passing laws, its legislative function, parliament also fulfils a vital role in representing the people. This is, above all, true for the directly elected House of Commons. The Lords being unelected is less significant in terms of its representative function — as Lord Birkenhead once succinctly put it, 'The noble Lord represents no one but himself, and I don't think much of his constituency.'

MPs with constituencies are representatives of:

- their constituents/voters
- their party
- special interests/groups they may feel strongly about

How well they perform this role is debatable.

DEBATE

How well does parliament perform its representation role?

Performs very well

All parts of the UK are represented geographically through 650 constituencies that are roughly equally sized and whose boundaries are drawn up independent of party bias by the Boundary Commission.

A wide range of parties is represented in the Commons, so ensuring a range of political opinions are represented.

The Commons is becoming more diverse particularly in terms of gender, race and sexuality. A record 220 women were elected in 2019. A total of 6% of MPs elected in 2019 openly identified as LGBTQ+, substantially higher than the 2% of the general population who identify as LGBTQ+.

MPs have a range of wider interests and specialist policy areas that they represent informally and speak about in debates or committees. These can include such diverse areas as disability, animal welfare and football.

Performs not well at all

Not all constituencies are in fact equal in population size. There are nearly six times more voters in the most populous constituency compared with the least populous.

The first-past-the-post (FPTP) electoral system favours the two largest parties and regionally concentrated parties such as the SNP. By contrast, it severely under-represents parties such as the Liberal Democrats, the Green Party and UKIP.

Women remain significantly under-represented. While just over half of all voters are female, only 34% of 2019's intake of MPs were women.

MPs increasingly come from backgrounds and have life experiences that are unrepresentative of the country as a whole. To take one example, a Sutton Trust report published after the 2019 election found that 29% of MPs were privately educated compared with 7% of the population as a whole.

 In pairs or a group, evaluate the points on either side of this debate by discussing how representative you think the Commons is today.

MPs as part-time representatives

In addition to the points raised above, there is also the vexed question of outside interests. Many MPs continue to undertake jobs outside parliament once elected. This equated to around 18% of all MPs in the 2017–19 parliament. These jobs must be declared in the Register of Members' Interests for the sake of transparency and the avoidance of any clear conflict of interest. For many MPs this might be serving as a company director, but it can also involve an MP continuing on a limited scale with their previous occupation. Conservative MP Maria Caulfield used to be a nurse. When giving evidence to an inquiry into the outside interests of MPs she commented that she represented a very marginal constituency, and needed to complete 480 hours over 3 years to retain her professional registration. Portsmouth Labour MP Stephen Morgan continued his service as a city councillor after first being elected to parliament in 2017.

This issue is significant when evaluating MPs as representatives, since it raises the following questions:

- Can MPs engaging in other jobs be fully effective representatives of their constituents?
- Do MPs with second jobs have a broader perspective on life than full-time politicians?
- Provided MPs are open and honest about second jobs, what is the problem? If constituents feel they are getting a poor service, they can vote them out.
- MPs are paid a relatively generous annual salary, just under £80,000 in 2020. Do they need a second income that inevitably takes time and attention away from their main job as an MP?

MPs as representatives of particular interests

While MPs are most obviously representatives of a geographical area (their constituency) and their party, they frequently informally represent particular interests or causes that cut across geography and party. These can range from sport to prevention of child abuse via pretty much anything in between. MPs often join all-party groups comprising other MPs (often from a range of parties) who share similar interests and concerns. Among the hundreds of all-party groups currently registered in parliament are those focused on such diverse areas as pigeon racing, darts, independent education and Scottish whisky.

MPs as constituency problem solvers

It is also important to consider how MPs undertake a lot of casework for their constituents, irrespective of whom they voted for in the election. MPs once elected should seek to represent all their constituents. Most hold regular local surgeries, usually via appointment, to listen to the concerns of constituents. These can relate to a wide range of issues including housing, immigration status or miscarriages of justice. While MPs do not normally have the power to bring about instant remedies, they often raise such matters with the local council or relevant government department, or in a Commons debate. This is known as the **redress of grievances**.

KEY CONCEPT

Redress of grievances The process by which individuals can approach their MP with complaints about their treatment by government and its agencies, such as local councils, government departments or bodies such as HMRC. Note, it is an expectation not a formal requirement that an MP will seek to remedy an issue brought to their attention by a constituent.

The volume of this workload should not be underestimated. In 2010, one MP calculated that in their first 10 months as an MP, they received over 38,400 pieces of communication, of which 24,000 were emails, 9,600 letters and 4,800 telephone calls. On top of this they dealt with 2,183 individual constituents' cases. MPs typically employ constituency caseworkers out of their parliamentary allowance to handle much of this work. The type and number of issues varies partly according to constituency. For example, MPs representing deprived inner-city areas are more likely to receive large numbers of requests for help with housing and social benefits.

ACTIVITY

Access the TheyWorkForYou website and look up your MP: <https://www.theyworkforyou.com/>. What evidence is there of them speaking on or asking questions about the local area, and fulfilling all of the functions outlined above?

STUDY TIP

When studying theories of representation, you should be aware that they are not mutually exclusive. MPs fulfil various representation models depending on the situation.

Theories of representation

There are three main theories on how MPs represent their constituents:

- Burkean or trustee theory
- Delegate theory
- Mandate theory

Burkean or trustee theory

The term **Burkean theory** originates with the eighteenth-century political thinker and MP Edmund Burke. He famously wrote in 1774 that as their MP, he owed his Bristol constituents,

'his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living... Your representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion.'

Burke felt that as representatives, elected officials should take into account their constituents' views while also employing their personal judgement, knowledge and experience to serve the public interest. Burke saw this as the opposite of a **delegate**, an elected official who simply mirrors the view of his constituents (see delegate theory, below). In this way, constituents entrust their elected officials (**trustees**) to represent them fairly in parliament.

The trustee theory has been significantly weakened through the advent of strong party ties and the parliamentary whipping system, but it can still be seen in practice on occasion. For example, Nick Boles, former Conservative MP for Grantham and Stamford, represented a Leave constituency but personally supported the Remain campaign. In addition, he voted against his own party in many of the Brexit votes. Electors argued that he was putting the perceived national interest before the interests of the party or the express wishes of his own constituents.

Another example is 'votes of conscience', during which MPs follow their own conscience or belief in the 'common good' when voting on issues such as abortion or assisted dying. It has long been the custom that such

KEY CONCEPTS

Burkean or trustee theory Theory that argues elected officials are purely representatives of their voters. Once elected, they are entirely free to act in the interests of their electors as they see fit.

Delegate Elected official authorised to represent and act as a mouthpiece for their constituents.

Trustee Elected official who takes into account the needs of their constituents before exercising their own judgement when making political decisions.

votes are ‘unwhipped’. The 2013 vote on gay marriage is the most notable recent example of a vote of conscience. Despite then Conservative prime minister David Cameron backing the vote and giving government time to debate it, over half his party either rebelled or abstained from the vote. In total, 136 Conservative MPs voted against the bill while only 127 backed it. In addition, 22 Labour and 4 Liberal Democrat MPs voted against the bill, although in both cases their leaders supported the measure. It is worth noting that none of the main English parties had made a clear commitment to support same-sex marriage in their 2010 manifestos, although then Liberal Democrat leader Nick Clegg had expressed his personal support. The Conservatives promised only to ‘consider’ reclassifying same-sex civil partnerships as marriages. Therefore, MPs felt able to vote according to their consciences and personal beliefs, not least as they weren’t breaking any manifesto pledges (this links to the mandate theory of representation, below).

Delegate theory

The **delegate theory** of representation states that elected officials are simply ‘mouthpieces’ for their constituents. In practice, it is probably the hardest representation theory to put into practice — how does an MP know what views the majority of their constituents hold on any single issue? Do they rely on the number of letters or volume of emails received, or on focus group findings? What about decisions in which their electors are evenly divided?

However, there are several instances of the theory occurring in practice. In 2015, Conservative MP Zac Goldsmith promised his voters in Richmond Park that he would resign if the government backed a third runway at Heathrow. He stuck to his word when the government came out in favour of a third runway — he resigned from his seat in 2016 and fought the ensuing by-election as an independent. He duly lost to the Liberal Democrats. By contrast, Stephen Lloyd, then Liberal Democrat MP for Eastbourne (a Leave seat), promised to support Brexit in Commons votes if re-elected in 2017 in order to honour the referendum result both nationally and within his own constituency. Against his own views and official party policy, he stuck to his pledge in the division lobbies, resigning the Liberal Democrat whip in the process. He went on to lose his seat in the 2019 election. Taking into account these recent examples it would appear, superficially, that voters do not necessarily reward MPs acting as delegates who keep to their word.

Mandate theory

The **mandate theory** advocates that elected officials are primarily there to represent and carry out their party’s policies and manifesto. The argument goes that it is the party and not the personality of an individual MP that secures their election. They therefore have a duty of party loyalty once in parliament. The strength of this theory is borne out by several examples of MPs being elected for a particular party, leaving it mid-term and standing again in the same constituency either for another party or as an independent. They nearly always go on to lose. For example, in 2019 Frank Field, the long-serving and highly respected MP for Birkenhead, stood as an independent having left Labour, and was defeated in this very safe Labour seat. The same was also true of former Tory MP Anne Milton, who stood for re-election in Guildford as an independent in the same election. A rare exception was Douglas Carswell who, having been elected as Conservative MP for Clacton, defected to UKIP in 2014. He resigned and went on to

KEY CONCEPTS

Delegate theory Theory that views MPs as being bound by the wishes of their constituents — what the constituents want, the constituents get from their MP.

Mandate theory Arguably the most prevalent representation theory in modern UK politics. It suggests that MPs are primarily in their position to represent and carry out their party’s policies and manifesto.

retain his seat in both the by-election and the 2015 general election standing for UKIP. This suggests the mandate theory does have its limits, although arguably the Clacton electorate, as a strong Leave seat, was voting for the same policies *and* the same person to represent them in parliament.

Situations or issues often arise during a parliamentary term for which there was no manifesto pledge. In March 2003, 139 Labour MPs rebelled against Tony Blair over the invasion of Iraq. Arguably, they were at liberty to exercise their own judgement, given such a policy was (for obvious reasons) not part of Labour's 2001 manifesto.

Overall, all three theories of representation influence how MPs vote in parliament, but given the dominance and strength of party politics, the mandate model usually, but not always, prevails. When it does not, it normally reflects strong local feeling that is at odds with the MP's own party, or that a controversial issue has emerged since the last general election.

KNOWLEDGE CHECK

- 7 What evidence is there that the mandate theory tends to have more influence over how MPs vote than either of the other representation theories?
- 8 What are the particular problems with the delegate theory of representation?

KEY CONCEPT

Scrutiny of the executive The process by which opposition MPs ask questions and critique government actions, thereby holding government to account.

Scrutiny of the executive

Aside from passing laws and representing the views and interests of voters, parliament performs an important role in scrutinising or checking the government of the day, known as **scrutiny of the executive**. By this we mean that MPs are partly there to ensure that laws are 'fit for purpose', that the government explains and defends its policies to fellow MPs and peers, and that proper and full discussion takes place. The latter is the deliberative role of parliament. The role of the opposition parties is particularly significant in scrutiny, and on occasion backbenchers from the governing party also play an important role. This is especially important when the governing party is divided or pursuing a policy that is particularly controversial.

How well parliament undertakes this function is a matter of considerable debate. The main ways that it tries to perform this role are through:

- debates in the chamber
- parliamentary questions
- parliamentary committees (standing and select)

Parliamentary debates

At moments of high political drama, parliament, and especially the Commons, takes centre stage. Parliamentary debates offer MPs the opportunity to raise their concerns and opinions, and on occasion can force the government to change its mind. Brexit has already been mentioned, but the debate on whether UK warplanes should undertake air strikes on Syria provides another insightful example (see case study overleaf).

CASE STUDY

Parliamentary debate over Syrian air strikes

In August 2013, with evidence that President Bashar al-Assad was using chemical weapons against civilians during the Syrian civil war, then prime minister David Cameron proposed air strikes against al-Assad's forces to deter any future use of such (illegal) weapons. The coalition government normally enjoyed a reliable majority in the Commons. Cameron was, however, defeated by a margin of 285-272 votes as 30 Conservative and nine Liberal Democrat MPs voted against the coalition government. The parliamentary debate was highly charged, and memories of the Iraq War not long gone. As then Labour leader Ed Miliband put it, the public 'wanted us to learn the lessons' of the Iraq War. Conservative MP David Davis commented during the debate, 'We must consider, being where we've been before in this House, that our intelligence as it stands might just be wrong because it was before and we have got to be very, very hard in testing it.' Fellow Tory MP Cheryl Gillian, again evoking the controversy over weapons of mass destruction and the Iraq War, stated, 'I cannot sit in this House and be duped again.'

This is a good example of highly charged debate on both sides of the argument. Cameron himself used highly emotional language to justify his government's proposed actions:

'There are pictures of bodies with symptoms consistent with that of nerve agent exposure, including muscle spasms and foaming at the nose and mouth. I believe that anyone in this chamber who has not seen these videos should force themselves to watch them.'

It is also significant as an example of the Commons checking the power of the government. After the defeat, Cameron stated,

'It is clear to me that the British Parliament, reflecting the views of the British people, does not want to see British military action. I get that and the government will act accordingly.'

By defeating the motion, parliament effectively took the lead in determining foreign policy, usually the sole preserve of government. There is no requirement for the prime minister to seek parliamentary approval for military action as it is part of their prerogative powers, but recent convention has led to prime ministers seeking the support of the Commons in such circumstances. In December 2015, the Commons voted to support air strikes on so-called Islamic State (IS) targets in Syria and had previously, in September 2014, voted by a huge majority of 524-43 to authorise air strikes against IS in Iraq. Therefore, parliament can and does collectively change its position depending on the mood of the nation and, above all perhaps, the context of the debate. The vote in 2015 came soon after nine IS-linked suicide bombers killed 130 civilians in coordinated attacks in Paris.

Parliamentary privilege

In parliamentary debates, MPs and peers are protected by **parliamentary privilege**. This dates back to 1689 and the Bill of Rights and includes freedom of speech and the right of both Houses to regulate their own affairs. When speaking in the Palace of Westminster, MPs and peers are free from the usual laws of slander and contempt of court. As all parliamentary debates are in the public domain, this means that news outlets can also freely report them without the threat of prosecution.

KEY CONCEPT**Parliamentary privilege**

Exemption of MPs and peers from the laws of slander and contempt of court in order to uphold the principle of free speech within parliament. It does not apply beyond Westminster, nor does it grant MPs/peers immunity from prosecution for criminal offences.

SYNOPTIC LINK

The Bill of Rights remains a key part of the British Constitution and a good example of how historic measures are still relevant to the Constitution and parliament. You can read more about the British Constitution in Chapter 1.

Parliamentary privilege has been used on several recent occasions, for example in 2018 when Lord Peter Hain broke an interim injunction granted by the Court of Appeal to name business person Sir Philip Green as the man behind a court injunction banning a newspaper from naming him. This injunction had prevented the *Daily Telegraph* from publishing allegations of sexual and racial harassment that had been made against Green.

Emergency debates

MPs can also call for **emergency debates**, which can be granted at the speaker's discretion. It must be on a 'specific and important matter that should have urgent consideration'. If the speaker grants permission, an MP has 3 minutes to put their request to the House. A total of 22 such debates on a broad range of topics took place in the 2017–19 parliamentary session. Some, such as Brexit and the rollout of Universal Credit, were strongly political and partisan, others less so. One good example of a non-partisan debate was that on the contaminated blood scandal. This concerned patients being given contaminated blood samples during transfusions and going on to contract serious conditions including the hepatitis C and HIV viruses. The debate was moved in July 2017 by Labour MP Diana Johnson. As she herself commented at the start of the emergency debate, 'After the announcement this lunchtime from Downing Street of a full inquiry into the scandal, emergency debates may become an even more popular route to get the government to listen and act.'

Recent developments

Alongside high-profile debates, such as those regarding Syrian air strikes and Brexit, there are increased opportunities for debate and scrutiny of government by backbenchers. The **Backbench Business Committee** was set up in 2010 having been first proposed by the Wright Committee in 2009 and gives MPs more opportunities to shape Commons business. It decides the topic for debate on the floor of the Commons and in **Westminster Hall** for roughly 1 day a week. The latter affords a very different atmosphere for discussion and deliberation to that of the main chamber.

Westminster Hall debates are held 4 days a week. MPs apply for a debate and all debates are then allocated by a ballot arranged by the Speaker's Office. Any MP may attend, there are no votes, but it is an opportunity for MPs to raise matters of concern, not least those relating to their local area. For example, on 12 February 2020, Cumbria MP and former Liberal Democrat leader Tim Farron raised the topic of support for hill farmers, while Mansfield MP Ben Bradley led a debate on education and attainment of white working-class boys.

Mondays are reserved for discussion of petitions and e-petitions. Any petition that garners more than 100,000 signatures must be considered for debate by the Petitions Committee, although it is not guaranteed to be debated. At the height of the coronavirus pandemic in 2020, there were several petitions calling for greater government action. For example, one requested that the self-employed received statutory sick pay — it went on to garner nearly 700,000 digital signatures. Another e-petition during this period called for the government to scrap parking charges for NHS staff. It received over 415,000 signatures and led to the government finding additional cash for NHS trusts to cover staff costs. By contrast, the government refused the e-petition on sick

SYNOPTIC LINK

The issue of the contaminated blood debate links to pressure groups. In her introductory speech, Diana Johnson referred to and thanked the Contaminated Blood Campaign and Tainted Blood groups for raising awareness of the issue. You can find out more about pressure groups in Chapter 9.

SYNOPTIC LINK

E-petitions are a good example of participation in politics aside from voting in elections or joining a political party. Some might argue, however, that they require minimal effort and commitment, so have much less of a popular mandate than an election result. You can find out more about e-petitions in Chapter 6.

KEY CONCEPT

Payroll vote Describes a group of voters who currently hold a government post, such as minister, junior minister or parliamentary private secretary (PPS), and are guaranteed to vote in support of the government. (Ironically the PPS post — the most junior in government — is unpaid, so they are technically not on the payroll.)

SYNOPTIC LINK

The nature of budget debates in parliament is in stark contrast to those in the USA. There, due to the separation of powers and a strong system of checks and balances, it is by no means a foregone conclusion that a president can get their spending plans through Congress. You can find out more about Congress's powers in Chapter 13.

pay for the self-employed. While the government responded to both e-petitions directly as opposed to through formal debate in parliament, these examples do suggest that such mechanisms can influence government policy at least some of the time.

The significance and impact of Westminster Hall debates is questionable. Similar to select committees, they cannot compel the government to act but only to issue a reply. Debates are often poorly attended.

On occasion, these debates perhaps exercise an indirect influence on government. Over 1 million signatures were collected in early 2017 for a petition to ban President Trump from making a state visit to the UK. There was a counter-petition in support of the visit but signed by far fewer. A lively and heated debate ensued in parliament. While the visit did take place, Trump did not visit or address parliament, perhaps in part an indirect result of the e-petition and the shared sentiments of many MPs.

Conclusions on the importance of debates

There are grounds for arguing that for much of the time parliamentary debates are of little consequence in checking and scrutinising government.

- Few MPs change their minds because of arguments made during a debate. Most have already made up their mind or been instructed on how to vote.
- The government is usually guaranteed to win most Commons votes by virtue of its overall majority and the party whip system.
- The government also possesses the advantage of a hefty **payroll vote** among MPs from the ruling party, who cannot rebel against the government unless they first resign. The size of the payroll has increased significantly in the last 60 years, from 101 in 1960 to 141 in 2018. By 2020, though, it had fallen to 134. Arguably this has helped reduce the ability of MPs from within the governing party to challenge the government.
- Westminster Hall debates are often poorly attended and have no direct power over government.
- Finance and money bills are particularly weakly scrutinised or debated. A Democratic Audit report commented in 2018 that 'Finance debates on the floor of the House are simply general political talk-fests for the government and opposition.'
- A vote on the budget is effectively regarded as a confidence vote in the government, and any rebel MP would lose the whip. Usually, only 4 days are allocated to debating the budget and the debates are effectively an exercise in party political posturing as opposed to rigorous scrutiny of plans for government taxation and spending.
- While debates in the Lords can often produce high-quality and informed contributions, their power to influence, let alone limit, the government is severely restricted. The Lords often debate and pass amendments to government bills but results are sporadic. For example, they made five amendments to Johnson's 2020 Brexit Bill but not one was agreed to by the Commons. This included the Dubs amendment, which would have allowed child refugees to be reunited with their families in the UK post-Brexit.

Parliamentary questions

One of the most high-profile ways of calling the government to account is through parliamentary questions. Questions can be either written or asked in the chamber during question time sessions. In the parliamentary year 2017–18

over 55,000 questions were asked, of which over 50,000 were written. The majority went to departments running major public services such as health and education. This represented an increase of 42% over the previous year suggesting, on a superficial level at any rate, a growing trend among MPs to interrogate the government.

The most important occasion for oral questions is the spectacle that is Prime Minister's Question Time (also referred to as PMQs), which takes place every Wednesday at noon for 30 minutes. Its effectiveness is highly debated.

Backbench MPs from the governing party often use PMQs and ministers' questions to ask questions deliberately designed to show the government in the best possible light. These are sometimes known as 'patsy' questions, as they have no intention of probing the government or being awkward. Indeed, they are often a chance to attack the opposition instead. To take one example from PMQs in March 2020, the newly elected Conservative MP for West Bromwich West, Shaun Bailey, asked the following question of the prime minister:

'Communities like mine in West Bromwich West are grateful for this government's commitment to 366 police officers for the West Midlands. Will my Right Hon. Friend reaffirm that, unlike the Labour police and crime commissioner, who is decimating communities like mine in Tipton with the closure of our police station, this government is committed to keep our communities safe through investment in the police and tougher sentences for the criminals who are ruining the lives of my constituents in Tipton?'

DEBATE

How effective are PMQs?

Evidence for PMQs as an effective way of checking the government

It is high profile and widely publicised, with clips often featuring in the television news or on social media.

It forces the prime minister to directly address key issues of the day. It is the most direct method of scrutiny, and most heads of the executive in other countries do not face it.

It offers particular opportunities for the leader of the opposition to stake a claim to the premiership by delivering a 'better' debating performance. A good example is of David Cameron who, as newly elected Conservative leader in 2005, famously quipped that Tony Blair 'was the future once'.

PMQs keep prime ministers on their toes and directly accountable to parliament. Most prime ministers, even the most self-assured, regard it with fear. In a 2015 BBC documentary on the workings of parliament, Cameron said, 'There isn't a Wednesday that you don't feel total fear and trepidation about what is about to happen.' Blair echoed this when he compared PMQs as akin to being led to his own execution.

Evidence against PMQs as an effective way of checking the government

It gives a highly misleading and distorted image of parliament's work and how government is scrutinised. Most debates and ministerial questions are nothing like as adversarial or theatrical.

It is mostly an environment for 'Punch and Judy' politics and petty point-scoring. Former speaker John Bercow stated in 2014, 'There are people who think culturally the atmosphere is very male, very testosterone-fuelled and, in the worst cases, of yobbery and public school twittishness.'

An opinion poll by the independent Hansard Society found that PMQs made just 12% of the public feel proud of parliament. By contrast, no less than 67% felt there was too much party political point-scoring as opposed to answering the questions asked.

Many MPs from the ruling party use it as an opportunity to ask 'patsy questions' that are solely intended to show the government in a good light. More cynically, some see it as an opportunity to ingratiate themselves with the frontbench in the hope of future promotion.



In pairs or a group, evaluate the arguments on both sides of the debate by discussing how useful and effective PMQs are for scrutinising the executive.

ACTIVITY

Watch a recent session of PMQs and use the following questions to help you decide how effective the session was.

- How far were any opposition questions directly answered?
- How effective was it at scrutinising government policies and actions?

STUDY TIP

When answering questions about parliamentary questions, make a distinction between PMQs and ministerial questions. The latter happen on a rota basis and involve the relevant minister replying to questions from MPs but only on issues related to their department. The first questioner is normally the relevant shadow spokesperson.



Keir Starmer and other MPs at PMQs in September 2020, with social distancing in place

In addition to the more familiar political ‘Punch and Judy’ show that often constitutes PMQs, there has also been a rise in the last few years in the speaker allowing MPs to ask urgent questions (UQs) of ministers immediately after the usual question time. MPs must apply to the speaker that morning for permission to ask their UQ later that day. Requests are granted entirely at the speaker’s discretion. In the year following the 2017 Queen’s Speech, the speaker granted 114 UQs. Topics covered a broad range of domestic and international issues, from the case of Nazanin Zaghari-Ratcliffe, a British-Iranian citizen jailed in Iran, to the publication of the government’s White Paper on immigration, and the cost of policing the visit of President Trump.

Committees

There are three main types of parliamentary committee, all of which play a part in scrutinising the government. They are:

- public bill committees
- select committees
- Lords committees

Public bill committees

As explained when analysing the legislative stages, members of public bill committees (previously called standing committees) go through legislation line by line and can make changes to the bill. These committees are temporary and only last for the lifetime of the bill. They therefore lack the continuity and accumulated wisdom of the permanent departmental select committees. Furthermore, the government always ensures it has a majority of loyal MPs on each public bill committee so any major changes to the overall nature of the bill are extremely unlikely. They are allowed to take oral and written evidence from the public and interested pressure groups. Numbers on each committee can vary but are normally between 16 and 20. The committees are named after the bill they are considering, e.g. the Equality Bill Committee.

The effectiveness of bill committees is debatable. A 2013 report by the UCL Constitution Unit claimed that ‘parliamentary scrutiny of bills is arguably where the House of Commons is at its weakest — and the committee stage is central to that weakness’.

DEBATE

What are the advantages and disadvantages of public bill committees?

Advantages	Disadvantages
They allow backbench MPs to scrutinise legislation in greater detail than is possible in a general debate.	Membership usually includes the relevant government minister. So, the 2019–21 Environment Bill Committee included a junior DEFRA minister, Rebecca Pow, among its number.
There are normally two joint chairs, one each from the governing party and the Official Opposition.	Membership is decided in proportion to party strength in the Commons. As such the government always has a majority on the committee.
They can and do make effective changes to government bills. For example, during the committee stage of the Investigatory Powers Act 2016 that dealt with the sensitive topic of electronic surveillance by the security services, additional safeguards were put in place to protect journalists.	Major amendments to bills are unlikely. Just 0.5% of opposition amendments are accepted.
They provide opportunities for pressure groups and individuals to put forward their views and suggestions. Indeed, outside evidence is usually explicitly called for in advance of a committee starting its full scrutiny process.	Membership is temporary, so MPs do not build up expertise in a particular policy area. Just 8% of MPs on bill committees also sit on the relevant departmental select committee.
Expert witnesses can be called. For example, the environmental activist and writer George Monbiot gave oral evidence to the 2019–21 Environment Bill Committee.	Committee membership is decided by party whips via the selection committee. Party loyalists are therefore more likely to be chosen than more independently minded MPs.



Individually or in pairs, consider how effective you think public bill committees are.

Select committees

These are probably the most significant of all the parliamentary committees. In 2013, parliament defined their role as:

‘To hold Ministers and Departments to account for their policy and decision-making and to support the House in its control of the supply of public money and scrutiny of legislation.’

Select committees check that government and public bodies are doing their job properly and spending taxpayers’ money efficiently. They do this by launching investigations, calling witnesses, and publishing reports with their findings and key recommendations. In addition, they often have a role in scrutinising draft bills before they are formally debated in parliament.

The oldest and arguably most important committee, the **Public Accounts Committee (PAC)**, dates back to 1857. Its role is to have an overview of how efficiently government spends money, so it often launches inquiries into major government projects such as the HS2 rail project and the cost of university technical colleges (UTCs). In the case of the latter it investigated why 10 of the 58 UTCs that opened between 2014/15 and 2018/19 had since closed. It is chaired by a senior opposition backbencher. Following the 2019 election, this was Labour MP Meg Hillier.

In 1979, a much more extensive system of departmental select committees was set up. This meant that every government department was ‘shadowed’ by a select committee. These are often chaired by MPs with a strong background in that field. For example, until 2019, the Health Select Committee was chaired by a former GP, Sarah Wollaston. She was succeeded in 2020 by former health secretary Jeremy Hunt. The chair of the Environment, Food and Rural Affairs Committee from 2017 and re-elected in 2020 was the Conservative MP for Devon, Robert Parish, who hails from a farming background.

SYNOPTIC LINK

The election of departmental select committee chairs is undertaken using the alternative vote electoral system. You can read more about electoral systems in Chapter 7.

There were a total of 28 select committees in 2020, most (one exception being the Petitions Committee) directly corresponding to government departments. They usually comprise 11 members and the total membership reflects the party balance in the Commons, ensuring the government has a majority on each committee. Since 2010, select committee chairs have been elected by a secret ballot of all MPs at the start of each parliamentary session, with membership normally lasting for the rest of that parliament, giving more permanence and stability. The chairs are divided up between the parties in advance, so the choice is between different backbench MPs from the same party. This has considerably reduced the whips' power and led to the election of many more independently minded MPs. Elections vary in intensity. In January 2020, while 13 chairs were elected unopposed, for some committees the vote was hotly contested and close. For example, Conservative MP Julian Knight won the select committee chair of the Department for Digital, Culture, Media and Sport by just nine votes.

Several select committees in addition to the PAC are chaired by opposition MPs. For example, following the 2019 election, the Department for Work and Pensions select committee was chaired by Labour MP Stephen Timms.

The aim of any select committee is to achieve consensus and unanimity among all its members, not least so reports have the most impact. Members sit in a horseshoe arrangement as opposed to the more adversarial seating arrangements in the Commons chamber. Despite the governing party having a majority on select committees, they can sometimes support opposition party policies. In September 2020, the Treasury Select Committee urged the government to consider extending the COVID-19 furlough scheme, a policy advocated by Labour.

Many MPs sit on a select committee for lengthy periods of time and therefore often develop more specialist knowledge than those government ministers who are in office for relatively brief periods of time. Since 2003, chairs have been paid an additional salary and have enjoyed a high media profile. This suggests that the select committee route is an increasingly attractive one for those MPs seeking career advancement outside of joining the frontbench.

Committees decide for themselves what issues to investigate and examine. They have considerable powers to summon witnesses and examine restricted documents. Their hearings are often akin to court-like interrogations, especially with those they suspect of misleading parliament or concealing the full truth. Recent high-profile witnesses who have appeared include Sports Direct owner and entrepreneur Mike Ashley, who was forced to answer questions about working practices in his company, and retail magnate Sir Philip Green, who was questioned over the BHS pensions scandal. Ministers can also be subjected to tough questioning, and they don't always come off well. For example, former immigration minister and Romsey MP Caroline Nokes appeared visibly irritated when questioned about problems faced by highly skilled migrants in the UK. She was later accused of misleading parliament with her answers, which appeared to contradict what later emerged from previously written letters. One member of the select committee went on to talk of the Home Office as guilty of 'shambolic incompetence'. However, in 2020 Nokes was elected chair of the Women and Equalities Committee, which suggests that one poor performance before a select committee is not necessarily a barrier to promotion elsewhere.

Since 2007 select committees have also had the ability to review major ministerial appointments of those heading quasi-government agencies. Out of 59 hearings up to 2017, appointments have divided committees or been rejected 13 times. Some key government posts have been involved. For example, MPs on the Education Committee initially rejected the government's proposed head of Ofsted, Amanda Spielman, after a lacklustre performance at their hearing. She was, however, subsequently appointed to the post. In 2017, Charlotte Hogg resigned as Deputy Governor of the Bank of England 2 weeks into her job after the Treasury Select Committee criticised the incomplete answers she had given to them.

ACTIVITY

Watch a clip from a recent hearing of the Liaison Committee and use the following questions to help you decide how effective the process appeared to be at challenging the prime minister.

- What topics were covered?
- How did the prime minister respond?

SYNOPTIC LINK

This more recent role of select committees is worth comparing to that of US Senate committees. The latter have the more significant power to veto executive appointments. You can find out more about US Senate committees in Chapter 13.

Select committees are active bodies and produced 267 reports in the period 2017–19, of which 56 (21%) dealt with Brexit-related topics. The issues considered by select committees are wide ranging. Some deal with failings by government departments/ministers, others with areas of national concern, and some with more low profile but still significant matters. The government must respond formally to select committee reports within 60 days. Research suggests that the government accepts around 40% of committee recommendations.

The prime minister is not exempt from the scrutiny of select committees. The Commons Liaison Committee consists of all select committee chairs and questions the prime minister on policy matters around three times a year.

SYNOPTIC LINK

The Osmotherly Rules are a lesser-known but still relevant example of piecemeal codification of the constitution. Prior to these formal rules, civil servant appearances before committees were governed by unwritten convention. You can read more about the British Constitution in Chapter 1.

Select committees and civil servants

When evaluating the effectiveness of select committees, it is worth knowing that the position of senior civil servants is a particularly delicate one. They are often summoned to hearings to explain or justify perceived mistakes or failings in their departments. On the one hand, they, like all witnesses, must be honest and not knowingly mislead the committee in their answers. On the other hand, they are also politically neutral so owe a degree of loyalty to their ministerial masters. In other words, they cannot simply blame or criticise a minister for any errors or problems. Guidance for these scenarios is provided for in the Osmotherly Rules (see page 20). Key aspects of 'The Rules' include the following:

- The Civil Service Code makes clear that civil servants are accountable to ministers who in turn are accountable to parliament. So, when civil servants give evidence to a select committee they are doing so not in a personal capacity, but as representatives of their ministers.
- They are not to give their personal views or judgements about any particular policy.
- They are, however, personally accountable for the delivery or implementation of government policy and cannot shift any blame back upwards to ministers.
- The rules set out the criteria by which civil servants can refrain from giving evidence, such as on the grounds of national security.

CASE STUDY

Select committee inquiries: the Transport Select Committee

In September 2019, the Transport Select Committee issued a report that criticised the Department for Transport for failing to take action on pavement parking. This had been promised back in 2015, but little of substance had been achieved since the initial complaint, despite several internal reviews and consultations.

The report highlighted the impact of pavement parking, especially on those with children or those

with visual and/or mobility impairments. It stated that such parking practices discouraged many vulnerable people from venturing out, therefore adding to the problem of social isolation. Among its recommendations were that ultimately the government should seek a complete ban of pavement parking across the country, and also conduct a national awareness campaign to highlight the negative consequences of the behaviour. In response to the report, in March 2020, the Department for Transport announced it would consult on whether to give local authorities more power to tackle the issue.

DEBATE

How effective are select committees in scrutinising and influencing the executive?

Effective	Not very effective
Committees provide an alternative and more corporate forum to scrutinise and interrogate government policy compared to debates in the main Commons chamber. Many high-profile issues ranging from Brexit to institutional racism in the police have been covered.	In the desire for a bipartisan approach, there is some evidence that chairs avoid selecting topics that they know are highly politicised and likely to provoke party partisanship.
They operate in a less party-political manner than much of the Commons and aim for consensus not competition between different parties.	Party loyalties continue to play a significant role in the work of select committees. Between 2010 and 2019, there were votes on 125 out of 1,325 departmental select committee reports. Many were along party lines, although over Brexit-related matters the divide was often Leave/Remain.
Many committee chairs are from opposition parties.	The governing party always has a majority of committee seats.
Recommendations from reports are often acted upon by the government and therefore influence policy.	The government is under no obligation to accept policy suggestions and indeed the majority are rejected.
They have the ability to call and question witnesses, including ministers and civil servants.	Many answers can be vague or evasive and even a poor performance may not permanently end a minister's career.
Select committees are increasingly high profile. Between 2008 and 2012, the annual number of press mentions of the Home Affairs Committee rose from 295 to 2,033.	A growing media profile is not necessarily an indicator of greater political influence or importance.
Chairs and members are now elected by a secret ballot, reducing the power of party whips and encouraging the election of more independently minded chairs.	Party whips still control the membership of public bill committees which scrutinise legislation in its passage through parliament. If select committees were to have real power, they would have a central role in the legislative procedure.
Select committees scrutinise some executive appointments.	Unlike the US Senate, they cannot directly veto appointments.
Many committee members have either previous ministerial experience or specialist interest in a certain policy area.	

 Individually or in pairs, consider how effective you think departmental select committees are at scrutinising the executive. Which arguments do you find the most persuasive and why?

STUDY TIP

It is a common mistake to state that select committees scrutinise legislation — this is the work of public bill committees. Select committees consider only some draft bills before they come to the Commons.

ACTIVITY

Go to the parliament committees website at <https://committees.parliament.uk/> and research a recently completed inquiry by a departmental select committee. Use the following questions to help you decide how effective the committee was in scrutinising and influencing the executive.

- What was the issue?
- Who were the key witnesses?
- What were some of the main recommendations?
- What was the government's response?

Lords committees

Of the three main types of parliamentary committees, those in the Lords are probably the least significant, partly because the Lords has much less power than the Commons. The Lords select committees do not shadow the work of government departments. Instead, their investigations examine specialist subjects, taking particular advantage of the Lords' breadth of expertise across a wide variety of areas. There are six main permanent committees:

- European Union Committee
- Science and Technology Committee
- Communications Committee
- Constitution Committee
- Economic Affairs Committee
- International Relations Committee

In addition, there are short-term ad hoc committees set up to deal with specific concerns. Peers put forward proposals for special inquiry committees to the Lords Liaison Committee, which makes recommendations to the House on which of them should be established. The Lords now typically appoints four special inquiry committees each year. For example, in May 2020, the Lords agreed to establish a COVID-19 Committee in order 'to consider the long-term implications of the COVID-19 pandemic on the economic and social wellbeing of the United Kingdom'.

Lords committees work in largely similar ways to select committees, although they usually comprise 12 not 11 members, and the government does not have a majority on them — reflecting the party representation in the Lords. They conduct inquiries, take evidence from witnesses and produce a report with recommendations. As an example, in 2014 the Communications Committee produced a report on televised election debates. Among its recommendations was that broadcasters produce a single online portal with details about all the debates and how to access recordings of them. Interestingly, this was a report aimed directly at programme makers and not the government. Given controversies over televised debates in subsequent elections, it would be difficult to argue that this report had a profound effect on the conduct of such debates.

Other parliamentary committees

There are a number of other committees that perform a scrutiny role. One of the most important is the **Intelligence and Security Committee of Parliament**, originally set up by the Intelligence Services Act 1994. It oversees Britain's intelligence community including MI5, MI6 and GCHQ. Comprising members of both the Lords and the Commons, the committee's membership is selected via the party whips, but it elects its own chair.

SYNOPTIC LINK

In the USA, congressional committees are often described as 'Congress at work'. While much work is increasingly done in parliamentary committees, Westminster's focus remains on the main debating chamber and not its committee rooms. You can find out more about congressional committees in Chapter 13.

KNOWLEDGE CHECK

- 9 How is membership of public committees decided?
- 10 In what ways can select committees scrutinise the government?
- 11 In what ways are Lords committees less significant than those in the Commons?
- 12 In what ways is a Westminster Hall debate different from a debate in the main chamber?
- 13 Why do prime ministers tend to dread Prime Minister's Question Time (PMQs)?
- 14 Why might an MP ask a 'patsy' question during PMQs?

The roles and influence of MPs and peers

Having looked at the legislative process and parliamentary committees, and the formal theories of representation, the question remains: what exactly do backbench MPs do all day? The following diary entry provides answers.

Tuesday in the life of a backbench MP

This MP's constituency is too far from London for him to visit during the week. He is an opposition backbench MP interested in children's health and well-being.

9.30–10.00 Spoke at a debate in Westminster Hall about Children Missing from Care Homes

10.00–10.30 Interviewed by a journalist about why children go missing from care homes

10.30–11.00 Discussion with staff in constituency office about various urgent constituency issues on the phone

11.00–12.00 Spoke at a meeting of the All-Party Parliamentary Group on Children about children accessing social care services

12.00–13.00 Met with other backbench MPs to discuss abuse on social media

13.00–13.15 Grabbed a sandwich

13.15–14.15 Meeting with a group of representatives from children's charities to discuss improving the educational prospects of children in care and strategies for responding to upcoming legislation

14.30–15.30 Attending as a member of the International Development Select Committee an oral evidence session on sexual abuse and exploitation in the aid sector

15.40–16.30 Participated in the Urgent Debate: Learning Disabilities Mortality Review in the main chamber of the House of Commons

16.30–17.00 Meeting with whip to explain plans to vote against the party in an important vote next week

17.00–17.15 Went to office in Portcullis House and discussed commitments for the week with Westminster office staff

17.30–18.30 Speech to open a charity function in one of the House of Commons function rooms for raising funds for a children's charity

18.30–19.30 Went to the House of Commons to collect some research findings and write speech for debate tomorrow

19.30–21.00 Dinner with colleagues in the party; discuss **campaign** tactics for the local elections in their region (and how the leadership is doing). Catch up with emails after dinner

1.00 a.m. Home to rented flat

Adapted from source: 'MPs' Outside Interests' (2018), Committee on Standards in Public Life, Assets Publishing Service

KEY CONCEPT

Campaign Working in an organised way towards a political goal. Alongside election campaigns, many MPs also choose to get involved with other campaigns reflecting their own interests and priorities or those of their constituency.

ACTIVITY

Read the diary entry and note down which functions of the role of MP this particular backbench MP fulfils on this day. Next, see page 25 of the same report on MPs' outside interests (see Further reading, page 63), which covers an ordinary MP's Friday routine. What differences are there between the two MPs' days?

To summarise, many opportunities exist for an MP to influence policy and represent voters. These include:

- voting on legislation, rebelling against their party on occasions
- proposing legislation via PMBs
- speaking in debates
- asking questions, oral or written, of ministers
- informal lobbying or chats with ministers, often related to issues raised by or affecting their constituents
- serving on committees
- joining all-party groups

KNOWLEDGE CHECK

- 15 Which opportunities for influencing government do you think are most significant for backbench MPs?
- 16 Which opportunities for influencing government do you think are least significant for backbench MPs?

The role and significance of the opposition in parliament

Having assessed the power and influence of individual MPs, we need also to look at the role of the opposition. In essence, there are four potential types of opposition in parliament:

- The Official Opposition (since the 1920s this has been either the Labour or Conservative Party)
- Other opposition parties such as the Liberal Democrats or the nationalist parties
- Intra-party: opponents within the governing party
- Inter-party: in a period of coalition government such as between 2010 and 2015, there can be disagreements between the different parties in government

Regardless of the form or source of the opposition, their fundamental purpose is to offer scrutiny and potentially a check on the government. They must also offer viable and practical alternative solutions. For example, opposition parties that advocate greater spending on public services must also explain where the funding will come from, either through higher taxes or from other areas of spending. Those who opposed a no-deal Brexit had to come up with 'better' alternatives, such as staying within the customs union or putting the future of Brexit to a second vote. There is an assumption of the Official Opposition in particular that its members must portray themselves as an alternative government, a 'government-in-waiting'. They therefore have a formal shadow cabinet whose role it is to challenge the relevant government minister, particularly during ministerial questions.

The opposition can challenge the government in a number of ways:

- The leader of the Official Opposition has special privileges in debates and Commons business. At PMQs, they always ask the opening question plus up to five more, and are the only MP allowed to respond to the prime

SYNOPTIC LINK

The campaign to allow Gurkhas to settle in the UK is also a prime example of pressure group success, in part due to celebrity support. The actress Joanna Lumley (whose father fought in Burma with the Gurkhas) played a prominent role in the campaign. You can find out more about pressure groups in Chapter 9.

STUDY TIP

Be clear to distinguish between opposition in general in parliament and the Official Opposition in your answers.

minister with further questions. They (along with up to three opposition whips) receive an additional salary. They also have the first right of reply to any major statements by the prime minister.

- The opposition parties have 20 opposition days set aside each year during which they choose the topic for debate. A total of 17 are allocated to the Official Opposition and the rest to the second largest opposition party. This is a chance for the opposition to raise topics they wish to publicise and to expose government failings. For example, in 2018 Labour raised the issues of school funding, the Grenfell Tower fire and NHS privatisation. Debate is over a motion, which is voted on but is not binding on the government. It is primarily a device for raising the profile of an issue. The procedure can, however, have an impact. In 2009 during Gordon Brown's leadership, an opposition motion to allow Gurkhas (Nepalese soldiers who serve in the British army) to settle in the UK was passed when 27 Labour MPs rebelled and supported the opposition parties. Although the government was not forced to change policy, in the event it did so. It was Labour's first defeat on an opposition day debate since 1997.
- Members of the shadow cabinet can also ask questions of ministers and propose alternative policies. For example, in debates over the standard of rail services, shadow Labour transport ministers argued for a renationalisation of the railways and an end to the system of rail franchising.
- As seen earlier in the chapter, select committees often produce reports critical of government policies and/or their implementation.
- During the coalition government, opposition from within Liberal Democrat ranks (intra-party opposition) meant that the Conservatives dropped proposals to lower inheritance tax.
- During the debates over Brexit in 2018–19, opposition MPs and Conservative rebels effectively prevented the various versions of Theresa May's deal from going through. They were, however, unable to agree on any alternatives.

The significance of the opposition

Whether the opposition has any real power depends on a number of factors. Parliamentary arithmetic is key — a government with a small or non-existent majority (as was the case with May's 2017–19 government) enables the opposition to be much more powerful. There is a greater chance they might be able to defeat the government on some of its legislative plans. This also suggests that the opposition parties did well at the last election and that their policies were popular with many voters.

Background and context are also crucial. In times of national emergency, such as during the COVID-19 pandemic, opposition parties had to be seen to be largely supportive of the government when national unity and not political point-scoring was the main priority. It could be argued, however, that the mere existence of opposition parties influences a prime minister at such times. The multibillion plan to safeguard many workers' jobs and wages during the COVID-19 outbreak was perhaps partly influenced by an awareness of the political backlash if the government was not seen to be reacting on a huge scale. As Lord Norton put it in a *Politics Review* article, 'Good government needs an effective opposition.' Perhaps in part, better government is created by better opposition?

DEBATE

What are the strengths and weaknesses of the opposition in UK politics?

Strengths	Weaknesses
The Official Opposition gets some extra funding and privileges in parliament. It also receives some funding (Short money) to assist with policy research. The opposition can position itself as an alternative government. On occasion, such as with the Gurkhas and aspects of Brexit, the opposition can check or even change government policy. Backbench rebels from within the governing party can present serious problems. For example, in 2012 Conservative rebels effectively blocked a bill that would have reformed the Lords.	The government possesses greater resources, not least the control of parliamentary business and choosing the topics for most debates. It also has the research resources of the Cabinet Office and special advisers. Much depends on the quality of members of the shadow cabinet and how well they perform in debates and in the media. When the shadow home secretary Diane Abbott appeared on LBC radio in 2017 for an interview about the police, she was widely criticised for her weak grasp of numbers and details. Opposition successes are rare. Most of the time, the government can get its legislation through parliament without huge obstacles. Successful rebellions on major issues are rare. Most of the time the government's will prevails. Internal opposition only works if supported by the opposition parties as well.



In pairs or a group, discuss how effective you think the opposition is in UK politics.

In summary, while the main role of the opposition is to oppose and to propose better policies, arguably there needs to be an 'equilibrium of legitimacy'. Both sides need to accept the legitimacy of the other. In a democracy, the opposition must not seek to veto or block the policies of the elected government. Equally, the government must allow the opposition regular and open opportunities to critique their policies and to suggest alternatives. Ultimately, a healthy opposition sustains the democratic process through scrutinising government and not acting as a roadblock.

KNOWLEDGE CHECK

- 17 What are the four possible forms that opposition can take in parliament?
- 18 Why is it accurate to describe the Official Opposition as a 'government-in-waiting'?

The interactions of parliament and other branches of government

The relationship between parliament and government is a complex one. On the one hand, under the British Constitution there is a **fusion of powers**, as the executive is formed out of and remains part of the legislature. On the other hand, parliament also has a key function in checking and scrutinising the executive. The UK is also fairly unique among Western democracies in that power is concentrated in one chamber, the Commons. This means that the important relationship is between government and the Commons. Is this relationship one of equals? The short answer is no. Under normal circumstances, the **executive dominates the legislature**, but in exceptional circumstances, such as a hung parliament or a deeply divided governing party, parliament has the ability to be a powerful player. While executive dominance still largely holds

true, especially after an emphatic election result such as in 1997 and 2019, it also remains vulnerable, not least to internal opposition from its own backbenches.

DEBATE

Does the executive dominate parliament?

Evidence for executive dominance over parliament

Party whipping and discipline ensures government-backed bills usually pass easily and largely unamended in major ways.

Most days of parliamentary business are controlled and determined by the government.

PMBs almost always require government support and time to get passed. Only the exceptional situation of Brexit allowed the Benn and Cooper–Letwin bills to pass. After the 2019 election result, they were effectively overridden by the Johnson government's own Brexit bill: a 100-page bill passed in January 2020 after just 11 days of debate and scrutiny.

Do not overestimate the power of select committees. Governments can and do ignore their reports and recommendations, 60% of them on average.

In debates, most MPs follow the party line in their speeches and public bill committee membership is effectively controlled by the whips.

Much of question time, especially PMQs, is simply about political point-scoring and theatricals and not forensic scrutiny of policy. Many would argue the adversarial atmosphere, especially that of PMQs, is a poor advert for parliament as a whole.

Evidence against executive dominance over parliament

In times of minority or coalition government, governments can and are defeated in the Commons. Theresa May's Brexit deals offer a good example.

There are 20 opposition days, which allow other parties to set the debate agenda and occasionally, as with the Gurkha citizenship issue, defeat the government. Also, during the Brexit process parliament did seize control of parliamentary business.

Individual MPs can pass legislation independently of the government. While most PMBs are non-controversial, some have dealt with significant issues such as abortion and the death penalty. The Benn and Cooper–Letwin bills concerning Brexit were passed despite the direct opposition of the government.

Select committees are increasingly high profile and independent, not least as chairs are now elected by a secret ballot as opposed to being chosen by party whips.

All legislation is scrutinised in debates and public bill committees.

MPs can ask questions of the prime minister and ministers in regular question time slots, which directly forces them to explain and justify their actions.

 In pairs or a group, discuss how far you think the executive continues to dominate parliament.

KNOWLEDGE CHECK

- 19 What is meant by the fusion of powers?
- 20 Why are select committees seen as increasingly effective?
- 21 What types of PMBs are most likely to get passed?

How effective is scrutiny of the executive in practice?

How well does parliament measure up, especially in its key role of scrutinising government? There is no short answer to this question, with valid points present on both sides. On the one hand, parliament has made major advances in recent years, both to modernise some of its procedures and to increase the effectiveness of its scrutiny powers. An important factor is the growing rebelliousness of MPs since the 1980s. This can be seen with rebellions not just on Brexit but also in areas of foreign policy (for example, the Iraq War and air strike missions on Syria) and domestic policy areas such as Sunday trading and student tuition fees. Departmental select committees are now increasingly independent and play a more important and

higher-profile role. It is now possible under certain circumstances to recall and potentially remove some MPs between elections. MPs have become more diverse in terms of ethnicity and gender. There have also been some changes to the House of Lords such as the removal of most hereditary peers. Parliament still remains a key arena for debate in times of national crisis such as during the COVID-19 pandemic. The UK sees relatively little of the frequent gridlock seen in the USA, where power is divided and separated both between executive and legislature, and within the legislature between two powerful chambers. While parliament can and does still ask awkward questions of ministers, it rarely sabotages their ability to govern. To a very large extent, we get the government we elect, it does what it promises, and we reward or punish it accordingly at the subsequent general election.

Yet there are also strong grounds for arguing that parliament remains, in many ways, an old-fashioned and ineffective institution. Much of the language and tradition is archaic and unnecessarily adversarial. There is no permanent opportunity for electronic voting — instead MPs and peers physically file out to vote in the division lobbies. Many debates and question times are excuses for party politics as opposed to objective probing of the executive. The checks on a strong government with a large majority remain relatively weak. More pointedly, when that is lacking, as with Brexit, parliament itself proves unable to take control and achieve a breakthrough — a resolution to the Brexit crisis only came about as a result of another election and a government being returned with an emphatic victory. Committees lack power (or more accurately the will) to influence and alter legislation before it is passed and have a very limited say in scrutinising government appointments. Finally, the second chamber remains weak, undemocratic and largely a haven for political retirees or defeated MPs.

Ultimately, the answer depends on what the citizen wants from their legislature. If it is strong and tough scrutiny of government then the UK comes out poorly. If it is a system that enables the government to get on and govern (and perhaps make the occasional mistake along the way) then the Westminster model works well enough most of the time. At the very least, it has not proved immune to changes and reform, but these have been evolutionary not revolutionary. In that sense perhaps, parliament simply reflects the wider aspects of our venerable constitution, warts and all!

ACTIVITY

Using the points made above and your own research, discuss the topic of whether or not scrutiny of the executive is effective in the UK with another student. Draw up a list of five agreed changes you would bring in to make parliament more effective.

SUMMARY

- Parliament comprises the House of Commons and the House of Lords. The Commons is the dominant chamber, with debates being chaired by the speaker and party discipline enforced by the whips.
- There have been some recent developments in parliament, most notably partial reform of the Lords.
- There are several hurdles in the legislative procedure for a bill to become law. Backbench MPs have opportunities to influence or introduce legislation in debate or via PMBs.
- Parliament represents the people in several ways and there are three main models of representation: Burkean/trustee, delegate and mandate.
- Parliament is a forum to scrutinise the government and hold it accountable, although party politics often makes these functions less effective.
- Parliamentary committees, both select and public bill, play key roles in the scrutiny of both legislation and policy.
- The opposition holds the executive to account in several ways, including through debates, PMQs and suggesting alternative policies. The Official Opposition acts as a 'government-in-waiting'.
- Despite some recent changes, to a large extent parliament is only partially effective at scrutinising the executive.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three different theories of representation. (9 marks)
- 2 Explain and analyse three stages in the legislative process. (9 marks)
- 3 Explain and analyse three ways that select committees could be seen as effective methods of executive scrutiny. (9 marks)

Paper 1 Section B style question

Read the extract below and answer Question 4 that follows.

How effectively do backbenchers scrutinise and check government legislation?

MPs are frequently criticised because of the rows of empty seats that are often seen on BBC Parliament during debates on government legislation. Why are all 650 MPs in the Commons chamber not engaging in deliberation and scrutinising the government's policies?

The government's control over the legislative process, and the ability to defeat opposition amendments in committee due to its majority, has led to criticisms that backbench MPs are ineffective in making an impact on government legislation. The evidence to support this claim is at first compelling. For example, in 2014–15, 100% of government bills received royal assent, while the percentage for private members' bills was just 6%. These figures demonstrate the government is highly successful in securing its legislation while backbench MPs attempting to introduce bills individually are not very successful at all.

On the other hand, backbench MPs on the governing side may exert pressure early on in the development of legislation, and then secure changes not captured by 'measurable' activity on the floor of the House. Indeed, government may shy away from introducing legislation altogether for how its backbenchers will react.

In addition, the threat of backbench rebellion, and of MPs voting against legislation, has become an increasingly useful tool deployed by backbenchers in order to secure concessions on bills that are already going through parliament. Consequently, understanding how effective backbenchers are in terms of legislation involves looking beyond raw numbers about how many bills are passed, and looking instead at how backbenchers skilfully use other opportunities to influence government legislation.

Source: adapted from Kelso, A. (2016) 'Parliament: how effective are backbench MPs?', *Politics Review*, Vol. 26, No. 2, pp. 28–31.

- 4 Analyse, evaluate and compare the arguments in the extract over the extent to which backbenchers can influence legislation in the Commons. (25 marks)

Paper 1 Section C style questions

- 5 'Backbench MPs have few ways to influence the government.' Analyse and evaluate this statement. (25 marks)
- 6 'Parliament is increasingly able to scrutinise and check the government.' Analyse and evaluate this statement. (25 marks)
- 7 'The main role of the opposition is to try and block government policy.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Kelso, A. (2016) 'Parliament: how effective are backbench MPs?', *Politics Review*, Vol. 26, No. 2, pp. 28–31.

Leston-Bandeira, C. (2017) 'Parliament: does the opposition matter?', *Politics Review*, Vol. 27, No. 2, pp. 2–5.

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Websites

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Sabbagh, D. (2019) 'Growing backbench Brexit rebellion has been months in the making', *The Guardian*, <https://www.theguardian.com/politics/2019/jan/09/growing-backbench-brexit-rebellion-has-been-months-in-the-making>

TheyWorkForYou: www.theyworkforyou.com

3

The prime minister and the cabinet

KEY QUESTIONS ANSWERED

- What is the core executive?
- How has the role of prime minister changed in recent times?
- How is policy made and what factors can affect it?
- How far can the prime minister and cabinet dictate events and decide policy?
- What is the true nature of the relationship between a prime minister and their cabinet?
- What is the difference between individual and collective ministerial responsibility, and how does it impact on ministerial resignations?
- How far do the prime minister and cabinet remain accountable to parliament?

BACKGROUND INFORMATION

If the Constitution represents the 'rules' of the political game and parliament is the debating chamber, where does the **prime minister** and their **cabinet** fit in? Perhaps one helpful metaphor might be that of the orchestral conductor. The prime minister is the leader, they set the tone, they also control proceedings...up to a point. One might also add that they compose some of the music or at least arrange the musical score. The biggest debates concerning the premier's role are, first, how far has their power and profile developed in recent times? Have they become more 'presidential' and less **primus inter pares** (first among equals)? To what extent is policy-making still undertaken by the cabinet as a whole (cabinet government) and how far is it directed and imposed by the prime minister themselves with limited scope for free debate and discussion? Has the cabinet simply become a rubberstamp for prime ministerial decrees?

In addition, there is discussion over what factors affect the powers of a prime minister. All prime ministers share equally the formal institutional powers of the post, such as hiring and firing ministers, but some are clearly more powerful and predominant than others. Context is crucial here — prime ministerial power is never fixed but is always a variable depending on a whole host of factors including the parliamentary arithmetic, the state of the economy and how the prime minister handles national crises.

KEY CONCEPTS

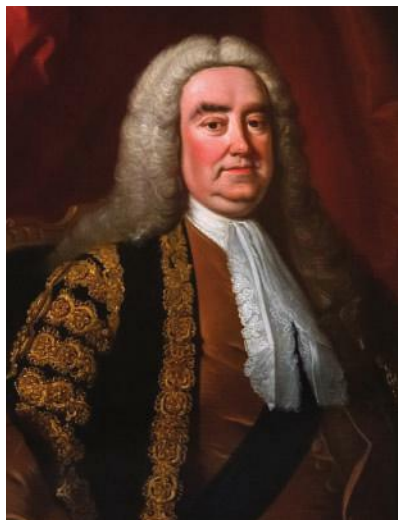
Prime minister The first or leading minister, the head of government.

Cabinet Group of around 20–25 senior ministers who meet regularly, usually weekly. The cabinet is chaired by the prime minister and is the key decision-making body in UK government.

Primus inter pares Latin term meaning first among equals. In respect of the prime minister, it implies he or she is the most important member of the cabinet, yet they govern in a collective manner.

STUDY TIP

It can be a common error to refer to the prime minister as the head of state. In the UK, the monarch performs that role in a ceremonial and non-political way. In some countries, such as the USA, both roles are combined in one person.



Robert Walpole (1676–1745), the de facto first prime minister of Great Britain

The origins, structure and powers of the core executive

Given the evolving nature of the British Constitution, the post of prime minister was never formally set up. Unlike the post of US president, which was set down in the US Constitution, the role of prime minister emerged as opposed to being formally created. The first generally recognised holder of the title and longest serving, Robert Walpole, was appointed first lord of the treasury, chancellor of the exchequer, and leader of the House of Commons in 1721. The term 'prime minister' was not widely used at the time, but this was Walpole's effective position until 1742. Interestingly, Walpole's fall from power came when he lost a vote of no confidence in parliament. This is significant since while the prime minister is formally chosen by the monarch, they must always ultimately command majority support in parliament. In summary, the origins of the office fit in well with a definition by a later prime minister, Herbert Asquith, who defined it as one of those constitutional practices that rested, 'On usage, custom, convention, often of slow growth in their early stages, not always uniform, but which in the course of time received universal observance and respect.' Only in more recent times (1992) did a full codified guide, the Ministerial Code, appear, which sets out the duties and expectations of the prime minister and government ministers.

SYNOPTIC LINK

The origins of the post of prime minister are a good example of how Britain's uncoded constitution often relies on convention and tradition and not formal definition. The Ministerial Code is also a good example of 'piecemeal codification'. You can find out more about the British Constitution in Chapter 1.

KEY CONCEPT**Confidence and supply**

An arrangement whereby one party, in this instance the DUP, agrees to support the governing party on key votes such as the budget and any votes of no confidence. It is different to a more formal coalition deal when the coalition parties share government and ministerial roles.

How is the prime minister chosen?

Unlike the US president, the UK prime minister is not chosen directly by the voters in an election. Instead, under the parliamentary system, the prime minister is the leader of the majority or largest party in the Commons. Technically, it is the monarch who invites the leader of that party to form and lead the government, but convention requires they must summon the leader of the party most able to command a majority in the Commons. When an election result is not clear-cut, as in 2017 when no party won an overall majority, the monarch must exercise some caution and abide by convention. As Theresa May was leader of the largest single party, though had lost her overall majority, she was offered the first chance to form a government. In the event she was able to agree a '**confidence and supply**' arrangement with the Democratic Unionist Party (DUP) and remained prime minister.

It is also worth noting how prime ministers leave office. Many lose an election and are forced out by voters. Some, such as Harold Wilson in 1976, retire mid-term due to health concerns. In other cases, it is pressure from the parliamentary party that makes their position untenable. Theresa May won the 2016 Conservative leadership election without grassroots party members having a say after her rival, Andrea Leadsom, pulled out of the race. Boris

Johnson became Tory leader in 2019 after defeating his opponent Jeremy Hunt by a two to one margin in a vote by 138,000 Conservative Party members. Prime ministers elected in such circumstances often feel the lack of a direct personal mandate and may well call another election in the hope of securing public endorsement. This was true for both May and Johnson, though their elections were also in part borne out of a desire to secure support for their approaches to Brexit.

SYNOPTIC LINK

May's election as Conservative leader and therefore as PM in 2016 is an example of, in certain situations, members of political parties having a major role mid-term in selecting the next prime minister. However, the opportunity is absent if the leader is unopposed within the parliamentary party. You can find out more about political parties in Chapter 8.

Table 3.1 lists all postwar UK prime ministers and the reasons they left office.

Table 3.1 Postwar UK prime ministers

Prime minister	Period in office	Governing party	Reason for leaving office
Clement Atlee	1945–51	Labour	Election defeat
Winston Churchill	1951–55	Conservative	Resigned — ill health and some pressure from party
Anthony Eden	1955–57	Conservative	Resigned — ill health and reputation damaged by Suez Crisis
Harold Macmillan	1957–63	Conservative	Resigned — ill health
Alec Douglas-Home	1963–64	Conservative	Election defeat
Harold Wilson	1964–70	Labour	Election defeat
Edward Heath	1970–74	Conservative	Election defeat
Harold Wilson	1974–76	Labour	Resigned — feared ill health
James Callaghan	1976–79	Labour	Election defeat following House of Commons defeat on confidence motion
Margaret Thatcher	1979–90	Conservative	Resigned — failed to win Conservative leadership election
John Major	1990–97	Conservative	Election defeat
Tony Blair	1997–2007	Labour	Resigned — decided early date for departure after pressure from party
Gordon Brown	2007–10	Labour	Election defeat
David Cameron	2010–16	Conservative	Resigned — led the losing 'Remain' campaign in EU referendum
Theresa May	2016–19	Conservative	Resigned — unable to get Commons support for her Brexit deal and pressure from the party
Boris Johnson	2019–	Conservative	

ACTIVITY

Research briefly the careers of six postwar prime ministers including the three most recent. What similarities are there in terms of background and previous political experience? Do any earlier ministerial roles appear especially significant in helping them achieve the top office? Why were Blair and Cameron unusual in this respect? Overall, what are the key requirements needed to become prime minister?

KEY CONCEPTS

Core executive Policy-making network that includes the prime minister, senior ministers, cabinet committees and top civil servants.

Cabinet committees

Specialist subdivisions of the cabinet comprising fewer members who focus on particular policy areas.

The core executive

The prime minister is not the sole player in the government. The term **core executive** often includes not only the prime minister and their cabinet, but also senior civil servants, **cabinet committees** and the Cabinet Office. It emphasises the network nature of where and how policy is made, with each component part having its own resources and levers of power. There is a sense that power in such a framework is based as much on dependence as it is on command. In addition, although many parts of the core executive are political and reflect which party is in power, the civil service is politically neutral and senior figures normally remain in post when the government changes.

Figure 3.1 is an overview of the UK executive.

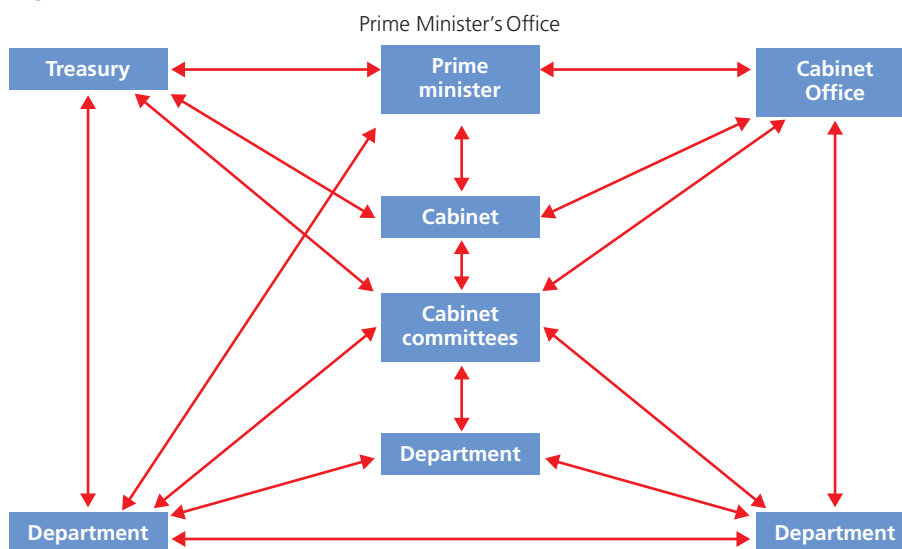


Figure 3.1 The UK executive

The key roles of the core executive

The core executive performs a number of key functions:

- **Making policy:** it is the role of the executive first to set political priorities and then decide upon policy often at cabinet meetings or in cabinet committees. Second, the administrative part, the civil service, has the job of implementing these policies and running the state on a day-to-day basis.
- **Passing legislation:** although parliament must pass all laws, major acts are first discussed and approved at cabinet level and then sent to parliament for debate and the final decision. Most of the time this is relatively straightforward due to the prime minister's party having a Commons majority, but on occasion, such as with Brexit, it is more problematic and protracted.
- **Financing:** a key role of the executive, especially the Chancellor and the Treasury, is to make decisions on taxation and government spending. These decisions are normally announced in the annual budget. There is usually much discussion and negotiation between different ministers and departments over where and how taxpayers' money is spent. Cabinet can be the forum where arbitration takes place, overseen by the prime minister.

KEY CONCEPT

Patronage powers Ability to appoint individuals to key offices. It is arguably one of the most important prerogative powers.

SYNOPTIC LINK

The Coronavirus Act 2020 is a good example of parliament passing legislation swiftly. The bill still went through all the parliamentary stages, but without the full debate and scrutiny bills usually face. This reflects how policy can happen very quickly when executive and legislature cooperate. You can find out more about how parliament operates in Chapter 2.

- **Being the national first responder:** in times of national emergency such as war, terrorist outrages or the coronavirus pandemic, the executive is required quickly and efficiently to put together emergency measures to deal with the threat as best it can, and reassure the public and calm fears. Many of these situations require swift and crucial cooperation between departments and ministers. For example, handling the COVID-19 crisis required input from departments overseeing health, the police and armed forces, education and social security, as well as the Treasury.

The main powers of the executive

Many executive powers derive from the royal prerogative, powers once held by the monarch but now in the hands of the government. Key powers include:

- the appointment (and dismissal) of ministers by the prime minister, and other **patronage powers**
- the deployment of UK armed forces overseas
- relations with international powers and international diplomacy
- making and ratifying treaties
- the organisation and structure of the civil service
- issuing directives and statements during national crises and emergencies

Other key powers derive from the ability of the executive to get its legislative agenda through parliament and to control the parliamentary timetable. All policy statements and executive decisions have to be lawful and covered by legislation to avoid 'arbitrary government', a characteristic of dictatorships and authoritarian governments, not liberal democracies. A good example is when, during the COVID-19 pandemic, Prime Minister Johnson instructed people to 'stay at home' except for a few exceptions such as purchasing food, keyworkers travelling to and from work and one short session of daily exercise. However, for these guidelines to have any force, such as fines for those who defied them, parliament had to pass the Coronavirus Act 2020.

DEBATE**How significant are the prerogative powers of the executive?****Significant**

The opportunity to deploy the armed forces overseas is clearly important. UK governments are not formally required to seek parliamentary approval for such actions, nor seek approval for any additional funding.

Prime ministers enjoy unlimited choice over who joins and leaves their government. Unlike the US president, who must submit their cabinet nominations for formal approval from the Senate, there is no similar requirement in the UK. The presence of the Lords means that the prime minister can also select ministers who lack a democratic mandate.

In times of national crisis, the executive and above all the prime minister deliver broadcasts, speeches and messages via social media to inform and reassure the public. Around 27 million people were estimated to have watched Boris Johnson's broadcast message about the national lockdown during the COVID-19 crisis.

Less significant

By convention, all recent military action overseas has been put before a vote in the Commons. This was true for the Gulf Wars and air strikes on Syria and Iraq.

Prime ministers are constrained in their choice of ministers. They must appoint a cabinet that not only has some diversity in background but also includes individuals from a broad spectrum of the governing party. For example, Theresa May had to include both Remainers and Brexiteers in her cabinets. Few cabinet members come from the Lords.

The executive and particularly the prime minister must also rely on parliament to pass relevant legislation such as anti-terror laws. The opposition will be quick to critique and monitor the executive's response to emergencies.

Significant

The executive plays a crucial part in negotiating treaties and agreements with other nations in areas such as trade and defence, without these normally being subject to direct parliamentary approval.

Less significant

The Brexit saga shows how limited prerogative powers can be. A Supreme Court ruling forced the prime minister to submit any Brexit deal before parliament. In addition, even in foreign policy and diplomacy, the government is indirectly influenced by parliament, the media and public opinion.



Individually or in pairs, consider which prerogative power you think is most significant.

SYNOPTIC LINK

This contrasts with a situation common in the USA. There, president and executive often face what is termed 'divided government', in other words when the president's party does not control both houses of Congress. This makes it harder for the president to pass laws and often leads to stalemate and gridlock. You can find out more about Congress in Chapter 13.

Overall, while its prerogative powers are considerable, the executive cannot ignore its limitations. Arguably, the willingness of parliament to back executive policy is equally important. The positive dimension for the executive is that it normally controls parliament so has few problems passing the required legislation.

ACTIVITY

Watch Johnson's broadcast to the nation on the COVID-19 crisis, made on 23 March 2020. Consider the following questions to help you assess the significance of the prerogative powers of the executive.

- What mood and reaction was he seeking to create?
- What does this suggest about the role of prime ministers in a time of national crisis?

KNOWLEDGE CHECK

- 1 Who forms the core executive?
- 2 What does *primus inter pares* mean?
- 3 What does the term 'prerogative powers' mean?

How the role of prime minister has changed in recent times

While the formal powers of the prime minister have changed relatively little since the days of Walpole, the office has changed considerably over the past two and a half centuries. In assessing what changes have occurred, it might be helpful to look first at how some previous holders of that office have reflected on the office of prime minister (see Figure 3.2).



Figure 3.2 Prime ministers reflect on their time in office

This range of quotations from prime ministers who held the office between the late nineteenth century and the early twenty-first century reveal the following aspects of the job:

- A prime minister cannot simply command and demand total obedience.
- Sometimes prime ministers have to take hard and tough decisions with regard both to ministerial colleagues and to important policy decisions.
- Prime ministers must often work hard at persuading cabinet colleagues to fall into line and come around to their way of thinking.
- The role involves a lot of learning on the job.
- There is scope for carving out a certain leadership style from what is inherently a flexible role.

The accusation of presidentialism

A frequent criticism is that the prime minister has become more presidential in leadership style. The role has morphed into one of a far more autocratic and towering figure, not least over the cabinet. Far from being a forum for open and balanced debate, some critics have argued the traditional model of cabinet government has ceased to exist — a once venerable institution rendered into a powerless, compliant body full of ‘yes men and women’. This accusation has most frequently been levelled at the administrations of Margaret Thatcher (1979–90) and Tony Blair (1997–2007). One of Blair’s own former cabinet colleagues, former Northern Ireland secretary Mo Mowlam, lamented in the 2002 BBC2 documentary *Cabinet Confidential* that she felt, ‘Cabinet itself is dead, it doesn’t have a function to play.’ The Blair government was often accused of preferring ‘**sofa government**’, or informal chats involving two or three ministers including the prime minister, to full-length cabinet discussions. Equally, Thatcher’s style was often criticised for being intolerant and overbearing. Her cabinet was often depicted as being comprised of ‘wets’ and ‘dries’, shorthand terms that roughly translated into dissenters (‘wets’) and supporters (‘dries’), with the former increasingly marginalised from positions of real influence.

KEY CONCEPT

Inner cabinet Small core of ministers a prime minister particularly relies upon for advice or support. In part, it reflects the relatively large size of the full cabinet, but also a tendency for the prime minister to seek ideas and support from ministers they particularly trust

Even in the 2010–15 coalition government, which by its very nature had to be based around a greater degree of consensus and compromise as it involved two parties sharing power, some felt real power was concentrated on the four leading figures, known informally as ‘The Quad’. This comprised Prime Minister David Cameron, Deputy Prime Minister Nick Clegg (Liberal Democrats), Chancellor George Osborne and the Liberal Democrat chief secretary to the treasury, Danny Alexander. This phenomenon is sometimes referred to as ‘**spatial leadership**’, when a sense of distance is created between the prime minister and the rest of their government and party. In such situations, the prime minister relies to a great extent on a small inner circle of advisers. This smaller group of confidants is sometimes also known as a kitchen or **inner cabinet**.



Prime Minister David Cameron and Deputy Prime Minister Nick Clegg at their joint news conference in December 2010

In addition, much has been made in recent times of prime ministers relying too much on special advisers, or SpAds. The first SpAds were appointed by Harold Wilson in the 1960s, but their role has since risen in importance. Unlike permanent civil servants, SpAds are political and personal appointments made by prime ministers. They are policy advisers who are often believed to wield too much power over the prime minister at the expense of fellow ministers and the civil service. Often they are colourful figures, such as Blair’s chief of staff and press secretary Alastair Campbell, who famously intervened during an interview with the interruption ‘We don’t do God’ when Blair was questioned about his Christian faith. Nick Timothy and Fiona Hill were the principal special advisers to Theresa May, while Dominic Cummings performed a similar service in the Johnson years. In January 2020 in his blog, the latter appealed for ‘weirdos and misfits with odd skills’ to apply for jobs with the incoming Johnson government. In fairness to Cummings, he also asked for applications from those with more routine skills, including data scientists and software developers.

In December 2019, it was revealed that the number of special advisers appointed to Boris Johnson’s government was 108 compared with 99 under Theresa May. As well as Dominic Cummings, the names included Sir Eddie Lister as chief strategic adviser — he’d worked previously with Johnson when he was London mayor. Munira Mirz, listed as director of No. 10’s Policy Unit, had been Johnson’s deputy mayor for education and culture. Many SpAds are therefore long-time political associates of the prime minister.



Dominic Cummings

There has been plenty of criticism and possibly some exaggeration of SpAds' influence. Clare Short said in her resignation speech in 2003 that the problems in Labour's second term of office were partly down to the 'centralisation of power into the hands of the prime minister and an increasingly small number of advisers who make decisions in private without proper discussion'. The departure of Cummings in November 2020 would seem to confirm this view. There was a widely held perception, among both the public and sections of the Conservative Party, that he had become both too powerful an influence on the prime minister and a focus for constant criticism. In part, this stemmed from a 260-mile trip he made to Durham during the height of the UK's first national COVID-19 lockdown, and his subsequent explanation, which failed to convince many that he had acted responsibly and within the law.

SYNOPTIC LINK

The notion of presidentialism implies some crossover with the US system. However, when UK prime ministers are accused of being presidential, this cannot be a direct comparison. US presidents have somewhat different powers and enjoy a direct mandate, having won a presidential election. They also lack the direct control over the legislature that the prime minister normally enjoys. You can find out more about the role of US president in Chapter 14.

The case against presidentialism

It is perhaps too easy to see a clear and sustained upward trend in the accumulation of powers in the hands of the prime minister. While the Thatcher and Blair years, and potentially the Johnson government, do suggest strong and powerful premiers with a habit of frequently ignoring cabinet and relying on a small group of loyal supporters and advisers, this would be a misleading picture overall.

First, prime ministers with weak or non-existent parliamentary majorities are in a very different position. For example, May suffered two crushing defeats in January and March 2019 over her proposed Brexit deal. Earlier in July 2018, her deeply divided cabinet agreed the so-called 'Chequers deal' over Brexit. In the following days, two of the cabinet ministers who initially reluctantly agreed to the deal swiftly resigned: her own Brexit secretary, David Davis, and then foreign secretary Boris Johnson, who colourfully compared the proposed deal to 'polishing a turd'. Not surprisingly, May failed to get her deal through and was effectively forced out of office, eventually resigning in June 2019. Her position as leader was severely weakened as not only was her own party deeply divided over the issue, but she also lacked an overall Commons majority and was dependent on the DUP to get legislation through.

Even prime ministers with large majorities can find themselves imperilled. Following a growing impatience with their styles of leadership, both Thatcher and Blair were effectively forced out of office due to criticism and divides within their own party. This was due, not least, to controversial policies such as the poll tax (Thatcher) and the Iraq War (Blair). Loyalty on the backbenches is never guaranteed and always conditional. In addition, all prime ministers have to work through and with key ministerial colleagues, as was the case with Tony Blair and his chancellor, sometime rival and successor as prime minister, Gordon Brown.

The former Conservative minister (and later Ulster Unionist MP) Enoch Powell shrewdly observed in a 1977 political biography that 'All political lives, unless they are cut off in midstream at a happy juncture, end in failure, because that is the nature of politics and of human affairs.' It would indeed be hard to identify a recent UK prime minister who has left office entirely at a time and in a nature of their own choosing.

Even the power of special advisers remains unclear. The tendency to appoint and listen to them can be the result of a feeling that the civil service is too set in its ways, and often has its own agenda. Some prime ministers have expressed frustration with its penchant for fussy and often cumbersome routines and procedures. Yet as a former senior minister, Gerald Kaufman, pointed out in his book *How to Be a Minister*, first published in 1980, 'Be sure of this, when you become a minister,

the system will be there waiting for you and watching you. Antagonise it, and you can do little. Win its cooperation, and you can do quite a lot.' The best way for ministers, including the prime minister, to wield power directly is to work alongside others, listen and liaise, and refuse to be captive of a small clique.

DEBATE

How far has the role of prime minister changed in recent times?

Greatly changed

Several recent prime ministers, such as Thatcher and Blair, have been accused of running a more presidential style of leadership. It is claimed they frequently bypassed full cabinet meetings and discussions, preferring instead smaller gatherings of key ministers and advisers.

There has been a growth in the use of SpAds at the expense of seeking policy advice from the civil service.

The development of social media and 'celebrity culture' have arguably resulted in a growing focus on the personality and style of individuals rather than the wider cabinet. More demonstrably, this can be seen in the existence since 2010 of televised leaders' debates as part of general election campaigns.

Increased media scrutiny and opportunities have led more prime ministers to focus on the popular media and take their message directly to the people, often preferring to appear on 'soft format' TV chat shows.

Barely changed

There have been no formal changes in the powers available to prime ministers in recent times. Twenty-first-century premiers possess the same prerogative powers as their predecessors. Indeed if anything, some powers have been reduced, including that of easily calling a fresh general election.

The 'predominant premierships' of Thatcher and Blair should be assessed alongside the more imperilled ones of John Major and Theresa May, and David Cameron's coalition administration.

The influence of SpAds is probably somewhat exaggerated, and the importance of more traditional sources of policy advice, such as fellow ministers and the civil service, should not be overlooked. For example, when devising the government's response to the COVID-19 pandemic, the most powerful advice came from medical experts such as the chief medical officer, Professor Chris Whitty.

Image-aware prime ministers are as likely to want to present themselves as collegiate and collaborative in their approach as they are to portray themselves as the sole and star player in the executive team. For example, during the COVID-19 emergency, Boris Johnson often appeared at media briefings with the chief scientific adviser Sir Patrick Vallance.



Individually or in pairs, decide which side of the debate you consider more convincing and why.

Opinions differ as to how far the post of prime minister has become more presidential. In his 2000 work *The British Presidency*, Michael Foley wrote:

'The British prime minister has evolved, and is evolving, away from what a prime minister used to do and used to be...British politics has accommodated and adjusted to a distinctive presidential dimension.'

On the other hand, others are less certain about presidentialism. According to Richard Heffernan in 2005:

'To describe the prime minister as a president underplays the core degree of collegiality found within a parliamentary executive. It also underestimates the degree of leverage a prime minister, compared to a president, can have over both legislature and executive.'

Perhaps it is best to describe modern-day prime ministers as parliamentary presidents?

The formal institutional powers of the prime minister have changed very little in recent times — their prerogative powers and those derived from being the leader of the majority party in parliament have remained constant. What is variable, and arguably this has been true for all modern prime ministers, is the context and particular situations of their premierships.

KNOWLEDGE CHECK

- 4 What are special advisers and why are they often controversial?
- 5 What is meant by a presidential style with reference to the prime minister?
- 6 What do the terms 'sofa government' and 'spatial leadership' mean?

How policy is made

The factors affecting policy-making come from a variety of sources and situations. These include the following:

- Manifesto pledges and promises
- Personal convictions of the prime minister/party leader, although these are usually reflected in the point above
- Outcome of referendums
- Results of deals with minority/other coalition parties
- Responses to national crises and emergency situations, including economic, foreign affairs and medical
- Mounting pressure from the public and media
- Changing social and cultural attitudes

The case studies that follow all feature an example of policy-making that exemplifies these different origins.

STUDY TIP

Mnemonics can often be a useful way of remembering key headings or factors. For the factors affecting policy-making, you could use PPPES — **p**ersonal, **p**olitical, **p**opular, **e**xternal and **s**ocial.

CASE STUDY

Fulfilling a manifesto pledge: extending free childcare

In their 2017 manifesto, the Conservatives promised to offer working parents of 3 and 4-year-olds 30 hours of free childcare a week instead of 15 hours. This was primarily designed to increase the number of parents in work (and therefore paying taxes and

contributing to the nation's economy) who might otherwise not be able to afford the cost of additional childcare. It was also felt that some young children might benefit from the opportunities for socialisation and would be taught basic skills by nurseries or childminders. Only those earning less than £100,000 would be eligible. This scheme was rolled out and in operation by September 2017.

CASE STUDY

The personal convictions of the prime minister: privatisation and the sale of council houses

In 1979, Margaret Thatcher came to power with many clear ideas and principles. She is often cited as the classic example of a 'conviction politician', someone who had strong pre-existing ideas on a range of issues. One of these was her clear belief in the benefits of a property-owning democracy, alongside a desire to 'roll back' or shrink the state. She pursued this through her policies between 1979 and 1990. Council house tenants were given the 'Right to Buy', which enabled them to buy their own homes at a substantially reduced rate from local councils. As a result, in 1981, England and Wales had 5.4 million households in social or council housing. By 1991, that figure had dropped by 900,000 to 4.5 million. In addition, many nationalised industries such as British Telecom, the gas and electricity companies and the coal mines were sold off and privatised. The public was often encouraged to purchase shares at a discount. This policy was largely continued by subsequent

governments both Labour and Conservative. For example, under Labour premier Tony Blair, the air traffic control system was privatised, while Thatcher's successor, John Major, saw the railways and electricity generating companies being sold off.



Margaret Thatcher championing the cause of the sale of council houses

CASE STUDY

The outcome of a referendum: Brexit

In one of the manifesto pledges he came to regret, David Cameron promised in 2015 to hold a referendum on the UK's continued membership of the EU. This went ahead in 2016, resulting in a 52%-48% victory for those who wanted to leave the EU. Cameron duly resigned and Theresa May was left with the challenge of implementing this decision. The referendum result was very unusual as the outcome represented support for a policy that was personally opposed by the prime minister and a large majority of MPs. As someone who had personally voted Remain, May nonetheless pledged to uphold the referendum result. Therefore, her approach was to implement a policy about which she had obvious personal qualms but felt duty-bound to honour. In this sense, her policy-making was the opposite of a 'conviction' approach, and largely about democratic duty. Despite her best efforts, her attempts to see Brexit through to a definitive

conclusion failed. This ultimately led to her resignation in June 2019 and her succession by Boris Johnson.



On 24 November 2019, Johnson launched the Conservative Party election manifesto, which promised to 'Get Brexit done'.

CASE STUDY

The results of deals with minority/other coalition parties: the 2011 AV referendum

The 2010 election produced a hung parliament. As a result, the Coalition Agreement was signed between the Conservatives and Liberal Democrats. The aim was to provide a common plan for policy and offer political stability in the aftermath of the 2008–09 global economic crisis. It therefore represented a compromise between the manifesto promises of each party.

Among the terms of the agreement was a promise to hold a referendum on the voting system for Westminster elections. The Liberal Democrats long supported electoral reform, and a more proportional

system as opposed to first-past-the-post (FPTP), which discriminates against smaller parties including themselves. The policy adopted as part of the Coalition Agreement, found on page 27 of the official document 'The Coalition: our programme for government', was a promise to hold a national referendum on adopting the alternative vote (AV). This was not a proportional voting system but did represent a degree of electoral reform. Without, it must be said, any great enthusiasm or high levels of public engagement, the proposal was decisively defeated by 67.9% to 32.1% on a low turnout of just 41%. By contrast the turnout for the 2010 general election had been 65%. Electoral reform was not implemented and the FPTP system was retained for future elections.

CASE STUDY

Responses to national crises and emergency situations, including economic, foreign affairs and medical: the coronavirus pandemic

In early 2020, it became clear that the world was facing an unprecedented coronavirus pandemic. All prime ministers and governments face unexpected issues requiring swift and deft responses. In recent times, the global financial meltdown of 2008–09 and

the 7/7 bombings in London tested Gordon Brown's government, while Theresa May's government was confronted with several IS terror attacks, including the Manchester Arena suicide bombing in 2017. Events such as these require the prime minister in particular to appear calm, reassuring and decisive. In addition, emergency legislation will often need to be passed — prime ministers must be seen to react and respond, and they very often make up policy as they go along.

However, no postwar prime minister has had to face an event on quite the same scale or of the same complexity as the COVID-19 pandemic. In the face of such a confusing and unprecedented event, Boris Johnson's reaction had to be measured, clear and immediate. Initially it was unclear quite how quickly or deadly the virus might be. The early stages of the government's response were somewhat limited as it advised against overseas travel to regions of early infection and recommended more rigorous hand washing procedures. Schools, shops and leisure and hospitality facilities all remained open.

But when the full scale of the pandemic became clear, government policy became far more extensive and draconian in an effort to protect the economy as best they could, support those in financial need and undertake a huge mobilisation of health resources. This included the construction of several large temporary field hospitals such as the Nightingale Hospital, situated in the ExCeL conference centre in east London. Large sections of the economy were required to shut down including all pubs, restaurants and gyms. Social distancing was introduced. Emergency legislation, the Coronavirus Act 2020, was passed allowing, among other things, for penalties to be issued to those who broke the new restrictions by



Panic buying during the COVID-19 pandemic

attending social gatherings outside their immediate household or undertaking non-essential travel. At times, a degree of uncertainty and confusion was apparent such as whether it was permitted to drive to an isolated area and go for a walk. A huge raft of measures was also announced by the chancellor, Rishi Sunak, to help businesses and workers survive the economic downturn. This included initially a promise that the government would cover up to 80% of wages for most employees furloughed or unable to work during the crisis.

CASE STUDY

Mounting pressure from the public and media: climate change policy

One of the most significant popular movements in recent times has been the campaign for drastic action to deal with climate change and carbon emissions. Pressure groups such as Extinction Rebellion frequently use direct action to draw attention to the issue. In addition, high-profile individuals such as the teenage Swedish environmentalist Greta Thunberg attract large followings. Thunberg's strategy of global climate strikes by school students was embraced by many UK schoolchildren, often with tacit support from parents and teachers.

There is little doubt that the highlighting of ecological issues has affected recent government policy and added a greater sense of urgency to plans to reduce carbon emissions. In 2019 the UK government pledged to cut greenhouse gas emissions to almost zero by 2050. Theresa May said there was a 'moral duty to leave this world in a better condition than what we inherited'. Previously, the government had pledged an 80% reduction under the Climate Change Act 2008,



Greta Thunberg delivers a speech on climate change at the Fridays For Future demonstration in Hamburg, Germany on 21 February 2020

so this further change of policy would suggest public opinion had an influence. The policy shift was also partly the result of the findings of the government's own independent adviser on climate change, the Committee on Climate Change (CCC).

CASE STUDY

Changing social and cultural attitudes: the 1960s and liberalisation of public attitudes

The 1960s was a time of rapid social change in the UK, largely unprompted by the governments of the day. In general, the 'swinging sixties' were characterised by the liberalisation of attitudes towards sex, marriage and women's rights. Governments have a choice when it comes to policy-making in relation to changing social attitudes: they can either ignore, delay or largely embrace new trends. Most governments, being essentially pragmatic and keen to be seen as 'in touch' with voters and changing moods, tend towards the latter approach. They are, however, usually somewhat cautious and often anxious to avoid losing votes among more traditional and conservatively minded voters. They may also be concerned about dividing their own parties over such matters.

Nonetheless, especially under Harold Wilson's Labour governments from 1964 to 1970, changes in social outlook were often reflected in legal changes. Examples include legalised abortion up to 24 weeks of pregnancy, ending the death penalty, decriminalising



The 1960s: a decade of rebellion and changing social attitudes

male homosexuality (for various reasons it was never illegal for women), and making divorce easier with the Divorce Reform Act 1969. Many of these measures were enacted by private members' bills but with government support. Policy-making can therefore often reflect, reactively rather than proactively, wider changes in social and cultural attitudes.

STUDY TIP

When answering questions about policy-making and government, include a breadth of examples that show a wide range of factors present, and which ideally reference several prime ministers.

As we have seen, when it comes to policy-making, governments and their leaders are influenced by a number of factors. Partly their response depends on political circumstances and whether or not the government enjoys a strong Commons majority. It also partly reflects the personality of individual prime ministers. Finally, policy can often be thrust upon governments due to either popular pressure or catastrophe. Asked what was most likely to throw governments off course, Harold Macmillan, probably referring to the Profumo sex and spy scandal, is alleged to have replied, 'Events, dear boy, events' — a sentiment surely shared by all prime ministers past and present.

KNOWLEDGE CHECK

- 7 List the main factors that can affect government policy-making.
- 8 Why is it particularly difficult to respond to national emergencies with policy-making?
- 9 Under what circumstances do prime ministers and governments largely have policy-making forced upon them?

ACTIVITY

Research another example of policy-making that shows some of the factors which contribute to policy-making in action.

The power of the prime minister and cabinet to dictate events and determine policy-making

Prime ministers and their cabinets only have partial control over events and decisions about policies, and there are many occasions when the executive has little or no control over either events or policy. There are, however, some clear

exceptions that clearly demonstrate how a prime minister/cabinet can dictate events and policy decisions. These include the following:

- The introduction of the poll tax in 1990 by Margaret Thatcher
- The invasion of Iraq in 2003 by Tony Blair
- Theresa May's decision to call an early election in 2017

The introduction of the poll tax in 1990

Domestic rates was a property-based tax that helped fund local councils. It was payable by the homeowner or landlord, but not by those who rented or were lodgers. As it was a tax on property, the amount paid did not necessarily reflect someone's income or ability to pay. Also, as it was a tax not paid by many residents, they had few qualms voting for councils (often Labour-run) that promised high levels of spending, as they would not be affected personally by any increase in the rates. There was also a strong desire to spread the burden of payment for local services such as schools and refuse collection.

Conservatives had long desired to reform the system of domestic rates, so they included the issue in their 1987 party manifesto. The proposal was to replace the rates with a flat-rate tax payable by nearly all adults. Its formal name was the community charge, although it was universally known as the poll tax. This was a pejorative reference to the tax originally levied between 1377 and 1381 that became increasingly unpopular and was a major cause of the Peasants' Revolt. The personal involvement and commitment of Thatcher in ushering in the poll tax is clear from cabinet papers released in 2016, with many annotations in her own hand apparent on the original policy documents. Following her third successive election victory in 1987, a bill was easily passed to implement the community charge — first in Scotland for 1989 and then to be rolled out to the rest of Great Britain the following year.

The prime minister's ability to dictate policy: the poll tax

The poll tax is widely regarded as Thatcher's biggest political misjudgement and it hastened the end of her time as prime minister.

- The new tax had proved very unpopular in Scotland when it was introduced there, yet this did not appear to deflect the 'Iron Lady'.
- Major poll tax riots broke out in London and elsewhere in March 1990, often ending in violence. There were 100 injuries and 400 arrests following the anti-poll tax rally in central London. There was also a major civil disobedience campaign of non-payment.
- The poll tax proved difficult to collect, in essence because people can easily move or disappear in a way that bricks and mortar cannot. There were high rates of evasion and it proved costly to administer.
- The new tax was easily parodied in parts of the media, where its opponents seized on the 'duke and dustman' analogy, namely that the duke in his mansion would pay the same as the man who emptied the duke's bins.
- The internal opposition within Thatcher's own party sparked a leadership challenge against her by former cabinet minister Michael Heseltine. Thatcher failed to win sufficient votes in the first ballot to be assured of final victory and was, somewhat reluctantly, persuaded to step down rather than face the possible ignominy of defeat in the second ballot.

- There was evidence that the economy was weakening, and Tory opinion poll numbers were slipping.
- Soon after Thatcher's resignation, the new prime minister and Conservative Party leader, John Major, replaced the poll tax with the council tax, which was a property-based tax, not that dissimilar to the rates.



The poll tax riots that broke out in London and elsewhere in March 1990 saw violent clashes between protesters and police, and spelled the end of Margaret Thatcher's 11-year premiership



Margaret Thatcher leaves Downing Street after her resignation in November 1990

The poll tax was a policy personally associated with Thatcher and demonstrates how the prime minister is able personally to dictate and decide policy. On the flip side of this, however, when it began to unravel, she had no 'political cover'. There was no one else to blame for its lack of popularity.

The poll tax policy, and especially Thatcher's handling of it, highlighted growing concerns within her own party of her inability or unwillingness to listen to others. This was highlighted when a normally loyal backbencher, Ralph Howell, sought to raise the issue with the prime minister on behalf of two constituents. An elderly couple who lived in a delightfully named house Dream of Delight in the village of Great Snoring, North Norfolk, had written directly to the prime minister complaining about the poll tax. In the letter they commented, 'You have taken advantage of your position to impose your will upon us to the point where you are now virtually a dictator riding roughshod over anyone who opposes you.' When Howell sought a meeting with Thatcher to discuss the complaint, her adviser suggested this be granted but commented, 'The meeting will be a waste of time, but I am afraid she will have to do it to keep his frustration at bay.' This was a telling reflection on how Thatcher was perceived even by those closest to her.

The poll tax story shows us that powerful prime ministers clearly have the power to push through policy. It also highlights the very real dangers that can ensue from rejecting the advice of political allies and natural supporters. It was also true that for some in the Conservative Party, the policy represented something of a 'final straw' with regard to Thatcher's leadership, coming as it did amid growing fears that the Conservatives would lose the next election due in 1992.



British army corporal Leanne Fielden, 21, guards a road on the Rumaila oilfield in southern Iraq, 2003

The decision to invade Iraq in 2003

Committing the armed forces to combat zones is always a risky move for prime ministers. When it goes well, and casualties are low and it is both militarily and strategically successful, it can offer a major political boost. This was the case, for example, with Thatcher and the Falklands War. When it goes badly, not only is the prime minister made to look weak and to possess poor judgement, but there is also the moral dimension of lives lost for no positive purpose.

For Blair, the Iraq War significantly coloured his legacy. When approached by US president George W. Bush to commit troops to a US-led invasion of Iraq, Blair obliged. He justified UK involvement on the moral grounds of the removal of weapons of mass destruction (WMDs) and discredited intelligence reports that these could be launched within 45 minutes. The UK was almost alone among EU and NATO states in joining the USA in the war. It would have been relatively easy for the UK to follow the example of France and Germany and stay on the sidelines.

As it happened, formal military victory was largely straightforward, and Iraq's dictator Saddam Hussein was soon removed. Far less easy, however, was the creation of a peaceful and stable successor state. Iraq descended into bloody civil war, the entire region was destabilised and fertile seeds were sown for the later rise of fundamentalist militant groups such as IS. In addition, over 180 British lives were lost — alongside, lest we forget, thousands of Iraqis — and no WMDs were found. There were also allegations of human rights abuses committed by British soldiers on Iraqi civilians and prisoners. Large-scale anti-war protests took place across the UK, and opinion polls showed a sharp slump in public trust of Blair. His standing in the Labour Party was badly (some would say irreparably) damaged.

The prime minister's ability to dictate policy: the Iraq War

There was no pressure within the cabinet or the wider party, or indeed the public, for UK troops to be mobilised. There was no sense that national security was imminently threatened by Iraq. The decision was largely the result of Blair wanting to cement his strong personal relationship with Bush, and to deepen the 'coalition of the willing'.

- A series of official reports after the war, such as the 2004 report by Lord Butler and the 2016 Chilcot Report, were highly critical of government actions, especially those taken by Blair personally. It transpired that although the cabinet was briefed many times on the situation in Iraq beforehand, ministers were denied access to key papers.
- Blair's preference for informal 'sofa government' meant there was little by way of informed collective discussion and decision-making. Blair also disregarded security warnings, and criticism that the legal basis for going to war had not been fully evaluated. There was also apparently scant discussion of other policy options, such as working more in tandem with European neighbours or through the UN. Blair was left without much, if any, political or diplomatic cover, especially when the non-existence of WMDs emerged.

- The resignation of a key and high-profile cabinet minister, Robin Cook, and of Clare Short soon afterwards served to weaken Blair's position further and more publicly. The suicide of government scientist Dr David Kelly also increased scrutiny of government and criticism of the government's Iraq War policy.
- The legacy of this unsuccessful military venture can be seen in the reluctance of subsequent UK governments to deploy ground forces in further Middle East conflicts, such as Syria.

The decision to call an early election in 2017

Sometimes in politics, it is hard to draw a clear line between policy and political strategy. The calling of a snap election for June 2017 is just such a case. Calling an election is one of the traditional prerogative powers enjoyed by the prime minister. However, for May the situation was not so clear-cut. Under the Fixed-term Parliaments Act (FTPA) 2011, another general election was not due until 2020. Having become leader in July 2016 after David Cameron resigned following the success of the Leave campaign, May had said in September on the BBC's *Andrew Marr Show*, 'I'm not going to be calling a snap election.' Yet she reversed that promise on 18 April 2017, when she announced that she would be calling an early election, effectively challenging Labour leader Jeremy Corbyn to 'come out and fight'. Labour's support was needed to ensure the two-thirds majority in the Commons required by the FTPA for an election to take place. Labour supported the call to arms and the election duly took place on 8 June.

The motives behind this change of policy are best understood as a mixture of capitalising on perceived political advantage and enabling her Brexit strategy to be successfully implemented. In the event, the policy backfired and the Conservatives lost rather than gained seats, forfeiting their overall majority in parliament.

The prime minister's ability to dictate policy: the 2017 election

This was ultimately a personal decision made by May, although she had taken advice from her political advisers, especially Nick Timothy, who resigned soon afterwards.

- As an unelected leader, May wanted her own personal endorsement from voters. She might have been influenced by the earlier example of Labour prime minister Gordon Brown. Like May, he took over the premiership mid-term, and while there was talk of him calling an early election to secure that alluring personal mandate, he was accused of 'bottling it', delaying the election until 2010 when he subsequently lost.
- May was convinced that she needed her own mandate to push through Britain's exit from the EU following the 2016 referendum. She was aware, however, that many Tory Remainers would resist leaving the single market and the customs union. She therefore wanted an increased majority to neutralise such a threat.
- A key factor was that the opinion polls prior to calling the election looked very favourable. They indicated a 20% lead for the Conservatives, while Corbyn was regarded as too left-wing and an easy opponent to defeat.
- The gamble did not pay off. Although gaining seats in Scotland, the Conservatives lost seats to Labour in England, and ended up eight seats short of an overall Commons majority, suffering a net loss of 13 seats.

- The Conservative manifesto flopped. One of its centrepiece policies, a new way of funding care for older people, was quickly dubbed the ‘dementia tax’. An attempt to backtrack on aspects of this social care policy undermined May’s self-proclaimed portrayal of ‘strong and stable’ leadership.
- The campaign revealed May to be something of a weak public campaigner. Her repetition of the phrase ‘strong and stable’ was criticised in some quarters as ‘Dalek messaging’.
- A further campaign flaw was an analysis by *The Guardian* newspaper found the prime minister spent more than half the campaign in Labour-held seats, and just a fifth of her stops were in Tory marginals. In other words, she was being over-confident and not defensive enough in her campaign strategy.
- There is strong evidence that May relied too much on a small group of inner advisers and not wider sections of the party — in other words, there was too much ‘command and control’.

The outcome of this fatally flawed decision was that although she remained in No. 10, the rest of May’s premiership was undertaken in straitened circumstances. She squandered much of her political capital with her party and had a weaker, not stronger, mandate after the election. Her original desire to follow through and deliver Brexit essentially hit the parliamentary buffers.

A comparison of the three cases

It is worthwhile comparing the above three situations, while bearing in mind that they are distinct situations that reveal the different ways prime ministers have fared when seeking to dictate policy and events. See Table 3.2 for a summary of their similarities and differences.

Table 3.2 Similarities and differences in the three cases of prime ministers dictating policy and events

Similarities	Differences
Each case involved decisions taken directly by and personally associated with the individual prime minister.	The poll tax was much more a ‘conviction’ policy, while the 2017 election was determined more by political and electoral considerations. The invasion of Iraq resulted from pressure from one of Britain’s closest overseas allies.
Each case appeared rational and logical at the outset.	The poll tax came at the tail end of a long-established premiership whereas the 2017 election was early on in Theresa May’s time as prime minister. The Iraq War was midway through Tony Blair’s premiership.
Each case represented a gamble — none ‘had’ to be undertaken in response to a particular crisis or to fulfil a major policy pledge, although the Conservatives had for a while promised to reform domestic rates.	The poll tax involved serious breaches of public order, with riots and violent protests, while the Iraq War claimed the lives of a significant number of British servicemen and women.
In all cases, the prime minister failed in the preliminary stages to consult widely and heed more closely the voices of caution within their party.	The 2017 election decision was a more direct test of the prime minister’s abilities as a political campaigner compared to the poll tax and Iraq War.
Each decision ended in failure and contributed significantly to each leader’s resignation.	The Iraq War did not immediately end the Blair premiership. He went on to win the 2005 election, although his majority fell to 66 seats compared with the 167-seat majority gained in 2001.

The lesson to take away from this analysis is that when prime ministers seek to dictate events and determine policy-making, they need to be extremely careful, have effective ‘political antennae’ and calculate and manage risks carefully. If a political gamble looks too attractive to be true, it probably is!

STUDY TIP

When answering a question about prime ministers dictating and determining policy, ensure you refer to one event before 1997 and one afterwards.

KNOWLEDGE CHECK

- 10 Why did Thatcher seek to introduce the poll tax?
- 11 Why did May believe she would win the 2017 election?
- 12 What did both policies ultimately lead to for each prime minister?

The relationship between prime minister and cabinet

Having examined the case for and against presidentialism with respect to the post of prime minister and the role of the latter in policy-making, it is important to analyse the exact nature of the relationship between prime minister and cabinet, starting with the following questions:

- What powers and resources can each muster?
- What factors affect that power?
- What is the balance of power between both institutions?

USEFUL CONCEPT

Cabinet reshuffle When a prime minister changes ministers' roles in the cabinet.

The powers and resources of the prime minister

There is a useful distinction to be made between the institutional powers available to all prime ministers, and their personal and political powers that vary according to circumstances and context.

Among the institutional powers available to all occupants of No. 10 are:

- appointing and dismissing ministers and undertaking **cabinet reshuffles**
- chairing weekly meetings of the cabinet and setting the agenda
- arranging and sometimes chairing cabinet committees
- dictating policy priorities
- the Cabinet Office
- as party leader, usually being able to command a Commons majority to get legislation through
- issuing honours such as life peerages

The personal and political powers of the prime minister are far more variable and include:

- the momentum and political capital that comes from leading their party to victory in the previous election, which enables them to persuade and lead more effectively
- effective management of colleagues both in cabinet and on the backbenches
- personal qualities as an effective communicator and national leader
- the ability (or otherwise) to unite and rally their own party
- skill in managing the economy and handling unexpected challenges faced in office

Both these sets of powers are dependent on a range of circumstances, some of which are beyond the prime minister's immediate control. These can include:

- opinion poll ratings, and the results of more recent elections such as by-elections and local council elections
- personalities in their cabinet and party at the time

- potential leadership challenges
- the strength and threat posed by the main opposition party

How do these powers compare in reality?

Patronage powers and the cabinet

On the surface, patronage powers (see page 68) appear a powerful weapon in the prime minister's arsenal. Prime ministers can hire and fire ministers at will and without requiring the approval of anyone else. When first appointed, even prime ministers from the same party often radically alter the makeup of their new cabinet to place their personal stamp upon it. When taking over from David Cameron in 2016, Theresa May removed 15 ministers, including key figures such as the chancellor George Osborne and former education secretary, later justice secretary, Michael Gove. Similarly, when Boris Johnson took over in 2019 he too had a line-up of fairly new faces, albeit some who had served in earlier times. Eleven senior ministers were dismissed and a further six declined to serve. The top three offices were held by new incumbents, Dominic Raab at the Foreign Office, Priti Patel at the Home Office and Sajid Javid as chancellor. This led to fellow Conservative MP, Nigel Evans, describing Johnson's changes as 'not so much a reshuffle as a summer's day massacre'. *The Sun* newspaper dubbed it 'Night of the Blond Knives'. The latter was an allusion to Harold Macmillan's 1962 reshuffle, when he dismissed one-third of the cabinet, which became known as the 'Night of the Long Knives', itself an allusion to the 1934 Night of the Long Knives in Nazi Germany.

Yet while this is a powerful and largely unchecked power, there are some important limitations. First, prime ministers need to be careful to maintain a balance within the cabinet. This refers not only to diversity of gender, ethnicity etc., but also to policy positions. For example, Theresa May had to include both Leave and Remain supporters in her cabinets. Tony Blair had to include a 'big political beast' such as Gordon Brown in his cabinet, alongside a deputy prime minister, John Prescott, whose style and background complemented that of his leader. Prescott had worked as a steward and waiter in the Merchant Navy and was the son of a miner. He was therefore seen to link to Labour's working-class roots in a way that the public school educated Tony Blair could not.

In addition, prime ministers must be careful who and how many they sack from their cabinets. An ex-minister on the backbenches can result in damaging consequences. Thatcher's demotion of former foreign secretary Geoffrey Howe in 1989 and his subsequent resignation a year later triggered a leadership challenge from another ex-cabinet minister, Michael Heseltine, which would lead to her downfall. Resignation speeches can also be powerful and inflict lasting damage on a prime minister's credibility. Howe's speech criticised Thatcher's attitudes to negotiations with Europe: 'It is rather like sending your opening batsmen to the crease, only to find...that their bats have been broken before the game by the team captain.' Coming from someone who had served in her cabinet for over 10 years, this was damning stuff. Furthermore, too many reshuffles can make a leader appear weak and/or difficult to work with.

Finally, coalition government brings its own constraints on prime ministerial powers of appointment. Under the terms of the Coalition Agreement, Cameron effectively ceded patronage power of five cabinet-ranking posts to the Liberal Democrats. These appointments were made solely by the Liberal Democrat leader, Nick Clegg.

KEY CONCEPT**Collective responsibility**

Requirement that all members of the cabinet and government must support the prime minister and government policy in public, enabling a united common front to be presented to the public and the media.

Authority over the cabinet

All prime ministers exercise formal control over the cabinet. They dictate when and where it meets (usually weekly on Tuesday, Thursday or Friday mornings), normally in the Cabinet Room of No. 10, but sometimes outside London. It was held in Sunderland on 31 January 2020 in recognition of that city being the first apparently to declare a 'Leave' result in the EU referendum. They also decide the agenda and formally chair proceedings. Cabinet is the formal decision-making body in UK government and the *Cabinet Manual* terms it 'the ultimate arbiter of all government policy'. In addition, all members of the cabinet and indeed all ministers are required to support cabinet decisions, a concept known as **collective responsibility**. Any minister who cannot support the decision is required to resign from government. Cabinet meetings are also private and secret, with official records not being made public until at least 30 years later.

Yet agreement within the cabinet is never automatic. Much depends on personalities, the issues and the wider political context. For example, Tony Blair was never able to persuade his chancellor, Gordon Brown, to support the UK adopting the euro currency. May's carefully constructed 'Chequers deal' over Brexit quickly unravelled. When journalists refer to 'full and frank discussions' within cabinet they often mean a strong exchange of views or even blazing rows. Wise prime ministers use cabinet partly as a sounding board, and to ratify decisions made elsewhere, often in cabinet committees. In addition, although meant to be private, ministers — often the disgruntled ones — may leak details of discussions to the media on the condition that their identity is not revealed. This has been a problem for all modern prime ministers. When Johnson became prime minister, he issued a new edition of the Ministerial Code, which stated clearly that 'there must be...no leaking'.

Arranging and sometimes chairing cabinet committees

Most decisions formally made by the full cabinet have effectively been decided in advance by cabinet committees. Prime ministers are at liberty to order and structure these at whim. They are partly designed to reduce the burden on the full cabinet by allowing smaller groups of ministers to take decisions on specific policy areas. These committees have been around in some form since the early twentieth century. In early 2021, the 11 main cabinet committees comprised:

- EU Exit Strategy
- EU Exit Operations
- Economic Operations Committee
- Parliamentary Business and Legislation
- National Security Council
- Climate Change
- Covid-19 Strategy
- Domestic and Economic Strategy
- Crime and Justice Task Force
- Union Policy Implementation
- National Space Council

The government can also create other types of ministerial committee. In June 2015, Cameron introduced implementation taskforces, designed 'to monitor and drive delivery of the government's most important cross-cutting priorities', although these were discontinued when Johnson became prime minister in July 2019. In March 2020, Johnson announced the creation of four new

STUDY TIP

There are often media references to COBRA meetings in response to national emergencies such as the 2019–20 floods or the coronavirus. The COBRA committee is named after Cabinet Office Briefing Room A. COBRA meetings represent an emergency response committee, a convening of ministers, civil servants, the police, intelligence officers and others appropriate to the issue under discussion. Although normally chaired by the prime minister, COBRA is not a formal cabinet committee.

'implementation committees' in response to the coronavirus pandemic. These four committees focused respectively on healthcare, the general public sector, economic and business, and international response. They were chaired by the relevant senior minister. Figure 3.3 shows the fluctuating number of cabinet committees.

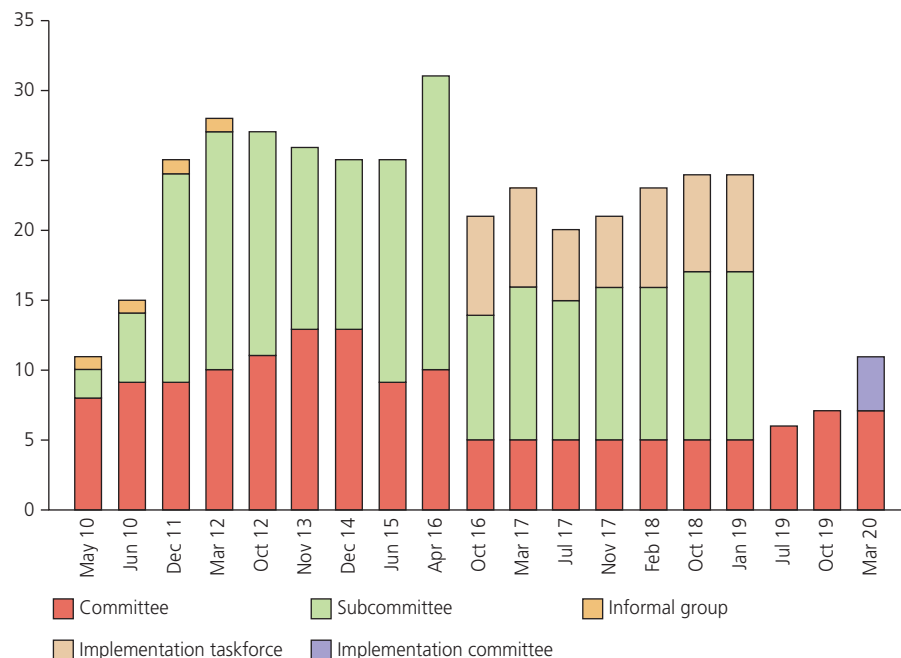


Figure 3.3 The fluctuating number of cabinet committees

Source: adapted from <https://www.instituteforgovernment.org.uk/charts/number-cabinet-committees-type-body>

As with full cabinet, the use and effectiveness of such committees is largely down to individual ministers and the prime minister. Often, committees are created to reflect current concerns. For example, several were set up under Theresa May to deal with Brexit, while in October 2019 Boris Johnson created the Climate Change Committee. This was in part because in the months prior, the government committed to achieving net zero emissions by 2050, and in November 2020 the UK was due to host COP26, a UN conference on climate change.

The mere existence of cabinet committees does not necessarily guarantee their significance. Although Tony Blair created large numbers of cabinet committees and subcommittees, one former cabinet secretary said that 'Blair's style of government didn't fit easily with the cabinet committee system... [his] preference was for ad hoc meetings and other ways of managing the government.' Cabinet committees took on additional importance under the coalition government. Oliver Letwin said they helped 'ensure that the government as a whole would abide by and enforce those rules that underpinned the coalition and ensured the Coalition Agreement was upheld'. George Osborne, though, 'didn't really believe in cabinet committees', according to former Liberal Democrat minister Vince Cable, and so the economic committees rarely met.

Under Theresa May, a degree of inconsistency prevailed. May initially slimmed down considerably the number of committees to just five main committees and ten sub-committees. By March 2017, she chaired every committee that she attended, indicating the extent of her control over government. The 2017 election result undermined her power, and this was reflected by some delegation to David Lidington, her de facto deputy, who chaired more committees than the prime minister in 2018.

ACTIVITY

Find out more about who sits on cabinet committees and recent developments. How have they changed over time? The Institute for Government has an excellent website, which would be a good place to start your research (see Further reading, page 102).

Cabinet committees are a classic example of a resource that different prime ministers can choose to deploy, rearrange or largely ignore as they see fit. They are, however, widely seen as important to the smooth operation of cabinet, if only as a way of delegating some of the decision-making away from full cabinet meetings.

Dictating policy priorities

The ability to set priorities and the cabinet agenda are clearly important to a prime minister. Many modern prime ministers have been able to exert their influence and political principles. This is especially true for those with strong majorities and mandates such as Thatcher and Blair, but also those elected on a clear platform such as ‘Get Brexit done’, a common theme throughout Johnson’s 2019 election campaign. Both Thatcher and Blair were able to achieve much of what they set out to do. In the case of Thatcher, that included a major programme of privatisation and significantly reducing the power of trade unions. For Blair, the priorities were to modernise aspects of the Constitution and to show that New Labour had departed considerably from its traditional socialist past.

Yet prime ministers do not enjoy a blank sheet and unfettered power when deciding policy. As we have already seen, they are often bound by manifesto pledges and constrained by unfolding developments. An economic recession, for example, can easily derail plans to boost public spending or lower taxes. In addition, many policies, especially in foreign affairs, require the cooperation of political players outside the UK. A prime example is Brexit — the EU and other member states also had to agree to the prime minister’s desired deal. Prime ministers may often determine priorities, but they cannot always determine the outcome.

The Cabinet Office

The Cabinet Office was created in 1916 to provide support for the cabinet system. Around 2,050 civil servants work in the department. Its role, as defined on the department’s official website, is to ‘support the prime minister and ensure the effective running of government’. Therefore, it is effectively the corporate headquarters and secretariat for central government, taking the lead in certain policy areas, and providing administrative support such as circulating key papers and taking minutes of meetings. It also coordinates work between departments. The head of the civil service also attends cabinet meetings in his role as cabinet secretary.

Individual prime ministers often tweak the priorities and roles of the Cabinet Office to reflect current issues. For example, during the coronavirus pandemic, the Cabinet Office set up the Rapid Response Unit to deal with misinformation about the virus by working with social media platforms such as Facebook to block ‘false narratives’.

SYNOPTIC LINK

The Cabinet Office is the rough equivalent, if smaller and less well funded, to the Executive Office of the President (EXOP), housed in the White House West Wing. You can find out more about the role of the president in Chapter 14.

Party leader

As party leader, the prime minister enjoys additional resources. This usually guarantees that their policies and legislation get through parliament, given the governing party’s overall majority. In addition, the leader is elected by their MPs and party members, which confers a strong degree of legitimacy to their authority. The party is aware that divided parties constantly criticising their own leader rarely win elections. Yet party loyalty is conditional, not absolute. Several recent prime ministers, most notably Thatcher, were effectively forced out by their own MPs. In 1995, John Major decided to call a leadership contest,

SYNOPTIC LINK

This again contrasts with the USA, where the president is not the official leader of the party. Presidents have to negotiate and persuade party members in the House and the Senate in order to gather support for their policies. You can find out more about Congress in Chapter 13.

a ‘back me or sack me’ tactic, in an effort to neutralise the growing critics on the backbenches, mainly from the Eurosceptic wing of the party. Although he won the subsequent leadership race, over a quarter of his MPs backed his opponent John Redwood. Blair, Brown and May also all faced efforts and rumours of plots to force them from office. In December 2018, Theresa May survived as leader when Tory MPs rejected a no-confidence motion in her leadership by 200 votes to 117, but the result showed the high levels of discontent within her party about her performance.

The party can also influence a leader’s policy — Conservative rebellions over Europe led David Cameron to promise an in/out referendum on continued EU membership.

Dispensing honours

As part of their prerogative powers, prime ministers can award life peerages to former MPs or party supporters. This is often used as a means of altering the balance of the House of Lords for party advantage. Blair and Brown made a total of 173 Labour peers but only allowed 66 Conservative nominations to go through. By unsurprising contrast, under Cameron and May, 136 Conservative life peers were appointed but only 59 Labour. An independent Appointments Commission makes recommendations for non-party political peerages and also vets all party political nominations for what is termed ‘propriety’. This is defined on the Appointments Commission website as:

- i The individual should be in good standing in the community in general and with the public regulatory authorities in particular
- ii The past conduct of the nominee would not reasonably be regarded as bringing the House of Lords into disrepute

Figure 3.4 shows the creation of new peerages by party affiliation after May 1997.

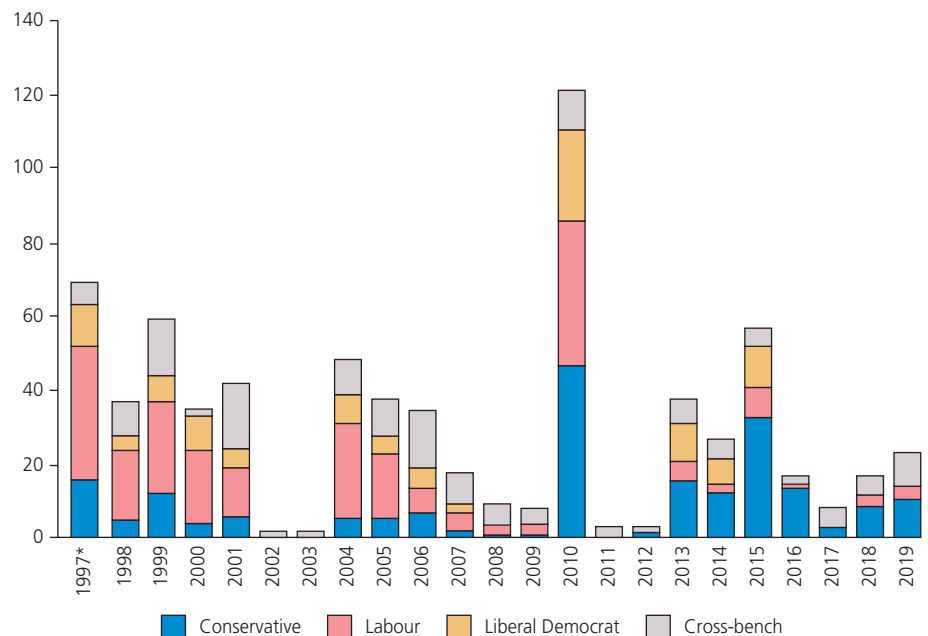


Figure 3.4 Peerage creation by party affiliation between May 1997 and December 2019

* From May 1997 only.

ACTIVITY

Cameron was not the only prime minister to be accused of abusing the honours system. Research the 'cash for honours' scandal of 2006–07.

SYNOPTIC LINK

The issue of 'cash for honours' links with the wider question of who should fund political parties and how. You can find out more about the debate over party funding in Chapter 8.

Despite such checks, Cameron's resignation honours in August 2016 sparked the following headline in the *Independent*: 'David Cameron Honours list would embarrass a medieval court'. The article stated he rewarded no fewer than 46 of his former aides, advisers and ministers with honours in his resignation list. These included his former chancellor George Osborne, who was given the rarely awarded Companion of Honour, and his former chief of staff Ed Llewellyn, who received a peerage. Perhaps even more controversially, several generous donors to Tory funds were rewarded including Andrew Cook, a former Tory treasurer who gave more than £1 million to the party and was awarded a knighthood for political service. Johnson's award of a peerage in 2020 to his own brother, former minister Jo Johnson, was also heavily criticised in some quarters.

The practice of awarding honours, not least life peerages, is a somewhat tricky one for prime ministers to navigate. It is certainly a way to reward the loyal and generous but used unwisely can lead to accusations of cronyism and 'cash for honours'.

Personal and political powers

By their nature, personal and political powers are far harder to quantify and assess when compared to the formal institutional powers. They are, however, very important in helping a leader to dominate, if only for a limited period, their cabinet and government. Perhaps the most important ingredient is that elusive political crypto-currency, political capital. This is the trust and readiness to follow a leader due to previous achievements. Even ideological opponents within the party will usually fall silent when the prime minister is winning elections and flying high in the polls. Political capital is also enhanced when prime ministers 'get it right' with a high-risk policy — conversely, it is jeopardised when they miscalculate. Exercising good and wise political judgement is crucial to a prime minister's continued tenure in office. A few examples illustrate this point well:

- In 1982, Thatcher showed resolve and political courage to undertake a major military operation to retake the Falkland Islands in the South Atlantic when they were invaded and occupied by Argentina. A large task force was quickly assembled and dispatched. A 10-week war resulting in victory was credited with contributing to Thatcher's own landslide election victory in 1983. Thatcher's decision to adopt this course of action wasn't a clear-cut one — some ministers and advisers had urged caution and negotiation. Yet in taking a risk that paid off, she considerably boosted her authority both in the country and within the party.
- In 2014, Cameron agreed to a vote on Scottish independence. As a committed supporter of the Union, he was taking something of a gamble, although arguably he was partly forced into it. The pro-independence Scottish National Party had won an overall majority in the 2011 elections to the Scottish Parliament and was strongly pushing for an independence referendum. By actively campaigning for Scotland to remain in the UK, Cameron was putting his political authority on the line. When Scotland voted to remain, he gained in political stature having made the right call — in other words, his strategy was vindicated.

- Blair called, and won comprehensively, early elections in 2001 and 2005 albeit with reduced majorities on both occasions. This cemented his position and authority within the party, although it did not deflect mounting internal criticism of some of his controversial policies, such as the Iraq War and the introduction of university tuition fees.

Enhanced political capital also enables prime ministers to shift the balance of power and policy positions within their cabinets over time, promoting loyalists and marginalising more critical voices. They must always be careful, though, to avert the creation of an 'echo chamber' in the Cabinet Room and to stay in touch with wider sections of the party.

The powers and resources of the cabinet

Compared to the prime minister, the cabinet collectively has far fewer resources. Its members' positions are due entirely to the prime minister. Too much dissent can easily lead to being sidelined or demoted in the next reshuffle. Certain departments are more prestigious and valued than others. In the past, posts such as Northern Ireland or agriculture were often seen (perhaps unhelpfully) as places of political banishment. Press coverage after reshuffles often refers to 'winners' and 'losers' with reference to individual ministers. Yet, cabinet ministers are far from powerless. They can and do exercise power and provide a check on the prime minister in a number of ways.

- Most ministers run their own departments and so, while adhering to commonly agreed policies, they have a fair degree of autonomy over policy details. Prime ministers are unlikely and should be unwilling to micromanage all their senior ministers. Many policies, such as the introduction of Universal Credit or organising the 2012 London Olympics, are complex and complicated. Prime ministers can set the tone and clarify expectations, but rarely get involved in policy minutiae.
- They can have their own links to the media and, through their departments, to key pressure groups. In extreme cases they can even leak information and brief journalists against policies that the prime minister wishes to pursue. For example, in 2019, defence secretary Gavin Williamson was sacked for allegedly leaking to the press details from a National Security Council meeting over the security threats posed by allowing Chinese tech giant Huawei a role in constructing Britain's 5G network. The implication (strenuously denied by Williamson) was that he had been critical of the plan and had deliberately leaked it to undermine the policy.
- In certain situations powerful ministers can refuse to be moved in a reshuffle. This was the case in January 2018, when then health secretary Jeremy Hunt refused to be moved from his post and ended up, after an hour of talks with Theresa May, being given an enhanced role and adding social care to his policy portfolio. This also reflects the weakened power of a prime minister with shrunken political capital.
- Cabinet meetings can involve real debate and discussion. Prime ministers often use such meetings as opportunities to gauge opinions and reflect before committing to a major policy initiative.
- Perhaps the biggest weapon available to ministers in the cabinet is resignation of their own accord. Figure 3.5 tells us a great deal about May's relatively brief tenure as prime minister, and the negative impact of Brexit on establishing a strong and stable government. Large numbers of ministers resigning implies a weak and divided government.

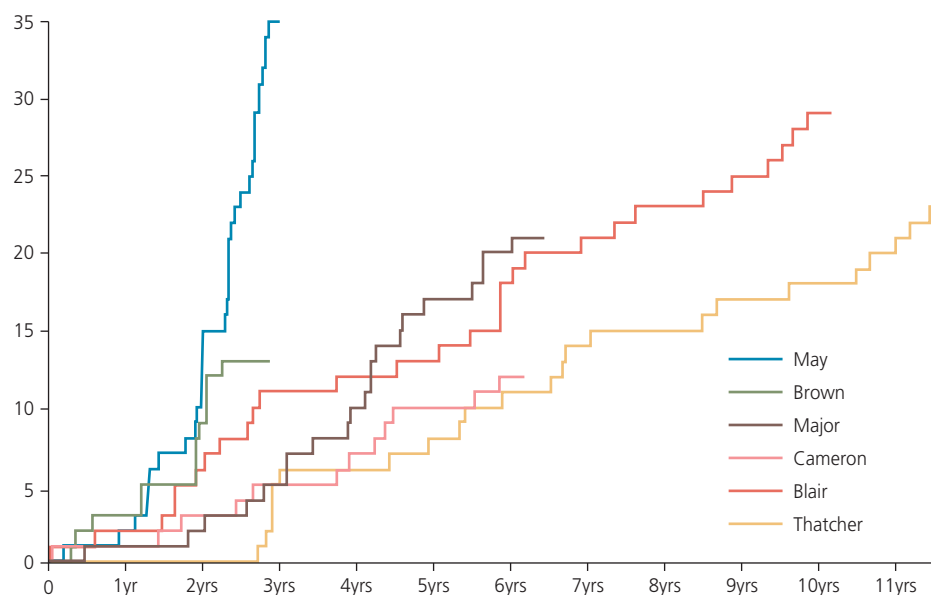


Figure 3.5 Number of ministerial resignations outside cabinet reshuffles, May 1979 to July 2019

Source: adapted from <https://www.instituteforgovernment.org.uk/charting-theresa-may-preiership>

While prime ministers retain very significant resources and levers of power, they are not sole masters in their court. Much depends on context and circumstances. Success, whether with policy or at the polls, brings added authority. Failures and growing unpopularity with both public and party spell disaster for even the most self-assured and once invincible prime minister. Therefore, the relationship between a prime minister and their cabinet is not one of equals but is full of relationship dynamics that make for an interesting saga at times.

DEBATE

Does cabinet government still exist?

Yes

Cabinet remains the key forum for high-level policy decisions.

Cabinet can still influence policy and can prove very useful to a prime minister to take soundings (find out ministers' opinions on a subject) and promote a more coordinated approach to policy.

Senior and influential ministers can be hard or even impossible to sack or remove, for example Gordon Brown as chancellor under Blair and Jeremy Hunt as health secretary under May.

Too many cabinet resignations can be a sign of weakness not strength, and on the backbenches, former ministers can often be a focus for internal opposition to a prime minister.

Government departments contain their own senior civil servants who provide ministers with policy support and expertise. Ministers also have their own political advisers.

No

Many decisions are made at cabinet committee level or in bilateral meetings.

Many meetings are quite brief, often not much more than 30 minutes. Cabinet is used more frequently to resolve or arbitrate disputes between departments, especially over allocation of funding.

Cabinet ministers are appointed by the prime minister and must do their bidding. Those who resist or who are deemed poor parliamentary performers can be easily removed by means of sacking or demotion in a reshuffle.

Prime ministers can appear strong and decisive by removing opponents and, over time, can mould a 'cabinet of compliance'.

The Cabinet Office, as well as special advisers, plays a greater and increasing role in providing research and policy advice across departments and therefore can bypass the formal cabinet structure.



Individually or in pairs, discuss the extent to which we can still talk of cabinet government being central to the UK executive.

KEY CONCEPTS**Individual responsibility**

The requirement that all ministers are responsible for their own actions while in public office. Where they fall short, they are expected to offer to resign.

Ministerial accountability

The convention that ministers must explain and justify their actions and decisions, particularly before parliament and its committees.

KNOWLEDGE CHECK

- 13 What is meant by the term 'cabinet reshuffle'?
- 14 What role does the Cabinet Office perform?
- 15 What is meant by 'political capital' and why is it important when considering a prime minister's influence over their cabinet?

The difference between individual and collective ministerial responsibility

A major important area to address is the extent and nature of how government ministers all share the same degree of responsibility (collective responsibility). In addition, we must consider the concepts of **individual responsibility** and **ministerial accountability** to the prime minister, parliament and the public for their actions and those of their departments. This also links with the important issue of why and when ministers resign.

The importance of collective responsibility

Collective responsibility is at the heart of cabinet government. It enables the government to speak with one voice and present a united front to parliament, the public and the media. It requires all ministers, senior and junior, to support and defend government policy in public. Without collective responsibility governments would appear chaotic and openly divided, incapable of giving a lead or delivering on promises. It does not prevent, of course, often strong debates and divisions during cabinet meetings, but 'what happens in cabinet stays in cabinet', at least in theory. Those who cannot accept the burden of collective responsibility are obliged to resign and air their misgivings from the backbenches. That is not to say that collective responsibility is watertight or unbreakable.

The suspension of collective responsibility

Labour prime minister from 1976–79, James Callaghan remarked in 1977: 'I certainly think that the doctrine should apply, except in cases where I announce it does not.' As the *Cabinet Manual* formally puts it: 'All members of the government are bound by the convention of collective responsibility, except where it is explicitly set aside.' However, there have been several occasions when the principle has been temporarily suspended. These have included:

- during the referendums in 1975 and 2016 over Britain's continued membership of the EU
- again in 2016, over the government's plans to build a third runway at Heathrow
- during the 2011 alternative vote referendum

In all these cases, public disagreement was only permitted on these specific topics and not on other issues. They were policy areas where it was widely apparent that individual ministers held opposing views. It was an 'agree to

SYNOPTIC LINK

Ministerial accountability is an example of how parliament seeks to scrutinise the executive. Ministers are expected to be open and honest in their dealings with parliament. For example, in March 2020 the speaker, Lindsay Hoyle, criticised Chancellor Rishi Sunak for first announcing a £350 billion package of aid to businesses during the COVID-19 crisis on a live televised briefing as opposed to in parliament. You can find out more about parliament in Chapter 2.

disagree' policy, determined by political realities. The concept also extends to avoiding public criticism of other cabinet colleagues, not just the prime minister.

In addition to formal suspension, collective responsibility is also sometimes undermined by non-attributable ministerial leaks, and on rarer occasions, by open dissent. For example, between 2016 and 2018 then foreign secretary Boris Johnson wrote articles and gave newspaper interviews in which he set out positions undermining government policy. The *Independent* reported how he told Tory supporters at a private dinner that gloomy economic forecasts were 'mumbo jumbo' and the Northern Irish border row had been blown out of proportion, as fears over disruption to supplies of food and medicines were unwarranted. Theresa May decided not to discipline him for these breaches of collective responsibility, perhaps fearing that he would prove even more troublesome on the backbenches.

In June 2018, again during the May years, then treasury minister Liz Truss openly criticised her 'male macho' cabinet colleagues in a speech delivered at the London School of Economics. She also mused on the 'hot air' coming out of the Department for the Environment — with the suggestion that 'woodburning Goves' were trying to tell people how to live their lives. This followed a statement by fellow cabinet minister and environment secretary Michael Gove, in which he had criticised woodburning stoves for their environmental impact.

Ministerial resignations

There are five main occasions when ministers resign from government:

- Accepting the blame for an error or injustice within their department by civil servants and officials
- Unwillingness to accept collective responsibility over policy
- An inability to deliver a policy promise in their own department
- Personal misconduct
- Political pressure

Ministers nearly never fall because of policy failure. This is for the simple reason that all major policy is agreed and decided upon by cabinet collectively and with the support of the prime minister. To admit that the policy itself was flawed (as opposed to how it was actually carried out) is to suggest that the whole government failed and must share the blame collectively. Callaghan resigning as chancellor in 1967 over the devaluation of sterling is one rare example. He was, however, shuffled sideways to take the post of home secretary in the ensuing cabinet reshuffle.

Accepting the blame for an error or injustice within their department

This is probably the rarest reason for resignation. Ministers routinely blame civil servants or the heads of executive agencies for operational failures. They normally absolve themselves from any errors of implementation. For example, ministers escaped with their jobs intact after critical reports found departmental mistakes over the sale of arms to Iraq (1996) and during the BSE crisis (2000). The classic example to the contrary is Sir Thomas Dugdale and the Crichton Down affair (see case study overleaf).

CASE STUDY**The 1954 Crichel Down affair and Sir Thomas Dugdale**

In 1954, Sir Thomas Dugdale resigned as minister of agriculture when an independent inquiry criticised his department for mishandling the compulsory purchase and subsequent re-letting of 725 acres of farmland in Crichel Down, Dorset. The land had been compulsorily purchased in 1937 for £12,000 for use as an RAF bombing range airfield. A promise had been made that land would be sold back to the owners when no longer required for military purposes. Instead, the land was

taken on by the Department of Agriculture and re-let for a much higher sum.

There was clear evidence of civil service mistakes and inefficiency. Dugdale took the blame and resigned, even though at the time it was not clear he was aware of the blunders. The release of official documents more recently, however, revealed that Dugdale did bear some personal responsibility as he was aware of the actions of his officials but had not tried to stop them. Nonetheless, the case is usually presented as a rare example of a minister taking responsibility for errors and inefficiencies in their own departments.

A similar case of resignation was that of Claire Perry as rail minister in 2016. She admitted in the Commons to the failure of her department to deal adequately with the problem of resolving issues of reliability and overcrowding on some parts of the network. She resigned following a week when she admitted that she was 'often ashamed to be the rail minister'. In a Commons debate about Govia Thameslink Railway, she said: 'If I thought it would help by falling on my sword, I would. This feels like a failure.'

Increasingly, civil servants take personal blame for mistakes in their departments. For example, in 2011 the head of the UK Border Force, Brodie Clark, resigned after border controls were relaxed without ministerial authorisation. He had gone beyond an initial pilot scheme of fewer checks by suspending some passport checks. In the wake of the exams fiasco in summer 2020, it was Sally Collier, head of the government's exam regulator Ofqual, who resigned. The education secretary, Gavin Williamson, stayed in post.

Unwillingness to accept collective responsibility over policy

An unwillingness to accept collective responsibility is another reason for ministerial resignations. It happens when a minister disagrees strongly on a particular policy, often one not even involving their own department. Resignations for this reason are not that common, as parties are elected on a shared platform of policies. They often come about through reactions to unforeseen events or reflect long simmering divides within a party.

The policies concerned can cover a wide range of areas:

- In 2003, two leading Labour frontbenchers, Robin Cook and Clare Short, resigned over the Iraq War.
- Two Liberal Democrat junior ministers, Mike Crockart and Jenny Willott, resigned in 2010 rather than support the government policy of increasing university tuition fees to £9,000 a year.
- In 2016, former Tory leader Iain Duncan Smith resigned from Cameron's government as work and pensions secretary, attacking £4 billion of planned cuts to disability benefits as 'indefensible'.
- More than 30 Conservative ministers resigned over Theresa May's Brexit deal, including two Brexit secretaries, David Davis and Dominic Raab.

An unusual variant in this category was the resignation of Scotland Office minister Douglas Ross in May 2020. He resigned in protest at the failure of the

prime minister's chief adviser, Dominic Cummings, to resign over apparent breaches of the first COVID-19 lockdown. He was quoted as saying:

'I have constituents who didn't get to say goodbye to loved ones...people who didn't visit sick relatives because they followed the guidance of the government. I cannot in good faith tell them they were all wrong and one senior adviser to the government was right.'

So, not so much a resignation over policy as over a personality.

CASE STUDY

Iain Duncan Smith

Iain Duncan Smith (often known as IDS) had earlier served as Conservative leader from 2001 to 2003 and had been work and pensions secretary since 2010 until he resigned in March 2016. His publicly stated reason for resignation was that cuts to the welfare budget, in particular to disability benefits, were a 'compromise too far' during austerity and the government's drive to reduce the budget deficit. He argued that instead the cuts should come from reducing benefits for better-off older people. Also noteworthy is the fact it had already been announced a few days earlier that the proposed benefit cuts were not going ahead, so it was not quite such a straightforward resignation over policy differences.

There is some justification for the view that Duncan Smith saw disability benefits cuts as a final straw

and that longer-term factors were at play. Some saw Duncan Smith's resignation as the culmination of a long-running feud with the Treasury focused on the roll-out of the new Universal Credit benefit, which he believed was his key legislative achievement and had been undermined by Treasury interference and salami-style cost-cutting. There were reports of difficulties with George Osborne, who had allegedly said that he thought Duncan Smith was 'just not clever enough'. There were also tensions over Europe — Duncan Smith was a staunch Brexiteer unlike both Osborne and Cameron. Finally, after 6 years in the post, an unusually long time for any cabinet minister to stay in one post, he might have been pushed out soon anyhow in a cabinet reshuffle. So perhaps he decided to go at a time of his own choosing before an inevitable exit?

CASE STUDY

Robin Cook and the Iraq War

As a former Labour foreign secretary who had served in the post from 1997 to 2001, Robin Cook was well placed to comment on the Blair government's Iraq policy and the proposal to invade Iraq in order to remove Saddam Hussein, who was accused of having weapons of mass destruction (WMDs). Cook urged that Britain should work with its European partners and the UN, and not go out on a limb with the USA. However, the government made the controversial decision to join the USA in the war, largely due to US pressure and especially that of its president, George W. Bush, with whom Blair had a close relationship.

Following his resignation, Cook delivered a powerful speech in the Commons and composed a frank letter of resignation, an extract of which follows here:

'I have been frank about my concern over embarking on military action in the absence of multilateral support. In principle I believe it is wrong to embark on military action without broad international support. In practice I believe it is against Britain's interests to create a precedent for unilateral military action... I was impressed by the energy and skill with which you ended Britain's isolation in Europe and achieved for our country equal status and influence to Germany or France. I am dismayed that once again Britain is divided from our major European neighbours.'

Source: Tempest, M. [2003] 'Cook resigns from Cabinet over Iraq', *The Guardian*, 17 March

ACTIVITY

Robin Cook's resignation speech is often viewed as one of the best parliamentary performances in recent times. Watch it on YouTube and note down some reasons why it has been so widely admired as a speech. Why do you think it was especially damaging to Blair's leadership?

Inability to deliver a policy promise in their own department

This is a relatively rare cause of ministerial resignation. It can occur because a minister feels they have been undermined by other Whitehall departments or a change in government policy that directly concerns their department. It can therefore involve a resignation on a point of principle but is not so high profile as a refusal to accept collective responsibility (see case study).

CASE STUDY

Tracey Crouch and fixed-odds betting machines

In 2018, sports minister Tracey Crouch resigned over delays to a crackdown on maximum stakes for fixed-odds betting machines. The chancellor, Philip Hammond, had said in his budget speech that the cut in stakes from £100 to £2 would only come into force in October 2019. Crouch said pushing back the date was 'unjustifiable' and it could cost the lives

of problem gamblers. In her resignation letter to Theresa May she wrote, 'It is a fact of government that ministers must adhere to collective responsibility and cannot disagree with policy, let alone when it is policy made against your wishes relating to your own portfolio.' There was a clear sense that a previously agreed policy had been deliberately delayed without her agreement, leading to her feeling undermined. She subsequently tweeted: 'Politicians come and go but principles stay with us forever.'

A related case of apparent interference in the affairs of their own department was the surprise departure in February 2020 of Sajid Javid as chancellor, just 4 weeks away from delivering his first budget. He rejected the prime minister's order to fire his team of aides, saying 'no self-respecting minister' could accept such a condition.

Personal misconduct

This is the most frequent cause of resignation and covers a wide range of misdemeanours. In general, this can be broadly summarised as 'letting the side down'. More precisely, it relates to ministers breaking one of the seven principles in the Ministerial Code. The seven qualities expected of all ministers are set out as follows:

- 1 **Selflessness:** ministers should act solely in terms of the public interest and not in the interest of themselves or their friends or family.
- 2 **Integrity:** they must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships. This effectively prohibits all kinds of corruption.
- 3 **Objectivity:** they must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias. This has particular importance when awarding contracts, making appointments or providing public services such as processing visas etc.
- 4 **Accountability:** ministers must be accountable to public and parliament for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this. This means in part that they reply truthfully to any relevant questions in parliament.
- 5 **Openness:** they should also always act on and take decisions in an open and transparent manner. Information should not be withheld from the

KEY CONCEPT

Accountability In politics, the requirement to explain and respond to any actions that ministers and their departments undertake, above all to parliament.

public unless there are clear and lawful reasons for so doing. The latter could include national security or sensitive commercial information.

- 6 **Honesty:** ministers should be truthful with both parliament and the public.
- 7 **Leadership:** they should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

There are numerous examples of ministers breaking the Ministerial Code, including the following:

- David Blunkett was forced to resign twice from Blair governments. The first time was in 2004 as home secretary when it transpired that he had requested officials to fast-track a visa application for a nanny employed by an ex-lover, Kimberly Quinn, for her son he had fathered. The second time was in 2005 when he had to quit as work and pensions secretary after he accepted a position as director at DNA Bioscience without consulting the Advisory Committee on Business Appointments. Although this happened between government posts, it was alleged there was a conflict of interest as the firm was bidding for a contract that involved his new department. This broke the objectivity principle of the Ministerial Code.
- Liberal Democrat MP Chris Huhne was forced out in 2012 for perverting the course of justice over a speeding ticket. He had got his wife to take his speeding points to avoid a driving ban. This broke the honesty principle of the Ministerial Code.
- Conservative MP Brooks Newmark left after being exposed as sending explicit images to an undercover reporter. This arguably broke both the selflessness and leadership principles of the Ministerial Code.
- In December 2017, Damian Green, then first secretary of state and minister for the Cabinet Office, was dismissed after it was found he had lied to colleagues over pornography found on his computer some time back. He was accused of sending suggestive text messages and ‘fleeting’ touching the knee of a young Conservative activist, Kate Maltby. This broke the honesty principle of the Ministerial Code.
- Several ministers over the years have had to leave after falsely claiming expenses. These have included Maria Miller in 2014 as culture secretary and David Laws in 2010, who was (very briefly) the chief secretary of the treasury. These ministers broke the honesty principle of the Ministerial Code.

In the area of sexual impropriety, it was not so much having an affair or making unwanted advances that brought down the ministers concerned as being caught out lying about or abusing their positions and seniority.

But do ministers have to resign if they are found guilty of breaking the Ministerial Code? The short answer is no. In November 2020, the home secretary, Priti Patel, was found to have broken the code by bullying and swearing at some of the senior civil servants in her department. Allegations against Patel emerged in March after the resignation of Philip Rutnam,

ACTIVITY

Research some other examples of ministers being sacked for misconduct. How similar are they regarding the cause to those listed above? Which principles of the Ministerial Code were broken in each case?

the former Home Office permanent secretary, over what he described as a 'vicious and orchestrated campaign' against him for challenging the alleged mistreatment of civil servants. A Cabinet Office inquiry was launched, and its leaked findings found that Patel had 'not consistently met the high standards required by the ministerial code of treating her civil servants with consideration and respect'. However, she retained the confidence of the prime minister and much of the parliamentary party, so was only required to issue an apology and received an official warning. Sir Alex Allan, Whitehall's independent adviser on ministerial standards, subsequently resigned in protest at the prime minister's inaction.

CASE STUDY**Priti Patel and unauthorised meetings**

In 2017, Priti Patel was dismissed from her ministerial post due to allegedly unauthorised meetings

Priti Patel, formerly the international development secretary in May's Cabinet, was forced to quit in November 2017 after Downing Street summoned her to return from a trip to Uganda and Ethiopia. It had emerged that she failed to be honest with May about 14 unofficial meetings with Israeli ministers, businesspeople and a senior lobbyist undertaken

while on a private holiday to Israel. Under the terms of the Ministerial Code ministers must be open and honest about any such private meetings. Patel's offence was compounded by the fact that when she returned to the UK and the story broke, she gave an interview with *The Guardian*, making misleading claims that then-foreign secretary, Boris Johnson, had been aware of the meetings and that a senior Foreign Office civil servant had briefed against her. She told the newspaper: 'Boris knew about the visit. The point is that the Foreign Office did know about this, Boris knew about [the trip]. It is not on, it is not on at all. I went out there, I paid for it. And there is nothing else to this. It is quite extraordinary.' This did not go down well with her boss and she was summarily dismissed. A significant part of the 'crime' was not being completely honest and open about the meetings as opposed to the actual content of the meetings, or the fact they took place in the first place.

As is often the case, though, this was an example of temporary suspension and not full exclusion from the cabinet table — in July 2019, Patel was appointed by Johnson as home secretary when he became prime minister.

Political pressure

Of all the causes of resignation this is perhaps the least easy to define. Fundamentally, political pressure means that over a period of time, perhaps several weeks, a minister has increasingly become too embroiled in controversy and negative publicity. This makes it hard for a prime minister to resist calls for the minister-in-question's resignation. In other words, it may not be a single policy issue or scandal, but a result of mounting and eventually overwhelming pressure. The case study overleaf offers a notable recent example.

Ministers resign for many reasons. Some are clear and straightforward, such as a principled disagreement over a major policy. Others are more complex and may reflect wider political circumstances, such as a government keen to be seen as dealing appropriately with live political issues. The advent of the #MeToo movement saw allegations of sexual harassment rightly being taken much more seriously in 2020 compared with just a decade or two earlier. Likewise, the 2009 expenses scandal, which involved multiple MPs and peers, made such

CASE STUDY

Andrew Mitchell and 'Plebgate'

In September 2012, Andrew Mitchell, then chief whip, attempted to cycle out of Downing Street directly out of the main vehicle gates. But to Mitchell's displeasure, he was told to dismount and walk his bike through a pedestrian entrance. He argued with the officer on duty and, according to the officer's account of the exchange, Mitchell said: 'Best you learn your f***ing place — you don't run this f***ing government — you're f***ing plebs.' This, not surprisingly, hit the press and was quickly termed 'Plebgate'.

Mitchell apologised early on saying, 'I admit I did not treat the police with the respect they deserve', but he denied swearing or calling the officers 'plebs'. For nearly a month, Mitchell clung to office, while the police officer, supported by the Police Federation, stuck to his version of events. Eventually, with neither side being able to prove conclusively their case, or to retract some of their story, Mitchell was forced to resign. In effect, he had become a distraction for the prime minister and government, and the episode was clouding the entire administration. In his resignation statement, he said, 'It has become clear to me that whatever the rights and wrongs of the matter I will not be able to fulfil my duties as we both would wish...Nor is it fair to continue to put my family and colleagues through this upsetting and damaging publicity'. He continued to deny using the word 'pleb,' however, and went on, unsuccessfully, to sue *The Sun* newspaper for libel.



Andrew Mitchell was forced to resign in October 2012 over his altercation with a police officer outside Downing Street a month earlier

It might seem slightly strange that this story escalated so quickly and generated so many negative headlines. Aside from Mitchell's apparent rudeness to a public servant who was only doing his duty, context is crucial. David Cameron's government had something of an 'issue' with its image of being public school Oxbridge 'toffs', in part due to Cameron's own background at Eton and Oxford. A senior minister using a socially derogatory term against a public servant only served to enhance this stereotype. It also did not help that Mitchell was on his way to the elite Carlton Club, one of London's foremost private members' clubs, again sending out all the wrong messages.

irregularities a much more high-profile offence. Ultimately, individual and not collective responsibility is the more significant factor behind resignation. Even so, a minister who can still enjoy the political support of their prime minister is in a far stronger position than one the prime minister is happy 'to let go'. Occasionally there can be genuine personal reasons for resignation. In September 2020, Simon Clark resigned as minister for regional growth and local government citing 'balancing my own life against the demands of office'. No scandal here, no political pressure to quit and no clash over policy. This is perhaps a reminder of the heavily pressurised nature of ministerial office.

Whatever the precise cause, any ministerial resignation damages a government, if only because it implies a poor ministerial pick in the first place.

KNOWLEDGE CHECK

- 16 When can collective responsibility be relaxed?
- 17 What is the difference between collective and individual responsibility?
- 18 What forms can personal misconduct take when analysing ministerial resignations?

The accountability of the prime minister and cabinet to parliament

Although modern prime ministers have often been accused of being presidential, the fact remains that they are still accountable to parliament. This involves regular appearances at question time, attending select committees and making ministerial statements before the Commons. However, there is some debate as to how well this works in practice.

DEBATE

Is the executive largely unaccountable to parliament?

Yes	No
Answers in parliament, especially PMQs, often favour style over substance. Ministers often choose to avoid difficult and probing questions.	Ministers from the prime minister down are subject to regular grilling at ministerial questions and PMQs. The televising of these occasions makes a poor performance have even more impact.
The principles can be open to interpretation. Ministers often claim they were unaware of an error, and if they have the backing of the prime minister, are unlikely to resign.	All members of the executive must follow the principles on standards expected in public life as set out in the Ministerial Code. This includes giving honest and accurate information to parliament and not knowingly misleading parliament or the public.
Select committees have relatively little power and an unconvincing or evasive performance is no guarantee of dismissal.	Ministers appear before select committees and must be honest and truthful in the hearings, which can often be probing and inquisitorial in nature.
Most of the time, party loyalty is guaranteed — not only because of party discipline, but also due to a desire to prevent opponents gaining ground. Few on their own benches openly criticise or attack 'their' executive.	The prime minister above all must retain the support of the parliamentary party. Where this becomes weak, a prime minister's position can eventually become untenable. Some former ministers, such as Heseltine, Howe and Cook, have proved very effective in undermining and exposing the flaws in a leader from their own party.



Individually or in pairs, discuss how far you think the executive is largely unaccountable to parliament.

SUMMARY

- The core executive comprises the prime minister, cabinet, cabinet committees and senior civil servants.
- The post of prime minister has become increasingly presidential, but clear differences remain between the role and the powers of most presidents.
- Policy-making in government is influenced by several factors including fulfilling manifesto promises and responding to crises and popular pressure.
- Prime ministers and the cabinet can only dictate events and decide policy to a limited extent. When they make free choices, such as with the poll tax, invasion of Iraq and calling an early election, they are often taking major political gambles that do not always pay off.
- The relationship between prime ministers and their cabinet can be quite complicated and strained, and much depends on personalities and political circumstances.
- Individual and collective ministerial responsibility are different. Individual responsibility applies to ministers taking responsibility for their actions and the decisions taken within their departments. Collective responsibility involves all ministers publicly defending government decisions.
- Ministers resign for many reasons, including policy differences and breaching the Ministerial Code.
- The prime minister and the cabinet are accountable to parliament in a number of ways including via question time, select committees and the confidence of their own party in parliament.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three prerogative powers of the prime minister. (9 marks)
- 2 Explain and analyse three factors that explain how prime ministers select their cabinet. (9 marks)
- 3 Explain and analyse three constraints on the power of prime ministers. (9 marks)

Paper 1 Section B style question

Read the extracts below and answer Question 4 that follows.

Has the UK prime minister become presidential?

When applied to the British prime minister, the notion of presidentialism usually focuses more on the personal style of the officeholder, less on the institutional substance of the office itself. The prime minister is the product of the British parliamentary system, and this system limits their powers. Comparing Britain with the USA demonstrates that in executive-legislative terms a British prime minister is more dominant than any US president. The presidential approach fails to acknowledge that their legislative power makes the British prime minister more significant than their US presidential counterpart. When a prime minister is able to lead the executive, determine its key decisions, shape its agenda and guide the work of its ministers, they will be a more influential actor than the president. Britain does not have a presidential system, so it cannot have a presidential chief executive.

Source: adapted from Heffernan, R. (2005) 'Why the prime minister cannot be a president: comparing institutional imperatives in Britain and America', *Parliamentary Affairs*, Vol. 58, No. 1

Discussion and debate over the development of the British premiership has increasingly been characterised by the emergence of a presidential dimension. It has been used to convey the scale and significance of a series of changes in institutional dynamics, conventions and culture that have had the effect of altering leadership politics in the UK. Recent studies show that the properties and concepts associated especially with the US presidency are similar to the recent evolution of the British premiership. Both offices can be seen to be moving along parallel lines of development.

British prime ministers find that while they inhabit established institutional structures, they increasingly operate in a world that is quite different from the traditional patterns of political interaction. This leads to prime ministers having to be adept at embedding themselves in the national consciousness, ensuring a high level of news management skills and mastering techniques of popular communication. The premiership is undergoing change in both practice and convention and the office is transforming in line with many aspects of presidential politics.

Source: adapted from written evidence submitted by Professor Michael Foley in 2011 to the Commons select committee on political and constitutional reform, <https://publications.parliament.uk/pa/cm201012/cmselect/cmpolcon/writev/842/m16.htm>

- 4 Analyse, evaluate and compare the arguments in the extracts over the extent to which the UK prime minister has become more presidential in style and power. (25 marks)

Paper 1 Section C style questions

- 5 'Increasingly presidential'. Analyse and evaluate this interpretation of the role of prime minister in modern Britain. (25 marks)
- 6 'Ministers mostly resign due to personal conduct.' Analyse and evaluate this statement. (25 marks)
- 7 'The modern prime minister has little opportunity to dictate policy, and even fewer opportunities to guarantee a successful outcome.' Analyse and evaluate this statement with reference to two examples, one before and one after 1997. (25 marks)

FURTHER READING

Articles

Bennister, M. (2016) 'Prime ministerial power: is it in decline?', *Politics Review*, Vol. 25, No. 3, pp. 24–27.

Bennister, M. (2017) 'The cabinet: is there still collective cabinet responsibility?', *Politics Review*, Vol. 26, No. 4, pp. 2–5.

Bennister, M. (2018) 'How effectively do prime ministers dictate events and determine policy?', *Politics Review*, Vol. 27, No. 4, pp. 8–11.

Heffernan, R. (2008) 'Prime ministerial predominance', *Politics Review*, Vol. 17, No. 3, pp. 2–5.

Books

Blair, T. (2011) *A Journey* (PB edn), Arrow Books.

Cameron, D. (2019) *For the Record*, William Collins.

Thatcher, M. (2012) *The Downing Street Years* (PB edn), HarperPress.

Websites

Cabinet Manual (2010): <https://www.gov.uk/government/publications/cabinet-manual>

Institute for Government: <https://www.instituteforgovernment.org.uk/>

Ministerial Code (2019): <https://www.gov.uk/government/publications/ministerial-code>

4

The judiciary

KEY QUESTIONS ANSWERED

- What does the UK judiciary consist of, what is the senior judiciary and how are senior judges appointed?
- What is the UK Supreme Court: why was it created, what does it do and what impact does it have on UK politics and society?
- What are the main principles and doctrines that underpin the work of the judiciary and what do they mean in practice?
- How much influence does the judiciary have over government and policy in the UK? Are judges too powerful?

BACKGROUND INFORMATION



Baroness Hale was the first woman to serve as President of the Supreme Court

On the 24 September 2019, at the height of the Brexit crisis, the UK **Supreme Court** ruled that the prime minister, Boris Johnson, had acted unlawfully in proroguing parliament. As the Court's president at the time, Baroness Hale, explained, this was because the prorogation 'had the effect of frustrating or preventing the ability of parliament to carry out its constitutional functions without reasonable justification'. The judgement was both clinical and immediate in its outcomes. The Order in Council that had authorised the prorogation was quashed, and MPs returned to Westminster.

Although the outcomes of the 2019 general election and the Brexit Withdrawal Bill that followed served to reduce the direct impact of the Supreme Court's judgement in this case, it nonetheless remains a landmark ruling in the evolution of the Court. This was, after all, the first time that the Court had ruled in a case involving the use of the prime minister's exercise of the monarch's prerogative power. Moreover, it was the Court itself that decided it had the power to review Johnson's actions — a judgement that was accepted, albeit reluctantly, in some quarters. In much the same way that the US Supreme Court is said to have 'discovered' its power of judicial review, so the UK Supreme Court had announced itself spectacularly on the political stage.



KEY CONCEPT

Supreme Court Comprises 12 justices and based in Middlesex Guildhall, close to the Westminster parliament. The court acts as the final court of appeal for all cases in England, Wales and Northern Ireland, as well as hearing appeals from civil cases in Scotland, and plays a key role in establishing legal precedent, by hearing appeals and laying down case law in cases where there is legal uncertainty.

The composition of the judiciary and the appointments process

Although in its widest sense the term ‘judiciary’ might be taken as encompassing all of those who are directly involved in the administration and application of justice, it is more commonly used when referring collectively to all UK judges, from lay magistrates and those serving on tribunals, right up to the 12 senior justices sitting in the UK Supreme Court. Before the UK Supreme Court began its work, in October 2009, the highest court of appeal in the UK comprised the 12 Law Lords who sat in the Appellate Committee of the House of Lords. These Law Lords were technically members of both the judiciary and the upper chamber of the legislature (i.e. the House of Lords).

While it is helpful to have an outline structure in mind, it is important to remember that the UK judiciary does not exist as a single body. Scotland and Northern Ireland operate under different legal arrangements than those in place in respect of England and Wales. The one feature common to all three systems is the part played by the UK Supreme Court, which acts as the highest court of appeal from the High Court of Justiciary and Court of Session in Scotland, the Court of Judicature in Northern Ireland and the Court of Appeal in England and Wales. The UK Supreme Court’s power to hear appeals and review the actions of other public bodies allows it to establish new rules or ‘precedents’ that affect not only the case in question but also all subsequent cases.

SYNOPTIC LINK

Under the US Constitution, individual US states are free to organise their own state-level judiciary largely as they see fit. As a result, UK/US comparisons tend to focus on the higher levels of the federal judiciary in the USA and the senior judiciary in the UK. The US federal judiciary, like the UK judiciary, is broadly hierarchical in structure. The US Supreme Court sits above 13 US federal circuit courts of appeal, with US district courts, the US Claims Court and the US Court of International Trade at the lowest tier. You can find out more about the US judiciary, the judicial branch of government and the judiciaries in chapters 16 and 17.

Figure 4.1 shows how the judiciary for England and Wales is organised.

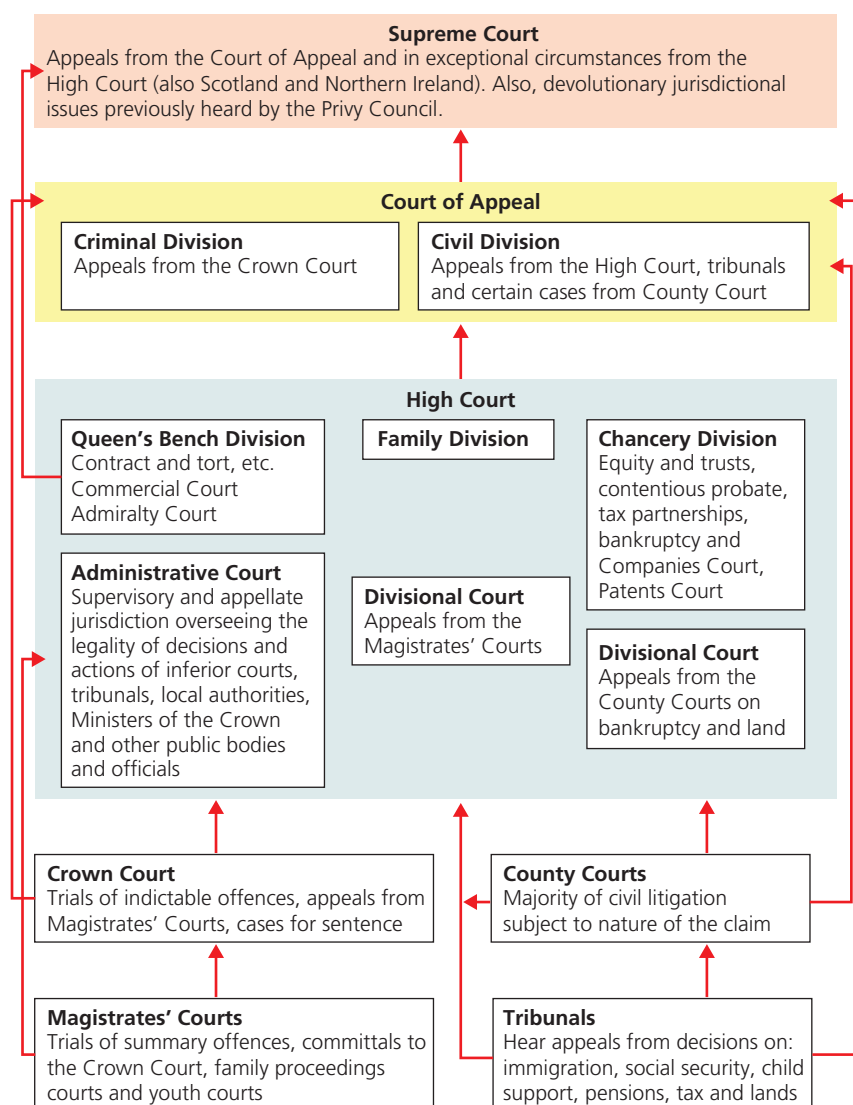


Figure 4.1 The judiciary in England and Wales

The composition and importance of the senior judiciary

The senior judiciary comprises justices of the Supreme Court, heads of divisions, Lords Justices of Appeal, High Court judges, and deputy High Court judges. It plays a significant role in the UK political system because senior judges use their power of judicial review to clarify or establish a legal position where statute law is absent or unclear. This case law, sometimes referred to as common law, forms a body of legal precedent that serves to guide both the lower courts and future lawmakers.

Appointments to the senior judiciary in the UK

Appointments to all positions in the senior judiciary were once made by the monarch, on the advice of the prime minister and the Lord Chancellor, with

SYNOPTIC LINK

Whereas the UK Supreme Court comprises 12 members (the president of the Court, the deputy president of the Court, and 10 justices of the Court), the US Supreme Court has numbered nine justices since 1869 (with one chief justice and eight associate justices). You can find out more about the US judiciary in chapters 16 and 17.

the Lord Chancellor making their ‘picks’ on the basis of ‘secret soundings’ with close associates and those already serving in the senior judiciary. It was said that this system lacked transparency, undermined the separation of powers, and resulted in a senior judiciary drawn almost exclusively from a very narrow social circle: public school and Oxbridge educated, white, male and beyond middle age. Such criticisms informed the Constitutional Reform Act (CRA) 2005.

CASE STUDY**Constitutional Reform Act 2005**

The Constitutional Reform Act 2005 reduced the power of the Lord Chancellor, placing most senior judicial appointments into the hands of a new, independent Judicial Appointments Commission (JAC). It was hoped that this change would enhance the separation of powers and result in a senior judiciary that was more socially representative of the broader population. The Act also provided for the creation of the Supreme Court, in which 12 justices would sit and discharge the roles previously performed by the Law Lords, who had sat as the highest court of appeal in the Appellate Committee of the House of Lords.

While the JAC was created as a means of lending greater transparency and legitimacy to the process by which most senior judges are appointed, the CRA established an entirely different process with respect to appointments to the UK Supreme Court. This separate system was certainly more open than the process under which Law Lords had been appointed in the days before the creation of the Supreme Court, but it retained a role — albeit a lesser one — for the Lord Chancellor.

Qualifications for appointment to the UK Supreme Court

In order to be considered for appointment as a justice in the Supreme Court, candidates must have either held high judicial office for at least 2 years or been a ‘qualifying practitioner’ for a period of 15 years (see Figure 4.2).

A qualifying practitioner is someone who:

- has a senior courts qualification, or
- is an advocate in Scotland or a solicitor entitled to appear in the Scottish Court of Session and the High Court of Justiciary, or
- is a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland.

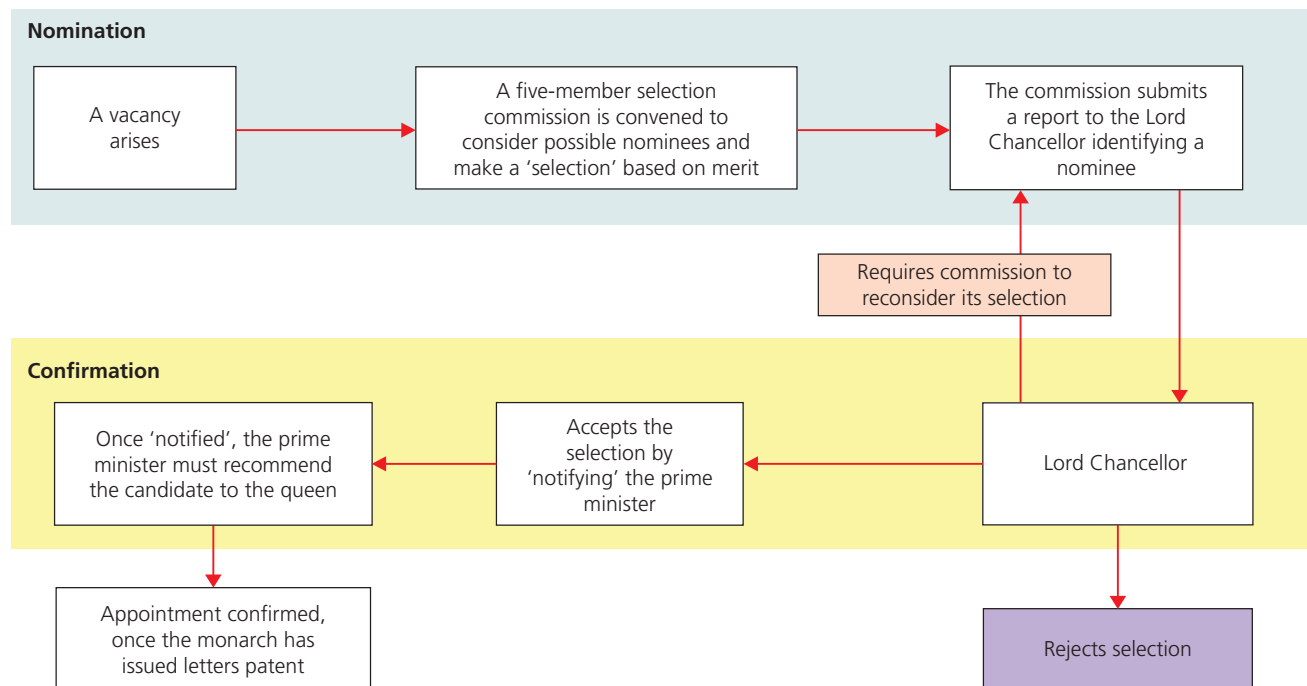


Figure 4.2 Appointing justices to the UK Supreme Court

CASE STUDY

Does the Supreme Court 'look like the UK'?

Although one could not reasonably expect a superior court such as the UK Supreme Court to be perfectly socially representative of the broader population — due to the statutory qualifications for office, and the need for considerable prior legal experience — the

membership of the Court has nonetheless left it open to accusations of elitism. Such concerns have not been dispelled by appointments to the Court since it opened for business in Middlesex Guildhall in October 2009.

Table 4.1 summarises the makeup of the UK Supreme Court on 20 April 2021.

Table 4.1 The UK Supreme Court on 20 April 2021

Justice	Education		
	Born (age)	School type	University
Lord Reed, President of the Supreme Court	Sep 1956 (64)	Independent	Edinburgh and Oxford
Lord Hodge, Deputy President of the Supreme Court	May 1953 (67)	Independent	Cambridge
Lord Lloyd-Jones, Justice of the Supreme Court	Jan 1952 (69)	State grammar	Cambridge
Lord Briggs, Justice of the Supreme Court	Dec 1954 (66)	Independent	Oxford
Lady Arden, Justice of the Supreme Court	Jan 1947 (74)	Independent	Cambridge
Lord Kitchin, Justice of the Supreme Court	Apr 1955 (65)	Independent	Cambridge
Lord Sales, Justice of the Supreme Court	Feb 1962 (59)	Independent	Cambridge and Oxford
Lord Hamblen, Justice of the Supreme Court	Sep 1957 (63)	Independent	Oxford and Harvard
Lord Leggatt, Justice of the Supreme Court	Nov 1957 (63)	Independent	Cambridge
Lord Burrows, Justice of the Supreme Court	Apr 1957 (64)	State grammar	Oxford
Lord Stephens, Justice of the Supreme Court	Dec 1954 (66)	Independent	Manchester
Lady Rose, Justice of the Supreme Court	Apr 1960 (61)	State comprehensive	Cambridge and Oxford



The Supreme Court

Is the profile of Supreme Court judges changing? Table 4.2 is an overview of Supreme Court demographic changes between 2009 and 20 April 2021.

Table 4.2 UK Supreme Court demographics between 2009 and 20 April 2021

	2009* (Oct)	2021 (20 Apr)	UK population (2021)
Attended an independent secondary school	10 (91%)	9 (75%)	7%
Attended Oxford or Cambridge	10 (91%)	11 (92%)	1%
Number of women	1 (9%)	2 (17%)	51%
Number from minority ethnic groups	0	0	14%
Average age (years)	67.8	65.1	40.5
Number of justices in post	11	12	—

* One seat was vacant at the time of the Court's creation.

KNOWLEDGE CHECK

- 1 Explain what is meant by the term 'legal precedent'.
- 2 Explain what is meant by the term 'senior judiciary'.
- 3 Explain why the Judicial Appointments Commission (JAC) was created.

The role of the Supreme Court and its impact on government, legislature and policy process

Three reasons why the UK Supreme Court was established

The UK Supreme Court was established under the Constitutional Reform Act with a view to addressing three longstanding issues:

- Concerns over the incomplete **separation of powers** present in the UK system
- Widespread criticism of the system under which Law Lords were appointed
- Confusion among the general public over the status, the role and the work of the Law Lords

KEY CONCEPT

Separation of powers The doctrine requires that the three elements of government power — legislative, executive and judicial — be held by separate branches of government in order to prevent tyranny:

- The legislature legislates (i.e. makes the laws).
- The executive branch has the role of executing policy (i.e. putting laws into effect).
- The judiciary is charged with the task of enforcing and interpreting the laws.

SYNOPTIC LINK

The UK is said to operate under a partial fusion of powers, because the ministers who comprise the government (the executive) also sit in parliament (the legislature). The US Constitution, in contrast, appears to enforce a clearer separation. The reality, however, is complicated both by a number of overlaps and by the system of so-called 'checks and balances' in place in the US system of government. You can find out more about the US take on the separation of powers in chapters 11 and 12.

Three key functions performed by the UK Supreme Court

Under the CRA, the new UK Supreme Court took on most of those judicial roles previously performed by the Law Lords. These included:

- To act as the final court of appeal in England, Wales, and Northern Ireland
- To hear appeals from civil cases in Scotland
- To hear appeals in cases where there is uncertainty and thereby clarify the meaning of the law

Key doctrines and principles that underpin the Supreme Court's work

The rule of law

The constitutional theorist A. V. Dicey identified the rule of law as one of the 'twin pillars' of the 'English Constitution', with the other being parliamentary sovereignty. Rooted in the general principle that 'equal justice' should be available to all, Dicey further described three key elements, or 'strands', of the doctrine as a means of demonstrating just what, in practice, such 'equal justice' might look like:

- 1 **No one can be punished without trial:** while this principle makes good sense in theory, it is not always maintained in practice. For example, terrorist suspects have been subject to a range of punishments without trial under measures passed since 2001, including indefinite detention, the imposition of control orders and the freezing of assets.
- 2 **No one is above the law and all are subject to the same justice:** again, while this appears to be a principle that would hold true in all liberal democracies, there have always been those who are effectively above the law in the UK: for example, the monarch, international ambassadors and MPs (under 'parliamentary privilege').
- 3 **The general principles of the Constitution result from the decisions of judges:** while the decisions of judges (i.e. case law or common law) certainly have a part to play in defining the UK's constitutional arrangements, parliament remains sovereign and statute law reigns supreme. Crucially, any legal precedent can be overturned by the means of a simple Act of Parliament.

KEY CONCEPTS

Judicial independence The principle that those in the judiciary should be free from political control. Such independence allows judges to 'do the right thing' and apply justice properly, without fear of the consequences.

Judicial impartiality Where judges operate without personal bias in their administration of justice. It is an essential requirement of the rule of law.

Judicial independence and judicial impartiality

The rule of law clearly demands that judges at all levels of the UK judiciary should operate with a high level of independence and dispense justice with a degree of neutrality, or impartiality. However, it is important to draw a clear distinction between the principles of **judicial independence** and **judicial impartiality**. The absence of judicial independence threatens judicial impartiality because if judges are subject to external control, their impartiality is compromised. However, judicial independence does not guarantee judicial impartiality because judges may still allow their personal views to influence their administration of justice.

What features of the UK system support judicial independence?

Judicial independence in the UK is based upon six main pillars:

- 1 **Security of tenure:** retirement aside, judges are appointed for an open-ended term, making it harder for politicians to bring influence to bear by threatening to sack or suspend them. Removing a judge by impeachment would require a vote in both Houses of parliament.
- 2 **Guaranteed salaries:** judges' salaries are paid automatically from the Consolidated Fund. This means that politicians are unable to manipulate judges' salaries as a way of controlling them.
- 3 **Contempt of court:** under the *sub judice* rule, the media, ministers and the wider public are prevented from speaking out publicly during legal proceedings.
- 4 **A growing separation of powers:** the downgrading of the post of Lord Chancellor and the creation of a new UK Supreme Court enhanced the separation between the senior judiciary and the other branches of government.
- 5 **An independent appointments system:** the creation of the JAC, under the Constitutional Reform Act, brought greater transparency to the process of judicial appointments and served to address accusations of political bias.
- 6 **Training and experience:** most senior judges have served a long apprenticeship in law. They have high status and take considerable pride in their legal standing. They are unlikely to compromise their professional integrity simply to defer to politicians or public opinion.

How is judicial impartiality guaranteed?

In simple terms, of course, it is impossible to guarantee judicial impartiality. After all, judges are only human, and they inevitably bring some degree of personal bias to their work. However, the promise of a universal application of the law under the doctrine of the rule of law requires that such bias is prohibited from colouring judicial decisions.

There are four main ways in which this goal is achieved:

- 1 **Anonymity:** judges generally operate away from the public eye and rarely speak out publicly on issues of law or public policy. Senior judges are expected to avoid being drawn into open defence of their rulings, or open criticism of those in government.
- 2 **Political activity:** judges are not supposed to campaign on behalf of a political party or a pressure group. Although judges retain the right to vote, their political views or outlook should not become a matter of public record.

SYNOPTIC LINK

US courts, like their UK counterparts, are expected to operate with high levels of judicial independence and judicial impartiality. Crucially, however, judges on both sides of the Atlantic must also rely on other institutions of the state to enforce their rulings. You can find out more about the US judiciary in chapters 16 and 17.

KEY CONCEPT

Politicisation The process by which those individuals who were traditionally seen as being beyond party politics are drawn into it. Politicisation of the judiciary is said to result from appointments being made on political grounds as opposed to being truly meritocratic. The way in which the UK judiciary was drawn into areas of political controversy in the wake of the Human Rights Act 1998 was also seen by some as evidence of politicisation.

- 3 **Legal justifications of judgements:** the fact that senior judges are expected to explain how their decisions are rooted in law makes it less likely that those decisions will be coloured by personal bias. UK Supreme Court decisions are published in full on the Court's website.
- 4 **High-level training:** judges are part of a profession that is highly trained and regulated by the Law Society. Elevation to the bench would suggest an ability to put personal bias to one side. Additional guidance and training can be offered or required where concerns exist.

Threats to judicial impartiality

Critics of the judiciary often point out two key threats to judicial impartiality. First, the narrow recruiting pool from which senior judges have traditionally been drawn, it is argued, could make it harder for judges to make impartial decisions when their own life experiences are so different from most of those who are brought before them. To date, most of those appointed to the higher tiers of the judiciary have been privately schooled, Oxbridge-educated, white, middle-class men who are beyond middle age. Crucially, the creation of the JAC appears to have done little to address this problem.

Second, senior judges have been drawn into more openly political conflicts in recent years, the suggestion being that the passage of measures such as the Human Rights Act 1998 has resulted in a **politicisation** of the judiciary. Some see this growing public profile and increased conflict between senior judges and politicians as posing a threat to judicial impartiality. However, it could equally be seen as evidence of growing judicial independence and impartiality — not least because senior judges appear increasingly willing to take on the political establishment in defence of civil liberties.

Table 4.3 gives an overview of judicial diversity statistics in 2020.

Table 4.3 Judicial diversity statistics 2020

	% Women			% Minority ethnic group		
	2018	2019	2020	2018	2019	2020
Senior judiciary below Supreme Court (2020 total)						
Heads of division (5)	0	0	20	0	0	20
Court of Appeal judges (39)	24	23	21	7	6	3
High Court judges (99)	24	27	28	3	3	4
Deputy High Court judges (111)	26	25	23	14	13	8
For comparison (2020 total)	2018	2019	2020	2018	2019	2020
Magistrates (13,177)	55	56	56	12	12	13

ACTIVITY

Using the information provided in Table 4.3, as well as material drawn from your own research, evaluate the work of the JAC in addressing the alleged under-representation of women and those from minority ethnic communities within the senior judiciary.

DEBATE

Has the UK judiciary become more politicised in recent years?

Yes

The Human Rights Act 1998 drew senior judges into the political fray by requiring them to rule on the 'merit' of an individual piece of statute law as opposed to its 'application'.

R (Factortame Ltd) v Secretary of State for Transport (1990) established the precedent that UK courts could 'suspend' Acts of Parliament where they were thought to contradict EU law.

The creation of the Supreme Court and the physical relocation of the most UK senior judges to its base in Middlesex Guildhall brought senior judges into the public arena and subjected them to greater scrutiny by the media.

Politicians have broken with convention by publicly criticising rulings handed down by senior judges.

No

The creation of the JAC and the process established in respect of appointments to the Supreme Court has enhanced transparency and addressed concerns over political interference.

Although 'politicisation' is often associated with political interference and/or control, the UK senior judiciary has in fact become more independent in the wake of the Constitutional Reform Act, e.g. through the 'downgrading' of the role of Lord Chancellor.

Increased conflict between judges and politicians is a 'positive' because it shows that the courts are challenging the government when it appears to be encroaching upon the public's civil liberties.

The fact that senior judges still benefit from security of tenure and guaranteed salaries helps to insulate them from political pressure.

 Individually or in pairs, evaluate the arguments presented on each side of this debate using the material presented elsewhere in this chapter and your own independent research. Then offer a reasoned judgement as to whether in your view the UK judiciary has indeed become more politicised in recent years.

KNOWLEDGE CHECK

- 4 Explain the distinction between judicial independence and judicial impartiality.
- 5 Explain the significance of the rule of law.
- 6 Explain what is meant by the term 'politicisation'.

Importance of *ultra vires*, judicial review and the Supreme Court's interactions with and influence over the legislative and policy-making processes

KEY CONCEPT

Judicial review The process by which judges review the actions of public officials or public bodies in order to determine whether or not they have acted in a manner that is lawful.

The importance of judicial review

Although the supremacy of statute law and the absence of a codified constitution mean that the UK Supreme Court does not have the power to 'strike down' Acts of Parliament, unlike its US counterpart, both the Supreme Court and the Courts of Appeals that operate directly below it still wield considerable influence through their exercise of **judicial review**. This is because unlike the lower (or 'inferior') courts that operate beneath them, these higher-tier courts can establish legal precedent or common law (sometimes referred to as 'judge-made' law) through their judgements. In short, these higher courts clarify the meaning of the law as opposed to simply applying the letter of the law.

SYNOPTIC LINK

The US Constitution is regarded as fundamental law, meaning that it is superior to regular legislation. This means that the US Supreme Court can use its power of judicial review to strike down regular Acts of Congress, where they violate constitutional provisions. You can find out more about the US judiciary in chapters 16 and 17.

Ultra vires cases and the Supreme Court

In the UK, judicial review traditionally involved little more than judges determining whether or not a public official had operated beyond the authority granted to them under the law (i.e. acted **ultra vires**), as opposed to questioning the basis of the law itself.

CASE STUDY

Ultra vires and the European Court of Human Rights

In the case *Reilly v Secretary of State for Work and Pensions* (2016), judges were asked to rule on the lawfulness of certain aspects of the government's 'welfare to work' scheme. Reilly argued that the Department for Work and Pensions (DWP) had infringed the protection against slavery provided in Article 4 of the European Convention on Human Rights (ECHR) by requiring her to work for a private company in order to receive her benefit payments. In 2013, the Supreme Court concluded that although the DWP had not 'established slavery' in violation of the European Court of Human Rights (ECtHR) when introducing

its 'welfare to work' scheme, it was still unlawful because the department had operated *ultra vires*, i.e. beyond the authority given to it by parliament.

By then, the government had already passed the Jobseekers (Back to Work Schemes) Act 2013. That Act changed the law retrospectively, so that no offence had been committed. In 2016, the Court of Appeal ruled that getting around the earlier ruling by changing the law and making it retrospective was incompatible with Article 6 of the ECHR, which guarantees the right to a fair trial. However, the Court also confirmed that it was entirely up to the government and parliament to decide how they wished to proceed in light of that declaration of incompatibility.

KEY CONCEPT

Ultra vires From the Latin meaning 'beyond the authority' or 'beyond one's powers'. The process of judicial review can be used to determine whether or not a minister or other government officer has acted *ultra vires*: that is, beyond the authority granted to them in law.

ACTIVITY

Read the *Reilly v Secretary of State for Work and Pensions* case study carefully.

- 1 Using the information provided, explain the concept of *ultra vires*.
- 2 What does the second paragraph of the case study tell us about the limitations on the power of senior judges?

Although the ability to make *ultra vires* rulings is still an important weapon in the Supreme Court's armoury, the power of the UK judiciary has been enhanced by two key developments in recent decades:

- The growing importance of European Union law
- The impact of the Human Rights Act 1998

European Union law and the Supreme Court

Under the European Communities Act 1972, the UK incorporated the Treaty of Rome into UK law. The effect of this simple change was to give European laws precedence over conflicting UK statutes, whether past or present. Initially, this simply meant that the UK government could be called to account at the European Court of Justice (ECJ). However, in the wake of the Factortame case (1990), UK courts were permitted to 'suspend' UK statutes that appeared to be in violation of EU law.

CASE STUDY**Factortame**

The term 'Factortame' refers to a series of connected cases in which the ECJ established the precedent that UK courts could suspend any UK statute law where it appeared to violate EU law, at least until the ECJ was able to make a final determination as to the legality of the statute in question.

The case took its name from a majority Spanish-owned fishing company, Factortame Limited, which had

challenged the legality of the Merchant Shipping Act 1988 under European law. Prior to the passage of the Act, the company re-registered more than 50 Spanish boats as British, while also purchasing a number of other UK fishing vessels. Because these boats were registered in the UK, their catches counted against the UK's EU fishing quotas, even though most of the boats landed their fish in Spain. The Merchant Shipping Act 1988 was the government's attempt to close that loophole.

The Human Rights Act and the Supreme Court

The Human Rights Act was passed in 1998 and came into force in October 2000. It incorporated most of the articles of the European Convention on Human Rights (ECHR) into UK law, so allowing UK citizens to pursue cases under the ECHR directly through the UK courts. Prior to 2000, cases brought under the ECHR were heard at the European Court of Human Rights (ECtHR) in Strasbourg.

CASE STUDY**The Supreme Court and the Human Rights Act**

The case of *Tigere v Secretary of State for Business, Innovation and Skills* (2015) demonstrates the way in which senior judges have been able to use the provisions of the ECHR to protect individuals against discrimination. Beaurish Tigere arrived in the UK from Zambia aged six as a dependent of her father, who had travelled to the UK on a student visa. When her father left the UK in 2003, Tigere remained, with her mother. Although it took some years for the Border Agency to become aware that Tigere had 'over-stayed', they ultimately awarded her 'temporary permission' and then 'discretionary leave to remain' in the UK. With her UK residency secure, Tigere completed her A-levels and secured a place to read Business Management at Northumbria University. However, she was not eligible for a student loan for her university degree, because she would not have been able to apply for the required 'indefinite leave to remain' in the UK until 2018. In 2015, the UK Supreme Court accepted Tigere's appeal on the grounds that the negative impact on her rights under Article 2 of the ECHR (the right to education) and also Article 14 (prohibiting discrimination) could not be justified.

ACTIVITY

Read the *Tigere v Secretary of State for Business, Innovation and Skills* (2015) case study carefully.

- 1 Pursuing one's rights through the courts can be incredibly expensive. Using your own research, explain how Beaurish Tigere was able to go down this road.
- 2 Explain the options that would have been available to the UK government if it had not been prepared to accept the Supreme Court's final ruling.

USEFUL CONCEPT

Derogation The process by which a country is exempted, perhaps temporarily, from observing a law or regulation it has previously agreed to abide by. Under Article 15 of the ECHR, national governments are permitted to derogate some of the convention's articles in times of national crisis.

The limitations of the Supreme Court's power under the Human Rights Act

We have already established that the HRA does not have the same legal force as other, similar documents that are in force both in the UK and beyond. This is because, unlike the guarantees provided in documents such as the US Bill of Rights, the HRA is neither entrenched nor superior to regular statute. The HRA can be amended, 'suspended' (**derogated**) — in

its entirety or in part — or simply repealed, like any Act. Crucially, while the courts can make a declaration of incompatibility and invite parliament to reconsider the offending statute, they cannot strike down parliamentary statute under the HRA.

It would be wrong, however, to think only in terms of statute law clashing directly with the HRA. Where statute is silent or unclear, the courts can make use of the HRA by using its provisions to establish legal precedent in common law. In addition, we should remember that the HRA also has a hidden influence through the process by which draft legislation is now examined by parliament's Joint Committee on Human Rights in order to ensure that it is HRA-compatible.

ACTIVITY

Using the information provided as well as material drawn from your own research, write two paragraphs evaluating the significance of the HRA in relation to the power of the Supreme Court:

- One paragraph should argue that the HRA has only a limited impact on the power of senior judges such as those who sit in the UK Supreme Court.
- One paragraph should argue that the HRA has led to the UK Supreme Court developing into an institution far more powerful than the Law Lords it replaced.

KNOWLEDGE CHECK

- 7 Explain what is meant by the term 'judicial review'.
- 8 Explain what is meant by the term '*ultra vires*'.
- 9 Explain the significance of the Human Rights Act 1998 in relation to the work of senior judges in the UK.

Judicial influence on government

The changing character of judicial action in the UK

Judicial review often requires senior judges to clarify the legal meaning of a specific law or regulation. Judicial review may also involve reviewing appeal cases heard previously at lower, or 'inferior', courts. As we have seen, the doctrine of parliamentary sovereignty and supremacy of statute law means that judicial review in the UK is generally seen as being less significant than that in the USA. In recent years, however, some commentators have argued that the judiciary has become more active.

DEBATE**Has the UK judiciary had a greater impact on the work of the executive and parliament in recent years?**

Yes	No
The Constitutional Reform Act 2005 enhanced judicial independence by reducing the role of Lord Chancellor and removing the UK's most senior judges from the House of Lords. Creating a clearer physical separation between the judiciary and the government, by relocating the Supreme Court to Middlesex Guildhall, also allowed the most senior judges to come out of the shadows and develop a more public profile. By allowing cases under the ECHR to be heard in UK courts, the HRA 1998 empowered the UK's most senior judges to directly question Acts of Parliament — as well as the actions of those working in the executive. The precedent established under the Factortame case (1990) allowed senior judges to suspend the actions of both parliament and the executive where either branch appeared to have breached EU law. The extension of EU law in the wake of the Maastricht Treaty (1992) brought senior UK judges into conflict with both the executive and parliament across a far wider range of policy areas than had previously been the case. This growth in judicial action had a further, indirect impact. Those in the executive and in parliament increasingly looked to head off potential conflict in the courts, by ensuring that all legislation was HRA and EU compliant before seeking to pass it into statute.	The physical relocation of the UK's top court to its new accommodation in Middlesex Guildhall in 2009, though highly symbolic, did little to change the legal-constitutional relationship between the judiciary, the executive and the legislature (parliament). Although the HRA gives judges the right to issue a 'declaration of incompatibility' where an Act of Parliament appears to have violated the ECHR, parliament is under no legal obligation to fall into line with the Court's ruling. While senior judges have the ability to rule that ministers in the executive have acted beyond their statutory authority (i.e. <i>ultra vires</i>), those very ministers can use the executive's control of parliament to pass retrospective legislation legitimising their earlier actions. Although the scope and scale of EU law expanded significantly after Maastricht, leaving the EU meant that the UK would not be subject to EU law beyond the transition period, so reducing the scope for judicial action. Any move to review the status of the HRA or limit its scope, as some have proposed, would significantly reduce the ability of the Supreme Court to exercise control over the operation of the executive or parliament.

 Individually or in pairs, examine the points for both sides of the debate and consider how convincing each one is to you, and why. Referring back to the material earlier in this section and using your own research, consider whether the impact of the UK judiciary on the work of the executive and parliament has grown in recent years.

What Brexit means for the power and authority of the UK Supreme Court

The UK's departure from the EU will inevitably have an impact on the status, power and authority of the UK Supreme Court. It is important, however, to distinguish between those institutions and processes which are part of the EU, and those which are not.

Brexit and the Court's power under the Human Rights Act

Much of the criticism of European judges is aimed not at the European Court of Justice (ECJ), the supreme court of the EU, but at the European Court of Human Rights (ECtHR). Although the ECtHR is, somewhat confusingly, based in Strasbourg, a key centre of EU operations, it is not an EU institution. It was instead established by the Council of Europe, an intergovernmental organisation, to hear cases arising under the European Convention on Human

Rights (ECHR) that the Council had drafted back in 1950. In truth, it is this Convention, fully incorporated into UK law under the Human Rights Act (HRA) 1998, and not EU law, that has been at issue in many of the cases that have led to criticism from those on the right.

Crucially, leaving the EU does not, in itself, remove the UK's obligations under the ECHR, any more than repealing the HRA would. The only way to remove ourselves from the jurisdiction of the ECtHR would be to withdraw from the Convention itself, an almost unthinkable act given that all European states — with the exception of Belarus, Kazakhstan and Vatican City — are current signatories.

STUDY TIP

The European Convention on Human Rights (ECHR) 1950 was established by the Council of Europe, an intergovernmental body that is separate from the European Union and should not be confused with the EU's Council of Ministers or European Council. Alleged violations of the ECHR are investigated by the European Commission on Human Rights and tried in the European Court of Human Rights, based in Strasbourg. Again, these bodies are not to be confused with the EU's European Commission and European Court of Justice. Table 4.4 gives an overview of the distinctions.

Table 4.4 Understanding European courts

European Court of Human Rights	European Court of Justice
Established by the Council of Europe	The 'supreme court' of the European Union
Hears cases brought under the ECHR	Hears cases arising under EU law
Based in Strasbourg but not an EU body	Based in Luxembourg



The European Court of Human Rights



The European Court of Justice

Brexit and the Court's power under EU law

Whereas leaving the EU has little or no direct impact on the status of the HRA, the ECHR or the ECtHR, Brexit did involve withdrawing from the Treaty of Rome (signed in 1957), meaning that EU law would no longer take precedence over UK law, and the ECJ would no longer have jurisdiction over the UK.

Leaving the EU impacts on the work of the UK Supreme Court in three significant ways:

- A proportion of its case load in recent years has related to EU law.
- The Supreme Court will no longer be tasked with enforcing EU law over UK law.
- The removal of a court that is superior to the Supreme Court, at least in some aspects of law, could serve to enhance the Supreme Court's status and authority.

As constitutional authority Professor Vernon Bogdanor commented in *The Guardian*, our courts have become, in effect, 'constitutional courts that enforce EU law. Brexit will leave a gap in our constitution in terms of the protection of human rights. This gap could well be filled by the judges. If that happens, Brexit will increase the danger of a clash between the judges and parliament.'

A decision to withdraw from the ECHR as well as the EU (removing the UK from the jurisdictions of both the ECtHR and the ECJ) would obviously leave the UK Supreme Court in an even more greatly enhanced position, though perhaps more vulnerable to central government control.

The evolution of the UK Supreme Court

The willingness of the Supreme Court to step in and hear cases arising from Boris Johnson's decision to prorogue parliament, and the ruling that the Court handed down in that case, marked a significant watershed in the evolution of the institution. Although the creation of the Court under the Constitutional Reform Act was portrayed as being more about enhancing the separation of powers than enhancing the power and jurisdiction of the highest court in the land, there was always the suspicion that things might take on a life of their own in the years that followed — as the author of this chapter

stated in the 2006 *UK Government and Politics Annual Survey*, published a full 3 years before the Court opened for business:

It is likely that the new Supreme Court will take time to establish itself in the public consciousness. The relationship between the Court, the public, the government and parliament will also take time to formalise. In this respect, the UK Supreme Court may have more in common with its US counterpart than one would initially think. After all, the latter's power of judicial review was not set out explicitly in Article III of the Constitution, but discovered by the Court itself in cases such as *Marbury v Madison* (1803). It may be that the new UK Supreme Court will have to carve out a role for itself in a similar way. You can find out more about the US judiciary in chapters 16 and 17.

The overall impact of the UK Supreme Court

As we have seen, the UK does not have an entrenched, codified and supreme constitutional document (or 'fundamental law') to work with. In consequence, while the US Supreme Court can tear up Acts of Congress and force the president to back down, it is impossible for the UK Supreme Court to 'strike down' Acts of Parliament or force the executive to give way.

In the wake of Brexit, the Court's power is limited to the three main areas identified over the course of this chapter:

- Revisiting and reviewing earlier legal precedent established under common law and case law ('judge-made law')
- Making *ultra vires* rulings where the Court judges that public bodies have acted beyond their statutory authority
- Issuing 'declarations of incompatibility' under the Human Rights Act 1998

While the Court can certainly be said to have developed a more public profile since 2009, Lord Philips' prediction that the change would essentially be one of 'form rather than of substance' has, in large part, been borne out. The five 'key cases' that Lord Neuberger identified (see Table 4.5), in a 2014 article that marked the Court's fifth birthday, did not represent a significant departure from what the Law Lords might have done previously.

Table 4.5 Lord Neuberger's five key cases from the Supreme Court's first 5 years

Year	Case	Focus	Significance
2009	<i>R v Horncastle & Others</i>	Hearsay evidence	Hearsay evidence could be used as a basis for conviction.
2011	<i>Al Rawi v the Security Service</i>	Secret hearings	Outlawed the use of secret evidence in court by the intelligence services.
2013	<i>Prest v Petrodel Resources Ltd</i>	Company law and divorce law	Company assets should normally be seen as separate from individual assets
2014	<i>R (HS2 Action Alliance Limited) v Secretary of State for Transport</i>	EU directives and the monitoring of parliament	EU directives did not require government to consult more widely over HS2.
2014	<i>R (Nicklinson) v Ministry of Justice</i>	Right to die	Article 8 of the ECHR could not be used to justify assisted suicide over the Suicide Act 1961.

In a similar vein, one could argue that the kinds of rulings that the Court has handed down since Lord Neuberger selected his ‘top five’, significant as they may be, are similar in character to those that the Law Lords might have issued in the years before the Supreme Court was established (see Table 4.6).

Table 4.6 Two significant court cases from 2020

Year	Case	Focus	Significance
2020	<i>Sutherland v Her Majesty's Advocate (Scotland)</i>	The limitations on the right to privacy	Sutherland was convicted for attempting to communicate indecently with a 13-year-old child, even though he had been in correspondence with a 48-year-old decoy from Groom Resisters Scotland. The Supreme Court unanimously rejected Sutherland's appeal that using the covertly obtained evidence against him breached his Article 8 ECHR right to a private life.
2020	<i>Begum v Special Immigration Appeals Commission and the Secretary of State for the Home Department</i>	The right to challenge the withdrawal of British citizenship	The Court of Appeal ruled that Shamima Begum, a young woman who had left the UK aged 15 to join Islamic State (IS), had a right under Articles 2 and 3 of the ECHR to challenge the UK government's decision to strip her of British citizenship. It also said that in the interests of justice, she should be permitted to return to the UK to plead her case in person. (In February 2021 the Supreme Court ruled that she would not be allowed to return to the UK to fight her citizenship case.)

It was only, perhaps, in its ruling over the prorogation of parliament that the court was truly breaking new ground (see case study).

CASE STUDY

The UK Supreme Court's prorogation ruling, 24 September 2019

The Supreme Court argued that the use of the royal prerogative, in this case to prorogue parliament, must always respect the conventions of parliamentary sovereignty and democratic accountability. Any prorogation that had ‘the effect of frustrating or preventing, without reasonable justification, the ability of parliament to carry out its constitutional functions as a legislature’ would therefore be unlawful. The prorogation in question had an ‘extreme’ effect on the ‘fundamentals of democracy’, coming as it did at such a crucial point in the Brexit process. In consequence, the Court declared the prorogation unlawful and

quashed the relevant Order in Council. This meant that parliament had, in law, never been prorogued, so MPs were free to return.

Two days after the prorogation ruling, *The Guardian* published an article entitled ‘After 10 years, the Supreme Court is confident in its role’, running with the lead: ‘flexing its muscles asserting the primacy of parliament, it is now a constitutional court’. However, as Professor Vernon Bogdanor told the paper, although ‘the decision by the Supreme Court is politically and constitutionally significant, it's not a huge jump and won't turn us into countries like the United States or Germany, where they have constitutional courts that can strike down legislation’.

The apparent threat posed by the Supreme Court's growing authority and influence

Recent coverage of the Supreme Court's developing role has often centred on the question of whether or not it has become ‘too powerful’. Such a question, as commonly framed, is rooted in a belief that there has been a blurring of the traditional lines that divide those who ‘make’ the law (i.e. the politicians) and those who should simply ‘apply’ it (i.e. the judges): that senior judges have become little more than ‘politicians in robes’ or ‘politicians sitting on a bench’.

However, it is important to remember that such a distinction was always flawed because of the role that senior judges have historically played in

USEFUL CONCEPT

Quasi-legislative Where the impact of differences in the Court's interpretations over time can appear tantamount to a legislative change, even though parliament has made no changes to statute law.

interpreting and clarifying the law when resolving those disputes arising under it. In that sense, the Supreme Court's ability to establish precedent through common law could always be seen as a '**quasi-legislative**' power.

The unelected nature of the UK Supreme Court

As we have seen, the UK Supreme Court has no more power than the equally unelected Appellate Committee of the House of Lords it replaced back in 2009. Although the unelected nature of the House of Lords often led to criticism of some aspects of its legislative function, that was never used as grounds for criticising the Law Lords that sat in the Appellate Committee. Furthermore, we should remember that it is almost unheard of for the very highest judges in other countries to be elected to office. This is because judicial independence requires that senior judges are free to interpret the law and dispense justice fairly, without fear of being arbitrarily removed from office via the ballot box or by any other means.

Writing rhetorically, the Roman poet Juvenal posed the question *quis custodiet ipsos custodios?* ('who is to guard the guards themselves?'). From the perspective of the UK Supreme Court, it is clear that while students of politics generally see accountability as a 'good thing', judicial independence demands a degree of unaccountability. It is an essential feature of democracy that we must at times place our trust in those who are not directly accountable to the citizenry at large.

The growing authority of the UK Supreme Court

While power can be seen as the ability to do something or make something happen, authority can be defined as the right to take a particular course of action. The German sociologist Max Weber (1864–1920) identified three sources of authority:

- **Traditional authority:** based on established traditions and customs
- **Charismatic authority:** based on a leader's personal characteristics
- **Legal-rational authority:** granted as a result of a formal process, such as an election

Although the UK Supreme Court has no more formal power than that held previously by the Appellate Committee of the House of Lords, and could not really be said to 'tick' any of Weber's boxes, it could be argued that the new Court nonetheless possesses greater authority than the body it replaced. This is because the very nature of its foundation and its operation has changed the way in which it is perceived as an institution, so transforming the way in which other institutions, the media and the wider public have come to view and accept its rulings.

Factors enhancing the authority of the UK Supreme Court include:

- a more independent and less opaque appointments process than that which applied to the Law Lords
- a clearer separation of powers accompanied by a clear physical separation between legislature and judiciary
- an ongoing process of 'demystification' via public visits, an intelligible website and enhanced coverage in the mainstream media

STUDY TIP

Learning Weber's three sources of authority will provide you with a good framework to evaluate the authority of any institution.

Conclusions

When seeking to make comparisons between the UK Supreme Court and its US counterpart, students often assume that the latter's greater status and power must necessarily result from Article 3 of the US Constitution. The reality, however, is that far from setting out the scope and extent of the Supreme Court's power, Article 3 focuses instead on the organisation and structure of the federal judiciary, making no explicit mention of what subsequently emerged as the Court's primary tool: judicial review. Rather than being vested in the hands of the Court, the power of judicial review was instead 'discovered' by the Court and developed over time, both through the justices' own rulings and by the willingness on the part of other key players to accept those rulings.

Although the absence of a codified constitution means that the UK has no 'fundamental law' for the UK Supreme Court to interpret, and the Court itself is only possessed of those powers previously held by the Law Lords, its status and authority would appear to be developing along a similar trajectory to that of its US counterpart. Just how far the UK Supreme Court travels along that road will depend upon the extent to which it can sustain the confidence and support of other key political institutions, and of the wider public.

KNOWLEDGE CHECK

- 10 Explain the differences between the European Court of Human Rights (ECtHR) and the European Court of Justice.
- 11 Explain why Brexit does not directly reduce the importance of the ECtHR in UK law.
- 12 Explain the difference between power and authority.

SUMMARY

- The term 'judiciary' refers collectively to all judges in the UK, from lay magistrates all the way up to justices of the UK Supreme Court. However, students of politics are primarily concerned with the work of the Supreme Court.
- In recent years, the independence of the UK judiciary has been enhanced as a result of reforms to the judicial appointments process and the greater separation of powers achieved following reforms to the role of the Lord Chancellor, and the creation of a new UK Supreme Court.
- Although it was not afforded any significant powers beyond those held by the Appellate Committee of the House of Lords, which it replaced in October 2009, the Supreme Court has grown in status and authority in recent years, and may well continue to do so.
- The Supreme Court has the power to establish legally binding precedent or 'common law' using its power of judicial review. This role is particularly significant where statute law is ambiguous or unclear, or where the laws passed by parliament are deemed incompatible with the Human Rights Act 1998.
- Under the doctrine of the rule of law, judges are expected to operate under the twin principles of judicial independence and judicial impartiality. Judicial independence requires that judges are able to apply the law as they see fit, free from external political controls. Judicial impartiality demands that justices set aside personal bias when applying the law.
- The Supreme Court can defend the rights of citizens by making *ultra vires* rulings where government officials have acted beyond their authority, or by issuing a declaration of incompatibility under the Human Rights Act 1998.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three features that help to maintain judicial independence in the UK. (9 marks)
- 2 Explain and analyse three ways in which the UK judiciary can exercise influence over government. (9 marks)
- 3 Explain and analyse three criticisms of the composition of the judiciary. (9 marks)

Paper 1 Section B style question

Read the extracts below and answer Question 4 that follows.

The Supreme Court as a defender of liberty?

On Tuesday, the UK Supreme Court [delivered] perhaps the most important constitutional decision for a generation: that government cannot [arbitrarily] prorogue parliament. It is significant that [the Justices were] unanimous [because] it made the decision as authoritative as legally possible. However, the Court did not create a new area of law, as its US counterpart had done in establishing the precedent of judicial review in 1803. The UK decision was instead a reassertion of constitutional principles: that parliamentary sovereignty be taken seriously.

Source: adapted from Green, D. A. (2019) 'Supreme Court has returned the power the government stole', *Financial Times*, September

An act of 'judicial sabotage'?

I expected the Court to rule [that] the prime minister's decision to advise the Queen to prorogue parliament was a political step and not the business of courts. [However] the judges ruled, first, that it was [their] business and, second, that the sidelining [of] parliament at a time of national crisis was unlawful. Johnson was therefore in the wrong. The order suspending parliament was a 'blank piece of paper'. Parliament had never been prorogued. MPs were back [at work] the next day. The ruling has variously been interpreted as an epoch-making change in the balance of constitutional power, a one-off with no further ramifications, and a part of a massive [Establishment] fight-back against a people's vote to leave the EU. First the MPs tried to sabotage the referendum result; now the Supreme Court.

Source: adapted from Dejevsky, M. (2019) 'The UK Supreme Court is veering towards a European judicial system', *The Independent*, September

- 4 Analyse, evaluate and compare the arguments in the extracts over the extent to which the UK Supreme Court has become too powerful in recent years. (25 marks)

Paper 1 Section C style questions

- 5 'Unelected politicians sitting on a bench'. Analyse and evaluate this interpretation of the role and status of UK Supreme Court justices. (25 marks)
- 6 'Socially unrepresentative and out of touch with the UK population at large'. Analyse and evaluate this view of the composition of the UK Supreme Court. (25 marks)

FURTHER READING

Articles

Egan, M. (2019) 'Ten years of the Supreme Court', *Politics Review*, Vol. 29, No. 2, pp. 2–5.

Fairclough, P. (2017) 'The UK Supreme Court: too much power for an unelected body?', *Politics Review*, Vol. 26, No. 3, pp. 26–29.

Moelwyn-Hughes, O. T. and Murphy, T. (2016) 'Debate: Is the UK judiciary too powerful?', *Politics Review*, Vol. 25, No. 3, pp. 22–23.

Munce, P. (2016) 'The Human Rights Act: why is it difficult to reform?', *Politics Review*, Vol. 25, No. 4, pp. 10–13.

Books

Reynold, F. (2019) *High Principle, Low Politics, and the Emergence of the Supreme Court*, Wildy, Simmonds & Hill.

Websites

Equality and Human Rights Commission on the potential impact of Brexit: <https://www.equalityhumanrights.com/en/our-human-rights-work/what-does-brexit-mean-equality-and-human-rights-uk>

Official website of the UK Supreme Court: <https://www.supremecourt.uk/>

5

Devolution

KEY QUESTIONS ANSWERED

- What is devolution?
- What are the roles, powers and responsibilities of the different devolved bodies in the UK?
- To what extent does devolution exist currently in England?
- Should devolution be introduced in England?
- What impact has devolution had on the government of the UK?

BACKGROUND INFORMATION

The British Constitution is traditionally described as being unitary, with an emphasis on power being concentrated at the centre, i.e. Westminster. **Devolution**, which has been introduced and expanded in Scotland, Wales and Northern Ireland since 1997, has modified that description somewhat and led some to describe the UK as having elements of a federal state.

However, devolution is not quite the same as federalism. In theory at least, powers given away by parliament could be reclaimed. Federalism, by contrast, implies a permanent alienation of powers to the states or regions, requiring a formal change to a nation's constitution to alter it.

Although debated earlier, particularly by the 1974–79 Labour government, devolution was only introduced successfully in 1998 as part of Tony Blair's wider programme of constitutional changes. This followed a positive set of referendums in 1997–98 when all three regions approved proposals for elected devolved assemblies. Blair, congratulating Scottish voters on the referendum outcome, claimed that 'the era of big centralised government is over. This is a time of change, modernity and renewal.' In large part, this proved an accurate assessment as devolution has proved largely popular and the powers of the devolved assemblies have been extended. Devolution has not, however, been extended to England.

KEY CONCEPT

Devolution The delegation of some governmental powers, known as devolved powers, away from the centre (parliament) to the regions, which have their own elected assemblies/parliaments that make many laws themselves. Certain policy matters, such as trade, defence and foreign policy, are retained by Westminster. These are termed reserved powers.

STUDY TIP

Be careful not to assert that devolution was entirely new to the UK in 1998. Northern Ireland had its own elected parliament from 1921 to 1972, when it was suspended due to 'the Troubles' and abolished altogether in 1973. In addition, Scotland has always had its own education and legal system.

The roles, powers and responsibilities of the different devolved bodies in the UK

The regional assemblies in the UK have different powers and electoral systems. Scotland and Wales use the additional member system (AMS) while Northern Ireland uses the single transferrable vote (STV). The regional assemblies are not identical bodies and have developed and evolved at varying speeds. The Scottish Parliament had more powers right from the start including tax-raising powers and the ability to pass legislation in designated areas, which is sometimes termed primary legislative powers. Wales by contrast began with an assembly that possessed far fewer powers at the start, in part reflecting the much lower level of initial support for devolution. In the 1997 referendum, only 50.3% supported devolution — a narrow majority in favour of 6,721 votes. The assembly's powers have been extended through the Government of Wales Act 2006, and the Wales Acts of 2014 and 2017. The progress of devolution in Northern Ireland has been slightly less smooth and straightforward. Overall, devolution in the UK is perhaps best understood as a process, not an event or finished product.

SYNOPTIC LINK

Devolution is a topic that counts as a major constitutional change since 1997, so you can use it as an example when you discuss recent changes to the British Constitution. You can learn more about major constitutional changes since 1997 in Chapter 1.

Key devolution legislation for Scotland



The Scottish Parliament building in Edinburgh

Three successive Acts of Parliament have legislated devolution for Scotland.

- **Scotland Act 1998:** gave the **Scottish Parliament** primary legislative powers in a number of domestic areas, including law and order, health, education, transport and the environment. It could also vary the rate of income tax by up to 3p in the pound — the Scottish variable rate (SVR).
- **Scotland Act 2012:** transferred significant tax-raising powers to the Scottish Parliament, most notably the ability to raise or lower income tax by up to 10p in the pound — the Scottish rate of income tax (SRIT). It also devolved stamp duty and landfill taxes to Scotland, and allowed the Scottish government to borrow up to £5 billion and set up its own tax authority, Revenue Scotland.
- **Scotland Act 2016:** involved a further major transfer of powers over to the Holyrood Parliament, including authority over areas such as equal opportunities, abortion law, speed limits and gaming machines. It also allowed the Scottish Parliament to set its own rate of air passenger duty (APD) and create income tax rates across any number of bands, and to make its own laws regarding who could vote in elections for the Scottish Parliament subject to a two-thirds vote by the Holyrood Parliament. This extension of powers was in part the delivery of a promise made by the 'No' side during the 2014 Scottish independence referendum campaign.

Overall, in its relatively short life, the Scottish Parliament has passed over 300 pieces of legislation. No one could accuse it of not having had an impact on the lives of Scottish people.

KEY CONCEPT

Scottish Parliament and government The legislative body and executive established in Scotland following the 1997 referendum, now elected on a 5-yearly basis with elections due in 2021 and 2026. It meets in the Holyrood area of Edinburgh so is often known as 'Holyrood'.

STUDY TIP

It is worth knowing that although the right to set the voting age for Scottish elections was permanently provided for by the 2016 Act and was duly set at 16, 16- and 17-year-olds had already been allowed to vote in the 2014 independence referendum. This was due to the Edinburgh Agreement 2012 between the UK and Scottish governments, which enabled the Scottish Parliament to stipulate the voting age for the referendum.

SYNOPTIC LINK

Devolution is an issue that has routinely been put to voters via referendums. There had been an earlier referendum on Scottish devolution in 1979, which although it resulted in a narrow victory for the 'Yes' vote, was unsuccessful because the legislation required that a minimum of 40% of all registered electors must support devolution for the result to stand. In the event, only 32.9% of voters did so. You can read more about UK referendums in Chapter 7.



Key devolution legislation for Wales



The Welsh Senedd/Parliament in Cardiff

Five successive Acts of Parliament, and the 2011 referendum, legislated devolution for Wales:

- **Government of Wales Act 1998:** set up the **Welsh Assembly**, which lacked primary legislative powers but did have the ability to devise secondary legislation in specified areas, including agriculture, fisheries, education, housing and highways. Such powers were broadly equivalent to those previously held by the secretary of state for Wales.
- **Government of Wales Act 2006:** enabled the Assembly to request further powers from Westminster and to gain primary legislative powers if approved by a referendum. It also set up a proper executive body, the Welsh Assembly government (as of May 2011, called the Welsh government).
- **2011 referendum:** following approval in the referendum, which asked the direct question ‘Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?’, the Welsh Assembly gained the power to enact primary legislation in 20 devolved areas of policy. These included important areas such as health, transport and agriculture. The referendum delivered a resounding ‘Yes’ vote of 64%, a clear indication of how support for a Welsh government had grown since 1997.
- **Wales Act 2014:** represented the first major transfer of some tax-raising powers to the Welsh government. These included stamp duty, business rates and landfill tax, and enabled the Welsh government to replace them with taxes specific to Wales.
- **Wales Act 2017:** represented a further transfer of important powers to Wales. It gave the Welsh government considerably greater primary legislative powers in additional policy areas, including control over its own electoral system (subject to a two-thirds majority in the government), and policy areas such as road signs, onshore oil and gas activity, harbours, rail franchising and energy efficiency. It could also vary the rate of income tax

by up to 10p in the pound, and it set up the Welsh Revenue Authority. The government also gained the power to change its name. It put Welsh devolution on largely the same footing as that in Scotland. The only key policy areas omitted were policing and justice.

- **Senedd and Elections (Wales) Act 2020:** this Act, passed by the Welsh government using the powers devolved to it by earlier Westminster legislation, formally changed the name of the legislature to Senedd Cymru, or the Welsh Parliament. It also gave the vote to 16- and 17-year-olds for Welsh parliamentary and local elections, as in Scotland.

Uniquely, the Senedd also has additional authority over legislation concerning the use and role of the Welsh language. Wales has also made effective use of its primary legislation powers. Just to take one example, Wales passed an 'opt out' system for organ donation in 2015, a move adopted by England in 2020.

KEY CONCEPT

Welsh Assembly and government The legislative body and executive established in Wales following the 1997 referendum, now elected on a 5-yearly basis with elections due in 2021 and 2026. Since 2020, the correct title for the body is Senedd or Welsh Parliament.

Devolution for Northern Ireland

The story of devolution in Northern Ireland has been more complex than that in the other two regions. Devolution for Northern Ireland has taken place against the backdrop of a period of sectarian violence known as 'the Troubles', which involved terrorist campaigns by both **loyalists/unionists** and **republican/nationalist** paramilitaries. The Troubles began in 1969, arising out of the nationalist civil rights movement. The devolved government from 1921 to 1972, often called the Stormont Parliament, was dominated by the unionists and was seen by many as discriminatory towards the nationalist minority. The parliament was suspended in 1972 and abolished in 1973. Any restoration of a devolved assembly would need to secure the engagement and agreement of both communities.

Since 1972, Northern Ireland had been governed by direct rule from Westminster, while the British Army had a large peace-keeping presence in the country, which was highly controversial to many nationalists. Any restoration of self-government/devolution, therefore, had to be interwoven with a wider peace process. Peace and greater stability was achieved to a large extent following ceasefires in 1995 by the main paramilitary groups, including the Provisional IRA. Delicate and lengthy negotiations involving the Northern Irish parties, the Irish and UK governments, and a weapons decommissioning programme overseen by ex-US senator George Mitchell, resulted in all sides signing up to the Good Friday Agreement in 1998.

The Good Friday Agreement involved a promise of a return to devolved government, but also other measures designed to embed the peace process. These included prisoner release for convicted paramilitary terrorists, reductions in the number of British Army troops stationed in Northern Ireland and civil rights measures. It promised 'parity of esteem and of just and equal

treatment for the identity, ethos, and aspirations of both communities for the two communities in Northern Ireland'. As with other devolution proposals, it had to be approved by a referendum, which duly happened in May 1998 when it was approved by 71%-29%. This allowed the creation of the **Northern Ireland Assembly and Executive**.

USEFUL CONCEPTS

Loyalists/unionists Group that wishes Northern Ireland to remain part of the UK.

Republicans/nationalists Group that wishes to unite with Eire and form a single united Ireland.

Both groups are sometimes, if unhelpfully, associated with religious affiliation: unionists as Protestants and nationalists as Catholics.

KEY CONCEPT

Northern Ireland Assembly and Executive The legislative body and executive established following the 1998 referendum, now elected on a 5-yearly basis with elections formally due next in 2022 and 2027.

However, since its creation in 1998, the Assembly has not had an easy ride. It remained suspended between 2017 and 2020 due to the collapse of the power-sharing agreement between the Democratic Unionist Party (DUP) and Sinn Féin. This followed controversy over the DUP's handling of a green energy scandal, compounded by deep divisions over the introduction of an Irish language Act. During that time, Northern Ireland was largely governed by its civil servants. Westminster also used the absence of a functioning Northern Ireland Assembly to extend same-sex marriage and legalise abortion in the province. These were both areas of devolved responsibility, but in the absence of the Assembly working normally, Westminster intervened. Such intervention in domestic policy of a devolved region is highly unusual and against the 'spirit' of devolution but reflected strongly held views across the parties in Westminster, who saw both issues as upholding the fundamental rights of the people of Northern Ireland. The action was strongly criticised at the time by the DUP.

STUDY TIP

The legalisation of both same-sex marriage and abortion in Northern Ireland provides a good example to quote when answering questions concerning the ultimate legislative authority of the Westminster Parliament. In July 2019, MPs backed amendments that required the government to change abortion laws and extend same-sex marriage to Northern Ireland if devolution was not restored by 21 October 2019. As it was still in abeyance, the laws were subsequently changed.

Because of this complex backdrop, the devolution achieved in Northern Ireland is notably distinct from that in Scotland and Wales in a number of ways:

- The party structure is completely different in Northern Ireland. It comprises parties from both communities: the DUP and the Ulster Unionist Party (UUP) on the unionist side, the Social Democratic and Labour Party (SDLP) and Sinn Féin on the nationalist side, along with the non-sectarian centrist Alliance Party and the Green Party. The main Westminster parties have no major presence in the province, although the Liberal Democrats are aligned with the Alliance Party, and there are historic ties between the SDLP and Labour. The Conservatives used to be in formal partnership with the UUP, but now contest a few seats themselves, albeit with little success.
- Unlike Scotland and Wales, the Northern Ireland Assembly and executive has power-sharing embedded into its structure. This ensures, in practice, that the executive always contains members from both communities. Ministerial posts are allocated on a proportional basis according to party strength. In 2020, the Alliance Party's Naomi Long was the justice minister although the bulk of ministerial posts were filled by the two dominant parties, the DUP and Sinn Féin. The first minister is chosen by the party with the largest number of seats, and the deputy first minister by the second largest party.
- Unlike the other regional assemblies, Assembly members (MLAs) must designate themselves as 'nationalist', 'unionist' or 'other', the latter referring to non-sectarian.
- Whereas Scotland and Wales have seen their powers enhanced considerably since 1997, the Northern Ireland Assembly and executive has not had its powers added to substantially since its inception. For example, it has very limited tax-raising powers.

Key features of each devolved legislature

Table 5.1 summarises the key features of each of the devolved assemblies.

Table 5.1 The UK's devolved assemblies

Parliament	Scottish Parliament	Senedd (Welsh Parliament)	Northern Ireland Assembly
Number of elected members	129	60	90 (108 before 2017)
Electoral system used	AMS	AMS	STV
Party in power (2021)	Minority SNP government	Minority Labour government	Multiparty power-sharing executive
First minister (leader of the devolved government)	Nicola Sturgeon (SNP)	Mark Drakeford (Labour)	Arlene Foster (DUP) first minister and Michelle O'Neil (SF) deputy first minister
Location	Edinburgh (Holyrood)	Cardiff	Belfast (Stormont building)

SYNOPTIC LINK

The use of alternative voting systems in the devolved assemblies has almost always led to the formation of minority/coalition executives. You can learn more about how STV and AMS work, and the impact of more proportional electoral systems in Chapter 7.

ACTIVITY

Research the current party makeup of each devolved assembly. Which parties are represented in each body, and which form part of the devolved government?



First minister of Scotland, Nicola Sturgeon

As Table 5.2 shows, the devolved assemblies today enjoy considerable legislative autonomy in a wide range of devolved areas. The only areas in which Westminster still holds sway are those policies deemed ‘reserved matters’, primarily defence, foreign affairs, trade and immigration. The Northern Ireland Assembly has slightly fewer powers. In particular it lacks major tax-raising powers although corporation tax was devolved in 2015. Much to the anger of many of their politicians, the devolved assemblies were given no direct role in the Brexit negotiations.

Table 5.2 Devolved assembly powers and reserved matters

Devolved matters	Reserved matters
Agriculture, forestry and fisheries	Benefits and social security
Education and training	Broadcasting
Environment	Constitution
Health and social services	Defence
Housing	Employment
Land use planning	Equal opportunities
Law and order	Foreign policy
Local government	Immigration
Sports and the arts	Trade and industry
Taxation (in some forms)*	
Transport (many aspects)	

* Northern Ireland enjoys most of the same powers, but not taxation.

On occasion, a clash can occur between devolved and UK governments. In such situations, it is not possible for the central UK government simply to override decisions of devolved governments. An example of this is seen with the M4 relief road (see case study overleaf).

CASE STUDY

The M4 relief road

In July 2020, Boris Johnson announced a relief road would be built for a section of the M4 in Newport, South Wales, which is plagued by queues and delays. He promised he would 'do the things the Welsh government has failed to do'. Johnson poetically explained it as 'Providing a Vicks Inhaler to the nostrils of the Welsh dragon', arguing that road congestion was having a negative impact on business investment in the area. This was challenged by members of the (Labour-run) Welsh government, who had previously scrapped such a scheme after declaring a climate emergency back in 2019. They had earlier stated that building more roads would increase both traffic levels and carbon emissions. The Welsh government argued that transport was an entirely devolved issue, so the prime minister had no say on road building in Wales. Wales's economy minister, Ken Skates, commented that the prime minister's comments were 'nothing more than nonsense on stilts'.

DEBATE

Has devolution worked well in the UK?

Yes	No
It has allowed regional political differences to be recognised. For example, Scotland is traditionally more left-leaning. The Scottish Parliament therefore has increased the income tax rate for the highest earners to 46p in the pound for those earning over £150,000 pa compared to 45p in the rest of the UK. It has strengthened the union between the regions by creating a 'best of both worlds' scenario, whereby the devolved regions are autonomous in many domestic policy areas, but benefit from being part of a much larger nation in the areas of defence and international trade etc. It has proved popular with voters. This has been particularly true for Wales when comparing the referendum results of 1997 and 2011. It has been vital to enabling the peace process in Northern Ireland (the peace dividend) and enabling cross-community cooperation. It has enabled a variety of electoral systems to be used, and shown that minority or cross-party government can work. It has encouraged innovation in policy-making and enabled devolved assemblies to function as 'legislative laboratories'. Administrations can learn from policies launched elsewhere and then replicate them if they think they will be effective. For example, the Scottish government's 2006 decision to ban smoking in enclosed public spaces was then extended to Wales, Northern Ireland and England.	It has led to inequalities in the provision and cost of public services within the UK. For example, university tuition is free in Scotland but costs over £9,000 pa in England. Prescriptions are free in Wales and Scotland but not in England. Devolution has encouraged demands for greater separation and full independence, and therefore weakened the unity of the UK. The result of the Scottish referendum was quite close (55%-45%) and devolution has given many the confidence that they can run their own affairs better without Westminster involvement. Brexit highlighted some of the divisions within the UK, as both Scotland and Northern Ireland voted heavily to Remain but played no direct role in subsequent negotiations. The SNP has called for a second independence referendum, suggesting devolution had not muted demands by many for full independence. Its position as the dominant party in Scotland also suggests many Scots want to go further than just devolved government. Community relations and devolution itself remain fragile, as evidenced by the prolonged suspension of the Northern Ireland Assembly from 2017 to 2020. It has not led to any additional momentum for replacement of first-past-the-post (FPTT) for general elections. Cross-party working in Northern Ireland has also proved problematic at times and led to gridlock. Policy ideas, including the banning of smoking in enclosed public places or a 5p charge on plastic bags first brought in by the Welsh Assembly, would have happened anyhow via Westminster.

 In pairs or groups, decide which argument in each column is the strongest when it comes to evaluating devolution.

STUDY TIP

When evaluating the impact and success of devolution, it is important to grasp different perspectives on what constitutes success. From a Scottish nationalist viewpoint, success might be measured by how far devolution has increased support for full independence. Those wishing Scotland to remain within the UK might interpret success in the opposite way.

KNOWLEDGE CHECK

- 1 What is the difference between devolved and reserved powers?
- 2 What is meant by the term 'primary legislative powers'?
- 3 What voting systems are used in the three different devolved assemblies?

Existing devolution in England

It has been widely debated that given the relative success of devolution in the regions, England too should have its own devolved parliament, leaving Westminster to focus on national and international matters that affect all of the UK. The case for English devolution is controversial and complex. It also poses the question of how far, if at all, devolution currently exists in England.

While it is true that there is no formal devolution in England, there does exist an extensive structure of local government institutions, alongside some directly elected mayors and regional police and crime commissioners. These local government authorities have no primary legislative powers, and can only deal with powers delegated to them by central government. Different local government authorities, however, have different powers. The categories of local government authority and some of their main areas of responsibility are set out below:

- **57 unitary councils:** single-tier bodies responsible for the full range of local services including education and social care as well as libraries, refuse collection and parks. Most unitary councils are found in large towns and cities, e.g. Portsmouth and Derby, and some small counties such as Rutland.
- **36 metropolitan boroughs:** single-tier bodies that have broadly similar powers to the more recently formed unitary councils but are longer established (being created in 1974). They are found in heavily urbanised areas in the North and Midlands, e.g. the Metropolitan Borough of Barnsley.
- **25 county councils:** part of a two-tier local authority structure and oversee key services such as education and social services. They are principally found in less heavily urbanised areas, e.g. Suffolk.
- **188 district, borough or city councils:** also part of the two-tier structure and are responsible for providing more localised services such as leisure, planning and refuse collection. Again, they tend to be in less heavily populated parts of the country, e.g. New Forest District Council.
- **Combined authorities:** since 1999 a small number of combined authorities have been set up, which enable a group of two or more councils to collaborate and take collective decisions across council boundaries. By 2020, 10 such bodies had been created, including Greater Manchester and Sheffield City Region.
- **32 London boroughs:** London has its own setup for local government, comprising 32 boroughs and the Greater London Authority, which comprises 25 elected members and a directly elected mayor. In 2020, this was Sadiq Khan; he was preceded by Boris Johnson. This structure was approved following a referendum in 1998.
- **City mayors:** the government has encouraged directly elected city mayors. The Local Government Act 2000 allowed any local council in England to hold a referendum on the introduction of a directly elected mayor, either by citizen petition or council decision. Since then, councils have been allowed

to introduce the system without a referendum. Under the Cities and Local Government Devolution Act 2016, 'Metro Mayors' were elected for the first time in 2017 to lead several combined authorities (CAs). In May 2018, a metro mayor election was held for the Sheffield City Region CA, followed by North of Tyne (Newcastle and its surrounding area) a year later. By 2020, there were 15 directly elected city mayors and eight metro mayors. For example, former Labour health minister Andy Burnham was elected as Manchester's mayor in 2017.



H'Angus the Monkey, Hartlepool Town FC's mascot

Local government in England has been frequently reorganised, with local authorities merged or newly formed according to the particular policy of the government of the day. There is a current tendency towards merging smaller units of local government in the interests of efficiency. This reflects the lack of real power and self-determination enjoyed by local councils in England. It also contrasts with the situation of the devolved assemblies, where there has been no similar restructuring by Whitehall.

The revenue-raising powers of English councils are extremely restricted. They mostly rely for their funding on a block grant from central government. They gain additional revenue from council tax, but the amount by which this can be increased is controlled by Whitehall. Some authorities, such as Bath and North East Somerset Council, have asked central government for the power to introduce a levy on local tourism and short-term holiday lettings, essentially a tourist tax. By 2021, though, no such levy had been implemented.

The introduction of directly elected mayors has not met with mass enthusiasm. In both Torbay and Hartlepool, subsequent referendums successfully abolished the post. The sentiment towards the office in Hartlepool was arguably demonstrated by the fact that in 2002, and again in 2005 and 2009, they elected H'Angus the Monkey, the Hartlepool Town football club mascot — or, more accurately, the man wearing the suit, independent Stuart Drummond.

ACTIVITY

Research a prominent elected mayor, such as the most recent London mayor. Compile a list of at least five recent policy initiatives or statements they have made.

KNOWLEDGE CHECK

- 4 What range of public services are provided by unitary and metropolitan boroughs?
- 5 By what method can English councils directly raise some tax revenue?
- 6 Name two authorities that have subsequently voted to get rid of directly elected mayors.

The debate over the introduction of proper devolution to England

Unlike the rest of the UK, the issue of devolution in England and an English parliament is far less emotional and high profile. A Speaker's Conference held as long ago as 1919–20, and which considered devolution, also examined options for England. It concluded that an all-England institution of some form would be preferable to a more regional approach, but the recommendation made little impact either at the time or subsequently. In the wake of devolution being rolled out elsewhere in the UK, the Campaign for an English Parliament was established in 1998 but has attracted relatively little support from the main political parties.

USEFUL CONCEPTS

Asymmetry A lack of balance, used to refer to the way the system of devolution only applies to parts of the UK.

West Lothian Question Refers to the fact that, following devolution, MPs from the devolved regions still have the right to vote on matters that relate only to England but, by contrast, MPs from English constituencies cannot vote on issues devolved to the regions.

SYNOPTIC LINK

EVEL is a recent addition to parliament's legislative procedures, being introduced via standing order in 2015. You can read about it further in Chapter 2, which also covers the West Lothian Question in more detail.

Arguments for an English parliament

A number of arguments can be put forward for a devolved English parliament.

- It would provide parity with the rest of the UK and complete the process of devolution in a logical way. One of its early supporters, the Conservative MP Teresa Gorman, when proposing an (unsuccessful) private member's bill calling for a referendum on an English parliament, said in 1998 that England deserved 'fair and equal treatment'. A devolved English parliament would end the current **asymmetry** in the UK.
- It would provide a permanent answer to the **West Lothian Question** and end the convoluted process of English votes for English laws (EVEL). For example, in July 2015, David Cameron's government withdrew its attempt to relax the foxhunting ban in England and Wales after the SNP said its MPs would vote against the measure, thereby breaking the convention that Scottish MPs would not vote on an English-only matter.
- It would further reduce the centralisation of power in Westminster. As any parliament would probably be based outside London, it would therefore reduce the dominance of London over English politics.
- It would give clear expression and priority to English identity and interests. Just as Wales and Scotland are generally more left-wing in their political preferences, England is more right-wing, and this could be reflected in an English parliament and its legislation. The Brexit vote also reflected this political divergence, especially between England and Scotland/Northern Ireland.
- Devolution has, on the whole, worked well in the other parts of the UK.
- There has been growing support for the idea in recent years. This has primarily, but not exclusively, been among Conservative politicians. A private member's bill proposing a federal structure for the UK, including an English parliament, was introduced by Conservative backbencher Andrew Rosindell in November 2014, co-sponsored by fellow Conservative MP John Redwood, then chair of the Conservative 1922 Committee Graham Brady and several MPs from other parties. Some support for an English parliament has also come from leading figures in the SNP, including former leader Alex Salmond and Pete Wishart MP.

Arguments against an English parliament

A number of arguments can be put forward against a devolved English parliament.

- Any English parliament would dominate, both economically and by population, a federal United Kingdom. It would, for example, contain 85% of the total population and generate the bulk of the national GDP.
- England lacks the cohesive and strong cultural identity found in other parts of the country. Cornwall and Merseyside, for instance, enjoy strong regional identities but have little directly in common with each other.
- There would be much argument over its location. Should it be in London, close to Westminster for the purpose of efficiency, or should it move to the Midlands or the North, and if so to where?
- There would be considerable extra costs involved in the creation of an additional layer of government. Its representatives would need to be paid and many more civil servants recruited to serve the new institution.

- The absence of any debate over laws for England would severely undermine the role of the Westminster Parliament, in a way that is not true for the current devolved bodies. The 'mother of all parliaments' would run the risk of being orphaned.
- It would, unlike devolution elsewhere, arguably weaken not strengthen the Union. There is no prospect of England leaving the UK if devolution is not granted. Again, England is unlike the other parts of the UK in this regard.
- There is a lack of public enthusiasm for such a move, or indeed for more elected regional/city government. A modest attempt to introduce a regional assembly for the North East was heavily rejected by voters in a 2004 referendum by 78%-22%. Many places have rejected the introduction of directly elected mayors. This lack of support suggests the introduction of devolution elsewhere has had minimal influence on support for an English parliament. If anything, most recently, aside from keeping the status quo, the preference is for regional assemblies over an English parliament.

DEBATE

Should England have its own parliament?

Yes	No
It would complete devolution and remove the current asymmetry.	England is different from the other regions in terms of size and its economy. What has worked in smaller parts of the UK may not automatically work in its largest region.
It would enable English identity and culture to flourish.	England largely lacks its own national identity. Culture and identity are much more regional.
It would finally resolve the West Lothian Question.	EVEL has largely addressed the West Lothian Question by giving English MPs more control over laws purely dealing with England.
It would enable more power to be decentralised away from London.	There would be considerable expense involved, and it would weaken significantly the role of the Westminster Parliament.
There are growing calls for it from some politicians.	There is no evidence of strong public support for an English parliament.
Devolution has worked well elsewhere in the UK.	

 Individually or in pairs, decide which of the arguments for and against an English parliament you find most convincing and least convincing.

ACTIVITY

Research the possible structure a future English parliament might take. A good starting point for research could be to download the briefing paper 'Options for an English parliament', produced by UCL's Constitution Unit (see Further reading, page 141). Chapters 11–13 of the paper contain some interesting ideas about the composition, electoral system and location of an English parliament. What plans are put forward there, and what conclusions are reached?

KNOWLEDGE CHECK

- 7 What evidence is there that the idea of regional assemblies is unpopular in England?
- 8 What is the main alternative for English devolution other than a full English parliament?

The impact of devolution on the government of the United Kingdom

Alongside some demands for its extension to England, devolution has impacted in a number of other ways on UK government.

The British Constitution

First, devolution has impacted significantly on the British Constitution. It has changed from a unitary framework to one that has been termed 'quasi-federal'. This implies that it combines elements of both a unitary state and a federal state. The UK remains unitary since ultimate sovereignty still lies with Westminster — in theory, the UK parliament could repeal all the devolution Acts and abolish the regional assemblies. Yet, the UK has strong elements of a federal state, since policy in many key domestic areas is now decided in the devolved bodies outside of Westminster, unless it concerns England. Also, it would be very difficult and unlikely for the parliamentary Acts enabling devolution to be repealed. Parliamentary sovereignty, of the Westminster variety at least, has been significantly reduced outside England. The Scotland Act 2016 established that Westminster cannot legislate in devolved matters without consent, therefore effectively acknowledging that the devolved institutions are permanent not temporary political fixtures.

Policy variation

Second, devolution has led to policy variation, some would say inequality, across the UK. It has considerably reduced the control Westminster has on domestic policy beyond England. Whether one looks at university tuition fees, hospital car parking, parental use of corporal punishment (banned in Scotland in October 2019) or income tax rates, there are now often considerable differences and contrasts across the UK. A significant example of variations within the four constituent parts of the UK can be seen in how the four parts of the UK handled lockdown during the COVID-19 crisis (see case study overleaf).



An NHS key worker performs a COVID-19 test at a drive-through testing centre. The COVID-19 pandemic response varied across all four parts of the UK

CASE STUDY

Devolution and COVID-19 measures during the first lockdown

At the end of May 2020, the guidelines/regulations around 'loosening' of the first pandemic lockdown varied somewhat between the regions, as seen in Table 5.3.

Table 5.3 Loosening of lockdown measures across the UK at the end of May 2020

Lockdown measure	England	Scotland	Wales	Northern Ireland
How many people can meet up?	6 (can be from different households)	8 (from two different households)	Unlimited (from two households)	4–6 (can be from different households)
Can they meet in gardens and outdoors?	Yes	Yes	Yes	Yes
Social distancing requirement	2 metres	2 metres	2 metres	2 metres
How far can you travel from home?	Unlimited	5 miles	5 miles	Unlimited
R (rate of infection) number	0.7–0.9	0.7–1	0.7–1	0.8–1
Can you enter other homes?	Yes (to use toilet or reach garden)	No	No	No
Unlimited outdoor exercise and socialising?	Yes	Yes	Yes	Yes
Are more shops opening?	All non-essential from 15 June	No date yet (They would eventually reopen at the end of June)	No date yet (They would eventually reopen on 22 June)	More non-essential from 15 June
Are schools reopening?	Primary schools from 1 June for some selected year groups	From 31 August	No date yet (They would eventually reopen in September)	September

This meant, for example, that people in England and Northern Ireland could travel long distances for a beach visit or to walk in the countryside, but could not drive into Wales or Scotland to do the same. Shops and schools reopened earlier in England and Northern Ireland than in the other two regions. The

key point is that the decisions were decided regionally. Even as prime minister, Boris Johnson could not determine the scale or pace of lifting the lockdown beyond England, and even the initial lockdown had to be undertaken in close collaboration with the leaders of the three devolved regions.

Alternative voting systems

STUDY TIP

To be totally accurate in an answer about parties and government in devolved assemblies, you might mention that the SNP did manage to win an overall majority in the Scottish Parliament at the 2011 election.

Third, devolution (along with European elections) has brought in alternative voting systems besides FPTP. This has usually resulted in minority or coalition governments. Whether this is a positive or a negative remains a matter of debate. Does it, for example, lead to more stalemate or instead encourage greater cross-party cooperation? What cannot be disputed is the impact it has had on the balance of power in the devolved assemblies — multiparty governance is now the norm not the exception in the regions.

SYNOPTIC LINK

You can read more about pressure groups and who/where they target in Chapter 9.

Pressure groups

Finally, devolution has inevitable consequences for how and where pressure groups operate, for example when the Scottish Parliament debated and subsequently passed the law banning the smacking of children north of the border. The consultation document was sent out to 12 charities, seven equality organisations, 12 police, legal and human rights bodies, and 20 medical and care profession organisations. Most of these responded and contributed their views. Children's charities such as Children 1st (previously known as the Royal Scottish Society for the Prevention of Cruelty to Children) were particularly involved in lobbying for the passing of the law. Pressure groups inevitably focus their energies on where policy is made, and so they increasingly lobby the devolved bodies and not just Westminster.

KNOWLEDGE CHECK

- 9 What is meant by the term 'quasi-federal'?
- 10 Are the devolved bodies best described as temporary or permanent institutions in the political landscape?

SUMMARY

- Devolution involves the delegation of some key powers away from the central government but differs from federalism, where power is more permanently alienated. The UK has moved away from a very centralised and unitary structure since 1997 towards one that could be termed 'quasi-federal'.
- Devolution has developed and progressed slightly unevenly across the three regions since the initial 1997 reforms. The general pattern has been to extend the power and competences of the regional assemblies. In Northern Ireland, some measure of devolution has helped bring a degree of peace and stability.
- Local government in England takes a number of forms and has been frequently reorganised by Whitehall. It remains under the direction of central government with no primary legislative powers.
- Devolution in the UK is asymmetrical as it does not apply to the largest component part of the UK, England.
- There are a number of arguments for and against having an English parliament but public support remains underwhelming, and the alternative option of regional assemblies holds arguably more attraction among some voters.
- Devolution has affected UK politics in several ways. These include variations in laws, who pressure groups target for lobbying and the impact of different voting systems, especially the prevalence of coalition or minority governments in devolved regions.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three benefits of devolution. (9 marks)
- 2 Explain and analyse three laws passed since 1998 concerning devolution. (9 marks)
- 3 Explain and analyse three ways that devolution has impacted the UK government. (9 marks)

Paper 1 Section B style question

Read the extract below and answer Question 4 that follows.

The debate over an English parliament

Supporters of an English parliament initially opposed devolution, but after this was passed they saw establishing an English parliament as a means of achieving fairness and greater symmetry. Conservative MP John Redwood launched a 'Speak for England' campaign in 2014, claiming that '[w]hat is good enough for Scotland is good enough for England'. He suggested that 'Labour's one-sided devolution...left unfinished business'.

A further argument put forward by its backers is that such a parliament could boost English identity. One MP suggested it would 'provide democratic self-government for all four countries, and uphold their own identities, traditions and laws'. Labour MP John Denham suggested that a progressive and patriotic Englishness cannot develop 'while there are no democratic forums or democratic government to provide the focus of debate'.

But there are considerable reservations about the proposal. The central objection is that an English parliament representing almost 85% of the UK's population would make the Union unbalanced. Opponents fear that England's political and economic dominance over Scotland, Wales and Northern Ireland would fuel a destabilising nationalism in those areas.

In addition, its opponents have frequently argued that there is insufficient public demand for an English parliament. Support for an English parliament peaked at 29% in 2009, but had fallen back to 19% by 2015, when it was overtaken by support for regional assemblies (22%).

Source: adapted from 'Options for an English parliament', an academic research project published in March 2018 by UCL's Constitution Unit

- 4 Analyse, evaluate and compare the arguments in the extract over the creation of an English parliament. (25 marks)

Paper 1 Section C style questions

- 5 'Devolution has been most successful in Scotland.' Analyse and evaluate this statement. (25 marks)
- 6 'Devolution has made the UK into a federal state.' Analyse and evaluate this statement. (25 marks)
- 7 'The case against an English parliament is overwhelming.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Bradbury, J. (2017) 'Devolution in the UK: has it been a success?', *Politics Review*, Vol. 26, No. 4, pp. 8–11.

Chesterton, M. (2020) 'The Northern Ireland Assembly', *Politics Review*, Vol. 29, No. 4, pp. 24–27.

Clayton, V. and Cooper, T. (2017) 'Should there be further devolution of power in England?', *Politics Review*, Vol. 27, No. 1, pp. 22–23.

Erasmus, T. (2019) 'Devolution in Wales: an insider's guide to devolved powers', *Politics Review*, Vol. 28, No. 4, pp. 18–20.

Stansfield, C. (2019) 'The role and power of the Scottish parliament', *Politics Review*, Vol. 29, No. 2, pp. 26–27.

Websites

British Social Attitudes — Brexit and nationalism: https://www.bsa.natcen.ac.uk/media/39220/bsa_35_scotland.pdf

Civil Service — guide to devolution: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/770300/IntroductionToDevolution.pdf

UCL Constitution Unit — 'Options for an English parliament': <https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/179-options-for-an-english-parliament.pdf>



2

The politics of the UK

6

Democracy and participation

KEY QUESTIONS ANSWERED

- What is democracy?
- What forms can democracy take in the UK?
- How have voting rights developed in Britain since 1832, and incorporated gender, class, ethnicity and age?
- Is suffrage a human right?
- What forms and patterns can political participation take, apart from voting?

BACKGROUND INFORMATION

Nearly all schools and colleges have some type of student forum or 'pupil voice'. They are a chance for students to raise and debate issues they care about and are a small example of democracy in action.

Pupil representatives are nearly always chosen by some form of pupil ballot. All students are normally eligible to participate and a free exchange of views and opinions is encouraged. But delve deeper, and you might ask are such forums truly democratic? How many students bother to vote for their representatives, and on what basis? In the council, how are decisions made? Is it dominated by older students or by a small group with passionately held views on certain issues? Should there be a popular vote by all students on important matters? Are students informed or knowledgeable enough in the first place to put forward suggestions?

Democracy and **participation** have a strong and natural emotional appeal yet they also contain some inherent flaws and problems. Winston Churchill was surely right in 1947 when he observed that:

'No-one pretends that democracy is perfect or all-wise... Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.'

This chapter focuses on what democracy is, the various forms it can take and the wider issues of participation.

USEFUL CONCEPT

Democracy A system of government in which the people have ultimate power.

KEY CONCEPT

Participation The various ways that people can get involved in the political process. These can range in scale from standing for elected office to signing an e-petition. The most central form of participation is voting in elections.





Voting in the 2019 general election. The prime example of representative democracy in practice. Of late, many voters have taken to bringing along their dogs too #Dogsatpollingstations

The nature of democracy

The word ‘democracy’ comes from the Greek word *demos* meaning ‘the people’, and *kratia* meaning ‘rule by’, so has origins dating back to around the fifth century BC. Yet, Athenian democracy was not exactly perfect. Enslaved people, women and foreign residents were all excluded from the political process. The term ‘people’ meant, in practice, a minority (10–20%) of Athens’ inhabitants: all male and free. For much of human history, the term has had negative connotations, being associated with mob rule and disorder. Only really in the twentieth century has it come to be seen as a desirable positive and a fundamental human right. The term has both changed in meaning over time and can take several different forms. The two main forms present in the UK are **representative democracy** and **direct democracy**.

KEY CONCEPTS

Representative democracy A system of democracy in which people vote for elected representatives, for example in local and general elections. Elected representatives then make decisions on the people’s behalf.

Direct democracy A form of democracy in which people decide on policy initiatives directly as opposed to indirectly through their elected representatives. Votes take place on specific questions, e.g. the 2016 EU referendum.

The main features of democracy are outlined in Table 6.1 along with challenges and questions particular to democracy in the UK.

Table 6.1 Features of democracy in the UK

Key features	Explanation	Challenges	Questions
Elections	These should be free, fair and secret. Everyone has an equal say in selection of their elected representatives irrespective of gender, class, ethnicity, wealth etc.	Turnout varies particularly according to age group.	Should 16- and 17-year-olds be able to vote in UK general elections? Should prisoners be able to vote?
Representation	Those who are elected must act in the best interests of the citizens in their area and represent their views effectively. The people must also be able to represent their opinions to their elected representatives.	Most elected representatives belong to a political party and represent their party's views most of the time.	How far do MPs listen and represent the views of those who do not vote for them and with whom they disagree over certain issues?
Legitimacy	Governments and legislatures have legitimacy or legal authority as they have been fairly chosen by the people in elections.	The first-past-the-post (FPTP) electoral system distorts party representation at Westminster. No recent UK government has won the support of over 50% of those who voted, let alone a majority of the entire electorate.	Should voting be made compulsory? Should the electoral system be changed?
Participation	People can get involved and contribute to politics and policy-making in a number of ways, according to commitment, aptitude and opportunity.	There is a wide range of participation opportunities, some of which require far more commitment than others.	Are the 'higher' levels of participation, such as standing as an MP, really open to all equally. e.g. those with demanding full-time jobs who might not have the time to campaign?
Accountability	Those elected to government or local councils are held accountable for their actions, which should be transparent, open and free from corruption.	There are frequent complaints about how government and public bodies try to cover up their mistakes. There are also many allegations of cronyism and partisan favouritism in many areas of government.	Is there a need for more independent scrutiny of government?
Rule of law	Laws apply equally to everyone including the government and elected officials. Anyone who breaks the law is punished.	Many argue that politicians and other elected officials sometimes see themselves as above or exempt from the laws everyone else has to follow.	Do we expect too much of our politicians, or are there double standards when it comes to following rules they set for everyone else?
Smooth transition of power	There is a formal process for handing power from one government to the next. This takes place peacefully without violence or mass protests.	In general, elections and government handovers are calm and peaceful in the UK. The prolonged hiatus and debate in parliament over a Brexit deal was, however, viewed by many Leave supporters as an attempt to thwart the will of the people.	Do we need a more transparent system for forming a government if no single party commands an overall Commons majority?
Civil rights	The rights of the people are protected and defended by the law and through the courts.	The UK lacks an embedded set of civil rights and relies largely on parliamentary statutes that can in theory be repealed. Access to justice can be prohibitively expensive for many.	How well does the UK compare to other Western democracies when it comes to protecting civil rights?
Education and information	The public are well educated politically and have access to accurate information from trustworthy sources. This enables effective and informed participation in the political process.	Many sources of news and information are biased and one-sided. This is true for newspapers, and much that purports to be news on social media, where unfounded rumours abound. Election campaigns rely on highly simplified messages that at their worst can be very misleading.	Is greater regulation of the press, and perhaps even more so of social media, necessary to avoid 'fake news' and conspiracy theories that have no foundation in fact?

SYNOPTIC LINK

The rule of law is dealt with more fully in Chapter 1.

ACTIVITY

Discuss in pairs or groups which features of democracy are most important and which of the challenges are most serious.

KNOWLEDGE CHECK

- 1 What does democracy literally mean?
- 2 What does political participation mean?
- 3 What is the difference between direct democracy and representative democracy?

The different types of democracy

Democracy in the UK primarily takes the form of representative democracy, with the occasional element of direct democracy. Some other countries, for example the USA, have a presidential democracy, which involves a directly elected leader who governs alongside a representative body, i.e. Congress.

Representative democracy

Representative democracy is by far the most common form of democracy in the UK, with regular elections for parliament, local councils and, until 2020 and Brexit, to the European Parliament. As explained earlier, representative democracy involves the people voting for representatives who then serve in parliament or on councils as MPs or councillors. Certainly at Westminster level, virtually all MPs belong to a political party. Once in office, they make decisions and pass laws on behalf of voters. Accountability comes in the form of regular elections when voters can endorse or reject candidates at the ballot box. The following points are among the most commonly cited advantages of representative democracy and elected representatives:

- Elected representatives have the knowledge and skill to make often difficult and complex decisions on behalf of voters.
- By being responsible for nearly all areas of policy and decision-making, they are able to take a broader view of issues and balance effectively competing claims and issues. This is particularly significant when it comes to priorities for allocating spending, balancing budgets and setting taxes.
- Belonging to a political party enables voters to have a good idea of how representatives will act once in power. Will they cut taxes, spend more on health than defence, or trim welfare benefits?
- Representative government is more efficient than laying numerous decisions and laws directly before the people for approval or rejection.

ACTIVITY

Research some arguments that suggest the disadvantages of or drawbacks to representative democracy.

Direct democracy

Direct democracy is in many ways the opposite of representative democracy. It entails directly involving the people in policy choices as opposed to leaving it purely to elected officials. Referendums are commonly associated with this type of democracy. Direct democracy in practice is rarely used in the UK, and then almost exclusively reserved for constitutional issues.

Examples of direct democracy in the UK include the following. Note that some of these were regional not national:

- **1973 — Northern Ireland:** vote on whether it would remain part of the United Kingdom
- **1975 — whole of UK:** vote on continued membership of the EU

SYNOPTIC LINK

The topics of devolution and the EU are dealt with more fully in chapters 5 and 10 respectively.

STUDY TIP

It is inaccurate to say that the use of referendums, such as over the UK leaving the EU (Brexit), make the UK a direct democracy. It is much more accurate to state that the UK remains a representative democracy that occasionally makes use of direct democracy for certain constitutional matters.

- **1979 and 1997 — Scotland and Wales:** proposed introduction of devolution
- **1998 — London:** referendum on whether there should be a directly elected mayor of London and the creation of a Greater London Authority
- **1998 — Northern Ireland:** vote on the Good Friday Agreement
- **2011 — whole of UK:** proposal to replace the FPTP electoral system with the alternative vote (AV)
- **2011 — Wales:** vote on whether more powers should be transferred to the Welsh Assembly
- **2014 — Scotland:** independence referendum
- **2016 — whole of UK:** EU referendum

The UK's use of direct democracy contrasts sharply with some other democracies that make far more use of direct democracy. The prime example is Switzerland where the practice is strongly embedded in its political culture. For example, 50,000 people can challenge any piece of legislation within 100 days of its adoption by parliament — a process known as an optional referendum and a clear check on representative government. There is also scope for citizens to draw up their own laws provided 100,000 people within 18 months sign up to a measure. Among the measures voted on by Swiss citizens over the years are joining the UN and banning the construction of minarets for mosques. The Republic of Ireland, too, has made quite extensive use of referendums on ethical issues that have led to the legalisation of both abortion and same-sex marriage.

e-petitions

In the UK, alongside occasional referendums, the other notable form of direct democracy is the growing use of e-petitions. Originally started in 2006 and relaunched in 2011, these enable members of the public to identify and raise issues with the government. Any e-petition with more than 10,000 signatures receives a response from the government, and those with more than 100,000 signatures are considered for a debate in parliament.

The following is a list of popular e-petitions:

- In 2019 around 6 million signatures were collected in a petition to revoke Article 50 and have the UK remain in the EU.
- In 2019 around 1.7 million signatures were collected in a petition in opposition to the planned prorogation of parliament in the midst of the debates and stalemate of a post-Brexit deal.
- In 2017 around 1.86 million signatures were collected in a petition to stop President Donald Trump from making a state visit to the UK.
- In 2007 around 1.8 million signatures were collected in a petition to stop plans to introduce road pricing, which would have charged motorists for actual road use.

In none of these cases did the petitioners change the mind of the government, although road pricing was subsequently abandoned and the Supreme Court ruled against the prorogation of parliament.

DEBATE

Should there be greater use of direct democracy in the UK?

Advantages of direct democracy

It promotes political participation. People can participate directly in the decision-making process.

It improves accountability. Elected representatives or the government cannot ignore the wishes of the people. It can sometimes provide a useful corrective when the MPs' views are out of step with the country at large, such as with Brexit.

It improves political education. People can be motivated to become politically well informed and research relevant material and points before arriving at a rational and considered decision.

It enhances legitimacy. Decisions have the direct authority and mandate of the people. This gives them greater legitimacy. When people vote in elections, they may not necessarily agree with all the policies in a party manifesto.

It works. Direct democracy, whether referendums or e-petitions, is popular with voters and engages them, e.g. turnout in the 2014 Scottish independence referendum was a record 84.6%. It also functions well in other countries, such as Switzerland.

It is often considered to be a 'purer' form of democracy since it allows and trusts the whole adult population to have a say and decide on issues directly instead of through representatives.

Disadvantages of direct democracy

There is a lack of political education. The public may not fully understand the question that they are voting on. Elected representatives might be better placed to analyse and evaluate the issue. It also undermines representative government.

Referendums are not binding on the government. In the UK, parliamentary sovereignty prevails under the terms of the constitution.

Populist outcomes can prevail. People may vote for emotional or populist short-term reasons rather than taking a more considered and long-term view. Many sources of information are one-sided and often sensationalist in their approach.

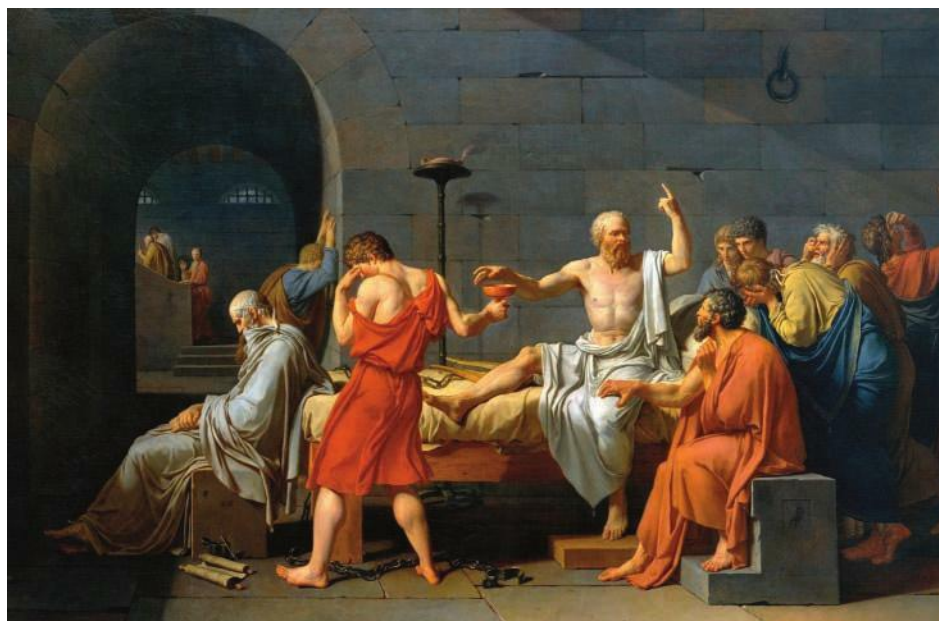
Turnout is often low for referendums, like that for the introduction of an AV in 2011, where the turnout was a meagre 42%. This reduces any notion of democratic legitimacy.

The majority of people may vote for something that undermines the rights of a minority group (tyranny of the majority). Can the removal of certain basic rights ever be justified in a democracy?

It is impractical. In a large and diverse country, greater use of referendums in particular would be costly and time consuming. If the public were allowed to propose legislation, it could make some aspects of effective government impossible, e.g. voters could choose both to lower taxes and increase spending on public services.



Individually or in pairs, decide which arguments on each side of the democracy debate are most compelling.



The death of Socrates by poisoning 399 bc. Socrates was put to death in the Athenian democracy following a 'popular vote' (or more accurately, a mass citizen-jury trial) for allegedly corrupting the youth of the city-state and infringing religious practices by illegally introducing new deities

KNOWLEDGE CHECK

- 4 What are the normal types of issues put to referendums in the UK?
- 5 How do e-petitions work?
- 6 What is meant by the 'tyranny of the majority'?

How suffrage has developed in Britain since 1832

USEFUL CONCEPTS

Oligarchy A political system in which power lies in the hands of a few, a privileged elite, not the great mass of the population.

Enfranchised Given the right to vote.

KEY CONCEPT

Suffrage The right to vote. Universal suffrage effectively equates to democracy.

As we saw in Chapter 1, although the origins of parliament date back to Magna Carta and the thirteenth century, the emergence of democracy is a much more recent development in the British Constitution. It really dates from the Great Reform Act 1832. Before then, like Athenian democracy, Britain was in reality an **oligarchy** in which political power lay almost exclusively in the hands of a small group of voters. These voters were wealthy, male property owners who were members of the Church of England and often part of the aristocracy.

Universal **suffrage** developed in Britain via an evolutionary rather than a revolutionary process. It took place gradually over about a century, beginning in 1832 with only around 2.7% of the population allowed to vote. Once eligibility for the vote began to be expanded it was arguably inevitable that the momentum for political reform would continue until virtually all the adult population was **enfranchised**.

The transition from oligarchy to democracy was largely peaceful. However, there were frequent incidents of popular protest, especially with movements such as the working-class movement of the Chartists (see pages 152–53) and the suffragettes. On occasion, these could lead to outbreaks of violence and law breaking.

By the end of the process nearly all adults except prisoners and peers gained the right to vote. Those not registered besides the categories mentioned are people aged 16–17 (who can vote in exclusively Scottish and Welsh elections), those who have (illegally) failed to register to vote, and many foreign citizens.

Table 6.2 is a timeline of universal suffrage extension in the UK.

Table 6.2 Universal suffrage in the UK

Suffrage Act and date introduced	Main features
Great Reform Act 1832	The Act was passed by the Whig government of Lord Grey. One in five male adults could now vote. This comprised 5.6% of the total population. It abolished 'rotten boroughs' such as Old Sarum. These were constituencies that had almost no voters but dutifully elected two MPs every election.
Second Reform Act 1867	The Act was much bigger in scope than the Great Reform Act. It was passed by the Conservative government of Benjamin Disraeli. It allowed many working-class men in cities to vote, doubling the size of the electorate. Roughly one-third of all men could now vote. It retained a difference in the franchise between the cities (boroughs) and countryside (counties)

SYNOPTIC LINK

It is worth noting that several of the measures to expand the franchise were passed by Conservative governments. This is an example of the 'reform that you may preserve' strand of conservative thought often associated with Edmund Burke (see Chapter 2). This is a key example to be aware of when you study conservatism as a political ideology.

STUDY TIP

Do not make the common mistake of stating that women won the vote in 1918. In fact the reality was more complicated: some women (those over 30, who met the property qualification) won the vote in 1918, but the remainder had to wait until 1928 to receive the vote on exactly the same terms as men.

SYNOPTIC LINK

While 18-year-olds in the USA were granted the vote around the same time as in the UK, in 1971, it was granted not by Congress but via a constitutional amendment — the 26th. You can learn more about comparisons between the UK and US constitutions in Chapter 12.

Third Reform Act 1884

The Act was passed by the William Gladstone's Liberal government.

It established a uniform franchise across the country for men.

All working men who met a property qualification could now vote.

A total of 40% of adult men were still excluded, mainly working-class men in rural counties.

Representation of the People Act 1918

This was a product of the social and political changes caused by the First World War.

It was passed by the David Lloyd George wartime coalition government.

All men over the age of 21 (or 19 for veterans) could vote.

Women over 30 who met the property qualification could now vote.

Representation of the People Act 1928

The Act was passed by Stanley Baldwin's Conservative government.

Women finally received the vote on equal terms to men.

All men and women over 21 could now vote.

Property qualifications were removed.

Representation of the People Act 1969

The Act was passed by Harold Wilson's Labour government.

The voting age was lowered to 18.

Extension of the franchise was also accompanied by other measures aimed at enhancing democracy. These included establishing the secret ballot (vote) in 1872, banning direct bribery of voters (1883) and redrawing constituency boundaries to make them more equal in terms of population (1885).

CASE STUDY**Extending the vote to 18–20-year-olds**

Whereas other changes to the franchise were the result of mounting public pressure and campaigning, the decision to extend the vote to 18–20-year-olds was much more about responding to social change. The status of this age group had been changing since the Second World War, with growing numbers going on to university and also seeking to get married and buy or rent a house. However, the law did not regard them as capable adults.

The Latey Committee was set up in 1965 to investigate lowering the age of majority (adulthood) to 18 from 21. Its original remit was to look at issues such as marriage and property ownership but its report published in 1967 also recommended lowering the voting age. One section of the report commented that young people:

'are handicapped in their attempts to make the best use of their lives by the fact that so many of the people around them seem to expect the worst...It would be truer to say, that considering the temptations to which they are subject, they could fairly be astounded at their own moderation.'

The government accepted its findings and the law was changed in 1969. The change also took place in a decade widely associated with social and political reform, and liberalisation in several areas, including abortion, homosexuality and capital punishment.

Debates over class and gender and the franchise

Although largely peaceful, the development of Britain into a full democracy was not without controversy, debate and opposition. Some of the most powerful debates have concerned class and gender. The Chartists are a movement associated with the debate over social class and the vote, while the debate over gender primarily involved the suffragists and suffragettes.

Chartists and the class dimension

In the wake of the Great Reform Act 1832, which did virtually nothing to extend the vote to the working class, the Chartists emerged as an early example of a pressure group for major political reform. They demanded the adoption by parliament of the Six Points of the People's Charter. This would, for men at least, have transformed Britain into a full democracy in one go. The Six Points comprised:

- 1 All men to have the vote irrespective of wealth or property ownership.
- 2 Voting should take place by secret ballot.
- 3 Parliamentary elections every year, not once every 7 years (note: the law was changed in 1911 to reduce the maximum length of a parliament to 5 years).
- 4 Equally sized constituencies.
- 5 Members of parliament should be paid.
- 6 The property qualification for becoming a member of parliament should be abolished.

Key leaders of the Chartists included William Lovett, Francis Place and Feargus O'Connor. Although Chartists as a whole advocated votes for all men, there were some female Chartists such as Susanna Inge and Anne Walker, who campaigned for the inclusion of votes for women.

The main tactic of the Chartists was the compilation and submission to parliament of three monster petitions in 1839, 1842 and 1848 that contained up to 6 million signatures, though some were of dubious authenticity (the names of Queen Victoria and Mr Punch appeared more than once!). On each occasion, the petition was overwhelmingly rejected by parliament — hardly surprising perhaps, given how it was still dominated by the landed aristocracy. Several violent protests associated with the movement were in turn violently put down by the authorities.

Although the movement collapsed soon after the failure of the 1848 petition, over time all but one of its demands were achieved, the exception being the demand for annual elections. Therefore, while a failure in the short term, the legacy of the Chartists was significant and influenced the creation of other political movements such as the Reform League, which helped pressure the government to pass the Second Reform Act 1867.

Primarily, the Chartists were concerned with ending the aristocratic domination of politics by a small wealthy elite. The Chartists, and other supporters of political reform, believed that the wealthy ruled in their own selfish interests. For example, there was no provision of help for the poor or unemployed beyond the horrors of the workhouse. Tenants often had few rights over their homes and could be easily evicted, housing conditions were often unsanitary and overcrowded. Finally, taxes on basic essentials such as

SYNOPTIC LINK

The Chartists are a good example of an early type of pressure group. You can read more about pressure groups in Chapter 9.

food could be high while taxes on property and income were relatively low. Only by gaining access to some of the levers of power could ordinary working men hope to improve their lot. Not only did the Chartists want the right to vote extended, but also other reforms such as a secret ballot and salaries to be paid to MPs. They saw these as vital if all men were truly to be able to participate equally in politics.

The wealthy elite were alarmed at the prospect of giving the vote to the working class for several reasons. First, they believed working-class men were too poorly educated to use their vote wisely and understand political issues. Second, they feared some might use their power and seize the wealth of the rich and privileged, inspired by the revolutionary spirit of the French Revolution in the previous century. They also feared that radical change might threaten Britain's global wealth and expanding trading empire. Above all perhaps, they were frightened of losing their own grip on power.

Suffragists and suffragettes and the gender dimension

Once a majority of men gained the vote, attention in large part shifted to women. The women's suffrage movement originated in the 1860s. Their demands and arguments were simple: in politics (and indeed in many other areas of life, such as employment, education and marriage), women should be treated on an equal basis to men. The two main groups to emerge from the movement were initially the suffragists (National Union of Women's Suffrage Societies, formed in 1897 from the merging of several suffrage groups) and then, in 1903, the suffragettes (Women's Social and Political Union) led by Emmeline Pankhurst and her daughters Sylvia and Christabel.

Although both groups largely shared the same objective of securing votes for women, they differed markedly in their tactics. The suffragists focused on peaceful and constitutional methods that included meetings, handing out leaflets, petitions, marches (often termed pilgrimages) and lobbying politicians. Their leader, Millicent Fawcett, described the movement as 'like a glacier, slow-moving but unstoppable'. They had around 100,000 members by 1914.

The suffragettes were more militant and prepared to break the law. Among their activities were chaining themselves to railings, heckling and disrupting public meetings, and criminal damage/arson. When imprisoned, they frequently went on hunger strike, which led the government to pass a law (the Cat and Mouse Act) to enable force-feeding to avoid suffragette deaths and the subsequent creation of martyrs for the cause. The highest profile example of this was Emily Davison, who was trampled to death by the king's horse at the 1913 Epsom Derby.

Both the suffragists and suffragettes suspended their campaign in 1914 at the outbreak of the First World War.

The key arguments used to demand votes for women were as follows:

- Women are the intellectual equals of men.
- Women paid equivalent taxes and obeyed the same laws as men.
- Women could already vote in local elections, serve as mayors and become doctors and teachers.
- Their roles as wives and mothers made a vital contribution to the nation.
- The franchise had already been reformed and extended to include two-thirds of men.
- Women could bring additional experience, insights and input into political debates, including to areas such as childcare and social reform.

STUDY TIP

A common mistake is to describe Davison's death as suicide. In fact, the historical consensus is that she ran out to attach a suffragette banner to the horse but accidentally ended up being trampled by the horse, and subsequently died from her injuries.

However, there were many arguments deployed against women being enfranchised:

- The powerful concept of 'separate spheres' held that some areas of life, including politics and the military, were 'naturally' better suited to men.
- Women were 'too emotional' to cope effectively with the tough and combative world of politics.
- Politics would be a distraction from women's 'key roles' as wives and mothers.
- Women were not able to make the ultimate sacrifice of serving and dying for their country in wartime.
- The sometimes drastic actions of the suffragettes proved the unsuitability of women for political responsibility.
- Women would outnumber men among the electorate and would therefore 'take over' politics and parliament.

It is worth considering how successful the suffragists and suffragettes were. In many ways, they witnessed success quicker than the Chartists, with most women being given the vote in 1918 and the remainder in 1928. Undoubtedly, much of this was due to the campaigning of both the suffragettes and suffragists. However, the invaluable contribution of women during the war, especially as munitions workers, also played a part in their success, alongside a change of prime minister. There was also a need to settle aspects of male suffrage by the war's end, so some reforms to the franchise were pressing in any case.

However, it took far longer for women to be elected as MPs in any large number, even though the first (to take her seat), Nancy Astor, was elected in 1919. The first female prime minister, Margaret Thatcher, was not elected until 1979, and it was only after 1997 that significant numbers of female MPs began to get elected. Three decades into the twenty-first century, women remain underrepresented at Westminster.



Theresa May, Britain's second female prime minister, unveils a statue to suffragist leader Millicent Fawcett in Parliament Square in April 2018

SYNOPTIC LINK

The activities of the suffragists and suffragettes are good examples of first-wave feminism, demanding equal political rights. This is an important example if you are studying feminism as a political ideology.

The debate over ethnicity, age and the vote

Alongside class and gender, one must also consider the issues of ethnicity and age in relation to the vote.

Unlike the USA, there has never been systematic or quasi-legal exclusion of minority ethnic groups from being able to vote in the UK, along the lines of the infamous Jim Crow laws in the American South. However, people from minority ethnic groups have been significantly and historically underrepresented in politics. It took until 1987 for the first people of colour to be elected as MPs in a fully democratic UK (see page 29). Even though the parliament elected in 2019 was the most diverse yet with around 10% of MPs from a minority ethnic background, the Electoral Commission reported in November 2019 that 25% of black voters in Great Britain and 24% of Asian voters had not yet registered to vote. Pressure groups such as Operation Black Vote focus their efforts on ensuring minority ethnic groups register and then turn out to vote, alongside promoting racial justice and equality more generally throughout the UK.

The issue of age is one that has come into prominence more recently, particularly since Scotland and Wales have given the vote to 16- and 17-year-olds for local and assembly elections. The argument for giving the vote to 16- and 17-year-olds nationwide is primarily due to the existing rights and responsibilities they enjoy. These include:

- paying income tax and National Insurance
- obtaining tax credits and welfare benefits in their own right
- consenting to sexual relationships and getting married
- becoming a company director
- joining the armed forces

ACTIVITY

Research the arguments and counter arguments for giving the vote to all 16- and 17-year-olds in the UK. The website **votesat16.org** is a useful place to start. What arguments are there against such a move?

KNOWLEDGE CHECK

- 7 When did the process of political reform in Britain begin?
- 8 Which one of the Chartists' Six Points has not been adopted?
- 9 What were the main differences in tactics between suffragists and suffragettes?

Suffrage as a human right

As we have seen from the analysis of democracy in the UK so far, it is only relatively recently that suffrage has been considered as a fundamental human right. Until the twentieth century, the right to vote was regarded as a privilege to be earned primarily through ownership of land and property, as well as being reserved exclusively for the male half of the population.

The UN Universal Declaration of Human Rights issued in 1948 proclaimed in Article 21 that everyone 'has the right to take part in the government of his country, directly or through freely chosen representatives', and also that 'The will of the people...shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.' This approach has been adopted by other human rights documents, such as the European Convention on Human Rights (ECHR).

In light of this, votes for all citizens has become one of the touchstones of global democracy. In the UK, this has largely been the situation since 1928. The main issues have therefore been votes for 16–17-year-olds mentioned previously, and the much-debated issue of votes for prisoners.

Traditionally, and many would argue correctly, prisoners lost the right to vote while incarcerated. Unlike many states in the USA, this right was only removed during and not after the period of incarceration. A small but persistent campaign sought to challenge this situation. A convicted prisoner, John Hirst, began a legal campaign that was supported by several penal reform pressure groups including the Prison Reform Trust. The UK High Court had originally dismissed Hirst's case in 2001, but this judgement was overturned in 2005 by a ruling of the European Court of Human Rights (ECtHR) based in Strasbourg. In the case *Hirst v UK*, the Court ruled that the UK's blanket ban on prisoners' voting was unlawful and in violation of Article 3 of the First Protocol of the ECHR.

Following the Hirst case, successive UK governments sought to delay and avoid implementation. The issue aroused strong feeling and plenty of popular opposition. Prime Minister David Cameron went as far as to say the whole idea made him 'physically sick'. After years of delay, finally in 2017, then justice secretary David Lidington proposed granting the vote to prisoners on temporary licence, which would affect around 100 prisoners at any one time. There are relevant arguments on each side.

SYNOPTIC LINK

Votes for prisoners links both with the function of pressure groups and their tactics, here using the courts, and with the role of the judiciary and the hierarchy of courts. You can learn more about the judiciary in Chapter 4 and pressure groups in Chapter 9.

DEBATE

Should prisoners in the UK have the right to vote?

Yes	No
Voting is part of civic responsibility and removing it makes rehabilitation harder.	Those who commit serious crimes against society should lose (usually temporarily except in the case of lifers) the right to have a say in how that society is run. Rights come with responsibilities.
Voting is a fundamental right that cannot be removed.	Losing the vote serves as another deterrent against law breaking.
There is no evidence that taking away the vote acts as an effective deterrent.	Prisoners are concentrated in certain constituencies that have large prisons, yet are not normally permanent members of those communities so should not play a part in selecting MPs for such areas.
Removal of the vote makes a prisoner a non-person and alienates them further from society.	Public opinion is strongly against such a change.
The ECtHR has ruled against a blanket ban, so the UK government must honour its commitment to abide by the court's rulings whether or not it disagrees with them. The rule of law applies.	It undermines parliamentary sovereignty.
	The ECtHR ruling and its interpretation of the ECHR goes far beyond the original intent of its framers. It is a classic example of judicial overreach.



Individually or in pairs, look at both sides of the argument regarding votes for prisoners and decide which side you find more convincing, and why.

Forms and patterns of participation in politics

Although voting is arguably the most significant form of political participation, it can also occur in a number of other ways, both traditional and more recent.

Traditional forms of political participation include the following:

- Voting in a range of elections including national, local, regional and referendums
- Membership of a political party, attending meetings and actively campaigning
- Standing as a candidate in elections
- Joining a pressure group
- Writing letters to MPs and councillors
- Going on a march
- Going on strike

Recent developments in political participation include the following:

- Signing e-petitions
- Following, retweeting and liking political posts on social media such as Twitter and Facebook
- Organising and participating in protests such as those associated with Black Lives Matter via social media
- Boycotting certain goods and businesses out of political and moral principle

Many of the types of participation associated with social media have been criticised and queried. While on the one hand political activity on social media can be seen as renewed political engagement provoking lively debate and exchanges of views, there are also issues associated with it. Some would argue that clicking 'like' on a social platform is a minimalist mode of political engagement requiring little effort or personal commitment. The term 'slacktivism' has been coined to describe this shallower level of activism and participation. The often abusive and aggressive tone of much online political discourse and the advent of trolling also undermine this format of participation. There are also Twitter bots that employ software which may autonomously perform actions such as tweeting, retweeting, liking, following, unfollowing, or direct messaging other accounts. This can distort the real amount of political support for a particular cause or politician.

Is there a political participation crisis in the UK?

For some there are concerns that the UK has experienced something of a crisis in political participation, with fewer and fewer people becoming involved in all forms of political activity and a growth in widespread political apathy. Evidence often cited tends to focus on:

- voter turnout in elections
- membership of political parties
- growing volatility among voters

It can be argued that participation and political engagement have been damaged by scandals such as MPs' expenses, and the long, drawn-out post-Brexit debates and potential deals that dogged Westminster politics between 2017 and 2020.

Participation through voting

Overall, turnout in general elections is currently lower than it has been historically (see Figure 6.1). From 1945 to 1992, turnout was usually above 75% and reached 84% in 1950. In 2019 it fell to 67.3% across the UK, a decrease of 1.5 percentage points from 2017 (68.8%). But this was still the second-highest turnout since 1997.

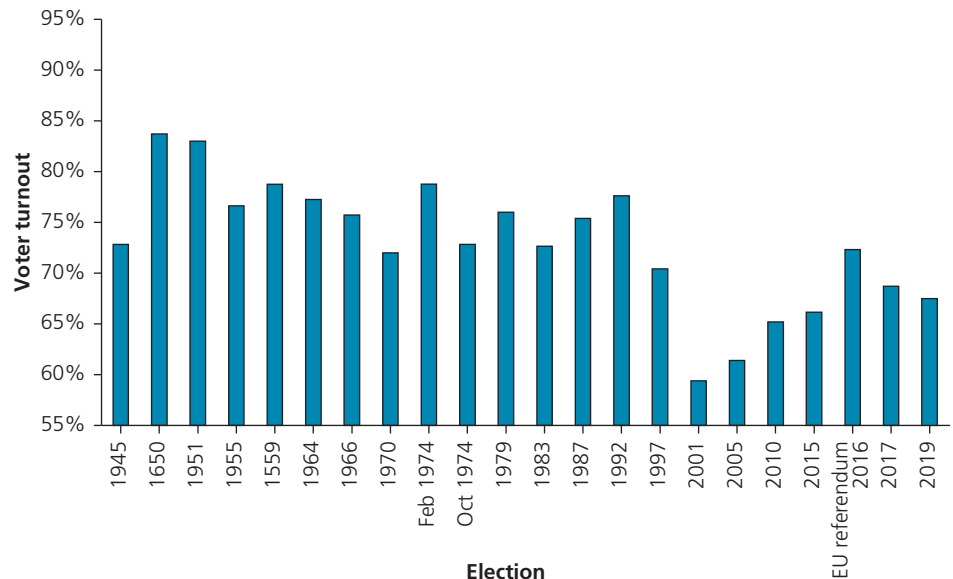


Figure 6.1 Turnout figures for UK general elections and the 2016 EU referendum

Elsewhere, though, recent turnout figures are often distinctly discouraging.

- 2019 European elections: 37% (34% in 2014)
- 2018 local elections for unitary councils: 33% (37% in 2017)
- 2016 police and crime commissioner elections: 27% (15% in 2012)
- 2016 Scottish Parliament elections: 56% (50% in 2011)
- 2014 Scottish independence referendum: 85%
- 2011 alternative vote (AV) referendum: 42%

These figures suggest that turnout for many elections is poor, but they do not necessarily prove that turnout is falling consistently. Turnout is noticeably higher where issues such as Scottish independence and Brexit excite passions on both sides of the political divide.

There is also significant variation in turnout according to age. In general terms, the older the voter, the more likely they are to vote. Polling research from Ipsos MORI suggested that turnout in 2019 ranged from 47% among 18- to 24-year-olds up to 74% among the over 65s. That was a wider gap than in 2017, when the same organisation measured turnout at 54% and 71% respectively in these age groups. However, such figures need to be treated with some caution as, unlike raw turnout figures, they only cover a selection of voters.

The average turnout figure masks some considerable variations by constituency. The highly marginal seat of East Dunbartonshire was the constituency with the highest turnout in the UK in 2019 (80%) and saw

Jo Swinson, leader of the Liberal Democrats, lose her seat. By contrast, the constituency with the lowest turnout in 2019 was Kingston upon Hull East with a figure of just 49%. In 2019, low-turnout constituencies tended to be clustered in certain areas such as urban northern England, the West Midlands, the Thames estuary, and the South Wales valleys. High-turnout constituencies in 2019 tended to be in southwest and southeast England, often in relatively affluent areas with above average levels of education and a high proportion of graduates. Interestingly, and perhaps somewhat surprisingly, turnout in both 2017 and 2019 tended not to be linked to the marginality of constituencies. A total of 453 of the 650 constituencies (70%) had been won by the same party at each of the last four general elections so can be classed as ‘safe seats’. However, the average 2019 turnout in these constituencies (67.1%) was only slightly lower than in the 197 seats that changed hands at least once in that period (67.9%).

Participation through party membership

The big picture is that of falling membership of political parties. A House of Commons research paper published in 2019 gave the following figures for each party:

- Labour Party: around 485,000 members
- Conservative Party: 180,000 members
- SNP: 126,000 members
- Liberal Democrats: around 115,000 members
- Green Party (England and Wales): 48,500 members
- UKIP: around 29,000 members
- Plaid Cymru: around 10,000 members

This meant that the combined membership of the Conservatives, Labour and Liberal Democrats constituted just 1.7% of the electorate. However, these numbers compare favourably to a historic low of just 0.8% in 2013. Labour in particular enjoyed something of a membership surge during the years of Jeremy Corbyn’s leadership. Yet these figures are far lower than those for earlier decades. In the 1950s, the Conservatives could boast around 2.8 million members while Labour had in excess of 1 million members as well as several million more who belonged via membership of Labour affiliated trade unions.

Figure 6.2 is a breakdown of the membership of UK political parties in 2019.

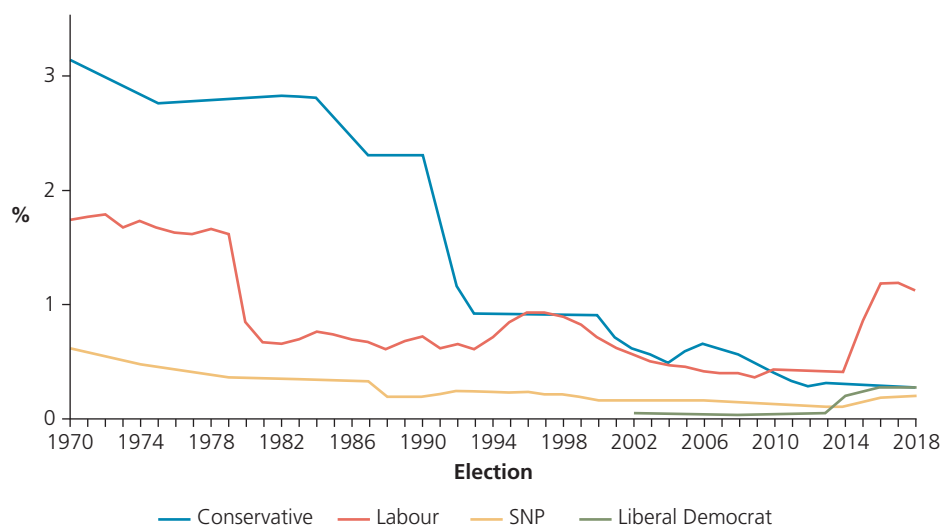


Figure 6.2 Membership of UK political parties, 2019 [% of electorate]

Overall, while there is a clear decline in the numbers of formal members of political parties, the picture arguably is not of terminal decline. Labour's membership grew considerably in the years after 2014, and the steady decline in Conservative Party membership has also levelled off. Membership of some other political parties such as the SNP and the Greens has grown considerably overall in recent years. Also, political parties are not the only institutions to register membership falls in recent decades. Churches and trade unions, for example, have also seen sharp decreases in membership since the 1950s.

An added complication is that not all of the political parties publish clear and comparable membership figures on a regular basis. The Brexit Party has no official membership but claimed 115,00 registered supporters in 2019.

Membership of parties is also skewed by age and social class. A majority of party members belong to higher social classes (ABC1). Figures for 2019 suggested this ranged from 85% of Liberal Democrat members to 65% of UKIP members. When it comes to age, the average is above 50 for all the main parties. More than half (53%) of current Conservative Party members are aged 60+. By contrast, 18–24-year-olds make up between just 4% and 6% overall of Labour, Liberal Democrat and Conservative memberships.

KEY CONCEPT

Partisan dealignment The process whereby individuals become less partisan and predictable in supporting a particular political party.

Participation and electoral volatility

One final factor cited as evidence for a participation crisis is the growing volatility of voters. In other words they are far more likely to switch between parties, suggesting a wider disillusionment with parties and politicians. This phenomenon is known as **partisan dealignment**.

Political dealignment could be seen as part of a wider pattern of disenchantment with parties and politics, especially with the two traditionally dominant parties. As social class has become less reliable as an indicator of voting behaviour, voters have been more prepared to 'shop around' and vote according to policies and personalities as opposed to traditional tribal loyalties. New parties in particular have often gained in popularity in recent elections. UKIP and the Brexit Party topped the polls in the last two European elections contested in the UK, while the Green Party gained nearly 200 seats in the 2019 local elections. Independents gained in excess of 600 new councillors in the same election. It is a moot point whether partisan dealignment therefore represents a participation crisis, or merely disillusionment with some of the more established parties. A protest vote is still participation, albeit perhaps less positively! The combined Conservative/Labour vote share was 75% in 2019 and 82% in 2017. By contrast, in 2010 it was just 65%. Some of the growth in 'political promiscuity' can also be placed at the door of the decline of traditional notions of class. British politics and parties were once dominated by class, but this is no longer really the case. While voters may well be more inclined to switch between parties we must be careful not to assume this automatically reflects a wider disengagement from politics.

SYNOPTIC LINK

The issue of voting behaviour and recent trends is explored more fully in Chapter 7.

DEBATE**Is there a participation crisis in UK politics?**

Yes	No
Turnout has been low in many recent elections. Membership of political parties has declined sharply in the past half century. Partisan dealignment suggests that voters increasingly feel no affiliation to a particular political party. Disillusionment with politicians has increased since the 2009 expenses scandal. Political apathy is particularly marked among 18–24-year-olds, who are less likely to vote or join a political party than older voters. Many modern political participation methods amount to 'slacktivism' and not true activism.	Some parties such as the SNP and Green Party have seen a growth in membership recently. Election turnout is not consistently lower, and some votes, especially referendums, have seen very high turnouts. There is a shift away from more traditional modes of participation in favour of those focused more on social media such as e-petitions. Citizens still participate, just in different ways. Social movements and less structured campaign groups focusing on direct action, such as Extinction Rebellion and Black Lives Matter, can attract strong support and commitment, especially from younger voters. There has been considerable growth in membership of pressure groups, some of which have millions of members. Internet-based movements can be powerful and effective: the #MeToo campaign against sexual harassment led to much public debate.

 Individually or in pairs, consider the points above and decide on balance whether you agree or disagree that the UK has a crisis in political participation. Which points do you find most convincing?

ACTIVITY

In pairs or individually, discuss and draw up a list of recommendations to present to the government for improving political participation. These could include reforms such as changing the electoral system, lowering the voting age to 16, compulsory voting and changing the electoral system. Make sure you present your rationale for each recommendation persuasively.

KNOWLEDGE CHECK

- 10** Which party today has the largest membership in the UK?
- 11** Which recent vote had the highest turnout of voters?
- 12** Give two examples of recent developments in political participation.

SUMMARY

- Democracy means rule by the people. It takes two main forms in the UK: representative and direct democracy.
- Representative democracy is dominant in the UK but direct democracy is occasionally used for key constitutional issues.
- The growth of suffrage in the UK has been largely evolutionary, and mainly took place from 1832 to 1928.
- The main debates over extending the vote covered class and gender.
- Voting has only relatively recently been regarded as a human right. The issue of prisoners' votes has highlighted debates over this concept.
- Political participation can take many patterns and forms. Voting remains prominent, but participation also involves belonging to a party and being involved in pressure group campaigns.
- Recently, alternative forms and patterns of participation have emerged, most notably using social media and the internet.
- There has been much discussion of a participation crisis in the UK, focusing mainly on turnout, party membership and partisan dealignment.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse any three movements and reforms that enabled the UK to become a democratic state. (9 marks)
- 2 Explain and analyse three features of a democracy. (9 marks)
- 3 Explain and analyse three factors that could potentially affect turnout. (9 marks)

Paper 1 Section B style question

Read the extract below and answer Question 4 that follows.

How far is there a participation crisis in British politics?

We know that the UK is suffering from a participation crisis because fewer people are getting involved in politics. We can measure this by the decreasing turnout at general elections: for example, in 1959 there was a turnout of 79% and in 2010 there was a turnout of 65%...Due to Britain having a two-party system, this results in the very limited number of political parties creating similar, if not the same policies. With no choice, abstaining from voting often seems like a much more appealing option.

Although elections are a common way of measuring levels of public participation, they are not the only way in which the public can vote or participate in politics...Some argue that almost anything, including voting in a referendum, answering opinion polls and watching or reading the news, can be a form of political participation. If participation is the act of being active and interested in politics, then isn't discussing current affairs over the dinner table a form of this? Sharing opinions and voting in referendums both show that one is active in politics.

Source: adapted from Ubni, A. (2014), 'How far is there a participation crisis in British politics?', www.shoutoutuk.org. The aim of the Shout Out UK website is to promote political education and literacy, especially among young people

- 4 Analyse, evaluate and compare the arguments in the extract over the extent to which it could be argued that the UK suffers from a participation crisis. (25 marks)

Paper 1 Section C style questions

- 5 'Representative democracy is significantly better than direct democracy.' Analyse and evaluate this statement. (25 marks)
- 6 'Recent developments suggest there is a serious crisis in political participation in the UK.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Colclough, A. (2020) 'The right to vote', *Politics Review*, Vol. 29, No. 4, pp. 18–20.

Gallop, N. (2019) 'Are referendums the best form of democracy?', *Politics Review*, Vol. 29, No. 1, pp. 12–15.

Books

Levitsky, S. and Ziplatt, D. (2018) *How Democracies Die*, Viking.

Websites

BBC Bitesize — a good straightforward overview of the development of democracy in the UK can be found here: <https://www.bbc.co.uk/bitesize/guides/z9hnn39/revision/1>

Commons Library — an analysis of turnout in 2019: <https://commonslibrary.parliament.uk/insights/general-election-2019-turnout/>

Commons Library — a recent piece of research into trends and patterns in party membership: <https://commonslibrary.parliament.uk/research-briefings/sn05125/>

Politics Review — a freely accessible poster showing milestones in the extension of the franchise based on an article by Nick Gallop in *Politics Review* magazine, February 2018 (note: there is a misprint for the date of the Third Reform Act): https://www.hoddereducation.co.uk/media/Documents/magazine-extras/Politics%20Review/Pol%20Rev%20Vol%2027%20No%203/PoliticsReview_27_3_Poster.pdf?ext=.pdf

7

Elections and referendums

KEY QUESTIONS ANSWERED

- What are the key issues and debates to do with the electoral system?
- What are the main electoral systems used in the UK?
- What are the advantages and disadvantages of different electoral systems?
- Should the current electoral system for UK general elections be replaced?
- What factors explain voting behaviour?
- Why can the general elections of 1983, 1997 and 2019 be regarded as key elections?
- What does each election reveal about the importance of the media, leadership, manifestos and policy, and the workings of the first-past-the-post electoral system?
- When have referendums been used in the UK?
- What are the advantages and disadvantages of referendums?

BACKGROUND INFORMATION

General elections are in many ways the cup finals of politics. The 'match' is played out in a few weeks of intense debate, publicity stunts and frenzied campaigning. The result is eagerly awaited and on rare occasions, such as in 2010 and 2017, it goes into the political equivalent of 'extra time' when an inconclusive result leads to negotiated deals between the largest single party and one of the smaller parties. More frequently, as in 1997 and 2019, victory is emphatic and clear. The 'trophy' of forming the next government is brought home to Number 10 Downing Street by the winning team's 'captain', who becomes prime minister.

Analysing and understanding the results is more complex though. Several key factors are in play: strong leadership, **manifesto** pledges, a united party and a clear and convincing message that is effectively communicated. In addition, while all elections have their own interesting tale to tell, some are worth more analysis than others. Yet general elections are not the only political competition. There are also elections for local government, devolved assemblies, the European Parliament (until 2020) and, more irregularly, referendums.

KEY CONCEPT

Manifesto The set of policies a political party promises to implement if elected to office.

Poll Card

Election of MP
constituency

Date of election

Voting information

Polling day

Voting hour

The key issues and debates with various electoral systems

As with constitutions, a key question revolves around the main criteria used to analyse different electoral systems. These are some of the main factors we can analyse when evaluating electoral systems:

KEY CONCEPT

Participation The various ways in which people can get involved in the political process, ranging in scale from standing for elected office to signing an e-petition. The most central form of participation is voting in elections.

- **Proportionality and a fair result:** the proportion of seats won should correspond to the overall percentage of the vote. A party gaining 15% of the vote should therefore ideally have 15% of MPs.
- **Vote value:** all votes are equally important in determining the final outcome of an election, none are 'wasted'. No voter should feel that their vote is pointless and counts for nothing.
- **Promoting participation and turnout:** electoral systems should incentivise high levels of turnout and participation. This is most likely when voters feel that casting their ballot could affect the final result.
- **Strong and accountable government:** voters should feel not only that any government is able to deliver its promises, but also that they can directly reward or punish a prime minister and their party based on their record in office.
- **Local links:** MPs represent a specific region or area, enabling voters to bring grievances and concerns directly to 'their' elected representative.
- **Power of the party:** many voters might want an electoral system that allows them to choose between different candidates from the same party, preventing too much power being given to the central party bureaucracy and leadership.
- **Party choice and representation:** the electoral system should encourage and enable a broad range of parties to stand in elections.
- **Comprehensibility and transparency:** the system is easy for the public to understand and produces clear results. There should not be dubious backstairs post-election deals between the parties.

Inevitably, no one system scores highly in every category. Equally, all the systems have strengths in at least one area. In many cases, a strength in one area, such as the first-past-the-post (FPTP) system usually generating strong majority governments, impacts negatively on another area, for example proportionality. With FPTP, no single political party has won more than 50% of the vote in a UK general election since 1945 — the closest was 1955, when the Conservatives won 49.7% of the overall vote. Inevitably, every electoral system involves something of a trade-off.

The debate over electoral reform

There has been much debate over whether or not the UK should ditch FPTP in Westminster elections. In 2015, the cross-party pressure group Make Votes Matter was formed and campaigned for a **proportional** not **majoritarian electoral system** for UK general elections. It brought together a number of groups and political parties which supported replacement of the electoral system. By 2019 supporters included: the Liberal Democrats, the Green Party, the SNP, the Brexit Party, Plaid Cymru and the Electoral Reform Society.

SYNOPTIC LINK

Make Votes Matter is a good example of a coalition pressure group, as it brings together a number of different groups and bodies. You can find out more about pressure groups in Chapter 9.

KEY CONCEPTS

Proportional electoral system Electoral system that calculates the number of MPs or elected representatives by the actual number of votes each party receives, e.g. List PR (PR meaning proportional representation).

Majoritarian electoral systems Electoral system in which the candidate with the highest number of votes in each constituency is elected, e.g. FPTP. Those that come second or lower gain no seats, hence it is also sometimes termed a 'winner takes all' system.

These supporters were joined by a handful of individuals from the Labour and Conservative parties. However, a quick glance at the parties who support the cause of electoral reform reveals that this is only partly a debate about democratic principles. Each of these parties is handicapped in some way by FPTP, most notably the Green Party, the Liberal Democrats and the Brexit Party. While the SNP and Plaid Cymru are not disadvantaged by the current system, they operate in a Westminster parliament normally controlled by one of the two main parties, therefore limiting their influence. In any debate about electoral reform political self-interest must not be forgotten. Proportional systems almost inevitably lead to permanent coalition governments. Unsurprisingly, then, there are relatively few supporters of proportional representation (PR) on either the Labour or Conservative benches, since that would deny them, in all likelihood, the opportunity to form a majority government in the future. That is certainly the experience in most other countries that use proportional electoral systems, and the norm in the UK's devolved assemblies, which use other electoral systems.

Another key issue is the evidence that electoral systems have a potential impact not only on the nature of governments, making coalition/multiparty government far more likely, but also on voting behaviour. Many voters may be reluctant to choose a candidate they feel stands no chance of winning, so may vote tactically for the 'least worst' electable candidate. Many may decide not to vote at all and abstain. In European elections, which since 1999 have used a proportional system, Eurosceptic parties such as UKIP and the Brexit Party have fared much better than in general elections. Part of this can be explained by the fact that they stand far more chance of getting candidates elected, which in turn encourages Eurosceptic voters to plump for them. However, it must also be said that support for these parties might also reflect a 'protest vote', and that these elections are, after all, more focused on European issues.

In summary, the key debates over reforming the electoral system are as follows:

- What aspects of electoral systems are most important?
- Will electoral reform help or hinder a particular party's performance at the polls?
- How could electoral reform affect voting behaviour?
- How much public enthusiasm is there for electoral reform?
- If reform is to happen, what system should replace FPTP?

KNOWLEDGE CHECK

- 1 How might electoral reform increase turnout at elections?
- 2 Why do the Liberal Democrats and the Green Party favour replacing the current electoral system?
- 3 What is the difference between proportional and majoritarian electoral systems?

The main electoral systems used in the UK, and their advantages and disadvantages

Several types of electoral systems are used in the UK.

- First-past-the-post (FPTP): used in general elections and English local elections
- Party list proportional representation (List PR) or D'Hondt system: used in European elections
- Additional member system (AMS): used in the Scottish and Welsh parliaments
- Single transferable vote (STV): used in the Northern Ireland Assembly and Scottish local council elections
- Alternative vote (AV): used in the election of parliamentary select committee chairs

The merits and shortcomings of each electoral system are discussed later, but note how the different systems can produce very different election results.

STUDY TIP

You only need to study two electoral systems (including FPTP) in detail, but it is useful to know how the other systems operate, and their benefits and disadvantages.

Election results calculated and compared using different electoral systems

Table 7.1 shows how different electoral systems can produce contrasting outcomes in terms of the number of MPs elected from the same result (these are the results of the 2019 general election).

Table 7.1 How different electoral systems produce contrasting outcomes using the results of 2019 general election

Party	Vote share	FPTP	List PR	AMS	STV
Conservative	43.6%	365 MPs	288 MPs	284 MPs	312 MPs
Labour	32.1%	202 MPs	216 MPs	188 MPs	221 MPs
Liberal Democrats	11.5%	11 MPs	70 MPs	79 MPs	59 MPs
SNP	3.9%	48 MPs	28 MPs	26 MPs	30 MPs
Plaid Cymru	0.5%	4 MPs	12 MPs	5 MPs	5 MPs
Green	2.7%	1 MPs	4 MPs	38 MPs	2 MPs
Brexit	2%	0 MPs	11 MPs	12 MPs	3 MPs
Others (excluding the speaker)	1%	0 MPs	3 MPs	0 MPs	0 MPs

Note: Apart from FPTP, these results are projections based on opinion polls. They come from a survey commissioned by the Electoral Reform Society. It excludes Northern Ireland, nor did it include AV.

Source: <https://www.electoral-reform.org.uk/latest-news-and-research/publications/the-2019-general-election-voters-left-voiceless/>

Key points to note using Table 7.1 are:

- only FPTP would have produced a government with an overall Commons majority
- along with the Conservatives, the SNP would also have gained fewer MPs using alternative voting systems
- the Liberal Democrats would benefit most from electoral reform
- the smaller parties, such as the Green Party and the Brexit Party, would fare best under AMS compared with the other alternative electoral systems, although the Brexit Party would do almost as well under List PR

First-past-the-post

First-past-the-post (FPTP) works on the majoritarian principle that the candidate with the largest number of votes in each constituency wins the seat. Those who are runners up, however close the contest, receive no electoral reward. With the UK being divided into 650 single-member constituencies, it is possible for parties to gain a large number of votes across the country but to have few or even no MPs. An example of how FPTP worked in the 2019 election is shown in Table 7.2.

Table 7.2 How FPTP worked in the Great Grimsby constituency in the 2019 general election

Candidate	Party	Votes
Lia Nici	Conservative	18,150 (elected)
Melanie Onn	Labour	10,819
Christopher Barker	Brexit	2,378
Ian Barfield	Liberal Democrats	1,070
Loyd Emmerson	Green	514
Nigel Winn	Independent	156
		Conservative majority: 7,331

Party list proportional representation (List PR)

Instead of electing one person per constituency as with FPTP, in the List PR system each area is bigger, electing a group of MPs that more closely reflects the way the area voted. In place of 650 individual constituencies with one MP, under the List PR system there might be 26 large constituencies each electing 25 MPs. The parties typically rank their candidates in each area, meaning that the highest-ranked candidates for the main parties, usually the leaders and other senior figures, would be almost certain to get elected.

This system was used in the UK (with the exception of Northern Ireland) for European elections. The country was divided into 11 large regions, for example South East England, each region electing between three and ten MEPs. Within each area, MEPs were elected on the basis of their share of the vote. The form of PR used, the D'Hondt system, works by allocating seats in successive rounds, with one seat allocated in each round. At the start of each round, the total votes for each party received at the start of the process are divided by the number of seats the party has already won, plus one. The party with the highest remaining total wins the seat in that round. An example from the 2019 European elections shows how it works in practice (see Table 7.3).

Table 7.3 South East England (10 MEPs)

	Brexit	Liberal Democrats	Green	Conservative	Labour	Winner of the round
Total vote	915,686	653,743	343,249	260,277	184,678	
Round 1	915,686	653,743	343,249	260,277	184,678	Brexit
Round 2	457,843	653,743	343,249	260,277	184,678	Liberal Democrats
Round 3	457,843	326,872	343,249	260,277	184,678	Brexit
Round 4	305,229	326,872	343,249	260,277	184,678	Green
Round 5	305,229	326,872	171,625	260,277	184,678	Liberal Democrats
Round 6	305,229	217,914	171,625	260,277	184,678	Brexit
Round 7	228,922	217,914	171,625	260,277	184,678	Conservative
Round 8	228,922	217,914	171,625	130,139	184,678	Brexit
Round 9	183,137	217,914	171,625	130,139	184,678	Liberal Democrats
Round 10	183,137	163,436	171,625	130,139	184,678	Labour
Total seats won	4	3	1	1	1	

Additional member system

The additional member system (AMS) is a hybrid system, being a mixture of FPTP and List PR. It is currently used in the UK for electing members of the Scottish and Welsh parliaments and the London Assembly. Voters have two ballot papers and two votes. The first is a list of candidates standing to be the constituency representative. On the second ballot paper is a list of parties standing for election in the region — Scotland, for example, is divided into eight regions. In Scotland, 73 MSPs are selected from the Westminster-style first ballot paper and 56 from the second ballot paper using the regional proportional list.

Figure 7.1 is a mock example of a ballot paper in 2016 Scottish Parliament elections (all names are fictional).

Election of the Scottish Parliament
You have **two** votes

Regional Members

Vote **once only** (X)

Thistle Party	
Scottish Tartan Party	
Pines of Scotland Party Caber Alliance	
Highland Democrats	
Saltire Socialist Party	
Harris Alliance	
Outlander Independence Party	
Grampian Party	

Constituency Member

Vote **once only** (X)

Fraser, Alastair Thistle Party	
Balkas, Ahmet Highland Democrats	
Hardy, Duncan Finlay Caber Alliance	
Logan, Iain Scottish Tartan Party	
Mackenzie, Lorna Mairead Harris Alliance	
Mukerjee, Saanvi Grampian Party	

Figure 7.1 A mock example of a ballot paper from the 2016 Scottish Parliament elections showing the two ballots, constituency and regional list (all names fictional)

Votes for the Westminster-style ballot are counted up and awarded on the traditional 'winner takes all' basis. The regional list ballots are then counted and the overall proportional share of the vote is calculated. If a party wins fewer constituency seats than its overall vote share entitles it to, the 'extra' is made up from the seats allocated to the second ballot. Put simply, regional list representatives 'top up' any underrepresentation from the constituency results. An example of the system taken from the 2016 Scottish Parliament election is shown in Table 7.4.

Table 7.4 Westminster-style constituency Edinburgh Western (one MSP)

Candidate name	Party	Votes cast
Alex Cole-Hamilton	Scottish Liberal Democrats	16,645
Toni Giugliano	Scottish National Party (SNP)	13,685
Sandy Batho	Scottish Conservative & Unionist Party	5,686
Cat Headley	Scottish Labour	3,750
Constituency MSP elected	Alex Cole-Hamilton	

SYNOPTIC LINK

You can find out more about the devolved governments in Wales and Scotland (and Northern Ireland) in Chapter 5.

Edinburgh Western is one of nine constituencies in the Lothians region. In those nine constituencies, the 2016 results were:

- SNP — 6 seats
- Scottish Conservatives — 1 seat
- Scottish Liberal Democrats — 1 seat
- Scottish Labour — 1 seat

But when it came to the second ballots based on the vote share of each party, the proportions of the votes cast were:

- SNP — 38%
- Scottish Conservatives — 24%
- Scottish Liberal Democrats — 6%
- Scottish Labour — 21%
- Scottish Green Party — 11%

The Lothians region is entitled to 16 MSPs in total, 9 constituency and 7 regional list. So, the seven regional list MSPs were allocated as follows:

- SNP — 0 MSPs (6 in total)
- Scottish Conservatives — 3 MSPs (4 in total)
- Scottish Liberal Democrats — 0 MSPs (1 in total)
- Scottish Labour — 2 MSPs (3 in total)
- Scottish Green Party — 2 MSPs (2 in total)

When the constituency and regional list MSPs are added together, it produces a more proportional result than if the system was solely based on single-member constituency seats elected by FPTP.

Single transferable vote

The single transferable vote (STV) system is currently used for European elections in Northern Ireland and Scottish local council elections. It works on the basis of multi-member constituencies where voters rank their choices in order of preference. A quota is worked out based on the number of seats and the total number of votes cast. A candidate who has more first preference votes than the quota is immediately elected. Surplus votes (i.e. votes in excess of the quota) are transferred to other candidates in proportion to the second preference marked on the ballots received by that candidate. If more candidates than seats remain, the candidate with the fewest votes is eliminated. Their votes are transferred to other candidates as determined by the voters' second preference. This process continues until all the seats are filled. The example in Table 7.5 is from the 2019 Northern Ireland European elections. The quota needed for election was 143,112.

Table 7.5 Results of the 2019 Northern Ireland European elections

Party	Candidate	First preference vote %	Count 1	Count 2	Count 3	Count 4	Count 5
Sinn Féin	Martina Anderson	22.17	126,951	128,117	128,190	128,200.50	152,436.50 (elected)
DUP	Diane Dodds	21.83	124,991	127,291	155,422 (elected)		
Alliance	Naomi Long	18.50	105,928	115,327	122,263	123,917.00	170,370.00 (elected)
SDLP	Colum Eastwood	13.72	78,589	80,949	82,101	82,413.50	
TUV	Jim Allister	10.83	62,021	63,872	79,540	89,854.00	90,079.00
UUP	Danny Kennedy	9.26	53,052	54,736			
Green (NI)	Clare Bailey	2.18	12,471				
UKIP	Robert Hill	0.89	5,115				
Independent	Jane Morrice	0.30	1,719				
Independent	Neil McCann	0.17	948				
NI Conservatives	Amandeep Singh Bhogal	0.12	662				

As can be seen in Table 7.5, it took three counts before the first MEP (Diane Dodds) was elected, and the other two, Martina Anderson and Naomi Long, were both elected at the fifth count. Five candidates were eliminated after the first count, and another after the second count.

Alternative vote

The alternative vote (AV) is currently only used for the election of chairs to parliamentary select committees, although it was proposed, but heavily rejected, as an alternative to FPTP for Westminster elections in a 2011 referendum. Under AV, the voter adds a number by the name of each candidate, one for their favourite, two for their second favourite and so on. They can put numbers by as many or as few candidates' names as they wish. This is similar to STV except that AV retains single-member constituencies. Also, there is no quota. If a candidate receives more than half the votes in the first stage, that candidate is elected. If nobody gets half, whichever candidate came last is eliminated and their second preference votes are redistributed. This process is repeated until one candidate gets at least half the vote. AV ensures that the winning MP has the support, albeit potentially as a second or third choice, of the majority of voters in a constituency.

Table 7.6 shows how the AV system was used to elect the chair of the Defence Select Committee in January 2020.

Table 7.6 AV system at work in the election of the chair of the Defence Select Committee, January 2020

Candidate	First stage	Second stage (Gray eliminated)	Third stage (Holloway eliminated)	Fourth stage (Courts eliminated)
Robert Courts	62	68	81	—
Tobias Ellwood	243	256	271	296 (elected)
James Gray	39	—	—	—
Adam Holloway	45	48	—	—
Sir Bernard Jenkin	173	183	193	226
Total number of votes cast: 562	Total number of votes required to win: 282			

SYNOPTIC LINK

The candidates for the chair of the Defence Select Committee were all Conservative backbenchers. This is because the chairs of different departmental select committees are divided up between the main parties, so MPs have a choice between candidates, but all come from the same party. You can find out more about select committees in Chapter 2.

Electoral systems evaluated

Table 7.7 evaluates the various electoral systems based on a number of categories.

Table 7.7 Electoral systems evaluated

Electoral system	FPTP	List PR	AMS	STV	AV
Proportionality and a fair result	The number of seats won does not directly reflect the proportion of votes cast for each party. For example, in 2019 the Conservatives won 77 more seats than their proportion of the overall vote entitled them to. By contrast, parties such as the Green Party and the Brexit Party were significantly underrepresented in terms of seats. For example, the Green Party won 2.7% of the vote but just one (0.2%) MP. Whether FPTP delivers a fair result is more debatable. Some would argue that as the Conservatives won the largest number of votes overall in 2019, they were entitled to win the election overall and form the government. On rare occasions such as in 1951 and February 1974, the party with the most votes overall did not win the largest number of seats. It also tends to exaggerate the performance of the winning party, producing a 'winner's bonus' or landslide result that distorts actual vote shares. In 1997 Labour won a landslide result in terms of seats (63%) on a vote share of just 43%. In 1983 the Conservatives won 61% of the seats on a vote share of just over 42%.	List PR scores very highly here. The number of seats won closely reflects the actual vote share of the parties. In the example given (Table 7.3), the Brexit Party won around 39% of the overall vote and gained four (40%) of the seats.	AMS, as might be expected for a hybrid system, falls between FPTP and List PR. The Lothians region result produced a largely proportionate result. For example, the Scottish Conservative Party won 25% of the seats (4/16) on a total vote share of 24%. The Scottish Green Party, which failed to win any constituency seats, won 2/16 seats overall, which was a fair reflection of its 11% share of the vote.	As a proportional system, STV tends to deliver results that accurately reflect overall shares of the vote. This electoral system tends to be the one most preferred by advocates of a more proportional system, such as the Electoral Reform Society (ERS). As the ERS notes on its website, 'Voters don't have to worry about "vote splitting" or tactical voting with STV — they just put the candidates in order.'	AV is not a proportional system, nor has it ever been used in national or regional elections. One study of the 2017 election predicted that it would have resulted in a less proportionate result than FPTP. The Liberal Democrats and the nationalist parties would all have ended up with fewer MPs than under the current system, with Labour picking up some seats off the Conservatives. In its favour, AV does ensure that every winning candidate has at least the tacit support of a majority of voters in their constituency. In 2019, 229 out of 650 MPs were elected with less than 50% of the vote. Five MPs were elected with less than 36% of the vote.

Electoral system	FPTP	List PR	AMS	STV	AV
Vote value	FPTP fares badly here. Many votes are 'wasted'. Those living in safe seats probably feel that their vote makes no difference one way or the other. Also, the thousands of votes cast for smaller parties can often result in no MPs. In 2019, the Brexit Party won a total of 644,257 votes but ended up with no MPs. Its critics would argue that FPTP is biased towards the two main parties and regional parties, such as the SNP, with a strong geographically concentrated support.	As a proportional system, there is much less chance of votes being wasted, and a wider range of parties can be expected to win seats. It is worth noting, though, that even dividing up the country into regions means the smallest parties who might perhaps receive 1–5% of the overall national vote still might not win any seats.	As with List PR, there is less chance of votes for smaller parties being wasted. In the example given (Table 7.4), the Scottish Green Party still gained two seats thanks to the regional list MSPs. Again though, as with List PR, where seats are awarded on a regional not national list, the smallest parties remain unlikely to secure any seats.	The system of preferential voting certainly reduces the potential for wasted votes. Even voting for minor parties can be effective on the final outcome, as first preference votes are redistributed using voters' second preference votes.	Here, AV fares relatively well. There is no disincentive to vote for a minor party or independent candidate. If they are eliminated early on, their first preference votes are redistributed according to second preferences. It also removes the temptation for tactical voting.
Promoting participation and turnout	Some argue that FPTP discourages participation because it disincentivises supporters of smaller parties to turn out and vote, as their votes will probably be wasted. On the other hand, turnout at UK general elections is not in steady decline as the figures below show: 2010 — 65.1% 2015 — 66.2% 2017 — 68.8% 2019 — 67.3% Many other factors affect voter turnout including the perceived closeness between the parties, and the issues and personalities involved.	In theory, a fully proportional system like List PR should boost turnout as far fewer votes are wasted. In reality, turnout for European elections is historically low when compared to general elections. In 2019, it was just 36.9%. it could be argued, however, that this figure says more about wider public interest and perceptions of European elections than the type of electoral system used. If the system were used for general elections, turnout might be comparable, or even higher.	When comparing Scottish and Welsh turnout levels for elections using different systems, there is no clear proof that AMS boosts turnout. For example, Welsh turnout in the 2019 general election was around 67%. For the 2016 devolved assembly elections, which use AMS, it was just 45%. Again, however, caution is needed. This difference might reflect the differing importance attached to each election. What can be said is that there is no clear evidence that AMS by itself boosts turnout.	Again, comparing turnout with elections using other systems is tricky. It is true that turnout in Northern Ireland in 2019 for the European elections at 45% was higher than for the rest of the UK. But Northern Ireland traditionally has high rates of turnout.	The absence of wasted votes should in theory encourage participation and turnout. But, as mentioned above, in the absence of AV being used for public elections, this remains a speculative point without firm evidence either way. No European countries currently use AV.

Electoral system	FPTP	List PR	AMS	STV	AV
Strong and accountable government	A frequently noted strength of FPTP is that it has traditionally produced clear and decisive results, enabling one party to govern with a decent Commons majority. This was particularly true for the period 1979–2010 when the Conservatives and then Labour were able to dominate government for lengthy periods. In 2010 and 2017 (and also in February 1974) the results were less conclusive, resulting in a hung parliament where no one party had an overall majority. The decisive Tory victory in 2019 could be seen as a return to a pattern of strong single-party government. It is of course questionable whether strong government is inherently desirable, or whether coalition government involving compromises and political deals is preferable.	Here, List PR fares less well. It inevitably produces election results in which no one party secures an overall majority of seats. For the 2019 European elections, the winning party, Brexit, won just 29/73 seats. This in turn, means that coalition governments of some kind are invariably the rule not the exception. This makes it less straightforward to punish or reward individual parties that have been in government. It also inevitably results in post-election deals and compromises between parties and can give disproportionate power to smaller parties which can act as 'king-makers'. Some would argue, though, that coalition or balanced government is preferable to single-party rule.	AMS, like List PR, almost inevitably produces minority government. Although the SNP has been the dominant force in the Scottish Parliament in recent elections, it has only once (2011) secured an overall majority. Yet although AMS produces multiparty government, in neither Scotland nor Wales has this led to constant political instability, or deadlock and early elections.	As with all systems that use a more proportional system, STV almost inevitably produces coalition or multiparty government. This usually leads to coalition deals and policy compromises, but its supporters argue that is a small price to pay for 'fairer votes'. They also point out that no single party has won more than 50% of the total vote in general elections since 1945. Hence, the UK has never voted for single-party government in recent history.	Of all the alternatives to FPTP, AV is the system most likely to produce single-party government. It is likely, although not inevitable, that many second preference votes would go to one of the main parties, where voters have plumped for an independent or minor party as their first choice.
Local links	FPTP scores highly here as it provides every constituency with its own MP whose role is to represent all voters and look after their interests. Many MPs enjoy a high profile in their local area and are directly accountable to their constituents at election time.	This is a weaker aspect of List PR. Even if the country was broken down into regions, representatives would still serve hundreds of thousands of constituents. It would also remove the notion of an MP serving all their constituents. Voters would probably be more inclined to approach an MP from their favoured party.	AMS through constituency members offers a local link not present with List PR. However, it also creates the potential to create a two-tier system of elected representatives — those directly elected for a constituency, and those who are elected via the top-up regional list, who therefore lack a direct mandate.	STV scores well here, as all elected members represent a geographical area, albeit a larger one than under FPTP. In addition, people can approach a range of representatives with their concerns. Conversely, it does mean that each representative oversees a pretty large area, perhaps five or more times larger than the current Westminster seats.	As with FPTP, this is a clear positive with AV. It retains single-member constituencies with one MP looking after and representing all their constituents.

Electoral system	FPTP	List PR	AMS	STV	AV
Power of the party	FPTP does not directly allow voters to choose between different candidates from the same party. Arguably, though, as most candidates are selected by the local party membership from a centrally approved list, the power of the central party is more limited than with the List PR system, in which the central party ranks candidates.	List PR can transfer a large amount of power over to the central party. In the closed list system, such as that used for the UK European elections, the parties decide on ranking of individual candidates, therefore guaranteeing that the most favoured candidates almost certainly get elected, while those at the bottom of the list lose. As the ERS stated, 'While closed party-list PR is very proportional, they empower parties rather than voters by giving them control over who is elected.' This could be partly remedied by using an open-list system, which allows voters to choose between candidates of the same party on the regional list.	With its regional lists, AMS inevitably grants more power to the central parties, which rank these candidates in the same way as with List PR. The presence of constituency members, however, ensures that many members have been chosen locally by party members and activists.	STV allows voters to choose between individual candidates from the same party, if the multi-member constituency is large enough (say five or more members) for this to occur. The example from Northern Ireland (Table 7.5) with just three MEPs, meant that all the parties put up just one candidate knowing they would not secure more than one seat.	As with FPTP, candidates would be largely chosen by local activists in their branches.
Party choice and representation	Although FPTP discriminates against smaller parties, a fair range of parties are represented in parliament, especially when compared to the US Congress, which also uses a majoritarian electoral system. Also, there is no evidence that FPTP discourages candidates from a wide range of parties choosing to stand for election. Most UK constituencies offer voters a wide range of parties and candidates at election time, even if the chances of success for many are remote.	The List PR system certainly tends to ensure that a wider range of candidates get elected. For example, in the 2009 European election two BNP candidates (a far-right party) were elected as MEPs. Also, smaller parties such as the Green Party and UKIP/Brexit have traditionally had far more MEPs than MPs elected.	Similar to List PR, third parties are much more likely to have greater representation than with FPTP. Yet the range of parties represented in both the Scottish and Welsh parliaments remains relatively small. Following the 2016 elections, the parties with assembly seats were just the three main national parties, the two nationalist parties, UKIP in Wales and the Green Party in Scotland.	With better 'vote value', there is a greater incentive to vote for independents or minor parties as votes are not wasted. The Republic of Ireland, the only European country to use STV aside from Malta, has a significant number of independent representatives (19/160 after its general election in 2020).	AV is likely to favour candidates with a broad appeal, or arguably the 'least worst'. Projections from the 2017 election, however, suggested that the party most commonly viewed as 'middle of the road', the Liberal Democrats, would have fared worse under AV. Candidates with extreme or polarising views who lack the support of at least 50% of voters are very unlikely to get elected under this system.

Electoral system	FPTP	List PR	AMS	STV	AV
			It also enables voters to have greater choice. They can split their ticket, using their constituency vote for one party and their list vote for another party.		
Comprehensibility and transparency	FPTP scores highly again, as it is simple to understand and straightforward to operate. It customarily provides a clear and quick result soon after the election.	As Table 7.3 shows, the system is less straightforward and more cumbersome, with its multiple rounds. Some argue, though, what really matters is that in the end a 'fairer result' is produced.	AMS is more complicated than FPTP. It requires two ballot papers. It also creates two categories of elected representatives. It is, however, relatively straightforward to count and calculate the result, and there are none of the multiple rounds associated with List PR.	This is probably the biggest shortcoming of STV. It is not a particularly straightforward system to understand and calculating the final allocation of seats can take some while. For example, in the Republic of Ireland, the process took two full days before the final results were declared.	AV is relatively easy to understand, with one MP per constituency.

ACTIVITY

Individually or in small groups, read through the evaluation table of the different electoral systems and score each one on a scale of 1–5 (1 being very poor, 5 being excellent) for each category. Add the totals up — which system comes off best and which is worst? Discuss whether you agree that the 'winning' system is the best system to adopt for general elections.

Should the first-past-the-post system for Westminster elections be replaced?

Not surprisingly, there has been considerable debate over whether or not FPTP should be retained or replaced by an alternative system for general elections. The main arguments on both sides are summarised in the debate below.

DEBATE

Should the UK replace first-past-the-post for Westminster elections?

Yes	No
Other electoral systems such as STV and List PR better reflect vote share. FPTP often distorts results, especially in the cases of landslide results and the 'winner's bonus'.	It has traditionally produced strong and relatively stable governments with a clear ability to govern. This enhances the opportunities to make government accountable at the next election.
The UK is the only country in Europe to use FPTP.	It is easy to understand and familiar to voters.
The party with the most votes does not always gain the most seats, e.g. in February 1974.	It enables a strong link between MPs and their constituents.
It does not always result in strong single-party majority governments, e.g. most recently in 2017.	Strong and stable single-party governments avoid the need for secretive post-election deals with coalition partners, which can also dilute manifesto promises.
It discriminates against smaller parties.	None of the alternative systems are without flaws.
Many single-party governments are voted in on a low share of the vote, e.g. the Conservatives in 2015 with just 37% of the overall vote.	Small and extremist parties are kept out of parliament and government.
Many votes are 'wasted', primarily those for smaller parties or in safe seats.	Although not used elsewhere in Europe, it is used in the USA, arguably the most significant democracy in the world.
It encourages tactical or negative voting, particularly in marginal constituencies.	By favouring a political culture centred on two dominant parties, it forces those parties to have a relatively broad appeal and basis of support. They therefore resemble internal coalitions.
Many MPs are elected without the support of a majority of their constituents.	It is fairly quick and straightforward to count the votes and work out who has won, meaning results can be declared quickly after the polls close.

 Individually or in pairs, using the points in the debate and your own knowledge, decide whether on balance FPTP should be replaced or retained for general elections. Which arguments on each side are most convincing?

KNOWLEDGE CHECK

- 4 Why are proportional electoral systems less likely to produce single-party government?
- 5 Why does FPTP often encourage tactical voting?
- 6 Why could AMS create two tiers of MPs?

KEY CONCEPTS

Voting behaviour The analysis of why people vote the way they do. Voters are placed in categories to allow comparison.

Campaign Working in an organised way towards a political goal. Alongside election campaigns, many MPs also choose to get involved with other campaigns reflecting their own interests and priorities, or those of their constituency.

The main factors that explain voting behaviour

History students are well versed in the complexities of causation: why events happen and what factors are most important in those events. The factors or causes behind voting behaviour provide an equally fertile debating ground for political scientists. Indeed, the statistical study of **voting behaviour** and trends has its own specialist term, psephology. The term, coined in 1948 by Scottish academic W. F. R. Hardie, has classical roots in the Greek word for pebble (*psephos*) and draws from the way in which citizens of Athens voted using different coloured pebbles.

ACTIVITY

The political compass test explores the link between political attitudes and where you stand on the political spectrum — centrist, left wing or right wing. Visit <https://www.politicalcompass.org/test> to take the test. Did the final result surprise you? Discuss the outcomes with your class mates.

SYNOPTIC LINK

Unlike in the USA, religion plays far less of a role in influencing how British people vote. Voting behaviour in the USA is analysed in Chapter 20.

Voting behaviour is a complex science because, fundamentally, people vote for a party for a mixture of reasons. These include:

- the personality of a particular candidate or party leader
- the attractiveness and relevance of manifesto promises
- the influence of the **campaign** and media: how leaders come across in televised debates, or the impact of political adverts on social media
- voter profile resulting from characteristics such as social class, gender and ethnicity — increasingly, age is also becoming a key predictor of voting patterns
- an individual's own political views about policies they feel are especially important, e.g. the economy, taxes, the NHS, environmental issues, education, immigration or racial justice
- the performance of the current government, and a desire either to retain or replace it
- voting for the 'least bad' option, or to ensure that a strongly disliked candidate or party does not win, i.e. tactical voting
- the nature of the electoral system — voters may want to ensure their votes are not 'wasted' on candidates and parties that are unlikely to win

It is helpful when analysing voting behaviour to collate different factors into **primacy** and **recency** models:

- The 'primacy model' of voting emphasises long-term factors such as social class, age and ethnicity. It focuses on voter profile and implies that voting patterns are relatively stable, with change primarily occurring when voters feel a particular party no longer adequately represents them.
- The 'recency model' emphasises the importance of short-term factors such as issues and leadership. It suggests that voting behaviour is more volatile and unpredictable.

Another term to be aware of is 'valence issues'. These are issues that are uniformly liked (e.g. healthcare) or disliked (e.g. corruption) by voters. So, while all parties purport to support the NHS, voters are less unanimous as to which party will best manage and resource the NHS.

Recent trends in voting behaviour

Until relatively recently, social class was considered crucial when analysing UK voting behaviour. For much of the post-1945 period, the bulk of the working class tended to vote Labour while the bulk of the middle and upper classes voted Conservative, with the Liberal Party retaining a residual appeal among some of the middle class and providing a refuge for protest votes. Most academic research, therefore, focused on voters who did not conform to these stereotypes, such as working-class Tories.

When it came to elections, both main parties had a set of core voters largely defined by social class. With politics largely based on class, parties adopted policies specifically designed to appeal to their core supporters. In addition, large swathes of the country were considered 'safe' for one or other party due to their class composition. Labour, for example, went virtually unchallenged in former coalfield areas such as the northeast or South Yorkshire.

KEY CONCEPTS

Class dealignment Where people no longer vote according to social class.

Floating or swing voters

Voters traditionally not loyal to any one party and therefore open to persuasion and political advertising. This group is the primary focus of most election campaigns.

From the 1970s, as a result of a number of wider social factors including deindustrialisation, immigration, Britain's relationship to Europe and changes in social attitude, class became far less easy to define. This has resulted in four key changes in voting behaviour:

- **Class dealignment:** as class has become more difficult to determine, and less important in how voters see themselves, it is much less significant as an indication of how an individual casts their vote.
- **Partisan dealignment:** as parties have become less class-based, so fewer people feel that one of the parties 'is for people like them'. Instead, they become much more like political consumers, 'shopping around' for the best 'basket' of policies and personalities.
- **More floating or swing voters:** a key effect of partisan dealignment is that more voters have become less faithful to a single party, and are open to being wooed by a range of parties and willing to switch their vote. This means parties have to work much harder at appealing to a wide base of voters instead of focusing on ensuring their core support turn out to vote for them.
- **The rise of identity politics:** although somewhat vague, identity politics generally refers to the discussion of and campaigning around issues pertaining to one's identity. The focus typically falls on women, minority ethnic groups, immigrants, LGBTQ+ people and minority religious groups. It is an alternative or supplement to social class as a way of self-identification. As a trend, it has further fractured and complicated how we categorise individuals in society — not least, as most people possess a number of cultural identities.

Another key and complicating development in recent times is the emergence of more third or minor parties. While Labour and the Conservatives still largely predominate (together they secured 75.8% of the overall vote in 2019), at various times and in different elections smaller parties play a far more significant role than was the case 50 years ago. Nationalist parties in Wales and Scotland make multiparty elections the norm in those regions of the UK. Eurosceptic parties, such as UKIP and the Brexit Party, have fared especially well in European elections and have often had a 'spoiler' effect in general election contests, syphoning off votes from both Labour and, perhaps more significantly, the Conservatives. The decision by Nigel Farage's Brexit Party not to contest Conservative-held seats in the 2019 election doubtless relieved many Tory strategists.

Age as the new class?

Increasingly, political scientists have concluded that one of the best predictors of voting behaviour, over class, gender or geography, is that of age. Simply put, the older one is the more likely they are to vote Conservative, even if the tipping point in the 2019 election was 39 not 35. The vital importance of age in voting behaviour is shown in Figure 7.2.

SYNOPTIC LINK

Identity politics links with the topic of pressure groups and social movements, which is covered in Chapter 9.

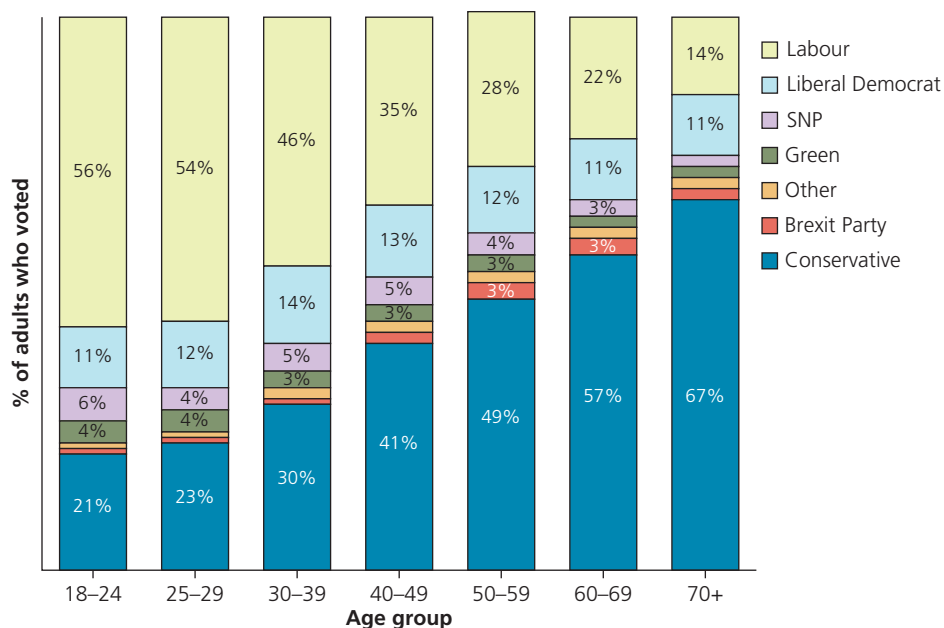


Figure 7.2 Age distribution of voting behaviour in the 2019 general election (% of 41,995 adults who voted)

Source: data from YouGov

KEY CONCEPT

Referendum A direct vote on a policy measure, the opposite of representative government.

An identical pattern was apparent in the 2016 EU **referendum**, as shown in Figure 7.3.

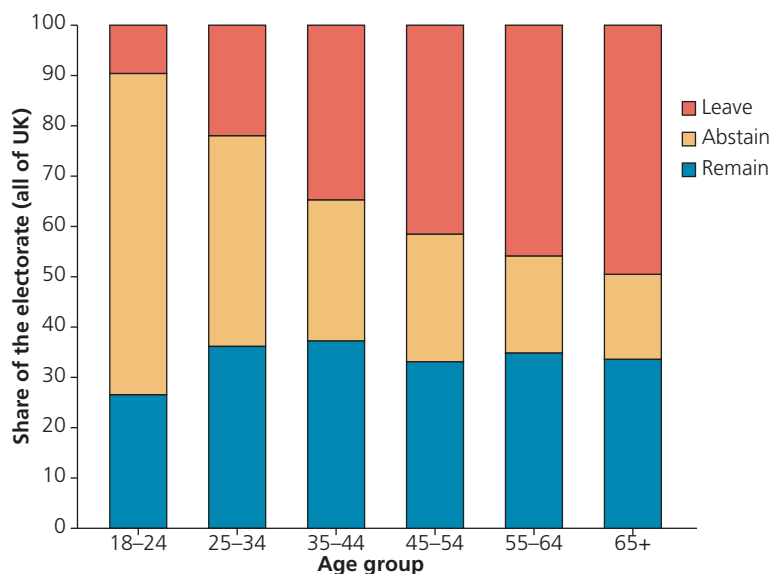


Figure 7.3 Age distribution of voting behaviour in the 2016 EU referendum

Source: adapted from http://london.worldmapper.org/files/maps/EUReferendum2016_AgeGroups.png

It is tricky to be precise about the reasons for age playing such a large part in voting behaviour. It does not relate to the age of the leadership — Labour leader Jeremy Corbyn was considerably older than Conservative leader Boris Johnson in the 2019 election. It could potentially be down to some of the following factors:

- The election was particularly focused on Brexit. Younger voters as a whole were predominantly Remain, reflecting perhaps a more globalist worldview. Issues of national sovereignty were more important to older voters.
- Older voters tend to be more socially conservative and concerned about issues such as immigration, where the Conservatives were seen as tougher.

Younger voters tend to be more focused on areas such as climate change, where Labour was viewed more positively.

- With changes to employment patterns, less job security and rising house prices, younger voters are often poorer and less likely to own their own home than many older voters. Labour has traditionally had a stronger appeal to low-income voters, and the Conservatives to homeowners and the better off.

KNOWLEDGE CHECK

- 7 Which party was traditionally most associated with the working class?
- 8 What is the difference between primacy factors and recency factors in voting behaviour?
- 9 Give three reasons why voting behaviour has become more complex to understand in recent times.

Key elections

While all elections are worth studying, some are more significant than others. This is because they either reveal fundamental shifts in voting behaviour, emphasise the importance of certain key factors in election outcomes, such as leadership or policies, or highlight features of the electoral system.

1983 election

Context, background and final result

The 1983 election was held on 9 June and took place against the background of rising unemployment (over 3 million) but also a military victory over Argentina in the 1982 Falklands War. It cemented the Conservative premiership of Margaret Thatcher (the 'Iron Lady'), who was first elected in 1979 and went on to win a third term in 1987. It also represented one of Labour's worst-ever defeats, as the Conservatives substantially increased their majority from 43 in 1979 to 144. It was therefore, in terms of seats at least, a resounding Conservative landslide. In large part this was due to a divided opposition. Many Labour moderates, led by the 'Gang of Four' (Roy Jenkins, David Owen, Bill Rodgers and Shirley Williams) had quit the party in 1981 to set up the Social Democratic Party (SDP). The SDP joined the Liberal Party to form the SDP–Liberal Alliance, which posed a major challenge to Labour in particular. (The two parties would go on to merge in 1988, forming the Liberal Democrats.)

This was, therefore, an election partly won by the Conservatives but somewhat lost by Labour, whose campaign and policies were subsequently criticised by many of its own supporters. Future Labour leader and prime minister Tony Blair commented on the 1983 Labour manifesto: 'I had no doubt at all it would lose us the election. I won my seat in spite of our programme, not because of it.' Nationally, there was a swing of 3.8% from Labour to the Conservatives, although the Conservative share of the vote fell by 1.5% from 43.9% to 42.4%. The most pronounced regional swings occurred in southern England outside London, where Labour won only two seats out of a possible 110. In a large number of constituencies, the strong showing of the SDP–Liberal Alliance had the effect of handing previously Labour seats to the Conservatives. Labour came third, or worse, in 292 out of 650 constituencies — a pretty abysmal result for a party hoping to form a government. In that sense, it was a classic example of an election in which the third party played a key 'spoiler' role as

STUDY TIP

You are required to study three post-1945 UK general elections in detail. One must be 1997, one later and one earlier. It is best to learn just three case studies but to study each in depth.

opposed to gaining large numbers of seats itself. It has been argued, however, that many who voted for the Alliance would have abandoned Labour in any case and perhaps have voted Conservative. So ironically, perhaps the Alliance deprived the Conservatives of an even greater majority? The Alliance came very close to overtaking Labour and it remains the best performance by vote share for the Liberals and their successor parties since 1945.

As happens in landslide victories, a number of prominent MPs on the losing side lost their seats. Among the many Labour political scalps claimed by the Tories was that of the leading left-winger Tony Benn, who lost his Bristol seat.

While representing a massive victory for the Conservatives in terms of MPs elected, it would be misleading to view the 1983 election as a ringing endorsement of Thatcher's policies and record during her first 4 years as prime minister. It was perhaps above all testament to the iron rule of politics that divided parties do not win elections. With a divided opposition, it was a Tory victory waiting to happen.

Table 7.8 summarises the election results.

Table 7.8 Results of the 1983 UK general election

Party	Votes	Seats	Change	UK vote share	Vote share compared with 1979
Conservative	13,012,316	397	+ 58	42.4%	-1.5%
Labour	8,456,934	209	-60	27.6%	-9.3%
SDP-Liberal Alliance	7,780,949	23	+ 12	25.4%	+11.6%
Others	1,420,938	21	+ 5	4.6%	-0.2%

STUDY TIP

It is important to recognise that although 1983 was a landslide result for the Conservatives in terms of seats, their vote share fell compared with the 1979 general election.

In terms of which sections of the electorate favoured which party, the Conservatives enjoyed an 8% lead among the C2 social class (the skilled working class). They reduced their deficit among the DE social class (semi/unskilled working class) from -15% in 1979 to -8%, largely because their vote share held steady as Labour shed votes to the Alliance group. The Conservatives also enjoyed a lead among all age groups, although did better among the over 55s (lead of 20%) than among 18-34-year-olds (a lead of just 10%).

The 1983 election was also one of those elections in which the electoral system most visibly distorted the final result. The left-leaning *Guardian* newspaper commented on the result:

'This is a remarkable victory; indeed, with more than 3 million unemployed and rising, a bizarre sort of miracle. Mrs Thatcher, who 2 years ago was the most unpopular British Prime Minister of modern times, has broken the mould of recession-stricken Western politics.'

So not just a landslide election, but arguably victory plucked out of the jaws of almost certain defeat, if the midterm polls were to be believed. It was Thatcher's greatest electoral victory, and also represented for her a remarkable political resurrection.

Role of the media

In the pre-social media age, and with the requirement that TV channels should remain politically neutral and balanced, the bulk of media influence fell to the newspapers. There was a hardened 'Maggie cult' among the more right-wing sections of the press. For example, *The Sun* encouraged its readers to 'Vote for Maggie'. Perhaps equally effective was the personal criticism levelled at Labour leader Michael Foot. *The Sun* ran one headline, 'Do You Seriously Want this Old Man to Run Britain?' In addition, in 1983 Labour was supported

SYNOPTIC LINK

The wider role of the press in election campaigns is also considered in chapters 3, 8 and 9.

by newspapers accounting for only 22% of circulation, the *Daily Mirror* and *Sunday Mirror*. A hostile right-wing press and a left-wing party platform together spelt disaster for Labour's press coverage.

Where Thatcher had a strong media presence and came across well during TV interviews, even if her strident tones alienated some, Michael Foot was generally perceived as less effective. He could deliver rousing two-hour speeches to the party faithful but was less adept at the sharp, pithy soundbites increasingly expected of political figures. He was perhaps lucky that the election took place in an era before televised debates between party leaders.

The significance of party policies and manifestos

Labour

Policies and manifestos played a major part in the outcome of the 1983 general election. It was widely believed in the aftermath of the election that Labour's manifesto, 'The New Hope for Britain', was too left-wing. Labour's programme was famously referred to by Gerald Kaufmann, then Labour shadow environment minister, as the 'longest suicide note in history'. When Michael Foot and deputy leader Denis Healey issued a joint statement confirming allegations of disagreement within the party over defence policy, it obliterated any semblance of party unity. Labour was deeply split, especially over nuclear disarmament. The manifesto itself contained pledges of unilateral nuclear disarmament, withdrawal from the European Community and the abolition of the House of Lords.

Labour supporter and author John O'Farrell commented in his book *Things Can Only Get Better*: 'It was said that the Labour campaign started badly and then fell away, but this is being generous. It was the worst campaign in electoral history, and it hurt to watch it.' In summary, within the Labour Party, the 1983 campaign became a by-word for how not to fight a campaign. However, left-wing pundits disagreed on whether Labour's electoral woes were down to the policies themselves or to the presentation of those policies.



The Labour Party Conference in Blackpool, 1983. From left to right: Michael Foot, Dennis Skinner, Tony Benn

Conservatives

The Conservative manifesto, 'Forward — the Challenge of Our Times', portrayed a party that hoped to become more radical during its second term in office. It promised trade union reform, including regular ballots on unions

having a political fund and curbing the right to strike without a fair and secret ballot. The Conservatives also pledged to expand the programme of privatisation to include British Telecom, British Airways and British Steel, with shares being sold to employees and the general public. It was a set of policies designed to allow Thatcher and her party to carry on with the agenda already pursued during the first term. In many ways, for example with trade union reform and the continued denationalisation of state industries, it was as radical and as ideological as Labour's policy programme. The difference was that, 8 years into her leadership of the party, Thatcher was far more in control than Foot was of his party. It was a largely strident and confident Tory party that went into the election, called early when the polls showed a clear Conservative lead, one that only widened during the campaign.

The radical nature of some of the Conservatives' policies was matched by a modern and effective mode of campaigning. Thatcher journeyed across the nation in her 'superbus', on a meticulously planned tour designed not only to connect with the general public but also to secure the best publicity and media shots. In fact, publicity was key to the Conservative Party's 1983 campaign. Thatcher's advisers decided that all efforts should be geared toward television advertising and appearances and, despite her misgivings (she famously 'disliked the way elections were being turned into media circuses'), biographer Hugo Young suggests she was obsessed with image and was willing to place herself entirely in the hands of her media advisers and experts. The last day of campaigning was especially designed to evoke memories of the Falklands victory, when Thatcher was flown by helicopter to the British Hovercraft Corporation on the Isle of Wight. There she was photographed with arms outstretched in front of the Union flag, which adorned the front of the hanger doors.

Finally, and perhaps uniquely in recent UK elections, foreign policy and defence emerged as key issues in the campaign over the usual staple features of public services and the economy. The Conservatives played the 'patriotic card' as a result of the victory against Argentina in the Falklands War. They also promised to retain the UK's nuclear deterrent and were in full support of NATO and a tough line against the USSR.



A defining image from the 1983 election campaign: Margaret Thatcher outside the painted door of the British Hovercraft Corporation, Isle of Wight

SYNOPTIC LINK

Thatcher called for the 1983 election early because she and her advisers saw that the polls were favourable. This is a classic example of the traditional power of the prime minister to call a snap election for party advantage. Prime ministerial powers are discussed in more detail in Chapter 3.

SDP–Liberal Alliance

The SDP–Liberal Alliance offered a manifesto entitled ‘Working Together for Britain’. Among other pledges, it promised to reduce unemployment by up to a million and to reform the electoral system to one based on proportional representation. It also advocated devolution for Scotland and Wales, a policy later taken up by Blair’s 1997 Labour government.

The impact of leadership and the election campaign

In many ways, the Conservatives had undertaken thorough preparatory work for the campaign. In the 4 months prior to the election being announced, Thatcher took part in 16 television interviews. She also threw open the doors of Downing Street to the cameras for an ITV documentary *The Woman at Number Ten*. The broadcast included a tour of the most interesting rooms in the prime minister’s residence. Thatcher told of how she had all the Italian paintings removed to be replaced by portraits of great British heroes such as Robert Clive, the Duke of Wellington and Admiral Nelson. All effective publicity for promoting her patriotic credentials.

The Conservative campaign was carefully crafted for maximum visual effect. Thatcher was supreme in front of the cameras — every evening news bulletin would see her driving a truck or operating a sophisticated computer system. Thatcher’s rallies resembled presidential conventions, with warm-up music and Union flags provided for everybody to wave enthusiastically. These events were all ticketed, invitation-only affairs, so no hecklers or unwanted voices could be heard. The audience was full of cheering devotees, which in turn helped portray the prime minister as powerful and confident. Such was the (well-placed) confidence in victory that the Conservatives apparently ceased advertising spending in the final 4 days of the campaign.

By contrast, leadership was a major problem for Labour. Foot was widely portrayed as left-wing and ill-suited to leading his own party let alone the country. Many of the same accusations of an extreme left-wing agenda would be deployed against Corbyn in 2017 and 2019.

How the election affected policy-making

For both main parties, the election had a significant impact on their future policies and direction. For the Conservatives, their huge Commons majority enabled them to push through policies such as further privatisation. It also emboldened the government to take on the powerful miners’ union led by the militant left-winger Arthur Scargill, in the protracted and bitter miners’ strike of 1984–85. The eventual climb-down and defeat of the mineworkers represented a major victory for the Thatcherite crusade against excessive trade union power. It also left a deep legacy of bitterness and anger towards the Tories in many mining communities, exacerbated by pits shutting down and unemployment rising. However, the election results did nothing to dampen Thatcher’s confidence in her own leadership qualities.

For Labour, the election marked the start of a wilderness period that would endure until Blair’s own landslide in 1997. The inevitable recriminations ensued, but ultimately the scale of the defeat would trigger a gradual return to a more centrist position as the party sought to make itself electable again. The period of reconstruction and modernisation that would culminate in New Labour began in the aftermath of 1983’s lesson in defeat. Having been on the ‘bottom line’, as the title of the 1980s pop song put it, ‘the only way (for Labour) was up’. Foot’s successor as Labour leader, Neil Kinnock, summed up



Labour Party leader Neil Kinnock meets with nurses at North Middlesex Hospital, Lewisham, during the 1992 election campaign

1983 in his first speech as leader, '9th June 1983 — never, ever again will we experience that!' There is no catalyst to change in party policy and image like a catastrophic election defeat. The Tories would experience similar turmoil, tribulations and adjustments after its 1997 rout.

The significance of the electoral system

The 1983 general election was one of the clearest examples of the FPTP system penalising third parties, here the SDP– Liberal Alliance, and adding a hefty bonus to the winners. It was calculated that 23% of seats in parliament were held by MPs who would not have been elected were the system based on proportional voting. This figure was not exceeded until 2015. In 1983, the Alliance received over 25% of the vote, just two points below that of the Labour Party, but won only 23 seats, 186 fewer than Labour and only 3.5% of the total. This represented a huge mismatch between vote share and seats won. Additionally, in the context of the bitter polarisation caused by Thatcher's subsequent policies, there was increasing resentment among some over the ability of the Conservatives to command an overwhelming majority of parliamentary seats, despite winning little more than 40% of the vote. How strong a mandate did the Conservatives really have for their second term in office?

Key conclusions

The 1983 election is a fascinating example. It produced a landslide result, yet on a reduced share of the vote for the winning party, thereby highlighting the vagaries of FPTP. It ushered in a more radical and confident phase in the Thatcherite ascendancy and proved, not for the first or last time, that leadership, unity and relevant, well-packaged, patriotic policies can greatly affect electoral outcomes.

1997 election

Context, background and final result

Similar to 1983, the 1997 general election was a landslide victory waiting to happen, except that there was one important difference: it resulted in a change of governing party. Blair's Labour Party completed its political comeback (it had gained seats in both the 1987 and 1992 elections), decisively defeating John Major's Conservative government. The victory ended an 18-year period of Conservative rule and an unprecedented four general election victories in a row. Major, who had replaced Thatcher as party leader and therefore prime minister following a parliamentary coup in 1990, had won something of an unexpected victory in 1992, although his overall majority was cut to just 21, subsequently eroded by several by-election defeats. By 1997, he was leading a minority government and presiding over a party deeply divided over Europe. On top of this, he had the misfortune to be facing a reinvigorated Labour opposition. Under the successive leadership of Neil Kinnock, John Smith and, since 1994, Tony Blair, the Labour Party had ditched many of its old ways. Out went the controversial commitment to unilateral nuclear disarmament and to wholesale renationalisation, with Clause IV rewritten. Trade union reforms passed under Thatcher were largely accepted and the power of the trade unions within the Labour Party significantly reduced. In short, under Blair, Labour moved from being a party with a traditional socialist ideology towards the much vaunted 'third way'. It now embraced elements of both left-wing values, such as social justice, and more right-wing principles, such as free-market economic liberalism.

ACTIVITY

Some of the most scathing yet witty cartoons were drawn by Steve Bell and appeared in the traditionally left-wing *Guardian* newspaper. Search online to see how John Major was portrayed by Bell.

Not only was the Conservative Party divided over Europe, but its fourth term in office had been less than stellar. The economy had been in recession and unemployment had risen. There was a major economic crisis in 1992 when the UK crashed out of the European Exchange Rate Mechanism (ERM), which led to devaluation of the pound and a rise in interest rates. Although the economy was on the mend and unemployment was declining again by 1997, the Tories had diminished their reputation for financial competence. The party was also embroiled in a number of scandals involving MPs and ministers, which somewhat undermined Major's 'back to basics' campaign that envisaged a return to the traditional values of moral propriety and honesty.

Finally, the election was fought against the background of 18 years of Tory rule. There was perhaps an inevitability that the public would opt for a change and fresh faces in government. The outcome, while dramatic in its results, was not unforeseen. Labour held and maintained an unassailable lead in the polls long before the election, enjoying a consistent double-digit lead almost constantly since 1992. It was a question not of who would win the election but how large Labour's majority would be. Unlike 1983, there was no question of Major using his power to call an early election. Instead, he limped on as prime minister hoping, rather like the fictional character Micawber in Charles Dickens' novel *David Copperfield*, that 'something will turn up'. He was to be sorely disappointed.

Table 7.9 summarises the results of the 1997 general election.

Table 7.9 Results of the UK 1997 general election

Party	Votes	Seats	Change	UK vote share	Vote share compared with 1992
Labour	13,518,167	418	+145	43.2%	+8.8%
Conservative	9,600,943	165	-171	30.7%	-11.2%
Liberal Democrats	5,242,947	46	+26	16.8%	-1%
Others	1,420,938	30	+4	9.3%	+4%

The Conservatives lost over half their seats, doing particularly badly in London where their share of the vote fell by 14.1%, and their southeast heartland where it fell by 13.1%. The Liberal Democrats picked up 8 seats off the Conservatives in the southwest, while in Scotland all 11 Tory seats were lost. A large number of Tory ministers lost their seats, perhaps the most dramatic being the defeat of defence minister Michael Portillo, tipped to be the next Tory leader — he lost his Enfield Southgate seat on a massive 17.4% swing to Labour. His defeat became known as the ‘Portillo moment’, such was the effect of the loss.

Other notable aspects of the result included the following:

- A record number of 120 women were elected as MPs, 101 of whom represented Labour, with a much smaller increase of just three in the number of minority ethnic MPs.
- For the first time, Labour won the same percentage of votes as the Conservatives among the C1 social class (roughly equating to the lower-middle classes), further proof of the ongoing process of class dealignment.
- Labour defeated the Conservatives in every age group, although its lead was smaller among older voters (3% in the 64+ category) compared to younger voters (21% of those aged 18–34).
- There was evidence in several seats of tactical voting by anti-Conservative voters. For example in a handful of seats, such as Sheffield Hallam, the Labour vote actually fell as voters switched to the Liberal Democrats, who were seen as best placed to defeat the Conservatives in that constituency.

Role of the media

When analysing the role of the media in elections, there is a danger of assuming that the political preferences of proprietors and/or editors determine their newspaper’s stance. While true to a point, this overlooks the crucial fact that some papers, especially the big circulation tabloids, like to back a winner. The most significant example of this was in 1997, when *The Sun* switched allegiances. Having backed Major in 1992, and butchered then Labour leader Neil Kinnock, it did an about-turn and decided to back Blair for prime minister in 1997. In part, this was also the result of a deliberate and strategic ploy by Blair and his political aides. Blair had flown out to Australia in 1995 to meet *The Sun*’s owner, Rupert Murdoch. At a News Corporation conference, when introducing Blair, the media tycoon joked: ‘If the British press is to be believed, today is all part of a Blair–Murdoch flirtation. If that flirtation is ever consummated, Tony, I suspect we will end up making love like two porcupines – very carefully.’ In due course, the ‘date’ led to a more fertile relationship. The contrast between *The Sun*’s headlines on the eve of the 1992 and 1997 elections could not be clearer. In 1992, the *Sun* carried the headline, ‘If Kinnock wins today, will the last person to leave Britain please turn out the lights’ — a highly personal attack on Labour and its leader. By the 1997 election, as the photo opposite shows, the paper had changed its political stance and opinion about Labour’s capacity to govern.



Headline from *The Sun*’s election eve issue in 1997

STUDY TIP

Whenever analysing the power of the media, ensure it is clear that the link between the press and voting behaviour is neither clear-cut or automatic.

SYNOPTIC LINK

Some of the main ideas that underpinned New Labour, such as Giddens and the 'Third Way', are covered in the socialism topic, which is one of the core political ideas studied in Paper 3 on political ideas.

In addition, even though the traditionally pro-Tory *Daily Mail*, *Express* and *Telegraph* remained loyal, their support for Major's re-election was more muted than that of Thatcher. On occasion, they ran critical stories on the Conservatives. But, while it is never clear quite how much influence newspapers have over their readership, pro-Labour newspapers counted for 62% of the overall readership — another nail in the coffin for the Conservative campaign.

The significance of party policies and manifestos

Neither party could be found guilty of having a political death wish in their manifesto. Unlike in 1983 or indeed 2019, voters weren't presented with polarised pledges in the 1997 election. In fact, this was one election where personalities and the wider perception of the two main parties mattered more than concrete policies.

Labour

Labour was helped by its recent process of policy modernisation and change. Gone were the old attachments to public ownership, wealth redistribution and trade union power. Labour deliberately broadened its appeal beyond its blue-collar working-class base. Its election message was clear: 'Our case is simple: that Britain can and must be better.' It went on to state: 'New Labour is a party of ideas and ideals but not of outdated ideology. What counts is what works. The objectives are radical. The means will be modern.' In that sense, Labour's was a pragmatic rather than an ideological programme. Key points from the party manifesto included the following:

- **Welfare:** there was an emphasis on personal responsibility over a powerful centralised state. While commitment to the welfare state remained, New Labour stated that the rights to benefits came with responsibilities.
- **Law and order:** Labour promised to be 'tough on crime and tough on the causes of crime', alongside pledging zero tolerance towards anti-social behaviour and petty crime.
- **Reform and rights:** the party actively committed to constitutional reform and human rights. More specifically, this involved promises to reform the Lords, bring devolution to the regions and incorporate the European Convention on Human Rights into UK law.
- **Education:** the party took a distinct 'middle way' approach. It rejected both a return to the 11-plus and the monolithic comprehensive school. Instead, in classic New Labour speak, the pledge was to 'favour all-in schooling, which identifies the distinct abilities of individual pupils and organises them in classes to maximise their progress in individual subjects. In this way we modernise the comprehensive principle.'
- **Healthcare:** the party pledged to cut waiting lists and NHS bureaucracy.
- **The economy:** the party was committed to balancing the books with government spending. Income tax would not be raised and a national minimum wage would be introduced to help low-paid workers. Labour sought to ditch its image as a 'tax and spend' party.

Conservatives

In opposition to this, the Conservative offer of 'You can only be sure with the Conservatives' emphasised continuity and security. The message's overall thrust resembled a line from Hilaire Belloc's poem 'Jim': 'Keep ahold of nurse, for fear of finding something worse'. After 18 years in power and the inevitable accumulation of policy failures and accusations of sleaze, it was never going to

be easy for the Tories to portray themselves or their policies as new and fresh. The general focus of their programme was more free-market liberalism and involvement of the private sector in public services. Among their manifesto promises were:

- **Education:** Conservatives pledged to publish school exam results and encourage more academic selection at secondary level.
- **Privatisation:** this would continue, and extend to the Royal Mail.
- **Reform:** there would be no major constitutional changes, e.g. devolution.
- **Law and order:** a 'get tough' policy on law and order would include greater use of CCTV cameras.
- **The economy:** the party pledged to reduce income tax to 20% and lower business taxes. It highlighted its economic track record, such as rising levels of home and share ownership.
- **Welfare:** the party pledged a crackdown on benefit fraud.

The Conservatives were facing the dilemma faced by all parties who enjoy long periods in power: how to appear dynamic and innovative and avoid the charge of 'same old, same old'. Labour faced a similar challenge in 2010, after 13 years in continuous office.

The impact of leadership and the election campaign

This was an election victory for Labour to throw away. All the party had to do was stay united and on message, and not become complacent despite its strong lead in the polls. As one of Blair's supporters, Lord Adonis, put it, 'Tony successfully carried the precious vase of electoral success across the slippery floor.'

Just like the Conservatives in 1983, the Labour campaign was tightly managed and run. Blair's key aides Alistair Campbell and Peter Mandelson were both trusted allies, thoroughly committed to New Labour and extremely media-savvy. Blair was seen as young, charismatic and energetic, a gift to political marketers. The campaign even had its own theme tune, D:Ream's 'Things Can Only Get Better'. While Blair had a strong appeal to younger and more middle-class voters, Labour's core vote was shored up by its deputy leader, John Prescott. Blair was educated at public school and Oxford and trained as a lawyer, while Prescott hailed from a traditional working-class background, failed the 11+ and went straight from school to working as a ship's steward.

Major, by contrast, suffered from something of an image problem. He was often mocked in cartoons and on TV satirical shows as being grey and uncharismatic. His party had spent the previous 5 years deeply divided, most notably over Europe. This led Major to issue a 'put up or shut up' challenge to his MPs in 1995 when he called a party leadership election to consolidate control. As Blair said at one session of PMQs in 1995, 'I lead my party; he follows his'. The campaign revealed how hard it was for Major to shake off the image of a weak leader presiding over a split and corrupt party.

To compensate, the Tory campaign led with a negative outlook and relied on attacking Blair, often in highly personal terms. The most (in)famous of these attacks was the 'demon eyes' poster, which portrayed a black and white image of a smiling Blair but replaced his eyes with 'red devil' eyes. The slogan below it read 'New Labour New Danger'.

While certainly memorable and creative, it aimed to cast doubt on Blair's honesty by portraying him as sinister. As it happened, the poster generated over 150 complaints and the Advertising Standards Authority instructed

the Conservatives to withdraw it in a classic example of political advertising backfiring. One poll found that 64% of the general public disapproved of the poster campaign. For many voters it smacked of desperate advertising and simply confirmed the impression that the Conservatives lacked positive ideas or images of their own.

How the election affected policy-making

Having gained a landslide victory in the 1997 election, Labour was able to use its huge majority to deliver the vast bulk of its policies, including constitutional changes, the minimum wage and increased spending on public services without major tax rises. It set the scene for subsequent election victories, albeit on a smaller scale, in 2001 and 2005. A strong personal mandate can lead to prime ministers feeling invincible and invulnerable. As with Thatcher, Blair would later go on to alienate many in his own party with policies such as the introduction of university tuition fees (1997) and the invasion of Iraq (2003). The subsequent official inquiry into the Iraq War concluded Blair hadn't been 'straight with the nation' over the evidence for the presence of weapons of mass destruction, evidence that led to him joining the USA in its 'war on terror' and invading Iraq.

For the Conservatives, the 1997 election marked the start of their prolonged spell in the political wilderness and the accompanying soul-searching. As with Labour in 1983 and 2019, a policy of modernisation and image-updating took place, albeit not immediately. The party worked hard to lose its 'nasty party' image. By 2010 the party had taken more of a 'One-Nation' approach under David Cameron, with his slogan of the 'Big Society'. Opposition to policies such as devolution and the minimum wage were quietly dropped and the party adopted more liberal stances in areas such as the environment and gay rights. While Thatcher remained an iconic figure for many Tories, she was metaphorically led away from the political stage and placed in revered storage. Cameron, like Blair before him, could by 2010 offer himself as the proverbial 'change candidate', being Eurosceptic without being obsessive, Thatcherite without being a zealot, and a gifted communicator to boot. Like Blair, he too was educated at public school and Oxford.

The significance of the electoral system

Again, the electoral system considerably over-rewarded the victors while under-rewarding the principal opposition party, and severely punishing the third party, the Liberal Democrats (see Table 7.10).

Table 7.10 Vote share in the 1997 general election

Party	Vote share	Share of MPs	Discrepancy
Labour	43.2%	63.4%	+20.2%
Conservative	30.7%	25%	-5.7%
Liberal Democrats	16.8%	7%	-9.8%
Others	9.3%	4.6%	-4.7%

Key conclusions

The 1997 election provided the greatest postwar majority for a single party in the twentieth century. It was won by a combination of youthful personality, a set of relevant yet non-revolutionary policies and a party facing an opposition that appeared tired and old, resembling 'exhausted volcanoes'. Strong support for Labour in the media also helped. The outcome was not unexpected, but

SYNOPTIC LINK

The constitutional changes ushered in by Labour after 1997 are explored more fully in Chapter 1.

nonetheless it brought considerable change to the government of the UK, not least the Constitution. Ironically, however, it marked a level of continuity with some of the most sacred cows of Thatcherism, not least a strong belief in and attachment to the free market, personal responsibility and support for entrepreneurship, albeit in combination with social justice and constitutional reform.



Newly elected prime minister Tony Blair greets supporters outside No 10

SYNOPTIC LINK

The parliamentary struggles over Brexit are analysed in Chapter 2, while the Fixed-term Parliaments Act is examined in Chapter 1.

2019 election

Context, background and final result

The December 2019 general election brought to an end 9 years of coalition, small majority and minority Conservative governments, delivering a thumping 80-seat majority to Boris Johnson's Conservatives and an apparent end to the impasse over Brexit that had bedevilled Tory governments since the 2016 referendum vote. Johnson had been prime minister since July 2019 following May's resignation, but like her, had struggled to build any unity within his own party let alone parliament over a post-Brexit deal. Johnson had also struggled to call a general election as he was hamstrung initially by the Fixed-term Parliaments Act 2011, which removed the prime minister's ability to call a snap election. In the event, the Act was circumvented by the passage of the Early Parliamentary General Election Act 2019.

The election was dominated by Brexit or rather its aftermath. While the 'people had spoken' in 2016 to quit the EU, MPs had spent three largely fruitless years trying to discern what exactly they had meant by their words. Voters were presented with three clear choices in the election or, perhaps more accurately, two clear options plus one confusing offering from Labour. This was not an election called early by the prime minister to increase the party's majority when the polls looked favourable as in 1983. Nor was it like 1997, when the governing party had run out of steam and a parliamentary majority and had to yield to the inevitable electoral meltdown of its 5-year term having run its course. In 2019, Brexit and the way forward was at the core of both the campaign and where voters would ultimately place their cross. There was a strong sense of frustration and anger among many voters who wanted the political stalemate broken and a functioning government back in the driving seat.

Table 7.11 is an overview of the results of the 2019 general election.

Table 7.11 Results of the 2019 UK general election

Party	Votes	Seats	Change	UK vote share	Vote share compared with 2017
Conservative	13,966,451	365	+47	43.6%	+1.2%
Labour	10,295,912	203	-59	32.2%	-7.8%
Liberal Democrats	3,696,419	11	-1	11.5%	+4.2%
SNP	1,242,380	48	+13	3.9%	+0.8%
Green	865,707	1	—	2.7%	+1.1%
Brexit*	644,257	0	—	2%	NA*
Others	1,302,984	23	—	4.1%	-1.5%

* The Brexit Party was newly formed and so fought its first election in 2019.

As with all strong victories, large numbers of seats changed hands. Most significant was Labour's 'red wall' of working-class seats in the Midlands and northern England falling into Conservative hands. This included seats that had been Labour held for generations such as Bolsover (Dennis Skinner's old seat) and Blyth Valley. Labour even lost Blair's former constituency of Sedgefield. While in some English working-class seats the Tories made major strides, other areas, such as the northwest and most of the big cities, remained loyal to Labour. In London, the Conservatives lost two seats, including Putney. Where urban seats were strongly multi-ethnic and/or younger than average, the Conservatives made far less headway. The SNP took 7 seats off the Tories in Scotland. Not surprisingly, results in many seats directly reflected their Remain/Leave position from the 2016 referendum. The biggest swing on election night was a colossal 18% from Labour to the Conservatives in the Nottinghamshire seat of Bassetlaw, a constituency in which 68% had voted Leave. The Conservatives came close to losing a number of its strongly 'Remain' seats in southern England, such as Winchester.

Age and not class or gender again proved the most secure indicator in voting behaviour, as it had done in other recent elections.

The polling organisation YouGov calculated that for every 10 years older a voter was, their chance of voting Tory increased by around nine points, and the chance of them voting Labour decreased by eight points. As further evidence for class dealignment and the declining importance of class in determining how people vote, the Conservatives outperformed Labour across all social classes. In fact, the Conservatives did better among C2DE (working class) voters (48%) than they did among ABC1 (middle class) voters (43%). This not only reflected the declining significance of class, but again in part reflected attitudes by social class towards Brexit. While those in social group AB voted 57%-43% Remain, those in group DE backed Leave by 64%-35%. By contrast, gender played a much smaller role, with the Conservatives on 46% among men and 44% among women, and Labour on 31% among men and 35% among women.

One other noteworthy aspect was the 'defeat of the defectors' also witnessed in 1983. Back then, it was defectors to the newly formed SDP who largely lost their seats. This time round it was the 11 MPs (8 Labour and 3 Conservative), including Anna Soubry and Chuka Umunna, who had quit to form the short-lived Independent Group (Change UK) party. By the time of the election, Change UK had already suffered defections to the Liberal Democrats. However, regardless of which party label these MPs ended up fighting under, they all

SYNOPTIC LINK

The dominance of the party label has implications for theories of representation, which are covered in Chapter 2.

ACTIVITY

Find out more about the 2019 campaign and social media. The **whotargets.me** website is a good place to start. How did parties seek to engage with voters virtually? How successful were they? Present your findings to the rest of the class.

lost. The same was true for a handful of former Labour and Tory MPs, such as Frank Field and Dominic Grieve who chose to run as independents. This reinforces how small an individual MP's personal vote is, and that the party label remains central to voting behaviour.

Tactical voting, however, remained quite limited in the 2019 election. An electoral pact was agreed by the Green Party, Plaid Cymru and the Liberal Democrats not to field candidates against each other in 60 seats and risk splitting the Remain vote. So, for example, only a Green Party candidate stood in the Isle of Wight. In the event, the three parties failed to secure any additional seats as a direct result of this pact.

Role of the media

This was an election played out not just in the traditional media but also on social media. While the press largely took sides as predicted, with the *Express*, the *Mail* and *The Sun* all rooting heavily for Johnson, in social media the picture was far more complex. Advertising on social media is now routine in UK elections, with Facebook and YouTube being the main beneficiaries. For example, a banner ad featured on a Conservative advert linked to a 78-second video, which would auto-play. Approximately 3.5 million people had seen at least 30 seconds of it on the first day of its release alone. Labour, by contrast, spent more heavily on Facebook.

As Figure 7.4 shows, in social media as elsewhere, Brexit dominated political debate.

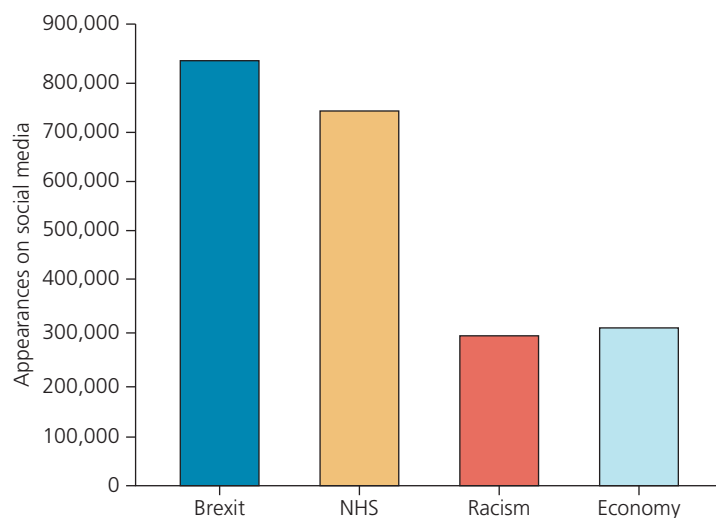


Figure 7.4 Main issues in the 2019 UK general election according to appearances on social media, 8 Nov–2 Dec 2019

Analysis of online media across the main social networks and online sources revealed significantly higher volumes of engagement with content from Jeremy Corbyn in comparison to that from Boris Johnson. Labour also outspent the Tories on social media by roughly £1.4 million to £900,000, with the Liberal Democrats spending almost as much as the Conservatives. Yet while Corbyn may have ‘won’ the social media war, Johnson emerged the ultimate election winner and by a hefty margin. What this suggests, perhaps, is another way that demographics remain central to voting behaviour. Younger voters, more pro-Labour anyhow, were also those most likely to engage with social media and be open to influence from posts and political adverts. Older voters, by contrast, remain more likely to get their news from the old media — press and television. Unlike television,

there is no real control or limit on online political advertising. Social media and its relative lack of regulation also meant there was plenty of scope for accusations of ‘fake news’. One study found that 88% of Tory ads featured questionable claims. There were also claims that Labour ads similarly misled voters.

The election in 2019 also saw another round of leaders’ debates in various formats. The Tories and Labour worked together to exclude the Liberal Democrats and the SNP from the main leaders’ debate aired on ITV on 19 November. Other debates including those featuring a wider range of parties and a Channel 4 debate focusing on climate change (with neither Johnson nor Brexit Party leader Farage participating) took place subsequently. Separate debates were held in the devolved regions featuring a wider array of parties including the nationalist parties. Johnson received a lot of criticism for turning down a one-to-one primetime interview with veteran political broadcaster Andrew Neil. Tory strategists apparently decided that a tough interview with Neil could be substantially more damaging than a few stories about Johnson refusing to take part in a television programme. Their approach appeared to have paid off. Since they were always a key way for politicians to reach a mass audience, television channels were used to calling the shots. But with other options available by 2019, the two main party leaders now appeared to have the upper hand, deciding which TV appearances to make and the line-up for televised debates.

The significance of party policies and manifestos

Unlike 1997 and even 1983, the 2019 election was about a single policy: Brexit. The electorate were faced with three clear(ish) choices.

Conservatives

Johnson’s Conservatives ran on the slogan ‘Get Brexit Done, Unleash Britain’s Potential’, which played on the electorate’s frustrations over the political gridlock of the previous 3 years. This overshadowed other pledges, including 50,000 new nurses and no rises in income tax, VAT or National Insurance. Worth noting too was a pledge to cut emissions to virtually zero by 2050, somewhat later than the date promised by other parties but certainly a nod to ‘blue environmentalism’. Also present was a promise that no one would have to sell their house to pay for adult social care. This pledge shored up the ‘grey vote’, avoiding the damaging accusations of the so-called ‘dementia tax’ that so damaged May’s 2017 campaign (see page 82). In the end, a vote for a clear closure on Brexit, respecting the view of the slim majority who backed it, won through.

Labour

Labour’s Brexit policy was more nuanced, its critics arguing that it was unnecessarily complicated and unclear. A second referendum was promised after 6 months following a renegotiated Brexit deal. Voters could choose between that deal or Remain. Its slogan, ‘The Final Say on Brexit’, was less straightforward than the offerings of its rivals, especially as many thought the ‘final say’ had already been delivered in 2016. Other Labour policies, including increases in health spending (4.3% annually) and a significant rise

in the national minimum wage to £10 an hour, were overshadowed by Brexit. Finally, ‘red meat’ socialist policies such as ending the charitable status of private schools in England and nationalisation of certain key businesses, including the Big Six energy companies and the Royal Mail, made for an easy target for the Tories to attack Labour as fiscally irresponsible and driven by class envy. Ultimately though, as one of the party’s own supporters, Labour MP Caroline Flint, who was defeated in Don Valley, lamented: ‘It was Brexit that cemented Labour’s undoing.’

Liberal Democrats

The Liberal Democrats under their new and youthful leader, Jo Swinson, made a bold bid for the core Remain vote. They promised to revoke Article 50 and for the UK to rejoin the EU under their slogan ‘Stop Brexit, build a Brighter Future’. While attractive to some, especially to many Remainers, the stance implied a blatant disregard for the popular vote in the 2016 referendum. It was at least a clear and simple policy to understand. Other Liberal Democrat election fare on offer, including 35 hours of free childcare from 9 months old and giving schools an extra £10 billion by 2024/25, went largely unnoticed by many voters. As their result showed, the Liberal Democrat manifesto did not repel voters but it failed to attract them in large droves.

The impact of leadership and the election campaign

Leadership and the campaign itself played a central role in the election result. Having done far better than many, including critics within his party, expected in 2017, this time round Corbyn failed to shine. He was often perceived as too ‘metropolitan’ and removed from the concerns of ordinary voters. Former cabinet minister Alan Johnson complained that Corbyn ‘couldn’t lead the working class out of a paper bag’. Consequently, many voters in Labour’s working-class seats said they switched their vote due to their personal dislike of Corbyn. Corbyn’s allies, however, laid the blame solely at the feet of the party’s Brexit stance, pointing to the fact that Labour’s losses were greatest in Leave-leaning seats. The party’s chair, Ian Lavery, said: ‘Ignore democracy and to be quite honest the consequences will come back and bite you up the backside.’ There were also apparent strategic mistakes, such as hundreds of activists being sent to Johnson’s Uxbridge seat — considered potentially vulnerable — which frustrated Labour MPs in marginal seats, who felt starved of support. To add insult to Labour injury, Johnson substantially increased his personal majority.

Johnson, by contrast, had a good campaign led by his campaign manager Isaac Levido. His more populist style, while avoiding the seedier extremes of Trumpist rhetoric, generally went down well, at least among those who voted for Brexit. The campaign was disciplined and candidates largely stayed ‘on message’. For the Conservatives the aim was clear: stay focused on the mantra ‘Get Brexit done’. Lessons had also been learnt from the mistakes of the 2017 election, which had been overshadowed by confused messaging, an overly complicated manifesto and a poor digital operation. Consequently, several publicity stunts involving Johnson were organised to shore up this tactic in 2019.



Prime Minister Johnson drove a JCB through a (polystyrene) Brexit wall in an on-message publicity stunt during the 2019 election campaign

The Liberal Democrats' bold election gambit, to reverse Brexit, failed to gain traction with voters. While it appealed to the staunch Remainers, many felt it ditched democracy, and the notion of a 'People's Vote' and a second referendum did not go down well on the doorstep. Indeed, during the campaign, the party switched the main thrust of its message to urging voters to deny Johnson a majority.

How the election affected policy-making

Unsurprisingly, the outcome gave the green light to Johnson to embark on negotiations for his preferred Brexit deal, 'no deal' being the nuclear option. Unlike May before him, Johnson had less need to worry about the loyalty of his own backbenchers over the issue, the one exception being the disquiet voiced by some Tories in the autumn of 2020 over the Internal Markets Bill. This measure left open the potential for the government to pass regulations that would break a few specific terms of the EU Withdrawal Agreement and thereby infringe international law. However, what was anticipated to be a time of political calm and stability was quickly thrown into disarray with the unparalleled challenges and magnitude of the COVID-19 pandemic. Policy-making instantly became determined by expedients and crisis management. No one who voted in December 2019 could have foreseen that for most of 2020 and beyond, the government would be forced to embark on an unprecedented borrowing spree, including a job retention programme, the 'Eat Out to Help Out' scheme to boost the hospitality sector and a temporary rise in Universal Credit payments. Brexit was shifted, in the short term at least, to the political drama sidelines. This shows how even governments with strong majorities and a clear agenda can be forced to improvise policies as a reaction to unforeseeable events.

The significance of the electoral system

As with the 1983 and 1997 elections, FPTP again over-rewarded the winning party and, above all, a party (the SNP) with a concentrated regional following in the 2019 election (see Table 7.12).

STUDY TIP

It is worth noting in your essay answers how all three key elections saw the winning party receive a very similar vote share but a significantly different number of MPs.

Table 7.12 Vote share in the 2019 UK general election

Party	Vote share	Share of MPs	Discrepancy
Conservative	43.6%	56.2%	+12.6%
Labour	32.2%	31.1%	-1%
Liberal Democrats	11.5%	1.7%	-9.8%
SNP*	45%	81%	+36%
Green	2.7%	0.2%	-2.5%

* The vote and seat share of the SNP applies just to Scotland. It did not contest seats elsewhere.

Put another way, the Conservatives won one seat for every 38,264 votes and Labour won one seat for every 50,837 votes. It took 336,038 votes to elect a Liberal Democrat and 866,435 to elect a Green MP. The SNP fared best under the system — it took just 25,883 votes to return one SNP MP.

In terms of proportionality of votes and seats, 2019 again highlighted the flaws of FPTP. But equally it reaffirmed one of the core arguments for its retention: the ability to deliver strong governments that are able to implement their policies. This was an argument weakened by the 2010 and 2017 results. After 3 years of parliamentary paralysis over Brexit, supporters of FPTP could point to the electoral system again functioning effectively and delivering a result that allowed the victorious government to govern. Although the Conservatives' majority was exaggerated, they were the clear winners, even if they fell well short of an overall majority of the votes cast. The election highlighted once again the fundamental issue with electoral reform: which is more highly valued, strong government or direct proportionality between votes and seats?

Key conclusions

The 2019 election, like those in 1983 and 1997 before it, produced a clear victory for one party with many seats changing hands. Personalities and policies, above all Brexit, played a key role in the campaign. But unlike the two earlier elections, this was a campaign played out on numerous fronts, including traditional-style battle buses, televised debates and the ever-growing arena of social media. FPTP again exaggerated the winner's margin of victory. Age and not class came to dominate voting behaviour. Overall, the election turned out to be a victory for policy clarity and campaign discipline over mixed messages and internal party divisions over tactics and strategy.

ACTIVITY

Choose one key election and present an 'election night special' to the rest of your class. Research the results and campaign in more depth, conveying this information in your 'broadcast'.

KNOWLEDGE CHECK

- 10** In which election did age and not class prove the best guide to voting behaviour?
- 11** Which key election saw the best result for a third party in terms of vote share?
- 12** Which key election saw more of a campaign focus on defence and foreign policy?

KEY CONCEPTS

Suffrage The right to vote. Universal suffrage effectively equates to democracy.

Representative democracy System of democracy in which people vote for elected representatives, for example in local and general elections. Elected representatives then make decisions on the people's behalf.

When have referendums been used in the UK?

Postwar Labour prime minister, Clement Attlee once said:

'I could not consent to the introduction into our national life of a device so alien to all our traditions as the referendum which has only too often been the instrument of Nazism and fascism.'

He had in mind referendums such as that in 1938 for Anschluss (unifying Germany and Austria), during which there was a huge propaganda campaign and whipped-up patriotism that resulted in a vote of over 99% in favour of Austria uniting with Hitler's Third Reich. While it would be unfair to extend this slur to most referendums in twenty-first-century democracies, Attlee was certainly right that referendums are not a traditional part of the UK's political landscape. **Suffrage** and voting in the UK is predominantly based on **representative democracy**, and not direct democracy or referenda.

There have only been three national referendums held in the UK, all of them on constitutional issues (see Table 7.13).

Table 7.13 UK referendums

Year	Referendum question	Result
1975	Do you think the United Kingdom should stay in the European Community (the Common Market)?	Yes 67.23% No 32.77%
2011	At present, the UK uses the 'first past the post' system to elect MPs to the House of Commons. Should the 'alternative vote' system be used instead?	Yes 32.10% No 67.90%
2016	Should the United Kingdom remain a member of the European Union or leave the European Union?	Remain 48.11% Leave 51.89%

In addition, there have been a larger number of regional referendums, all of which focused on constitutional issues (see Table 7.14).

Table 7.14 UK regional referendums

Year	Region voting	Referendum question	Result
1973	Northern Ireland	Northern Ireland border poll Should Northern Ireland remain part of the UK or join the Irish Republic?	Remain in UK 98.90% Leave UK 1.10%
1 March 1979	Scotland & Wales	Devolution	Scotland: Though a slim majority voted in favour, this did not result in devolution being enacted, as turnout failed to reach the threshold of 40% of all voters supporting devolution. Wales: For 20.26% Against 79.74%
11 September 1997	Scotland	Devolution	Yes 74.29% No 25.71%
18 September 1997	Wales	Devolution	Yes 50.30% No 49.70%

Year	Region voting	Referendum question	Result
1998	Northern Ireland & Republic of Ireland	Good Friday Agreement Do you support the agreement reached at the multiparty talks on Northern Ireland and set out in Command Paper 3883?	Northern Ireland: Yes 71.12% No 28.88% Republic of Ireland: Yes 94.39% No 5.61%
1998	London	London mayor and Greater London Authority Assembly Are you in favour of the Government's proposals for a Greater London Authority, made up of an elected mayor and a separately elected assembly?	Yes 72.01% No 27.99%
2004	Northeast	Northeast England devolution	Yes 22.07% No 77.93%
2011	Wales	Extending powers of the Welsh Assembly Do you want the Assembly now to be able to make laws on all matters in the 20 subject areas it has powers for?	Yes 63.49% No 36.51%
2014	Scotland	Scottish independence Should Scotland be an independent country?	Yes 44.70% No 55.30%

SYNOPTIC LINK

The lack of referendums in the UK contrasts with much of the USA, where ballot initiatives enable ordinary voters to propose new state laws. US direct democracy is covered in Chapter 18.

There have also been a number of local votes on introducing or stopping directly elected mayors in cities including Bristol and Doncaster.

Referendums in the UK are focused on constitutional issues involving sovereignty and devolution. They are never used, as they are in other countries such as the Irish Republic and some US states, for ethical or moral issues including abortion and same-sex marriage. When referendums do occur in the UK, they are usually held because either the government believes it will win them, or they reflect political deals. For example, the AV vote held in 2011 was a direct consequence of the Coalition Agreement, in which the Liberal Democrats demanded an opportunity for implementing electoral reform. Referendums never happen because of pressure from below via petitions or direct action.

KNOWLEDGE CHECK

- 13 What issues are put to referendums in the UK?
- 14 Which was the most recent national referendum held in the UK?
- 15 What power do UK voters lack regarding referendums?

What are the advantages and disadvantages of referendums?

There is much debate about the use of referendums in the UK (see Table 7.15). Some would argue they are vital for engaging with voters and promoting political awareness, especially among those who often feel excluded from other

types of political activity. For example, the Brexit campaign saw high levels of participation among young people. Another pro-referendum argument is that they are a 'purer' form of democracy as they hand power over important issues directly to voters.

However, critics argue that they undermine representative democracy and require people to make choices on complicated issues they may not fully understand. For example, were those who voted for Brexit in 2016 actually voting for a clean and complete break from the EU, with all the attendant opportunities and risks, or were they just supporting a looser link with Europe but with the caveat that a trade deal and high level of cooperation would subsequently occur? In essence, the referendum could not differentiate between 'Brexit Lite' and 'Brexit Max'.

Table 7.15 Advantages and disadvantages of referendums

Advantages of referendums	Disadvantages of referendums
Referendum campaigns engage voters in political debate and decision-making over specific issues. This often promotes participation among groups that are traditionally less politically active. Turnout can sometimes be higher than for general elections, e.g. 81% for the Northern Ireland Good Friday poll and 84.6% for the Scottish independence vote. Referendums offer a direct link between policy-making and the national will. Referendums can absorb divisions within parties (e.g. Conservatives over Europe), something not possible at general elections where voters can only choose between parties and national manifestos. They enable voters to 'fine tune' their policy preferences. Referendums can settle controversial arguments in a more final manner than a parliamentary vote, which could subsequently be overturned. Referendums can provide a much-needed check on governments. This is particularly applicable in the UK, where the parliamentary system usually gives vast power to the executive between elections, yet governments are only voted in by a minority of the electorate. Greater use is made of referendums in many other Western democracies.	Referendums are something of a blunt instrument, and do not allow voters to make finer decisions beyond a binary Yes/No choice. Elected representatives, by contrast, are able to debate and decide such refinements. They undermine and weaken representative democracy. Many issues are complicated and may not be easily understood by a majority of voters. In place of balanced arguments, some voters are swayed by campaign propaganda that can be simplistic and misleading. Many Remain supporters accused the Leave campaign of misleading voters by promising an additional £350 million a week to the NHS using funds that went on EU membership. The political debate initiated by referendums can often be bitter and divisive. This was especially true for the Brexit and Scottish independence referendums. Controversial issues are not always decided 'once and for all' by a single referendum. Many wanted a second vote on Brexit after a deal (or no deal) had been concluded. The SNP has demanded a second Scottish independence referendum. Turnout in some referendums can be low: 34% in the vote over creating the London mayor and Greater London Authority, and 42% for the AV referendum.

STUDY TIP

It is worth noting that the Brexit vote highlighted for some the 'tyranny of the majority' argument. Was there a clear mandate for such a dramatic change when only 51.9% of voters supported it, and the results would be disproportionately felt over time by younger voters who were least likely to vote Leave?

KNOWLEDGE CHECK

- 16** What evidence is there that referendums can boost political participation?
- 17** Why are referendums sometimes called 'blunt instruments'?
- 18** In what way do referendums represent a 'purer' form of democracy?

SUMMARY

- There are a range of electoral systems used in the UK including single transferable vote (STV) and additional member system (AMS). The principal system used in general elections is first-past-the-post (FPTP), which is a majoritarian system.
- All electoral systems have strengths and weakness. Key factors include producing stable and accountable government and ensuring proportionality of votes to seats.
- FPTP disadvantages most smaller parties, while proportional systems usually lead to coalition governments.
- Voting behaviour is determined by a number of factors, but increasingly age, not social class, has become the most important indicator of how people in the UK vote.
- 1983 is a key election for showing distortion due to the electoral system, and the impact of a divided opposition in bringing about a landslide result.
- 1997 is a good example of a landslide result due to a party ('New Labour') rebranding and remoulding itself after successive election defeats, and the desire for a change in government after a long period of dominance by one party.
- 2019 offers a prime example of an election dominated by a single issue, Brexit, and a return to the electoral system providing strong majority government.
- Referendums are used infrequently in the UK, and always for constitutional issues such as EU membership and devolution.
- Among the main advantages of referendums are enabling voters to have a direct say over policy and widening opportunities for political participation.
- Key disadvantages of referendums include weakening representative government and being a 'blunt instrument' in policy-making.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three arguments in favour of reforming the system used for Westminster elections. (9 marks)
- 2 Explain and analyse the role of the media in any three elections you have studied. One must be 1997, one earlier and one later. (9 marks)
- 3 Explain and analyse three arguments against the greater use of referendums in UK politics. (9 marks)

Paper 1 Section B style questions

Read the extracts below and answer Question 4 that follows.

The debate over electoral systems

Boris Johnson swats away his critics with the claim that he has a mandate, pointing to his whopping 80-seat Commons majority. Yet his party won less than 44% of the 2019 vote but bagged 56% of the seats — thanks to our flawed, anti-democratic electoral system. Likewise, Labour grabbed 55% of the seats in the 2005 general election, despite winning the support of only 35% of voters.

No party has won a majority of the vote since 1931. Even the landslide election victories of Margaret Thatcher and Tony Blair were secured on a minority vote. Millions vote for smaller parties, but our electoral system denies them parliamentary representation. Campaigners from the Chartists to Black Lives Matter have shown that non-violent direct action and civil disobedience are often necessary tactics in the struggle for social justice. Few causes are of greater importance than the cause of a democratic, representative parliament.

Source: adapted from an article by political campaigner Peter Tatchell, which was published in August 2020 in the *Independent* online newspaper

As a voting system, FPTP is simple to understand and the ballot papers are easy to count, making it quicker for counters to declare the result of an election. It tends to produce a clear overall winner, which is helpful in a UK general election, as Westminster generally operates under a two-party system. FPTP produces one MP per constituency so there is a stronger link between constituent and MP. It can be more confusing for voters to choose whom to approach with problems if they have multiple representatives.

Source: adapted from an article by political journalist Lizzy Buchan, which was published in November 2018 in the *Independent* online newspaper

- 4 Analyse, evaluate and compare the arguments in the extracts for replacing the FPTP electoral system. (25 marks)

Paper 1 Section C style questions

- 5 'Westminster elections should change over to an electoral system used elsewhere in the UK.' Analyse and evaluate this statement. (25 marks)
- 6 'Personalities rather than policies determine election outcomes in the UK.' Analyse and evaluate this statement. Your answer should contain references to three different postwar elections including 1997, one previous and one later example. (25 marks)
- 7 'The criticisms made against the use of referendums in UK politics are unfounded.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Gallop, N. (2020) 'The 2019 election', *Politics Review*, Vol. 29, No. 3, pp. 2–5.

Gallop, N. (2019) 'Are referendums the best form of democracy?', *Politics Review*, Vol. 29, No. 1, pp. 12–15.

Hammal, R. (2019) 'The media and voting behaviour', *Politics Review*, Vol. 29, No. 2, pp. 21–23.

Huggett-Wilde, L. (2019) 'The 1997 general election: why was Labour's win so big?', *Politics Review*, Vol. 28, No. 4, pp. 24–25.

Qvortrup, M. (2018) 'UK referendums since 1997: how, and why, have they been used?', *Politics Review*, Vol. 27, No. 3, pp. 18–21.

Qvortrup, M. (2019) 'Voting behaviour: how do voters decide in elections?', *Politics Review*, Vol. 28, No. 3, pp. 22–23.

Walker, M. (2018) 'First past the post: is it still fit for purpose?', *Politics Review*, Vol. 28, No. 1, pp. 11–15.

Books

Crewe, I. (1986) *Political Communications: the General Election Campaign of 1983*, Cambridge University Press.

Also useful are the biographies and memoirs/diaries of key figures involved in general elections, including:

Campbell, A. (2008) *The Blair Years: Extracts from the Alistair Campbell Diaries*, Arrow.

Major, J. (2010) *John Major: the Autobiography*, HarperCollins.

Website

Commons Library — breakdown of the 2019 result from the House of Commons Library Briefing Paper, free downloadable resource: <https://commonslibrary.parliament.uk/research-briefings/cbp-8749/>

8

Political parties

KEY QUESTIONS ANSWERED

- What are the origins and core values of the Conservative, Labour and Liberal Democrat parties, and how have these changed over time?
- How are parties structured and organised?
- How should political parties be funded?
- What relationship do parties have with the media, and how are they influenced by it?
- What factors affect parties and their electoral outcomes?
- What role do minor parties play in political debate and setting the political agenda?
- To what extent does the UK today possess a multiparty system?

BACKGROUND INFORMATION

In the game of politics, parties represent the competition's teams and principal players. There is a Premier League (the largest parties) but also minor divisions. There are the managers (party leaders) whose longevity often corresponds with their ability to 'win matches' and 'fill the trophy cupboard' — win elections and hold power. Finally, there are the spectators, or voters, encouraged to cheer on 'their' team and to boo the opposition, except many are fairweather fans whose support needs to be fought for. In short, political parties are what makes modern democratic politics possible, accessible and competitive.

As the UK has a parliamentary system of government, parties and their leadership are arguably more important than in the USA. The strong tradition of party government means that whoever leads the majority party in the Commons, or the party able to form a majority government, is automatically prime minister. One must go back to 1918 and David Lloyd George to find an exception to this convention. Hence, when Theresa May stepped down as prime minister in June 2019, Boris Johnson succeeded her by virtue of winning the Tory leadership election, not a general election.

The main UK political parties: origins, development and policies

Parties fulfil several **functions** in politics, but above all they seek to win office and hold power. They achieve this by holding a set of beliefs that translate into specific policies. Although the main parties' core values and **ideologies** have changed remarkably little over time, policies have to be continually updated and reinterpreted. For example, the Conservative Party has consistently paraded its credentials as the 'patriotic party'. A century or more ago, this translated into strong support for the British Empire. By the twenty-first century, it mutated into Euroscepticism and a wariness of ceding too much sovereignty to the EU. Likewise, the Labour Party was traditionally the party of the working classes and preached the gospel of wealth redistribution and public ownership. By the twenty-first century, this message morphed into a general commitment to social justice.

SYNOPTIC LINK

You will learn more about many of the political ideas that influence all three main UK political parties when you study the core topic 'Political Ideas'.

KEY CONCEPTS

Party functions A political party's key roles, primarily contesting elections and seeking to hold power.

Ideology In this case, the core beliefs and ideas of political parties. UK parties were traditionally seen as much more ideological than their American equivalents.

Parties can neither stand still and fossilise, nor become mere opportunistic vote-gathering machines. What do the three main English parties stand for today, and what are their historical roots?

The development and policies of the Conservative Party

The modern Conservative Party dates from 1834 and has proved the most successful of the British political parties. It has held the office of prime minister for approximately two-thirds of the period since 1900, albeit sometimes in coalition with other parties. This is despite the fact that the party drew its core support from the landed aristocracy, and its principles encompassed defence of the privileges of the Church of England and opposition to political reform. The development of the party and its ideas can roughly be broken down into four main strands, each of which has left an imprint on the party of the 2020s.

One-nation conservatism

Most commonly associated with Victorian prime minister Benjamin Disraeli, one-nation conservatism focused on the duty of those with power and privilege to use this wisely, and to unite the nation by way of moderate social reforms and patriotism. It represented a form of pragmatic if self-interested paternalism, summed up well by Disraeli himself, 'The palace is not safe when the cottage is not happy.' There were echoes of this sentiment in David Cameron's espousal of the 'Big Society'. It is even more pronounced in many of Boris Johnson's victory speeches, as in December 2019 when he mentioned 'members of our new one-nation government, a people's government'. This stance embraced the state protecting the vulnerable through public services, without penalising the rich with high income tax rates or seeking to dismantle free-market capitalism and significantly redistribute wealth. In short, privilege and wealth inequality are fine and natural, but with them comes duty and responsibility.

KEY CONCEPT

Butskellite Term used to describe the postwar consensus between Labour and the Conservatives that endured until the 1970s. Named after Rab Butler, a leading Conservative politician in the 1950s, and Hugh Gaitskell, Labour leader from 1955 to 1963.

Butskellite pragmatism and consensus

In the wake of the 1945 Labour landslide and the establishment of the Welfare State, including the NHS, the Conservative Party shifted further to the centre and accepted the bulk of Labour's social reforms. Throughout the 1950s and into the 1960s, there were large areas of consensus in many key policy areas between the two parties. This '**Butskellite**' conservatism was also pro-European and the Conservatives were keen to join what was then the European Economic Community (EEC), or Common Market (what became the EU). Surprising as it may seem today, it was a Conservative prime minister, Edward Heath, who led the UK into the EEC in 1973, while

Eurosceptics were more generally found on the Labour benches, although the previous Labour prime minister, Harold Wilson, had tried to negotiate the UK's entry in 1967.

Traditional values

This vaguer strand of conservatism is not associated with a single politician or leader, but it does perhaps reflect the party's ongoing insistence on supporting the traditional nuclear family and the institution of marriage, while maintaining a firm line on immigration policy. Echoes of this ideal can be seen in slogans such as John Major's 'Back to Basics', a campaign launched in 1993 when he delivered a speech stating it was:

'Time to get back to basics, to self-discipline and respect for the law, to consideration for others, to accepting a responsibility for yourself and your family and not shuffling it off on other people and the state.'

ACTIVITY

Research the background and content of Enoch Powell's 'Rivers of Blood' speech. Why was his speech controversial both at the time and subsequently? What were the main themes of the speech and how did his views influence future aspects of Conservative policy? *The Atlantic* website contains a thought-provoking article on the speech and is a good place to start.

Other policy measures reflecting traditional values include the passing of Section 28 in 1988, which banned the promotion of homosexuality in schools, and Theresa May's promise as home secretary to create a 'hostile environment' for illegal immigrants. It can also be seen in the opposition of some Conservative MPs to Sunday trading and its extension — a Tory backbench revolt in 2016 derailed attempts to relax the Sunday trading hours. In its more controversial form, critics have implicated this type of conservatism as embracing elements of racism, for example in Enoch Powell's 1968 'Rivers of Blood' speech.

Thatcherism

Many of the Conservative Party's most traditional principles are based around pragmatism and 'good sense', alongside a suspicion of revolutionary and radical ideas. Thatcherism, however, was different, and as an ideology, it came to dominate much of the party's thinking and policies throughout the 1980s and into the 1990s. Associated most closely with Margaret Thatcher (Conservative Party leader from 1975 to 1990), it was far more ideological than previous forms of conservatism and represented conviction over compromise. Thatcher saw herself on a crusade to promote individual freedom, especially economic, to slay the 'dragons' of overly powerful trade unions and to emphasise self-help and personal responsibility. The aim was to 'roll back the frontiers of the state', denationalise most government-owned industries and encourage council tenants to buy their own homes. This was to be accompanied by lower taxes, especially on income.

The prolonged and bitter 1984–85 miners' strike saw Thatcher's government break the power of one of the country's most formidable unions, the National Union of Mineworkers (NUM), a feat that had eluded previous prime ministers including Thatcher's predecessor Edward Heath. She also embraced a more confident, assertive foreign policy, overseeing the Falklands victory in 1982 and working closely with that other famous Cold War warrior, US president Ronald Reagan.



The miners' strike in 1984–85 pitted industrial trade unions, miners and their families against Thatcher's government

In addition, she won a hard-fought financial rebate from the EU, while also sowing the seeds of more recent Tory Euroscepticism. Her famous 1988 Bruges speech stated the following:

'We have not successfully rolled back the frontiers of the state in Britain, only to see them re-imposed at a European level with a European super-state exercising a new dominance from Brussels.'

However, Thatcher was a strong advocate of the European single market. To this day, the Iron Lady's legacy both haunts and inspires many contemporary Conservative politicians and supporters.

The policies and principles of the Conservative Party today



The Conservatives pledged 20,000 additional police officers as part of their 2019 election manifesto

Today's Conservative Party, led in turn by Cameron, May and Johnson, contains elements of all four strands of conservatism. This can be seen through several highlights in the 2019 election manifesto, 'Get Brexit Done — Unleash Britain's Potential' (see Table 8.1).

Table 8.1 How the Conservatives' 2019 election manifesto reflected the four strands of conservatism

Policy pledge	Strand of conservatism
Extra funding for the NHS, with 50,000 more nurses and 50 million more GP surgery appointments a year.	Butskellite consensus — acceptance and expansion of a key plank of the Welfare State
20,000 additional police officers and tougher sentencing for criminals.	Traditional values
An Australian-style points-based system to control immigration.	Traditional values
A promise not to raise the rate of income tax, VAT or National Insurance.	Thatcherism
Get Brexit done, and remove the influence and power of institutions such as the European Court of Justice.	One-nation conservatism/Thatcherism — a strong emphasis on the sovereignty of the nation-state
Maintain the 'triple lock' on pensions.	One-nation conservatism
Make Britain a world leader in tackling plastics pollution, and creating an independent Office for Environmental Protection.	Arguably, tackling climate change and environmental issues is a mixture of Butskellite consensus and one-nation conservatism
Keep the minimum voting age at 18.	Traditional values
Everyone who can work, should work, continue the rollout of Universal Credit, and crack down on benefit fraud.	Thatcherism — a belief in self-help, reducing the 'welfare dependency culture'

Divisions within the Conservative Party

Until the 2019 election, Europe, or more precisely the European Union, was the main fracture line in the party. Successive Tory leaders were plagued by the division between Leavers and Remainers, Eurosceptics and Europhiles. By delivering a referendum on continued membership of the EU in 2016, Cameron hoped to finally settle the matter. However, the narrow Leave victory simply confirmed divisions went deeper, as opposing factions of the party squabbled over the terms of any negotiated deal. Theresa May tried to placate both wings, but her deals were rejected on several occasions in the Commons and she suffered a record number of ministerial resignations. The emphatic victory of Johnson in December 2019 heralded if not the end, at least the beginning of the end to this ongoing fissure.

Conservatives have been divided over social issues, too. A majority of his own MPs rejected Cameron's bill to legalise same-sex marriage in 2013, a measure only passed due to the support of opposition parties.

The development and policies of the Labour Party

The Labour Party can trace its origins back to the Farringdon Street conference of 1900. From the beginning the party was an alliance between members of the trade union movement and various socialist groups. Its initial aim was the

independent representation in parliament of the working man (women didn't get the vote until 1918).

The party only formally assumed a socialist position in 1918, with the adoption of Clause IV into its constitution. Clause IV represented the party aspiration to abolish capitalism, alongside nationalisation and the inevitable redistribution of wealth that would result from such a policy. Although this clearly mirrors the language of communism and revolution, the Labour Party has always been a parliamentary and constitutional political movement. It has never advocated violent revolution, but rather change from within and through existing political structures. Like the Conservatives, the modern-day Labour Party is the sum of several Labour principles and values, with the inevitable internal tensions and factionalism.

Economic socialism

A commitment to various core strands of socialism can be observed in some of the actions and promises made by Labour over the decades. The clearest examples are seen in the postwar Attlee government, the first majority Labour government. Perhaps most famous for setting up the Welfare State, it also took into state ownership many core industries including coal mining, iron and steel and even the former travel agent Thomas Cook. Subsequent Labour governments would nationalise several other industries including major parts of the shipbuilding and aerospace industries in 1977. The advent of the Thatcher years saw the sale of nearly all these industries, although the Blair/Brown Labour governments chose not to renationalise them. However, under Jeremy Corbyn, Labour's 2017 and 2019 manifestos did pledge some partial renationalisation. The commitment to nationalisation reflects Labour's historic pledge to redistribute wealth for the many not the few, and to put people before private profit. The election of Corbyn as leader therefore marked a clear shift towards this more left-wing position, although with Sir Keir Starmer's election in 2020 there has been a shift back to the centre.

Trade unionism

Labour's historic ties with the trade union movement go back to its foundation, and many unions have looked to Labour to protect and advance the rights of workers, for example the right to strike and trade union recognition in the workplace. Trade unions have also traditionally supplied the bulk of Labour's funding, sponsored some of its MPs and had seats on the ruling national executive. However, the influence of the unions waned in the 1980s and 1990s, partly through deindustrialisation and a shift in the economy away from manufacturing to the far less unionised service sector. In addition, their power was considerably weakened by Conservative reforms in the 1980s, which were designed to make unions more democratic and for it to be harder to take industrial action. The Blair/Brown governments of 1997–2010 did not reverse these reforms. Again, under Corbyn, trade unions enjoyed increased influence and access to the leadership. Unite's general secretary, Len McCluskey, was particularly close to Corbyn, although union influence has been reduced under Starmer's leadership.

STUDY TIP

When discussing the role of trade unions and the Labour Party be careful to make clear that many major trade unions, such as the National Education Union (NEU), the UK's largest teachers' union, are not affiliated to Labour and play no part in its funding or policy-making. Just 12 unions were affiliated with Labour in 2020.

Globalist internationalism

A strong strand of Labour's policies has been a commitment to peace and disarmament, alongside resisting fascism and racism worldwide. Labour's first prime minister, Ramsey MacDonald, remained a pacifist

during the First World War. There has also been a strong body within the grassroots Labour movement opposed to nuclear weapons and advocating for unilateral nuclear disarmament. Indeed, Labour has at certain times briefly embraced this policy officially. Many MPs and activists have also long fought against right-wing dictatorships whether fighting alongside the Republicans in the Spanish Civil War (1936–39), or campaigning against apartheid in South Africa. This internationalism is in part an outworking of socialism's emphasis on the need for workers to show solidarity across national boundaries. Socialists view nationalism as a pretext for preserving the capitalist status quo and distracting the masses from revolutionary consciousness. Many in the modern-day Labour movement, however, would revise this attitude into support for European integration, with a strong emphasis on protecting workers' rights across the EU. During the Blair years, this strand of Labour was arguably weakened by Blair's close relationship with the conservative Republican president George W. Bush and his support for the 'war on terror' with the accompanying military campaigns in Iraq and Afghanistan. This produced deep divisions in the party and large-scale backbench rebellions. Ironically, for a Labour prime minister, Blair was denounced as a warmonger by many on the left. The disenchantment with Blair's 'Third Way socialism' was reflected in the swing to the left with the election of Corbyn as leader in 2015, and the adoption of more left-wing politics. While this served Labour well in the 2017 election where it gained votes and seats, the party's defeat in 2019 led to Corbyn's resignation and the election in 2020 of Starmer, a more mainstream Labour figure.

New Labour/Third Way socialism

If Thatcherism was the revolutionary creed that both helped then hindered the Conservative Party electorally, Blair's New Labour project (1997–2010) did the same for Labour. Blair's intention was to modernise and update Labour and move it to the centre ground of electability following its lurch to the left in the early 1980s under Michael Foot. The emphasis was on triangulation: repositioning Labour on the centre ground, accepting many of the Thatcherite economic policies but retaining Labour's social values such as justice and fairness for all. There was less concern about who owned industry and far more emphasis on how profits could be put to good use and achieve the goal of social justice. More money was pumped into the NHS and education — indeed, Blair's mantra was 'Education, education, education'. Again, in something of a reversal of traditional Labour education policy, Blair's governments oversaw the demise of what his key adviser, Alastair Campbell, called the 'bog-standard comprehensive'. Instead, the party focused on specialist schools and colleges often outside the direct control of local authorities. New Labour was also focused on eliminating child poverty. For some in the Labour Party, all of this amounted to pragmatic common sense and electoral success — indeed, Blair won three consecutive general elections on the back of his New Labour policies, unprecedented for a Labour leader. To others, the Third Way was a sell-out and betrayal — one of Blair's chief critics and most frequent backbench rebels was Jeremy Corbyn.

CASE STUDY

The Labour Party and Clause IV

Clause IV and its subsequent revision by Blair in 1995 says much about the original principles of the party and the rebranding that took place in the 1990s as part of the New Labour project. The original clause, set out below, reflected classic socialist goals and used much of the language of Karl Marx himself, involving a commitment to large-scale nationalisation. These aspirations were partly, but far from fully, achieved by postwar Labour governments:

‘To secure for the workers by hand or by brain the full fruits of their industry and the most equitable distribution thereof that may be possible upon the basis of the common ownership of the means of production, distribution and exchange, and the best obtainable system of popular administration and control of each industry or service.’

However, the wholesale privatisation programme of the Thatcher and Major years left Labour with

a dilemma: should it commit to renationalise (at huge expense) or should it pragmatically rephrase its statement of intent? In 1995, a vote was held at the Methodist Central Hall, Westminster (where the original clause had been adopted in 1918) to determine whether Clause IV should be amended or not. In the event, the party voted to amend. The newly modified Clause IV read:

‘A dynamic economy, serving the public interest, in which the enterprise of the market and the rigour of competition are joined with the forces of partnership and co-operation to produce the wealth the nation needs.’

It had been a significant gamble for Labour leader Blair, but by winning the vote he was given the green light to go ahead with his plans for modernising the party. After 18 years in the political wilderness, Labour went on to win a landslide victory in 1997. Blair’s pragmatism and modernisation programme had paid off.

The policies and principles of the Labour Party today

As with the Conservatives, Labour’s 2019 manifesto, ‘It’s Time For Real Change’, contained policy promises from all of Labour’s previous main strands (see Table 8.2). Overall, however, it contained far more authentic socialism than Blairism.

Table 8.2 How Labour’s 2019 election manifesto reflected the strands of Labour

Policy pledge	The strand of Labour most reflected
To hold a second referendum on Brexit following a renegotiation of a new Brexit deal within 3 months. The choice would be the renegotiated deal or Remain and be held within 6 months.	Arguably slightly Blairite, with a clear desire to remain closely aligned with the EU or indeed remain in the EU.
Raise the minimum wage from £8.21 to £10 an hour.	Again, somewhat Blairite with its emphasis on making capitalism fairer and promoting social justice.
Increase the health budget by 4.3% and cut private provision in the NHS.	Economic socialism — while all Labour supporters strongly back the NHS, many on the Blairite wing were ready to accept some private sector involvement in the delivery of actual services where this made economic sense.
Bring forward the net-zero target on carbon emissions, putting the UK on track for a net-zero carbon energy system within the 2030s.	Globalist internationalism — the emphasis on caring for the planet is arguably a modern version of international cooperation and all nations working together for a better future.
Renationalise the so-called big six energy firms, National Grid, the water industry, Royal Mail, railways and the broadband arm of BT.	Economic socialism — and one of the most radical pledges in the 2019 manifesto. Also, strongly supported by much of the trade union movement.
Abolish private schools’ charitable status, alongside plans to scrap tuition fees and bring back maintenance grants for the poorest students.	Economic socialism — Labour’s left wing has long dreamed of the abolition of private schools, seeing them as elitist and perpetuating social and economic inequality. The tuition fees policy is a marked departure from the Blair years, since it was under his watch that university fees were first initiated.

Policy pledge	The strand of Labour most reflected
Remove unfair and unnecessary restrictions on trade unions, allowing people to come together and speak up on issues that affect them at work. Strengthen and enforce trade unions' right of entry to workplaces to organise, meet and represent their members and to recruit. Strengthen protection of trade union representatives against unfair dismissal and union members from intimidation and blacklisting. Repeal anti-trade union legislation including the Trade Union Act 2016.	Trade unionism — these quite extensive pledges again marked a shift from the Blair years, when Tory anti-union laws were largely untouched.
On immigration and refugees, a promise that the system would be built on human rights and meet the skills and labour shortages that existed in the economy and public services. Asylum seekers would have the right to work, access to public services and be treated humanely by government at all levels.	Globalist internationalism — again this reflects Labour's traditional emphasis on human rights and welcoming the positive aspects of immigration.

SYNOPTIC LINK

The election result of 2019 showed a particular collapse in the Labour vote in some of its traditional Midlands and northeastern strongholds, which had firmly backed Brexit in the referendum. Many Labour votes also viewed Corbyn negatively. You can read more about the factors that affected voting behaviour in the 2019 election in Chapter 7.



Jeremy Corbyn (left) and Sir Keir Starmer (right)

Along with the 2017 manifesto, this 2019 manifesto represented a clear and consistently left-wing programme. Unlike in 2017, however, the electorate decisively rejected the policies and Labour's vote share fell from 40% to 32%. Opinion is divided over how far this was a result of the overall programme being seen as too extreme and reminiscent of the 'longest suicide note in history' jibe made against Labour's 1983 manifesto, which had also been seen as too left-wing. Others argued the fault primarily lay with Labour's stance on Brexit, which failed to resonate with most voters.

The development and policies of the Liberal Democrats

The Liberal Democrats have a slightly more chequered history than either the Conservatives or Labour. Until the 1920s, their predecessor, the Liberal Party, was the Conservative Party's main rival. The nineteenth-century Liberal Party, epitomised by four-time prime minister William Gladstone,

stood for free trade, religious toleration, self-help and a more ethical foreign policy. It was less of an overt fan of the Empire from the 1860s onwards and favoured home rule for Ireland. Its traditional supporters included Christian nonconformists, many in the skilled working class, and industrialists who had made their fortunes from scratch. However, the party suffered a serious split over Irish Home Rule in 1885/6 and further divisions during wartime coalition government. More seriously perhaps, the emergence and rise of the Labour Party attracted many of its working-class voters, while the Conservatives drew away many of its middle-class supporters by playing on their fears of socialism and revolution. As a result of this political pincer movement, by the 1930s the Liberal Party was permanently relegated to third-party status in UK politics. Despite some sporadic signals that the Liberal Democrats might usurp one of the two dominant parties, and sharing power in the 2010–15 coalition government when leader Nick Clegg served as deputy prime minister, it still retains third-party status today.

The party adopted its present name in 1988, after a merger of the Liberal Party and the Social Democratic Party (SDP), which was founded in 1981 by a number of centrist Labour politicians (and a sole Conservative MP) who were concerned by how far to the left their party had drifted. The SDP was particularly wary of Labour's commitment to unilateral nuclear disarmament and withdrawal from the EEC. Having agreed an electoral pact with the Liberals for the 1983 and 1987 elections, the two parties finally merged in 1988.

Today, the Liberal Democrats are fundamentally a progressive centrist party with a strong commitment to Europe and the EU, a concern for constitutional reform and especially reform of the voting system, and an emphasis on human rights and freedoms. Members have also prided themselves on pursuing green environmental policies. While they have a strong and consistent body of support, they have also traditionally been a receptacle for 'protest votes', from voters disillusioned with both main parties.

Key Liberal Democrat policies and principles

The core values of the party were reflected in many of its 2019 manifesto promises (see Table 8.3).

Table 8.3 How the Liberal Democrats' 2019 election manifesto reflected their core values

2019 manifesto pledges	Liberal Democrat values and principles
To stop the Brexit process completely, and not pursue a renegotiated Brexit deal or a second referendum. Their ploy was to attract angry Remainers from across the political fold, put off by the Conservatives' pro-Brexit stance, and Labour's more equivocal position of a renegotiation followed by a second referendum.	Europe — the Liberal Democrats are unashamedly the most pro-EU English party. Their leaders energetically campaigned for Remain in the 2016 referendum and subsequently were strongly opposed to a 'no-deal' Brexit. They believed that the UK was always better off in the EU.
To defend the Human Rights Act 1998, resist any attempt to withdraw from the European Convention on Human Rights and oppose any laws that unnecessarily erode civil liberties. To halt the use of facial recognition surveillance by the police and to end the bulk collection of communications data and internet connection records.	Civil liberties — the Liberal Democrats have long been wedded to the protection of civil liberties and is suspicious of an overarching security state. It was strongly opposed, for example, to compulsory ID cards, an idea first proposed by Labour in the wake of the 9/11 attacks. As part of the 2010 Coalition Agreement, the plan was scrapped.

2019 manifesto pledges	Liberal Democrat values and principles
Put an end to wasted votes by introducing proportional representation through the single transferable vote (STV) for electing MPs, and local councillors in England. Give 16- and 17-year-olds the right to vote in elections and referendums. Scrap the plans to require voters to bring identification with them to vote. Reform the House of Lords with a proper democratic mandate.	Political reform — the Liberal Democrats have long championed reform of the political system to make it, in their view, fairer and more representative. They have particularly prioritised reform of the electoral system and abolishing FPTP, a system that certainly works against them in terms of Commons seats. When in coalition, they succeeded in securing a national referendum on replacing FPTP with the alternative vote. The proposal was rejected by voters.
Champion a federal future for the UK by introducing/extending devolution for each of the nations of a strong, federal and united UK.	Federalism — Liberal Democrats have long supported a more federal system of government and opposed excessive centralisation of power in Westminster.
Set a new legally binding target to reduce net greenhouse gas emissions to zero by 2045 at the latest, and implement a comprehensive climate action plan, cutting emissions across all sectors. Establish a Department for Climate Change and Natural Resources, and appoint a cabinet-level chief secretary for sustainability in the Treasury.	Environment — a policy long associated with the party, arguably long before it became more mainstream. The Liberal Democrats enthusiastically back sustainability and renewable energy.
Taxing big business more heavily including a promise to restore corporation tax to 20% — thereby reversing the previous cut to 17%. Taking tough action against corporate tax evasion and avoidance especially by international tech giants and large monopolies.	Taxation — arguably the party has adopted more of a left-wing position and embraced the need for higher taxes on the wealthiest to pay for better public services and a greener economy.
Reinstate maintenance grants for the poorest students, ensuring that living costs are not a barrier to disadvantaged young people studying at university. Regarding tuition fees, the promise was more nuanced. There was a pledge to establish a review of higher education finance to consider any necessary reforms in the light of the latest evidence of the impact of the existing financing system on access, participation and quality.	Education — a key plank of recent Liberal Democrat policy has been emphasis on far more investment in all sectors of education, and also the abolition of student tuition fees. The party has often done well in student cities such as Oxford and Edinburgh, and constituencies with a high proportion of graduates including Richmond Park and Sheffield Hallam.

SYNOPTIC LINK

The net loss of one seat in 2019 for the Liberal Democrats, despite a significant rise in their share of vote from 7.4% to 11.5%, is a good example of how FPTP can produce distorted election results. You can read more about the debate over electoral systems in Chapter 7.

The current state of the Liberal Democrats

Although the coalition government was stable and the imprint of Liberal Democrat influence could be seen in some of its policies, the party was heavily punished at the polls in the 2015 election. In 2010, it won a very respectable 57 seats whereas in 2015 it crashed to just eight, only recovering very slightly to 12 in 2017 and dropping down slightly again to 11 in 2019 when then party leader, Jo Swinson, narrowly lost her East Dunbartonshire seat. This was despite the defections to the party of several MPs following the creation but subsequent swift demise of the Change UK Party, when several of Change UK's leading MPs switched to the Liberal Democrats. The party's overall vote share did, however, increase.

In part, recent electoral woes have come down to opposition to the Conservative coalition from 2010 to 2015, which resulted in the abandonment of several key policies, such as the abolition of student tuition fees. Some critics also blamed the campaigning shortcomings of former leader Jo Swinson, one comment being, 'It feels like she's running a presidential campaign when no one really knows her.' Unlike in the early 1980s, the Liberal Democrats proved unable to benefit from Labour's lunge to the left or from the Tories' adoption of a more emphatically pro-Brexit position by the time of the 2019 election.

KNOWLEDGE CHECK

- 1 What were the main beliefs of Thatcherism?
- 2 In what ways did Blair change and modernise the Labour Party?
- 3 Why do Liberal Democrats strongly support a proportional electoral system?

The structures and functions of the main parties

Political parties in all democracies need structure to perform key roles, including formulating policy and drawing up a manifesto, selecting candidates for general and local elections and choosing a leader. How this is undertaken in each party partly reflects their history and political outlook. The most open and internally democratic of the three main UK political parties is generally considered to be the Liberal Democrats. The party with the least scope for direct membership participation is the Conservatives, with Labour somewhere in between. It is worth noting, however, that all three main parties have recently displayed a tendency towards centralising power in the hands of the leadership, while the Conservatives have moved towards slightly more internal party democracy in recent years. For instance, its ordinary party members, not Tory MPs, now have final say over the choice of leader.

Formal structures and policy-making

Table 8.4 summarises the essentials of **party structure** and policy-making systems in the three main UK parties at a local and national level.

KEY CONCEPT

Party structure The organisation of political parties at both local and national level.

Table 8.4 Party structure of the three main UK political parties

Structures/ systems	Conservative	Labour	Liberal Democrats
Local level structure	Local Conservative Associations, sometimes with ward branches below them.	Each constituency has a Constituency Labour Party (CLP). Many also have council ward level Branch Labour Parties (BLP).	The Liberal Democrats have local branches but are also organised along federal lines with separate national parties for England, Wales and Scotland.
Local level policy-making systems	Local Conservative Associations play a key role in organising the grassroots of the party, and in planning local campaigning and selecting candidates, although with less autonomy in the latter than previously.	CLP takes the lead in local and national election campaigns.	Local branches take the main role in running constituency-level campaigns and can also submit motions to conference for debate.

Structures/ systems	Conservative	Labour	Liberal Democrats
National level structure	The national HQ is Conservative Campaign Headquarters (CCHQ) at Millbank, Westminster. Previously, Conservative Central Office was based in Smith Square, London. Day-to-day running of the party machine is undertaken by the Board of the Conservative Party, made up of representatives from each section of the party, including MPs and local associations. Only three of its 18 or so members are from the grassroots party, which is overseen by the Annual Convention.	Labour's national base is in Victoria St, London, and day-to-day running of the party is undertaken by the National Executive Committee (NEC). The NEC enforces party discipline and can, on occasion, expel members for breaking party rules. It has the final say over the selection of parliamentary candidates. The NEC is comprised of around 40 members and automatically includes representatives from the parliamentary party, affiliated trade unions, CLPs, local councillors and Young Labour. Elections to the NEC are often highly factionalised. By-elections for two CLP reps held in April 2020 were regarded as a victory for new leader, Keir Starmer, as candidates backed by the moderate groups Progress and Labour First triumphed over Corbynite candidates.	The party has national headquarters in Great George Street, London. The Federal Board (FB) is the national governing body. It comprises 35 voting members, including the party president (who chairs it), the leader and three other MPs/peers, the chairs of the three national parties, a councillor, a Young Liberals representative and 15 members directly elected by party members.
National level policy-making systems	The Conservative Policy Forum was set up in 1998 to enable more grassroots participation in policy-making, although its role is advisory as opposed to binding. In general, the Tories have left the writing of their manifesto to their leader and their trusted advisers. Major could boast of the winning 1992 manifesto 'It was all me', but much of the 2019 manifesto was co-written by Rachel Wolf. She had been an education and innovation adviser at Number 10 during Cameron's premiership.	Until the 1990s, the annual conference was the sovereign policy-making body, but its role has since diminished.	The process largely replicates the party's federal structure. Motions debated and passed at conference become official national party policy. Policies that affect the whole of the UK or just England are voted on by the Liberal Democrat Federal Conference, while Scottish, Welsh and regional conferences set policy that only affects their own area.

Candidate selection

All three main parties have a similar three-stage process. First, hopefuls must get onto the party's central list of approved candidates after undergoing a selection/vetting procedure and training. For example, all aspiring Conservative candidates must first pass a Parliamentary Assessment Board, which tests skills such as communication and motivational leadership. Second, once on their party's central list, they must then apply to get shortlisted as the prospective parliamentary candidate (PPC) by local branches. Finally, they then get adopted following a vote of the local party members. All the main parties in recent years have sought to increase the diversity of their candidate

pool, particularly in the areas of gender and ethnicity. Labour pioneered the use of all-women shortlists, while the Conservatives have occasionally used open primaries (for example in Gosport) and priority lists, often called A-lists. On occasion, the central party may impose a candidate shortlist on the local party, as the Conservatives were accused of doing in Bridgend in 2017. In 2019, Labour's NEC was accused of fast-tracking longlists of favoured candidates in several constituencies, such as Ealing North, to have candidates ready in place for a snap election. Party activists claimed these lists lacked sufficient local candidates and undermined local parties having a proper and democratic influence on the process.

Leadership elections

There is also a degree of similarity in how the main parties choose their party leader. All operate a two-stage system, whereby candidates must initially be nominated by a certain number of MPs/local parties. The final choice lies with party members and, in Labour's case, registered supporters (see Table 8.5).

Table 8.5 Process for main parties choosing their party leaders

	Conservative Party	Labour Party	Liberal Democrats
Selection by MPs	MPs vote in a series of ballots to narrow the choice of candidates down to just two names. In 2019, nine MPs secured enough support to stand, but after a succession of votes by Conservative MPs, seven were eliminated, leaving just Jeremy Hunt and Boris Johnson on the ballot for party members to make their choice.	Candidates must first secure the backing of at least 10% of Labour MPs/MEPs, and also either 5% of constituency parties or at least three affiliates (two of which must be trade unions). In 2020 in the race to succeed Jeremy Corbyn, Emily Thornberry failed to get sufficient support from the affiliates section so was unable to proceed to the first round of the vote. Keir Starmer, Rebecca Long-Bailey and Lisa Nandy all qualified to stand in the first round of the vote of party members.	Candidates must gain support from at least 10% of other Liberal Democrat MPs, and be supported by at least 200 members from more than 20 local parties.
Election by party members	Party members make the final pick on a one member, one vote (OMOV) basis. Johnson won a clear victory in 2019 with around two-thirds of the vote, after 16 regional hustings before party members and several televised debates.	Party members and registered supporters vote on an OMOV basis using the alternative vote system to make the final choice. In 2020, as Keir Starmer won over 50% of the vote in the first round, there was no need for a second round of voting.	Party members vote on an OMOV basis using the alternative vote to make the final choice. Ed Davey won the leadership race in 2020, securing 63.5% of the vote by party members in the first and only round.

Labour uses the same process to elect its deputy leader, with Angela Rayner winning that contest in April 2020. On occasion, a new leader can be elected unopposed, as happened with Theresa May in 2016 after Andrea Leadsom withdrew from the race, while Gordon Brown won the Labour leadership unopposed in 2007. Vince Cable was similarly unopposed when he stood for leadership of the Liberal Democrats in 2017. In such situations, the leader is not so much elected as crowned.

STUDY TIP

When analysing how parties choose their leaders, be aware of the historical perspective. Until 2014, when it was abolished by Ed Miliband, Labour's leader was chosen via an electoral college where MPs, party members and trade unions each had a third of the votes. Similarly, the Conservative leader was chosen by its MPs until 1998. Before 1965, the leader was not formally elected but 'emerged' following discussions and soundings among its MPs.

With both policy-making and leadership selection, there is a balance between the participation and involvement of grassroots members and the input of the party's MPs and institutional stakeholders, such as Labour's affiliated unions. If ordinary members are not involved in the selection process, there is the risk that they will become disillusioned and less willing to volunteer and campaign for the party at election time. Yet, without some peer review by those who probably best know the candidates, there is the danger that the chosen leader may lack sufficient support from their parliamentary group, a problem that often affected Corbyn during his leadership of the Labour Party. However, grassroots activists are often more extreme in their political views than ordinary voters. Excessive devolution of policy-making to the wider party membership could prove electorally damaging. Overall, therefore, parties aim to strike a balance between membership participation and central direction/filtering, with perhaps a growing bias towards centralised control.

SYNOPTIC LINK

Recent growth in some party memberships, partly through introducing new categories such as affiliated supporters, means that talk of a full-scale participation crisis in UK politics needs to be treated with some caution, even if numbers are far lower than they were back in the 1950s. You can read more about political participation in Chapter 6.

SYNOPTIC LINK

US parties differ significantly in terms of candidate and leadership selection. Candidates are chosen by the primary system, which allows for far more public participation and prevents power residing with the central party structures. There are also no direct equivalents of a single national party leader as in the UK. You can read more about US parties in Chapter 19.

Each of the main parties have sought to increase their membership figures in recent years. Contrary to the impression of consistent decline, each has had some success in improving supporter numbers. Labour's membership had grown to just over 550,000 by the time of the 2020 leadership election, making it the largest political party in Europe, with around an additional 230,000 affiliated supporters. The Conservative Party also enjoyed a membership boost, with around 160,000 eligible to vote in the 2019 leadership contest. Liberal Democrat numbers in 2020 were just over 100,000.

The funding of political parties

Party funding is one of the most controversial issues relating to political parties.

The current state of regulation

Unlike the USA, campaign finance is tightly regulated in the UK via two key pieces of legislation, the Political Parties, Elections and Referendums Act (PPERA) 2000 and the Political Parties and Elections Act (PPEA) 2009.

Political Parties, Elections and Referendums Act 2000

Under this Act, all political parties must register with the Election Commission and provide regular returns of their income and expenditure. In addition, there are strict limits placed on the amount each party can spend in the run-up to the election, of £30,000 per constituency. Finally, parties have to declare all large donations, defined in 2020 as those over £7,500.

The Act also regulates campaign expenditure for national referendums and can issue fines to parties and groups that break the rules. In 2018, for example, Leave.EU was fined £70,000 for breaches of electoral law.

KEY CONCEPT

Party funding The methods by which political parties raise money to finance their activities, e.g. campaigning, advertising, policy research. Most funding is via private donations and not the state.

SYNOPTIC LINK

Campaign finance is much less regulated, and campaigns therefore much more expensive, in the USA. You can find out more about US campaign finance in Chapter 18.

Political Parties and Elections Act 2009

This measure strengthened the provisions of PPERA by increasing the powers of the Electoral Commission and placing further requirements on parties and donors to clarify the source of donations. Major donations or loans can only come from UK residents.

While these laws regulate some of the funding that occurs, they do not tackle or resolve the thorny issue of *how* parties should be funded. Several proposals for doing this have been suggested, all of which are problematic in their own way:

- 1 **Membership subscriptions:** these are agreed to be the fairest and most transparent method of funding. Large numbers paying small amounts ensures that no single donor gets undue influence. The problem is that party memberships are not by themselves large enough to sustain the level of finance required to fund professionally run national campaigns, post ads on billboards and increasingly on social media, or organise effective policy research.
- 2 **Individual donors:** all main parties have often relied on generous individual or institutional donors. In the Blair years, Labour benefited from wealthy individuals, such as Bernie Ecclestone (chief executive of the Formula One Group) and Lord Sainsbury, although traditionally, and more recently under Jeremy Corbyn, the party has been heavily bankrolled by affiliated trade unions, including GMB and Unite (which gave over £3 million in 2019). The Conservatives have also benefited from generous donors, with the party raising more than £5.67 million in large donations in the first week of the 2019 election campaign, including £200,000 from Lubov Chernukhin, the wife of a Russian business person. Smaller parties can also receive large donations on occasion — business person Christopher Harborne donated £2 million towards the Brexit Party's 2019 campaign.

Table 8.6 shows the registered donations made to political parties during the 2019 general election campaign. The main problem with reliance on a few wealthy givers is, obviously, the potential for corruption, and undue political influence and access. The well-documented case in 1997 of Bernie Ecclestone's £1 million donation to Labour led some to suggest that this was 'repaid' by a delay in the introduction of a ban on tobacco advertising in Formula 1 motor racing. Research by the independent media platform openDemocracy found that almost 20% of an elite group of leading Tory funders, known as the Leader's Group (open to those who donate in excess of £50,000) later received honours after donating to the party. One example was hedge-fund manager Michael Farmer, who had given more than £6.4 million to the party since 2010 and received a peerage. Of course, 'cash for honours' is not a new accusation and has been levelled at each of the main parties over the years.

- 3 **State funding:** the final option for party funding is state funding based upon 'pence-per-vote' or 'pence-per-member'. Parties can receive public funds through Policy Development Grants (£2 million in total annually), which are available to parties with at least two sitting members of the House of Commons who have taken the oath of allegiance. They can also receive Short (Commons) and Cranborne (Lords) money, which is paid to opposition parties to help with their administrative work in providing effective scrutiny of the government in parliament. Parties also receive indirect help through free television airtime for party election broadcasts, and free postage for one piece of campaign literature during elections. However, some have argued that there should be greater state funding of political parties.

Table 8.6 Registered donations made to political parties by donors during the 2019 general election

Party	Value of donations by donor status				Total value	Number	% share
	Individual	Company	Trade union	Other			
Conservative	£13,265,157	£5,997,751		£108,000	£19,370,908	275	63.1%
Labour	£159,442	£201,600	£5,039,754	£10,500	£5,411,296	48	17.6%
Brexit	£4,150,000				£4,150,000	9	13.5%
Liberal Democrats	£1,004,998	£241,000			£1,245,998	38	4.1%
Green	£232,477	£10,000			£242,477	9	0.8%
Alliance	£25,000	£50,000			£75,000	3	0.2%
Plaid Cymru	£70,000				£70,000	2	0.2%
Advance Together	£32,500	£30,000			£62,500	5	0.2%
Scottish National Party	£14,929	£10,000			£24,929	2	0.1%
Women's Equality Party	£20,000				£20,000	1	0.1%
Democratic Unionist Party				£19,425	£19,425	1	0.1%
Renew		£15,000			£15,000	1	0.0%
Sinn Féin				£14,465	£14,465	1	0.0%
Total	£18,974,503	£6,555,351	£5,039,754	£152,390	£30,721,998	395	100%
% of total	62%	21%	16%	1%	100%		

Source: <https://commonslibrary.parliament.uk/insights/general-election-2019-which-party-received-the-most-donations/>

DEBATE

Should the state fund political parties?

Yes

State money would be 'clean' without the dependence on wealthy donors and interest groups who may expect something in return, whether in the form of honours or policies.

It would enable politicians to focus on representing constituents and developing policies that benefit the entire nation as opposed to cosying up to potential donors.

It could provide a greater sense of equality between the parties. The Conservatives considerably outraised all their rivals in 2019.

Other attempts to regulate party funding and eradicate allegations of corruption have largely failed. Both the independent 2007 Phillips report 'Strengthening Democracy' and the 2011 Committee on Standards in Public Life recommended greater state funding of parties.

If parties had state funding that matched their vote, it would encourage them to campaign in all seats to increase the party vote and not just in the key marginals, which would help democracy overall.

State funding would make it easier to limit overall spending on elections, much of which goes on advertising and could be reined in.

If funding was matched to small donations, it would encourage parties to seek more money from all their supporters, not just the wealthiest.

No

Voters should not fund parties with which they disagree, and there are many better areas on which to spend taxpayers' money, such as health and education.

Parties could become isolated from the 'real world' if links and donations with interest groups were cut.

There will always be inequality in party funding. Some parties are larger and more popular than others. What matters is that everyone is equally able to join and give as they wish.

Politics should be treated as an extension of the free market and the right to donate is a basic democratic right, provided it is made openly and major donors are identified.

Funding based on the existing share of the vote merely strengthens the larger parties and makes it more difficult for smaller parties to get off the ground. Smaller parties, already disadvantaged by FPTP, would be hit again.

State funding would make parties too dependent on the state and less incentivised to actively recruit members. Funding could also be manipulated by the governing party for its own benefit.



In pairs or groups, evaluate the points in the debate by discussing and deciding on whether you think there should be more state funding for political parties. If so, what form should it take?

KNOWLEDGE CHECK

- 4 What problem is often linked to political donations by wealthy individuals?
- 5 From where does the Labour Party historically derive much of its income?
- 6 What is the main requirement of the Political Parties, Elections and Referendums Act (PPERA) 2000 regarding large donations?

Table 8.7 UK national newspapers and their political stance

Conservative-leaning papers	Labour/Lib Dem-leaning papers
<i>The Sun</i>	<i>Daily Mirror</i>
<i>Daily Express</i>	<i>The Guardian</i>
<i>Daily Mail</i>	<i>Sunday People</i>
<i>Daily Telegraph</i>	<i>The Observer</i>
<i>The Times</i>	<i>Daily Mirror</i>

The relationship between political parties and the media

UK political parties enjoy an interesting relationship with the media. First, all terrestrial television is governed by strict rules on impartiality, so parties and candidates cannot buy any airtime for political adverts in the same way they can in the USA. All broadcast news reporting must also be balanced and fair. Political neutrality is a central principle of the BBC Charter, which states that one of its aims is 'To provide impartial news and information'. This of course does not prevent politicians on both sides of the political divide labelling the BBC as biased. The main partisan political campaigning, therefore, takes place in the national newspapers, nearly all of which have a strong political slant (see Table 8.7).

As the tabloid front pages on the eve of the December 2019 election made clear, Fleet Street is rarely shy in expressing political viewpoints (see Figure 8.1). The papers went into more detail in their columns.

Jeremy Corbyn is the most dangerous man ever to stand for high office in Britain — use your vote to stop him

— *The Sun*

The most crucial vote since the War ... and we cannot let it be the nightmare before Christmas

— *Daily Mail*

Vote Conservative to say 'yes' to Brexit and to reject Labour's politics of hate

— *Daily Telegraph*

Britain's fateful election offers no good choices

— *Financial Times*

Banish the Blues by voting Red this Thursday

— *Daily Mirror*

The *Guardian* view on Boris Johnson's constitutional changes: he cannot be trusted

— *The Guardian*

Figure 8.1 National newspaper quotes from the run-up to the 2019 general election

The papers often like to claim credit for poll success. For example, following John Major's unexpected victory in 1992, *The Sun* famously boasted 'It's The Sun Wot Won It'. Interestingly, the paper subsequently denied wielding

such influence. When questioned about the article while giving evidence to the 2012 Leveson Inquiry, which dealt with phone hacking by certain newspapers, *The Sun's* proprietor Rupert Murdoch replied, 'Anti-democratic is too strong a word...it was tasteless and wrong for us. We don't have that sort of power.' *The Sun* went on to back Blair for prime minister in 1997, and again Murdoch commented, 'In the 10 years he was in power, (I) never asked Mr Blair for anything, nor did I receive any favour.' Yet the objective evidence is more complex. One study argued that *The Sun's* decision to switch support in 1997 generated around 525,000 extra votes for Labour, and about 550,000 additional votes for the Conservatives in 2010, when it switched back to supporting the Tories.

Regardless of how far newspapers do influence voters, and some would say they only reinforce existing opinions, or in the case of certain tabloids often just back likely winners, their influence is decreasing. National newspaper circulation in the UK has fallen sharply in recent years. Much of the media war in politics is now conducted online via social media. Here, the parties are far more in control and able to purchase ads without needing to ingratiate themselves with newspaper tycoons. In both 2017 and 2019, each of the main parties spent heavily on Facebook ads, which were often carefully targeted, by both location and voter profile. For example, the BBC reported that Conservative NHS ads were targeted in key marginal seats including Stroud and Abingdon. Gender can also be directly targeted. The text of one Conservative ad seen over 250,000 times, but only by female users, read: 'We're recruiting 20,000 more police and giving them the powers they need to keep you safe.' This is just one way that media spending by parties has become increasingly targeted and developed in response to how voters access news and political opinion.

But does it work? The significant sums listed in Facebook's Ad Library Report from October 2018 to May 2020 would certainly suggest the parties believe so.

- Liberal Democrats' total spend on 19,975 ads — £1,312,915
- Labour's total spend on 7,647 ads — £1,219,315
- Conservatives' total spend on 20,887 ads — £999,730

How effectively that money was spent is more debatable, since the actual result bore little relation to the amounts each party set aside for online ads.

KNOWLEDGE CHECK

- 7 Which acts regulate campaign spending in the UK?
- 8 How and why do parties target social media ads at particular demographics?

The factors that affect parties and their electoral outcomes

Well-targeted media support is one factor that can explain how well parties do in elections, but there are many other factors at play as well. These include the following:

- **Relevance and attractiveness of main policies:** the Conservative offer to 'Get Brexit done' resonated with voters in a way that Labour's more convoluted Brexit policy did not.
- **Leadership:** a strong personality and good communication skills in a leader can make or break a party's election campaign. Theresa May came across as a somewhat robotic performer in 2017, with her repeated emphasis on 'Strong and stable government'. By contrast, Labour's

SYNOPTIC LINK

The factors that explain voting behaviour and how well parties do in elections are explored in more detail in Chapter 7.

KNOWLEDGE CHECK

- 9 What factors best explain why the Conservatives triumphed in 2019?
- 10 What problems confronted Labour and the Liberal Democrats in 2019?

KEY CONCEPTS

Minor parties Smaller political parties that often have few or no MPs, e.g. the Green Party and the Brexit Party.

Political agenda Issues that are the subject of decision-making and debate by those with political power. The agenda varies according to time and circumstance, as well as which party is in power.

Jeremy Corbyn, initially seen as the underdog, performed better than expected in this area and went down especially well with younger voters — few party leaders could have garnered the rapturous applause he received when he appeared on stage at Glastonbury festival in 2017 and again in 2019.

- **A committed and energised group of activists on the ground:** parties need local campaigners to hand out leaflets, canvas door to door and coordinate the campaign in the constituencies.
- **The strength and situation of the opposition:** in 2019, Johnson was a formidable and experienced campaigner. By contrast, the newly elected Liberal Democrat leader, Jo Swinson, was a less assured candidate and arguably made a huge and ultimately unsuccessful gamble in campaigning for a clear 'stop Brexit' approach without any second referendum or renegotiation. The Conservatives were also helped by the decision of the newly formed Brexit Party not to contest Tory-held seats, thereby avoiding any split in the Brexit vote in those constituencies. Also, while the party's intervention in other seats robbed the Conservatives of some additional gains, overall its vote largely fizzled out.
- **Party unity:** although the Tories had been in deep disarray under May, Johnson largely resolved this by removing the whip from 21 rebel MPs, several of whom, including key figures such as former chancellor Philip Hammond, decided not to contest their seats again. Labour meanwhile remained heavily factionalised and dogged by accusations of anti-Semitism. A number of its own MPs, including Ian Austin, resigned from the party over the scandal.
- **Electoral system:** the impact and distortions of the electoral system should not be ignored. The Liberal Democrats are particularly disadvantaged. In 2019, despite winning over 11% of the total vote, they were awarded just 1.7% of the seats. By contrast, the Conservatives received just over 43% of the vote but 56% of the seats.

The role played by minor parties in political debate and setting the political agenda

The UK, unlike the USA, has a large number of significant **minor parties** as well as the three main national parties. While never likely to win Westminster elections, they are important in a number of ways and often play a part in setting the **political agenda**.

The nationalist parties, especially the Scottish National Party (SNP), have strong concentrated regional followings. The SNP is the largest Scottish political party in terms of seats both at Westminster and in the Scottish Parliament. In 2019, the party won 48 seats and 45% of the total vote in Scotland. Without pressure from the powerful SNP, Cameron would almost certainly not have entertained a referendum for Scottish independence in 2014.

In Wales, Plaid Cymru won four out of 40 Welsh seats and secured just over 10% of the vote.

KEY CONCEPT

Party system The way in which political parties operate in a country. The UK is usually said to have a two-party system, although this is much less true in the regions, where multiparty systems prevail.

SYNOPTIC LINK

You can find out more about devolved government and politics in Scotland, Wales and Northern Ireland in Chapter 5.

ACTIVITY

Although the Green Party and the Brexit Party are often labelled as single-issue parties, in fact they have policies on a wide range of areas. Research some of these policies. A good place to start is the official website of each party.

Northern Ireland has its own **party system** based largely on the nationalist/unionist divide. The three main British parties are almost entirely absent from Ulster politics. Only the Conservatives contested any seats (four) directly in 2019 and received a total vote share of just 0.7%. Therefore, Ulster politics is entirely dominated by 'minor' parties such as the unionist Democratic Unionist Party (DUP) and the Ulster Unionist Party (UUP), the nationalist Sinn Féin and Social Democratic and Labour Party (SDLP), and the non-sectarian Alliance Party. The significance of the Ulster parties was cast into the spotlight when the DUP ended up holding the balance of power in Westminster after the 2017 general election and struck a 'supply and confidence' deal with the Conservatives.

'Single issue' parties such as the Green Party, UKIP and the Brexit Party are also far from insignificant. The latter two as Eurosceptic parties fared particularly well in European elections, winning those held in 2014 and 2019. In 2014, Farage's UKIP won just over 26% of the vote, defeating the three main parties. His newly formed Brexit Party went on to win the 2019 European Parliament elections by an even bigger margin. It finished a clear first with over 31% of the vote, while the Green Party pushed the Conservatives into a humiliating fifth place.

The wider impact of these results is also important. Many would argue that the success of Eurosceptic parties pushed the Conservative Party into a more resolute position on Brexit, so that it would avoid losing votes and potentially seats. However, the Eurosceptic parties have only ever won one Westminster seat, Clacton, when the sitting Tory MP Douglas Carswell defected to UKIP and won a by-election after resigning, and then held the seat at the 2015 election.

In short, the ongoing attraction of the Eurosceptic parties and especially the high public profile of Nigel Farage meant that the Conservatives were never able to ignore the debate over the UK's future relationship with the EU. The Green Party, too, should not be ignored. While posing less of a direct threat to the main progressive parties, it has ensured that environmental issues remain on the political radar.

KNOWLEDGE CHECK

- 11 Why is it inaccurate to label the SNP as a minor party?
- 12 How can Eurosceptic parties be said to have affected political debate?

STUDY TIP

The heading opposite and exam specification heading refers to Britain not England. Noting this distinction makes any exam answer more accurate and convincing.

The extent to which a multiparty system exists in Britain

A glance at the green benches of the Commons would strongly suggest a two-party duopoly. In terms of Westminster, after the 2019 election 87% of the seats were held by the two largest parties on a combined vote share of nearly 76%. Some previous general elections, however, suggested elements of a multiparty system. For example, in 2010 the combined Tory/Labour vote share was only 65%, although their share of seats was somewhat higher at 87%.

SYNOPTIC LINK

A multiparty system is most notably present in the UK's devolved assemblies. You can find out more about devolution in Chapter 5.

- When we turn our attention to the devolved assemblies, the UK contingent to the European Parliament (prior to Brexit) and many town halls, the picture is very different.
- No fewer than 10 parties won seats in the last European elections in 2019.
- Politics in Northern Ireland often involves contests between several parties, despite some local electoral pacts to avoid splitting the unionist or nationalist vote.
- Scotland is a country with three-/four-party politics.
- Many local authorities have hung/balanced councils with no party in overall control, and independents have a significant presence on many local councils especially in more rural areas. In the 2019 council elections for example, independents won over 1,100 council seats, not far off the total achieved by the Liberal Democrats.
- Even at Westminster, the unelected Lords is a multiparty chamber with no party having an overall majority and having more cross-bench peers than either Labour or Liberal Democrat ones.

At general elections and in the Commons, Britain (or more accurately England) is currently a two-party dominant system. Look beyond it though, and the picture is more complex. It could even be said that where FPTP is absent, a multiparty system is often present.

KNOWLEDGE CHECK

- 13** Where are multiparty systems found in UK politics?
- 14** What is the link between electoral systems and multiparty systems?

SUMMARY

- The three main parties have different political ideologies and histories. The Conservatives are more right wing, Labour more socialist and the Liberal Democrats more centrist. Each has also evolved and changed over time.
- The parties have different methods of selecting candidates and choosing their leaders but all involve ordinary party members, MPs and the central party organisation in the process. Labour also involves its registered supporters.
- There is considerable debate over how parties are funded. Particular problems are posed by a reliance on wealthy donors, but agreement is lacking over how far there should be greater state funding.
- Parties have an important relationship with the media although there is a general decline in the influence of the press and a growing focus on advertising through social media.
- There are several factors that help parties to win (and lose) elections including the importance of policies, leadership and the strength (or weakness) of the opposition.
- Minor parties, such as the SNP and the DUP, play an important role in UK politics, especially in the devolved regions and when there is a hung parliament.
- A multiparty system, while largely absent from the Commons, is a reality elsewhere in UK politics, for example in the devolved assemblies and on many local councils.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three key policies of the Conservative Party. (9 marks)
- 2 Explain and analyse three ways that ordinary members can play a role in one of the main UK political parties. (9 marks)
- 3 Explain and analyse three factors that can explain why some parties do better than others in elections. (9 marks)

Paper 1 Section C style questions

- 4 'The Labour Party is still dominated by socialist ideas.' Analyse and evaluate this statement. (25 marks)
- 5 'Its membership play a minimal role in the party.' Analyse and evaluate this statement with regard to the Conservative Party. (25 marks)
- 6 'The UK can never be referred to as a multiparty system.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Bale, T. (2017) 'How socialist is the Labour Party?', *Politics Review*, Vol. 26, No. 3, pp. 6–9.

Cooper, T. (2019) 'What determines the prime minister's power?', *Politics Review*, Vol. 29, No. 1, pp. 2–5.

Brown S. and Gallop N. (2015) 'Debate: should political parties be funded by the state?', *Politics Review*, Vol. 24, No. 3, pp. 16–17.

Gallop, N. and Tuck, D. (2020) 'Socialism and the Labour Party', *Politics Review*, Vol. 29, No. 4, pp. 16–17.

Gallop, N. and Vincent, S. (2016) 'Does the UK now have a multiparty system?', *Politics Review*, Vol. 26, No. 1, pp. 4–15.

Glazebrook, D. (2017) 'UK politics: Theresa May: a one-nation Conservative?', *Politics Review*, extra resources, Vol. 26, No. 4.

Heywood, A. (2016) 'Corbynism: the strange rebirth of UK socialism?', *Politics Review*, Vol. 25, No. 4, pp. 2–5.

Tomes, A. (2020) 'Have the minor parties reshaped UK politics?', *Politics Review*, Vol. 30, No. 1, pp. 30–33.

Websites

BBC News — general election 2019: manifesto guide on where the parties stand: <https://www.bbc.co.uk/news/election-2019-50291676>

Electoral Commission — financial reporting: <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/financial-reporting>

9

Pressure groups

KEY QUESTIONS ANSWERED

- What are pressure groups?
- What are the different types of pressure group?
- Do pressure groups enhance democracy?
- Which methods of campaigning by pressure groups are more likely to succeed?
- Why are some pressure groups more successful than others?
- What are the other influences on government apart from pressure groups?
- How do pressure groups link with political parties, government and the media?

BACKGROUND INFORMATION

Pressure groups might sometimes resemble the hounds in the foxhunt — they follow scent to catch their prey. In this case, the scent is power and the prey is policy-making and political outcomes. Pressure groups come in all shapes and sizes, and embrace the full spectrum of ideology and viewpoints. In many issues ranging from education to defence, from very local issues to national or indeed international ones, pressure groups are involved in the struggle to determine policy outcomes. Meanwhile, there is much debate about their role in the political chase. Do they help or hinder the democratic process? Are some groups more equal than others, and which methods and tactics are most likely to bear fruit?

The main functions of pressure groups

All pressure groups share a number of characteristics. Above all, they seek to influence policy-making and decisions. Sometimes this can be short term and precise, such as the passing or amending of a particular law or keeping open a local hospital. Sometimes it is broader and involves getting their concerns high up the **political agenda**. This is particularly true for groups with longer-term objectives, such as protecting the environment or minority rights.

Unlike political parties, pressure groups do not seek to run for or hold political office. Instead, they seek to influence those elected and other institutions of government such as government agencies. They use a variety of tactics to achieve their goals, ranging from direct action to discreet lobbying. Some use high-profile methods while others operate in a more low-key manner.

KEY CONCEPT

Political agenda The issues that are the subject of decision-making and debate by those with political power. The agenda varies according to time and circumstance, as well as which party is in power. Pressure groups seek to ensure their policy area is both high up the agenda and shaped in a way that accords with their own views.

STUDY TIP

Although it is true that by the classic definition pressure groups do not seek to hold elected office, occasionally they do contest elections.

One example is Wyre Forest's Independent Community & Health Concern, a group initially set up to stop the closure of the local hospital in Kidderminster. One of its members, Dr Richard Taylor, was Kidderminster's MP for 10 years.

Pressure groups campaign for their cause in the face of competition and opposition. Sometimes there are groups on both sides of a controversial issue: for example, those who support gay marriage and those who are opposed to it. At other times pressure groups compete for resources. For example, no one opposes more resources for cancer research, but other healthcare groups, such as mental health charities, also seek funding and prioritisation from the government.

All pressure groups offer opportunities for political participation and representation. Supporters can give money, donate time to campaigning and get actively involved. Pressure groups also complement the representative function of political parties. Many of the causes groups promote are not party political but often cross-party. Animal welfare, for example, has support from those on the right, left and centre of UK politics.

Ultimately, pressure groups seek to influence and change the policies and priorities of those with political power. That can be in Westminster, a devolved assembly or the local town hall.

SYNOPTIC LINK

UKIP and the Brexit Party, and arguably the Green Party, are examples of political parties that share much in common with pressure groups. However, they do have policies on a whole range of other issues, too, not just the EU or the environment. You can read more about political parties in Chapter 8.

KNOWLEDGE CHECK

- 1 What are the main aims of pressure groups?
- 2 How do pressure groups differ from political parties?

The main categories of pressure groups

When studying pressure groups, it is usual to sort them into different types. The two forms of categorisation are:

- their status and how they relate to the political establishment — these are separated into **insider** and **outsider groups**
- the purpose of their campaigning — are they primarily defending the interests of their members (**interest groups**), or are they advocating a specific cause or interest that does not directly benefit their members or supporters (**promotional groups**)?

KEY CONCEPTS

Insider groups Pressure groups that have close ties and contacts with government. They often represent either powerful, well-resourced groups such as those associated with business or industry, or offer specialist knowledge and insights that can be useful when governments are drawing up legislation.

Outsider groups Pressure groups that lack strong established links with government. They often represent more marginalised or radical policy agendas and frequently use direct action to publicise their aims.

Interest groups Pressure groups (sometimes known as sectional groups) that exist primarily to defend

and advance the specific interests of their members, e.g. trade unions and business groups. They might be defined as more selfish in their aims, although would also justify their stance as being in the national interest.

Promotional groups Pressure groups that are sometimes termed causal groups and set out to achieve a specific set of aims that are not in the direct self-interest of their members. This can include causes such as human rights or nuclear disarmament. They can be seen as more selfless in their objectives, which are often based on ethics and principles.



Insider groups

Insider groups are generally agreed to have more power and influence than outsider groups. Bodies such as the National Farmers' Union (NFU) and the British Medical Association (BMA) have long been viewed as having privileged access to the corridors of power. They have traditionally maintained a close relationship with government departments, civil servants and individual ministers. Until Brexit, the NFU especially maintained an important presence in Brussels, as many details concerning agricultural policy, such as farm subsidies, were made at European and not national level. With the advent of Brexit, the NFU campaigned successfully for short-term seasonal work visas so that fruit and vegetable growers could continue to hire seasonal labour from eastern Europe, vital to the growers' livelihoods.

SYNOPTIC LINK

The origins and subsequent history of the Labour Party are bound up with the labour movement. For example, affiliated trade unions are allocated seats on Labour's National Executive Committee. You can find out more about the Labour Party and its history in Chapter 8.

STUDY TIP

It is important to be aware that the majority of UK trade unions are not affiliated to Labour and therefore are not political donors. In answers, it is best to refer to 'Labour-affiliated unions' if mentioning political donations by trade unions.

As with all categorisations of pressure groups, the term 'insider group' is somewhat flexible. Groups can move from insider to outsider status or vice versa, depending both on the government in power or the particular issue at stake. For example, under Labour governments, especially before 1997, trade unions as sectional interest groups were often treated as insider groups. They were widely consulted on aspects of industrial and economic issues and carried considerable weight when it came to policy formulation. 'Beer and sandwiches at No. 10' was a popular term used to describe this close relationship. In part, it reflected both the formation and history of the Labour Party, but also the basis of much of Labour's core working-class support. It was also, and continues to be, the case that certain trade unions provided a large amount of Labour's funding. For example, during the last 3 months of 2019 the Unite trade union donated over £4 million to the Labour Party nationally, while the Unison union contributed in excess of £500,000.

The status of trade unions as insider groups has changed somewhat in recent years. Tony Blair's 'New Labour' project was somewhat keen to distance itself from such ties. The advent of Jeremy Corbyn's leadership reinstated those close relationships, especially with the Unite union whose general secretary, Len McCluskey, was a key Corbyn supporter. For example, part of Labour's 2019 manifesto promised to 'Repeal anti-trade union legislation, including the Conservatives' undemocratic Trade Union Act 2016.' This represents a clear example of a powerful pressure group exerting influence on a political party. As Labour lost the election, though, this relationship did not translate into policy implementation. Under Conservative governments, trade unions never enjoyed the same insider status.

Some long-established and non-party political pressure groups, such as the Royal Society for the Prevention of Cruelty to Animals (RSPCA), enjoy close ties with parliament through involvement with All-Party Parliamentary Groups (APGs). The RSPCA has helped in some years with the funding of a cross-party group. For example, it contributed £16,500 in 2017 to the APG for Animal Welfare (APGAW). In return, such groups raise issues and promote causes that reflect their wider aims. So, in 2019 APGAW provided oral evidence to an inquiry on abattoir provision in the UK and went on to draft a report with a set of key recommendations for the Department for Environment, Food and Rural Affairs (DEFRA) to review. The group also wrote a letter that year to the Chinese ambassador about the dog meat trade, urging for it to be banned.

The final category are those insider groups represented by big business. These include organisations such as the Confederation of British Industry (CBI) and

British Finance (a merger in 2017 of several banking and finance associations including the British Bankers' Association (BBA)). In the aftermath of the banking crisis in 2008, the UK government offered support including loans and some temporary renationalisation to the tune of £850 billion. Obviously, this support was championed and lobbied for by the BBA and other industry groups, but it also reflected the vital national importance of restoring confidence in the banking sector and minimising wider damage to the economy. Some might argue, therefore, that while this partly reflects the power and influence of the banking and business lobby and its insider status, the government in reality had little choice but to deliver such a hefty bailout. The complete collapse of major banks would potentially have wiped out the savings of millions of ordinary people and caused economic havoc.

Some political scientists have divided insider groups into smaller subdivisions:

- **Core insiders:** these groups, such as the NFU, have a longstanding bilateral relationship with policy-makers over a broad range of issues.
- **Specialist insiders:** these groups have insider status but only within a narrow and specific area in which their specialist knowledge is required. For example, the British Meat and Poultry Federation is only routinely consulted on issues specific to that sector of the farming industry.
- **Peripheral insiders:** these groups have insider status but are only rarely needed by government due to the nature of their interest/cause. For example, the Stillbirth and Neonatal Death Society (SANDS) managed to get the definition of stillbirth lowered from 28 to 24 weeks in the Still-Birth (Definition) Act 1992. This was clearly a very specialised area: the government does not routinely consult SANDS on wider child health issues.
- **Prisoner groups:** these groups find it almost impossible to break away from insider status, either because of their reliance on government funding or because they are themselves a public body. One example is Historic England, which is government-funded via the Department for Digital, Culture, Media & Sport (DCMS). One of Historic England's main aims is to promote the conservation and preservation of historic buildings and sites. But its lack of independence from the state could make it harder for it to resist policy generated by other parts of the government, such as major transport projects including HS2 that impact both the landscape and historic buildings.

The advantages and disadvantages of insider groups

Insider groups possess a number of advantages, which afford them more impact on politics, but there are drawbacks to being an insider group too (see Table 9.1).

Table 9.1 Insider groups: advantages and disadvantages

	Advantages	Disadvantages
Proximity to government	They have good channels of communication with the government and Whitehall departments. This can often enable informal lobbying before draft legislation is drawn up to ensure their views are incorporated.	This advantage can equally play to a group's disadvantage. Getting too cosy with the institutions of government can lead to 'policy entrapment' and an unwillingness to criticise or speak out against the political establishment. This can diminish a group's independence and freedom of action.
Resources	They are usually well resourced and funded, so often hire professional lobbyists and sponsor relevant APGs.	Superior resources and a well-oiled PR machine are no guarantee of success. Also, unlike in the USA, UK pressure groups are not allowed to air political ads and are limited in their involvement in election campaigns.

Government inquiries	They are often invited to take part in and give evidence to select or public bill committees. For example, in 2013, the respected independent health pressure group, The King's Fund, gave evidence to the Health Select Committee inquiry into emergency services and care.	Not just insider groups are called to give evidence to government inquiries. For example, in March 2020, the UK Cladding Action Group, which was set up by leaseholders of affected properties and is more of an outsider group, provided evidence to the Communities select committee. This was because the committee had launched an inquiry into the cladding used on tower blocks in the aftermath of the Grenfell Tower fire tragedy.
Historic ties to political parties	A few, such as certain trade unions, have close historical and institutional ties to major political parties. They can also be important donors.	When such a party is out of office, pressure groups associated with it are left outside the corridors of power. Most groups prefer to keep parties at arm's length so as to maintain good terms with a range of political groups.
Laws and regulations	Public consultation processes, for example during the Green Paper stage of legislation, can involve evaluating large amounts of very specific information. Often the detailed technical information needed for effective laws and regulations lies with trade associations, trade unions and professional bodies, not Whitehall. This gives insider groups direct influence over legislation.	Pressure groups and their members are often those who are most directly affected by any changes in the law. They should not, therefore, be playing a major role in writing the rules in the first place by influencing the initial consultation and drafting stages of parliamentary bills. Pressure groups have a 'policy axe to grind'.

CASE STUDY

Insider pressure group: the National Trust



Among the land and property the National Trust owns are castles, stately homes, wilderness countryside, industrial heritage sites and over 770 miles of coastline

The National Trust was founded in 1895 and is Europe's largest conservation charity. It has a membership of over 5 million, far in excess of any political party or trade union. It is also a major landowner with over 600,000 acres of land in England, Wales and Northern Ireland (Scotland has a separate but parallel charity).

Among its key aims and objectives are:

- preservation through ownership of the nation's most beautiful, iconic and vulnerable countryside, and threatened historical properties
- preserving these buildings and landscapes forever: its motto is 'For ever for everyone'
- promoting biodiversity/nature conservation, e.g. reintroducing hedgerows and wildflower meadows on its land

- lobbying the government on issues such as preserving the green belt, climate change, spending on the arts and culture etc.

In many ways, the National Trust typifies the insider group. It is long established, membership is still probably disproportionately white and middle class, it has a formal organisational structure and some of its senior officials are drawn from the top ranks of the civil service or other public bodies. For example, a former director-general, Dame Helen Ghosh, had previously been a senior civil servant in the Home Office.

It also has ties with the political establishment in other ways. Under various Acts of Parliament from 1907 onwards the Trust is allowed, uniquely, to declare its land 'inalienable', meaning it can never be built upon or compulsorily purchased without specific parliamentary approval. In addition, although completely free of the state, it sometimes receives government grants for specific projects, for example from the National Heritage Memorial Fund. It is also routinely consulted on arts and cultural issues.

It does however on occasion speak out against government policies it sees as detrimental to its objectives. For example, in 2011 it took a strong public stance against government-proposed changes to land-use planning in England. It argued that changes to the planning system would make it easier to build on greenfield sites, had been rushed through parliament and represented a serious threat to the countryside. It set up a petition signed by thousands, and the

government did later modify aspects of its national planning policy to accommodate some of the fears raised by the Trust and other environmental groups. It has also in turn been influenced by other pressure groups. In the wake of the Black Lives Matter protests it accelerated research into the links between some of its historic properties and the slave trade, with the pledge to inform visitors about these links.

The National Trust is also a good example of a pressure group with a large 'chequebook membership'. Many of its paid-up members join mainly for the services it offers, such as free parking at its coastal sites and free admission to its properties. Relatively few take an active part in its campaigning and lobbying work, although it could be assumed that nearly all would support such work albeit passively.

KEY CONCEPT

Direct action Campaign tactics that employ direct power and activity to advance a set of aims. These can be both legal and non-legal, violent or non-violent, e.g. boycotting certain products, striking, mass street demonstrations or even riots and blockades.

Outsider groups

In contrast to insider groups, those considered outsiders are much less likely to enjoy close and enduring ties with the government and its agencies. Their campaigning is often more militant and publicity seeking, and can sometimes involve breaking the law. Many use stunts or high-profile direct action to publicise their cause. For example, in July 2015 members of the anti-aviation group Plane Stupid cut the perimeter fence at Heathrow and chained themselves together on the runway, leading to the cancellation of 25 flights. They were protesting against the impact air travel has on climate change, as well as more specifically against the planned expansion of Heathrow. Thirteen members of the group were prosecuted. The following statement they made during their defence exemplifies the rationale behind much **direct action**:

'When the democratic, legislative processes have failed it takes the actions of ordinary people to change them. Climate change and air pollution from Heathrow are killing people now and the government's response is to spend millions making the problem bigger.'

As well as environmental causes, outsider groups have also been involved in a wide range of other campaigns over the years, including the following:

- Campaigning for fathers' rights after a divorce or relationship breakdown: Fathers 4 Justice was set up in 2001 by Matt O'Connor. Many Fathers 4 Justice protests have involved supporters donning superhero costumes to make the point that fathers are superheroes.
- Militant animal welfare groups: the Animal Liberation Front has broken into laboratories that use animals for scientific testing or harassed scientists involved in such research. Anti-blood sport groups such as the Hunt Saboteurs Association set out to deliberately disrupt hunting with hounds using false scent trails and other similar methods.
- Groups that challenge poverty and tax avoidance by major firms and businesses: for example, in 2010, 70 UK Uncut activists stormed Vodafone's Oxford Street shop, temporarily shutting it down, in protest over claims that Vodafone had dodged £6 billion in tax.
- Perhaps the most extreme type of outsider group action is terrorism. It could be argued that suicide bombers advocating radical Islamist beliefs, such as those responsible for the attacks at London Bridge and the Manchester Arena, represent such a group, who claim to be inspired by fundamentalist militant groups such as Islamic State (IS).
- Many groups campaigning for less popular or minority causes can also be termed outsider groups. Groups calling for penal reform, such as the Howard League and the Prison Reform Trust, often take up causes that may not reflect the public mood. These have included voting rights for prisoners and the early release of some inmates during the COVID-19 pandemic.

ACTIVITY

Research in more detail the campaigns and aims of one of the outsider groups mentioned here. What other tactics have they used, and how successful have they been? Go to the official website of your chosen pressure group to start your research and study press coverage from a range of newspapers.

Interestingly though, both groups would normally be invited to give evidence to government inquiries into penal policy given their specialist knowledge and focus. In addition, these groups have links with the political mainstream. In 2020, Lord Ken MacDonald QC, a former director of public prosecutions, became president of the Howard League. Being an outsider group does not always preclude involvement with political insiders.

Some groups that begin as outsiders may, over time, move closer to the political mainstream. For example, gay rights pressure group Stonewall was an outsider group in the 1980s, when it was formed in 1989 by political activists and others lobbying against Section 28 of the Local Government Act 1988, which prohibited the promotion of homosexuality in UK schools.

As public and cultural attitudes have shifted, Stonewall's aims have become more mainstream. For example, in July 2019, head of Ofsted Amanda Spielman spoke at a Stonewall conference and concluded with the following comment:

'teach about the wonderful diversity of humanity in modern Britain: a diversity of race, gender, faith and love. Education shouldn't sow the seeds of discord, it should prepare the citizens of tomorrow to create a more tolerant, respectful and hopeful world.'

Arguably, those groups that hold to a more traditional view of sexual relationships, for example some Christian and Muslim bodies, are the new outsiders. Pressure group status always has an element of fluidity about it.

As with insider groups, further subdivisions are sometimes made to distinguish between different types of outsider groups:

- **Potential insiders:** these groups, while currently outsiders, seek to be insiders but lack the experience and connections to achieve this. Insider status can sometimes be achieved to an extent by a successful but usually peaceful high-profile campaign. For example, the Gurkha Justice Campaign spent 4 years lobbying the Blair and Brown governments to give equal rights to all Gurkhas to settle permanently in the UK. The group gained a much higher profile when the celebrity Joanna Lumley joined the campaign in November 2008. In 2009, the government conceded settlement rights to all Gurkhas.
- **Outsiders by necessity:** this represents groups forced to operate as outsiders by virtue of either their cause or the nature of their tactics. Violent actions and law breaking make it very hard for such groups to have any realistic consultation with the government, which invariably wants to avoid giving the impression that illegality can yield positive results. At its most extreme, this takes the form of the 'we don't deal or negotiate with terrorists' approach adopted by all UK governments. Some outsider group aims may also be viewed as too far outside the current political mainstream for policy-makers to take them taken seriously. One current example could be the Campaign for Nuclear Disarmament, whose objectives include stopping the costly replacement of the Trident nuclear submarine — a move directly at odds with government policy.
- **Outsiders by choice:** some groups, such as those campaigning for civil liberties including Liberty and Amnesty International, may choose deliberately to stay outside government and establishment circles. This is to retain their independence and ability to critique policies, and avoid a cosy relationship with government that could jeopardise their neutrality and objectivity.

The advantages and disadvantages possessed by outsider groups

Outsider groups possess a number of advantages, but there are drawbacks to being an outsider group too (see Table 9.2).

Table 9.2 Outsider groups: advantages and disadvantages

	Advantages	Disadvantages
Media	High-profile and sometimes illegal protests make the headlines. These can both raise publicity and promote awareness of a group's cause.	Making the headlines may not translate into growth in public support. Arguably, too much disruption can lead to negative publicity and put off potential supporters.
Direct action	Direct action such as striking or closing down airports can result in fines or even imprisonment. This shows the commitment of supporters to a particular cause.	Those who face prosecution for their protests are easily labelled as fanatics or extremists, and this may do more harm than good to a group.
Links to government	These groups have the freedom to act and take policy stances without being constrained by close ties to government and its institutions.	The type of close ties and regular consultation enjoyed by insider groups can often lead to significant influence when it comes to policy-making. Sometimes, this can even take the form of a 'critical friend'.
Developing insider status	Some will achieve insider status in due course, either due to a shift in public attitudes (e.g. LGBTQ+ rights) or through a change of government.	Many outsider groups never achieve insider status. In addition, some are outsiders by choice.

KEY CONCEPT

Holacratic group

Organisation that rejects formal hierarchical leadership structures, preferring instead a flat structure that distributes authority and power across its membership. Power is dispersed, not centralised, in such groups. Many modern activist groups adopt this structure.

CASE STUDY

Outsider pressure group: Extinction Rebellion

Extinction Rebellion (XR) is a prominent, high-profile outsider group and an example of a **holacratic pressure group**. Launched in the UK in 2018, XR has frequently made headlines through mass demonstrations such as blocking roads and bridges. The group's first major action was in August 2018, when it blocked a road on Trafalgar Square. Many subsequent protests have focused on central London. An 11-day wave of demonstrations in April 2019 saw thousands of climate activists take part, causing major disruption to London traffic, and protesters gluing themselves to the London Stock Exchange building and train carriages. Around 500,000 commuters were affected.

A central part of XR's tactics has been to encourage mass arrests and thereby completely fill up police cells. A wave of protests in October 2019 led to 1,828 arrests from around 30,000 protestors. In September 2020, smaller groups of XR activists blockaded three News Corp printing sites, which affected the printing of several national newspapers and led to accusations that they were attacking the freedom of the press.

XR has the following main demands listed on its website:

- Tell the truth: government must tell the truth by declaring a climate and ecological emergency, working with other institutions to communicate the urgency for change.
- Act now: government must act now to halt biodiversity loss and reduce greenhouse gas emissions to net zero by 2025.

- Beyond politics: government must create and be led by the decisions of a Citizens' Assembly on climate and ecological justice. A Citizens' Assembly would bring together ordinary people to investigate, discuss and make recommendations on how to respond to the climate emergency. Members would be randomly selected and hear balanced information from experts and those most affected by the climate emergency. Members would speak openly and honestly in small groups, with the aid of professional facilitators.

While XR has certainly grabbed the headlines, how successful has it been in achieving its goals? Certainly environmental concerns moved up the political agenda during the 2019 election cycle. In May 2019, Corbyn called on the government to declare a national environment and climate emergency during an Opposition Day Debate. In the lead-up to the election, 26% of voters (rising to 45% among 18–24-year-olds) cited the environment as one of their top three issues. In the corresponding period before 2017, that figure was just 8%. Clearly the issue of climate change had become much more high profile. In addition, Theresa May in her final speech as prime minister announced that the UK would seek to cut its greenhouse gas emissions to zero by 2050, although XR's target is 2025. Finally, one of its founders gave oral evidence to the Business, Energy and Industrial Strategy select committee in June 2019 and argued for a Citizens' Assembly to tackle the issue. By the end of the year plans for just such an assembly were put in place, having been supported by a total of six select committees. The 100-strong Climate Assembly UK met over four weekends in 2020 to discuss and produce suggestions to tackle climate change.

In addition, although focused on non-violent direct action, XR has achieved some elements of insider status, for example by being invited to give evidence before a select committee.

However, the group's propaganda stunts haven't always gone down well. For instance, a failed attempt to spray the Treasury building with 'fake blood' from a fire engine elicited the following response from the (far from reactionary) *Independent* newspaper:

'It just looks like a lot of angry people shouting and throwing stuff. Their surfeit of passion doesn't compensate for their weirdness, and failure to persuade decent people who are sympathetic but not earth murderers.'

Its direct action tactics were, however, affected during the first COVID-19 lockdown, and the group emerged

from 'hibernation' (as XR termed it) in September after several months of relative inactivity. During this period, it also faced competition for publicity and activists from the Black Lives Matter group.

On Remembrance Day in 2020, members of XR, including British Army veteran Donald Bell, drew controversy when they laid a wreath of poppies and a banner that read 'climate change means war' on the Cenotaph war memorial. Bell justified his action by saying, 'Unchecked climate change means a return to a world at war. I cannot stand by and let that happen.'

In addition, like many activist groups, including Fathers 4 Justice, XR has been prone to splits that centre on tactics, aims and personalities. Co-founder Gail Bradbrook commented: 'One of the tensions in XR are people who want to slow down and be strategic and then people who think it's an emergency, let's get out on the streets now.' Another co-founder, Roger Hallam, split from XR and founded a new movement, the Beyond Politics party, which is more radical in its aim of bringing down the government and replacing it with citizens' assemblies. Among its activities was a stunt involving walking out of a supermarket with shopping trolleys filled with food but without paying and then giving away the food for free as a protest against poverty.

While XR has raised the profile of climate change and the notion of an emergency, it has been campaigning against the background of increasingly supportive public opinion, stronger scientific evidence and a growing willingness by all politicians to engage seriously with environmental issues.



Members of XR lay a wreath at the Cenotaph just hours before the official Remembrance Day ceremonies on 11 November 2020

SYNOPTIC LINK

The involvement of six select committees working together to help establish a Citizens' Assembly on climate change is a good example of their effectiveness, and also their ability to coordinate their work on occasion. You can find out more about parliamentary select committees in Chapter 2.

STUDY TIP

When referring to outsider groups in an answer, remember to be clear that some of them, as with XR, still have elements of insider groups including the opportunity to give evidence to parliamentary committees. They do not always seek confrontation with the government, but on occasion seek and receive engagement and dialogue with policy-makers.

KNOWLEDGE CHECK

- 3 What are the main differences between insider and outsider groups?
- 4 What are the main subdivisions within both insider and outsider groups?
- 5 What is direct action, and what forms can it take?

Pressure groups and their impact on democracy

One of the key debates concerning pressure groups is whether they help or hinder the democratic process. A major aspect of this discussion is the elitist v pluralist debate.

Elitist vs pluralist debate

The elitist argument is that pressure groups fundamentally hinder democracy because groups with the greatest resources and best connections to those in power wield disproportionate influence. Such groups are usually insider groups and comprise sections of society already powerful and dominant. By contrast, interest groups that represent the weaker and more marginalised sections of society are effectively excluded from having a loud and impactful voice.

Advocates of the pluralist viewpoint argue that political **pluralism** allows all groups to enjoy roughly equal opportunities to campaign and to be heard. Those that prevail therefore often represent the causes most in line with the public mood and broadly representative of the current opinion. This view essentially assumes that pressure groups are beneficial for democracy as they enable all legitimate views to be heard, and the most popular or practical to prevail. As ever in such debates, the truth lies somewhere in between.

KEY CONCEPT

Pluralism The concept that democratic politics involves numerous or plural groups all competing for power and influence on a roughly equal basis. The playing field is level and no one group or interest has significant advantages. Pluralism is therefore characterised by a wide dispersal of power. In the political process, pluralism promotes a forum for debate and scrutiny between competing groups in society.

DEBATE

Do pressure groups promote elitism or pluralism?

Elitism

Power is inherently distributed unequally in society and politics, and this is reflected in pressure groups.

Powerful and well-resourced groups often 'have the ear' of government and use their insider status to influence and manipulate legislation and regulations, often before they are publically revealed or debated.

Groups that are already powerful and dominant often claim a monopoly of knowledge and competence in their chosen field and can fund research to back up their claims. For example, discussions about legal reforms, such as reducing the distinction between barristers and solicitors, rely heavily on legal opinion and advice provided by the same groups the government might wish to reform and reduce in terms of power. The views and concerns of the ordinary public, here the users of the legal system, are unlikely to get the same hearing from government.

Many pressure groups are themselves undemocratic in structure and dominated by their own internal elites. This accusation has been levelled at the environmental group Greenpeace in the past.

Many of the most marginalised and poorly resourced people in society, such as the homeless and the unemployed, lack any group with influence to represent their views.

Some corporate interests such as the banks, big business and billionaires — and especially those who make political donations — have become too big to confront.

Pluralism

In a democracy, no one group or section of society has a monopoly on power. Free speech and expression enable a multiplicity of views to coexist.

The advent of social media in particular has enabled groups with limited financial resources to communicate their message to large numbers.

Governments are naturally keen not to be out of touch with voters. In a democracy, votes still matter, and governments are wary of being too close to a narrow clique that could be seen to be hostile to a large body of public opinion. This can be seen, for example, with select committees often taking evidence from a wide range of groups and viewpoints in their inquiries. Recent government initiatives on climate change could be seen as 'taking on' the powerful vested industry groups who might otherwise prefer to go on using fossil fuels.

Many pressure groups, especially newer ones such as Extinction Rebellion and Black Lives Matter, are largely non-hierarchical and loosely structured.

Nearly all groups in modern British society have pressure groups that represent them.

There are checks in place that can limit the power of even the most entrenched and traditionally powerful interest groups. The BMA, for example, resorted to strike action in response to government reforms to the health service and especially doctors' pay and conditions. Even parts of the legal profession went on strike in 2015 in protest at cuts to the legal aid budget. Such tactics suggest that traditional lobbying by insider groups, such as the Criminal Bar Association, had clearly failed. Arguably, no group is too powerful in a democracy to be untouchable.



Individually or in pairs, decide which analysis of pressure groups is more convincing: elitist or pluralist?



Actor John Boyega addresses protesters outside parliament during the Black Lives Matter rally, 3 June 2020

Pressure groups and democracy

The debate concerning pressure groups and democracy, however, goes beyond the elitist v pluralist debate. There remains much scope for discussing other ways in which pressure groups affect democracy. These involve issues of representation, participation and their accountability both to their members and to the wider electorate.

DEBATE

Do pressure groups help or harm democracy?

Help democracy

Pressure groups provide popular forums for campaigning and active political participation. Groups including the Stop the War coalition took part in mass rallies in 2003 against the Iraq War. Around 1 million people attended the main London march, the largest-ever political demonstration in the UK.

Large crowds also attended numerous Black Lives Matter protests across the UK in the summer of 2020. There is evidence that BLM protests did little to spread COVID-19 (the impact was much lower than that of the government's 'Eat Out to Help Out' scheme).

Pressure groups also perform a key representative function. Virtually every group and viewpoint imaginable is represented by a pressure group in some way. Many of these issues, such as mental health or human rights, can cut across traditional party-political divides. Arguably, as many groups have memberships larger than political parties, they better represent voters.

Pressure groups enable representation between elections through their lobbying and campaign work and ensure issues continue to be debated outside election campaigns. They also allow the voices of more marginalised groups in society to be heard, including prisoners and asylum seekers.

All pressure groups make use of a wide range of democratic bodies to make their case. This includes Westminster but also often local councils and the devolved assemblies. It could also be argued that they bring accountability to some of the less democratic parts of the state, such as unelected quangos and government departments. Many decisions are made by civil servants and not directly by ministers.

Pressure groups increasingly have structures that are internally democratic. This is particularly true for trade unions which, following reforms in the 1980s, have regulated secret ballots for internal positions and for when they want to take industrial action. The many pressure groups that are also registered charities are subject to regulation by the Charity Commission, which can investigate financial irregularities or conflicts of interest.

Pressure groups contribute positively to public awareness and knowledge of specific issues. They promote political education and debate and enable voters, as well as policy-makers, to be better informed.

Pressure groups provide specialist input that enables laws and regulations to be better and fairer.

Hinder democracy

Large-scale participation in pressure group campaigns and protests is the exception not the norm. A large proportion of members, especially in big organisations, are passive. Many are 'chequebook members' who join for the benefits and not out of principled conviction. For many, participation might be limited to little more than signing a petition electronically or sending a pre-formatted email to their MP.

Many pressure groups have small and unrepresentative memberships and may not be truly representative of public opinion. Those that shout loudest may not be the megaphone of the majority. Political parties are better placed to assess competing claims for resources and policy direction.

Unlike elected representatives, e.g. MPs and local councillors, pressure groups have no direct democratic mandate, and thus could be said to lack political legitimacy.

Pressure groups certainly make use of as wide a range of access points as possible, but this does not automatically mean they benefit democracy. Arguably, they are no more democratically representative than some of the unelected officials, e.g. civil servants, whom they seek to persuade.

While many groups do have transparent and internally democratic structures, some do not. Some are dominated by a few powerful or charismatic individuals. Disagreement or personality clashes can often lead to splits. This can be seen for example with Extinction Rebellion and the setting up of the more radical Beyond Politics party in 2020.

Information put out into the public arena by pressure groups is inevitably one-sided and selective. Groups highlight the positive aspects of their stance and either refute or ignore information from other viewpoints. This is particularly true of highly divisive and emotional issues, such as immigration and abortion.

Groups consulted on new laws and regulations tend to argue only their own case and offer proposals that benefit their vested interests.



Individually or in groups, evaluate the arguments above and decide whether you think pressure groups overall help or hinder democracy.

SYNOPTIC LINK

Many of these arguments concerning pressure groups and democracy also apply to the USA, although the range of access points is greater there due to its federal structure and the importance of the Supreme Court. You can find out more about US pressure groups in Chapter 21.

KNOWLEDGE CHECK

- 6** What are the principal arguments in the elitist argument?
- 7** What are the principal arguments in the pluralist argument?
- 8** List at least three ways that pressure groups boost representation and participation in democracies.

The relationship between pressure group methods and success

There are two fundamental points to grasp here:

- 1** The criteria of success vary from group to group and issue to issue. In some cases, the criteria are straightforward, as the aim is clear and specific, such as saving a local children's centre from closure or securing NHS availability of a new cancer drug. In other situations success can be getting an issue moved up and kept on the 'agenda radar' of policy-makers. This is the aim, for example, of many environmental or anti-racism groups.
- 2** There is no automatic answer to the question of which tactics are most likely to succeed. Similar to the categorisation of pressure groups, there is a high degree of flexibility. Circumstances and context are also crucial.

With those caveats in mind, the following themes emerge. First, insider groups are more likely to succeed than outsider groups. A low-profile approach of lobbying and meetings with ministers and officials can often bring results without the need for public campaigning.

Second, campaigns and aims that accord with the government's own political priorities and manifesto pledges are more likely to bring success. For example, the Blair government prioritised tackling the issue of child poverty, meaning groups such as children's charities and those already working on poverty issues, including the Child Poverty Action Group, found it much easier to exercise influence. A hostile political or cultural atmosphere is much less likely to gain traction. For example, pro-hunting groups were largely excluded from access or influence during the 1997–2010 Labour governments. Even when the Conservatives returned to power and there was talk of a free vote in the Commons to repeal the hunting ban, that pledge was dropped from the 2019 Tory manifesto for being too controversial and unlikely to win votes.

Finally, groups that can mobilise either large numbers of supporters or a high percentage of the powerful sector they represent have a higher degree of success. Other factors such as celebrity endorsement, eye-catching publicity stunts, collaboration with other groups and more financial resources can also play a part, albeit a lesser one.

Factors in pressure group success

There are a number of reasons for pressure groups succeeding in their aims, as summarised in Table 9.3.

Table 9.3 Reasons for pressure group success

Reasons for success	Example
Achievability of aims: groups that are too countercultural or extreme are unlikely to get far. Those that have clear, achievable and, ideally, popular aims get a lot further.	In 2000, protestors against raising the fuel duty succeeded in getting the government to drop the plans. Although the policy U-turn cost the government an estimated £2 billion in lost revenue, there was considerable public support for the campaign. It was also a narrow and specific campaign target.
Insider status: close links with decision-makers often enable success to occur at an early stage of policy- or decision-making. Often, key groups are consulted in advance of bills or the formulation of new regulations in order to deflect any potential criticism from such groups later on.	The announcement in the 2019 Queen's Speech of a Police Protections and Powers Bill and of the establishment of a Police Covenant was in part due to prior lobbying by the Police Federation. Welcoming the news, the Federation's Chair commented: 'It is positive and reassuring to see the government is listening to us and the prime minister has stayed true to his pre-election promises to support law and order.'
In tune with government policy and ideology: groups advocating causes already shared by the government stand a much greater chance of positive policy outcomes.	The incoming 1997 Labour government was generally much more positive about gay rights and so repealed legislation that prevented the promotion of homosexuality in schools (Section 28), and introduced civil partnerships for same-sex couples.
In tune with public opinion: tapping into the public mood at any given time is also an ingredient for potential success. Governments of all political complexions are keen to be seen as in touch and responsive to public opinion.	In 1996, following the tragic shooting in Dunblane, Scotland, when Thomas Hamilton killed a teacher and 15 children with a legally held handgun, there was a huge public outcry. The Snowdrop Campaign was formed to put pressure on politicians to change the law and ban the private ownership of all handguns. This was quickly achieved by the passing of the Firearms (Amendment) Act in 1997.
Large membership: having a large membership not only boosts financial resources, but also enables the group to claim it represents large numbers of voters, which an elected government may not wish to alienate.	The National Trust and the Royal Society for the Protection of Birds (RSPB) both have large memberships. It could also be argued that their members are disproportionately middle class and educated, and so more confident engaging with politicians.
Financial resources: wealthy pressure groups are able to run national publicity campaigns to increase the visibility of their campaigns, and on occasion to employ professional lobbyists or commission research to support their arguments. Wealthy groups can also employ paid professionals to aid specific areas of their work. This could include IT specialists such as web designers or experts in communication.	Professional lobbying firms can be adept at shifting the debate on to the group's strong points. For example, the Campaign for High Speed Rail hired Westbourne Communications to shift the debate to the economic benefits of the project for northern England, so deflecting attention away from the environmental impact of HS2.
Celebrity endorsement: support from celebrities can both add publicity and lend a degree of legitimacy to campaigns.	In 2020, throughout the COVID-19 crisis, Manchester United footballer Marcus Rashford led a successful campaign to secure free school meal vouchers for children in low-income families, which drew widespread support and forced the government into two policy U-turns.
Media support: the media can help a pressure group's campaign by raising its profile among the general public and shining a light on its most positive aspects. Note that there is an important difference between media support and media attention — the media can also bring negative publicity to a group, such as highlighting its association with violent or threatening action, or apparent hypocrisy by leading figures.	Following an attempt by the home secretary to ban sending books to prisoners in English jails, a campaign was set up to overturn the ruling. Led by the Howard League for Penal Reform and with support from the media and bestselling authors, including Philip Pullman and Tracy Chevalier, the campaign was a success and the original ruling was overturned by the High Court in December 2014.
Legal challenges: depending on the situation, pressure groups may well use the courts to secure a change of policy. This is usually to reverse a policy they see as harmful or unwelcome.	In 2019, the Joint Council for the Welfare of Immigrants brought and won a case against the UK government to end the 'right to rent' scheme, which required landlords to check the immigration status of tenants, first introduced in 2016. The case was also supported by other pressure groups with different perspectives. For instance, the Residential Landlords Association argued the policy had turned landlords into untrained and unwilling border police.

Factors in pressure group failure

The factors for pressure group failure are in many ways the opposite of those listed for success. They include the following:

- **Objectives that are too extreme or unworkable in the current political climate:** anti-capitalist groups such as the Occupy movement could be said to fall into this category.
- **Lack of resources:** this includes groups that lack sufficient resources to be able to present their case professionally and with convincing evidence supported by proper research.
- **Association with violence and disorder:** while this might generate publicity and headlines, it is normally viewed as counterproductive.
- **Links to government:** outsider status means these groups are less likely to enjoy regular contact with policy-makers.
- **A hostile political climate:** while the Stop the War Coalition organised huge rallies against the 2003 invasion of Iraq, the Blair government enjoyed a huge Commons majority and support from the Conservatives. The prime minister was also personally committed to the policy.
- **Strong countervailing forces:** many groups face strong opposition from other pressure groups. For example, the Coalition for Marriage, which resisted gay marriage, faced considerable opposition from the gay rights lobby and groups such as Stonewall.

KEY CONCEPT

Countervailing forces

Equally powerful groups that work against the cause and objective of another pressure group.

ACTIVITY

Research a high-profile pressure group campaign that has been largely unsuccessful. Find out the reasons behind the failure. One example could be the Campaign for Nuclear Disarmament (CND) and its campaign against the UK having nuclear weapons. Start your research by visiting the group's official website.

As we have seen, the reasons for pressure group success and failure are varied and often intertwined. There is no sole reason for either, and very often success is the result of a combination of factors, many outside of the pressure group's control, for example public opinion or the political complexion of the government.

KNOWLEDGE CHECK

- 9 Why can the media both help and hinder pressure groups?
- 10 What advantages can greater resources provide for pressure groups?
- 11 In what ways can celebrity support help a pressure group's cause?

Other influences on parliament and government aside from pressure groups

Increasingly, the role of traditional pressure groups has been supplemented by **pressure participants**. This is a loose term which covers the many groups that seek to influence policy but are not necessarily old-style pressure groups with formal structures and membership. In addition, it reflects the growing role corporations, lobbyists, think tanks and the media play in applying pressure to government.

Corporations

Big business especially is constantly in contact and consultation with government and its departments. Businesses carry considerable weight, not least in terms of providing jobs and paying tax. In an increasingly globalised economy, multinationals can threaten to move factories and jobs outside the UK. For example, during Brexit, motor manufacturers lobbied the government for a trade deal that would retain most elements of the single market. During the COVID-19 crisis, business groups lobbied the government for a freeze on tax payments including national insurance and VAT.

Although a powerful force, corporations do not always get their own way. For example, in the March 2020 budget the government announced it was going ahead with a 2% digital sales tax on the UK revenues of search engines, social media services and online marketplaces, despite opposition from powerful corporations such as Google and Amazon. However, some businesses, including shop-based retailers, supported the move in the belief it levelled the playing field — traditional retailers had long complained they were unfairly burdened by High Street overheads such as business rates.



In March 2020, the government announced a 2% digital sales tax on online marketplaces such as Amazon

In addition, many big corporations have themselves become the target of pressure groups, especially those associated with environmental and ethical issues. For example, Barclays announced its intention in 2020 to become a 'net-zero bank' by 2050 following pressure from shareholders including the Church of England. The shareholder resolution was filed by the campaign group ShareAction.

SYNOPTIC LINK

In the USA, businesses and corporations are often involved in frontline electioneering via political funding. The landmark *Citizens United* case extended First Amendment rights to corporations, allowing them to campaign in elections. You can find out more about the contrasts (and similarities) between US and UK pressure groups in Chapter 22.

Lobbyists

Lobbyists are a controversial and somewhat misunderstood player in the arena of political influence. They are firms hired to help target a group's message as effectively as possible. They provide professional advice about campaign and communication strategies and may be able to arrange meetings between their clients and relevant ministers and officials. Not surprisingly, a number of former ministers go on to work for lobbying firms (often known as the 'revolving

STUDY TIP

Be careful in answers concerning lobbyists not to view them as a wholly negative influence on policy-making. They can and do supply ministers and government departments with effective, evidence-based arguments in support of their clients.

door'), although they must seek permission from civil service body ACOBA (the Advisory Committee on Business Appointments) in advance. There is usually a 'cooling off' period between leaving office and taking up such a job to avoid any conflict of interest. For example, in 2017, the veteran Labour MP, Barry Sheerman, became the chair of the not-for-profit lobbying firm Policy Connect. A register for MPs who double up as lobbyists was established in 2015 following the 'cash for access' scandal, when a number of politicians were caught out offering to ask parliamentary questions or arrange meetings in return for payment. In that year, senior former ministers Jack Straw and Malcolm Rifkind were filmed meeting undercover reporters from the *Daily Telegraph* and Channel 4's *Dispatches* posing as a fictitious Hong Kong-based communications agency called PMR. The former MPs appeared to offer to use their positions to benefit the firm in exchange for thousands of pounds.

While the potential for corruption and scandal is clearly there, lobbyists often work at a more low-profile level and can help achieve some very positive outcomes. The small Wiltshire-based lobbying firm Morgan Roberts worked with the charity Jo's Cervical Cancer Trust between 2006 and 2008 to campaign for the early introduction of a UK-wide human papilloma virus immunisation programme to protect young women against the leading cause of cervical cancer. The policy was adopted in 2008.

Think tanks

Think tanks are also an important part of the policy-influencing network. They are specifically set up to undertake policy research and development, which in turn is published and used to push certain policy positions. Their research is often used by pressure groups with similar priorities. They are normally privately funded, often by business or wealthy individuals. For example, Lord Sainsbury donated £260,000 in 2016 to Progress, a centrist Labour think tank. One estimate in 2017 of around 30 UK-based think tanks put their combined annual income at £65 million, a not inconsiderable amount. Income tends to be fairly balanced across the political spectrum. A report in 2019 found that the 11 right-leaning think tanks received £15.5 million, compared with £12.9 million that went to left-leaning groups. The bulk of income — £35 million — went to eight politically neutral groups.

Many think tanks have highly ideological standpoints, such as the fiercely pro-free market Institute of Economic Affairs. On the left are groups such as the long-established Fabian Society, formally affiliated to Labour. Such organisations also publish magazines and organise conferences as ways of communicating their ideas. Some are more non-political, such as the Centre for Social Justice, which was established in 2004 by former Conservative leader Iain Duncan Smith to seek effective solutions to poverty and social issues in the UK. Some, such as Chatham House, specialise in policy research in international relations.

Their impact on policy can be difficult to ascertain. However, the leading think tank, Policy Exchange, claimed credit for a number of policy ideas later taken up by government, which included directly elected police commissioners and the pupil premium. In 2018, the Centre for Social Justice published the report 'A Woman-Centred Approach', which called on the government to scrap plans for five new women's prisons and replace them with community-based alternatives. The government subsequently adopted this approach.

Table 9.4 is a list of several UK think tanks, and their political leanings and main areas of policy research.

SYNOPTIC LINK

In the USA, lobbying is even bigger business and a multibillion dollar industry. Although there is some attempt at regulation, in general this has proved to be largely inadequate. The issue of the 'revolving door' in the USA is discussed in Chapter 21.

Table 9.4 UK think tanks, 2021

Think tank	Political leaning/main policy focus
Institute of Economic Affairs (IEA)	Right wing/focuses on free-market economics
Resolution Foundation	Independent/focuses on improving outcomes for people on low and modest incomes
Policy Exchange	Right wing/focuses on the better delivery of public services
Centre for Social Justice	Independent/centre-right/focuses on social policy
Chatham House	Independent/focuses on foreign and defence issues
Fabian Society	Left wing/focuses on a wide range of policy issues
Progress	Left wing/New Labour/focuses on a range of policies and ideas from a moderate left-of-centre position
Compass	Centre-left/wide range of policy interests and also a membership-based organisation

Media

The media have always been a major presence in the world of peddling political influence. This is historically true particularly of Fleet Street. Most UK national newspapers are politically aligned and in tune with the preferences of both their proprietors and their readership. *The Sun* famously boasted in 1992 that 'It's The Sun Wot Won It' as it modestly credited itself with the surprise Tory victory in that election. It had campaigned relentlessly against then Labour leader Neil Kinnock, including publishing on polling day the headline, 'If Kinnock wins today will the last person to leave Britain please turn out the lights.' In 2019, the Conservative-leaning press was similarly blunt: 'IAN AUSTIN "I've given 40 years of my life to Labour, but EVERYONE should vote for Boris". Here's why Corbyn is unfit for No 10' was a *Sun* headline publicising the opinion of a former Labour MP. Yet the influence of the traditional media is more problematic than might at first be assumed:

- The circulation of national newspapers had roughly halved between 1992 and 2019 due to the rise of social media and the internet.
- A change in ownership and editor can bring about shifts in political stance. The traditionally right-wing *Daily Express* is now owned by the same company as the Labour-backed *Daily Mirror*. While it has not performed an editorial U-turn, it strongly backed Boris Johnson in 2019, ending the influence of its previous proprietor, Richard Desmond, whose staunch Euroscepticism led the *Express* to back UKIP in the 2015 election.
- Lastly, there is evidence that newspapers often prefer to back winners. Not only did the bulk of the national press support Blair between 1997 and 2010 but also different editions of the same paper can back different parties in different regions.

The biggest change in the media has been the rise of social media, which is far less controlled in a conventional sense by proprietors and opens up a whole new world of political advertising, trending topics and fake news. During the 2019 campaign, Twitter itself accused the Conservatives of misleading the public. This was after they rebranded one of their official party accounts to make it look like a fact checking service during the ITV leaders' debate. They temporarily changed the name of the Conservative campaign headquarters press office Twitter account, usually CCHQPress, to factcheckUK.

SYNOPTIC LINK

The media and their role in influencing elections is discussed in chapters 3, 7 and 8.

KNOWLEDGE CHECK

- 12 What is meant by the term 'pressure participants'?
- 13 How can corporations be seen as pressure groups in their own right?
- 14 What role do lobbyists perform?

The links between pressure groups and political parties, government and the media

Pressure groups are best understood as part of a 'policy web'. Some have close ties with political parties, such as Labour-affiliated unions. Many consciously adopt a policy of political neutrality so they can work more easily with governments of all political persuasions. Governments, by contrast, usually seek to engage with key insider groups, especially those with specialist and technical knowledge.

Pressure groups often seek to attract positive media attention, but the media can often dole out negative publicity, especially when a cause conflicts with their own editorial stance. Few Tory-leaning newspapers show much sympathy for striking public servants, while few left-wing papers give favourable coverage to private school fears about Labour plans to impose VAT on school fees. In the end, all political players want a slice of the cake of power and therefore cooperate, compete and collide with each other in equal measure for much of the time.

SUMMARY

- Pressure groups seek to influence policy-making as opposed to standing for elected office.
- Groups can be categorised as outsider and insider groups according to their status, and also by who or what they seek to represent: promotional and cause groups, and also, interest and sectional groups. These categories can and do overlap.
- There are strong arguments on both sides as to whether or not pressure groups enhance democracy. These include the elitism versus pluralism debate, as well as different interpretations of pressure groups' role in representation and participation.
- Pressure groups use a range of methods and strategies to achieve their aims. Outsider groups are most likely to use direct action. Insider groups rely far more on lobbying, often behind closed doors and via policy-making contacts.
- Some groups are more successful than others for a range of reasons. This is often affected by the wider political and social context as much as their own resources or tactics.
- Pressure groups are not the only influence on government policy: think tanks, the media, lobbyists and corporations are also key pressure participants.
- Some pressure groups have close links with political parties, government and the media, but relations can be both strained and fruitful.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse three advantages possessed by insider pressure groups. (9 marks)
- 2 Explain and analyse three methods used by pressure groups to advance their policy objectives. (9 marks)
- 3 Explain and analyse three factors that explain why some pressure groups are less successful than others. (9 marks)

Paper 1 Section B style questions

Read the extract below and answer Question 4 that follows.

Why are some pressure groups more successful than others?

Pressure groups come in all shapes and sizes, but some are far more effective than others. There are several reasons for this. Above all it boils down to resources — human and financial. Successful pressure groups, such as the RSPB and trade unions, usually have large memberships, which means governments are much more likely to listen to them than to a group that represents only a relatively small number of individuals. In addition, large membership means more money. Finance is crucial to pressure groups both because they can afford professional lobbyists and because they can spend large amounts on publicity to gather more support for their cause or campaign. In addition, some unions such as Unite are able to donate large amounts to the Labour Party, therefore buying influence there.

Yet resources are only part of the equation. First, successful pressure groups also tend to be in tune with the national mood. This explains why environmental groups are currently quite powerful and prominent. Many people are deeply concerned about the issues of global warming and burning fossil fuels. Hence, groups lobbying for greener energy are virtually knocking at an open door when it comes to influencing the government. Second, a sympathetic government can be very helpful. Groups fighting poverty and homelessness are far more likely to receive a positive reception from a Labour government. The reverse could be said to be true for business groups such as bankers, who tend to fare better under Conservative administrations. In this sense, pressure group success is inexorably linked to whichever party holds the keys to No 10.

Source: a piece written for the purposes of this book by author Simon Lemieux

- 4 Analyse, evaluate and compare the arguments in the extract that resources are the main factor determining the success of pressure groups. (25 marks)

Paper 1 Section C style questions

- 5 'The status of pressure groups is largely irrelevant in determining their chances of success.' Analyse and evaluate this statement. (25 marks)
- 6 'Pressure groups that engage in direct action are doomed to failure.' Analyse and evaluate this statement. (25 marks)
- 7 'Pressure groups seriously and inevitably undermine democracy in the UK.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Rathbone, M. (2015) 'Pressure groups: do they strengthen pluralist democracy?', *Politics Review*, Vol. 25, No. 2, pp. 2–5.

Tomes, A. (2019) 'UK pressure groups and democracy', *Politics Review*, Vol. 28, No. 4, pp. 6–9.

Books

Grant, W. (2014) 'Pressure politics: the role of pressure groups' in *Political Insight*, Sage Publications.

Websites

For a fairly basic introduction to the topic these two websites should be useful:

BBC Bitesize: <https://www.bbc.co.uk/bitesize/guides/zqhmjty/revision/2>

Brit Politics: <https://www.britpolitics.co.uk/what-are-pressure-groups/>

The European Union

KEY QUESTIONS ANSWERED

- What are the aims of the EU and to what extent have they been achieved?
- What are the key EU institutions and what are their functions?
- What impact did the EU have on UK politics and policy-making?

BACKGROUND INFORMATION

After two deadly European conflicts in the twentieth century, there was a strong desire across western Europe, but especially within its two most hardened rivals, France and Germany, for the Second World War to be the last major European war. From the start, the 'European project' was intended to be about more than just creating a large and powerful trading bloc. It was about promoting a clear set of aims and values, and strengthening the political and not just the economic ties between the democracies of western Europe.

By its supporters, the EU is applauded for its commitment to democratic values, embracing European unity and transcending sectarian nationalism. National sovereignty is not lost but pooled. In an increasingly globalised world, only a strong and united Europe can compete and wield influence against superpowers such as China and the USA. To its critics, the EU represents all that is worst about large, overarching government. Remote, unaccountable, unwieldy and hugely bureaucratic, the EU tries to achieve the impossible by uniting countries with hugely differing economies, histories and cultures. The price is not only financial but also diminishing national sovereignty. The EU is a juggernaut without brakes, storming towards an inevitable collision with the negative popular opinion of those it purports to serve.

Both interpretations are naturally something of a caricature but, as we shall see, each contains more than a grain of truth.

The aims of the EU and the extent to which they have been achieved

The original aims of the 'European project', which would over time evolve into the European Union of today, were:

- economic recovery and prosperity across western Europe
- embedding and reinforcing democratic values and human rights in a continent that had borne witness to the racist and authoritarian ideology of Nazism
- achieving reconciliation and a lasting peace among formerly warring states, above all between France and Germany

Central to this vision, according to one of its founding fathers Robert Schuman, was that:

'Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.'

These words reveal a sense of a constitutional and structural dynamic. The EU is not a static institution, like parliament, but a concept slowly but surely evolving into an 'ever closer union' with a final destination that might well

resemble a United States of Europe. A quick glance at the European project's changing formal titles arguably gives away the plot. It began as the European Coal and Steel Community in 1952, became the European Economic Community from 1958 and the European Community from 1967. In 1993, it finally became known as the European Union.

ACTIVITY

Find out more about the origins of the EU by researching its key founding fathers: Jean Monnet and Robert Schuman. A good starting point is the official EU website.

Key events in the structural history of the EU

Unity and integration would be slow and gradual for the EU. Centuries of nationalism based around individual nation states could not be transformed in an instant. This is borne out by the timescale over which the EU has developed (see Table 10.1).

Table 10.1 Development of the EU

Date	Event	Key features	Impact on membership
1951 (implemented 1952)	Treaty of Paris	Established the European Coal and Steel Community (ECSC) enabling a common market in coal and steel. It also established the High Authority in order to supervise the market, monitor compliance with competition rules and ensure price transparency.	Membership was just six countries: France, West Germany, Italy, Belgium, the Netherlands and Luxembourg.
1957 (implemented 1958)	Treaty of Rome	Established the European Economic Community (EEC) and created a wider common market. It effectively laid the foundations of an 'ever closer union' and greatly expanded the scope of the institution into areas such as agriculture and a common tariffs policy.	Same membership as the ECSC.
1973	Enlargement Round 1	The first significant expansion in EEC membership.	Denmark, Ireland and the UK joined the EEC. Greece (1981) and Spain and Portugal (both 1986) joined subsequently.
1985 (effective from 1987)	Single European Act passed	A single European market was created. Qualified majority voting (QMV) rather than unanimity was adopted for votes on legislation to do with the single market.	None
1985	Schengen Agreement	Removed internal border controls, so effectively created a single travel area within the EEC/EU.	The UK and Ireland secured an opt-out from the agreement.
Concluded in 1992	Maastricht Treaty	Created the EU, and established a timetable for economic and monetary union and increased cooperation between member states in foreign and security policy.	None
1995	Enlargement Round 2	Three more countries joined the EU.	Austria, Finland and Sweden joined, bringing membership to 15.
1997 (implemented 1999)	Amsterdam Treaty	Extended the role of the EU into further areas such as some aspects of immigration and security. It also amended parts of the Treaty of Rome. It included an updated integration clause that now read, 'This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.'	None

Date	Event	Key features	Impact on membership
1999	Eurozone created	Eleven countries abolished their national currencies and adopted the euro. This marked another significant stage in economic integration. It meant monetary policy for those states, such as setting interest rates, was in the hands of the European Central Bank, not national governments.	Four countries did not join the eurozone including the UK. Since 1999, a further eight EU member countries have adopted the euro.
2001 (implemented 2003)	Nice Treaty	Created a European security and defence policy.	None
2004	Enlargement Round 3	Created the largest single influx of new members, mainly eastern European countries that gained independence after the end of the Cold War and the collapse of the Iron Curtain.	Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia all joined. They were joined by Bulgaria and Romania in 2007 and Croatia in 2013.
2007 (implemented 2009)	Lisbon Treaty	This further reformed EU institutions. QMV was extended to over 45 policy areas in the Council of Ministers, and it created the important posts of President of the European Council and High Representative of the Union for Foreign Affairs and Security Policy.	None
2016 (implemented 2020)	UK holds an EU membership referendum	By the margin of 52%-48%, the UK voted to leave the EU. It was the first member state to leave, although Norway rejected joining in a referendum held in 1972, after its government had negotiated membership.	The UK left the EU, leaving it with 27 members. In 2020 there were five countries formally in the process of applying to join: Albania, Macedonia, Montenegro, Serbia and Turkey.

USEFUL CONCEPT

Qualified majority voting (QMV) Voting system used by the Council of the European Union when deciding many policies. It requires 55% of member states to vote in favour, i.e. 15 out of 27. The proposal must be supported by member states representing at least 65% of the total EU population. It ensures that no one country, nor an alliance of smaller states, can block measures. It makes decision-making easier, but significantly weakens the power of individual nations.



Contrasting approaches to the EU: a group photo of European leaders at the signing of the Lisbon Treaty (left) and supporters of Brexit celebrate the 2016 referendum result (right)

Key themes and aims of the EU

The fundamental aims of the EU have been summarised as the ‘four freedoms’:

- **Freedom of movement of people:** the right of EU citizens to live and work in any other EU country and enjoy equal access to public services.
- **Freedom of movement of services:** professionals, businesses and the self-employed have their qualifications recognised across all EU states. In short, until the UK left the EU, if you were qualified as a nurse in Spain, you were equally qualified to work in the NHS and vice versa.
- **Freedom of movement of capital:** the ability to move money and capital around the EU without many restrictions.
- **Freedom of movement of goods:** the ability to buy and sell products across the EU without border checks, import duties or the need to meet additional national standards. Countries are not allowed to protect domestic industries by way of tariffs and national regulatory requirements.

These freedoms are cornerstones of the European Single Market. They strengthen trade within the EU. Two-thirds of all goods produced in the EU are exported to another EU country. But the aims of the EU go beyond just trade and economics, and also include politics and civil rights. The wider aims of the EU include:

- peace and stability
- promotion of economic growth across member states
- the promotion of individual rights and freedoms
- integration into an ‘ever closer union’

Peace and stability

The EU has had a great deal of success promoting peace and stability. Not only have wounds from two world wars been healed, but also stability and a peaceful transition to democracy have been achieved in much of eastern Europe. The sudden collapse of the USSR and the swift dismantling of the Iron Curtain in 1989–90 had the potential to cause widespread instability and possibly violent conflict. Instead, largely because of considerable EU investment in infrastructure and support of fledgling democratic institutions, the region has been successfully reintegrated into the European mainstream. Compared with the chaos often seen elsewhere when swift regime change follows the collapse of an autocratic system, for example in the Middle East, this represents a clear ‘win’ for the EU. This approach is also being slowly undertaken in the war-torn countries of former Yugoslavia where there was a series of deadly civil wars from 1991 to 2001. Two such states have already joined the EU (Slovenia and Croatia) and others are at various stages of becoming members.

Promotion of economic growth across member states

The EU’s success in promoting economic growth across its member states is somewhat more difficult to assess. Some previously economically impoverished nations, such as Ireland and countries in eastern Europe, have enjoyed substantial economic growth and prosperity due to participating in the single market and benefiting from EU grants for various projects including improving transport links. But while the creation of a single market has created millions of new jobs and helped to increase GDP by 15% since its inception, problems remain. The economies of member countries remain highly disparate. In 2019, for example, gross domestic product per capita in Germany was over five times that of Bulgaria.

Wealth inequality within the EU has risen quite substantially since the mid-1980s. Towards the end of the 2000s the income distribution in Europe was more unequal than in the average developed (OECD) country, although notably less so than in the USA. Therefore, it could be said that the EU has done little to enable a fairer distribution of wealth both within and between countries. Arguably though, we cannot blame it all on the EU as domestic governments still play a large role in economic policy, including retaining control of most taxation.

Some EU states, particularly poorer countries such as Greece and Italy, were severely impacted by the aftermath of the 2007–08 global financial crisis. Finding themselves in need of bailouts by both the EU and the International Monetary Fund, they were forced to slash public spending and introduce austerity measures. Some critics argued this was largely the EU's making, having allowed poorer countries to join the eurozone in the first place when their economies were not 'convergent' with those of wealthier nations. The EU had also allowed these countries to run up large budget deficits, suggesting a lack of rigorous budgetary discipline had in part led to the sovereign debt crisis.

Finally, many smaller businesses in particular have found EU red tape and regulations complex and expensive to implement. One aspect of a single market is the need to set uniform standards, for example with product safety. These can be complex and costly for small firms.

Individual rights and freedoms

The EU's promotion of individual rights and freedoms across all member states has had mixed success. On the one hand, the principle of the freedom of movement has allowed citizens to move freely across borders in search of better and higher-paid jobs. Yet this in turn stoked tensions in countries such as the UK, which has seen high levels of immigration, especially from eastern Europe. Fears over growing immigration numbers played an important part in the increasing support for Brexit.



Nigel Farage, former leader of UKIP, and his party played on fears that continued membership of the EU would lead to the UK losing control of rising immigration

On the other hand, many EU citizens enjoy increased opportunities for easy travel within the EU, reciprocal healthcare (via the EHIC card) and the chance to study abroad with the help of Erasmus grants. There are also enhanced protections for workers, such as limits on working hours via the Working Time Directive 2003, which states the average working time for each 7-day period, including overtime, must not exceed 48 hours.

Finally, the recent influx of economic migrants and refugees into Europe (circa 1.8 million in 2015 alone), many fleeing the civil war in Syria, has created major problems across the continent. The responsibility of holding them until asylum applications are processed has fallen most heavily on southern Mediterranean countries, including Greece and Italy. The willingness of other EU countries to take their share of asylum claimants was mixed: Germany offered asylum to over 1 million, while Hungary was much more reluctant, temporarily closing its border with Croatia to try and stem the flow of illegal immigrants. Many might argue that the EU has been unable to respond in a coordinated and effective manner to the crisis. The root cause varies depending on one's point of view. For some it highlighted the need for more power to be given to Brussels to override the wishes and political priorities of individual states. Others argued that it revealed precisely why countries need to retain some control of their own borders and asylum policies.

KEY CONCEPT

Competences Areas of policy over which the EU has authority, e.g. farming, agriculture and trade.

Integration and an 'ever closer union'

In part, the EU has achieved a great deal of integration. Large areas of policy-making are now possible, due to both the expansion of **competences** through the various treaties and the creation of the eurozone and the single market. The extension of QMV has also enabled more decisions to be made, thereby reducing the opportunity for a single country to veto proposals.

There has been considerable integration in many areas of economic policy, above all via a single customs union and EU-wide standards in environmental production and food safety. Chlorinated chicken, a frequent feature in the US food industry, is expressly banned under EU regulations. Structural changes, such as the creation of a European Council president, the adoption of a flag and anthem, and the concept of EU citizenship and a common passport format, all suggest growing unity.

Yet set against this is the growth of populism in many European states. These include the Northern League in Italy and the National Rally (previously Front National) in France. All suggest a backlash and growing Euroscepticism beyond the UK. Many poorer countries felt ignored or dictated to by EU institutions, while richer countries — especially Germany and the Netherlands, which are proud of their fiscal frugality — balked at the idea of taking on the debt of nations they saw as lacking adequate fiscal discipline.

One of the greatest challenges for the EU came in 2020 with the onset of the COVID-19 pandemic (see case study overleaf).

CASE STUDY

The EU and its response to COVID-19

The initial lack of a coordinated EU response to the COVID-19 pandemic in 2020 saw the temporary reimposition of internal border controls, different approaches to lockdown and squabbles over the sale of personal protective equipment (PPE). It made for a poor public image of European unity and cohesion. France, Germany and several other European countries rejected EU officials' attempts to lift controls on the export of protective medical gear. Some of the worst-hit countries, such as Italy, complained of less badly affected nations denying help and supplies.

However, the pandemic also saw unprecedented intervention by the European Central Bank (ECB) and a coordinated response by EU leaders. After delays and lengthy negotiations, in April 2020 EU finance ministers agreed a €500 billion rescue package for European countries hit hard by the coronavirus pandemic. A few weeks later, the president of the European Commission, Ursula von der Leyen, called on member countries to back a €750 billion recovery plan, commenting that: 'The crisis has huge externalities and spill overs across all countries and none of that can be fixed by any single country alone.' Overall, the pandemic ultimately pulled the economies and public finances of member countries closer together.

DEBATE

Has the EU achieved its aims?

Yes	No
With 500 million consumers, the single market has promoted economic growth and boosted trade across the union. Some of Europe's poorer nations have particularly benefited.	The single market is overregulated and significant disparities in national wealth remain.
The EU has provided coordinated large-scale support at times of financial crisis, such as during the COVID-19 pandemic and the 2008–09 global financial crisis.	Many have criticised the inadequacy of the EU's responses to crises, both financial and human.
Workers' rights and freedom of movement have benefited ordinary people.	Freedom of movement has proved controversial, and some see the EU labour market as too rigid and inflexible.
Coordination in areas such as policing and security (e.g. the European Arrest Warrant) has made Europe safer.	Security has been enhanced through separate agreements independent of the EU. Interpol, for example, is an international body that is separate from the EU.
Democracy has been cemented in countries emerging out of decades of authoritarian rule, especially those in eastern Europe.	Many of the EU's own institutions lack full democratic accountability.
Europe is closer and more united in a whole range of areas. This is seen in the creation of the eurozone and the expansion of EU competences.	The EU reflects differentiated integration. Some countries are more integrated than others. Denmark, for example, remains outside the eurozone. Many have secured opt-outs from policies they see as detrimental to national interests.
The EU has increasingly adopted a more unified front on foreign policy, especially after the creation of the post of High Representative of the Union for Foreign Affairs and Security Policy.	National governments still take the lead in foreign affairs. This can be shown by different approaches to intervention in conflicts in the Middle East. There is no European Army. NATO is a more significant player in terms of common defence.
	Some member states, notably Hungary and Poland, have been accused of adopting undemocratic policies such as restricting press freedoms and politicising their courts.

 In pairs or groups, using the points in the debate above discuss which of the EU's aims have best been achieved and which remain most problematic.

In summary, the process of enlargement and growth of powers has raised both opportunities and challenges for the EU. The opportunities are to create an ever more stable, prosperous and united Europe. The challenges are trying to achieve these goals with an even greater diversity of economies

and cultures. Many voters feel increasingly disenchanted and remote from both the ethos and institutions of the EU, for example the UK voted to quit. Yet other countries are queuing up to join. That perhaps sums up the EU's overall record, successful...but only in parts.

KNOWLEDGE CHECK

- 1 When did the UK join the EEC/EU?
- 2 What are the 'four freedoms'?
- 3 What three major crises are identified as posing particular challenges to the EU?

The nature and functions of the key EU institutions

The EU comprises five key **institutions**:

- European Commission
- Council of the European Union
- European Council
- European Parliament
- Court of Justice of the European Union

KEY CONCEPT

EU institutions The principal bodies of the EU that comprise its legislative, executive, judicial and administrative branches.



The Berlaymont Building in Brussels, headquarters of the European Commission

The institutions have different functions, membership, democratic accountability and status — some are **intergovernmental**, comprising representatives of national governments (the Council of the European Union and the European Council). The others (the European Commission, the European Parliament and the Court of Justice of the European Union) are **supranational** bodies — they possess their own authority and can impose decisions on national governments. The relationship between the institutions of the EU is complex and best illustrated by Figure 10.1.

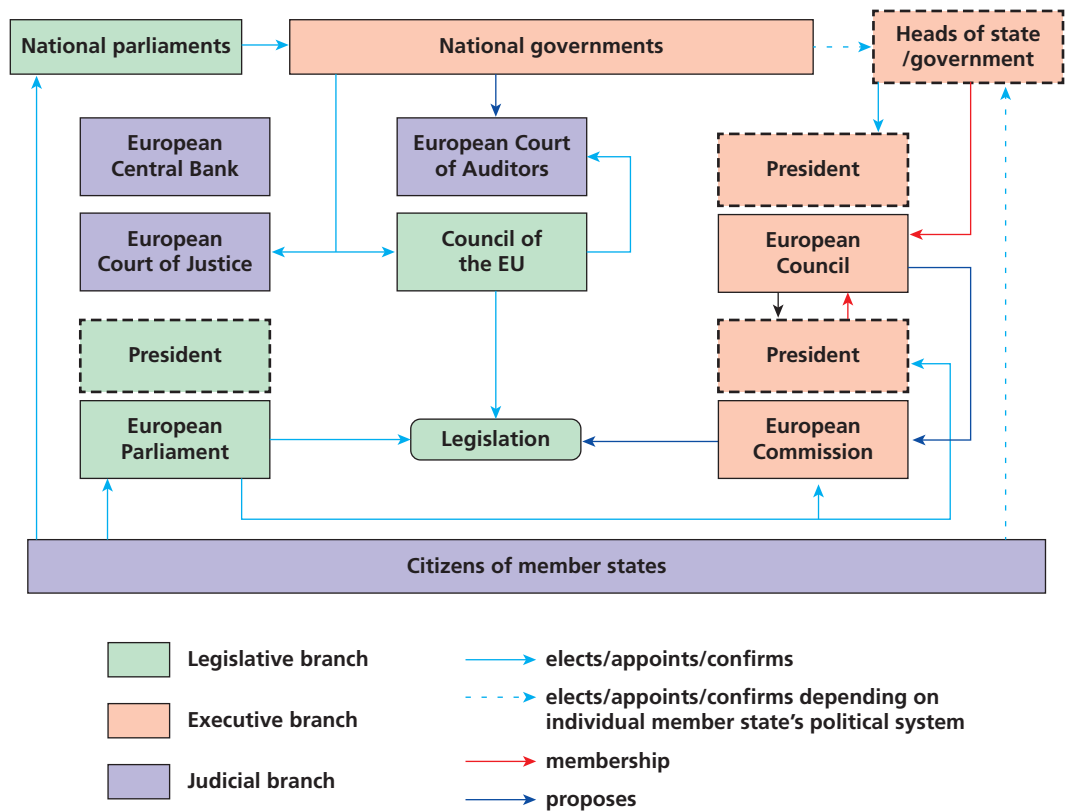


Figure 10.1 Relationship between the EU institutions

Source: adapted from <https://commons.wikimedia.org/w/index.php?curid=68954242>

European Commission

Table 10.2 gives an overview of the main features of the European Commission.

Table 10.2 European Commission

Location	Brussels
Membership size and method of appointment	27 commissioners (one from each EU state) led by the commission president, who allocates responsibilities for policy areas. The Commission president (Ursula von der Leyen since December 2019) is nominated by the European Council but must be approved by the European Parliament. Individual commissioners are nominated by national governments and voted on by the European parliament.
Function	The Commission is something of a hybrid. It is both the civil service and administrative branch of the EU, yet also has a key role in devising policy via its directives. It proposes new laws — it is the only EU body that can do this. It manages EU policies and allocates EU funding. It enforces EU law (along with the EU Court of Justice) and ensures member states comply. It represents the EU internationally, including in the negotiation of agreements.
Examples of its work	In June 2020, the Commission announced a 9% reduction in funding for the Common Agricultural Policy. In 1982 (and since updated) the Commission issued the Seveso Directive dealing with the storage of dangerous substances in the oil and chemical industries to minimise the risk of major accidents. It affects over 12,000 industrial establishments across the EU.

Council of the European Union

Table 10.3 gives an overview of the main features of the Council of the European Union.

Table 10.3 Council of the European Union

Location	Brussels
Membership size and method of appointment	Government ministers from each EU country, according to the policy area to be discussed. Membership is effectively decided by national governments.
Function	The main EU decision-making body, previously known as the Council of Ministers. There are no fixed members — instead it comprises ten sectional councils dealing with a specific policy area, e.g. Agriculture and Fisheries. It shares legislative power with the European Parliament (known as 'co-decision') and coordinates economic policy across the states. It negotiates and approves laws proposed by the European Commission regarding policy and directives. Most decisions are agreed using QMV, but in a few areas such as foreign policy and taxation, unanimity is required.
Example of its work	It negotiates trade deals with non-EU states, such as that in 2019 with Japan.

European Council

Table 10.4 gives an overview of the main features of the European Council.

Table 10.4 European Council

Location	Brussels except during April, June and October when meetings are held in Luxembourg City
Membership size and method of appointment	Quarterly summit meetings of the leaders of all member-states. In addition, the Council chooses a president to serve for a 5-year term. In 2019, Charles Michel was selected as president, replacing Donald Tusk. Meetings are also attended by the president of the Commission, who does not have a vote.
Function	Primarily, 'agenda setting' and defining the EU's overall direction and priorities. It is not one of the EU's legislating institutions, so does not negotiate or adopt EU laws. It is the key strategic body of the EU.
Examples of its work	It oversaw Brexit negotiations with the UK, laying down the EU's terms. It also formulated an EU response to unrest in Ukraine and the threat posed by Russia. A 2019 tweet by former president of the European Council Donald Tusk said, 'There can be no just Europe without an independent Ukraine. There can be no safe Europe without a safe Ukraine. To put it simply: there can be no Europe without Ukraine!'

European Parliament

Table 10.5 gives an overview of the main features of the European Parliament.

Table 10.5 European Parliament

Location	Strasbourg, though some meetings are held in Luxembourg and its secretariat is based in Brussels. This complex structure is defined by EU treaties and cannot be changed by the parliament itself.
Membership size and method of appointment	Post-Brexit, it contains 705 members (MEPs) directly elected by member states. The number of MEPs per country is determined by size: Germany has 96 MEPs, while Malta has just six. In the parliament, MEPs sit not as national delegations but in pan-European political groupings, such as the Group of the Progressive Alliance of Socialists and Democrats.

Function	It approves the annual EU budget. It amends and vetoes EU legislation as proposed by the Council of the European Union and drafted by the Commission. Unlike most parliaments, it cannot propose its own legislation. It confirms the appointment of commissioners nominated by national governments. It oversees the work of EU institutions, notably the European Commission.
Examples of its work	Commissioner nominations are occasionally vetoed, as happened in 2019 to Romanian nominee, Rovana Plumb, by the parliament's oversight committee. The veto concerned irregularities in her wealth declaration form. In 2019, the parliament approved a new EU copyright law including the controversial Article 11 and Article 13, which required social media platforms such as YouTube, Facebook and Twitter to take more responsibility for copyrighted material being shared illegally on their platforms. This was seen by many as stifling the creativity of social media creators. Some talked of a 'meme ban', as there was uncertainty as to whether memes, often based on copyrighted images, would fall foul of these laws. The law/directive was backed by industry groups which saw it as protecting the rights of creative artists.

SYNOPTIC LINK

The debate over the EU copyright directive is a good example of pressure groups operating at a European level. The law was strongly opposed by social media giants such as YouTube. You can read more about UK and US pressure groups in chapters 9 and 21 respectively.

Court of Justice of the European Union

Table 10.6 gives an overview of the main features of the Court of Justice of the European Union (CJEU).

Table 10.6 Court of Justice of the European Union

Location	Luxembourg
Membership size and method of appointment	The CJEU is divided into two courts: Court of Justice — deals with requests for preliminary rulings from national courts. General Court — rules on actions for annulment brought by individuals, companies and, in some cases, EU governments. In practice, this means the court deals mainly with competition law, state aid, trade, agriculture and trademarks. Each judge is appointed for a renewable 6-year term by national governments. In each court, the judges select a president who serves a renewable term of 3 years.
Function	To uphold EU laws, ensuring they are implemented fairly and uniformly across member states. Many cases are brought to the court by the Commission where it believes laws are being infringed. It is the ultimate source of legal authority, and decisions cannot be overruled by another EU body or national governments.
Examples of its work	Much of its work concerns matters of trade and copyright. It does not always back the European Commission. For example, in 2020 its General Court overturned the Commission's decision to block the merger of two UK mobile telecoms companies, O2 and Three.

STUDY TIP

A common error is to confuse the CJEU with the Strasbourg-based European Court of Human Rights (ECtHR), which oversees the European Convention on Human Rights. The ECtHR is not an EU institution but one associated with the Council of Europe, which is also not an EU institution.

ACTIVITY

For each of the five institutions, research some additional up-to-date examples of their activities and actions. A good starting point is the websites of the individual EU institutions.

KNOWLEDGE CHECK

- 4 Which is the only directly elected EU institution?
- 5 What type of cases are often likely to come before the CJEU?
- 6 Which institution is the main decision-making body?

The impact of the EU on UK politics and policy-making

The EU impacted significantly on UK politics, even before 1973. These impacts are best evaluated thematically.

Constitution, sovereignty and referendums

Without doubt, one of the areas most affected by EU membership was parliamentary sovereignty. While the UK was a member of the EU, no parliamentary Act could conflict with EU law. EU legislation took precedence, which meant that areas such as farming and fishing quotas were tightly restricted in terms of what the UK could change. The campaign to repeal the so-called 'tampon tax' (VAT on women's sanitary products) floundered due to EU rules on varying VAT rates. Yet 'no parliament can bind its successor', so the limits on parliamentary sovereignty, self-imposed following the passing of the European Communities Act 1972, were removed by the repeal of that Act during the Brexit process.

Referendums used to decide the future of UK membership in both 1975 and 2016 also set up an interesting clash between popular and parliamentary sovereignty. There was no crisis in 1975, as the will of the people (to remain in the EEC) accorded with that of parliament. However, the Brexit vote saw a clear mismatch in opinion between the Remain majority among MPs, and a slim Leave majority among the population. Did referendums assert the true and 'pure' view of the people, unfiltered by representative democracy, or was it a textbook example of the inherent inadequacies of referendums? Much depends on where one stands in the Leave/Remain debate.

Government and parliament

Government policy-making in the UK was affected by EU membership. Not only did all legislation have to align with EU law, but it also affected government action in other ways. It made it harder for governments to bail out struggling industries, as EU approval needed to be sought to ensure competition rules were being adhered to. Yet at the same time it created stronger political partnerships

SYNOPTIC LINK

The process of getting Brexit passed through parliament is analysed more fully in Chapter 2.

between the UK government and our EU neighbours. Had the UK joined the eurozone or signed up to the Schengen Agreement, the impact on policy-making would have been even greater. For example, the Bank of England would no longer have been able to set its own interest rates.

The tortuous progress of Brexit through parliament between 2017 and 2020 also created an unusual gridlock in UK parliamentary procedure, and briefly in 2019 saw the chamber seize control of the parliamentary timetable from the government. The impact of the EU on policy is limited in areas outside its direct competences. These include health and education, where national governments retain full control over policy details.

Judiciary

The major impact of EU membership on the judiciary is that UK judges had to give precedence to EU law when making judgements. The 1990 Factortame case was a stark reminder of this impact. The Law Lords (predecessors to the Supreme Court) ruled unanimously that as the Merchant Shipping Act 1988 was already illegal under EU law, according to the CJEU, they could apply that judgement in making their own judgement about related compensation claims. Crossbench peer and barrister Lord Pannick commented that Factortame was 'the most significant decision of United Kingdom courts on EU law...It brought home to lawyers, politicians and the public in this jurisdiction that EU law really did have supremacy over Acts of Parliament.'

SYNOPTIC LINK

UK political parties and their divisions and policies, including on Europe, are covered in Chapter 8.

Political parties

EU membership also divided both main political parties. In the 1970s, this was most evident among Labour ranks. From the 1980s onwards, it was the Tories who were most divided by Europe. Sharp divisions emerged between Eurosceptics such as John Redwood and pro-Europeans such as Ken Clarke. The split culminated in 21 Tory rebels having the whip withdrawn in September 2019, after they defied the leadership and voted to stop a no-deal Brexit. Only a clear Conservative victory in the December 2019 election resolved the matter.

By contrast, the EU served as a rallying and unifying issue for some parties, including the Welsh and Scottish nationalists. The Liberal Democrats, too, embraced a pro-EU stance, and promised to revoke Article 50 in their 2019 election manifesto.

Voting behaviour

If there is any doubt that 'age is the new class' when it comes to voting behaviour, then Figure 7.3 (page 181) provides further convincing evidence. Nothing predicted an individual's vote over Brexit as well as age.

ACTIVITY

Research all these areas in more depth. One useful source about the impact of Brexit is the Commons briefing paper by Vaughne Miller published in 2016. You can find it on the UK parliament website.

KNOWLEDGE CHECK

- 7 Why was the Factortame case important?
- 8 Which party was most split over Europe before the 1990s?

SUMMARY

- The EU's origins go back to the period immediately after the end of the Second World War. It has since gone through several name changes, and a growth in membership and power.
- The key aims of the EU are the stated 'four freedoms' and wider aspects including closer integration. There is much debate over how far these aims have been met successfully.
- There are five key EU institutions: the European Parliament, the European Commission, the Council of the European Union, the European Council and the Court of Justice of the European Union. All perform different functions and membership is selected via different methods.
- The EU made a considerable impact on UK politics and policy-making across a range of areas. It caused divisions and controversy, although it didn't completely subvert parliamentary sovereignty, as shown by the passage of the European Union (Withdrawal) Act 2018.

Practice questions

Paper 1 Section A style questions

- 1 Explain and analyse the powers of three European Union institutions. (9 marks)
- 2 Explain and analyse three ways the European Union could be said to have achieved its aims. (9 marks)
- 3 Explain and analyse three ways that the European Union affected UK policy-making and politics. (9 marks)

Paper 1 Section C style questions

- 4 'Membership of the EU had little impact on policy-making in the UK.' Analyse and evaluate this statement. (25 marks)
- 5 'The institutions of the EU largely lack a democratic mandate.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Jeffries, J. (2020) 'What is the future of the European Union?', *Politics Review*, Vol. 29, No. 3, pp. 12–15.

Tuck, D. (2019) 'The legitimacy of the EU', *Politics Review*, Vol. 28, No. 4, pp. 16–17.

Websites

EU official website — contains good summaries of the main institutions and up-to-date news concerning the EU: https://europa.eu/european-union/about-eu/institutions-bodies_en

HistoryExtra magazine has a useful brief summary of views on the successes/setbacks of the EU:

<https://www.historyextra.com/period/20th-century/big-question-has-european-union-eu-been-success-brexite/>

UCL Constitution Unit: <https://www.ucl.ac.uk/constitution-unit/research/uk-and-europe>



3

Government and politics of the USA and comparative politics

11

The constitutional framework of US government

KEY QUESTIONS ANSWERED

- What are the key features and principles of the US Constitution?
- What is the significance of the main principles in the US Constitution?
- What framework of government is set out in the US Constitution?
- How can the US Constitution be amended both formally and informally?
- What does the US Constitution say about federalism?
- What is the current balance of power between individual states and federal government?
- Is the US Constitution still suited to twenty-first-century America?
- How well does the US Constitution, and especially the Bill of Rights, defend civil liberties and freedoms?

BACKGROUND INFORMATION

One of the most important things to understand when studying the US Constitution and US politics is that it is easy to assume too many similarities with the political structure and culture of the UK. The USA is different. Consider the way both countries reacted to the COVID-19 pandemic. In both countries, social distancing was prominent, health systems struggled to cope and the usual patterns of life were significantly disrupted. Yet beneath the apparent similarities, there were marked differences in tone and emphasis.

On 3 April 2020, President Donald Trump stressed how wearing face masks to prevent the spread of COVID-19 was a voluntary action. He stated:

‘You do not have to do it...I don’t think I’m going to be doing it. Sitting in the Oval Office...I somehow don’t see it for myself.’

Even by early April 2020, around ten states had still stopped short of asking all residents to remain indoors or imposing lockdown orders. Iowa Governor Kim Reynolds argued: ‘I can’t lock the state down...I can’t lock everybody in their home.’ At the same time, Governor Andrew Cuomo of badly hit New York state, along with the city’s mayor, issued stay-at-home orders and stressed the deadliness of the virus. The response was a long way from the UK’s national lockdown and the initial simple and universal mantra of ‘Stay at Home, Protect the NHS, Save Lives’. This illustrates one of many differences between the UK and the USA in political structure and culture. But like other nations around the world, much of modern-day US political culture and diversity stems from its historic roots.

The nature and significance of the US Constitution

The origins of the US Constitution

Following the American Revolution, the first attempt at creating a new government was based on the **Articles of Confederation**. This agreement between the 13 original US states served as the first Constitution. It provided for a loose commonwealth of colonies, with very little by way of central government or authority, and there was no president. Individual colonies — each with their own distinct features, and of varying size and political institutions — were reluctant to give up their hard-won independence, only for it to be handed over to a remote central government. Within several years, however, the setup proved unsustainable. But weaknesses soon became apparent through events such as Shays' Rebellion, an armed uprising in 1787. The rebels were mostly ex-Revolutionary War soldiers-turned-farmers who opposed Massachusetts' economic policies, which had led to poverty and property seizures. The tension — keenly felt then as it is now — lay in how to balance freedom and the right to resist on occasion with stability and effective government. The answer was the Constitutional Convention, which met in Philadelphia from May to September 1787. The 55 attendees (Founding Fathers) drew up the **US Constitution**, which then had to be ratified by nine of the 13 states before it could come into effect. This was achieved in June 1788 when New Hampshire became the ninth state to ratify.

KEY CONCEPT

US Constitution The document that contains the key rules and framework for the USA's government. Although drawn up in 1787, it has subsequently been amended 27 times, so the Constitution today is longer than the original version.



The Constitutional Convention meets in Philadelphia, May–September 1787

Key features of the US Constitution

Drawing up a constitution for a fledgling nation was no easy task for the Founding Fathers, a group of men that included George Washington, Alexander Hamilton and Thomas Jefferson. There was much heated debate and discussion, disputes and differences over a number of points including how

power should be balanced between states and the federal government, and between large and small states. The final document bore several important and enduring features:

- **It emphasised ‘representative government not democracy’.** The original Constitution contained no lofty aspirations to one man, one vote, let alone one person, one vote. Nor was there any requirement for a secret ballot. The only nod to elections was: ‘The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature.’ The notion of representative government is borne out further by the indirect election of the president, who was (and still is) selected via an Electoral College and not by a direct popular vote. The Senate, too, was initially chosen indirectly by state legislatures, although this was altered to direct election in 1913 by the Seventeenth Amendment.
- **One less well-known aspect of the Constitution was its general fear of mass democracy.** Hamilton wrote: ‘Can a democratic assembly who annually revolve in the mass of the people be supposed steadily to pursue the common good? Nothing but a permanent body can check the imprudence of democracy.’ That permanent body was the Constitution.
- **It was a product of its time and culture, and of its authors.** The Founding Fathers were all white Christian males. Nearly all were slave owners, most owned land and there was no desire to undertake a fundamental shift in power away from a wealthy elite.
- **Slavery was part and parcel of the new nation, and intrinsic to the economy and society of several states.** This was especially true in the South, where white Americans forced African-Americans to do slave labour on cotton and tobacco plantations. The Constitution was diplomatically silent on the issue of slavery — diplomatic, that is, in the eyes of its framers and not those forced to toil on the plantations.
- **It was about the framework and structure of government — it was not about individual rights.** Those first appeared in 1791 with the first ten constitutional amendments, known as the **Bill of Rights**.

KEY CONCEPT

Bill of Rights The first ten amendments to the Constitution that were agreed by Congress in 1789 and finally ratified in 1791. These amendments focus on individual rights such as freedom of speech and religion. They protect the civil liberties of US citizens from the actions of government.

STUDY TIP

In your answers, do not make the mistake of stating that these well-known words are found in the Constitution:

‘We hold these truths to be self-evident, that all men are created equal, that they are endowed, by their Creator, with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.’

They originate in the 1776 Declaration of Independence.

- **The order of the articles was not pure chance.** Congress comes first in the articles, suggesting it was seen as the principal player. The president is mentioned second and was envisaged as more of a trouble-shooter, an international representative and a focus for unity than as a powerful authority figure. Having escaped the ‘tyranny’ of one monarch, the Founding Fathers had no desire to manufacture a US version. The Supreme Court came last, and its role lacked specific details. There were no specific requirements for the judges in terms of age, number or even nationality. Nor was there any mention of their role as interpreters of the Constitution or of judicial review.

STUDY TIP

A common error is to misunderstand the three-fifths clause. The clause wasn't intended to grant enslaved people part of a vote. Instead it was solely included to aid in the calculation of numbers of seats in the House of Representatives — enslaved people would count for three-fifths of a freeman. The three-fifths clause was repealed by the Fourteenth Amendment (1868).

USEFUL CONCEPTS

Implied powers Powers of federal government implied by, or read into, its roles and responsibilities as laid out in the US Constitution.

Enumerated (delegated) powers Powers explicitly spelt out in the US Constitution.

- **It was a compromise in several important ways.**
 - The Connecticut Compromise dealt with the clash between small and large states, both of which feared being dominated or held to political ransom by the other. The upper chamber, the Senate, would have equal representation from every state, while the lower chamber, the House of Representatives, would have representation based on population size.
 - There was also compromise between states with large populations of enslaved people, such as Virginia, and others via the **three-fifths clause**.
 - Finally, there was compromise between those Founding Fathers such as Hamilton, who wanted a strong central government, and those such as Jefferson, who wanted most power still to lie with individual states.
- The Constitution was also based on the premise that political relations, especially between executive and legislature, would be based around **negotiation and cooperation**, not **confrontation and competition**.
- **There was an implicit fear of power.** The framers accepted that some power was required for a nation to flourish and prosper, but that power was also dangerous. Thomas Jefferson wrote in his autobiography that good governance came 'not by the consolidation or concentration of powers, but by their distribution'. Power was separated and shared between the states and federal government, and between the different institutions of federal government. **Limited government** was a key principle, both in the balance between individual rights and those of government, and between the federal government and individual states. The US Constitution was also to be a codified document, unlike the British Constitution.
- **The Constitution left much unsaid and plenty that was vague.** Powers that are only outlined vaguely are termed **implied powers**. For example, Congress was given the power to 'provide for the common defence and general welfare of the United States'. What does this mean in practice? Can that be used, for example, to justify the military draft (conscription) or a national healthcare programme? Yet in places it is remarkably specific, such as setting the minimum age for the president (35), senators (30) and members of the House of Representatives (also known as congress(wo)men) (25). It also sets out certain key powers such as Congress's power to 'coin money' and the president acting as commander-in-chief. These are **enumerated (or delegated) powers**. The Constitution is therefore, according to Anthony Bennett, a 'blend of specificity and vagueness'. It was also designed to be **long lasting and enduring, and not to be easily changed or overturned**. Therefore, the process for formal amendment was complex and required a high threshold for approval.
- Despite huge differences over what it means in places, and a deep polarisation in US politics generally, the Constitution itself **acts as a focus of loyalty and attachment** for the majority of Americans.
- Finally, and perhaps most crucially, the **Constitution was to be sovereign**, the ultimate source of authority. As stated in Article VI, 'This constitution... shall be the *supreme Law of the Land*.' Neither president nor Congress could override its provisions.

KNOWLEDGE CHECK

- 1 What does codification mean?
- 2 In what ways was the Constitution a compromise?
- 3 What is the difference between implied and enumerated powers?

The significance of constitutional principles

The Constitution remains fundamental to how US politics and government operate today. The relevance and importance of some of its principles are examined in this section.

Vagueness and silence in the Constitution

The mixture of vagueness and silence on key issues is at once one of the Constitution's main strengths and weaknesses. It is a strength in the sense that it has allowed the Constitution to evolve and develop over the centuries. The term '**general welfare**' has altered meaning considerably since the eighteenth century, when the Constitution was first drawn up. The same applies to the **necessary and proper** clause, which empowered Congress to make all laws 'necessary and proper' in order to carry out the duties of federal laws. Often termed the 'elastic clause', this has enabled the legislature to adapt over time to changing circumstances and values. For example, the Immigration Act 1924 reflected clear racial bias, banning the entry of all Asian people to the USA. Yet in 1965, Congress passed a Voting Rights Act that expressly forbade racial discrimination in voting. Such shifts in the law reflect changing perspectives and values.

The Constitution's vagueness has been a weakness too. By saying nothing on slavery in the original document, the seeds were sown for a sectional divide that would culminate in the 1860s in a bloody civil war. Only in its aftermath was slavery banned under the Thirteenth Amendment (1865).

The lack of any allusion to democratic principles also suggests that the original Constitution was not necessarily the enlightened and visionary document some have claimed. It would take decades of struggle and several constitutional amendments, such as the Nineteenth Amendment (1920) that enfranchised women, for the USA to become a fully democratic state. The original Constitution did not establish the USA as a 'beacon of democracy'. Just like Britain and other Western nations, the march towards full democracy was long.

Perhaps one of the most frustrating aspects of the original Constitution is its vagueness and ambiguity in places. Two instances are gun rights and the ability to make war. The Second Amendment contains that well-known phrase 'the right to bear arms', but this seemingly straightforward right is prefixed by the phrase 'A well-regulated Militia, being necessary for the security of a free state'. So does this really mean that all Americans have an inalienable right to private gun ownership, or only those who are, say, military reservists or members of the National Guard, 'Always Ready and Always There'? There is also ambiguity in the term 'arms'. In the 1780s, 'arms' referred to single-shot muskets — so does this now imply semi-automatic weapons, handguns or



The US National Guard logo

even more lethal devices? With good reason, retired Supreme Court judge John Paul Stevens suggested that the Second Amendment be rephrased for clarity's sake as follows: 'A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms when serving in the militia shall not be infringed.'

A similar vagueness and uncertainty pervades the issue of whether Congress or the president is ultimately responsible for initiating military action. The Constitution gives Congress sole power to formally declare war. Yet it also conveys the title of commander-in-chief on the president. It would appear that the Founding Fathers were not being deliberately disingenuous here. They were envisaging a situation where Congress would be the most important institution, all the while accepting that there would be occasions when a more immediate armed response would be required, for example an unexpected attack by the British or Indigenous Americans. In emergencies, it might not be practical for Congress to swiftly reconvene, especially before the age of modern transportation or communication — in such scenarios, the president would be required to act quickly. While that might have been the intention, the reality has been somewhat different, with presidents usually ordering military action and then seeking approval from Congress retrospectively. Such military interventions have also often involved secrecy and subterfuge, for example the secret bombing missions on Laos and Cambodia during the Vietnam War (1955–75).

The combination of both silence and ambiguity has proved a mixed blessing. In some ways it has helped the Constitution to be adapted and updated without formal changes to its clauses. Yet in others it has proved unhelpful, causing uncertainty and a lack of clarity. Where there is no clarity, the Supreme Court steps in.

The need for a referee

KEY CONCEPT

Judicial review The power of the courts to decide whether a law or action is legal or illegal.

Judicial review is probably the Supreme Court's most important power, as it effectively grants the Court the power of interpreting the Constitution and declaring laws or executive actions as unconstitutional and therefore illegal. However, judicial review is not specifically mentioned in the Constitution — it came into being with the precedent set by the 1803 case *Marbury v Madison*.

Due to these areas of doubt and uncertainty, alongside ultimate sovereignty, there have been multiple times in the Constitution's history when it required authoritative interpretation. Charles Evans Hughes, before he became a Supreme Court justice, phrased it thus in 1907:

'We are under a Constitution, but the Constitution is what the judges say it is.'

Judicial review has become a crucial function of the Supreme Court but has also led to its inevitable politicisation. Many contentious issues, ranging from abortion to gay marriage, end up in the Supreme Court. Matters that in other Western democracies might be settled by legislation or a referendum are in the USA often decided in the courts. This reflects the vagueness of the Constitution, and the requirement of a definitive legal opinion on what is and is not constitutional and lawful.

This has resulted in a huge number of landmark cases in US history, although such cases are often not final victories but contests that demand a 'rematch'. In other words, they often represent commas not full stops. The Court can and does revise its opinions. So, while in the 1896 *Plessy v Ferguson* case the Court upheld

SYNOPTIC LINK

Landmark rulings through the Supreme Court have included *Roe v Wade*, *Plessy v Ferguson* and *Brown v Board of Education of Topeka*. You can learn more about landmark cases in Chapter 16.

racial segregation laws, these were effectively reversed in the 1954 case of *Brown v Board of Education of Topeka*. Therefore, the Court has become a battleground for ongoing legal challenges in areas of controversy and conflicting views. The Constitution does have the last word, but the Supreme Court often re-types it.

ACTIVITY

Research another controversial area, such as abortion rights or the death penalty. How have the Supreme Court's interpretations of the Constitution altered over time? As a starting point, look up the article 'Changing the constitutional landscape for firearms' on the NCBI website (see Further reading, page 289).

SYNOPTIC LINK

The power of the Supreme Court has led to many struggles over appointments to the Court. Presidents have sometimes found it difficult to get nominees confirmed by the Senate. The last nomination directly rejected was that of Robert Bork in 1987. The respective powers of Congress and the president are fully explained in chapters 13 and 14.

The game of gridlock

The Constitution was designed to promote cooperation and compromise between the different branches, for example between Congress and president, and the Senate and the House. By often requiring mutual agreement — for example, all laws must be approved by both congressional chambers — the hope was that they would work together. It was also intended that the Senate would calm the passion and populism of the House. It would constitute the 'senatorial saucer' to 'cool' legislation coming from the House, as Washington allegedly termed it in a conversation with Thomas Jefferson. Reality has proved otherwise, and all too frequently there is competition and deadlock between the different branches. The budget, for instance, is proposed by the president and submitted for approval to Congress. In recent years this had often led to a standoff and gridlock. In the worst scenarios, a limited government shutdown has occurred, the longest being 35 days between December 2018 and January 2019 when party differences made compromise more heated than usual. In part this was due to President Trump's insistence on greater funding for his border wall. The presidential veto or threat of one, and equally Congress's refusal to pass legislation requested by the president, has also led to legislation in areas such as immigration reform not being passed. Arguably, instead of uniting Americans, the Constitution has often inadvertently led to division and deadlock.

Elections: a match still played out in 50 states

The Constitution places the organisation of elections firmly in the hands of the 50 individual states. While some main rules and requirements for voting are uniform across the USA, many are not. Certain national criteria are mandatory under laws such as the Voting Rights Act 1965 and the Help America Vote Act 2002, but in many practical ways the conduct of elections

is left to individual states. As with other areas of government, this is ultimately down to the Constitution.

This can mean wide variations in the use of postal ballots, early voting, how primaries and caucuses are organised and the voting rights of ex-felons. There is no national list of voters and there are different methods of voting. Some states use electronic voting machines (direct-recording electronic systems), while others stick with the traditional paper ballot. A handful, including Utah, automatically mail ballots to all voters. Lever machines were commonly used in the USA until the 1990s. New York was the last state to employ lever machines, ending its use of them as late as 2009. Following the 2020 elections, Georgia state law required that as neither candidate for its two senatorial races achieved over 50% of the vote in November, a runoff election was held in January 2021.



An old lever-style voting machine

This state-based focus for elections has also raised controversy over stricter voter ID laws, where some states, mainly Republican controlled, have sought to toughen up the rules to prevent alleged voter fraud. Some, including Kansas and Mississippi, have strict requirements over what forms of photo ID are permissible. This has led to accusations of voter suppression. It is worth noting that despite loud claims to the contrary by Trump and many of his Republican supporters that the 2020 election was 'stolen', in reality voter fraud remains very rare in the US.

SYNOPTIC LINK

The state-based nature of US elections not only applies to aspects of voter eligibility and primaries/caucuses, but also to direct democracy. Direct democracy is discussed more fully in Chapter 18.

KNOWLEDGE CHECK

- 4 In what areas is the Constitution silent or vague?
- 5 Which institution is responsible for interpreting the Constitution in areas of uncertainty?
- 6 What does the Constitution say about the organisation of elections in the USA?

KEY CONCEPTS

Separation of powers

The doctrine requires that the three elements of government power — executive, legislative and judicial — be held by separate branches of government in order to prevent tyranny.

Checks and balances

A crucial feature of the Constitution's framework in which each branch of government is limited by the others, so preventing too much concentration of power in any one institution or individual.

The framework of government laid down in the US Constitution

The two main principles in the US Constitution are the **separation of powers** and **checks and balances**. The Constitution's framers envisaged a constitution that would limit government and share the balance of power between the different branches. Each institution has powers to limit the others, as well as those reserved for that branch.

Separation of powers

The Founding Fathers were influenced by the French political philosopher Montesquieu who, in his 1748 work *De L'Esprit des Loix* ('The Spirit of the Laws'), argued that the best way to avoid tyranny and absolutism was to divide government into three distinct branches:

- Legislature (Congress)
- Executive (Presidency)
- Judiciary (Supreme Court)

Separate articles of the Constitution were therefore designed to adhere to this principle, and consequently they deal with and define each branch. The significance of this principle does not stop there — it is also reflected in how each branch functions. Yet the separation is not as complete as one might assume.

DEBATE

How significant is the principle of the separation of powers in the US Constitution?

Very significant	Less significant
Each branch is clearly checked and limited by the other two.	The term 'separation' is misleading, making it less significant. It is better phrased as ' shared powers '. For example, both president and Congress have powers over passing laws.
No person can serve simultaneously in both Congress and the legislature. For example, Hillary Clinton had to resign as senator for New York when appointed secretary of state, and Deb Haaland resigned as a New Mexico congresswoman when Biden nominated her as secretary of the interior in 2020.	The vice president (executive) is also senate president (legislature) and has the casting vote in the event of a tie. Mike Pence used this power on several occasions, including to confirm Betsy DeVos as education secretary in 2017 and Jonathan Kobes for the Court of Appeals for the Eighth Circuit (2018). Given the 50/50 party split in the Senate after the 2020 election, it is very likely that Vice President Harris will have to do likewise.
It helps to prevent any one branch from having too much power and avoids the notion of an 'elective dictatorship', the type sometimes associated with the UK prime minister. For a president to get policy through, they need to work with Congress, and ensure it is compatible with the Constitution.	A president with a supportive Supreme Court, and whose party also controls Congress, can wield a lot of power.
It helps to preserve the notion of an independent and non-political judiciary, vital to the defence of civil liberties and entrenched rights.	Few judiciaries in modern democracies are arguably as politicised as the US judiciary. By involving politicians in the nomination and confirmation process, as well as the considerable political power of the Supreme Court, this inevitably lessens their independence.
	Presidents have the power of pardon, which overlaps somewhat with the judiciary's powers and limits the significance of powers being separated in practice.

 Individually or in pairs, consider the points above and your own knowledge — how significant do you think the separation of powers is in the government of the USA? How well do you think the US system of checks and balances works?

Checks and balances

Every branch of government is limited and constrained by the others (see Figure 11.1).

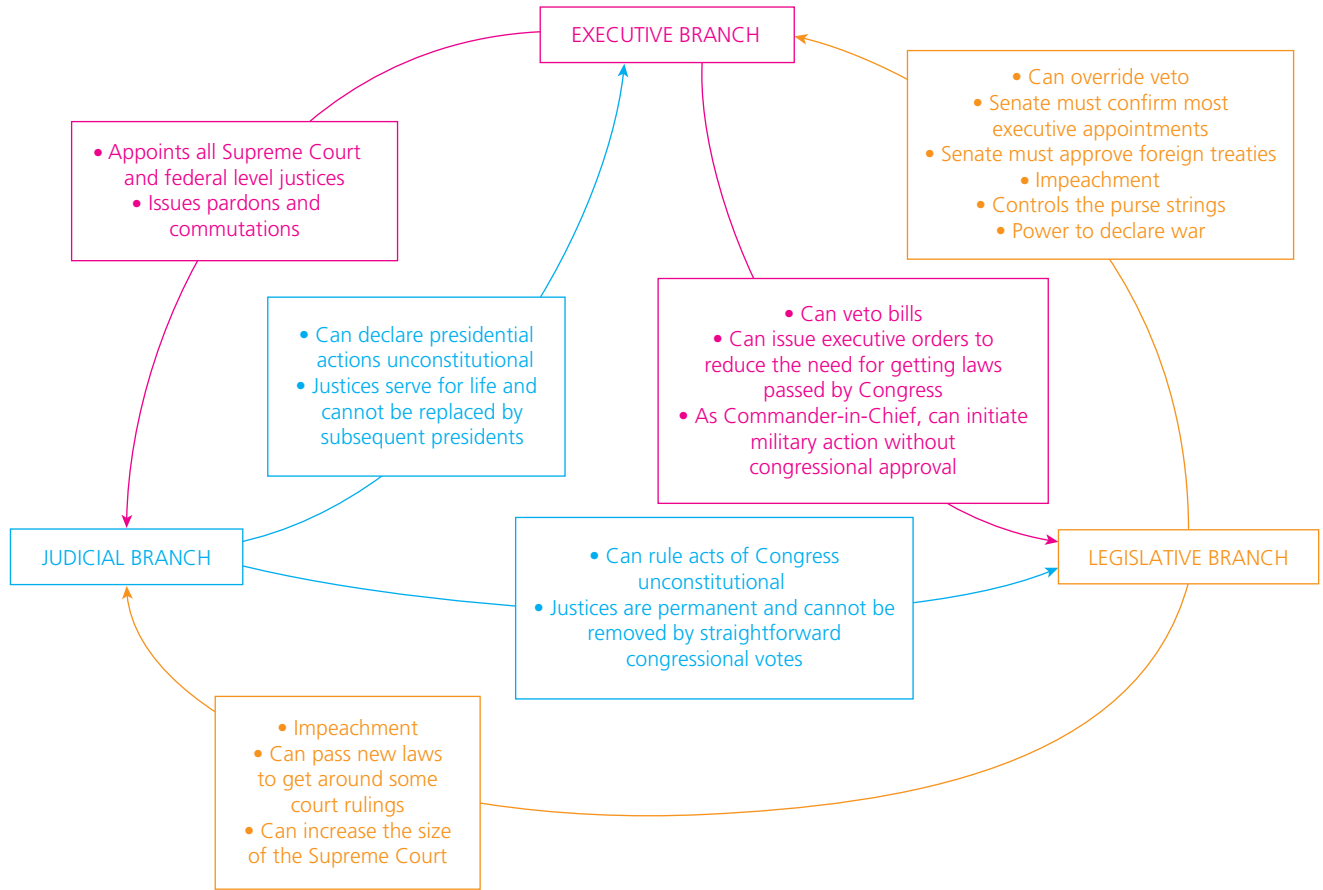


Figure 11.1 Checks and balances in the US federal government

Examples of these checks in operation include the following.

Presidential checks on Congress

Presidents can limit the power of Congress in several ways:

- **Presidents veto acts or resolutions passed by Congress.** President Barack Obama vetoed the Keystone XL pipeline and issued 12 regular vetoes during his two terms in office. President Trump vetoed a resolution revoking his declaration of a national emergency at the US–Mexico border.
- **Presidents often threaten the veto to dissuade Congress from passing an unwelcome measure.** Obama made four veto threats in his 2015 State of the Union Address, on the topics of stiffer Iran sanctions, diluting or overturning the Affordable Care Act, loosening Wall Street oversight and tightening up immigration controls. ‘If a bill comes to my desk that tries to do any of these things, I will veto it’, he said.
- **Presidents can issue executive orders to bypass the need for formal legislation.** In 2017, Trump introduced a travel ban on visitors from several countries, mostly Muslim-majority countries.
- **Presidents can use their commander-in-chief role to deploy US troops overseas, thereby avoiding congressional approval of declaring war.** In 2001 and 2003 respectively, President George W. Bush ordered the invasions of Afghanistan and Iraq.

KEY CONCEPT

Pardon A government decision to forgive someone of a crime. Once a pardon is issued, all punishment for the crime is waived.

Commutation A reduction in the length or severity of a punishment.

Presidential checks on the courts

The president also checks the judicial branch in several ways:

- **The president nominates all federal justices including, when there is a vacancy, to the Supreme Court.** Obama appointed Sonia Sotomayor and Elena Kagan, and Trump appointed Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett to the Supreme Court.
- **The president can issue pardons and commutations to those convicted of federal crimes.** President Gerald Ford **pardoned** his immediate predecessor, Richard Nixon, while Trump pardoned the media mogul Conrad Black in 2019, who had previously written a favourable biography about him. Obama issued a record 330 **commutations** on his final day in office. Trump proved a little more restrained on his final day as president in 2021, but nonetheless issued 73 pardons and 70 commutations, including one to his former chief strategist Steve Bannon, who was facing serious fraud charges. The power of pardon is one of those quirkiest parts of the US Constitution. A role traditionally reserved for monarchs to act as the 'fount of justice', seeing the power of pardon among the US president's authority initially seems surprising. The reason is contextual and historic — it was originally included as a presidential power to enable the president to pardon rebels in the early days of the nation, in the interests of national reconciliation.

Congressional checks on the president

Congress checks the president in the following ways:

- **A presidential veto can be overturned by a supermajority in both houses.** In 2016, Congress overturned Obama's veto of the Justice Against Sponsors of Terrorism Act (JASTA), the only veto he had overturned. George W. Bush had 4 out of his 12 regular vetoes overridden. During his one term in office, Trump had just one of his ten vetoes overridden, on a defense spending bill in January 2021 during the final days of his presidency.
- **The Senate must confirm by a simple majority presidential appointments to the administration including the judiciary.** In 2013 the Senate blocked Obama's appointment of Robert Wilkins to the District of Columbia (DC) court of appeals, the second-most important court in the States. The last Cabinet nominee to be denied confirmation was John Tower as defense secretary in 1989. The last Supreme Court nominee to be formally rejected was Robert Bork in 1987.
- **As with the presidential veto, the threat of a Senate rejection is often as powerful and is more frequent.** One example was Biden's controversial 2020 pick of Neera Tanden as Director of the Office of Management and Budget. When it was clear she would not secure enough Senate votes for confirmation, her nomination was withdrawn in March 2021.
- **Congress has the 'power of the purse' and can turn down presidential requests for funding.** Congress, on several occasions, frustrated Trump's attempt to get full funding for his Mexican border wall.
- **Congress can simply decline to pass legislation desired by the president, for example in their State of the Union Address.** In the aftermath of several mass shootings, most notable at Sandy Hook school in 2012, Obama requested Congress pass several gun-control measures, but nothing was passed despite proposals being drawn up. Trump encountered similar frustration when he tried to get his own version of healthcare reforms passed.

USEFUL CONCEPTS

Supermajority Represents approval by two-thirds of all members of both the House and the Senate. Constitutional amendments and convicting an impeached president in the Senate also require the same level of support from lawmakers.

STUDY TIP

When analysing checks and balances in the Constitution, also note that presidential power was further checked by Congress and the states by the Twenty-Second Amendment ratified in 1951. This limits the president to serving two full terms. Its significance is debatable though, as few postwar presidents are reckoned to have been popular enough to win a third term.

- **The ‘nuclear option’ of impeachment can remove a president from office mid-term.** In 2019, the House voted to proceed with an impeachment trial against Trump. However, the Republican Senate did not convict him following the trial. Uniquely, in the final days of his presidency the House voted to impeach him a second time on 13 January 2021.
- **Congress has the power to block treaties negotiated by the president.** A two-thirds vote in the Senate is required to ratify treaties. In 2012, the Senate failed to ratify the Convention on the Rights of Persons with Disabilities. Although it passed by 61-38, it needed five more votes to get ratified.
- **Congress can launch investigations into presidential actions where wrongdoing or serious concerns are raised.** In 2019, the House Oversight and Reform Committee launched an inquiry into a potential conflict of interest over increased spending by the US air force on refuelling at a struggling Scottish airport near a resort owned by Trump. The airport was seen as integral to the viability of the Trump Turnberry golf resort.

Congressional checks on the courts

Congress can check the courts in several important ways, too.

- **Congress can impeach federal justices and remove them from office.** In 2010, a Louisiana federal judge, Thomas Porteous, was successfully impeached and removed from office for corruption in a near unanimous vote.
- **Constitutional amendments can be initiated to overturn Supreme Court verdicts.** In 1896, the court found a national income tax to be unconstitutional. This was reversed by the ratification of the Thirteenth Amendment in 1913. Subsequently, there have been attempts in Congress to pass amendments banning flag burning and prayer in public (state) schools, although these have been unsuccessful.

Judicial checks on the president

The Supreme Court in particular can limit presidential powers:

- **The courts can rule presidential actions unconstitutional and therefore illegal.** In *Hamdan v Rumsfeld* (2006), the Court ruled against special military commissions set up by George W. Bush to try suspected members of the terrorist group al Qaeda. In July 2020, in two cases involving the tax and financial records of President Trump, *Trump v Mazars* and *Trump v Vance*, the court ruled that presidents do not enjoy absolute immunity from state criminal subpoenas. In other words, the president is not above the law even when in office.

Judicial checks on Congress

The Supreme Court can also limit congressional powers:

- **The courts can declare acts of Congress to be unconstitutional, and therefore effectively require them to be repealed.** In 2013, the Defense of Marriage Act was ruled unconstitutional in *United States v Windsor*, which marked a major advance for the legalisation of same-sex marriage across the USA.

The significance of checks and balances

The system of checks and balances is significant in several ways. First, it often encourages the political players, above all Congress and the president, to deploy other tactics to get around the constraints. Hence, many presidents prefer to

negotiate executive agreements over full treaties with international powers, such as Obama's nuclear deal with Iran, or to call a national emergency to secure additional funding without the express approval of Congress, as Trump did over the USA–Mexico border. They also frequently issue executive orders that do not require congressional approval, though they can be, and are, challenged in the courts.

Second, it is noteworthy that the president is subject to the most checks out of all three branches. This is a clear indication of the framers' fears — in their view, the main threat to good government was laying too much power in the hands of a single person. Yet arguably it is the office of president that has seen the greatest expansion in its powers over the decades. Perhaps a case of necessity being the mother of political initiative?

KEY CONCEPT

Midterms Elections for Congress that occur in between presidential elections/terms. The entire House and one-third of the Senate are put up for election.

In a roundabout way, checks and balances can also affect the timing of presidential initiatives. Presidents face particular problems getting legislation through when their party does not control Congress, a situation known as **divided government**. Presidents often lose popularity midway through a 4-year term, leading to their party performing poorly in the **midterm** congressional elections and perhaps losing control of one or both chambers. Trump's Republican Party lost control of the House in the 2018 midterms, while Obama's Democratic Party lost control of the Senate in the 2014 midterms. Therefore, it makes sense for presidents to try and push through major chunks of legislation in their first 2 years after getting elected. This can be seen with President Obama securing the Affordable Care Act (popularly known as Obamacare) by early 2010, and Trump getting his Tax Cuts and Jobs Act passed in 2017.

As well as tactics and timing, the elaborate system of checks and balances also means that much of US politics at a national level is characterised by gridlock. With levers of power often held in different hands, frequently very little positive is achieved. By dispersing power, the Founding Fathers have ensured, intentionally or otherwise, that it is much easier to stop something happening, such as a new law, than it is to achieve something positive. Arguably, this is not the fault of the system itself but how it is currently being played. While the structure was designed to promote bipartisanship and different groups and factions working together, the opposite has occurred. In a time of bitter partisanship the parties show a marked reluctance to cooperate and compromise. Even a national emergency, such as the emergence of COVID-19 in 2020, took several days of intense and often fraught negotiation to get the original \$2.2 trillion stimulus package (CARES Act) passed. While the current players must take their fair share of the blame for how they are 'playing the game', arguably the rulebook itself is something of an invitation to struggle.

Note that not all the checks and balances necessarily have equal significance. The most powerful weapons — arguably, those of impeachment — are rarely used and even more unlikely to be successful. No US president has been successfully impeached, although President Nixon resigned in 1974 rather than face a likely removal from office. Even the presidential veto is declining in use in recent presidencies and is perhaps overrated as a political tool. Obama vetoed 12 bills in his two-term presidency compared with Ronald Reagan, who issued 78 during his two terms in office in the 1980s. Very often it is the **threatened checks and balances**, the threat of a veto or a denied Senate confirmation that ultimately has most impact.

STUDY TIP

An easily overlooked check and balance is that between the Senate and the House. A longer 6-year term for senators who are re-elected by thirds every 2 years is balanced by the re-election of the entire House every 2 years. This offers the potential for greater stability and a longer-term outlook in the Senate, while resulting in a House more responsive and accountable to the popular mood.

KNOWLEDGE CHECK

- 7 Why did the Founding Fathers adopt the principle of the separation of powers?
- 8 Why is the term 'separation of powers' somewhat misleading?
- 9 Which branch of government is most checked by the Constitution?

Formal and informal amendment of the Constitution

Formal amendment of the US Constitution

The Constitution was made deliberately hard to amend formally. There are two ways in which formal amendments can occur. In the vast majority of successful amendments, the process begins with Congress and it is followed by ratification by individual state legislatures. In both cases, a high threshold of approval is required. In one case (the Twenty-First Amendment that repealed Prohibition), ratification occurred via ratifying conventions in individual states. There is provision for amendments to be proposed by two-thirds of states calling for a national constitutional convention, but this has never been successful. The closest it has come in recent times was in 1992, when 32 states petitioned Congress for a convention to propose a balanced budget amendment. This fell two states short of the threshold, so the plan failed. Figure 11.2 details the process for amending the US Constitution.

Passing an amendment can be done in two ways.



After an amendment has been passed it must then be ratified. Again, two routes are possible.

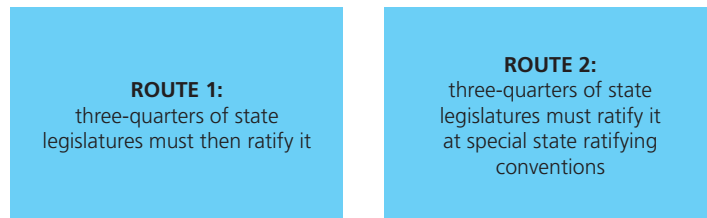


Figure 11.2 Amending the US Constitution

SYNOPTIC LINK

Many of the key protections of civil rights are found in the Bill of Rights and the Civil War era 'Reconstruction Amendments' (the Thirteenth to Fifteenth Amendments). You can find out more about civil rights in the USA in chapters 23 and 24.

Before evaluating the amendment process, we should highlight a few basic facts about constitutional amendments.

- There have been 27 successful amendments, ten of which were passed very soon after the Constitution was ratified. Together they are known as the 1791 Bill of Rights.
- The amendments deal with a wide range of topics, but among those several concern individual rights and also voting. The last major amendment, the Twenty-Sixth (1971), lowered the minimum voting age from 21 to 18.
- One amendment overturned an earlier one — this dealt with Prohibition, so there are only 25 current 'live' amendments.
- Many of the amendments were passed in response to a particular situation or context. For example, the amendment restricting the president to two terms in office was passed soon after the lengthy presidency of Franklin D. Roosevelt, who served for an unprecedented 13 years having won four successive elections and died in office in 1945.
- Not all amendments have equal significance. The Twenty-Third Amendment (1961) gave Washington, DC votes in the presidential Electoral College — important for DC certainly, but perhaps not quite so significant as enfranchising women or ending slavery.

Key amendments from the Bill of Rights include:

- First Amendment: introduced freedom of religion, speech, the press and assembly
- Second Amendment: introduced the right to bear arms
- Eighth Amendment: banned the use of 'cruel and unusual' punishments

Key amendments after the Bill of Rights include:

- Thirteenth Amendment (1865): abolished slavery
- Fourteenth Amendment (1868): gave citizenship to former enslaved people and included the 'equal protection' and 'due process' clauses
- Seventeenth Amendment (1913): introduced direct election to the Senate
- The last amendment to be passed was in 1992 and specified that any increase to congressional salaries could only take effect after the next election. This was originally proposed by James Madison for inclusion in the Bill of Rights but didn't 'make the cut'. Its subsequent 'discovery' is a fascinating tale in itself. Its ratification, when many other far more major proposed changes failed, is perhaps due to how one scholar, Richard Bernstein, has described it as being 'credible and unthreatening...modest, reasonable, and appropriate'.
- Numerous amendments have been proposed and six to date, including the Equal Rights Amendment (which would embed women's rights in the Constitution), have been passed by Congress but failed to get sufficient state ratifications within the allocated timeframe.

Although formal ratification is rare and difficult, informal amendment via the judgements of the Supreme Court is far more common, and arguably enables the Constitution to remain relevant and up to date. The question of whether formal amendment to the Constitution should be made easier is a significant one.

ACTIVITIES

- 1 Research the background to the Twenty-Seventh Amendment in more detail. The story starts with a college student and his C grade essay. The National Constitutional Center website is a good starting point (see Further reading, page 289).
- 2 Research another example of an unratified constitutional amendment. What were its main provisions and why did it fail? To begin, read the article 'The zombie amendments to the Constitution you've probably never heard of' on the NPR website (see Further reading, page 289).

DEBATE

Is the US Constitution too hard to amend formally?

Yes	No
Very few amendments have been passed recently due to the high thresholds required — 27 in over 200 years is not an impressive achievement. The current Constitution contains some provisions that many consider outdated, for example the Electoral College and the Second Amendment. It prevents the Constitution from being updated, especially in the area of rights. While some key groups are protected, such as racial minorities, others, such as women and people with disabilities, are not. The complexities of passing amendments make this almost impossible to achieve. Too much informal amendment takes place via Supreme Court judgements from individuals who are unelected and unaccountable. Although in theory states can initiate the formal amendment process under Article V, no national constitutional convention has ever been held.	The high thresholds for formal amendment ensure that change only happens when there is a wide consensus and broad agreement. Obsolete clauses of the Constitution can be repealed, as happened with Prohibition. Some constitutional problems, such as the Electoral College, could be reformed without the need for outright abolition. Some aspects, such as the Second Amendment, are capable of sensible adjustment, including banning the sale of certain weapons or requiring background checks. The rights of many groups not specifically singled out for protection in the Constitution can be equally well defended by federal and state laws. If constitutional amendments were made much easier, where would the line be drawn? While protecting the rights of women and children might receive near universal support, those of transsexuals or vegetarians might be more complicated and controversial. The Supreme Court does often take note of the direction of public opinion when reaching its conclusions and so informally amending the Constitution, for example in relation to LGBTQ+ rights. The current amendment procedure, in theory at least, allows for a federal dimension to be present via a national constitutional convention, as it is state initiated.



Individually or in pairs, discuss and decide whether you believe the US Constitution is too difficult to amend formally.

Informal amendment of the US Constitution

The Constitution is primarily updated via Supreme Court judgements and not through the formal process of amendment. The Court has a crucial role in interpreting the Constitution via judicial review. This has led the judges to ‘discover’ new meanings and rights within existing clauses. Aside from *Roe v Wade*, other examples include the following:

- The explicit right to private gun ownership, as a result of *District of Columbia v Heller* (2008).
- The right of those stopped by the police to remain silent and avoid self-incrimination — the so-called ‘Miranda rights’.
- The right of corporations and interest groups to enjoy First Amendment rights and extending the notion of free speech to political activity and organisation following the *Citizens United* case.
- The rights of LGBTQ+ Americans in *Obergefell v Hodges* (2015).
- Extending the right of privacy to mobile phone data in *Carpenter v United States* (2018).

There is considerable debate as to whether or not the framers’ intentions can be discerned in this way. Can we ever, for example, truly know what George Washington, were he alive and living in twenty-first-century America, would think about gay rights, or the power of the state to collect and store data from mobile phones? Many conservatives would argue this is

an impossibility and such decisions should be left to legislatures, whether in individual states or in Washington, DC. Others, mainly found on the liberal wing, disagree and see the Constitution as a 'living document', capable of being reinterpreted for a modern age. But the above list, and many more examples, show the applicability via judicial interpretation of an ancient document to technology and other issues that the Founding Fathers could never have envisaged.

SYNOPTIC LINK

The divergence of views regarding the Constitution and its applicability to modern situations links to judicial philosophies. Strict constructionists favour a narrow and more literal reading of the text and argue against finding new rights therein. By contrast, loose constructionists claim the Constitution holds a dynamic meaning, evolving and adapting to new circumstances. You can learn more about judicial philosophies in Chapter 16.

The federal system of government

When advocating the concept of limited government, the original framers of the Constitution weren't thinking only of government infringing on the rights of individual citizens. They were hoping also to limit the interference of federal or central government in the affairs of the separate states. The key term is **reserved powers**, meaning that as per the Tenth Amendment (the federalist clause), all powers not expressly delegated to federal government, such as trade and defence, 'are reserved to the States respectively or to the people'. Yet here is another constitutional ambiguity: what does the phrase 'or to the people' mean? If 'the people' means the will of voters expressed through the election of Congress or the president, clearly not all residual powers necessarily lie with individual states. Not surprisingly, **federalism** is another area of debate in relation to the US Constitution.

Even at the Constitutional Convention there was fierce disagreement between those, including Benjamin Franklin and Alexander Hamilton, who wanted a stronger central government (slightly confusingly termed federalists) and those anti-federalists, including Thomas Jefferson and Patrick Henry, who supported more autonomy for individual states. Interestingly, and perhaps frustratingly, the Constitution itself makes no explicit reference to federalism. However, what it clearly did say was that state law must conform not only with the Constitution but also with federal law, which has primacy.

Over time, the argument over the distribution of power between central government and the states has been a major focus for political struggle. Key landmarks in the debate have included the following:

- The Civil War (1861–65) was fought over slavery, but also involved the issue of states' rights, above all the ultimate power — that of breaking away from the Union. The North won the war, and so this ultimate expression of state power was permanently suppressed.
- The post-Civil War era in the South saw the emergence of legalised racial segregation. This was viewed as permissible under the notion of states'

KEY CONCEPT

Federalism A system of government in which bodies such as states or provinces share power with national government. Aside from the USA, Germany and Switzerland are other examples of federal nations. The UK, by contrast, is traditionally defined as a unitary state, although it has arguably shifted in recent years towards becoming quasi-federal.

rights. It was successfully challenged and ended by the federal government in the 1950s and 1960s. Segregation has also given the notion of states' rights a somewhat racist and negative connotation.

- The Sixteenth Amendment (1913) allowed for a national income tax. This is the only constitutional amendment to have expressly extended the power and authority of central government.
- The New Deal of the 1930s and the Second World War (1939–45) necessarily required huge increases in the power and influence of national government. For example, during the Depression, a nationwide social security programme was established. During the war, industry had to be much more coordinated on a national scale.
- The 1950s and 1960s saw increasing measures by national government to tackle issues such as racial inequality and poverty. Not only were laws passed requiring states to end practices that prevented African-Americans from voting, but also some national healthcare schemes such as Medicare were introduced.
- The 1970s and 1980s saw something of a backlash against the seemingly unending growth of 'big government'. Several Republican presidents, including Nixon and Reagan, talked of a **new federalism**, and of returning some powers to individual states. Block grants, or federal money given to the states for use at their discretion within broad policy areas, were introduced. However, the federal budget deficit grew in the 1980s and many federal programmes were cut back. This led to **unfunded mandates**, during which states were still required to undertake certain roles but without sufficient federal funds. Although new federalism was most associated with Republicans, it was the Democrat president Bill Clinton who, in 1996, uttered the famous words, 'The era of big government is over.'
- Since 2000, despite an alternation of Republican and Democrat presidents, most commentators would agree that the era of big government was back with a vengeance. Under George W. Bush, a major reform of education was undertaken on a national scale with the passing in 2002 of the No Child Left Behind Act. In addition, there was a substantial expansion of Medicare to include new prescription drug benefits for seniors. In the aftermath of the 9/11 attacks, the Patriot Act was passed, which set up a new executive department, the Department of Homeland Security.
- Under Obama, government spending continued to rise with new healthcare reforms including the Affordable Care Act and several measures to help stimulate the economy following the financial crisis of 2007–08, such as the American Jobs Act 2011, which provided \$140 billion for repairing roads and modernising schools.
- This trend continued under Trump. Even before the coronavirus crisis hit, a major stimulus package, the Tax Cuts and Jobs Act 2017, was passed. In March 2020, Trump signed the largest-ever US financial stimulus package, worth \$2 trillion. He had previously invoked the Defense Production Act (DPA) 1950, which gives the president the power to force private industries to create items required for national defence. This was undertaken primarily to escalate the production of medical ventilators by firms such as General Motors as a response to COVID-19.

This overview strongly suggests that federalism has been seriously weakened from the 1930s onwards. As the world has become more global and complex, as people's expectations of what governments should deliver to their citizens have grown, and as a result of military, economic and medical crises, federal government is doing more — and certainly spending more.

ACTIVITY

A movement called the Tea Party emerged in 2009. It was strongly linked to the more conservative wings of the Republican Party and called for a scaling back of government spending. Research the Tea Party's main policies and tactics. How successful has its impact been?

The current balance of power between individual states and federal government

Despite an erosion of states' powers in recent decades, and a clear shift in the balance away from individual states to central government, the 50 states still play a very important role in US politics. Key areas where they still retain important roles include the following:

- **The ability to legislate in a wide range of areas including local taxes and access to abortions.** Several conservative states, such as North Dakota and Arkansas, have tightly restricted abortion laws.
- **The issue of the death penalty is primarily state-based.** A heinous murder in one state, such as Texas, can leave the perpetrator on Death Row, but in an adjoining state serving a life sentence without parole. In that sense, the US federal system is literally a matter of life or death.
- **The presidential election.** The Electoral College system, whereby each state elects its Electoral College voters who then go on to choose the president, remains state based. The number of electors per state is based on the size of its congressional delegation.
- **States run and conduct elections, deciding on whether to hold caucuses or primaries as a way of selecting party candidates.** Important issues including postal ballots, voter ID laws and direct democracy are all decided at state level.

In times of crisis, it is often states and their governors who are at the forefront of the response, for example during Hurricanes Katrina and Sandy, and the COVID-19 pandemic. Such disasters, however, also highlight the limits of states' abilities to cope. They inevitably require national involvement, both in the form of financial help and in the involvement of federal agencies such as the Federal Emergency Management Agency (FEMA).

During the COVID-19 crisis, there was often a sense that the US response lacked centralised coordination, with president and governors often blaming each other for the shortage of vital equipment such as ventilators and personal protective equipment (PPE). Illinois governor J. B. Pritzker called Trump's response to the pandemic incompetent, saying he 'does not understand the word "federal"', referring to the president's instructions for states to seek out their own resources. 'If he were right, why would we ever need a Federal Emergency Management Agency? It's because individual states can't possibly do what the federal government can do.' By way of response, Trump criticised some (Democrat) governors for the speed of their response, tweeting: 'Some [governors] have insatiable appetites & are never satisfied (politics?), remember, we are a backup for them. The complainers should have been stocked up and ready long before this crisis hit.' The clash between individual states and the federal government is often as much about national party politics as it is high principles of federalism.

The coronavirus outbreak also revealed the differing approaches between states to the unfolding crisis. Some states, including Ohio, were quick to lock down while others, including Florida, were much slower. Some, including Arkansas, did not even issue a full lockdown order.

ACTIVITY

Another issue that has seen some liberal-leaning states, including California, and the Republican White House clash, is undocumented and illegal immigrants and the idea of 'sanctuary cities'. Research this topic to discover how and why there was conflict between Trump's federal government policy and the approach of some states.

The COVID-19 crisis also led to something of an explicit power struggle between federal and state authorities. On 13 April 2020, when questioned about easing aspects of the lockdown, Trump openly declared, 'When someone is the president of the United States the authority is total.' He was referring directly to his ability to dictate events nationally over the heads of individual states and their governors. Governor Cuomo of New York, the state worst hit by the pandemic at the time, replied, 'The Constitution says we don't have a king...we didn't have a King George Washington but President George Washington.' The debate over the distribution of power in the Constitution is, therefore, one that is ongoing.

SYNOPTIC LINK

It is often said that one of the president's main powers is to persuade, but that does not necessarily prevent a president from issuing imperial-like statements, such as those issued by Trump during the COVID-19 pandemic. You can learn more about presidential power in Chapter 14.

Ultimately, recent discussion over the role of central government has been less focused on how far it should interfere in the rights of individual states than on what form interference should take. Democrats have no problem with federal government imposing healthcare expansion on states via Obamacare, but they bitterly resist individual states opting to restrict abortion access. Likewise, Republicans have no issues with federal government cracking down on the sanctuary cities movement that undermines their wish to curb illegal immigration, but they have no problem with states passing 'bathroom bills' that restrict transgender rights. In summary, many politicians on both sides of the political divide support states' rights — unless they go for the 'wrong sort' of rights.

KNOWLEDGE CHECK

- 10** What examples are there of federal government expanding its powers since the 1930s?
- 11** What is new federalism?
- 12** In what areas do states still have considerable powers?

The suitability of the US Constitution to twenty-first century America

A key debate is whether or not the US Constitution is still fit for purpose in modern America. The Constitution has real flaws, such as its rigidity and uneven approach to protecting rights and liberties as well as specific clauses such as that requiring the Electoral College. It has also been criticised for enhancing the role of unelected judges who carry out the task of interpretation.

Yet the Constitution has its defenders, not least those who argue that the real flaws lie in how contemporary politics is played out in the USA. Operating within a political culture characterised by deep polarisation and

hyperpartisanship, the Constitution is arguably not allowed to function effectively, as opposed to being fundamentally flawed. Where, then, does the truth lie? One way to approach this is to evaluate the pros and cons of the Constitution via two approaches: first, in terms of some of its specific clauses and second, in respect of its broader structure and nature.

Examining specific clauses of the Constitution

A number of clauses in the Constitution have proved particularly problematic.

- The Constitution continues to balance the interests of small and large states by equal representation in the Senate but population-based representation in the House. This rightly reflects and respects the federal structure and diversity of modern America. However, the gap between the largest and smallest states has mushroomed since the 1780s. In 1789, the population of the largest state (then Virginia) was 12 times larger than that of the smallest state (then Delaware). Today the largest state, California, is 68 times larger than the least populous state, Wyoming. Small states are increasingly over-represented in the Senate, which has more by way of exclusive powers than the House. Half of senators are elected by states representing just 16% of the population.
- The Electoral College ensures that smaller states are not overlooked when it comes to campaigning and importance in the presidential election. Again, this reflects the federal composition of the USA. However, not only has the Electoral College failed twice in recent times (2000 and 2016) to reflect the outcome of the popular vote, but it is a product of a bygone era before the age of mass communication and transport, when ordinary voters might not have known the candidates standing. That manifestly is no longer the case.
- In foreign policy, the Constitution shares this vital power between executive and legislature. No trigger-happy president can launch a major war without the consent of Congress. However, the Constitution is unhelpfully ambiguous about war-making powers, with Congress having the power to declare war and the president to make war. How can the Constitution be said to be working well if the USA has not officially been at war since 1945?
- The Senate provides a useful check on presidential appointment using its 'advice and consent' powers, and can prevent unsuitable or inexperienced candidates from being appointed. For example, several appointees have withdrawn when senators have raised concerns over insufficient experience or proximity to the president. These have included Supreme Court nominee Harriet Miers in 2005 and Trump's pick in 2018 of Ronny Jackson (then physician to the president) as secretary of veterans affairs. While opposition in these cases was largely related to competence and track record, more frequently Senate confirmation powers have become another location for partisan political struggles. Few queried the legal expertise and experience of Supreme Court nominee Brett Kavanaugh, who served as a justice on the Court of Appeals for the District of Columbia Circuit, the second most important court in the land, prior to his nomination by Trump in 2018. The controversy of his nomination and the subsequent confirmation process founded on allegations of sexual harassment, probably owed more to his conservative judicial stance and perceived political partisanship. Advice and consent powers have arguably become 'search and destroy'.
- The biennial election of the entire House and a third of the Senate ensures that Congress is regularly held to account. However, this not only means that there

is a sense of ‘constant campaigning’ in US politics, but it also increases the chances of divided government, which in turn makes gridlock more likely.

- The Bill of Rights continues to **entrench** and protect key rights such as free speech and free expression. However, the Second Amendment right appears anachronistic or indeed positively dangerous to many today. Were the Founding Fathers really envisaging a society of mass gun ownership for self-defence against fellow Americans?

KEY CONCEPT

Entrenched rights Rights that cannot be easily removed. The US Constitution has a complex amendment process that prevents the easy change of rights.

Examining the general nature of the Constitution

The separation of power between the different branches of government and the federal government and individual states remains as crucial today as it did when the Constitution was first composed. There is no reason to suppose that modern presidents are any less susceptible to power-grabs than their predecessors. However, the Constitution has not prevented a steady accumulation of power by the White House and by federal government at the expense of the states. States’ rights have undeniably diminished over the past century as federal government and its agencies have become ever more bloated. Trump’s campaign call to ‘drain the swamp’ struck a chord with many Americans.

Checks and balances remain vital. They ensure no one branch can dominate the others, and in times of urgency promote collaboration and cooperation. This can be seen with the rapid passage of the Patriot Act soon after the 9/11 attacks, and with the vast stimulus and intervention package put together during the COVID-19 crisis. However, most of the time in an age dominated by hyper-tribal politics, there is little true bipartisanship. Checks and balances so often result in gridlock, political point-scoring and intrigue. Senate confirmation votes, particularly of key appointments, are often decided almost entirely along party lines. The 2020 confirmation vote for Supreme Court justice nominee Amy Coney Barrett saw her approved by 52-48 votes with just one Republican and no Democrat directly breaking party ranks.

The vagueness of many of the Constitution’s terms, such as ‘necessary and proper’ and ‘general Welfare of the United States’, allows for flexible and evolving interpretations, which ensure the Constitution stays relevant. However, the question often is whose interpretation? Arguably too much is left in the hands of nine unelected Supreme Court justices who frequently read things in different ways. Many key decisions on high-profile matters, including the legality of Obamacare or same-sex marriage, have been decided 5-4 — in other words, on the slimmest of margins. This suggests that interpretation can be subjective and partisan, which is hardly surprising as the justices themselves are effectively political appointees.

The amendment process is robust and correctly requires a supermajority. This avoids the Constitution being constantly changed according to the whims or

SYNOPTIC LINK

The notion of an imperial presidency is explored fully in Chapter 14.

issues of the day. However, some would argue matters have gone too far in the opposite direction and the Constitution is now just a well-preserved relic. Is it not of concern that the last major formal amendment was over 50 years ago?

Finally, the Constitution has managed to adapt to a world and nation where a strong executive is often vital to tackle and coordinate complex problems. A swift response, a degree of uniformity across the nation and much greater expectations by the public in terms of social benefits and public services all require a strong presidency. However, this just highlights how far the modern reality of the Constitution has drifted from the original intentions of its framers. They envisaged a proactive Congress and a largely supervisory president. Particularly since 1945, the USA has ended up with pretty much the reverse — a proactive, often imperial presidency and a reactive Congress, particularly in foreign affairs.

In conclusion, the Constitution works except when it doesn't — and when it doesn't it can often be painfully obvious, such as when the self-proclaimed 'beacon of democracy' chooses its leader by a system that delivers victory to the candidate who only got the second highest number of popular votes. There is a story, often told, that on leaving the Constitutional Convention in Philadelphia, Benjamin Franklin was approached by a group of citizens asking what sort of government the delegates had created. His answer was: 'A republic, if you can keep it.' To slightly modify that comment, we might say the USA is 'just keeping' its Constitution. In the absence of anything likely to command deeper and wider support, they are probably stuck with it, 'warts and all', to use a phrase attributed to Oliver Cromwell, England's only significant republican leader.

KNOWLEDGE CHECK

- 13** Why is the Electoral College a controversial part of the Constitution?
- 14** Why have Senate confirmation powers arguably become discredited as an effective check on the president?

The protection of civil liberties and rights

The extent to which the Constitution protects civil liberties and the rights of US citizens is another keenly debated topic. To help you arrive at a judgement, keep the following points in mind. First, the bulk of individual rights are in the 1791 Bill of Rights, and not the original document. Second, not all rights are equally well entrenched and therefore inalienable. Finally, the protection of rights is, to a large extent, dependent on interpretation by the Supreme Court.

The key rights explicitly enshrined in the Constitution are:

- the First Amendment rights to free speech and expression, a free press and the right to practise one's religion freely
- the Second Amendment right to bear arms
- the Fourth Amendment right against 'unreasonable searches'
- the Fifth Amendment right not to incriminate oneself
- the Sixth Amendment right to a swift, fair and public trial



First Amendment area at Great Smoky Mountains National Park, North Carolina

- the Seventh Amendment right to receive a jury trial in civil lawsuits
- amendments that have protected Americans against slavery, and racial or gender discrimination in voting

Yet many groups are not specifically afforded constitutional protection, including people with disabilities, children and LGBTQ+ Americans.

Social rights, including the rights to education, healthcare and housing, are not mentioned in more recent human rights charters. The US notion of constitutional rights is patchy, selective and often a product of its time. The rights of many groups are instead protected by congressional or state legislation.

In order to analyse the effectiveness of these rights, consider the First Amendment. One of the stranger experiences of visiting many of the USA's excellent National Parks is to see signs that designate them as a 'First Amendment area'.

Yet in many ways, these signs sum up the paradox concerning the USA and free speech, which is essentially a mixture of protection and regulation. Free speech does not equate to the ability to say anything, anywhere, at any time. Virtually any opinion, however weird or morally debased, must be protected. Yet views that advocate breaking the law or threaten public order can be regulated and sanctioned. There are a number of test cases that seek to discover where a line can be drawn, as shown in the following case studies.

CASE STUDY

First Amendment rights: *Schenck v United States* (1919)

A significant landmark case occurred in 1919 with *Schenck v United States* when two socialists were convicted, under the Espionage Act, of distributing leaflets urging people to disobey the draft but advising only peaceful action. The Supreme Court used the 'clear and present danger test', and concluded that the

First Amendment does not protect speech that could create a clear and present danger of a significant evil that Congress or another body had the power to prevent. Justice Holmes reasoned the leaflets were sufficiently likely to disrupt the conscription process. Famously, he compared them to maliciously and falsely shouting 'Fire!' in a crowded theatre, which is not speech protected by the First Amendment.

CASE STUDY

First Amendment rights: *Morse v Frederick* (2007)

The case found against the protection of free speech. It involved an Alaskan high school student who unfurled a banner reading 'BONG HiTS 4 JESUS' across the street from the school at a school-supervised event during the 2002 Winter Olympics torch relay. He was suspended by his principal for

promoting the use of illegal drugs but appealed, claiming his freedom of expression had been violated. The student lost the case on the grounds that schools can indeed regulate speech, 'school speech', where it undermines a school's educational mission or threatens students' safety. Had the banner not been displayed at a school-run event or been contrary to an accepted goal of the school (to dissuade illegal drug use), the outcome would probably have been different.

The First Amendment does not protect unlimited speech and expression can be lawfully regulated. Yet there is a presumption in the USA that favours freedom, especially of opinions, unless it can be proved to the contrary that it must be regulated. These case studies focus on individual rights, but many have argued that the First Amendment should also be used to resist the rise of the security and surveillance state, which also impacts the Fifth and Fourteenth Amendments.

ACTIVITY

Research some recent developments in this area, such as the Patriot Act and Foreign Intelligent Surveillance Acts, and key cases such as *Rasul v Bush*, *Clapper v ACLU* and *Holder v Humanitarian Law Project*. How well has the Constitution protected citizens' rights in these instances?

DEBATE**How well does the US Constitution protect individual rights?**

Very well	Less well
Many key rights are explicitly protected, particularly in the Bill of Rights, including free speech and expression and the right to a fair trial. They are entrenched and inalienable and would be very difficult to overturn. Supreme Court judgements have often discovered new rights in the 'elastic clauses' including 'equal protection' and 'cruel and unusual punishment'. The Constitution does not prevent other rights being protected in other ways such as by Acts of Congress. Equal pay and disability access issues are covered by federal laws, such as the Equal Pay Act 1963, the Lilly Ledbetter Fair Pay Act 2009 and the Americans with Disabilities Act 1990. The USA has adapted well to changing notions of rights and many rights have been 'updated' via judicial review. The USA is largely on a par with other democracies. In trickier areas such as abortion, some argue that this is just rebalancing rights between the unborn and women. Many notions of rights are subjective and controversial.	Many rights and groups are not directly or explicitly protected by the Constitution, for example free and fair elections, and the rights of children and people with disabilities. The Supreme Court's interpretations are inevitably subjective and can (and do) alter over time, creating uncertainties and contradictions. In theory, laws passed by Congress can be reversed and lack the embeddedness of constitutional rights. The USA has some bizarre quirks in its approach to rights. No European democracies still permit the death penalty (forbidden by the European Convention on Human Rights) or grant entrenched rights to gun owners.

 Individually or in pairs, consider the points above and your own knowledge. How well do you think the US Constitution and the Bill of Rights protect civil liberties and individual freedoms?

KNOWLEDGE CHECK

- 15 Where is most of the protection of rights found in the Constitution?
- 16 How do 'elastic clauses' help protect rights?

SUMMARY

- The US Constitution was drawn up in order to promote representative government rather than democracy and to avoid tyranny by way of checks and balances, federalism and the separation of powers.
- The key features of the Constitution include codification, its compromise nature and how it was originally about the structure of government as opposed to defending individual rights.
- The Constitution, not the president or Congress, is the sovereign body in the USA. This gives a great deal of power to the Supreme Court through judicial review.
- The main principles that underpin the Constitution are the separation of powers, checks and balances, and federalism.
- It has proved difficult to formally amend the Constitution, but informal amendment via the Supreme Court is much more common and enables regular updating and revision.
- Federalism remains important to the Constitution but states' powers have diminished in recent times as the power of federal government has grown.
- The Constitution has adapted to changing times. Despite its flaws and gaps, there remains little likelihood of it being substantially redrafted in the foreseeable future.
- The Constitution, particularly through the Bill of Rights, protects citizens' rights, but there is variation in how successful this is.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways that the US Constitution reflects the separation and division of powers. (9 marks)
- 2 Explain and analyse three ways that Congress can check the president. (9 marks)
- 3 Explain and analyse three ways that individual rights are protected by the US Constitution. (9 marks)

Paper 2 Section B style question

Read the extract below and answer Question 4 that follows.

Does the US Constitution work?

There is plenty of evidence to suggest that President Ford was correct when he said 'the US Constitution works'. It is remarkable that a document, most of which was written over 200 years ago, has been subject to only 27 amendments. There is no widespread call in the USA for constitutional reform. In the UK, there are heated political debates about Lords reform, devolution, electoral reform etc., yet there is nothing comparable to this in the USA.

The Senate confirmation powers are another example. In 1962, when President John F. Kennedy appointed Byron White to the Supreme Court, he was unanimously confirmed within 8 days. In 1986, when the conservative justice Antonin Scalia was appointed by President Reagan, he was confirmed 98-0. But the turning point came in 1987 when the Democrat-controlled Senate defeated another Reagan nominee, Robert Bork. He was voted down by 58-42. This could suggest at first glance that the Senate is taking its scrutiny role seriously.

But there has also been significant debate about the meaning of the Second Amendment. The reason for the debate is the gun violence that has come to concern many Americans. Gun control legislation has been passed by Congress, but given the Second Amendment, such legislation is difficult to write if it is to be both effective and constitutional. The Supreme Court has increasingly favoured a one-sided view on the right to bear arms.

Another candidate for the constitutional dustbin is the Electoral College, which has failed to elect the winner of the popular vote on three occasions. The winner-takes-all provision in most states often hugely distorts the result with, for example, President Reagan in 1984 winning around 97% of Electoral College votes on just 59% of the popular vote. Overall, most would agree with President Ford, that the Constitution works, except for the bits where it doesn't.

Source: adapted from Bennett, A. (2009) 'The US Constitution, does it work?', *Politics Review*

- 4 Analyse, evaluate and compare the arguments in the above extract over the extent to which it could be argued that the US Constitution still works today. (25 marks)

FURTHER READING

Articles

Bennett, A. J. (2018) 'The US Constitution — does it still work?', *Politics Review*, Vol. 28, No. 1, pp. 18–21.

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Singh, R. (2018) *In Defense of the United States Constitution*, Routledge.

Stevens, J. P. (2014) *Six Amendments: How and Why We Should Change the Constitution*, Little Brown.

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National Center for Biotechnology Information (NCBI) — Vernick, J. S. et al. (2011) 'Changing the constitutional landscape for firearms: the US Supreme Court's recent Second Amendment decisions', *American Journal of Public Health*, Vol. 101, No. 11, pp. 2021–26: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222390/>

National Constitution Center — Bomboy, S. (2020) 'How a college term paper led to a constitutional amendment': <https://constitutioncenter.org/blog/how-a-c-grade-college-term-paper-led-to-a-constitutional-amendment>

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Comparing constitutional arrangements

KEY QUESTIONS ANSWERED

- How do the UK and US constitutions compare in terms of their nature, sources and provisions, separation of powers, checks and balances?
- What is the difference between federalism and devolution?
- How similar are Congress and parliament, what are their relative strengths and weaknesses and how far are their roles similar and powers equal?
- How can the three theoretical approaches be used to analyse the similarities and differences between the UK and US constitutions, parliament and Congress, and devolution and federalism?

BACKGROUND INFORMATION

Comparing and contrasting the constitutions, legislatures and balance of power between the centre and the regions (devolution and federalism) is crucial to understanding the wider aspects of government and politics in both countries. There are plenty of similarities such as the dominant role played by political parties and how both constitutions have evolved and adapted over time. Yet there are also significant differences, not least the location of sovereignty and the greater formal checks and balances found in the USA. Both constitutions over time have also been subject to criticism from both liberals and conservatives. More specifically, this often comes down to those who want greater accountability and restraints for both executives and legislatures, and those who want fewer checks and balances, especially by the courts, and a more 'popular' form of sovereignty. As with most critiques, it is usually much easier to identify flaws in constitutions and legislatures than it is remedies that find agreement across the political spectrum.

Comparative theories in politics

In all comparative chapters, frequent reference will be made to the three comparative theories that feature as one of the 9-mark questions in Paper 2. Each theory can be applied to different topics. A definition of each theory, with some examples, is set out below.

- 1 **Structural theory:** focuses primarily on **institutions and their structure**, their formal and outward appearance. It is most logically applied to topics such as constitutions and legislatures. Good examples include the ways in which constitutions can be amended, or the powers possessed by different chambers in a legislature. If politics were a play, the structural theory could be said to represent the script.

- 2 **Rational theory:** the focus here is on the actions and behaviours of **groups and individuals**. It can be usefully applied to studying areas such as voting behaviour and the methods adopted by pressure groups to achieve their aims. The emphasis is on what political tactics make logical sense in any given situation. To continue the drama analogy, the rational theory could symbolise the play's actors.
- 3 **Cultural theory:** the emphasis here is on **history, shared values and cultural context**. This theory is particularly relevant when examining constitutions and their origins, the nature and traditional values of political parties, and the background to why legislatures and judicial benches have developed as they have. To complete the theatrical analogy, the cultural theory could be seen as the production process leading up to the play being performed, and key historic features of the venue.

Although some theories lend themselves more naturally to some topics over others, it is vital to see how each theory could be used to explain and identify comparative aspects of all the topics studied.

Comparing the constitutions of Britain and America

SYNOPTIC LINK

Make sure that you have studied Chapter 1 (which covers the British Constitution) and Chapter 11 (which covers the US Constitution) before comparing the two.

The structure and potential for change of each constitution

When evaluating the two constitutions, it is perhaps too easy to focus overmuch on their differences, so before those are examined it is worth remembering the important common ground found in each.

- First, both fulfil the same functions of laying out the framework of democratic politics and accountable political institutions.
- They also both seek to defend individual rights and deal with issues such as discrimination.
- Finally, in their different ways, both have adapted to the emergence of mass democracy without the need for a political and therefore constitutional revolution. This is in contrast to some other democracies, such as France and Germany, where new constitutions have been implemented following times of political upheaval.

Yet major differences in their nature are apparent, as shown in Table 12.1.

Table 12.1 Differences between the UK and the US constitutions

British Constitution	US Constitution
Uncodified	Codified
Easy to amend formally as it only takes an Act of Parliament. It is best described as flexible .	Hard to amend formally, as it requires the approval of supermajorities in both chambers of Congress, and also from individual states. It is best described as rigid .
It is easy to change and update historical clauses that no longer prove helpful or relevant and are seen as anachronistic.	It is much harder to remove or revise historic clauses that no longer seem appropriate or desirable to the twenty-first century.
Parliament (or more accurately the Crown in parliament) is sovereign.	The Constitution is sovereign.
There is often a lack of clarity and precision in some roles and practices. Hence, convention often becomes very important in the absence of clear and entrenched procedures. There is also some piecemeal codification, as with the Cabinet Manual.	The Articles of the Constitution are very precise in places, for example the roles and duties of each branch, though again, much of the terminology is somewhat grey and vague.

The differences go beyond mere nature, however, and are also reflected in how power is distributed. In the USA there is a deliberate **separation of powers** wherein the three elements of government power (executive, legislative and judicial) are held by separate branches of government.

In the UK, there is more of a **fusion of powers** in the legislature: whoever controls parliament controls the nation. What this often means in practice is that there are few formal or powerful checks on a prime minister with a large majority. There are checks afforded by their parliamentary party — backbench rebellions and on occasion, as with Boris Johnson's attempted prorogation of parliament in 2019, by the courts. Otherwise, between elections and with a weak second chamber, the accusation of elective dictatorship holds some sway some of the time.

In the USA by contrast, even presidents who enjoy control of both houses of Congress, such as Trump between 2016 and 2018, can find it hard to push through legislation. Consider the fate of the American Health Care Act 2017. They can also expect legal challenges, and must constantly work to persuade their party's representatives in Congress to support their policies. Arguably, though, the pleas for unity over Brexit and discipline from her MPs suggested Theresa May faced a similar problem to those far more routine in the White House.

STUDY TIP

Avoid the mistake of saying the British Constitution is unwritten while the US Constitution is written — the correct terms are uncodified and codified.

ACTIVITY

With a partner, discuss the different ways that each country's constitution places limits on the executive. Decide which constitution gives the leader most power.

The rational dimension

The constitutions also have much in common when it comes to how they operate in practice. Political parties and the influence of pressure groups are, for example, similarities shared by both. Table 12.2 gives a more detailed overview of the common features and differences between the constitutions when it comes to political realities.

Table 12.2 How do the UK and the US constitutions work in practice?

Feature	Similarity	Difference
Legislative power	The elected legislature passes all national or federal laws, meaning pressure groups and other groups focus much of their lobbying on parliament and Congress.	In the UK, the focus is almost entirely on the Commons. In the USA, lobbyists and others will target both Senate and House as they have legislative equality.
Executive power	The executive plays a significant role in drawing up policies and setting the political agenda. Whether it is 'Make America Great Again' or 'Get Brexit Done', the president and the prime minister both seek to set the political tone.	In the UK, a prime minister with a healthy majority can normally get their agenda through parliament without major incident. This is trickier for US presidents, who have to negotiate carefully and bargain with congressional leaders, even those from their own party. Johnson could push through Brexit legislation in 2020, whereas Donald Trump found it far harder to secure the billions of dollars required for his proposed Mexican border wall.
Limits on executive and legislative power	Neither president nor prime minister can be truly imperial. UK prime ministers can sometimes be checked in the Commons, especially by backbench rebellions. US presidents are often faced by an uncooperative Congress.	Checks and balances are 'earthed' into the US political system, with vetoes and congressional supermajorities being key features. These are absent from the UK's system. The only formal veto point, denial of royal assent, has not been used since 1707. Presidential vetoes continue to be exercised.
The role and impact of the judiciary	In both countries, the judiciary can rule against the legislature and the executive. In the UK, the courts have intervened to rule aspects of anti-terror legislation as incompatible with the European Convention on Human Rights (ECHR) or the prolonged prorogation of parliament as unlawful. Likewise, the US Supreme Court has ruled executive actions such as the line-item veto unconstitutional, and has struck down some congressional legislation such as certain clauses of the Bipartisan Campaign Reform Act 2002, in the 2010 <i>Citizens United</i> case.	The US judiciary is far more powerful and significant in shaping the modern American state. Indeed, landmark cases are a major part of US constitutional and political history. UK courts do not have the power to rule Acts of Parliament as unconstitutional and can only issue 'declarations of incompatibility' with regard to EU law (until 2020) or the ECHR. The US Supreme Court, therefore, is a major focus for lobbying by interest groups with 'amicus curiae' briefs. This reflects the fundamental difference between parliamentary and constitutional sovereignty.
Devolved and federal government	Although there is a tendency to focus on DC and Westminster as being the epicentres of power, in reality much decision-making takes place in regional assemblies or in state capitols. This means that a lot of campaigning goes on for elected offices in these places, and also that they are important targets for pressure group influence.	Devolution in the UK, while growing in significance, remains far less important than the wholly federal structure of the USA. Elections to state legislatures and governorships have long been heavily contested, and these are a major access point for pressure groups.

The cultural and historical context

The reasons for the constitutions' different natures can be explained in large part by their different origins and intent.

Principles

The US Constitution was deliberately formulated with clear principles in mind, alongside the inevitable compromises needed to make it broadly acceptable. From the start, it embraced key features, such as republicanism and representative government. It was, after all, the product of revolution and, one might add, one short-lived failed attempt. The British Constitution by contrast is the product of centuries of evolution and has been gradually adapted over time to incorporate the notions of parliamentary government (1689) as well as democratisation and expansion of the franchise from 1832 onwards. The British Constitution is essentially still monarchical, which although largely ceremonial in form today, still involves the monarch's use of prerogative powers as opposed to the enumerated powers in the US document. Yet, it is also the case that there is scope for vagueness in the US Constitution where some powers are implied and not clearly set out.

Heritage

Another historical legacy when comparing the two constitutions is how in the UK there remains a legacy of hereditary practice and deference. This can be seen partly in the antiquity of some constitutional documents, for example the thirteenth-century Magna Carta. It is also present in the titles of the two legislative chambers, the House of Lords and the House of Commons. There is general acceptance that the presence of hereditary peers and 26 bishops, while not necessarily logical, does not amount to a major affront to democracy. By contrast, the US Constitution did not borrow from monarchical or hereditary principles. In fact, it took some inspiration from aspects of ancient Rome and Greece (note the use of the term 'Senate'). Both constitutions, therefore, have roots in the past via classical republicanism (USA) and traditional monarchism (UK).

Individual rights

Finally, the constitutions share cultural similarities and differences when it comes to their stance on individual rights. While the US Constitution is more explicit about the protection of individual rights, and Americans historically have a greater attachment to individual liberty, the UK too has a historic attachment to civil liberties. Several key documents express in different but cumulative ways the need to limit the ability of monarchs to deny justice or subvert parliament. Both Magna Carta and the 1689 Bill of Rights stress this point. The comparison grows stronger when we recognise that neither the British nor US constitution started off with the intention of protecting the rights and liberties of every man and woman. Magna Carta, often regarded as the foundational source for the British Constitution, was an agreement between King John and his barons. And what of the Philadelphia Constitutional Convention? It was a gathering of a white colonial male elite to thrash out a plan that would not only ensure the survival and flourishing of the new nation but also reflect their own political views and priorities. That both documents have been capable of adaptation, significant revision and numerous subsequent additions (especially in the case of the UK) suggests significant vision on the part of the drafters.

KNOWLEDGE CHECK

- 1 What are the three broad criteria by which we can compare and contrast the UK and US constitutions?
- 2 How and why does the importance and significance of the judiciary vary between the two constitutions?

Comparing and contrasting US federalism and UK devolution

There are three key ways we can compare and contrast US federalism and UK devolution.

First, federalism is an entrenched principle of the US Constitution (Tenth Amendment) and cannot, therefore, be repealed easily. By contrast, devolution in the UK was adopted by parliamentary statute. The relevant legislation having been created and sustained only by parliamentary laws means, in theory at least, that a subsequent parliament could reverse devolution, although that is extremely unlikely in the current political climate. Devolution essentially equates to a delegation not alienation of powers.

Second, US states have greater law-making powers than the devolved regions of the UK. The death penalty is a case in point. However, the gap between the two systems is declining and there is growing legislative divergence across the different parts of the UK. For example, top earners pay more income tax in Scotland while university students pay far higher tuition fees in England. In the USA by contrast, the reach of central or federal government has increased markedly in recent decades. Major federal initiatives in healthcare and education have undoubtedly reduced the autonomy of individual states. However, US states can still decide the electoral systems they use, and this is becoming more frequently available in the UK. Devolved assemblies get to partially decide their own electoral systems for assembly elections, meaning that there is now a greater variety of systems employed across the UK. For example, Scotland and Wales use the additional member system (AMS), while Northern Ireland employs the single transferable vote (STV) system.

Finally, and perhaps most importantly, devolution in the UK does not apply to the entire nation but only to Scotland, Wales and Northern Ireland. The great bulk of the UK's population lives in England, which does not have its own parliament. Decisions are made by Westminster MPs, the power of English councils is tightly circumscribed and they enjoy nothing like the primary legislative powers of the devolved regional assemblies. By contrast, the USA is uniformly governed by the federal system and all 50 states enjoy legislative equality. However, state laws must conform with both federal law and the Constitution. Hence many state laws, such as abortion laws and those dealing with campaign finance, end up being challenged in the courts.

STUDY TIP

When comparing federalism and devolution, ensure you reference the historical context and how devolution is a much more recent phenomenon in the UK. Note that it was initially a controversial idea — Conservatives continuously and consistently opposed devolution prior to Tony Blair's Labour government pushing the policy through.

KNOWLEDGE CHECK

- 3 Summarise the three main ways federalism and devolution differ.
- 4 What evidence is there that the USA and the UK are drawing closer together in the areas of federalism and devolution?

Comparing the legislatures: Congress and parliament

There are certain key similarities between the legislatures of the UK and the USA:

- Both pass laws that have legislative supremacy over any state or devolved measures.
- Each has a vital representative role, above all through political parties and geography.
- In both cases, the bodies serve as important checks on the executive, while committees play an important role in this process.
- Both institutions are bicameral (they comprise two chambers).
- Political parties dominate proceedings in both Congress and parliament.

The strengths and weaknesses of each legislature

When evaluating the two legislatures, a number of criteria apply:

- How far do legislators resemble those they seek to represent?
- How well and widely do they represent voters?
- How effective are their executive scrutiny powers?
- How efficient is their law making?
- How well regarded are they by the voting public?

Legislators resembling their voters

In both cases, there are disparities in terms of background and diversity. Both parliament and Congress remain largely more male, whiter and older than the general population, although both are steadily becoming more diverse. A record 220 women (34%) were elected to parliament in 2019, while just over a quarter of Congress was female after the 2020 election. Record numbers of candidates from minority ethnic groups were also elected in the most recent elections with around a quarter of Congress coming from minority ethnic backgrounds and around 10% of MPs. Yet these figures remain disproportionately low compared to the overall populations in each country, where just over half the electorate is female, and around 14% (UK) and 33% (USA) are from minority ethnic backgrounds.

While both legislatures have issues of underrepresentation, the disparity between the parties is more extreme in Congress. After the 2018 midterms, of the 101 women elected to the House, 88 were Democrats and just 13 Republican. Following the 2020 congressional elections, though, the number of female Republican House representatives roughly doubled. Labour and Conservatives show less gender divergence: after 2019's election, a quarter of Tory MPs were women compared with just over half for Labour.

Legislators as political representatives

In both constitutions, the use of majoritarian electoral systems means the two largest parties are considerably overrepresented, and third parties underrepresented. This situation is worse in the USA, where no third party is represented in Congress and independents are usually aligned with a major party, such as Vermont senator Bernie Sanders. Parliament contains a much

SYNOPTIC LINK

You can find out more about the two main parties in both countries in chapters 8 (UK) and 19 (US).

broader range of parties, including the Liberal Democrats, who shared power with the Tories in the 2010–15 coalition government, and the nationalist parties.

Legislators as checks on the executive

In the UK, prime ministers must beware of the power of the backbenchers (consider the fate of both Theresa May and Margaret Thatcher). The same situation cannot occur in Congress, where the president enjoys their own separate mandate and only impeachment can remove an unpopular or corrupt president. With a supermajority of two-thirds required in the Senate, this has proved impossible to achieve. In part, this is because of stronger partisanship in Congress. Only one Republican senator, Mitt Romney, broke ranks with his party over Trump's impeachment in 2020, although ten House Republicans voted to impeach Trump at the second attempt in January 2021. By contrast, all prime ministers must enjoy 'the confidence of the House of Commons'.

Yet in other ways, congressional scrutiny can be very powerful. Congress's committees are able to launch inquiries and investigations into all areas of executive action, whether that be the wars in Iraq and Afghanistan under George W. Bush's presidency or alleged political bias at the Internal Revenue Service during the Barack Obama era. In parliament, while select committees can draw attention to government failings and policy mistakes, such as the Windrush immigration scandal, they too lack direct powers to enforce their findings on government. However, parliament does have the distinct advantage of being able to question ministers and prime ministers directly during Prime Minister's Question Time (PMQs).

ACTIVITY

Individually or as a pair, research two recent examples of committee inquiries, one for parliament and one for Congress. Which committee appeared to be most effective in scrutinising the executive? Was one committee more partisan and party political than the other?

Legislators as effective lawmakers

Parliament is normally more efficient and effective than Congress. Commons dominance, parliamentary sovereignty and the norm for healthy parliamentary majorities and strong party discipline usually enable parliament to 'get stuff done'. By contrast, bills progress more slowly in the USA. Bills must pass both chambers, and neither can prevail without the agreement of the other, a consequence of their structure as both chambers are democratically elected, unlike the UK's upper chamber. Even something as central as the annual budget can be fiercely debated and even stalled for a time, leading in the worst-case scenario to a partial government shutdown, as happened in 2018–19. By contrast, any UK government that struggles to get its budget through would simply cease being the government, since a budget vote is effectively the same as a confidence vote. On the other hand, this might suggest that while Westminster is more efficient, Congress is more effective, as it thoroughly scrutinises important fiscal issues. It should also be noticed by way of similarity that both legislatures in times of crisis can push through emergency legislation quickly. This can be seen in the emergency packages passed at the height of the COVID-19 pandemic in both countries, and the security and anti-terrorism legislation passed in the wake of 9/11 and the 7/7 bombings.

Legislators as viewed by the voters

Congress is historically unpopular, with very low approval ratings. One has to go back to 2003 to find an approval rating of more than 50%. In October 2020, its ratings languished at 19%, meaning that over 75% of Americans disapproved of their national legislature. Hardly a vote of confidence. There are no real equivalent figures for parliament as a distinct institution, which itself says something. In British minds, parliament and government are traditionally inextricably linked, which of course they are.

Conclusions

Both legislatures have their strengths and weaknesses. Parliament's key strengths include:

- the ability to question members of the executive directly
- a range of parties are represented in the chamber
- government can implement its policies with relative ease

But critics would argue that:

- it does not provide an effective enough check on the executive especially over fiscal policy
- the second chamber is weak
- its committees remain either dominated by party, in the case of public bill committees, or relatively toothless, e.g. select committees

Congress's main strengths include:

- a strong and established committee system
- two powerful chambers, which reduces the chance of one-party dominance over the executive
- several important checks on the executive, such as the veto override and, ultimately, impeachment

Its detractors would argue that:

- Congress is too often a 'bastion of negation', namely very effective at stopping things happening
- Congress has in recent decades become overly partisan, and this has reduced the objectivity of its committees. Republican-controlled committees investigate Democrat executives with partisan rigour, and the roles are reversed when there is a Republican in the White House and Democrats control one or both congressional chambers.

KNOWLEDGE CHECK

- 5 Which country has the most diverse legislature in terms of membership?
- 6 Why are UK prime ministers more vulnerable to backbenchers in a way that US presidents are not?

Theoretical approaches to comparing the constitutional arrangements

Comparing the constitutions

Structural theory demonstrates a number of key comparisons in the nature of the two countries' constitutions:

- The US Constitution is codified and the British Constitution is uncoded, meaning that the contents of the US Constitution are more accessible and better known.

- Fusion of powers in the UK contrasts with a separation of powers in the USA, although both terms need qualifying. Neither constitution completely embodies each principle.
- There is a federal arrangement in the USA while the UK has a predominantly unitary structure though with a growing role for devolved assemblies.

Rational theory demonstrates a number of key comparisons in the nature of the constitutions:

- The key role of the US Supreme Court makes it a major focus for pressure groups and lobbyists. In the UK, the traditional focus for lobbying is parliament.
- In both constitutions, the leaders often have to spend time persuading fellow party members to support their bills and policies, although this is more usual in the USA.
- Federalism in the USA means that state governments are a major focus for lobbying. In the UK, the devolved assemblies are increasingly becoming targets for pressure groups, but post-Brexit the EU is far less of a target.

Cultural theory demonstrates a number of key comparisons in the nature of the constitutions:

- There is a deep-rooted attachment to states' rights in the USA, in contrast to the traditional emphasis on parliamentary dominance in the UK.
- The British Constitution is a product of evolution and gradual change. The US Constitution, however, is the product of revolution, and was created largely in one go at the 1787 Constitutional Convention in Philadelphia.
- The British Constitution retains traditional residual elements of aristocratic and church power, especially in the Lords. The US Constitution contains some terms from the classical republican world, such as Senate.

Comparing devolution and federalism

Structural theory demonstrates two key comparisons between devolution and federalism in both countries:

- The Tenth Amendment embeds federalism into the US Constitution. This means that every state retains considerable law-making powers. By contrast, devolution in the UK is only granted by parliamentary statute and therefore is not entrenched into the Constitution.
- Federalism applies uniformly across the nation, whereas devolution does not — it only applies to parts of the UK and devolved powers remain relatively limited.

Rational theory demonstrates a number of key comparisons between devolution and federalism:

- In the USA, state elections are significant affairs and often fiercely contested both between and within the two main parties.
- US pressure groups focus much of their activity on state legislatures but also state supreme courts. In the UK, parliament and Whitehall remain the main focus of lobbying.
- The UK devolved regions contain significant nationalist parties including the SNP and Sinn Féin, which view victory or strong showings in assembly elections as important stepping stones towards securing their goal of full independence. By contrast, secession has been off the cards for US states since 1865.

Cultural theory demonstrates a notable comparison between devolution and federalism:

- States' rights are a deep-rooted concept in US political history, reflected in a strong attachment to state-based institutions. State governors often enjoy higher approval ratings than presidents and Congress. The leaders of the UK regional assemblies are far more recent arrivals on the political stage, although arguably their profile and importance has grown considerably in recent years.

Comparing the legislatures

Structural theory demonstrates a number of key comparisons between the two countries' legislatures:

- Both parts of Congress enjoy significant concurrent powers above all over legislation, which both chambers must approve. Both also have powerful committees. House committees can instigate impeachment proceedings, while the Senate Judiciary Committee plays an important preliminary role in the confirmation of judicial nominations. By contrast, the Commons is the dominant chamber in the UK. Since the 1911 Parliament Act, the Lords has had very few real powers and cannot veto legislation.
- The executive in the UK is found in the legislature, while in the USA it is entirely separate. No member of the US cabinet can also be in Congress, while every member of a prime minister's cabinet must be in parliament and directly answerable to it.
- In the USA, more power lies with the 50 states, meaning Congress is not the only important political arena. While the situation is changing in the UK, Westminster still dominates most areas of political life, especially over issues such as Brexit and the budget.

Rational theory demonstrates two key comparisons between the legislatures:

- In both nations, two political parties have dominated political affairs. Yet third parties are more significant in Westminster and indeed held the balance of power between 2010 and 2015, and again from 2017 to 2019.
- Party discipline is traditionally stronger in the UK, meaning there is less of a need in general for party leaders to plead with or persuade their MPs to 'toe the party line'. A leader with a strong majority can more easily ignore internal dissent. Yet recent experience has changed this assumption somewhat. US presidents still seek bipartisan support for tricky legislation or nominations.

Cultural theory demonstrates two key comparisons between the legislatures:

- Parliament has many arguably anachronistic traditions, such as the Queen's Speech, the division system of voting and antiquated terminology. Congress also has longstanding traditions and constitutional requirements, such as the State of the Union Address, but it is generally less dominated by ancient ritual. However, it has developed its own traditions over time, including the Senate filibuster (see page 311).
- In the UK, the debating floor of the Commons and especially occasions such as PMQs are mainstays of political theatre, while such direct questioning of ministers or the president is impossible in Congress due to the separation of personnel. The debating floors of Congress also generally lack the drama and overtly adversarial nature of the Commons.

SUMMARY

- The UK and US constitutions differ in structure, history and how they influence politics in the respective countries. The greatest contrast exists between their codified and uncoded natures.
- Checks and balances are present in each constitution. In the UK these are largely informal, such as via internal party opposition, while in the USA they are more formal and entrenched in the Constitution.
- Federalism and devolution differ. Federalism is embedded and universal across the USA in a way that devolution is not in the UK.
- There are strengths and weaknesses of both legislatures. Parliament can often be more efficient at passing legislation, while Congress is arguably more effective at scrutinising government.
- The three theoretical approaches (structural, rational and cultural theory) can all be applied to studying the constitutions and legislatures of each country.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways that structural theory could be used to compare the UK and US constitutions. (9 marks)
- 2 Explain and analyse three ways that cultural theory could be used to study the role of federalism and devolution in the UK and USA. (9 marks)
- 3 Explain and analyse three ways that rational theory could be used to study the UK Parliament and the US Congress. (9 marks)

Paper 2 Section C style questions

- 4 'The US and UK legislatures effectively check the executive.' Analyse and evaluate this statement. (25 marks)
- 5 'Federalism and devolution operate in very similar ways in the UK and the USA.' Analyse and evaluate this statement. (25 marks)
- 6 'Power is evenly distributed in both the US and UK constitutions.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Lemieux, S. (2020) 'Comparative politics: a tale of two constitutions: the UK and US constitutions compared', *Politics Review*, Vol. 29, No. 3, pp. 31–33.

Milford, A. (2019) 'Comparative politics: Congress vs Parliament', *Politics Review*, Vol. 29, No. 1, pp. 28–31.

Website

HistoryExtra — 'The differences between UK and US governments: a brief guide': <https://www.historyextra.com/period/modern/us-uk-government-consitution-differences-parliament-house-commons-republic-president-prime-minister/>

The legislative branch of government: Congress

KEY QUESTIONS ANSWERED

- How is Congress structured and what are its roles and powers?
- What is the composition of Congress and how representative is it of US society?
- How long are the terms of office of members of Congress?
- What party allegiance do members of Congress have?
- How effectively does Congress fulfil its functions?
- How important are the party system and the committee system?
- How do members of Congress represent their constituents?
- What are the relative strengths of the House of Representatives and the Senate?
- What relationship does Congress have to the executive and the legislature?

BACKGROUND INFORMATION

During the summer of 2020, in the midst of the COVID-19 crisis and Black Lives Matter protests, **Congress** was gridlocked. Democrats and Republicans argued over proposed legislation targeting police brutality and failed to pass a new pandemic response package. Just 18% of Americans approved of Congress's performance, an even more damning verdict than President Donald Trump's historically low 41% approval rating.

Congress presents us with a paradox. On the one hand, the Constitution begins 'We the People', and the people's representatives serve in Congress. Members of Congress enjoy re-election rates higher than 90%, suggesting their constituents are satisfied with their performance as individuals. In times of emergency, Congress has been capable of real action: in March 2020 it passed a bipartisan pandemic response that provided the largest economic stimulus in US history and was approved by 77% of the public. And yet, partisanship in Congress produced some of the defining events of Trump's presidency, including an unprecedented 35-day government shutdown in 2018–19, and his 2019 impeachment and subsequent acquittal. Congress's longstanding reputation as the 'broken branch' of US government has led many Americans to conclude that it does not represent their interests effectively.

KEY CONCEPTS

Congress The federal legislature of the USA. It has two chambers: the House of Representatives and the Senate.

State legislatures The elected representatives who are responsible for making state laws in each of the states. There are 50 state legislatures, e.g. the Texas Legislature.

The structure, role and powers of the US Congress

Congress is based in the Capitol on what is known as Capitol Hill in Washington, DC. This commanding position reflects its importance. Congress is the legislative branch of the US government, meaning it is responsible for making laws. The USA has a federal system of government, so **state legislatures** make some of their own laws, but Congress creates federal law, which applies to all states. The separation of powers provided by the Constitution means that members of Congress are able to act independently of the other two branches of government.



Congress is based in the Capitol, in a commanding position on Capitol Hill, Washington, DC

KEY CONCEPTS

House of Representatives

The lower house of Congress. A total of 435 congress(women) are elected for 2-year terms to represent congressional districts.

Senate The upper house of Congress. A total of 100 senators serve 6-year terms. Each state has two senators.

The structure of Congress

Congress is bicameral, meaning that it has two chambers: the House of Representatives and the Senate.

- The **House of Representatives** is the lower house of Congress and has the most members. There are 435 congressmen and congresswomen, also known as representatives. Each represents a different congressional district. They serve 2-year terms, so a significant proportion of their time is spent campaigning. All House of Representatives seats are contested at every election.
- The **Senate** is the upper house of Congress. It has 100 members, called senators, who serve 6-year terms. Each state is represented by two senators. Congressional elections are held every 2 years. One-third of Senate seats are contested at every election.

Congress was designed by the Founding Fathers as a compromise between the demands of large and small states. During the Philadelphia Convention (1787), two versions of how Congress should be structured were considered. Small states favoured the New Jersey Plan, which proposed all states receive equal numbers of seats in the legislature. This would have protected the rights of small states. States with larger populations argued that this system would disadvantage them, as their people would be underrepresented. Representatives of these states favoured the Virginia Plan, in which population size would determine the number of seats states had in Congress. Eventually an agreement was reached: the Connecticut Compromise. Seats in the House of Representatives were allocated according to the population size of each state, but each state received two seats in the Senate, regardless of its size. California, the most populous state in the USA today, has almost 40 million inhabitants and 53 congress(wo)men in the House, while seven states qualify for only one representative, including the geographically large states Alaska and Montana. Figure 13.1 illustrates the number of congressional districts allocated to each of the 50 states.

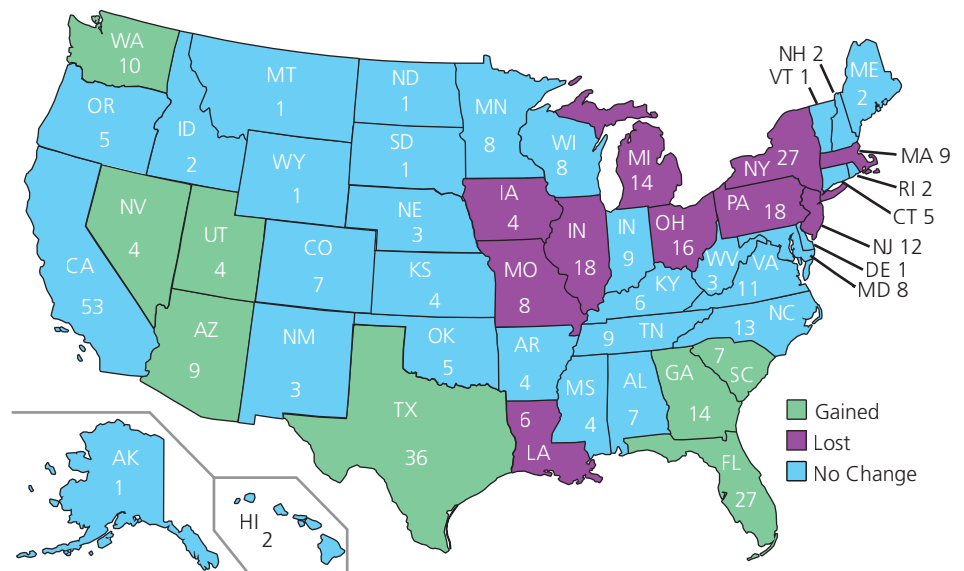


Figure 13.1 Number of congressional districts per state, 2020

ACTIVITY

Make a note of those powers listed in Table 13.1 that are used to fulfil each of Congress's roles described here.

Roles of Congress

Congress is responsible for performing the following roles:

- Passing legislation: as the legislative body of the USA, Congress has the task of making new federal laws.
- Representing the people: members of Congress need to represent the interests of their constituents.
- Overseeing the executive: Congress has a number of powers that allow it to scrutinise and potentially check the actions of the president and the federal government.

Powers of Congress

Table 13.1 lists the powers that help Congress to fulfil its different roles.

Table 13.1 The powers of Congress

Powers	Roles
Legislative powers	Congress initiates legislation. Both houses must approve a bill. Once a bill has been approved it is sent to the president where it will either be signed, vetoed or 'left on the president's desk' (see Figure 13.2, page 306).
Overriding a presidential veto	In the event of a presidential veto, Congress decides whether to amend or abandon the bill, or to override the veto. Congress can override the president's veto if it has a two-thirds majority in each house.
Initiating amendments to the Constitution	Any amendment to the Constitution needs a two-thirds majority in both houses. Once it passes Congress, the amendment is then sent to the states for approval.
Ratifying treaties (Senate only)	Presidents negotiate treaties but they cannot be ratified (made official) without a two-thirds majority in the Senate.
Declaring war	Both houses must vote for a declaration of war. This power has not been used since 1941. Modern presidents avoid asking Congress for a formal declaration of war.
Congressional oversight	Congress must approve federal budgets. Congressional committees also allow congressional oversight and investigation of the executive.
Confirming presidential appointments (Senate only)	Senate confirmation is required for all presidential appointments to the federal judiciary. Many presidential appointments to the executive branch also need Senate confirmation.
Impeachment and removal from office	Only the House of Representatives can impeach a public official. A simple majority in the House is needed for impeachment. Only the Senate can try impeachments. A two-thirds majority Senate vote is needed for a guilty verdict, which results in the official's immediate removal from office.
Electing the president and vice president in the event of a hung Electoral College	This power has not needed to be used since 1824.

The legislative process in Congress

Bills may originate in the House or the Senate. Before being considered by the whole chamber, the bill is examined by a standing committee, which consists of members of Congress who are experts in the subject area to which the bill relates. The committee stage is the most important part of the legislative process. The committee can amend the bill if it wishes to, and decides whether to release the bill to the main chamber. Most bills end their passage through Congress when they are rejected by committee.

If the bill is released, it is timetabled for debate on the main chamber floor. In the House, rules are set for the bill that determine whether amendments can be made. The House or the Senate then debates the bill, and may amend it. The whole chamber then votes on the bill.

A bill must pass through both houses of Congress separately to become law. Differences between the two versions of the bill are discussed in a conference

ACTIVITY

Research the legislative process in Congress by visiting <https://www.congress.gov/legislative-process> and watching the overview video. Evaluate the importance of the following in the legislative process:

- The House and the Senate
- Committees
- The president

KNOWLEDGE CHECK

- 1 What is the name of the upper and lower chambers of Congress?
- 2 How many members of each chamber are there?
- 3 What are the three roles of Congress?

committee, made up of members of the standing committees for both houses. They agree upon one modified version of the bill and release this as a 'conference report'. This final bill must then be approved by both houses of Congress.

Once Congress has passed a bill it is sent to the president. It will then either be signed, vetoed, or left on the president's desk. If left on their desk, it automatically becomes law after 10 days. The only exception is the rarely used 'pocket veto', when the president leaves the bill on their desk but Congress adjourns before the end of the 10 days. This has the effect of vetoing the bill, and Congress cannot vote to override as it is not in session.

Figure 13.2 shows the process in full.

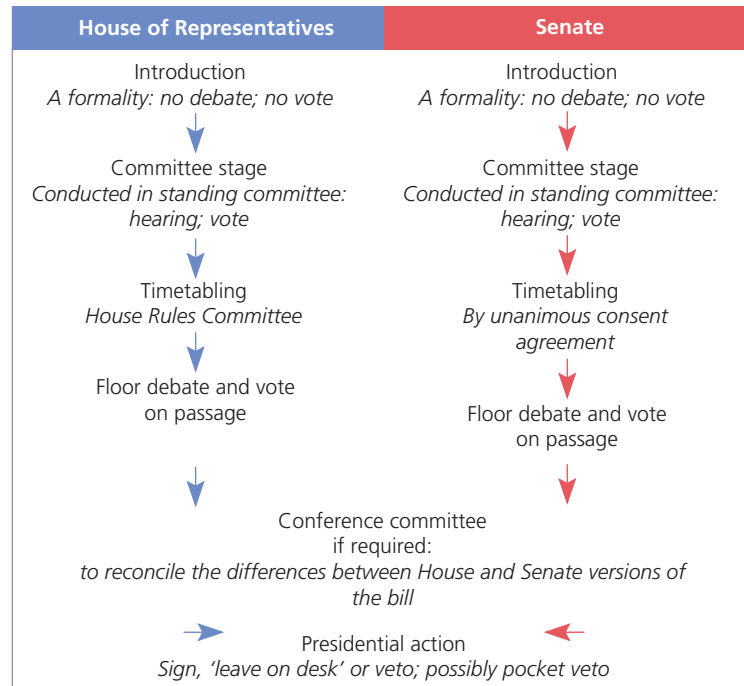


Figure 13.2 The legislative process in Congress

Composition of Congress, the different terms of office and party allegiance

The composition of Congress

In addition to being elected to their office, all members of Congress have to meet the following criteria:

- Age: congress(wo)men must be aged 25 years or over, senators must be aged 30 years or over.
- Citizenship: congress(wo)men need to have been a US citizen for a minimum of 7 years, senators need a minimum of 9 years of citizenship.
- Residency: both senators and congress(wo)men must reside in the state they represent.

Congress has been criticised for failing to reflect the diversity of US society. The USA is forecast to become ‘minority white’ by 2045, when white people will make up less than 50% of the population. In 2019 nearly 14% of the US population were immigrants, and millennials (born 1981–96) outnumbered baby boomers (born 1946–64). Congress is comparatively ‘pale, male and stale’ due to high numbers of white, male and older members. Christians are also overrepresented in comparison to the population as a whole.

However, Congress is gradually becoming more representative of society (see Table 13.2). The 117th Congress (2021–23) was the most racially diverse in history, with the lowest proportion of Christians and the highest number of women. In the previous Congress (2019–21), the first two Muslim women were elected, and a record four Native Americans. At 29, Democrat Alexandria Ocasio-Cortez became the youngest ever congresswoman. She and three other Democrat congresswomen of colour (Ilhan Omar, Ayanna Pressley, and Rashida Tlaib) became known as ‘The Squad’, and were seen as representing a new generation of progressive politics.



Members of ‘The Squad’ speak about criticism the group received from President Trump via Twitter in 2019. Left to right: Ayanna Pressley, Alexandria Ocasio-Cortez, Ilhan Omar and Rashida Tlaib

USEFUL CONCEPT

Hispanic Used to describe Americans with origins in Spanish-speaking countries. It has a strong connection with Spain, and excludes people from Latin American countries that speak other languages (e.g. Brazil, whose national language is Portuguese). Many prefer the term Latino, which applies only to people with Latin American roots. In practice, the two terms are often used interchangeably. In recent years the term Latinx has been used as a gender-neutral alternative.

However, groups that continue to be significantly underrepresented in Congress include women, **Hispanics**, African-Americans and those with no religion.

In the 2018 midterms more women ran for Congress than ever before, partly as a reaction to Hillary Clinton’s 2016 presidential defeat. The resulting 116th Congress had the largest proportion of women (24%) in US history, a figure surpassed by the 117th Congress (27% female), although the US population is majority female. It is worth noting that women are much better represented in the Democratic Party than the Republican Party, with Republicans making up just 37 (26%) of the 142 women in the 117th Congress.

Hispanics are the largest ethnic minority group in the USA and make up 18% of the population, but just 9% of the 117th Congress. Of the 52 Hispanic members, 46 were in the House, 6 in the Senate. There were a record number of African-Americans in the 117th Congress: 52 in the House and 3 in the Senate. As with gender, there was a dramatic difference in terms of party affiliation: 58 African-American members of Congress were Democrats, while only 3 were Republicans.

Those with no religion remain the most underrepresented in Congress. A total of 23% of the US population have no religion, but only one member of the 117th Congress (Kyrsten Sinema, Democrat senator for Arizona). She is also the first openly bisexual senator. There were 11 openly LGBTQ+ members of the 117th Congress, a record number.

Table 13.2 gives an overview of the different groups represented in the 117th Congress.

Table 13.2 Representation of different groups in the 117th Congress (2021–23)

	Representation in Congress (2021–23)	Representation in US population, 2019 estimates
Women	27% (there were 118 women in the House, 24 in the Senate)	51%
People of colour	22%	23%
African-Americans	12%	13%
Hispanic Americans	9%	18%
Asians	4%	6%
Religion		
Christian	88%	71%
— Protestant	55%	48%
— Catholic	30%	21%
— Mormon	2%	2%
Jewish	6%	2%
Buddhist	0.4%	1%
Muslim	0.6%	1%
Hindu	0.4%	1%
No religion	0.2%	23%
LGBTQ+	2%	4.5%
Average age	59 years	38 years
Professional background	99% have a university degree Dominated by politics, law and business	35% of adults over 25 years have a university degree

ACTIVITY

Discuss in a pair how important you think it is that Congress represents the diversity of the society that it serves in terms of gender, ethnicity, religion and age.

Reasons for underrepresentation

Various reasons have been suggested for the underrepresentation of key groups. Many members of Congress first serve in the state legislatures, where women and African-Americans are also underrepresented. This means there can be a shortage of suitable candidates for Congress. African-Americans and Hispanics are better represented in the House of Representatives than the Senate, partly because of the existence of ‘majority-minority districts’, in which a majority of voters in the district are from the same minority ethnic group (e.g. African-American). This does not apply to Senate seats because each senator represents the whole state.

Congress has traditionally been more male-dominated than it is today. Its culture and traditions have been slow to respond to the needs of women, which has made it an off-putting environment for female members. For

example, the Senate swimming pool was male-only until 2009 and allowed male senators to swim naked if they wished. Senators have to be physically present to vote, making it difficult for new parents to take maternity or paternity leave or nurse babies while the Senate is in session. Progress is gradually being made: in 2018, Tammy Duckworth became the first senator to have a baby while in office, and she convinced the Senate to change its rules to allow young children in the chamber.



Prior to becoming a senator, Tammy Duckworth was a military pilot and had both legs amputated after her helicopter was attacked in Iraq. Duckworth is an advocate for women, people with disabilities and veterans

Terms of office

The term of office refers to how long a member of Congress can stay in their position before they must contest it in another election. As we have already seen, members of the House of Representatives and Senate have different terms of office — congress(wo)men serve 2 years and senators 6 years. The result of the shorter term is that the composition of the House of Representatives can alter dramatically every 2 years, reflecting changes in public opinion. Senators are in their posts longer than congress(wo)men, so should become more experienced. They can take a more long-term view of issues, as they do not face elections as frequently. This allows them to take decisions that might be unpopular in the short term, but necessary.

The Senate acts as some protection against volatile swings in public opinion, as only a third of its members are up for re-election in each 2-year election cycle. The party with a majority in the House could change every election, but this is much less likely to happen in the Senate, where two-thirds of seats are not contested. George Washington is said to have described the Senate as having been designed to 'cool' legislation passed by the House, in the way a saucer might cool hot tea.

SYNOPTIC LINK

During the 116th Congress (2019–21) two congressmen left the Republican Party to become independents. One of them, Justice Amash, joined the Libertarian Party and became the first third-party member of Congress since 1985. You can find out more about independents and third parties in Chapter 19.

KNOWLEDGE CHECK

- 4 Which party has more female and ethnic minority members of Congress?
- 5 What are the term lengths for the House and the Senate?
- 6 What party allegiance do members of Congress have?

Party allegiance

Congress is dominated by the main two parties. At the start of the 117th Congress all members of the House of Representatives were Republican or Democrat. All but two senators were Republican or Democrat. Senators Bernie Sanders of Vermont and Angus King of Maine are independents. However, they belong to the Democratic caucus so work closely with the Democrats and tend to vote with them. Bernie Sanders even ran as a candidate in both the 2016 and 2020 Democratic presidential primaries.

Debates concerning the functions, powers and effectiveness of Congress

Most Americans have a low opinion of Congress. The percentage of the public who approve of the way that Congress handles its job has hovered around 20% for more than a decade, while more than 70% disapprove. Many Americans feel that Congress is ineffective and unproductive. There has been much debate about how effectively Congress fulfils its functions of passing legislation, overseeing the executive and exercising the power of the purse.

Legislation

Congress is the federal legislature and is therefore responsible for initiating, debating, amending and passing legislation. The US legislative process has several unique features:

- **Gridlock** occurs when Congress is unable to pass legislation effectively.
- **Divided government** is a situation in which the two houses of Congress are held by different parties, or both held by the same party but the presidency by the opposing party. Divided government makes gridlock more likely as the executive needs the support of a majority of both houses of Congress to pass legislation. This is much easier to achieve during periods of **unified government**.
- The use of a procedure known as a **filibuster** allows individual senators to 'kill off' legislation by talking at length to prevent the Senate from voting on a bill.
- The process for ending a filibuster is known as **cloture**, which means 'closure'. It is very difficult to invoke cloture for a legislative bill as at least 60 senators need to vote to end the filibuster. This is a three-fifths supermajority, which is very difficult to achieve, as one party rarely has 60 seats in the Senate. Filibusters can therefore be another cause of gridlock.

There is considerable debate about how effectively Congress fulfils its legislative function.

SYNOPTIC LINK

The longest individual filibuster speech was 24 hours and 18 minutes, on the issue of civil rights. This sounds like an inspiring act of defiance, but it was quite the opposite: the senator, Strom Thurmond, supported racial segregation and was attempting to filibuster the Civil Rights Act 1957. He was not successful. You can find out more about civil rights in chapters 23 and 24.

USEFUL CONCEPTS

Gridlock A failure of Congress to agree on legislation, meaning new laws cannot be passed. This is often caused by divided government, when the two parties refuse to compromise.

Divided government Occurs when different political parties hold the presidency and at least one chamber of Congress.

Unified government Occurs when one party holds the presidency, the House of Representatives and the Senate.

Filibuster A tactic used in the Senate to prevent a vote. Senators can debate for as long as they wish, so filibustering senators aim to make a speech long enough to use up all the time available for voting.

Cloture The process for ending a filibuster. For a bill a three-fifths majority of senators must vote for cloture. The filibustering senator must then stop talking so that the Senate can move to voting.

DEBATE

Does Congress perform its legislative function effectively?

Yes	No
Congress has passed transformative legislation, including Obama's Patient Protection and Affordable Care Act 2010, which reformed healthcare in the USA. Major legislation is most likely to be passed during periods of unified government, as was the case from 2009 to 2010 of Obama's presidency. Even during a period of hyperpartisan division compromise is possible. Republicans and Democrats both worked together to pass the First Step Act 2018, which reformed the criminal justice system. It passed by 87-12 votes in the Senate and by 358-36 votes in the House, demonstrating significant bipartisan support.	Only 2–3% of all bills become law — this figure has fallen since the 1980s, when 6–7% of bills became law. The 112th Congress (2011–13) passed 283 bills, making it the least productive Congress in US history. The 115th Congress (2017–19) passed 442 bills, but nearly a third of these were ceremonial (e.g. renaming a courthouse) so did not produce any substantive change. Gridlock is common, particularly in the current climate of polarisation, which makes bipartisanship difficult. Members of the Senate can filibuster bills, contributing to gridlock.
Congress can pass emergency legislation when it needs to: it responded to the COVID-19 crisis with the largest-ever economic stimulus in US history, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Congress can reject legislation proposed by the executive, which is an important check on the power of the president.	Increased use of 'closed rules' by the House Rules Committee (see page 320) has reduced the number of amendments made to House bills, which prevents legislation from being improved by congress(wo)men. Presidential vetoes are rarely overturned since a supermajority of two-thirds of each chamber is required to overturn them.

 In pairs or groups, consider the points on both side of the debate and decide which are most significant, and why. When evaluating, remember to distinguish between theory and reality. Note: the question is asking how **effectively** Congress performs its legislative function.

KEY CONCEPT

Oversight The process by which Congress oversees and scrutinises the activities of the federal government. This is an important part of the system of checks and balances.

Oversight

One of Congress's functions is to oversee, investigate and scrutinise the activities of the federal government, including the president. **Oversight** is not specifically mentioned in the Constitution, so is seen as an implied power.

Political factors often determine how effectively Congress performs oversight. During periods of divided government, the majority of one or both houses of Congress has an incentive to investigate their opponents in the executive. After winning the House of Representatives in 2018, the Democrats launched a series of investigations into Trump that resulted in his first impeachment. Oversight is generally weaker during periods of unified government, as Congress is dominated by members of the president's own party. However, this only applies if the president has control over their party. Despite controlling both houses of Congress at the start of his presidency, Trump could not achieve his campaign pledge of repealing Obamacare during his first 100 days.

Presidents who enjoy high public approval ratings may face less opposition from Congress. Congress's traditional low public approval ratings can make it politically difficult for it to hamper the actions of a popular president. George W. Bush's popularity ratings shot up to 90% following the 9/11 terrorist attacks. As a result, his administration enjoyed low levels of congressional scrutiny for the next few years.

Congress can carry out its oversight function in four ways: investigating the executive, confirming presidential nominees, impeaching officials and ratifying treaties.

Investigating the executive

Standing and select committees investigate the actions of the executive. Committees hold hearings and can compel (subpoena) witnesses to provide information for their investigations. Lying to Congress is a crime with a possible prison sentence.

The threat of investigation should motivate the executive to ensure its actions are not only legal, but reasonable enough to withstand the full glare of media attention. Government officials may be called to account for their decisions in a televised hearing. Unfortunately, some investigations are intended to smear the political opposition with bad publicity instead of as a positive form of oversight. Furthermore, despite all the publicity many investigations do not produce tangible results.

Overseeing the entire federal government creates a vast workload for Congress. The Government Accountability Office (GAO) supports Congress to investigate and audit the executive. However, it has been reduced in size, along with several other congressional offices — staff in the GAO, the Congressional Research Service and the Congressional Budget Office were cut by 45% between 1975 and 2015.

Confirmation of nominees

Senate confirmation is needed for many presidential appointments including Supreme Court justices. The Senate may refuse to confirm appointments, although this is relatively rare. Senate confirmation encourages presidents to nominate a high-quality individual. Nominees are sometimes forced to withdraw when exposed to Senate and media scrutiny.

SYNOPTIC LINK

The process of confirming Supreme Court justices can be highly controversial. You can find out more about the confirmation process in Chapter 16.

The confirmation process has been highly criticised for its politicisation. A president whose party controls the Senate generally has their nominees confirmed, even if the nominee is a controversial choice or possesses questionable ability. Trump's education secretary, billionaire Betsy DeVos, displayed a lack of knowledge of basic education policy during her 2017 confirmation hearing, and argued that guns in schools would protect students from bears. The Senate vote tied 50-50, with only two Republicans breaking ranks to oppose DeVos's appointment. Vice President Mike Pence broke the tie and voted to confirm DeVos. The Senate can also block a nomination for partisan reasons. In 2016, Republican senators refused to hold hearings on the appointment of Merrick Garland, Obama's nominee to the Supreme Court (see case study, page 376).

Impeachment

Congress can impeach and try the president for 'treason, bribery, or other high crimes and misdemeanours'. This is the ultimate sanction, with the threat of impeachment prompting Richard Nixon to resign in 1974. Bill Clinton's reputation never fully recovered from his 1998 impeachment, despite his acquittal. Congress can also impeach other government officials, so in theory the threat of impeachment should motivate all members of the executive to follow the law.

In practice, impeachment has never led to the conviction and removal from office of a sitting president. The third president to be impeached, Trump, was acquitted by the Senate in his first impeachment trial in a highly partisan vote (52-48) with all but one Republican voting to acquit and all Democrats voting to convict. Surprisingly, immediately after his acquittal Trump's popularity with the US public reached 49%, the highest point of his presidency. The controversy surrounding his impeachment did not have the expected toxic impact on public opinion, highlighting the limitations of impeachment as a check on presidential power. Trump is the only president in US history to be impeached twice. Though his second impeachment trial occurred after he had left office, the Senate had the opportunity to disqualify him from running for president again.

Senate ratification of treaties

The president negotiates treaties but then the Senate must ratify them. This forces the president to work closely with the Senate during treaty negotiations. However, agreement is not always possible. The Senate has rejected many important international treaties, including those listed here:

- The Treaty of Versailles (1920), the rejection of which was the start of a period of international isolationism for the USA.
- The Comprehensive Test Ban Treaty (1999), which would have banned the testing of nuclear weapons.
- The Convention of the Rights of Persons with Disabilities (2012), a UN treaty that protects the rights of people with disabilities.

Recent presidents often use their direct authority to make executive agreements with other countries, which avoids the need for a formal treaty. This allows them to bypass the Senate's oversight completely and is a significant weakness of the Senate's power of ratification.

SYNOPTIC LINK

Presidents can use their direct authority as chief executive to act independently of Congress. The increased use of direct authority in recent years has been highlighted by those who fear the presidency is too 'imperial' in character. You can find out more about direct authority in Chapter 14.

DEBATE**Does Congress fulfil its oversight function effectively?**

Yes	No
There is strong oversight during periods of divided government.	Members of Congress are generally reluctant to criticise the president if they belong to the same party, so oversight is weaker during periods of unified government.
Standing or select committee investigations of the executive provide high-profile scrutiny.	Congress's lack of popularity makes it difficult for it to attack a popular president.
Congress is better able to check the executive if a president is unpopular or at the end of their presidency.	Investigations can be politicised and partisan.
Congress can impeach and try the president for wrongdoing in office.	Investigations can be time consuming and costly but may yield few results.
Fear of impeachment or investigation helps to keep the president and government officials acting within the law.	No president has ever been removed from office by the impeachment process.
The president must work closely with the Senate during treaty negotiations to secure ratification.	Trump's partisan acquittal by the Senate in 2020 showed that political allegiance may have more impact in an impeachment trial than the alleged facts of the case.
The Senate can refuse to confirm presidential appointments.	The Senate has refused to ratify reasonable treaties, which isolated the USA from key global agreements.
	The confirmation process for political nominees is highly politicised.
	The number of employees supporting Congress with the work of oversight has been reduced over the last 50 years.

 Individually or in pairs, consider the overall effectiveness of Congress in carrying out oversight. Decide which of the points above are most important in helping you to answer this question. Use your knowledge of recent events to help you evaluate how Congress applies its oversight powers, and therefore how effective it is.

Power of the purse

In order to ensure that the people's representatives give their consent to taxation, the Constitution gives Congress 'the power of the purse'. Only Congress can raise revenue for the federal government. All tax bills must start in the House, but the Senate can amend them. As with any bill, the approval of both chambers is needed for it to become law.

Government shutdowns happen when neither the executive nor Congress is prepared to compromise, so the budget is not passed. Most government shutdowns are 'partial' and end after a day or two with little disruption, even though the government has a funding gap (see Table 13.3). In a 'full' shutdown the federal government is forced to close its 'non-essential' functions such as benefit applications, environment and food inspections, and national park visits, and to send home (furlough) many of its employees. Full shutdowns are extremely unpopular with the public because of the inconvenience they cause. The 2018–19 shutdown during Trump's administration lasted 35 days and was the longest shutdown in US history. In order to avoid a shutdown, Congress often resorts to temporary 'continuing resolutions' as a short-term source of funding while budget negotiations continue with the president. The executive may be forced to make concessions to Congress in order to keep the federal

government running. Trump found a novel way to bypass Congress's power of the purse in 2019, when he declared a national emergency so that he could use emergency federal funding to pay for his border wall.

Table 13.3 Major federal government shutdowns

Shutdown	President	Number of days	Estimated cost to government
1980	Jimmy Carter	1	\$700,000
1981	Ronald Reagan	1	\$80–90 million
1984	Ronald Reagan	1	\$65 million
1986	Ronald Reagan	1	\$62.2 million
1990	George H. W. Bush	3	\$2.57 million
1995	Bill Clinton	5	\$530 million
1995–96	Bill Clinton	21	\$830 million
2013	Barack Obama	16	\$1.3 billion
2018	Donald Trump	3	\$68 million
2018–19	Donald Trump	35	\$2.3 billion

DEBATE

Does Congress use the power of the purse effectively?

Yes	No
The power of the purse is one of the most powerful checks on the power of the executive. The executive may make concessions to Congress in order to avoid a shutdown. Government shutdowns are relatively rare.	Government shutdowns are disruptive and unpopular and can be lengthy. The threat of a government shutdown hovers over every budget negotiation. Presidents are unable to reduce the size of the federal budget, so US debt continues to increase. 'Pork barrel' funding (see page 322) is an unnecessary use of taxpayers' money. Trump's use of emergency powers to bypass Congress's power of the purse has created a precedent that may be used by future presidents.

 Individually or in pairs, consider which of the points above are most important when evaluating how effectively Congress uses its power of the purse.

KNOWLEDGE CHECK

- 7 What is the name used when Congress is unable to pass legislation effectively?
- 8 What term describes the tactic used by senators of talking without interruption in an attempt to stop a vote on a bill from taking place?
- 9 How many presidents have been impeached and how many removed from office?

Party system and committee system and their significance within Congress

Party system

Congressional caucuses

A congressional caucus is a group of members of Congress who work together to achieve similar legislative aims. Most members of Congress belong to many different caucuses, but all belong to one of the two party caucuses (unless they are an independent and choose to remain separate). The main party caucuses are:

- House Republican caucus (also known as the House Republican Conference) — all Republicans in the House
- Senate Republican caucus (also known as the Senate Republican Conference) — all Republicans in the Senate
- House Democrat caucus — all Democrats in the House
- Senate Democrat caucus — all Democrats in the Senate

Smaller congressional caucuses act as ‘subgroupings’ of members with a similar interest to advance. This interest is often ideological. For example, in 2021 the House Freedom Caucus consisted of around 45 conservative Republicans with a commitment to limited government, and the Congressional Progressive Caucus was made up of nearly 100 **progressive** Democrats.

Some congressional caucuses are bipartisan and include members of both parties. Examples include the Bipartisan Heroin and Opioid Task Force, and the Climate Solutions Caucuses in the House and the Senate. The Congressional Black Caucus is officially bipartisan, but only four Republicans have ever joined it.

Congressional caucuses may include members from both houses. The Congressional Black Caucus had 55 members in 2019, two of whom were senators. Smaller caucuses can be powerful, even acting as an alternative influence to the party leadership. At the start of 2018 the House Freedom Caucus opposed Trump’s budget, forcing the Republicans to depend on Democrat votes to pass the bill.

Party leadership

Members of each party caucus elect a leader, known as:

- the majority leader if their party has a majority in that chamber
- the minority leader if they do not have a majority in the chamber

Majority and minority leaders act as ‘floor leaders’ in both chambers. They plan the legislative agenda and coordinate their party for votes and debates. Their job is to try to achieve party unity so that the party can achieve its legislative aims.

The speaker of the House of Representatives is the most high-profile leadership position in Congress. The speaker is elected by all members of the House, so belongs to the majority party. Their role is to preside over debates and keep order while the House is in session, and to act as leader of the majority party. They determine the legislative agenda for the House, and choose members of

USEFUL CONCEPT

Progressive The idea that politics should improve society and the lives of ordinary people, often through government action. This positive intervention is associated with liberals and particularly the left wing of the Democratic Party.

conference and select committees. This gives the speaker considerable power. The Constitution places the speaker second only to the vice president in the line of presidential succession.

If the speaker is from a different party to that of the executive, they provide the main focus for opposition to the president. The speaker is supported by the House majority leader, who is second in the leadership hierarchy of the main party and follows the speaker's agenda by scheduling legislation for consideration by the House. The speaker is also helped by three other important figures: the assistant speaker, the party whip and the chair of the party caucus.

CASE STUDY

Speaker of the House: Nancy Pelosi



Nancy Pelosi became the first female speaker of the House of Representatives in 2007

Nancy Pelosi served as the first female speaker of the House of Representatives from 2007 to 2011, and was re-elected in 2019. Her election as speaker was ground breaking. It was the most important position held by a woman in Congress, and in the line of presidential succession (until Kamala Harris became vice president in 2021). Pelosi first became congresswoman for California in 1987, aged 47. Prior to this she had raised five children and been a volunteer organiser for the Democrat Party, including serving on the Democratic National Committee.

Pelosi led House Democrats to impeach President Trump in December 2019. However, she also worked with Republicans to pass bipartisan legislation — Trump's revised trade deal with Canada and Mexico was passed by the House in the same month that it voted for impeachment.

SYNOPTIC LINK

Pelosi and Vice President Kamala Harris are arguably the most powerful women in US history. However, the glass ceiling remains for the presidency, chief justice of the Supreme Court and Senate majority leader. In contrast, the UK has had two female prime ministers. Women are underrepresented in both legislatures: 27% of members of Congress are female, and women make up just 34% of MPs. You can find out more about representation in the UK parliament in Chapter 2.

Party discipline

Party discipline has traditionally been weak. Majority and minority party whips in each chamber organise party members to vote as directed by the leadership. However, their power to enforce party unity is limited. The separation of powers prevents party leaders from offering government positions to members of Congress in exchange for support.

In the House, the speaker does have some levers to influence congress(wo)men. They decide who sits on the House Rules Committee, and who chairs and sits

SYNOPTIC LINK

Romney was also one of the only Republicans in Congress to speak up against Trump's claims of election fraud in 2020, and blamed Trump for inciting 'insurrection' at the Capitol in 2021. You can find out more about factions within the Republican Party in Chapter 19.

SYNOPTIC LINK

Party discipline has traditionally been stronger in the UK. The prime minister is a member of parliament and leader of the biggest party in the House of Commons, with greater powers of patronage. The UK's whip system therefore tends to be more effective than that of the USA, although this is not always the case, as demonstrated by the divisions in parliament over Brexit from 2016 to 2019. You can find out more about UK party discipline in Chapter 2.

on select and conference committees. In the Senate, party leaders determine which senators will serve on different committees, which can encourage senators to follow the party's directions. Party leaders often need to use their powers of persuasion to convince members of Congress to support the party's agenda, unifying the broad range of opinion within each party. In 2018–19, Democrats cohered around their opposition to Trump's border wall to maintain unity during the longest government shutdown in history.

The final means of convincing members of Congress to remain united is to threaten them with a withdrawal of party support, either in their next election campaign or in their attempt to progress up the party hierarchy. The 2018 midterms marked a turning point in Trump's control of the Republican Party, as many of his critics resigned from Congress and were replaced by more supportive members. The Republicans lost control of the House but generally won the seats where Trump campaigned in person. Only one Republican senator, Mitt Romney, voted against Trump in his 2019 impeachment trial. Although party discipline is generally seen as weak, Congress has become more partisan and polarised over the last two decades, with members more likely to vote along party lines.

Partisanship

Partisanship is a focus on the interests of one's political party. If partisanship is extreme, it can be damaging for democracy as it may prevent bipartisanship, the process of two parties working together to reach a compromise.

In the 1980s, many congress(wo)men and senators were politically centrist with considerable ideological overlap between centrist Republicans and Democrats. This allowed them to work together on certain bills. Even in a period of divided government, a president with centrist legislation could often find sufficient bipartisan votes to pass it through Congress. Since the 1990s, Congress has become much more polarised. Republicans and Democrats have moved away from each other on the political spectrum, leaving few members of Congress in the political centre. One reason for the polarisation of Congress is the reduced number of competitive electoral districts. These are districts in which either party has a realistic chance of winning. There were 164 competitive congressional districts in 1997 but just 91 by 2020.

Polarisation increases partisanship, as the two parties become implacably and ideologically opposed to each other. Bipartisanship becomes more difficult to achieve, increasing the likelihood of gridlock during periods of divided government. Party unity votes are those in which the majority of voting Republicans oppose the majority of voting Democrats. The number of party unity votes has increased significantly since the turn of the century, another product of increased partisanship.

There have been attempts to increase bipartisanship. The Problem Solvers Caucus was set up in 2017 to promote bipartisan cooperation on legislation and has about 50 members drawn from both parties. This is a small proportion of Congress, but party leaders have also been prepared to compromise on key initiatives, including the First Step Act 2018, which reformed the criminal justice system. The COVID-19 crisis initially generated an exceptional bipartisan response — in March 2020 senators voted unanimously (96–0) to approve the largest-ever economic stimulus in US history, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The House vote was nearly unanimous, too. Coming just 2 months after the bitter

partisanship of Trump's impeachment, the CARES Act showed that Congress could put party differences aside when the circumstances made it absolutely necessary. However, partisanship quickly resurfaced in the latter half of 2020, as Republicans and Democrats failed to agree a further economic stimulus.

KEY CONCEPT

Committee system A system of different types of committees used by Congress to divide up its workload. It includes standing committees, select committees, the House Rules Committee and conference committees.

Committee system

Congress uses several different types of committees to help it to fulfil its functions, together known as the **committee system**:

- Standing committees
- Select committees
- House Rules Committee
- Conference committees

Standing committees

Standing committees are permanent and each focuses on a specific area of policy, such as foreign affairs or agriculture. There are 20 House standing committees and 16 Senate standing committees. Much of their work is done within subcommittees. Parties are represented in the same proportions as in the Senate or the House, so the majority party in a chamber has a majority on all standing committees for that chamber.

Standing committees are responsible for:

- holding hearings during the committee stage of bills, in order to listen to and question witnesses and vote on whether the bill should proceed to the House or Senate
- carrying out investigations and oversight of the executive, focused on the committee's policy area

Senate standing committees have the additional task of considering presidential appointments:

- Hearings are held to consider the nominee's suitability.
- This is followed by a committee vote, which is a recommendation to the rest of the Senate on whether to confirm the appointment.

Standing committees allow Congress to manage the wide range of issues it needs to legislate on and investigate. Long-term members of standing committees become experts in their policy area and are ideally placed to scrutinise relevant legislation. Committee members' specialist expertise enables them to carry out more effective oversight than the House and Senate as a whole, giving their findings more weight. Hearings are often high profile and attract media interest, providing an important check on the executive. Therefore, committee chairs occupy a desirable position within Congress and wield considerable influence.

Senate standing committees play a key role in presidential appointments. Committee hearings are a public test of the nominee's suitability. Furthermore, the committee vote on the nomination tends to reflect how the nomination will be received by the Senate as a whole. The committee can even influence whether a nominee is considered by the Senate. Merrick Garland was nominated by Obama for the Supreme Court in 2016, but the Republican members of the Senate Judiciary Committee supported Senate majority leader Mitch McConnell's refusal to hold hearings on the appointment.

SYNOPTIC LINK

Pressure groups often use lobbyists to influence members or chairs of influential committees. Professional lobbyists can use their 'revolving door' of personnel, those who have previously worked in Congress, to help them develop strong relationships with relevant committee members. You can find out more about how US pressure groups operate in Chapter 21.

STUDY TIP

Make sure you understand the differences between US and UK select committees. Select committees in the USA are generally temporary and focus on a specific issue, such as Russian interference in the 2016 presidential elections. In the UK, select committees are permanent and responsible for oversight of a particular area of policy, such as defence.

Select committees

Select committees are set up to deal with a specific urgent issue, and therefore prevent the relevant standing committee from being overloaded. Most are temporary but a few, such as the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence, are permanent.

Select committees generally do not work on legislation but instead investigate the issue in question. For example, from 2017 to 2020 the Senate Select Committee on Intelligence investigated Russian interference in the 2016 presidential elections. Select committees carry out high-profile and detailed hearings in the public interest. The possibility of congressional investigation creates a powerful incentive for the executive to ensure its actions stand up to scrutiny. However, investigations can be politicised, which reduces their credibility. Committees may even be divided on the conclusions they reach (see case study).

CASE STUDY**House Select Committee on Benghazi**

The House Select Committee on Benghazi (2014–16) was set up to investigate the 2012 terrorist attack on the US embassy in Benghazi, Libya, in which the US ambassador to Libya was killed. The committee interviewed more than 100 witnesses and spent 2 years and \$7 million investigating the attack.

The committee made headlines when it questioned former secretary of state Hillary Clinton for 11 hours in 2015. Clinton was the frontrunner for the Democratic Party's 2016 presidential nomination. The hostile tone taken by Republicans and their determination to keep asking questions on issues already covered in detail appeared to be an attempt to score political points.

The committee released an 800-page report in 2016, which did not find any new evidence against Clinton and focused on military leadership in Washington. However, the committee was divided along partisan lines.

Two Republican members released their own report highlighting a failure of leadership and emphasising Clinton's role. Democrats on the committee also released their own report exculpating Clinton.



Hillary Clinton testifies before the House Select Committee on Benghazi in a marathon 11-hour session, 2015

House Rules Committee

The House Rules Committee is a standing committee in the House of Representatives and is uniquely important. It sets the 'rules' for bills, determining how much time they will have on the floor of the House and whether amendments will be allowed. 'Open rules' allow congress(wo)men to suggest amendments to bills whereas 'closed rules' do not.

The House Rules Committee has a small membership of 13, weighted in favour of the majority party in a 2:1 ratio. The speaker uses their party's control of the House Rules Committee to determine what is debated on the floor of the House. The committee determines what legislation is discussed when, for how long and in what way. The House can force a bill to be debated if an absolute majority of congress(wo)men sign a 'discharge petition', but this is not easy to achieve. In general, the committee's decision stands.

The choices that the committee makes have important consequences. For instance, the number of bills debated under closed rules has been increasing in recent years. In the 115th Congress (2017–19) 56% of bills were debated under closed rules, the highest percentage of any Congress. This prevents legislation from being improved by congress(wo)men and gives the minority party less ability to shape government bills.

The chair of the House Rules Committee is one of the most important positions in Congress. Its occupant from 2013 to 2019, Republican Pete Sessions, received millions of dollars of donations to his campaign funds from pressure groups and corporate donors as a result of his influence. Sessions reportedly used his position to advance his personal opposition to marijuana, preventing amendments that would have relaxed federal laws against marijuana in states where it is legal.

Conference committees

These are temporary committees set up to consider a specific bill. This occurs when the House and the Senate have each passed different versions of the same bill. Members from the relevant standing committee from each house sit together in a conference committee, where they consider the two versions of the bill and merge them into one combined bill, known as a conference report. This final version of the bill is sent back to both houses to be approved by a vote. Either or both houses can vote against the final bill if they are not satisfied with it.

Conference committees can play an important role in developing legislation, but have been used less frequently in recent years. In the 104th Congress (1995–97) there were 67 conference reports, compared with just 7 in the 115th Congress (2017–19). Party leaders increasingly prevent bills from going to conference committee because the shape of the final bill will be out of their control. Instead, they ask members in one chamber to adopt the other chamber's bill.

ACTIVITY

Go to <https://www.congress.gov/committees/video> and choose one of the House committees to investigate. Clicking on the committee name will take you to a list of recent videos. Watch a few minutes of one of these and evaluate how effectively the committee appears to be performing its oversight function.

KNOWLEDGE CHECK

- 10 What is a congressional caucus?
- 11 Which term describes the person who presides over debates in the House and is leader of the majority party?
- 12 Which types of committee consider legislation?

Representative role of senators and representatives

One of the roles of members of Congress is to represent their constituents. They do this in the following ways:

- Communicating with constituents
- Passing legislation
- Committee membership
- Lobbying the executive
- Constituency casework

Communicating with constituents

Members of Congress communicate with their constituents through visits to their state or district, including ‘town hall’ meetings. They also use social media and letters and emails from constituents to keep informed of their views. This allows members to represent those views in Congress.

Passing legislation

Members of Congress debate, amend and vote on legislation with their constituents in mind. They may follow the delegate model and vote according to their constituents’ views, or the trustee model in which they vote for what they believe are their constituents’ best interests.

SYNOPTIC LINK

The delegate and trustee models are important to understand for both UK and US politics. The trustee model was developed by Edmund Burke, a British MP and political thinker in the eighteenth century, who felt that representatives should always be led by their best judgement. You can find out more about theories of representation in Chapter 2.

Committee membership

Many members of Congress sit on committees that allow them to defend their home state’s or district’s interests. For example, from 2015 to 2020 the chair of the Senate Agriculture Committee was Pat Roberts, senator for the agricultural state of Kansas. Roberts steered a bipartisan farm bill through Congress with the support of many Kansas agricultural groups and producers. The Agriculture Improvement Act 2018 gave farmers billions of dollars of funding and better access to crop insurance.

Lobbying the executive

Members of Congress lobby the executive for funds or policies that will benefit their constituents. In the case of funding, this is controversial. The federal government may allocate funding to states or districts to secure the support of key members of Congress and not because the spending is necessary. This is known as pork barrel funding. The most notorious example is the ‘bridge to nowhere’, a proposed \$400 million project that would have joined a town in Alaska to Gravina Island, which is home to about 50 people and an airport. It was never built.

Legislation in 2011 aimed to limit pork barrel funding by stopping the process of ‘earmarking’ federal funding to a specific project in a member of Congress’s district or state. This did initially have some impact: the pressure group Citizens Against Government Waste found much lower levels of ‘pork’ from 2012 to 2017 than previously, although \$3.7 billion was spent. However, ‘pork’ increased dramatically in 2018 and 2019, averaging \$15 billion each year even if it is no longer earmarked for particular projects.

Constituency casework

Members of Congress are often approached by constituents asking for help with problems, particularly those involving a federal agency. Problems raised could include an issue with benefit payments or a benefits application, applications for US citizenship, or a government decision that affects the

constituent's life in some way. Members of Congress use their staff to help constituents solve these problems, for example by supporting them in completing documentation or liaising between them and the federal government.

Evaluating representation

Congress as a whole is unpopular, but individual members of Congress are highly likely to be re-elected. More than 90% of incumbent candidates are typically returned to the House, and re-election rates for the Senate are nearly as high. This could suggest that constituents feel their members of Congress are doing a good job of advancing their interests, although it is also likely to be the result of fewer competitive electoral districts.

Table 13.4 details re-election rates to Congress since 2008.

Table 13.4 Re-election rates of congress[wo]men and senators

	2008	2010	2012	2014	2016	2018	2020
House of Representatives	94%	85%	90%	95%	97%	91%	95%
Senate	83%	84%	91%	82%	93%	84%	84%

Source: <https://www.opensecrets.org/overview/reelect.php>

ACTIVITY

Look at the websites of several senators and congress[wo]men, for example Democrat Congresswoman Alexandria Ocasio-Cortez <https://ocasio-cortez.house.gov/> and Republican senator Rand Paul <https://www.randpaul.senate.gov/>. Evaluate, on the basis of the evidence provided on these websites, how well they perform each of their representative functions.

STUDY TIP

Remember that Congress's ability to reflect US society through its socio-demographic makeup is not the same as the individual representative function that members have to fulfil. Although Congress does not reflect the USA's diversity, individual members must strive to represent the interests of everyone in their district or state. If assessing Congress's effectiveness in representation, you need to consider the two separately.

SYNOPTIC LINK

There is a vast difference between the powerful elected upper chamber of the US legislature and the unelected UK House of Lords. The Lords can only delay certain legislation for up to 1 year, whereas the Senate's approval is required for any bill to become law. The Senate confirms presidential nominees and ratifies treaties, whereas the House of Lords has no comparable powers. You can find out more about the House of Lords in Chapter 2.

Relative strengths of the House of Representatives and the Senate

The House and the Senate have joint powers in the following areas:

- Legislation
- Oversight
- Overriding a presidential veto
- Initiating amendments to the Constitution
- Declaring war

However, there are a few important differences between the two houses in terms of the powers they hold, their terms of office and the relative status of their members. These are detailed in Table 13.5.

Table 13.5 The House of Representatives and the Senate: a comparison

Feature	House of Representatives	Senate
Confirming appointments	N/A	It has sole power to confirm presidential appointments.
Ratifying treaties	N/A	It has sole power to ratify treaties.
The power of the purse	Only the House can initiate money bills.	The Senate can amend money bills. In order to pass money bills both chambers must agree.
Impeachment	It has sole power of impeachment: it decides whether to charge an official with an offence.	It has sole power to try all impeachments: it decides whether an official is guilty.
Term of office	Two years, so members are under greater pressure to keep their constituents happy.	Six years, so members can focus more on their work as senators and less on running for re-election.
Career prospects	There are 335 more congress(wo)men than senators, so there's more competition for leadership posts and committee membership. Congress(wo)men may aim to be elected to the Senate. Senators do not covet a position in the House, as it is seen as less desirable.	It comes with a higher public profile as there are only two senators per state. There are good opportunities to progress to leadership roles within Senate and committees. It can be a route to the presidency: 16 presidents were former senators, including John F. Kennedy, Barack Obama and Joe Biden. Many presidential candidates have also been senators, including John McCain and Hillary Clinton. Four of the last six vice presidents were former senators (Dan Quayle, Al Gore, Joe Biden and Kamala Harris).

The net effect of these differences is that the Senate has more power than the House of Representatives, and senators enjoy greater status and career prospects than congress(wo)men.

Relationship of Congress to the executive branch of government and the Supreme Court

Relationship to the executive

The president depends on support from Congress to pass legislation, so the president's administration has regular contact and meetings with members of Congress. The Office for Legislative Affairs is part of the Executive Office of the President, and lobbies members of Congress to vote for the president's legislation. Cabinet officers and key figures in the president's administration can reach out to members of Congress to secure their support on key votes. The administration may need to 'call in favours' and make deals. The president may also use their informal power to persuade members of Congress to support their agenda. In the case of members of their own party this could include campaigning in their home state when they face re-election.

The administration often needs votes from across the aisle, meaning the opposing party, since the two parties sit on opposing sides of the central aisle in each chamber of Congress. The administration may therefore lobby members of Congress from both parties.

CASE STUDY**Tie-breaker: Vice President Kamala Harris**

The vice president is also president of the Senate. Usually, this role merely involves presiding over the Senate on ceremonial occasions. However, in the event of a tie in the Senate, the vice president can vote to break the tie. Vice President Mike Pence did this 13 times between 2017 and 2021. In 2021 the Senate was split 50–50 between Republicans and Democrats, giving Vice President Kamala Harris's role as President of the Senate unusual significance. With Harris to break the tie, Democrats had a majority in the Senate. This gave the executive direct influence in the Senate, in an important exception to the separation of powers.

President Biden's narrow majority meant he needed support from the entire Democratic caucus in the Senate to pass legislation (unless he could find Republicans to back it).

Relationship to the Supreme Court

Under the system of checks and balances, the Supreme Court can rule that Acts of Congress are unconstitutional and therefore no longer law. This gives the Supreme Court huge power over Congress. Congress can only overturn the ruling of the Court by introducing a constitutional amendment. This is very difficult to achieve as it requires a two-thirds majority of both houses, and then ratification by three-quarters of US states. In practice the Court's decision usually stands.

In 1996 Congress passed the Defense of Marriage Act (DOMA), which gave states the right to refuse to recognise same-sex marriages performed in other states and made it clear that the federal government would not recognise same-sex marriages. This law was later struck down by two Supreme Court decisions: *United States v Windsor* (2013) and *Obergefell v Hodges* (2015), which ruled that DOMA violated the rights 'given to citizens by the Fourteenth Amendment'. This had the effect of legalising same-sex marriage across the USA. This example shows how a democratically elected Congress can be overruled by an unelected Supreme Court, fundamentally changing US law against the wishes of its legislature.

Congress does have some ability to check the power of the Supreme Court. The Senate is responsible for confirming Supreme Court justices. Congress also has the power to impeach and try Supreme Court justices, although only one justice has ever been impeached, in 1811, and he was subsequently acquitted by the Senate.

DEBATE**Is Congress the broken branch of government?****Yes**

There is frequent gridlock.
Only 2–3% of bills become law.
There is increased partisanship.
Government shutdowns are unpopular and bring federal government to a standstill.

No

Major legislation is still passed through Congress every year.
Bipartisan compromise is still possible, e.g. the First Step Act 2018.
The CARES Act 2020 showed that Congress could unite in response to national emergency.

Yes

Congress is deeply unpopular with the public.

Congressional investigations can be more focused on partisan point scoring than establishing the truth.

Unnecessary 'pork' spending contributes to bloated federal budgets.

Trump's 2020 impeachment acquittal was voted for on partisan grounds.

The Supreme Court can declare laws passed by Congress to be unconstitutional.

Senate confirmations of presidential appointments are often politicised and partisan as opposed to genuine oversight.

Uncompetitive seats have led to a polarised and divided Congress.

Congress has not declared war since 1941, despite regular military action by the USA.

No

Individual members of Congress are highly likely to be re-elected.

Congressional investigations provide much-needed scrutiny and oversight of the executive.

The power of the purse allows Congress to hold the executive branch to account.

Congress has impeached and tried three presidents.

Senate confirmation of Supreme Court justices encourages presidents to choose experienced nominees who will stand up to public scrutiny.

Polarisation in Congress is representative of a divided USA.



Individually or in pairs, evaluate the effectiveness of Congress, considering the extent to which Congress fulfils its roles. Then evaluate whether it constitutes a 'broken' branch of government or just a weak one.

KNOWLEDGE CHECK

- 13** What is the term for unnecessary government spending that aims to secure the support of key members of Congress?
- 14** Which two oversight powers are only held by the Senate?
- 15** What role do the two houses of Congress play in impeachment?

SUMMARY

- Congress has two chambers, the House of Representatives and the Senate.
- Congress's roles are to pass legislation, represent the people, oversee the executive and declare war when necessary.
- It has a range of powers, including legislative and oversight powers, which allow it to fulfil its functions to a varying degree of effectiveness.
- Congress has been criticised for being unrepresentative of US society, but the 117th Congress was the most diverse on record.
- Congress(wo)men serve 2-year terms, and Senators 6-year terms.
- Nearly all members of Congress are Republican or Democrat.
- Political polarisation has increased the importance of the party system.
- The committee system allows Congress to oversee the executive.
- Members of Congress represent their constituents by lobbying government on their behalf, helping with constituency casework, supporting relevant legislation and serving on appropriate committees.
- The House and Senate each have similar powers in many areas, but senators enjoy a higher public profile and longer terms, and the sole power to confirm presidential appointments and ratify treaties.
- The president needs the support of Congress to pass their legislation.
- The Supreme Court can rule that a law passed by Congress is unconstitutional, and strike it down.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways that the power of the purse may be significant in US politics. (9 marks)
- 2 Explain and analyse three ways that the committee system may be significant within Congress. (9 marks)
- 3 Explain and analyse three ways in which members of Congress represent their constituents. (9 marks)

Paper 2 Section B style question

Read the extract below and answer Question 4 that follows.

The effectiveness of Congress

The US Congress is meant to be where the country's political and policy issues are debated and resolved. ...Committees are the engine of the legislative process. Ideally, committees are responsible for conducting most of the deliberative work of Congress through hearings, oversight, staff background reports, bill drafting, committee markups and final report writing...Amendments are...a mechanism for members to improve and influence the development of legislation...One of Congress's chief oversight duties is to review government programs...Fundamental to Congress is the power of the purse. With that power comes the basic duty to set a budget and fund the federal government.

The 110th through 115th congresses (2007–18) were marked by light work schedules in Washington, a lack of regular order in the legislative process, and neglect of Congress's most basic duties to oversee and fund the government. Both Democrats and Republicans are responsible for this dysfunction. In pursuit of their agendas while in the majority, both parties circumvented the committee process and restricted the minority's ability to debate and amend legislation. In the minority, both parties focused their attention more on obstruction than on cooperation and compromise. Under these conditions and with little time spent in the Capitol, it is no wonder Congress could not carry out even its fundamental spending and oversight responsibilities.

Source: adapted from the Bipartisan Policy Center think tank's report, 'How Congress Governed in a Polarized Era: 2007–18: Analysis from the Bipartisan Policy Center's Health Congress Index', Bipartisan Policy Center, March 2019

- 4 Analyse, evaluate and compare the arguments in the above passage for and against the view that Congress has effective powers of legislation and oversight. (25 marks)

FURTHER READING

Articles

Ashbee, E. (2018) 'The US Congress: how effective is it?', *Politics Review*, Vol. 28, No. 2, pp. 18–21.

Couldrey, A. (2021) 'Legislative logjams in the US Congress', *Politics Review*, Vol. 30, No. 4, pp. 7–10.

Kilheeny, E. (2021) 'Power and control in the US Congress', *Politics Review*, Vol. 30, No. 3, pp. 26–29.

Kilmer, D. and Graves, T. (2019) 'How to make Congress work better for the American people', *TIME* magazine, <https://time.com/5739796/congress-work-better/>.

Website

Bipartisan Policy Center (March 2019) 'How Congress Governed in a Polarized Area: 2007–2018: Analysis from the Bipartisan Policy Center's Health Congress Index': <https://bipartisanpolicy.org/wp-content/uploads/2019/03/How-Congress-Governed-in-a-Polarized-Era-2007-2018.pdf>.

The executive branch of government: the president

KEY QUESTIONS ANSWERED

- What are the sources of presidential power and how have different presidents used them?
- What is the difference between the formal and informal powers of the presidency?
- What constraints are there on the president's ability to exercise their powers?
- What is the relationship between the presidency and other institutions?
- How does presidential power wax and wane over time?
- Is the presidency 'imperial' or 'imperilled'?

BACKGROUND INFORMATION

In 2004 an almost-unknown young state senator from Illinois gave a speech that would change his life, and that of millions of other Americans. Barack Hussein Obama described himself to the Democratic National Convention as 'a skinny kid with a funny name', and painted a hopeful vision of a country for people of all races and political beliefs. His words catapulted him to national fame, as the embodiment of twenty-first-century promise. Four years later, he was sworn in as the USA's first black **president**.

It's a compelling story, but the epilogue is jarring. After two terms in office, Obama failed to pass the torch to the first female president. Instead, he was forced to hand it to a billionaire property tycoon who was the antithesis of everything he stood for. Instead of racial and social harmony, Obama's legacy appeared to be a divided America. This division had only deepened by 2020, when Obama's former vice president, Joe Biden, beat Donald Trump to the presidency amid unfounded accusations of electoral fraud and a failed mob insurrection at the US Capitol.

The US president is often described as 'the most powerful person in the world'. They head the world's largest economy, command a military superpower with a deadly nuclear arsenal and enjoy a leading role within the international community. Despite all this, many presidents are deeply frustrated by the limitations on their power.

KEY CONCEPT

President Head of the US government, head of state and commander-in-chief of the military. The US president is directly elected via the Electoral College system.

STUDY TIP

As of 2021, all presidents have been men, but Kamala Harris made history when she became the first female vice president (as well as the first African-American and South Asian vice president). A number of women have run for president but only one, Democrat Hillary Clinton, was chosen as a major party presidential nominee. Despite winning the popular vote in 2016, Clinton lost to Donald Trump in the Electoral College vote, so the wait for the first female president continues.



President Barack Obama bids farewell to the presidency on President Donald Trump's inauguration day, 20 January 2017. In a startling break with tradition, Trump refused to attend President Joe Biden's inauguration in 2021.

KEY CONCEPTS

Formal powers Powers given to the president by the Constitution or Congress, or those that are inherent to the president's role as chief executive of the federal government.

Executive The branch of government in the USA that carries out and enforces laws. The federal government is headed by the president and consists of 15 executive departments and more than 60 independent agencies. The executive governs or 'runs the country'.

Informal powers Powers that have a political, not a constitutional, basis. They include the president's role as party leader, their ability to set the political agenda, and the use of direct authority by stretching their implied powers (those implied by the Constitution).

Sources of presidential power

The president has both formal and informal powers. The Constitution gives the president **formal powers** to carry out their role, such as the power to be head of the **executive** branch of the federal government, and the president also receives formal powers that are delegated (given) by Congress. In contrast, **informal powers** are political and not constitutional. Informal powers derive from a variety of different sources, including the president's popularity with the public, their standing within their party, and their reputation among the international community. While the president's formal constitutional powers are fixed, the president's informal powers vary considerably depending on an individual president's circumstances. An unpopular president, for example, will find it more difficult to persuade members of Congress to follow their agenda, and will therefore have less informal power than one who enjoys favourable opinion polls.

The president's formal powers can be divided into the following:

- **Enumerated powers:** these are explicitly granted to the president by Article II of the Constitution, or delegated to the president by Congress.
- **Implied powers:** these are implied by the text of the Constitution.
- **Inherent powers:** these are not set out in the Constitution, but are needed by the president to carry out their constitutional role as head of the executive. Unlike implied powers, inherent powers are not linked to a specific power mentioned in the Constitution. Rather, they are inherent to the overall role of the president described in the Constitution.

STUDY TIP

The sources of presidential powers can be confusing — lawyers and presidents have argued over them for years. So don't worry if you find them tricky to understand or remember at first! Start by learning the difference between formal and informal powers, and then learn the different sources of formal powers (enumerated in Article II of the Constitution or delegated from Congress, implied by the Constitution or inherent to the role).

Presidents have used these sources of presidential power in a variety of different ways. Section III of Article II of the Constitution gives the president the power to propose legislation to Congress. However, early presidents rarely did so: George Washington only proposed three laws to Congress. This changed when Franklin D. Roosevelt came to office in 1933, at the height of the Great Depression. Many see him as the instigator of the modern presidency. By interpreting some of the sources of presidential power in a new way, Roosevelt expanded the power of the presidency. He proposed an extensive series of laws during his first 100 days in office, with the aim of reducing unemployment. Since then, proposing legislation to Congress has been one of the most important presidential powers.

Roosevelt also developed the use of implied powers, expanding the president's power to use emergency powers in a national emergency. In 1942, shortly after the Japanese bombed the US naval base at Pearl Harbor leading to the USA entering into the Second World War, Roosevelt issued a notorious executive order that suspended the civil liberties of approximately 120,000 Japanese-Americans and forced them into internment camps for the duration of the war. This dramatic step was overruled by the Supreme Court in 1945, and in 1988 Congress formally apologised to those interned and paid reparations (financial compensation).

As chief executive, the president needs certain powers, known as inherent powers. Unlike implied powers, inherent powers are not linked to a specific power mentioned in the Constitution. Rather, they are inherent to the overall role of the president described in the Constitution. After the 9/11 terror attacks, George W. Bush's administration argued that the president's inherent powers gave him the authority to ignore civil liberties and anti-torture laws. Bush ordered the detention of terrorist suspects for an indefinite period. Suspects were also transported to other countries or US overseas bases for interrogation and torture, in a practice known as 'extraordinary rendition'. Bush was widely criticised for interpreting the idea of inherent powers too loosely in order to increase his own power.

STUDY TIP

You need to know two examples of how different presidents have used the sources of presidential power. You can discuss Roosevelt's use of implied emergency powers and Bush's use of inherent powers to detain terrorist suspects.

KNOWLEDGE CHECK

- 1 Which part of the Constitution describes the president's powers?
- 2 What term describes powers that are not explicitly described in the Constitution but are said to be suggested by it?
- 3 Which president used emergency powers to detain Japanese-American citizens during the Second World War?

Formal and informal powers

The president's formal powers are *constitutional* and consist of enumerated powers, implied powers and inherent powers. In contrast, the president's informal powers are *political*, or involve the stretching of implied powers. Informal powers are not mentioned in the Constitution but form the basis of all successful presidencies.

Formal powers

The president has a number of formal powers: executive powers, the power to influence the passage of legislation through Congress, appointment powers, foreign policy powers and the power to grant pardons. These are examined in detail below.

Executive powers

The president is the chief executive of the federal government. This means they control the federal bureaucracy. The federal bureaucracy is made up of 15 executive departments, each with a different area of responsibility, and a large number of independently run federal agencies.

The president also has the power of preparing the annual federal budget. This crucial piece of legislation sets out how much money the federal government will spend over the coming year. In reality, the president does not personally write the budget, as it is hundreds of pages long. Instead, the president's Office of Management and Budget (OMB) writes the budget at their direction. In February 2020, Trump's budget for the coming year took government spending to a record \$4.8 trillion, even before the economic costs of COVID-19 were clear. However, the president does not have the power to pass the budget — the 'power of the purse' belongs to Congress.

The power to influence the passage of legislation through Congress

When it comes to influencing the passage of legislation through Congress the president has four powers, one at the start of the legislative process and three at the end.

At the start, the president can propose legislation to Congress and this occurs most publicly and importantly in the annual State of the Union Address usually in January of each year. In this address, the president presents their legislative priorities to a joint session of both houses of Congress. But the president can propose new policy initiatives at any time, often doing so in a high-profile speech or press conference. All such proposed legislation is given to Congress for consideration and, hopefully, its approval.

Once a bill has successfully been passed through the legislative process in Congress the president has the option of using one of their three further powers. First, the president has the power to sign the bill into law. When the president does that, the bill becomes an Act of Congress — part of US law. The president's second option is not to sign the bill but to, as it were, 'leave it on the desk' for it to become law after 10 working days without signature. The president might use this option for minor pieces of legislation or for those they do not agree with but would be unable to prevent Congress passing. If the congressional sessions ends during these 10 working days, the bill is lost. This is known as a **pocket veto** and was last used by Bill Clinton in 2000.

SYNOPTIC LINK

Congress's 'power of the purse' gives it the right to confirm the president's budget. This is also an example of the system of checks and balances — in this case, Congress is able to check the power of the executive by rejecting the budget. You can find out more about the power of the purse in Chapter 13.

USEFUL CONCEPT

Pocket veto Allows the president to veto a bill by not signing it before the end of the current legislative session of Congress. If the president has not signed a bill it would normally become law after 10 days, but if Congress adjourns within those 10 days, the bill is lost. Unlike a standard veto, the pocket veto cannot be overridden by Congress.

ACTIVITY

President Trump's February 2019 Statement of Administration Policy warned that a bill terminating the national emergency declared on the southern border would likely be vetoed. Read the statement, which can be found at https://www.whitehouse.gov/wp-content/uploads/2019/02/saphj46h_20190226.pdf, then identify and evaluate the reasons that the Trump administration gave to justify a veto.

SYNOPTIC LINK

The process of confirming Supreme Court justices can be highly controversial. You can find out more about the confirmation process in Chapter 16.

The third option the president has at this stage is to veto a bill. The president does this by sending the bill back to Congress with a message explaining his reasons for vetoing the bill. Congress does have the power to override a presidential veto, but in practice this is very difficult to achieve (see Table 14.1) because a two-thirds majority is needed in both houses of Congress. Because it's so difficult for Congress to override the president's veto, the president can use the threat of a veto during the legislative process to pressure Congress to make changes to a bill that the president wants. This is known as 'veto signalling' and is done by a Statement of Administration Policy, which the White House releases to communicate the president's views of a bill to Congress.

Different presidents have used their veto power to a greater or lesser extent, as is shown in Table 14.1. Trump used the veto 10 times, two of which were to block legislation that would have ended the state of national emergency at the southwestern US border. Trump had declared a state of emergency in February 2019 to allow him to use federal funds to build the border wall promised in his presidential campaign. Congress had previously refused to fund the wall and twice voted to terminate the state of emergency. Trump's vetoes allowed him to maintain the state of emergency and continue his use of federal funds for the construction of the border wall. That's how important vetoes can be.

Table 14.1 Presidential vetoes

President (years)	Vetoes	Overridden by Congress
Ronald Reagan (1981–89)	78	9
George H. W. Bush (1989–1993)	44	1
Bill Clinton (1993–2001)	37	2
George W. Bush (2001–9)	12	4
Barack Obama (2009–17)	12	1
Donald Trump (2017–21)	10	1

Source: adapted from <https://www.senate.gov/legislative/vetoes/vetoCounts.htm>

Appointment powers

The president nominates officials to key posts in the executive branch. When a new president takes office there are about 4,000 positions in the executive branch they can fill with appointments. More than 700 are confirmed by the Senate by a simple majority vote. Heads of executive departments, heads of many independent federal agencies and US ambassadors (top diplomatic representatives overseas) all require confirmation by the Senate. The president also nominates all federal judges, including Supreme Court justices when vacancies arise. The Senate again provides a check on the appointment power of the president, as its confirmation via a simple majority vote is required for judicial nominees. Unlike executive branch positions, which are political appointments and end with each incoming president, judges are appointed for life. The impact of presidential judicial appointments can continue long after a president has left office. Supreme Court justices determine how the Constitution is interpreted, so their appointment is one of the most important powers of the presidency.

Foreign policy powers

The president is commander-in-chief of the US military. This power makes the president overall head of the US armed forces and allows the president to initiate military action. According to the Constitution, only Congress has the power to declare war, but it has not done so since 1941. In theory, the War Powers Act 1973 requires presidents to ask Congress to approve in advance

military action. Some presidents have acted without presidential approval, including Clinton, who sent US troops into Kosovo and several other countries in the 1990s, and Obama, who ordered military intervention in Libya.

Presidents have used their power as commander-in-chief to lead the USA into a series of conflicts. In the twenty-first century, George W. Bush ordered the US invasion of Afghanistan (2001) and Iraq (2003) as part of his 'war on terror' that followed the 9/11 attacks. Obama initiated military action in Libya (2011) and Syria (2015), and used drone strikes to target and kill terrorist suspects in Pakistan, Yemen and Somalia. Presidents can use special forces to kill terrorist leaders; Obama authorised the killing of Osama bin Laden, leader of al Qaeda, in 2011, and Trump ordered the death of Abu Bakr al-Baghdadi in 2019. More controversially, Trump authorised a drone strike to kill a top Iranian general, Qasem Soleimani, in 2020, leading to military retaliation by Iran.

The most deadly power of the commander-in-chief is of course the ability to use nuclear weapons. To ensure that this power is constantly available, when the president is away from the White House they are accompanied by a military officer carrying the 'nuclear football'. This is a black briefcase containing nuclear codes and guidance for their use. Nuclear weapons may act as a deterrent to enemies of the USA, but only one president has ever authorised their use. In August 1945, keen to hasten the end of the Second World War, Harry Truman ordered two nuclear bombs to be dropped on the Japanese cities of Hiroshima and Nagasaki, killing more than 250,000 people.

The president has the power to negotiate treaties with other countries, although these must be ratified by the Senate with a two-thirds supermajority (see page 337 for further details).

Power to grant pardons

The president can pardon anyone who has been convicted of a federal crime, with the exception of cases of impeachment. A pardon can be given after the convicted individual has died, as when Trump pardoned African-American boxer Jack Johnson in 2019 for the 1913 offence of crossing state lines accompanied by a white woman. The president can even give a pre-emptive pardon for any crimes already committed that an individual may be charged with in future. In 1974, Richard Nixon resigned to avoid impeachment for his role in the Watergate scandal (see case study, page 340). Nixon's vice president, Gerald Ford, assumed the presidency and pardoned Nixon for any crimes he might have committed.

Presidents can also show clemency by commuting a sentence, which releases the prisoner but does not give them a formal pardon.

Many presidents have been criticised for using the power of pardon inappropriately. Bill Clinton was criticised both for pardoning his own brother for a drug offence and for pardoning wealthy supporters. Clinton granted 140 pardons on his final day in office, generating a scandal known as 'Pardongate'. Arguably the most controversial approach to pardons was Trump's 2018 tweet, which stated, 'As has been stated by numerous legal scholars, I have the absolute right to PARDON myself', a claim widely disputed by legal experts. Trump's use of pardons was also much criticised. In July 2020 Trump commuted the sentence of his friend and adviser Roger Stone, who was convicted of obstructing the investigation into Russian interference in the 2016 presidential election. In the last hours of his presidency Trump pardoned his former advisor, Steve Bannon, who had been charged with fundraising fraud.

Informal powers

The president's informal powers include the 'power to persuade', and the ability to make deals with and to influence the political agenda, Congress, their party and the global community.

The power to persuade

According to Professor Richard Neustadt, 'Presidential power is the power to persuade.' Neustadt argued that because power is shared between the executive, legislature and judiciary, and between the states and federal government, persuasion is the key skill needed for an effective presidency, although he did state this in 1960, so we need to ask how true his argument is today. Writing in the *New York Times* in 2020, political scientist Matt Glassman explained: 'Presidents compete with numerous actors...for influence over public policy. The president must rely on his informal ability to convince other political actors it is in their interest to go along with him, or at least not stand in his way.'

Presidents use personal influence, the authority of their office and their political capital to win support from key political figures. They can also use the support of their vice president, cabinet officers and lobbyists in the Office of Legislative Affairs to push forward their agenda with members of Congress. However, the president's power to persuade can be severely constrained by the extent of their control over Congress. The presidential support score considers the total number of votes in Congress on which the president took a position and shows the percentage the president won. Presidential support scores are generally much higher during periods of unified government. For example, Obama enjoyed a presidential support score of 96.7% in 2009, when the Democrats held both houses of Congress, and Trump won 98.7% of votes in 2017, when Republicans controlled both houses. During periods of divided government, the support score typically falls. Obama's score dropped to 57% in 2011 after the Republicans won back the House, before reaching its lowest point, 45.7%, in 2015, as a result of the loss of the Senate in the 2014 midterms.

Deal-making

Presidents need the support of Congress to pass their legislation, and may make deals with politicians to achieve this. The president might offer to support a policy that a legislator is championing, support them with election campaigning (if they belong to the same party), or deliver funding to their home state or district. During periods of divided government, bipartisan deal-making is essential to avoid gridlock. Donald Trump made bipartisan deals to pass the First Step Act 2018, which reformed criminal justice, and the 2019 trade deal with Mexico and Canada. Trump also made concessions to allow a \$1.4 trillion spending bill to pass in December 2019, avoiding a repeat of the previous year's 35-day government shutdown. Most presidents must make concessions to the opposing party in order to pass their budgets.

Setting the agenda

Presidents command the media spotlight and can set the political agenda. More than any other figure in the USA, the president determines what issues are discussed by journalists, political commentators and the public. They can also shape public opinion by making speeches or statements that argue their position. President Trump utilised this power widely, commandeering the

SYNOPTIC LINK

The president's power to persuade has been reduced by the hyper-partisan nature of US politics in recent years. The two parties have become more polarised, meaning it is much more difficult for the president to convince members of the opposing party to make bipartisan compromises. You can find out more about partisanship in Chapter 19.

SYNOPTIC LINK

You can find out more about Nancy Pelosi and the important role of speaker of the House of Representatives in Chapter 13.

political agenda with controversial tweets. In 2019 he tweeted that the four Democrat congresswomen of colour, known as 'The Squad', should 'go back and help fix the totally broken and crime infested' countries that they came from. All four women are US citizens, and his message was widely condemned for being racist and insulting. Trump described the women as 'socialist' and 'radical left', allowing him to portray the Democratic Party as ideologically extreme in advance of the presidential elections. In 2020, Trump described COVID-19 as the 'Chinese virus' and blamed the Chinese government for the global pandemic in an attempt to deflect blame from his own administration's response. When Trump caught COVID-19 in October 2020, he attempted to show positive leadership by telling the public 'don't let it take over your lives', although more than 200,000 Americans had died from the virus. Trump's relaxed attitude to the pandemic likely contributed to the partisan divide in COVID-19 responses, with people in Republican counties less likely to physically distance and more likely to suffer higher growth rates of COVID-19 infections and deaths. Most controversially of all, President Trump used his position to claim that the 2020 presidential elections had been 'stolen', and exhorted his supporters to 'fight like hell' just minutes before they attacked the Capitol on 6 January 2021. Trump was consequently blocked by Twitter and Facebook, and impeached for 'incitement of insurrection'.

De facto party leader

The president is in effect the head of their party, so can influence its membership. This is particularly helpful if the president's party controls both houses of Congress, as it should be much easier for them to convince Congress to pass legislation. If the president's party does not control Congress then their influence on their party will be of limited use in passing legislation through Congress, as evidenced by Obama's low presidential support score in his final years in office. However, even a president whose party controls both houses of Congress may not always have unconditional support. This was certainly the case in 2017, when the Republicans controlled both houses but Trump was unable to convince Congress to fully repeal Obama's Affordable Care Act 2010, even though it had been one of Trump's main presidential campaign pledges.

World leader

The USA is the most powerful liberal democracy and military superpower in history, and its president is often described as the 'leader of the free world'. The USA dominates global politics and international institutions such as the UN, the North Atlantic Treaty Organization (NATO), the G7 group of advanced economies, and the World Trade Organization (WTO). Reagan led Western democracies against the USSR during the Cold War (1945–91). Following the 9/11 terror attacks, George W. Bush led an international coalition in the 'war on terror', and Obama convinced nations to sign up to the 2015 Paris Agreement on climate change, and the 2015 Iran nuclear deal.

Trump showed less interest in international leadership. He withdrew the USA from both the Paris Agreement and the Iran nuclear deal, and sent mixed signals about US commitment to NATO. Trump preferred developing bilateral relationships with international powers to working through international institutions. His 'America First' policy led him to take an abrasive approach to the USA's traditional allies, and to start a trade war with China. During the COVID-19 pandemic, Trump terminated the USA's relationship with the World Health Organization (WHO).



In 2018 Donald Trump met with Kim Jong Un at a bilateral meeting in Singapore. Trump appeared to prefer making bilateral agreements with international powers to working through international institutions

Direct authority and the stretching of implied powers

Direct authority means the power of the president to take action directly, without consulting Congress. Franklin D. Roosevelt used direct authority frequently, and subsequent modern presidents have followed his example. This is achieved by 'stretching' the president's implied powers (those implicitly granted to the president by the Constitution, or by Congress) to create a new set of informal powers beyond those set out in the Constitution, including executive orders, signing statements and executive agreements.

Executive orders

An executive order is an official order made by the president directly to the federal government. It has the effect of law but can be easily reversed by the next president, unlike a real law passed by Congress. The power to issue executive orders is not mentioned in the Constitution, although Article II gives the president executive power. From this, presidents have claimed an implied right to issue executive orders.

As the longest-serving US president, and one who held the position during both the Great Depression and the Second World War, Franklin D. Roosevelt holds the record for executive orders, with 3,721 issued. Dwight D. Eisenhower famously used an executive order in 1957 to send federal troops to enforce racial desegregation of Central High School in Little Rock, Arkansas. George W. Bush used executive orders to authorise controversial anti-terror measures after 9/11, including surveillance of suspects without a court order. Obama continued the trend of relying on executive orders after he became frustrated with Congress's resistance to his agenda, and took to issuing executive orders as an alternative to legislation, for example increasing the federal minimum wage and outlawing discrimination against married same-sex couples by health insurance companies. While a presidential candidate, Trump criticised Obama's use of executive orders as 'power grabs'. However, as president, Trump signed more executive orders in his first 3 years in office than Obama did over the same period of his presidency.

Signing statements

Presidents use signing statements when they sign a bill into law but wish to comment on it. The president may make a positive comment, or argue that aspects of the bill are unconstitutional and that their government will not enforce them. Signing statements are controversial, as presidents can effectively use them to achieve a line-item veto (a type of veto that allowed presidents to veto a portion of a bill — it was declared unconstitutional by the Supreme Court in 1996 via the Line Item Veto Act). Signing statements can also be used to criticise legislation. For example, Trump used a signing statement to criticise a 2017 bill imposing sanctions on Russia, Iran and North Korea, claiming it affected his constitutional powers to conduct foreign policy.

Executive agreements

An executive agreement is one made between the USA and an international government. Executive agreements are signed by the president and do not require Senate ratification as a formal treaty would. The process of getting a treaty ratified by the Senate is complex, as a two-thirds majority is needed, so presidents use executive agreements to avoid lengthy and potentially unproductive negotiations with senators. Since the Second World War, the number of executive agreements relative to treaties has increased dramatically. Presidents have been criticised for using executive agreements to circumvent the Senate. They find it easy to make executive agreements, but they are easier to remove than a treaty ratified by the Senate and can simply be abandoned by a subsequent president, as when Trump withdrew from Obama's 2015 Paris Agreement on climate change and his 2015 Iran nuclear deal.

Bureaucratic power

The Executive Office of the President (EXOP) is a collection of offices providing both policy advice and administrative support to the president. Together these offices help the president to:

- run the federal government
- develop policy
- write legislation
- communicate with the public
- communicate with members of Congress
- negotiate trade deals
- promote their agenda

EXOP was set up by Franklin D. Roosevelt and is yet another example of how he expanded the power of the presidency.

Constraints on the president

The Founding Fathers, eager to escape the authority of the British monarch, designed a system of limited government with a separation of powers. The system of **checks and balances** within the Constitution was intended to prevent the president from becoming too powerful.

KNOWLEDGE CHECK

- 4 Which power allows the president to block legislation signed by Congress?
- 5 Which set of powers has a political rather than a constitutional basis?
- 6 What type of agreement can presidents make with other countries if they wish to avoid the need to ask the Senate to ratify a treaty?

KEY CONCEPT

Checks and balances

A crucial feature of the Constitution's framework, checks and balances mean that each branch of government is limited by the others, so preventing too much concentration of power in any one institution or individual.

Checks and balances by Congress

The Constitution provides Congress with the ability to check or balance the power of the president in a number of ways.

ACTIVITY

Read the online article 'The real reason Obama didn't pass gun control', which you can find at <http://www.politico.com>. Write a paragraph to explain why gun control is so contentious in the USA using the following key concepts somewhere in your answer: the Constitution, Congress, the executive, the judiciary, pressure groups, civil rights.

Amending, delaying or rejecting the president's legislation

Without the support of Congress, a president cannot pass legislation, even if public opinion is on the president's side. This was evident after the 2012 Sandy Hook elementary school shooting in which 26 people were shot and killed, 20 of whom were children. Obama released plans for stricter gun controls including a ban on assault weapons. A majority of the US public supported these reforms but Congress rejected the legislation.

Congress, therefore, has a powerful check on the president's ability to pass legislation, but this check is generally less effective during periods of unified government. Congress is less likely to obstruct a president's legislation if a majority of the members of each house are from the president's party. Obama was able to pass legislation effectively from 2009 to 2010 as the Democrats controlled both houses of Congress. This changed when the Republicans won a majority in the House of Representatives in the November 2010 midterms.



Obama wept in 2016 as he discussed his inability to convince Congress to pass gun control legislation following the 2012 Sandy Hook mass shooting of children aged six and seven

Overriding a presidential veto

It is very difficult for Congress to override a presidential veto, as a two-thirds 'supermajority' in both chambers is required. Significant numbers of members of Congress would need to vote against their own president. Congress only managed to override one of Obama's 12 vetoes of its legislation: the Justice Against Sponsors of Terrorism Act, which made it easier for US citizens to sue foreign states for acts of terrorism. In September 2016 the Senate voted 97-1 to override and the House 348-77. This was right at the end of Obama's presidency, a point when most presidents lose influence. The degree of consensus in Congress reflected support for the victims of the 9/11 terror attacks, whose families wanted to sue the government of Saudi Arabia for its alleged involvement. Similarly, Congress only overrode one of Trump's vetoes, and this came right at the end of his term and on an issue that commanded

USEFUL CONCEPT**Government shutdown**

Occurs when Congress or the president refuses to agree to the federal budget. Most government shutdowns are partial and end after a day or two, but in a full shutdown the federal government is forced to stop its non-essential functions and furlough (send home) many of its employees.

bipartisan support. Trump's veto of the annual defence spending bill was sharply criticised by Republican Mitch McConnell, the Senate majority leader, who pointed out that the legislation had been passed '59 years in a row' and was essential to 'our brave men and women' in the armed forces. Despite Republicans holding a majority in the Senate, the veto was overridden by 81-13 votes in the Senate and 322-87 in the House.

The power of the purse

The power of the purse is a powerful check on the president, which requires Congress to pass the federal budget and therefore fund the federal government. Leaders in Congress have significant leverage in negotiations with the executive, as they can extract key concessions from the president in return for passing the budget. If Congress refuses to pass the president's budget, it can force a **government shutdown**, putting pressure on the president to agree to its demands (see page 314).

Confirmation of presidential appointments (Senate only)

More than 1,000 presidential appointments to the federal government or the federal judiciary must be confirmed by the Senate, via a simple majority vote. The power of the Senate to confirm nominees encourages the president to make appointments carefully, given that the professional and ethical reputation of their nominee will be closely and publicly considered by the Senate. It is relatively rare for the Senate to formally reject a nominee for high-profile appointments — in US history, the Senate has rejected just nine cabinet nominees, and 11 Supreme Court nominees. However, hundreds more nominees have withdrawn from the process when it became clear that they would not win enough support in the Senate.

Some presidential nominees have expired because the Senate did not consider them before the end of a session of Congress. The most controversial example of this was Obama's nominee to the Supreme Court, Merrick Garland (see page 376). The seat on the Supreme Court remained vacant until Trump became president in 2017 and appointed Neil Gorsuch. Had Garland been appointed, the Supreme Court would have had a majority of justices appointed by Democrat presidents for the first time since the 1970s.

Ratification of treaties (Senate only)

A two-thirds majority in the Senate is needed to ratify a treaty. This is difficult to achieve, so since the Second World War presidents have increasingly used executive agreements to avoid the ratification process. As a result, the Senate rarely rejects treaties. The most significant example of rejection of a treaty is that of the Treaty of Versailles in 1920. After the First World War, President Woodrow Wilson played a leading role in the writing of the treaty, hoping to create a new world order based on an international League of Nations. However, he was unable to convince the Senate to agree to ratification. American isolationism fundamentally weakened the League of Nations, which was unable to check the actions of Nazi Germany in the 1930s. A more recent example of the Senate refusing to ratify a treaty is the UN Convention on the Rights of People with Disabilities. A total of 61 senators voted to ratify this treaty in 2012 (5 votes short of the required two-thirds majority) — 38 Republicans voted against, claiming the treaty would have reduced the parental rights of children with disabilities.

The power to declare war

In theory, Congress has the power to declare war but has not done so since 1941. Under the War Powers Act 1973 presidents should ask Congress to approve military action in advance, but this does not always happen (see pages 332–33).

Investigation

High-profile congressional investigations are an important form of oversight of the president's administration and generate significant media scrutiny. Trump's presidential campaign and its possible links to Russian interference in the 2016 elections was investigated by numerous congressional committees, although his administration refused to comply with many requests for information and witnesses. The Senate Intelligence Committee's reports considered the effectiveness of the Obama administration's response to Russian interference, and made suggestions to avoid a recurrence in the 2020 elections. The vice chair of the committee, Democrat Mark Warner, described the scale of Russian interference in the presidential elections as 'unprecedented in the history of our nation'.

ACTIVITY

Explore the work of the Senate Intelligence Committee at <https://www.intelligence.senate.gov/> and evaluate the different ways in which it acts as a check on the president's powers.

CASE STUDY

The Watergate scandal

The Select Committee on Presidential Campaign Activities was set up in 1973 to investigate the activities of Richard Nixon's presidential campaign during the 1972 presidential election, including the break-in at the Democratic headquarters in the Watergate office building. Nixon had promised that he had no connection to the break-in, and was re-elected in a landslide win.

The committee's hearings were broadcast live on national television, with 85% of the population seeing at least portions of the hearings. The investigation and Nixon's refusal to comply with the impeachment inquiry prompted the House to commence a formal impeachment process against Nixon. During the trial, the Supreme Court ordered the Oval Office to turn over recorded tapes of conversations between Nixon, administrative officials and White House staff. The tapes revealed that Nixon had conspired to cover up activities taking place after the break-in and tried to use federal officials to deflect the investigation. Nixon

subsequently resigned to avoid impeachment for obstruction of justice and abuse of presidential power. He was replaced by his vice president, Gerald Ford, who told the nation 'Our long national nightmare is over.'



President Richard Nixon during a televised speech on Watergate on 29 April 1974. He resigned on 8 August due to the scandal

Impeachment and trial of the president

The House of Representatives can impeach the president with a simple majority vote. The president is then tried by the Senate, where a two-thirds majority is needed for a guilty verdict. If found guilty, the president is removed from office. Only three presidents have been impeached — Andrew Johnson (1868), Bill Clinton (1998) and Donald Trump (2019 and 2021) — and all three were acquitted by the Senate. However, even if the president is acquitted, the process of impeachment generates huge media attention and public scrutiny.

CASE STUDY

The impeachments of Donald Trump

Donald Trump was impeached by the Democrat-majority House of Representatives in December 2019 for abuse of power and obstruction of Congress. Trump was accused of having used aid to compel the Ukrainian president to investigate his political opponent, Joe Biden, and Biden's son. In January 2020 the Senate acquitted Trump by 52-48 votes. All Democrat senators voted to convict, but only one Republican.

The Constitution specifies that the grounds for impeachment are 'treason, bribery, or other high crimes and misdemeanours'. This language is vague, so one of the arguments that Trump used in his defence was that, even if he had threatened to withdraw aid to Ukraine in exchange for a political favour, this was not in itself an impeachable offence as it did not constitute a 'high crime or misdemeanour'. Trump's acquittal set a precedent that may mean future presidents feel freer to use the presidency to further their own interests.

In January 2021 Trump became the first president to be impeached twice and the first to be tried for impeachment after leaving office. The Democrat-majority House of Representatives charged him with 'incitement of insurrection'. Trump had encouraged his supporters to 'fight like hell' moments before they stormed the Capitol. The attack aimed to prevent the confirmation of Joe Biden's presidential win by stopping Congress from certifying the Electoral College votes. One police officer died of injuries sustained during the attack, a protester was shot and killed by police, and three other protesters



On 6 January 2021, hundreds of pro-Trump supporters and far-right protesters breached the US Capitol building. One protester was shot dead and more than 300 people were later charged with crimes

died. Rioters spoke about hanging Republican Vice President Mike Pence for his willingness to certify the election results, and the youngest female member of Congress, Democrat Alexandria Ocasio-Cortez, later said that her life was threatened and she thought she was going to die.

Unlike previous presidential impeachments, Trump had already left office when the trial began, so many Republicans thought the trial was unconstitutional. Democrats hoped to secure a guilty verdict and then bar Trump from running for office again.

On 13 February, only five days after the trial began, a majority of senators voted to convict Trump — 57 to 43, including seven Republicans. But two-thirds, or 67 votes, was needed to convict, meaning Trump was acquitted for a second time.

Checks and balances by the judiciary

Judicial review is the process by which the judiciary examines the actions of the executive branch to check that they are lawful. If they are not, the Supreme Court can declare such actions unconstitutional. This is a powerful check on the executive. When federal courts halted Trump's 2017 ban on travellers from seven majority-Muslim countries, he was forced to amend his original executive order to include North Korea, Venezuela and Chad. The Supreme Court then ruled that the expanded ban was not a 'Muslim ban' and therefore was constitutional. In 2020 the Supreme Court ruled that the president had no absolute right to refuse to give his personal financial records to criminal prosecutors. The president's lawyers had argued that his position gave him complete immunity from criminal investigations and proceedings. Brett Kavanaugh, a conservative justice appointed by Trump, explained that: 'In our system of government, as this court has often stated, no one is above the law. That principle applies, of course, to a president.'

Other constraints on the president

In addition to formal checks and balances, the president is also constrained by other factors.

Party support in Congress

A president can find that they have, or lack, political support at the federal and/or the state level. Presidents generally find it more difficult to pass legislation or get nominees confirmed during periods of divided government, as they lack party support in Congress. However, if a president's party is not united and supportive, the president may also find it difficult to pass legislation during periods of unified government. In addition to party loyalty, members of Congress may also be influenced by interest groups, many of whom donate large amounts to the election campaigns of members of Congress, and then encourage them to vote in a certain way. For example, the National Rifle Association (NRA) successfully convinced many members of Congress to block Obama's gun control reforms in 2013.

Table 14.2 summarises the history of party control of the presidency and Congress.

Table 14.2 Party control of the presidency and Congress, 1993–2021

Years	Presidency	House	Senate
1993–4	Democrat (Bill Clinton)*	Democrat	Democrat
1995–2000	Democrat	Republican	Republican
Jan–May 2001	Republican (George W. Bush)	Republican	Republican
Jun 2001–2	Republican	Republican	Democrat
2003–6	Republican	Republican	Republican
2007–8	Republican	Democrat	Democrat
2009–10	Democrat (Barack Obama)	Democrat	Democrat
2011–14	Democrat	Republican	Democrat
2015–16	Democrat	Republican	Republican
2017–18	Republican (Donald Trump)	Republican	Republican
2019–20	Republican	Democrat	Republican
2021–	Democrat (Joe Biden)	Democrat	Democrat

* Bold type indicates periods of unified government.

STUDY TIP

Although Joe Biden's Democrats held the Senate in 2021, it was on the slimmest of margins. For only the fourth time in US history, the Senate was split 50:50 between Republicans and Democrats (including two independent senators who caucused with the Democrats). In her role as President of the Senate, Kamala Harris had the power to cast a tie-breaking vote if senators were evenly divided.

State governors can actively work against the president's agenda, although their impact is limited to their state. A state governor is the individual elected as chief executive for each state. Like the president, governors are directly elected, but only by voters in their state. There are 50 state governors, many from the opposing party to the president. Governors of large and powerful states such as California, which has one-eighth of the US population and is the world's fifth biggest economy, can work against the president's agenda (see case study).

CASE STUDY**California's resistance to Trump**

Democrat Californian governor Jerry Brown campaigned against Trump's decision to withdraw from the 2015 Paris Climate Agreement, and signed California up to a separate subnational coalition committed to reducing greenhouse gas emissions. When Trump signed an executive order removing

federal funding from 'sanctuary cities' that did not support federal immigration enforcement, Brown signed a bill passed by the state legislature that made California a sanctuary state. Continuing the pattern of direct opposition to Trump's immigration policies, Brown's successor, governor Gavin Newsom, withdrew National Guard troops from the Californian border with Mexico in 2019.

STUDY TIP

The AQA specification refers to 'the prevailing orientation of the Supreme Court'. This means the balance of the court, i.e. whether it has a liberal or a conservative majority.

The prevailing judicial philosophy of the Supreme Court

The balance of the Supreme Court is determined by how many of its nine justices are liberal, and how many are conservative. Presidents who share the same ideology as the majority of the Supreme Court are also more likely to receive favourable rulings on government actions and government-supported legislation. Republican presidents therefore hope for a conservative-majority court, and Democrat presidents a liberal-majority court. However, a conservative-majority Supreme Court may still make rulings against a Republican president, as Trump found on several occasions.

SYNOPTIC LINK

The Supreme Court is the final court of appeal in the US judicial system. You can find out more about the Supreme Court and the rulings it made against Trump in Chapter 16.

Attitudes of the media and public opinion

The media can constrain the president's actions by informing public opinion. Many presidents have argued that the media gave them unfavourable coverage. Obama, for example, felt that his administration was unfairly attacked by conservative channel Fox News. However, most presidents have accepted the importance of the media within US democracy, and tried to win their support where possible. Trump took a notably different approach, claiming his agenda was being undermined by 'fake news' and adopting an aggressive approach to liberal-leaning media such as news channels CNN and MSNBC. During the COVID-19 pandemic, he criticised individual reporters during press conferences, accusing one of being a 'terrible reporter' and another of asking a 'nasty question'. Despite presidential criticism of the media, the impact of negative reporting is lessened by the tendency for people to watch a news channel or read a newspaper that supports their pre-existing political leanings.

Public opinion, once formed, affects a president's impact significantly. Presidents with high approval ratings are more likely to win re-election and

generally find it easier to influence Congress. However, in recent years the USA has become more politically polarised and has fewer competitive electoral districts. Presidents who have a strong appeal to their base may worry less about appealing to the whole nation, allowing them to govern with relatively low approval ratings. For example, Gallup opinion polls stated that Trump had the lowest presidential approval ratings in recorded history, with a high of 49% reached in February 2020, just after his acquittal in his impeachment trial. In contrast, Obama's highest approval rating was 69%, while George W. Bush reached a record 90% immediately after the 9/11 terror attacks. Trump's approval ratings with his core supporters remained high (around 85–90% among Republicans in 2018, compared with around 40% nationally), highlighting the sharp divisions within US politics.

As we have seen, presidents face very different constraints depending on their political circumstances. Although in theory each president is subject to the same formal checks and balances, in practice the extent to which these are applied varies considerably depending on key variables such as their public approval, party support within Congress and the balance of the Supreme Court.

KNOWLEDGE CHECK

- 7 Why are presidential vetoes rarely overturned by Congress?
- 8 Why is the power of the purse a significant check on the president?
- 9 Which president resigned to avoid impeachment?

The relationship between the presidency and other institutions

As chief executive of the federal government, the president is head of a vast bureaucracy. Presidents are supported in their role by a number of institutions (see Figure 14.1).

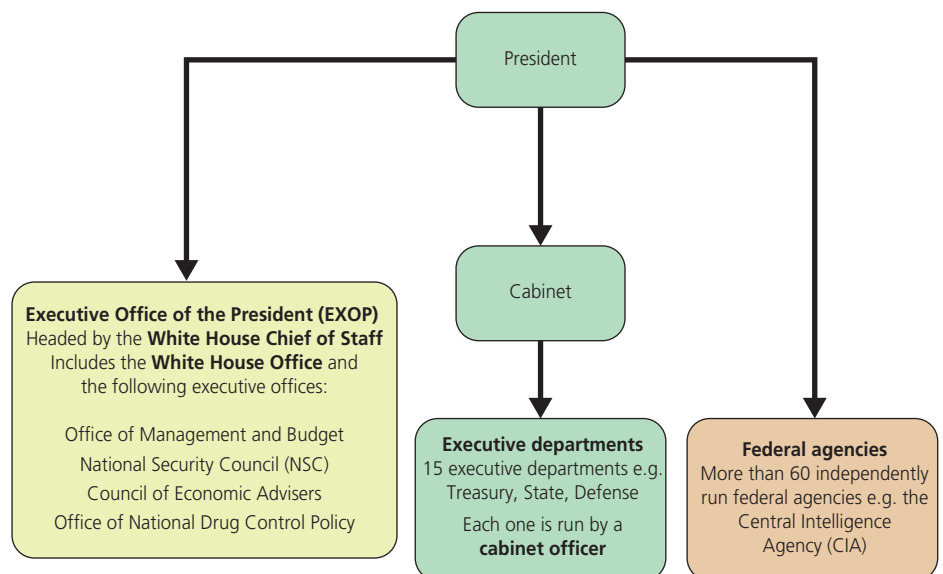


Figure 14.1 The institutions supporting the president

The cabinet

The cabinet is a group of advisers chosen by the president to help run the federal government. It includes the vice president and the heads of the 15 executive departments (e.g. the secretary of state, secretary of the treasury), and may include other advisers.

Cabinet members are policy specialists and usually give advice on their specific department as opposed to general political advice. Cabinet officers come from a variety of backgrounds:

- **Former politicians:** Hillary Clinton, former senator and first lady of the USA, served as Obama's secretary of state from 2009–13. Clinton had an exceptionally broad range of political experience, and her appointment promoted unity between the different factions of the Democratic Party after she lost the Democratic presidential nomination to Obama in 2008.
- **Academics:** Obama appointed the Nobel Prize-winning physicist Steven Chu as his secretary of energy.
- **Experts in their field:** Steven Mnuchin, Trump's secretary of the treasury from 2017, was previously an investment banker and hedge fund manager.
- **Military officers:** Biden appointed retired general Lloyd Austin as secretary of defense in 2021, and former general James Mattis served as Trump's secretary of defense from 2017 to 2019.
- **Lobbyists:** Trump was criticised for appointing former coal lobbyist Andrew Wheeler to head the Environmental Protection Agency (EPA) in 2018.

The makeup of a president's cabinet generally reflects their own perspective and experience. Pro-business Republican George W. Bush appointed a large number of business experts and CEOs to his cabinet, whereas former law professor Barack Obama chose a highly academic cabinet in which two-thirds of officers had attended an Ivy League university. Billionaire Donald Trump said that he wanted officers who had 'made a fortune', appointing individuals with a total net worth of \$2.3 billion to his first cabinet. Trump also appointed more former lobbyists to his cabinet in 3 years than Obama or Bush did during their 8-year terms. Joe Biden promised that his cabinet would be 'the most diverse in history', and appointed the first African-American defense secretary (Lloyd Austin), the first female treasury secretary (Janet Yellen), and the first openly gay cabinet officer (transportation secretary Pete Buttigieg). Biden's secretary of the interior, Deb Haaland, became the first Native American cabinet officer.

The Constitution gives the president sole executive authority, meaning that members of the cabinet work for the president, who does not have to take their advice. Some individual cabinet members may have greater influence with the president than others, perhaps because they have a particularly high public profile or a close political relationship with the president. However, all cabinet officers 'serve at the pleasure of the president' and can be dismissed if the president is not satisfied with their performance. Trump famously sacked the secretary of state Rex Tillerson via Twitter in 2018. In 2019 Trump said that he liked having 'acting' cabinet members (those acting in a temporary capacity who have not been formally confirmed by the Senate) as it gave him 'more flexibility'.

SYNOPTIC LINK

The relationship of the president with cabinet is very different from that of the UK prime minister and their cabinet. The prime minister is *primus inter pares* (first among equals) and the system of cabinet government means that power is held collectively by the cabinet, rather than by a single executive as in the USA. You can find out more about the UK cabinet in Chapter 3.

STUDY TIP

US cabinet officers can be dismissed by the president at will. However, there is one instance in which they have the ability to temporarily remove the president's powers. The Twenty-Fifth Amendment allows the vice president and a majority of cabinet officers to declare to Congress that the president is unable to discharge the powers and duties of their office. This has never been invoked, although it was widely suggested that then-vice president Mike Pence should use it to remove Donald Trump from power after the 2021 failed mob insurrection at the Capitol. Pence subsequently rejected the idea.



Debra Haaland (left) is sworn in as secretary of the interior on 18 March 2021

USEFUL CONCEPT

White House chief of staff

The most senior adviser to the president. Heads the Executive Office of the President (EXOP) and, within it, the White House Office.

US cabinet meetings are chaired by the president. They are not a forum for collective decision-making, unlike in the UK, so the cabinet meets less regularly, typically a few times a year. Presidents also have one-to-one meetings with cabinet officers. The exact frequency of formal cabinet meetings depends on the president's wishes. Reagan held many more than most presidents, suggesting that he valued meeting his cabinet members in person and hearing their thoughts. Under Obama the cabinet met on average just 3.5 times a year, compared with six times a year under his predecessor George W. Bush. Obama often used his meetings to brief cabinet members on a significant forthcoming event or policy launch. Trump initially held more cabinet meetings than his predecessors, with nine a year in both 2017 and 2018, but in 2019 this fell to four meetings, and by August 2020 he had held just one meeting that year. Trump often began cabinet meetings with lengthy addresses to the assembled press in an attempt to promote his policies to the public.

The Executive Office of the President

The Executive Office of the President (EXOP) is a group of offices that support the president in running the federal government. These include the White House Office, the National Security Council, the Office of Management and Budget, and the Office of the Vice President. EXOP was originally set up by Franklin D. Roosevelt in the 1930s as the federal government grew in response to the Great Depression. The president needed a bureaucracy to help run the executive branch. Today, EXOP employs approximately 3,000–4,000 staff and is headed by the **White House chief of staff**. Two of the most important parts of EXOP are the White House Office and the National Security Council.

White House Office

The White House Office is the part of EXOP that works most closely with the president. It is a large organisation, with more than 400 employees in 2019, and includes a collection of offices such as the Office of the Chief of Staff, the Office of Legislative Affairs, the Office of Cabinet Affairs, the Office of Communications, and the Office of the National Security Adviser. Many of these offices are based in the West Wing of the White House, which is seen as the heart of the presidency. Unlike the cabinet, appointments are solely at the discretion of the president: staff in the White House Office do not need Senate confirmation. The White House chief of staff often decides who has access to the president, and so determines the balance of opinions that the president receives.

National Security Council

The National Security Council (NSC) is the president's main forum for discussing and managing national security or foreign policy issues. It is chaired by the president and its members include the vice president, secretary of state, secretary of the treasury, secretary of defense, and the chair of the Joint Chiefs of Staff, who acts as the military adviser. The NSC coordinates national security and foreign policy within the executive branch and all its agencies, including US military forces around the world. It runs the secure Situation Room in the basement of the White House, where the president and the national security team coordinate and manage the US response to domestic or international crises.



President Obama watches the mission in which Osama bin Laden was killed, from the White House Situation Room in 2011. Vice President Joe Biden sits far left, while Secretary of State Hillary Clinton and Secretary of Defense Robert Gates are on the right. They are surrounded by members of the national security team

The federal bureaucracy and federal agencies

Cabinet officers head the 15 executive departments, such as the Department of Justice, that make up the federal bureaucracy. The leader of each executive department is directly accountable to the president and works to achieve the president's policy objectives.

There are also more than 60 federal agencies. These are part of the executive branch of the federal government, but independently run, for example the Central Intelligence Agency (CIA). They have more autonomy from the president than executive departments do. It is usually possible for a president to remove the head of an independent agency, but generally only for wrongdoing.

Table 14.3 lists all US executive departments and examples of federal agencies.

Table 14.3 Executive departments and examples of independent federal agencies

Executive departments	Agriculture	Health and Human Services	Labor
	Commerce	Homeland Security	State
	Defense	Housing and Urban Development	Treasury
	Education	Interior	Transportation
	Energy	Justice	Veterans Affairs
Examples of independent federal agencies	Central Intelligence Agency	National Aeronautics and Space Administration	Securities and Exchange Commission
	Commission on Civil Rights	National Endowment for the Arts	Social Security Administration
	Environmental Protection Agency	National Labor Relations Board	US Nuclear Regulatory Commission
	Federal Election Commission	National Science Foundation	US Postal Service
	Federal Reserve System		US Trade and Development Agency

Relationships between the presidency and other institutions

The relationship between the presidency and cabinet, EXOP and the federal bureaucracy and federal agencies varies from one president to another, depending on:

- the relationship between the president and their chief of staff
- the president's approach towards their wider staff
- the extent to which the president uses EXOP to dominate the cabinet
- the extent to which EXOP staff act as political operatives
- the president's view of the federal bureaucracy and federal agencies

The relationship between the president and their chief of staff

This is arguably the most important relationship within the president's administration, and is crucial to the effective running of the executive branch. Obama allowed his first chief of staff, Rahm Emanuel, considerable authority. Emanuel coordinated the work of policy czars, cabinet officers and national security advisers, leading to resentment from cabinet officers asked to submit weekly reports to him. Emanuel checked policy suggestions before they were presented to the president, and was criticised by some for encouraging the president to pursue moderate rather than ideological policies. Under his watch, relationships between the presidency and other institutions were tightly organised, and Obama's administration achieved some important policy successes, including the Affordable Care Act 2010.

In contrast, Trump's relationship with his first chief of staff, Reince Priebus, deteriorated quickly amid claims of a dysfunctional administration. Priebus resigned after little more than 6 months in the post and was replaced by former general John Kelly in July 2017. Kelly attempted to impose order, restricting access to the president and attempting to bring discipline to the White House. However, Kelly's influence diminished amid arguments with senior staff and criticism from Trump. It was reported that Trump and his chief of staff were no longer on speaking terms when Kelly resigned in January 2019. Kelly's replacement, Mick Mulvaney, remained in post for just over a year before being replaced by Mark Meadows. The appointment of a fourth chief of staff in less than 4 years suggested less stability within Trump's administration than that of George W. Bush, for example, who had two chiefs of staff in 8 years.

The president's approach towards their wider staff

During every presidency, advisers jockey for access to the president with the aim of increasing their influence and personal status. However, the character of every administration is different. Obama's White House appeared to be run effectively, with a sense of shared purpose among most of the staff. In contrast, Trump initially left many positions in his administration unfilled. After over 2 years in office, he had failed to fill more than 280 positions requiring Senate confirmation. Trump's frequent sacking of officials, and the number of resignations by senior staff, quickly led to reports of chaos. The bestselling 2018 book *Fire and Fury* described the Trump White House as one in which aides battled for the president's favour while fearing the wrath of an irrational and volatile leader. Advisers who did not agree with the president were reportedly sacked or encouraged to resign, resulting in a staff that

reportedly tended to unconditionally support the president's ideas, rather than challenging him when required.

The extent to which the president uses EXOP to dominate the cabinet

Some presidents have appointed 'policy czars' in the White House. These are government officials who are responsible for a particular area of policy, often similar to the area of government that is overseen by a cabinet officer. For example, Paul Volcker acted as an economic czar in his position as chair of the Economic Recovery Advisory Board under Obama from 2009 to 2011, while Timothy Geithner was the cabinet officer responsible for the economy in his role as secretary of the treasury.

Policy czars generally work in the White House, and may be given greater access to the president than cabinet officers. Republicans criticised Obama for his widespread use of policy czars, arguing that these officials had not been confirmed by the Senate, so were subject to less scrutiny than cabinet officers. However, policy czars were not a new development. Franklin D. Roosevelt introduced them and Obama's Republican predecessor, George W. Bush, made broad use of his own czars. Trump also used policy czars. Peter Navarro acted as trade czar from 2016 and was instrumental in pushing for tariffs against China. In his role as senior adviser to the president, Trump's son-in-law, Jared Kushner, acted as policy czar on an unprecedentedly broad range of issues, including the border wall, healthcare, US innovation (new ideas to improve US government, economy and jobs), Lebanon, criminal justice reform, and diplomacy with China and Mexico. In 2017 Kushner convinced Trump to overrule the objections of Rex Tillerson, his secretary of state, and James Mattis, his defense secretary, and move the US embassy in Israel to Jerusalem, ignoring the fierce objections of Palestinians and criticism by European allies. During the COVID-19 pandemic a special post was set up for Kushner at the Federal Emergency Management Agency, allowing him to take charge of the federal response to the pandemic.

The extent to which EXOP staff act as political operatives

The president's advisers are political appointees but should be able to speak truth to power in order to assist the president in making the best decisions for the country. However, many EXOP staff act as primarily political operatives rather than neutral assistants. For example, Kushner's role as policy adviser within the White House was combined with his leadership of Trump's failed 2020 re-election campaign.

The president's view of the federal bureaucracy and federal agencies

Some presidents aim to increase the scope of the federal bureaucracy. They are generally Democrats, and believe that the federal government plays a positive role in improving society. Franklin D. Roosevelt dramatically expanded the federal government during the Great Depression in the 1930s, and Obama increased the number of federal employees by 8% during his tenure.

Other presidents aim to reduce the size of the federal government, fearing that the federal bureaucracy is wasteful, inefficient and removes too much power from individual states. These presidents are generally Republicans. Trump promised to 'drain the swamp' in Washington, DC, and in February 2018 announced plans to abolish 22 government agencies. Congress would not consent, so to pass his budget Trump had to keep the agencies. However, in 2019, Mick Mulvaney, acting

White House chief of staff, explained that relocating agencies to another part of the USA would cause mass resignations — the US Department of Agriculture Economic Research Service (ERS) relocation from Washington, DC to Kansas City, Missouri, saw the resignation of 78% of employees. During the COVID-19 pandemic it was revealed that in 2018 the Trump administration disbanded the pandemic response office set up by the National Security Council under Obama.

George W. Bush's approach to the federal bureaucracy was unusual for a Republican. Despite promising to cut the size of the federal government during his 2000 election campaign, Bush increased the number of federal employees by 13.8%. This was partly due to the national security response to 9/11 and the 'war on terror', but Bush also increased federal spending on education and healthcare, and launched a federal economic stimulus in response to the 2008 financial crisis.

CASE STUDY

The waxing and waning of Obama's power

Presidential power does not remain constant throughout a presidency. Instead, presidential power waxes (increases) and wanes (reduces). Barack Obama's two terms illustrate this well.



Obama's historic victory in 2008 was celebrated by Democrats, African-Americans and millions across the world

Obama was elected in November 2008 on a wave of optimism. Millions welcomed him as a historic break with the past. Not only was he the first black president, but he also promised a new start in foreign policy after the neo-conservative wars of George W. Bush. Obama's campaign slogan promised 'change we can believe in', and initially he seemed to deliver. The USA faced a serious economic crisis, but Obama had a productive first 100 days, and received the highest approval ratings for that period since the 1970s. The Democrats controlled both houses of Congress, allowing him to pass his economic stimulus, support for financial and automobile industries, environmental reforms and his signature Obamacare healthcare policy, the Patient Protection and Affordable Care Act 2010.

Obama's power began to wane when he lost control of Congress. In the November 2010 midterms the Republicans won a majority in the House. From here on Obama became increasingly frustrated by Congress and the challenges of divided government. However, his personal popularity remained strong, and he enjoyed some important successes, including overseeing the killing of terrorist Osama bin Laden in 2011. Obama defeated Republican challenger Mitt Romney in the 2012 presidential election, winning a second term.

Nevertheless, Obama was loathed by many conservatives, who thought that Obamacare expanded the role of federal government too far into people's lives. Politics became more polarised during his presidency, making it harder for him to pass legislation in a period of divided government. Following the mass shooting at Sandy Hook elementary school, Obama could not convince Congress to support gun control, including a ban on assault weapons. In the November 2014 midterms the Senate was lost to the Republicans.

Obama subsequently found it even more difficult to advance his political agenda using legislation. In addition, he was nearing the end of his two terms in office. In an attempt to avoid becoming a **lame duck president**, Obama relied on executive orders and executive agreements rather than legislation, although this was not always successful. Obama's executive order to protect some illegal immigrants from deportation was challenged by 26 states and blocked by the Supreme Court in 2016. Perhaps the most significant example of the limits to Obama's presidential power was his 2016 attempt to fill a vacancy on the Supreme Court. In refusing to begin hearings to consider his nominee, the Senate prevented Obama from exercising his formal constitutional power to appoint a Supreme Court justice. This later allowed his successor Donald Trump to achieve a conservative majority on the Court.

USEFUL CONCEPT

Lame duck president Occurs if the president has lost most of their political power and struggles to implement policy objectives. This typically happens in the latter part of a president's second term, when their political influence is limited by the fact that their presidency will soon be ending because of the constitutional two-term limit.

KEY CONCEPTS

Imperial presidency The idea that the presidency has an imperial or 'emperor-like' character.

Imperilled presidency The idea that the presidency is weak and its effectiveness is limited by Congress and an excessively large federal bureaucracy that prevents it from taking action.

KNOWLEDGE CHECK

- 10 What term describes the large group of agencies, including the White House Office and National Security Council, that support the president?
- 11 Which group, comprised of heads of executive departments and the vice president, helps the president run the executive branch?
- 12 What term describes the position held by the president's most senior adviser?

An imperial or imperilled presidency

There has been considerable debate about the nature of the presidency since Professor Arthur Schlesinger claimed in 1973 that Richard Nixon's presidency (1969–74) was **imperial** in nature. Under the imperial model of the presidency, presidents dominate Congress and conduct foreign policy independently of the legislature. This type of presidency overrides the checks and balances that Congress should provide and goes beyond the powers of the president intended by the Founding Fathers.

Schlesinger pointed to a number of 'imperial' actions taken by Nixon:

- He authorised military intervention in Cambodia and Laos without telling Congress.
- The Watergate scandal showed his use of corrupt and illegal methods to advance his own interests.
- He continued the war in Vietnam without congressional approval, even after 1971, when Congress revoked the Tonkin Gulf Resolution (passed by Congress in 1964, this had given the president authority to take any military action in Vietnam).

In response to the imperial presidency theory, President Gerald Ford (1974–77) argued that the presidency was actually '**imperilled**'. Ford made a number of claims that the presidency's effectiveness was limited by an overly assertive Congress and a bloated and inefficient federal bureaucracy, including the following:

- Congress had responded to the failings of Nixon's presidency by passing new laws restricting the powers of the president: the War Powers Act 1973 was intended to force presidents to obtain congressional approval before ordering military action.
- The federal bureaucracy's size made it difficult for presidents to ensure their wishes were properly carried out. This might seem a paradoxical criticism, as a strong federal government is generally seen as enhancing the power of the presidency, but as a Republican, Ford felt that it was working against his agenda to reduce government intervention and spending.

In recent years, debate about whether the presidency is imperial or imperilled has continued, with many political commentators arguing that George W. Bush, Obama and Trump all increased the power of the presidency. However, Cal Mackenzie took the opposite view in his 2016 book *The Imperilled Presidency: Presidential Leadership in the 21st Century*, which highlighted the weaknesses of the modern presidency.

Recent debate has focused on evaluating the following issues.

Military action

Usually presidents seek congressional approval for military action, although this is not always the case. The War Powers Act 1973 states that presidents must have congressional authorisation for the use of US armed forces in hostilities, but Clinton's use of US troops in NATO peacekeeping missions in the 1990s was argued to be a violation of the Act, as was Obama's 2011 military intervention in Libya.

Emergency powers

Declaring a national emergency allows a president to unlock federal funding and more than a hundred powers granted by Congress to presidents in case of emergency. Presidents have used emergency powers to limit civil liberties in the following ways:

- Franklin D. Roosevelt ordered the internment of Japanese-Americans during the Second World War.
- Following the 9/11 terror attacks George W. Bush authorised the extraordinary rendition of terrorist suspects, their detention without trial at the Guantanamo Bay detention centre, and interrogation techniques that were widely criticised as torture.
- Obama rejected torture but did not close Guantanamo Bay, and his 'targeted killing' programme allowed him to launch ten times more unmanned drone strikes in the Middle East and Asia than his predecessor.
- Trump declared a national emergency in March 2020 in response to the COVID-19 pandemic, and banned US citizens from travelling to European countries.

The National Emergencies Act 1976 attempted to limit presidential power by requiring any declaration of an emergency be accompanied by a legal justification and a review by Congress every 6 months. However, it had little impact. More than 30 national emergencies remained current in 2020. The lack of a clear definition of an emergency allowed Trump to declare a national emergency in February 2019 to secure funding for his planned border wall. Congress twice voted to end the state of emergency, but Trump used his veto power to overrule Congress each time.

ACTIVITY

Read the online article 'The alarming scope of the president's emergency powers' from *The Atlantic* (see Further reading, page 356) and identify and evaluate the reasons why commentators have concerns about the scope of the president's emergency powers.

The rise of direct authority

The use of executive orders, signing statements and executive agreements shows the willingness of presidents to stretch their powers. However, it could be argued that the use of direct authority is an expression of weakness and not strength, given that it is a lesser alternative to legislation when they lack the support of Congress, and can easily be overridden by future presidents.

Opposition from Congress

Frequent gridlock, particularly during periods of divided government, provides plenty of evidence for an imperilled presidency. Presidents are also often forced to make budgetary compromises to avoid a government

shutdown. Reagan, George W. Bush and Trump all blamed Congress for forcing them to sign budgets that increased the size of the deficit. When shutdowns do occur, they are a stark reminder of the limitations of the president's power. Trump's 2019 impeachment might appear to suggest that the president's position was imperilled by opposition from the House of Representatives. However, his 2020 trial and acquittal by the Republican-controlled Senate, particularly given its decision not to hear new evidence, demonstrates the limitations of Congress in opposing the president, if one chamber is controlled by the president's party.

Every two-term presidency is imperilled to some extent towards the end of the second term, when the president effectively becomes a lame duck.

Presidential style

Ronald Reagan (1981–89) had a more imperial style than presidents Jimmy Carter and Gerald Ford, particularly in foreign policy where he led the West to victory at the end of the Cold War. As has been seen, both George W. Bush and Obama used direct authority widely. However, all these presidents operated within the conventional range of presidential style, despite their political differences.

CASE STUDY

Trump and the limitations of presidential power

Trump's presidency represented a significant breach with conventional presidential style. He was more imperial than any previous modern president, using executive orders to cancel major international agreements signed by his predecessor, declaring a national emergency to fund his border wall, and taking to Twitter to conduct foreign policy and sack advisers. Trump was accused of treating the presidency as an extension of his business empire by employing his son-in-law Jared Kushner and daughter Ivanka Trump as advisers, despite their lack of government experience. Trump's 2018 tweet that he had an 'absolute right' to pardon himself was effectively a claim to complete impunity from the law. During the COVID-19 crisis Trump claimed 'total authority' over the states, seemingly ignoring the concept of federalism.

Despite Trump's imperial style during his presidency, the president's powers are still limited by the checks and balances in the Constitution. Congress often provides the most significant limitation, particularly during periods of divided government, forcing presidents to rely on direct authority and the stretching of implied powers to bypass Congress. The states' reserved powers are protected by the Constitution, which is why, despite his rhetoric, Trump was forced to allow state governors to respond individually to the COVID-19 crisis.

At the end of his presidency, Trump was unable to cling onto power. Legal challenges failed to overturn the 2020 presidential election result, and his address to supporters before the Capitol insurrection led to his second impeachment. Regardless of his imperious tendencies, Trump was forced to leave office and US democracy was preserved.

Expansion of the federal government

The size and scope of the federal bureaucracy has increased since the 1970s, at the behest of presidents. Most analysis would suggest that this enhances the power of the president rather than, as Ford claimed, imperilling it.

DEBATE**Does the USA have an imperial or an imperilled presidency?**

Imperial	Imperilled
Nixon's actions during the Vietnam War are proof of an imperial presidency.	Congress responded to Nixon by passing the War Powers Act 1973.
Presidents do not ask Congress to declare war.	Presidents can be forced to use direct authority to avoid gridlock in Congress.
They may avoid asking Congress to authorise military action.	They are unable to achieve their legislative priorities without congressional support.
They have access to emergency powers.	Government shutdowns are a reminder of the limitations of presidential power.
They can make use of direct authority, which allows them to bypass Congress.	There are lame duck periods of presidencies, during which presidents struggle to implement policy objectives.
Strong partisan support in Congress can prevent a president from being held to account.	
Presidential style can be imperial.	
Expansion of the federal government increases the president's power.	

 Individually or in pairs, evaluate the above question, remembering to distinguish between what is generally true (i.e. the constitutional role of the presidency) and how differently occupants have used its powers at different times.

KNOWLEDGE CHECK

- 13** Which president did Professor Arthur Schlesinger claim had acted in an 'imperial' way?
- 14** What type of enhanced powers can the president use in times of crisis?
- 15** Which institution can severely limit the ability of the president to act in an imperial way, particularly during periods of divided government?

SUMMARY

- Presidential power stems directly or implicitly from the Constitution or Congress, and from the inherent powers of the president's role as chief executive.
- The president's formal powers are enumerated in Article II of the Constitution or are inherent, whereas the president's informal powers are political rather than constitutional.
- The president's ability to exercise their powers is constrained by checks and balances by Congress and the judiciary, and by other constraints including party support in Congress and the prevailing orientation of the Supreme Court.
- The president is supported by a number of different institutions including the cabinet, the Executive Office of the President (EXOP), the White House Office, the National Security Council (NSC), and the federal bureaucracy and federal agencies.
- Presidential power generally waxes at the start of a presidency, but wanes towards the end of a president's final term.
- Presidents have been accused of being 'imperial' when they have used executive orders and agreements to bypass Congress, or when their control of Congress is strong enough to prevent it from holding them to account.
- The presidency can also be seen as 'imperilled' when its occupant is unable to advance their agenda because of opposition from Congress.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three checks and balances on the power of the president. (9 marks)
- 2 Explain and analyse three differences between formal and informal presidential powers. (9 marks)
- 3 Explain and analyse three ways in which the relationship between the presidency and other government institutions varies from one president to another. (9 marks)

Paper 2 Section B style question

Read the extracts below and answer Question 4 that follows.

Why presidents disappoint

A profound discovery strikes anyone who studies the changes in the American presidency over the past century: the expectations Americans impose on their presidents frequently exceed the capacity of presidents to meet them. The American presidency at the beginning of the twenty-first century is many multiples larger and more competent than the office inhabited by Theodore Roosevelt or Woodrow Wilson. But in many ways, the duties of a president — both actual and presumed — have expanded much faster than the real authority of the presidency. The consequence is a persistent gap between expectations and reality, between goals and accomplishments. Presidents fall short of public expectations and are usually diminished in stature and power as a result.

Source: extracted from an article by G. C. Mackenzie, Professor of American Government at Colby College (2016)
The Imperiled Presidency: Leadership Challenges in the Twenty-First Century, Rowman & Littlefield Publishers

The strangest thing about Trump's approach to presidential power

Past presidents have expanded their power in part because the public demands it, and because the public allows it. Tracking expansions of executive power is important because it's so rarely reversible...After Watergate, a mixture of new laws and new norms restricted the president — but many of those laws have since been superseded. The Trump presidency has demonstrated how flimsy norms are when a president is determined to ignore them...Most of the new powers he is claiming are about self-preservation. They arise not out of any public demand, nor out of any desire to accrue powers to the presidency itself...Trump ran for the presidency for personal reasons, and he is expanding its power for personal reasons too.

Source: extract adapted from an article by Graham, D. A., a staff writer at *The Atlantic* magazine (2018)
 'The strangest thing about Trump's approach to presidential power', *The Atlantic*, 7 June

- 4 Analyse, evaluate and compare the arguments in the above passage for and against the view that the presidency is imperilled. (25 marks)

FURTHER READING

Articles

Ashbee, E. (2017) 'Obama's second term: success or failure?', *Politics Review*, Vol. 26, No. 4, pp. 12–15.

Birks, G. (2019) 'Does the US president make foreign policy?', *Politics Review*, Vol. 29, No. 3, pp. 28–30.

Mogridge, A. (2019) 'Congress vs the president: checks on power', *Politics Review*, Vol. 29, No. 3, pp. 22–23.

Tuck, D. (2020) 'The imperial president?' *Politics Review*, Vol. 30, No. 2, pp. 10–13.

Singh, R. (2021) 'Presidential power and the Trump effect', *Politics Review*, Vol. 30, No. 4, pp. 12–15.

Websites

CNN — an explanation of how presidents have applied the War Powers Act: <https://edition.cnn.com/2020/01/08/opinions/iran-war-powers-democrats-in-congress-suri/index.html>

The Atlantic — 'The alarming scope of the president's emergency powers': <https://www.theatlantic.com/magazine/archive/2019/01/presidential-emergency-powers/576418/>

Comparing the US and UK executives

KEY QUESTIONS ANSWERED

- What are the roles and powers of the UK prime minister and US president, and how do they differ from each other?
- How accountable is each to the executive?
- How do their relationships to other institutions of government compare?
- How can the three theoretical approaches be used to analyse the similarities and differences between the executives?

BACKGROUND INFORMATION

The US president travels in an armoured limousine called 'the Beast' and surrounded by a motorcade made up of at least 20 vehicles, including motorcycle sweepers, SUVs carrying the secret service and a heavily armed counter-assault team, an ambulance, and a hazard materials mitigation truck in case of biological or chemical attack. A helicopter keeps watch overhead. If travelling by air, the president travels medium-/long-distance by aeroplane (known as Air Force One) or short-distance by helicopter (known as Marine One). When the journey is complete, the president returns to the 55,000 square foot White House set in 18 acres of grounds.

In contrast, the UK prime minister makes much less of a stir, typically travelling with up to four cars and a similar number of motorbike outriders. The prime minister's official residence at 10 Downing Street is an estimated 3,800 square feet, but its living accommodation is so small that Tony Blair chose to move his family into the bigger four-bedroom flat above 11 Downing Street, a practice followed by subsequent prime ministers.

The president's trappings of power clearly overshadow those of the prime minister, but this can be misleading. A prime minister with strong party support and a sizeable majority in the Commons can influence their legislature with an ease that most presidents would envy.



10 Downing Street, London



The White House, Washington, DC

Roles and powers of the UK prime minister and of the US president, and the extent of their accountability to the legislatures

The USA is a presidential democracy, in which the president is directly elected and holds sole executive authority once inaugurated. The UK is a parliamentary democracy in which the UK prime minister is not directly elected, and instead holds their position on the basis of the support of a majority in the House of Commons.

The two leaders have very different roles and powers.

Roles and powers of the prime minister and the president

Chief executive

The UK prime minister and US president are each chief executive of their government, so are responsible for running their respective countries. However, there is a very important difference in the type of executive power that they

USEFUL CONCEPTS

Singular executive

An individual who has sole authority over the government, as is the case with the US president. Also known as a sole executive.

Collective executive Authority over the government is shared. In the UK's system of cabinet government, members of the cabinet share power and take collective responsibility for decisions.

KEY CONCEPT

Primus inter pares A Latin term meaning first among equals. In respect of the prime minister, it implies they are the most important member of the cabinet, yet govern in a collective manner.

hold. The president is a **singular executive**, so has sole executive authority. The prime minister heads a **collective executive**. Under the system of cabinet government the prime minister is ***primus inter pares***, and shares power with cabinet members who hold collective responsibility for all cabinet decisions.

The president has greater executive power than the prime minister, including the ability to use direct authority to issue executive orders, executive agreements and signing statements.

Head of state

In the USA the president is the head of state, whereas in the UK this role is performed by the monarch. The US president therefore receives the type of ceremony and pageantry that is reserved for the monarch in the UK.



Donald Trump, then US head of state, was given a state banquet in his honour at Buckingham Palace as part of his state visit to the UK in June 2019. His host was Queen Elizabeth II, the UK's head of state, rather than Prime Minister Theresa May

Legislation

Both leaders initiate legislation within their respective legislatures, but the US separation of powers means that the president's powers are significantly more limited in this area. Congress is separate from the executive and therefore develops its own programme of legislation. The president can suggest legislation to Congress, but it may be rejected.

In the UK, the executive is part of the legislature. As a result, the government's programme of legislation receives the vast majority of parliamentary time. In addition, the UK's parliamentary democracy allows the prime minister more opportunities to influence voting on legislation, provided that their party has a majority in the House of Commons. Prime ministers can use their position as party leader to influence MPs from their party. The fusion of powers allows the prime minister to use their powers of patronage to offer government jobs to MPs as inducements to vote for legislation. The whip system helps to ensure party discipline.

USEFUL CONCEPT**Elective dictatorship**

Describes the great power wielded by a prime minister with a firm majority in the House of Commons.

SYNOPTIC LINK

The UK's uncoded and unentrenched constitution can be modified by a law passed by parliament. The US president would need the support of two-thirds of both houses of Congress and three-quarters of state legislatures to amend the Constitution, which is far harder to achieve. You can find out more about comparisons between the two constitutions in Chapter 12.

A prime minister with a sizeable majority and strong support from their party enjoys a position so strong that it has been described as an '**elective dictatorship**'. There are few checks and balances on the UK government's ability to pass legislation, provided it has sufficient support within parliament. Parliament is sovereign, so the UK Supreme Court cannot strike down its laws, whereas the US Supreme Court can rule laws unconstitutional. The House of Lords can only delay legislation for up to a year, unlike in the USA, where the Senate can block legislation entirely.

The separation of powers limits the president's control of party discipline. House and Senate whips work for the party leadership of those chambers, rather than for the president. The president's powers of patronage are also more limited, as they cannot offer government jobs to members of the legislature. A prime minister with a large majority generally finds it much easier to deliver their legislative agenda.

However, the president does have the ability to veto legislation, which the prime minister does not. If parliament passes legislation of which the prime minister disapproves, it becomes law regardless. This occurred in September 2019 when the European Union (Withdrawal) (No. 2) Act 2019 forced Boris Johnson's government to seek an extension to the UK's withdrawal from the EU.

Financial powers

Congress must approve the president's budget each year. Agreement is often difficult to achieve and requires significant compromises. Occasional government shutdowns are a dramatic illustration of the limits of presidential power.

In the UK, government shutdowns do not happen, as it is much easier for the prime minister to pass their budget. UK governments usually hold a majority in the House of Commons, so have the votes required. Minority governments are rare and generally receive enough votes from other parties to pass their budget, or make the necessary changes to the budget to avoid rejection and a vote of no confidence.

Military powers

The president is commander-in-chief of the armed forces, whereas in the UK the monarch formally performs this role. However, the prime minister acts as the overall military decision-maker, just as the president does. The prime minister can declare war using royal prerogative power (the power to take action using royal authority), although again this is formally done by the monarch.

Unlike the prime minister, the president cannot declare war, as this is done by Congress. However, neither country has made a formal declaration of war since the Second World War, so their use of military action is more significant. The War Powers Act 1973 places a legal requirement on the president to seek the approval of Congress for military action, although presidents do not always adhere to this.

In contrast, there is no legal need for the prime minister to consult parliament before committing troops. Some argue that a constitutional convention of parliamentary approval has emerged since 2003, when parliament supported UK involvement in the Iraq War. In 2013 parliament voted against David Cameron's planned military action in Syria. However, military action was taken in Libya in 2011 and in Mali in 2013 without a preceding vote.

Appointments

The president's appointments to executive branch positions require Senate confirmation, whereas the UK prime minister can appoint whomever they choose. However, the president has the right to nominate federal judges. These need Senate approval but give the president influence over the judiciary that the UK prime minister lacks.

Election

The US president is directly elected, so has a personal mandate. The UK prime minister is the leader of whichever political party is able to form a government. Their authority comes from leading the largest party in the House of Commons, which in turn has a mandate from the last general election. Prime ministers therefore do not need an individual mandate. Indeed, a prime minister who takes over between general elections has not faced the electorate as a potential prime minister, as was the case for Johnson from July 2019 until the general election in December of that year.

Term limits

The prime minister has no term limits, whereas the US Constitution prevents the president from being elected for more than two terms. This weakens the power of the president in the final years of their second term, potentially making them a lame duck president (see page 351).

The longest-serving modern prime minister was Margaret Thatcher (11 years, 208 days) followed by Tony Blair (10 years, 56 days). Prime ministerial power tends to decrease towards the end of their time in office, particularly if support from their party and the public begins to wane, but prime ministers do not have a clear end point as US presidents do.

Succession

The US Constitution states the line of succession, in which the vice president automatically succeeds the president if the latter dies, resigns or is removed from office. Presidential candidates choose a 'running mate' for the presidential election and the successful pair are elected together. If the vice president resigns, dies or becomes president, a candidate for the vacant position is chosen by the president and confirmed by both houses of Congress.

In the UK, the prime minister may choose to appoint a deputy but this is not a constitutional requirement. Johnson did not have a deputy prime minister when he was hospitalised with coronavirus in 2020, so the first secretary of state, Dominic Raab, deputised for him. A deputy prime minister may stand in for the prime minister, for example at Prime Minister's Question Time (PMQs), but is unlikely to succeed them as leader. Instead, the prime minister is succeeded by whomever leads the party with most support in the House of Commons, following either an internal leadership election or a general election. This has not been the deputy prime minister since 1955. The office of UK prime minister, therefore, does not have a clear line of succession, unlike the US presidency.

SYNOPTIC LINK

Many presidents including Donald Trump, Bill Clinton and Gerald Ford have made a number of controversial pardons. You can find out more about presidential pardons in Chapter 14.

ACTIVITY

With a partner, discuss the roles and powers of the two types of leader. Give the prime minister and the president a score of 1–5 for how much power they have in each area.

Patronage

The prime minister and the president can both reward supporters with cabinet or government positions. This power of patronage is more useful to the prime minister as it increases their influence over parliament, where they can depend on the loyalty of the payroll vote (see page 48). The separation of powers prevents the president from influencing members of Congress in this way.

The prime minister can also recommend supporters for life peerages or honours. Life peerages allow prime ministers to directly influence the composition of the House of Lords, although appointees may act independently if they choose. Honours give the recipients a medal and either a knighthood or admission to a different 'order of chivalry', such as an MBE, which is similar to presidential awards such as the Presidential Medal of Freedom.

Pardon

The power of pardon is held by the president, and used widely. In the UK the monarch can issue a royal pardon on the advice of the justice secretary, although this is rare. A high-profile example was the 2013 posthumous pardon of Second World War codebreaker Alan Turing for homosexual 'indecency' in 1952.

DEBATE**Who has greater power, the president or the prime minister?**

President	Prime minister
The president is head of state and head of government.	Prime ministers with a large majority and good party discipline have great power, even an 'elective dictatorship'.
The president is the sole head of the executive.	The prime minister can use the whip system and powers of patronage to dominate MPs from their party.
The president is directly elected, so has a personal mandate.	The prime minister does not require approval for their cabinet appointments.
The president has a much larger bureaucracy to support them (Executive Office of the President, or EXOP).	The prime minister is less restricted by checks and balances than the president.
The president is commander-in-chief of the US military.	There is no legal requirement for the prime minister to obtain parliament's permission for military action.
Presidents cannot be removed during a term of office, except by impeachment. In contrast, the House of Commons can bring down a prime minister's government through a vote of no confidence for any reason, at any time.	Prime ministers do not have term limits so can continue for longer in office.
The USA's position as the world's largest economic and military power gives the president huge international influence.	

 Individually or in pairs, consider the extent to which political factors such as party support and control of the legislature determine which leader has more power.

Accountability to the legislatures

Passing legislation

Both leaders introduce their annual legislative agenda to their legislatures. The president makes a State of the Union Address to Congress, and the monarch delivers the Queen's Speech on behalf of the government at the state opening of parliament.

Presidents generally find it more difficult to pass legislation through Congress, particularly during periods of divided government. Members of Congress are less subservient to their party leadership than MPs and more critical of legislation, which often leads to gridlock. The president's relationship with Congress can be challenging even during periods of united government. In 2017, Trump failed to repeal Obamacare in his first 100 days. His bill was defeated by four Republican senators who declared they would vote against it. However, the president has the power to veto legislation passed by Congress, and it is difficult for Congress to achieve the supermajority in both houses required to override the veto. Presidents can use the threat of a veto to pressure Congress to modify its legislation in line with the president's demands. The prime minister has no veto power, but is less likely to be faced with legislation that they do not support. The vast majority of parliamentary legislative time is given to government bills. The prime minister only has to convince one chamber to support their legislation — the House of Commons, in which the prime minister generally has a majority. UK prime ministers therefore rarely face the challenge of divided government.

Prime ministers can generally use the whip system to ensure party discipline on government legislation. MPs are pressured to 'toe the party line' by the threat of deselection or career stagnation. Presidents have to make more deals and work harder to convince members of Congress to support them. During periods of minority government, however, the prime minister may also struggle to get legislation through parliament. Theresa May failed to pass her EU withdrawal bill through parliament, which led to her resignation. Even prime ministers with a majority can find it difficult to get their way in parliament if they do not have tight party discipline. For example, John Major's premiership was hampered by divisions and rebellions within his own party over Europe. However, these situations occur less frequently in UK politics than in the USA.

Scrutiny of the executive

Both legislatures use the committee system to scrutinise government. However, the prime minister is personally held to account by the House of Commons at the weekly PMQs, and also speaks at key debates in the Commons. The separation of powers in the USA means that the president does not address Congress other than during the president's annual State of the Union speech, and occasional special joint sessions of Congress relating to specific issues of national importance.

Removal from office

The House of Commons can call a vote of no confidence in the government at any time. This can be for any reason, including simply that the prime minister and the government are not performing well. A simple majority vote is enough to remove the prime minister and the government from office. Prime ministers may also be forced to resign by their party when it becomes clear that they do

not command enough support in the House of Commons to govern effectively, but before a vote of no confidence is called.

It is much more difficult for Congress to remove the president from office, as it must navigate the complex process of impeachment for wrongdoing. No president has ever been found guilty by the Senate and removed from office, although three have been impeached by the house (twice in Donald Trump's case).

KNOWLEDGE CHECK

- 1 What is the difference between the type of executive power held by the US president and that of the UK prime minister?
- 2 Which of the two leaders is head of state and who performs this function in the other country?
- 3 Why do prime ministers generally find it easier to pass their legislation than do presidents?

Relationship of the UK prime minister and US president to other institutions of government

Cabinet

The prime minister and the president both select their cabinet members, but there are a number of key differences in their relationships with their cabinets.

Table 15.1 is an overview of both leaders' relationships with their cabinets.

Table 15.1 Cabinet relationships with the president and the prime minister

US cabinet	UK cabinet
The president's cabinet nominees need Senate confirmation.	Prime ministers can appoint whomever they like to the cabinet.
The president does not share executive authority with cabinet officers.	The prime minister is <i>primus inter pares</i> in a system of collective cabinet government.
US cabinet officers are only responsible for running their own department.	Cabinet is the ultimate decision-making body: under collective cabinet responsibility ministers must publicly support government policy, or resign.
US cabinet officers are not political rivals of the president.	UK cabinet ministers are often the prime minister's political rivals.
Cabinet officers tend to be policy specialists.	UK cabinet ministers are generally not policy specialists.
Cabinet officers tend to stay in the same department.	Cabinet ministers are often moved from one department to another.
Cabinet reshuffles are not used to increase the president's control of their party.	Cabinet reshuffles are used as a form of patronage and control.
The US cabinet has no power to threaten the president's position (other than invoking the Twenty-Fifth Amendment, which has never occurred).	The prime minister can fall from power if they lose the support of their cabinet.
The president may only call a handful of cabinet meetings in a year.	Cabinet meetings are held frequently in the UK (usually weekly).

Executive administration

Both leaders receive considerable administrative support to help them run their governments. The scale and scope of the Executive Office of the President (EXOP) is much more extensive than the Prime Minister's Office and the Cabinet Office.

Wider bureaucracy

Both leaders act as chief executive for the whole government bureaucracy. The president heads the federal government and federal agencies, and the prime minister controls the civil service and government agencies.

The vast majority of top officials in the UK civil service do not change from one government to the next, although a number of special advisers, who are important political appointees, do. In contrast, a new US government administration needs to fill around 4,000 government positions. The character of the federal government's senior staff is fundamentally changed from one administration to the next, with a steep learning curve for the many staff appointed at the start of a president's first term.

KNOWLEDGE CHECK

- 4 Which leader is 'first among equals' in their cabinet?
- 5 Which leader routinely uses cabinet reshuffles to increase their control of their political party by rewarding supporters and keeping rivals close?
- 6 Which leader has the largest executive administration to support them?

Theoretical approaches to the executives

We can use the structural, rational and cultural theories to compare and analyse the similarities and differences between US and UK politics. For an explanation of the three theoretical approaches, see Chapter 12.

STUDY TIP

One of the three 9-mark questions on Paper 2 asks you to explain and analyse three ways in which one of the theoretical approaches can be used to study a feature of comparative politics. You therefore need to write three paragraphs, each covering a different way in which the theoretical approach can be used to explain the feature you've been asked to write about.

Structural: the role of political institutions

The fusion of powers in the UK means that the prime minister and the government are part of parliament. This gives a prime minister with a majority far greater ability to influence the legislature than the president, as the separation of powers limits the president's control of Congress.

The UK prime minister can rely on the 'payroll vote' (see page 48), whereas the US president cannot. The membership of the UK cabinet, composed as it is of members of the House of Commons and, sometimes, several members of the House of Lords, means that key parliamentarians take collective responsibility for government decisions. Again, this increases the prime minister's influence over selected individuals in parliament. In the USA, cabinet ministers are not part of Congress.

The USA has a singular executive whereas the UK has a system of cabinet government. The US president has sole executive authority whereas the prime minister is 'first among equals' and all cabinet ministers take collective responsibility for government decisions. The US president also benefits from more extensive administrative support than the prime minister. Different processes for removal from office give the US president greater job security. It is very difficult for Congress to impeach and convict the president. In contrast, the UK House of Commons can remove the prime minister with a simple majority vote. This makes it essential for the prime minister to retain the support of the Commons, whereas a president who loses the support of Congress will continue in office, barring impeachment. The president is head of state, unlike the prime minister, and therefore has a greater ceremonial role to play.

Rational: the role of individuals acting out of self-interest

Different individuals have approached the roles of president and prime minister in different ways. They have used rational strategies to help them govern effectively within the political context they found themselves in.

Responding to a weak legislative position: Barack Obama and David Cameron

Cameron's Conservatives lacked a majority in parliament from 2010 to 2015, so formed a coalition government with the Liberal Democrats. Cameron was therefore highly focused on his cabinet during his first term, particularly the Quad committee, which consisted of the prime minister, his chancellor of the exchequer (George Osborne), and the two most senior Liberal Democrats in the coalition government (Nick Clegg and Danny Alexander). Without the agreement of both parties to Cameron's policies, the coalition would have ended, so his emphasis on collective decision-making was a rational response to the circumstance of a hung parliament.

Like Cameron, Obama lacked control of the legislature for most of his presidency. After losing the House in the 2010 midterms, the Democrats lost the Senate in 2014. However, whereas Cameron was able to forge an alliance with the Liberal Democrats and govern through a coalition cabinet, Obama rarely met with his cabinet. His cabinet had no ability to control Congress, so Obama had to use different strategies. His rational response was to use direct authority to govern. Where Cameron's strategy was focused on control of parliament, Obama used executive orders and executive agreements to avoid asking Congress to pass legislation or ratify treaties, as he knew these would be rejected.



Barack Obama and David Cameron both lacked control of their legislatures for part of their period in office, although Cameron was able to overcome this by forming a coalition government

Responding to national emergency: George W. Bush and Tony Blair

Bush and Blair both found that their time in office was transformed by the 9/11 terror attacks. Bush declared 'war on terror', and ordered the US invasion of Afghanistan (2001) and Iraq (2003). Blair believed the UK had a duty to support the USA and became Bush's closest ally.

Both leaders maximised control during a time of war. Bush used emergency powers to authorise the extraordinary rendition of terrorist suspects and their detention without trial. Blair was accused of a 'presidential' style of government in which he ignored his cabinet: two ministers resigned in protest against the Iraq War. Cabinet meetings were criticised for resembling briefings as opposed to discussions, with decisions being made in smaller meetings of key figures in a process derided as 'sofa government'. Blair could dominate cabinet in this way because of his large majority in parliament and strong support within the Labour Party.

Bush and Blair knew that the public and politicians tolerate a more assertive style of government and foreign policy during times of national emergency. To justify the invasion of Iraq, they stressed the threat from its dictator, Saddam Hussein, although it subsequently became clear that several of their key claims were based on faulty intelligence.



Republican president George W. Bush and Labour prime minister Tony Blair came from different sides of the political spectrum but developed one of the closest friendships in the history of the US-UK 'special relationship'

USEFUL CONCEPT

Populist A politician who portrays themselves as the true representative and champion of ordinary people. Populists often claim to be opposing an established 'elite' of existing politicians, the media and other public figures.

Responding to media criticism: Donald Trump and Boris Johnson

All leaders face criticism from the media. Traditionally presidents and prime ministers have tried to cultivate good relationships with the media. However, in the modern social media age, Trump and Johnson have taken a different approach, which can be explained using rational theory. Both leaders adopted **populist** policies to win elections, and subsequently harnessed the informal

power of their offices to bypass the media. Trump used Twitter to commandeer the political agenda, and Johnson answered 'People's PMQs' sent in by Facebook users and gave statements directly to an in-house camera team as opposed to the media.

Trump pushed back against criticism from traditional media, dismissing it as 'fake news'. His confrontational relationship with liberal news organisations led to him claiming the *New York Times* and the *Washington Post* were 'siding with China' against the USA. These tactics were intended to bolster the distrust felt by many Trump supporters towards liberal news outlets, and to defend him from attack.

Johnson was also criticised for a confrontational relationship with the media, and famously refused to be interviewed by Andrew Neil during the 2019 election campaign. After winning the election, his government discussed the possibility of abolishing the BBC licence fee and, in February 2020, his aides caused controversy when they prevented some news organisations from attending a briefing, leading to claims that Johnson was inspired by Trump, whose administration had revoked the press passes of certain journalists.

ACTIVITY

Find the *Guardian* video clip 'How Trump has reacted to journalists questioning his handling of the coronavirus crisis' and watch Trump's comments to journalists during the COVID-19 crisis. How can you use rational theory to analyse his confrontational approach?



Despite occupying positions that were structurally very different, Donald Trump and Boris Johnson chose to respond to the media in similar ways

Cultural: the role of shared ideas and culture

Comparing the political cultures of the USA and the UK can help us to explain the differences between the two executives.

Respect and presidential status

US political culture generally affords the president a greater degree of respect than the UK prime minister. As head of state and commander-in-chief of the armed forces, the president has an important ceremonial role. This is reflected by the grandeur of the White House and Air Force One, the president's

personal aircraft. When a president's term ends they retain the title of president and retire with the highest possible status. In contrast, when a prime minister resigns they continue to be a member of parliament. Many, including Theresa May and Gordon Brown, choose to return to the rough and tumble life of the backbenches.

In recent years, respect for the presidency as an institution (regardless of the political opinion of its incumbent) has been eroded by increasing division within US politics. This was evident in the erroneous claims of the 'birther movement' that Obama had not been born in the USA, and Trump's 2020 State of the Union Address in which the speaker of the House of Representatives, Nancy Pelosi, publicly ripped up his speech.

Limited government versus parliamentary government

The USA was created as an alternative to British rule, so hostility to an overly powerful government is at the heart of its political culture. In contrast, the office of prime minister evolved in the context of parliamentary government. Parliament's sovereignty has been rooted in British culture since the English Civil War (1642–51) and allows the prime minister to exercise enormous power with little restraint, provided that they maintain the support of parliament. Furthermore, within parliament only the House of Commons can fundamentally block the prime minister's plans, whereas in the USA the president can face opposition from two independent chambers: the House and the Senate.

Imperial versus presidential criticism

The US public expect their president to act independently of Congress and take executive action as required. The president is only likely to be criticised for acting in an 'imperial' fashion if they exceed the normal parameters of presidential authority. In the UK, public expectations of the prime minister are very different. Prime ministers who do not follow a sufficiently collegiate approach with their cabinet colleagues are portrayed as 'domineering' and, often, 'presidential'. The expectation is that prime ministers work collaboratively with cabinet ministers and their party within parliament.

SUMMARY

- The president has a broader role as they are chief executive and head of state, whereas the prime minister is head of the government but not head of state.
- Prime ministers head a collective cabinet government, whereas the president has sole executive power.
- The separation of powers limits the president's ability to influence Congress, particularly if they do not possess strong party support. The UK's fusion of powers means that the prime minister generally finds it easier to pass legislation.
- The extent to which the president and the prime minister are held to account by the legislatures depends on their control of their party and whether their party has a majority in the legislature.
- Structural, rational and cultural theory can each be used to analyse the similarities and differences between the executives.

Practice questions

Paper 2 Section A style question

- 1 Explain and analyse three ways that structural theory could be used to study the extent of the UK prime minister's and the US president's accountability to their respective legislatures. (9 marks)
- 2 Explain and analyse three ways that rational theory could be used to study the relationship of the UK prime minister and the US president with their respective cabinets. (9 marks)
- 3 Explain and analyse three ways that cultural theory could be used to study the relative power of the UK prime minister and the US president. (9 marks)

Paper 2 Section C style questions

- 4 'The UK prime minister is far more accountable to the House of Commons than the US president is to Congress.' Analyse and evaluate this statement. (25 marks)
- 5 'The president has greater power than the prime minister in theory, but in practice it is usually easier for the prime minister to achieve their aims.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

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Prime Minister (Office, Role and Functions) Bill: <https://publications.parliament.uk/pa/cm200102/cmbills/060/2002060.pdf>

16

The judicial branch of government

KEY QUESTIONS ANSWERED

- How are Supreme Court judges selected and appointed?
- What is the current composition of the Supreme Court?
- What is the nature of judicial power?
- What constitutional role does the Supreme Court play by interpreting the Constitution and protecting citizens' rights?
- Why is the Supreme Court's power of judicial review so significant?
- What debates exist regarding the political significance of the Supreme Court?
- How have two of the Supreme Court's landmark rulings generated debate and controversy?
- How significant has the Supreme Court been in shaping public policy regarding abortion?

BACKGROUND INFORMATION

Just 6 weeks before the November 2020 presidential election, Associate Justice Ruth Bader Ginsburg died. At once, the nightmare of liberal Americans became a reality. Ginsburg's death was far from unexpected — she was 87 years old and had long lived with cancer — but no less devastating to her supporters. Even as Ginsburg's body lay in repose at the **Supreme Court** and then in state at the Capitol, President Donald Trump planned to nominate a replacement justice who was every bit as conservative as Ginsburg had been liberal. The resulting change from a 5-4 to a 6-3 conservative majority cemented Donald Trump's legacy more firmly than any other single action, ensuring a conservative Court for potentially decades to come.

Together the Supreme Court justices wield more power than anyone in the USA. They can overrule the democratically elected president and Congress, and they decide what the Constitution means. Ginsburg had contributed to rulings that transformed millions of lives by protecting abortion rights, legalising same-sex marriage and supporting the interests of women, immigrants and transgender people. Small wonder then, that many mourners paying their respects at her casket feared they were witnessing the death of a liberal interpretation of the US Constitution.

KEY CONCEPT

Supreme Court The highest federal court in the USA. The Supreme Court is the final court of appeal and is responsible for interpreting the Constitution.



The Supreme Court is the guardian of the Constitution, and has the duty of protecting citizens' rights. Its judgements can have huge political and social implications. Same-sex marriage was legalised across the USA by the Supreme Court in *Obergefell v Hodges* (2015), a major victory for the LGBTQ+ community

The Supreme Court's place in the judicial branch of government

The judicial branch of government is the system of courts that interpret and apply the nation's laws. The Supreme Court is the highest court in the federal judiciary and acts as the final court of appeal. Appeal is the process by which either party in a court case can object to the verdict and ask for a higher court to check it. Unlike in a criminal trial, the Supreme Court does not concern itself with the facts of the case and the guilt or innocence of either party. Instead, it focuses on cases that are of constitutional importance. Its job is to decide what the Constitution really means in relation to these cases.

Federal cases are first tried in a district court. This is where witnesses are heard, and a judge or jury decides whether the accused is guilty or innocent. A murder trial, for example, is heard by a district court. The judgement made by a district court can then be appealed in the US Courts of Appeals, which are also known as circuit courts. Appeals courts do not try cases again and there is no jury. Instead, judges review the decisions made in the trial to make sure that the law was applied correctly. They may overrule the decision of the district court if they choose. Figure 16.1 shows the structure of the US federal courts system.

A judgement made by the Court of Appeal can be appealed to the Supreme Court, which is asked to review more than 7,000 cases every year. Supreme Court justices decide which cases are of constitutional importance and agree to hear between 100 and 150 each year. These cases are chosen because they relate to an area of the Constitution that could be interpreted in different ways. It is the job of the Supreme Court to decide exactly what the Constitution says about a particular point of law. As the Constitution is sovereign, this gives the

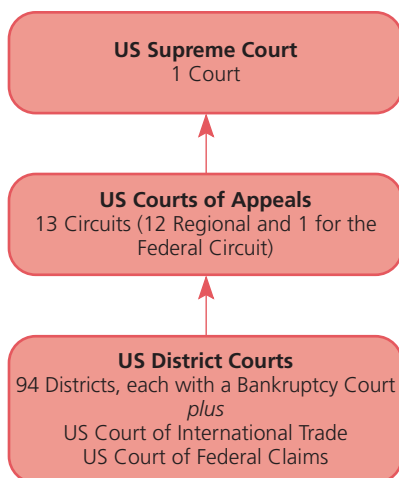


Figure 16.1 The US federal courts system

KEY CONCEPT

Judicial review The process by which US Supreme Court justices decide whether a law or government action is constitutional.

ACTIVITY

Find out more about the history and traditions of the Supreme Court by reading about them on the Court's official website: <https://www.supremecourt.gov/>. What factors have affected the development of the Court?

Supreme Court enormous power. It can consider laws passed by Congress or state legislatures and rule on whether they are constitutional or not. It can also declare actions of the executive unconstitutional — whether these have been taken by the president, a state governor or their administrations. This power is known as **judicial review** and allows the Supreme Court to check the powers of the other two branches of government.

The Supreme Court has one chief justice and eight associate justices. Decisions by the Supreme Court have had a profound impact on US politics, in areas that include civil rights, capital punishment, abortion and marriage.

The process of selection and appointment of Supreme Court justices

Supreme Court justices are nominated by the president and then confirmed by the Senate in a highly politicised and controversial process.

Presidential selection of the nominee

Justices have life tenure so a seat on the Court only becomes vacant when a sitting justice dies, retires or is impeached. The president is responsible for nominating the next justice, who will likely remain on the Court for many years or decades after the president's term ends.

The president's team initially draws up a list of possible nominees, taking into account suggestions from the president's political advisers, party and legal experts. There are a wide range of factors to consider, including a candidate's judicial experience or legal knowledge, their professional standing and reputation, and their personal history and integrity. If they are a judge, their rulings on previous cases are closely scrutinised to see how they might vote in the future. Presidents aim to appoint justices who will share their view of how the Constitution should be interpreted, so conservative presidents nominate conservative justices and liberal presidents nominate liberal justices. While running for the presidency, Trump promised that he would choose judicial nominees from candidates suggested by the conservative legal group, the Federalist Society.

SYNOPTIC LINK

The Federalist Society is a conservative legal pressure group. It believes the legal profession is dominated by liberals who impose their views on others at the expense of individual freedom. The Society believes the judiciary should 'say what the law is, not what it should be'. You can find out more about pressure groups in Chapter 21.

Nominees must be confirmed by the Senate, so presidents need to be confident that their candidate will attract the necessary support from senators. Possible candidates are short-listed and background-checked by the White House's lawyers and the FBI. Every aspect of a candidate's professional and personal life is considered, with the aim of uncovering anything that might count

against them in the confirmation process. This is an intense process: Justice Anthony Kennedy (served 1988–2016), for example, was interviewed by the FBI for more than ten hours and asked questions on topics ranging from his sexual history to his treatment of animals.

Most presidents interview the last few candidates before making their choice. Finally, they announce their nominee, resulting in massive media attention and the start of a new and very public round of scrutiny. Occasionally, the White House vetting process has failed to uncover issues that subsequently sparked controversy once the president had announced his nomination. In 1987 Douglas Ginsburg was nominated by Ronald Reagan, but had to withdraw a few days later when it was discovered that he had used marijuana while a law professor.

Senate confirmation of the appointment

Once the president has made a choice, their nominee is considered by the **Senate Judiciary Committee**. The nominee completes a lengthy questionnaire covering their previous experience and rulings. Most nominees come from the federal Courts of Appeals and have considerable experience as an appeals judge. In 2021, eight out of nine Supreme Court justices had previously sat on the Courts of Appeals. Justices can also be appointed from a state court as opposed to a federal one. However, it is not necessary to have judicial experience to sit on the Court. The remaining justice of the nine, Elena Kagan, had never been a judge. Kagan was previously solicitor general at the Department of Justice, a role which involves representing the executive branch in Supreme Court cases.

Witnesses help the committee to assess the nominee's suitability and the nominee is interviewed by the committee in a televised hearing. Once the nomination hearings have concluded, the Senate Judiciary Committee votes on the nominee. This vote is only a recommendation to the Senate but tends to indicate the ease or difficulty with which the nominee is likely to be confirmed by the Senate itself. For example, Ruth Bader Ginsburg (served 1993–2020) received a unanimous vote from the committee before being approved by 96-3 senators. Nominees for whom the committee vote divides on partisan lines are likely to see that same divide reflected in the Senate as a whole. Clarence Thomas's (served 1991–) 7-7 committee vote was followed by a close 52-48 vote in the Senate. A simple majority in the Senate is sufficient for confirmation.

For most of the Court's history, a presidential nominee effectively needed the support of 60 of the 100 senators. The rules allowed any senator to **filibuster** the nomination, and 60 votes were needed to invoke **cloture**. In 2013 the Democrat-controlled Senate changed the cloture rules for nominations to the executive branch and the federal judiciary, with the exception of the Supreme Court. This introduced the so-called 'nuclear option', which allowed cloture to be invoked with a simple majority. In 2017 the Republican-held Senate extended the rule change to the Supreme Court, to prevent the Democrats from filibustering the confirmation of Neil Gorsuch. Legislative bills still require a three-fifths supermajority to invoke cloture, but presidential nominations now only need a simple majority vote. The introduction of the 'nuclear option' for judicial filibusters was a result of increased partisanship in US politics. Justices used to command more bipartisan support, but this has been lacking in recent years (see Figure 16.2). The rule change for judicial

USEFUL CONCEPTS

Senate Judiciary Committee

A standing committee of the Senate which has the job of considering presidential judicial appointments, including nominees to the Supreme Court. It conducts confirmation hearings and votes on the nominee as a recommendation to the Senate. The whole Senate then has the final vote.

Filibuster A tactic used in the Senate to prevent a vote. Senators can debate for as long as they wish, so filibustering senators aim to make a speech long enough to use up all the time available for voting.

Cloture The process for ending a filibuster. For a Supreme Court nominee a simple majority vote is required to invoke cloture, meaning that the filibustering senator must then stop talking and allow the Senate to vote. Prior to 2017, 60 votes were required, a three-fifths majority, which was much harder to achieve.

SYNOPTIC LINK

The filibuster is a tactic used only by the upper house of Congress, the Senate. Members of the House of Representatives do not have the right to uninterrupted debate, so they cannot filibuster. You can learn more about filibusters in Chapter 13.

filibusters means justices can be confirmed by just one party if it has a majority in the Senate. This allows controversial candidates to be approved (see case studies) and gives more power to the president. In 2020 Amy Coney Barrett became the first Supreme Court justice in more than 150 years not to receive a single vote from the minority party in the Senate.

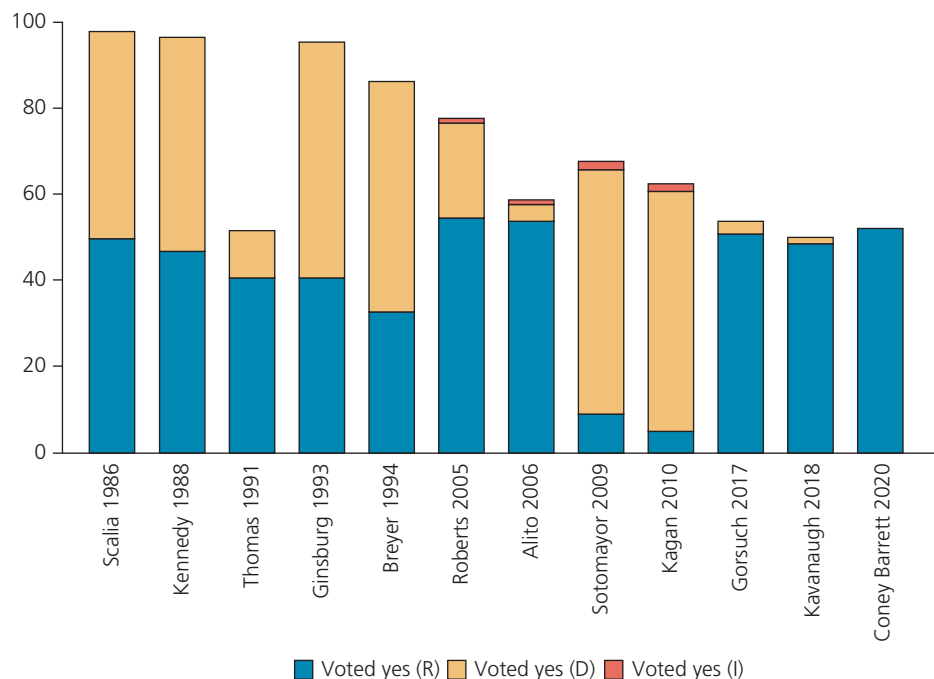


Figure 16.2 Votes for Supreme Court justices since 1986

Source: adapted from <https://www.statista.com/chart/14477/votes-for-us-supreme-court-justice-since-1986/>

Defeat at the Senate confirmation stage of the nomination process is relatively rare. The Senate last formally voted against a nominee in 1987, and the last time a nominee was withdrawn by the president was in 2005 (see Figure 16.3).

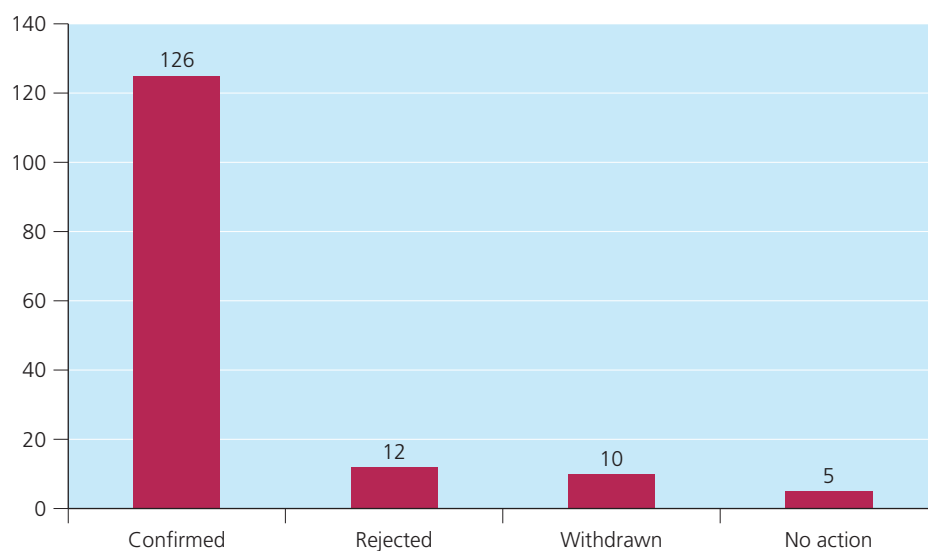


Figure 16.3 Result of Supreme Court nominations

CASE STUDY

Controversial nominations: Merrick Garland and Amy Coney Barrett

Barack Obama nominated Merrick Garland to the Court in March 2016. Republicans held the Senate and declared that they would not consider Garland as there was a presidential election due in November. Democrats were furious, arguing that such an action was unprecedented, and that the Senate should begin hearings as the president had a right to nominate whomever he chose.

Four years later, a vacancy on the Court again arose during an election year. Following Ruth Bader Ginsburg's death in late September 2020, Trump

nominated Amy Coney Barratt to the Supreme Court. Despite the presidential election being just weeks away, Republicans were eager to take advantage of their Senate majority and confirm Barrett quickly. More controversially, Trump made it clear that he wanted Barrett confirmed before the election so that she could potentially rule in his favour if he chose to appeal the election result to the Supreme Court. In the event, the Supreme Court refused to hear cases regarding the 2020 election results. Barrett is known for being anti-abortion, and there have been fears that the Republican-heavy Supreme Court could vote to overturn *Roe v Wade*.



Presidents Obama and Trump both nominated new Supreme Court justices in an election year. The Republican-controlled Senate refused to consider Obama's nominee, Merrick Garland (left), in 2016, but rushed to confirm Trump's pick, Amy Coney Barrett (right), in 2020

CASE STUDY

Controversial nominations: Clarence Thomas and Brett Kavanaugh

In 1991 George H. W. Bush nominated Clarence Thomas to become the second African-American justice in the Court's history. The nomination was nearly derailed by accusations of sexual harassment from Thomas's former colleague Dr Anita Hill. Clarence Thomas denied all charges and accused the Senate Judiciary Committee of conducting 'a high-tech lynching for uppity blacks who in any way think for themselves'. He was eventually confirmed by the Senate in a highly partisan vote, with only 11 Democrats prepared to support him and 2 Republicans opposing.

Trump's nomination of Brett Kavanaugh in 2018 was also thrown into jeopardy by an accusation of sexual misconduct. Dr Christine Blasey Ford gave detailed testimony of an alleged sexual assault by Kavanaugh when she was 15 and he 17, which he forcefully denied. Kavanaugh had been nominated to fill the seat vacated by Anthony Kennedy, the swing vote on the Court, which supercharged his political significance. The president mocked Dr Ford at a political rally, while demonstrations were held on Capitol Hill by women's organisations supporting #BelieveWomen and conservative women united behind #BackBrett. Pressure groups on both sides spent millions of

dollars advertising and campaigning. Kavanaugh was eventually confirmed by 50–48 votes, in the closest Senate confirmation vote ever recorded. The vote was almost entirely on party lines: only one Democrat



voted for him and one Republican against. Twenty-seven years had passed since Clarence Thomas's confirmation, but again the Senate confirmed a justice despite serious allegations of sexual misconduct.



The controversial confirmation hearings of Clarence Thomas (left) in 1991 and Brett Kavanaugh (right) in 2018 show how politicised the judicial confirmation process can be

Independence once appointed

STUDY TIP

It is important to remember that justices are completely independent once they are appointed. Although the president hopes their appointees will interpret the Constitution in a certain way, the president has no influence over them once in post.

Judges are completely independent once appointed, and have life terms. This means that the president's ability to influence them ends once they are appointed, as they cannot be removed from office for making a judgement that the president dislikes. Republican president George H. W. Bush appointed David Souter (served 1990–2009), who became an unexpectedly liberal member of the Court as opposed to the conservative justice that Bush had hoped for. Justices have even ruled against presidents who appointed them, as Bill Clinton's appointees Ruth Bader Ginsburg and Stephen Breyer did in 1997 when they ruled that the president was not immune to prosecution. Trump's nominees Neil Gorsuch and Brett Kavanaugh judged in *Trump v Vance* (2020) and *Trump v Mazars* (2020) that the president did not have an absolute right to withhold his tax returns and financial records from an investigation.

DEBATE

Is the selection and appointment process of Supreme Court justices fit for purpose?

Yes

Detailed scrutiny of every nominee means past misdemeanours or controversial decisions are almost certainly uncovered.

There are several opportunities for unsuitable candidates to be withdrawn from the process.

The Senate Judiciary Committee members are experts in judicial matters and undertake detailed scrutiny of the candidates.

No

Presidents choose nominees who appear to support their political philosophy.

Justices may be selected for their record on issues such as abortion as opposed to judicial excellence.

Questioning by the Senate Judiciary Committee may be aggressive or focused on embarrassing the nominee as opposed to analysing judicial expertise.

Yes

Senate confirmation is a check on the power of the president, as the nominee must win the support of a majority of senators.

The Court has a broad range of conservative and liberal justices, allowing a range of different legal approaches to be represented.

Justices are independent once appointed, and may follow a different approach to that hoped for by the president who appointed them, e.g. David Souter.

The involvement of the president and the Senate gives the two elected branches of government oversight of the process of selecting justices, which is important for democracy as the Supreme Court has so much power as guardian of the Constitution.

No

If the Senate is held by the president's party it tends to carry out less effective scrutiny.

In recent years there has been less bipartisan support for justices.

The Senate's refusal to hold hearings for Merrick Garland in 2016 was a political decision that violated the president's right to appoint a justice to the Court.

Pressure groups spend millions of dollars campaigning for or against nominees.

Media interest in nominees can be intrusive and personal.

The Senate's confirmation of Brett Kavanaugh following sexual assault allegations damaged the Court's reputation in the eyes of many Americans.



Individually or in pairs, evaluate the effectiveness of the selection and appointment process of Supreme Court justices by considering how effectively the process achieves its purpose.

KNOWLEDGE CHECK

- 1 What type of court is the Supreme Court?
- 2 What type of cases does the Supreme Court try?
- 3 Who is responsible for nominating new Supreme Court justices?

Current composition of the Supreme Court

Table 16.1 shows the current composition of the US Supreme Court.

Table 16.1 Composition of the US Supreme Court, 1 January 2021

Justice	Date appointed	President appointing
Chief Justice		
John Roberts	2005	George W. Bush (R)
Associate Justices		
Clarence Thomas	1991	George H. W. Bush (R)
Stephen Breyer	1994	Bill Clinton (D)
Samuel Alito	2006	George W. Bush (R)
Sonia Sotomayor	2009	Barack Obama (D)
Elena Kagan	2010	Barack Obama (D)
Neil Gorsuch	2017	Donald Trump (R)
Brett Kavanaugh	2018	Donald Trump (R)
Amy Coney Barrett	2020	Donald Trump (R)

The chief justice is currently John Roberts, a conservative justice appointed by George W. Bush in 2005. The chief justice has the same powers as the associate justices, but is also responsible for chairing the Court, and decides which justice will write opinions on cases in which the chief justice is in

the majority. In this way, the chief justice can influence the character of the judgements the Court makes. They are also responsible for administering the oath of office at presidential inaugurations and chairing a presidential impeachment trial in the Senate. John Roberts presided over the impeachment trial of Donald Trump in 2020.

At any given time, the US Supreme Court is named after its chief justice, so the current Court is known as the 'Roberts Court'. However, the balance of justices on the Court has far more bearing on its judgements than an individual chief justice. There is currently a 6-3 conservative majority on the Court (see Table 16.1).

All justices usually hear each case, so the odd number of justices on the bench prevents tied decisions. However, there have been periods when fewer than nine justices have tried a case. This can happen when a seat on the Court is empty. For example, there were only eight justices on the Court following associate justice Antonin Scalia's death in 2016, until Neil Gorsuch was appointed in 2017. It may also happen if a justice has a connection to the case in question and therefore recuses (excuses) themselves from trying the case. In cases where the Supreme Court is tied (e.g. 4-4), the lower court's decision stands. The Court needs a minimum of six justices to try a case.

Balance

The balance of the Court is of the utmost political importance. For years, Anthony Kennedy (served 1988–2018) was known as the 'swing vote' on the Court. Kennedy was appointed by Republican Ronald Reagan and frequently made conservative judgements on issues such as gun control and campaign finance. However, he also made liberal judgements on abortion, LGBTQ+ rights and affirmative action. Kennedy wrote the **majority opinion** for *Obergefell v Hodges* (2015), which legalised same-sex marriage across the USA.

Kennedy's retirement in 2018 was a huge blow for liberals. Donald Trump appointed a successor, Brett Kavanaugh, who was seen as more conservative. This has made the Court more likely to make conservative judgements. For example, in *Rucho v Common Cause* (2019) and *Lamone v Benisek* (2019) the Court ruled that **partisan gerrymandering** was not unconstitutional. The Court voted 5-4 on ideological grounds, meaning the five conservative justices made up the majority and the four liberal justices dissented.

However, the Supreme Court makes many judgements that do not split neatly along liberal and conservative lines. Many rulings focus on technical legal interpretation and are not inherently political. The Court regularly reaches unanimous judgements, suggesting that in some cases the political leanings of the justices are less relevant than their shared legal expertise. Even in the most finely balanced judgements, the division between liberals and conservatives is not always clear cut. From 2018 to 2019 less than 50% of the 5-4 decisions had all five conservative justices in the majority, and every conservative justice voted with liberals at some point in a 5-4 ruling. In the 2019–20 term, Chief Justice John Roberts was the justice most likely to act as a 'swing vote', joining liberal justices in key rulings on abortion and transgender rights. The 5-4 conservative majority Court also made decisions against Trump, including overruling his attempt to end the Deferred Action for Childhood Arrivals (DACA) programme in 2020.

USEFUL CONCEPTS

Majority opinion An explanation of the judgement reached by a majority of the Court, written by a justice in the majority. Unless the decision is unanimous, a minority opinion is also presented, written by a justice on the minority side and explaining why they believe the majority have made the wrong judgement.

Partisan gerrymandering

The practice of redrawing electoral district boundaries to give an advantage to one political party. Racial gerrymandering (redrawing boundaries based on race) is broadly illegal, but the Supreme Court has ruled that partisan gerrymandering is a political question that cannot be decided by the federal courts.

ACTIVITY

Read the article 'A brief history of Anthony Kennedy's swing vote' on the NPR website (see Further reading, page 394) and make a list of the landmark judgements that were swayed by Kennedy's deciding vote. Decide whether each judgement would have been supported by conservatives or progressives.

SYNOPTIC LINK

Gerrymandering helps to create more safe electoral seats, and can contribute to political polarisation. You can find out more about gerrymandering in Chapter 18.

Diversity

The Supreme Court has often been criticised for its lack of diversity. Only five women have ever sat on the Court. The first was Sandra Day O'Connor (served 1981–2006), who was followed by Ruth Bader Ginsburg (served 1993–2020), and there are currently three female justices: Sonia Sotomayor, Elena Kagan and Amy Coney Barrett. Only two African-Americans have sat on the Court: Thurgood Marshall (served 1967–91) and Clarence Thomas (served 1991–). Sonia Sotomayor is the first and only Hispanic justice on the Court.

The nature of judicial power

The Supreme Court has the power of judicial review. This means that it can:

- declare the actions of the executive branch to be unconstitutional — this could be actions taken by the federal government or state governments
- declare laws to be unconstitutional — this could be Acts of Congress or Acts passed by state legislatures

The Court's power to strike down any legislation, and its ability to rule against the executive, is an important check on the other two branches of government. Judicial review ensures that all branches of federal and state government comply with the Constitution.

SYNOPTIC LINK

The Constitution is silent on many areas of crucial importance to modern society such as abortion and transgender rights. You can learn more about the Constitution in Chapter 11.

KNOWLEDGE CHECK

- 4 What is the current balance of the Court?
- 5 How many women and how many African-Americans have sat on the Court?
- 6 What two things can the Supreme Court rule unconstitutional using its power of judicial review?

The constitutional role of the Supreme Court

The Supreme Court has two important constitutional roles:

- Interpreting the Constitution
- Protecting citizens' rights

Supreme Court as guardian of the Constitution/constitutional interpretation

Although the Constitution is a codified document, its meaning is not always clear. The Supreme Court's role is to interpret the Constitution and apply it to modern situations. It ensures that both laws and executive actions comply with the Constitution so, in effect, the Constitution means whatever the Supreme Court says it means. As the Constitution is sovereign, this gives the Supreme Court tremendous power to determine the meaning of the law in the USA.

However, Supreme Court justices disagree about how the Constitution should be interpreted. Justices are often described as 'conservative' or 'liberal', but the terms 'strict constructionist' and 'loose constructionist' better explain the ways in which they approach their role as guardian of the Constitution.

Strict constructionism

Strict constructionism states that the Constitution should be interpreted strictly according to what it says. According to this legal philosophy, the Constitution is a precise legal document that can only be updated or changed through the formal amendment process, which requires the consent of two-thirds of both houses of Congress and three-quarters of state legislatures. Interpretations of the Constitution, therefore, should not depart from the meaning of the text, even when applying it to modern situations. Strict constructionists tend to make conservative judgements.

Strict constructionists are closely associated with **originalists**, who believe the language and words in the Constitution should be interpreted in the way in which the framers intended them to be read, even if this now appears outdated. Perhaps the most famous originalist was Antonin Scalia (served 1986–2016), who summarised his philosophy like this:

'The constitution that I interpret and apply is not living but dead, or as I prefer to call it, enduring. It means today not what current society, much less the Court, thinks it ought to mean, but what it meant when it was adopted.'

Republican presidents aim to appoint strict constructionist or originalist justices. Clarence Thomas, the longest-serving justice on the Court and a dedicated originalist, was appointed by George H. W. Bush. Trump appointed three originalists, Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett. However, Gorsuch pointed out in 2019 that an originalist justice will not automatically make conservative judgements:

'Originalism is a theory focused on process, not on substance. It is not "Conservative" with a big C focused on politics. It is conservative in the small c sense that it seeks to conserve the meaning of the Constitution

KEY CONCEPTS

Strict constructionism A judicial approach in which the text of the Constitution is followed as closely as possible when making judgements.

Originalism A judicial approach in which the language and words in the Constitution are interpreted according to the original intentions of the framers.

as it was written. The fact is, a good originalist judge will not hesitate to preserve, protect, and defend the constitution's original meaning, regardless of contemporary political consequences...In my own judicial career, I've written many originalist rulings with so-called "liberal" results.'

Indeed, in 2020, Gorsuch wrote the majority opinion on the landmark ruling that outlawed discrimination by employers because of sexual orientation or gender. In practice, however, most judgements made by originalists are conservative.

Loose constructionism

On the liberal wing of the Court, **loose constructionism** dominates. Loose constructionists believe that the Constitution should be interpreted loosely and applied to a modern context as opposed to relying on the framers' precise meaning. This allows the interpretation of the document to evolve over time. Loose constructionists, such as the late Ruth Bader Ginsburg, favour the idea of a **living constitution**. In their view, the Constitution is a living document that should be interpreted by the Court to suit the changing needs of society over time. Stephen Breyer wrote in 2014 that the Constitution should be interpreted 'in light of its text, purposes, and our whole experience'. Loose constructionists are usually appointed by Democrat presidents and are likely to make judgements that liberals support.

KEY CONCEPT

Loose constructionism

A judicial approach in which the Constitution is interpreted more loosely, according to a modern context.

USEFUL CONCEPT

Living constitution The idea that the Constitution is a living document which should be interpreted according to the needs of modern society.

ACTIVITY

Compare and evaluate the approach taken to the Constitution by these two justices:

- Justice Neil Gorsuch: the article 'Justice Neil Gorsuch: why originalism is the best approach to the Constitution' can be found on *TIME* magazine's website — see Further reading, page 394].
- Ruth Bader Ginsburg: a video clip in which Ginsburg explains why a more flexible approach to the Constitution is needed to allow it to evolve over time is available on YouTube — search for Justice Ruth Bader Ginsburg explaining how 'We, The People' has become ever more inclusive.

Views of interpretative approaches

Liberals criticise strict constructionism for preventing necessary and positive change. In contrast, many conservatives argue that the practice of updating the meaning of the Constitution beyond its framers' intentions is a power grab by unelected justices. In 2017, the year before he was appointed to the Court, strict constructionist Brett Kavanaugh explained his view:

'...we believe that changes to the constitutional laws are to be made by the people through the amendment process and, where appropriate, through the legislative process, not by the courts snatching that constitutional or legislative authority for themselves.'

Not all justices neatly identify as strict or loose constructionist. Liberal justice Sonia Sotomayor dismissed the focus on a living constitution, arguing that the decision-making process is much more complex:

'What you are doing is interpreting new facts to an established law that in part has been given meaning in precedent, and that in part has a historical background, and you're drawing from all of that toolbox of

precedent, history...and from statutory construction principles. It is not about reading words strictly or about living constitution. It's about giving meaning on the basis of facts that are presented to you.'

Some conservative justices also resist being labelled with these terms. Chief Justice John Roberts explained at his confirmation hearings that he 'does not have an all-encompassing approach to constitutional interpretation' and instead would 'follow the approach or approaches that seem most suited in the particular case'. Roberts' flexible view of interpretation led him to act as the 'swing vote' on the Court after Anthony Kennedy's 2018 retirement.

Supreme Court as protector of citizens' rights

The Supreme Court protects civil rights and liberties. It is the ultimate court of appeal for people who believe their rights have been infringed. It can strike down laws passed by federal or state legislatures if they do not comply with the Bill of Rights or other constitutional rights. It can rule actions taken by federal or state executives unconstitutional if they infringe citizens' constitutional rights.

The Supreme Court also has a crucial role in interpreting rights and liberties within the Constitution. Table 16.2 shows how the Court has applied the provisions in the Bill of Rights to a modern context.

Table 16.2 Examples of how the Court has interpreted the Bill of Rights

Provision	Interpretation
First Amendment: freedom of religion 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.'	The Court must strike a balance between avoiding an 'established' religion (one adopted by the state) and allowing citizens to freely practise their religion. In <i>Burwell v Hobby Lobby Stores Inc.</i> (2014) the Court struck down part of the Affordable Care Act 2010, which made family-run businesses contribute to health insurance that might be used for contraception.
First Amendment: freedom of speech 'Congress shall make no law...abridging the freedom of speech, or of the press.'	Political donations are seen as an expression of free speech and have been protected by the Court. In <i>Citizens United v Federal Election Commission</i> (2010) the Court controversially ruled that corporations, unions and associations had the same rights to free speech as individuals, so could make political donations and political adverts in the same way as an individual.
Second Amendment: gun rights 'A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.'	Liberals interpret this as a collective right to bear arms within a militia (a military force made up of civilians, used in emergencies such as the US War of Independence, 1775–83). Conservatives claim the amendment provides an individual right to bear arms, and most argue that this would be infringed by any form of gun control. In <i>District of Columbia v Heller</i> (2008), the Court struck down a law banning handgun ownership and ruled that the amendment does confer an individual right to bear arms.
Eighth Amendment: the death penalty 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.'	The death penalty is legal in 31 US states. Supreme Court rulings have focused on deciding what constitutes 'cruel and unusual punishment'. In <i>Baze v Rees</i> (2008) the Court ruled that lethal injection was not 'cruel and unusual punishment', so could be used for executions.

SYNOPTIC LINK

Supreme Court rulings on civil rights and liberties have had a very significant impact on US politics. You can learn more about civil rights and liberties in Chapter 23.

KNOWLEDGE CHECK

- 7 How do strict constructionists interpret the Constitution?
- 8 How do loose constructionists interpret the Constitution?
- 9 Which part of the Constitution has the Supreme Court used to protect civil rights and liberties?

The significance of judicial review

The Supreme Court is arguably the most powerful of the three branches of government, because of its power of judicial review. In *Boumediene v Bush* (2008), the Court ruled that foreign nationals detained as terrorist suspects at Guantanamo Bay by George W. Bush's administration had a right to challenge their detentions in federal courts, and *United States v Texas* (2016) struck down Obama's executive order giving an indefinite delay in deportation to around 5 million illegal immigrants. Judicial review is therefore a very powerful check on the powers of the executive and the legislature. The only way for the other two branches of government to overrule the Court's decision is to formally amend the Constitution, so in practice the Court's decision almost always stands.

Judicial review is not expressly explained in the Constitution but was established by a Supreme Court judgement, *Marbury v Madison* (1803). This was the first time the Court struck down an Act of Congress and established the principle that the Supreme Court could overrule legislation if it conflicted with the Constitution. For ordinary Americans, judicial review is the means by which their civil rights and liberties are protected from infringement by federal or state executives, or legislatures.

Debates about the political significance of the Supreme Court

Political appointees

Each justice is of great political significance from the moment they are nominated by the president. The balance of the Court is watched very closely, with the current conservative 6-3 majority representing a source of grave concern for liberal Americans. The health of older justices is of continual interest to the media, with Ruth Bader Ginsburg's medical news repeatedly making headlines for years before her death in 2020.

Controversial rulings

The Court has ruled on the most controversial areas of US public policy, including abortion, affirmative action, gun control, marriage rights and immigration. **Landmark rulings** have led to politically significant changes to the law. *Roe v Wade* (1973) ruled that women have a constitutional right to an abortion, and *Obergefell v Hodges* (2015) ruled that it was unconstitutional to prevent same-sex marriage. These judgements had the same effect as a new law legalising abortion or same-sex marriage, but lacked a democratic mandate.

KEY CONCEPT

Landmark ruling Supreme Court judgement that establishes a new legal principle or fundamentally changes the way in which the Constitution is interpreted. This effectively changes the meaning of federal law.

The Court has also intervened in the electoral process. The 2000 presidential election was so close that it depended on which candidate could win Florida's Electoral College votes. After a machine recount, George W. Bush led Al Gore by just 327 votes out of 6 million cast. The Florida Supreme Court ordered a manual recount in certain counties, a decision that Bush appealed to the US Supreme Court. The Court ruled 5-4 in *Bush v Gore* (2000) that a recount within the timeframe set in Florida was unconstitutional. This was one of the most controversial decisions ever made by the Court because it decided the general election, with Bush becoming president by 271 to 266 Electoral College votes as a result. All conservative justices voted in Bush's favour, and all four justices on the liberal wing of the Court voted against. Liberal justice Ruth Bader Ginsburg wrote a scathing opinion on the case, which substituted the traditional 'I respectfully dissent' with the stinging 'I dissent'.

A 'quasi-legislative' body

Through their decisions on certain cases, unelected justices have created new rights for Americans. This has led critics to label the Court a 'quasi-legislative' body, and to argue that it has moved beyond its constitutional role of *interpreting* the law to usurping Congress's role in *making* the law.

Strict constructionists and originalists argue that the text of the Constitution does not mention abortion or same-sex marriage, nor did framers have any intention of authorising either when they wrote the Constitution. They condemn the justices involved for 'legislating from the bench', or making rulings that interpret the Constitution in such a radically new way that it has the *effect* of making a new law. Indeed, as the Court's decisions can only be overruled by the Court itself or by a formal constitutional amendment, a landmark ruling is much more difficult to reverse than a law passed by Congress. In practice the Court's new interpretation of the law functions as a form of 'interpretative amendment' to the Constitution.

Judicial restraint

There is considerable debate as to how the Supreme Court should exercise its power. Conservative justices typically claim to practise **judicial restraint**. This is a legal philosophy in which the Supreme Court avoids unnecessary conflict with the president or Congress, rarely overturning their actions or laws. Judicial restraint upholds the principle of **stare decisis**, the convention that rulings should follow past **precedent** wherever possible, respecting previous Supreme Court decisions. Most judges try to follow precedent where possible to avoid contradictory judgements, but this is particularly true of those who practise judicial restraint.

KEY CONCEPT

Judicial restraint Judges take a deferential attitude to the legislative and executive branches of government because these two branches are elected, whereas the judiciary is not. Judges who practise judicial restraint seldom rule that laws or executive actions are unconstitutional, and tend to rule in line with past precedent.

USEFUL CONCEPTS

Stare decisis Latin term meaning 'to stand by things decided', referring to the convention that judges follow legal precedent where possible.

Precedent The term used for previous legal judgements, which form an important part of the law.

KEY CONCEPT

Judicial activism Decisions by judges that are aimed at improving society. Judges engaged in judicial activism are likely to strike down laws and rule against executive actions as opposed to deferring to the other two branches of government.

Judicial activism

Liberal justices are often accused of practicing **judicial activism**, which is making judgements in order to improve society. Justices who believe in a living constitution may actively seek to make progressive rulings that modernise the rights of Americans.

Judicial activism is usually practised by individual justices, although Chief Justice Earl Warren was said to be leading an 'activist court' in *Brown v Topeka* (1954). This landmark case struck down the doctrine of 'separate but equal' facilities for white and black Americans, removing the legal justification for segregation (see case study, page 388). Warren was determined to achieve a consensus in order to give the greatest possible weight to the Court's judgement. Using his experience as a politician, Warren chaired private discussions between the justices and convinced them to give a unanimous ruling. Judicial activists also have less objection to breaking with precedent if required, as the Brown verdict did by reversing an earlier ruling by the Court, *Plessy v Ferguson* (1896).

Although *Brown v Topeka* is an example of judicial activism, almost all political and legal commentators now see it as an essential and irreversible judgement. Segregation has been consigned to history. However, another landmark case, *Roe v Wade* (1973), has been far more politically contentious (see case study, page 390). Conservatives condemned it as judicial activism, as the male framers clearly had no thought of granting abortion rights when they wrote the document in 1787.

SYNOPTIC LINK

The Bill of Rights is the first ten amendments to the Constitution. The Tenth Amendment reserves for the states all powers that the Constitution does not delegate to the USA or prohibit to the states. The Supreme Court has used this amendment to make rulings in defence of states' rights, e.g. *New York v United States* (1992). You can find out more about the Bill of Rights in Chapter 11.

Federalism

The Supreme Court has played an important role in the development of federalism. It has frequently made judgements that overruled state laws. In *District of Columbia v Heller* (2008), the Court ruled that a District of Columbia law banning handguns was unconstitutional as the right to bear arms cannot be overruled by individual state legislatures. *Roe v Wade* (1973) took the same approach to abortion, which had previously been legal in several states, restricted in many others and illegal in 30. *Obergefell v Hodges* (2015) forced all states to allow same-sex marriage. However, the Supreme Court has also defended states' rights against Congress. The Rehnquist Court (1986–2005) made several key rulings in support of states. In *Murphy v National Collegiate Athletic Association* (2018) the Roberts Court struck down a law passed by Congress in 1992 that prohibited states from authorising sports gambling, on the grounds that Congress was exceeding its powers under the commerce clause of Article I of the Constitution.

Most conservatives believe that diversity between states is essential in a federal country and oppose new restrictions on states. Many liberals argue that 'states' rights' have been used to justify discrimination. Civil rights advances such as racial desegregation and same-sex marriage would not have occurred without Supreme Court judgements that applied to all states.

ACTIVITY

The website <https://www.oyez.org/> gives a summary of every US Supreme Court case. You can find the case you are looking for by typing its name into the website's search box. Use Oyez to research *New York v United States* (1992), *United States v Lopez* (1995) and *Murphy v National Collegiate Athletic Association* (2018). For each case find out:

- the key question being asked of the Supreme Court
- how the Court justified its decision

DEBATE

Is the Supreme Court too political?

Yes	No
This unelected body can make important changes to the most controversial areas of public policy.	For the Constitution to remain relevant the Court must apply it to modern areas of public policy, even if this is controversial.
The nomination and confirmation process of justices is highly politicised.	Justices are independent and free from political influence once appointed.
Most justices tend to make conservative or liberal judgements.	Decisions are made on the basis of legal argument and not political principles.
Justices generally share the political stance of the president who appointed them.	Some justices do not reflect the political stance of the president who appointed them, e.g. David Souter, or sometimes vote against that president's interests, e.g. Brett Kavanaugh and Neil Gorsuch.
The Court has been criticised for acting as a 'third house of the legislature' by effectively making rather than interpreting law.	Some justices do not consistently vote the same way, e.g. Anthony Kennedy was a 'swing vote'.
Judicial activist judges make rulings that they believe improve society, but were not intended by the framers.	Judicial activism can be necessary to ensure all citizens enjoy equal protection under the law, as in <i>Brown v Topeka</i> (1954).
<i>Roe v Wade</i> (1973) remains a key dividing line between liberals and conservatives.	Congress acts as a check on an overly political Supreme Court: if it wished to, it could initiate a constitutional amendment to overturn the Court's decision.
The Court effectively decided the result of the presidential election in <i>Bush v Gore</i> (2000).	
Over time the Court has increased the power of the federal government at the expense of states' rights.	

 In pairs or a group, consider the above points. Do you think the Supreme Court is too political? When weighing up the evidence, remember to distinguish between politicisation and independence.

KNOWLEDGE CHECK

- 10 What is the only way for the executive or the legislature to overrule a judicial review ruling by the Supreme Court?
- 11 Why could the power of judicial review be seen as undemocratic?
- 12 Why has the Supreme Court been described as 'a quasi-legislative body'?
- 13 What is judicial restraint?

Landmark rulings and related controversies

A landmark ruling is a decision by the Supreme Court that establishes a new legal principle, or fundamentally changes the way in which the law is interpreted. These are among the most politically controversial judgements made by the Court.

Two of the most significant landmark rulings are *Brown v Topeka* (1954) and *Obergefell v Hodges* (2015) (see case studies).

CASE STUDY

***Brown v Topeka Board of Education* (1954)**

Thirteen African-American parents from Topeka, Kansas, brought this lawsuit after their children were denied access to the local all-white school, forcing them to travel miles to attend an all-black school. The National Association for the Advancement of Colored People (NAACP) supported the legal challenge. The parents were represented by lawyer Thurgood Marshall, who later became the first African-American Supreme Court justice.

Marshall asked the Supreme Court to reconsider a judgement it had made almost 60 years earlier, *Plessy v Ferguson* (1896). This judgement underpinned the policy of **segregation** in the American South, where racism was endemic. Southern state legislatures had passed segregation laws (known as Jim Crow laws) to enforce 'separate but equal' facilities for white people and African-Americans. These included separate parks, restrooms, water fountains, restaurants, public transport and schools. In reality, facilities were not equal, as those for white people tended to receive much better funding. Segregation, therefore, legitimised and entrenched the idea of racial inferiority in the South.

The Supreme Court ruled unanimously that the doctrine of 'separate but equal' was fundamentally unequal, and therefore violated the Fourteenth Amendment, which gives citizens the right to 'equal protection' under a state's laws. Chief Justice Earl Warren explained that, even if 'tangible' aspects of education were equal (such as school resources and teaching quality), the 'intangible' result of segregation was a feeling of inferiority and reduced educational attainment. In a follow-up judgement in 1955, the Court ordered local school authorities to integrate public schools.

Brown v Topeka is arguably the most significant landmark case in US history. It ended more than half a century of legal segregation and transformed the rights of African-American citizens. *Brown v Topeka* is also significant because:

- in the South the decision was seen as an attack on states' rights by the federal Supreme Court
- it led to confrontation at Little Rock, Arkansas in 1957, when the state governor supported the high school's decision not to admit nine African-American students: President Dwight D. Eisenhower eventually ordered federal troops to escort the 'Little Rock nine' into school
- it was a key victory for the growing civil rights movement, and the NAACP
- it was the product of an activist court, led by Chief Justice Earl Warren



In 1957 President Eisenhower sent federal troops to escort nine African-American students into the all-white high school of Little Rock, Arkansas

USEFUL CONCEPT

Segregation The policy of separating white people from African-Americans in the American South, including in schools, restaurants, libraries, public transport, toilets and water fountains.

STUDY TIP

Be aware that the Supreme Court has a complicated history where federalism is concerned. It has certainly increased the reach of federal law into areas such as segregation, abortion and same-sex marriage, but it has also limited the power of Congress to pass laws that infringe on states' rights, e.g. in *Murphy v National Collegiate Athletic Association* (2018).

CASE STUDY***Obergefell v Hodges* (2015)**

James Obergefell married his husband in Maryland (where same-sex marriage was legal), but the state of Ohio (where same-sex marriage was illegal) did not recognise their marriage. Obergefell made a legal challenge that reached the Supreme Court, which also considered several similar cases in the same ruling relating to the states of Michigan, Kentucky and Tennessee.

Like *Brown v Topeka*, this judgement focused on the 'equal protection' clause of the Fourteenth Amendment. The Court ruled 5-4, with the majority arguing that the right to marry was fundamental, supported by the equal protection clause.

Obergefell v Hodges legalised same-sex marriage across the USA, giving same-sex couples the same rights as any others. It is also significant because:

- the majority of justices took a loose constructionist approach and interpreted the Constitution in the context of modern liberal ideas about sexuality
- a fundamental change was made to US law, by an unelected body
- strict constructionists condemned the judgement as judicial activism and 'legislating from the bench'
- the judgement horrified many Christian and conservative groups who viewed marriage as a union 'between a man and a woman'
- dissenting justices argued that the right to religious freedom was being infringed by the ruling

SYNOPTIC LINK

Brown v Topeka and *Obergefell v Hodges* both had important implications for federalism. In *Brown*, the state of Kansas was defending educational segregation, and in *Obergefell* states claimed the right not to recognise same-sex marriages performed in other states. The Supreme Court ruled against both states. You can learn more about federalism in Chapter 11.

KNOWLEDGE CHECK

- 14 What is a landmark case?
- 15 Which landmark case saw the Supreme Court strike down the doctrine of 'separate but equal' facilities for white people and African-Americans?
- 16 Which landmark case legalised same-sex marriage across the USA?

Significance of the judiciary in shaping one area of public policy: abortion

SYNOPTIC LINK

You can learn more about how the Supreme Court has shaped civil rights in Chapter 23.

The Supreme Court has been significant in shaping many areas of public life including federalism, civil rights, race, gender, punishment and abortion, the last of which we will focus on here.

The Court has played a dominant role in shaping public policy on abortion since its landmark decision in *Roe v Wade* (1973). Before *Roe*, abortion was illegal or highly restricted in many states across the USA. *Roe* made abortion legal in every state. However, 'pro-life' supporters have never ceased to challenge the judgement. Since the Supreme Court acquired a conservative majority in 2018, many critics of *Roe* have aimed at reversing or eroding it completely.

CASE STUDY

Roe v Wade (1973)

The *Roe* in the case was 'Jane Roe', an alias used by a 21-year-old woman named Norma McCorvey to give herself anonymity at the time. McCorvey was pregnant but abortion was illegal in Texas, where she lived. Two young female lawyers took on her case and challenged the right of Texan law to deny her an abortion. The case took several years to reach the Supreme Court, during which time McCorvey gave birth and gave her baby up for adoption.

The Supreme Court ruled 7-2 that women had an unrestricted right to an abortion in the first stage (trimester) of pregnancy. It considered the 'due process' clause in the Fourteenth Amendment, which reads, 'nor shall any state deprive any person of life, liberty or property, without due process of law'. The Court found that this implied a 'right to privacy' from the government, which Texas had breached by denying McCorvey an abortion. The ruling allowed states to regulate abortion in the second trimester of pregnancy, but only in the interests of the mother's health. In the third and final trimester, when the foetus could survive outside the womb, abortion could be banned unless there was a risk to maternal life or health.

Roe was significant because:

- it was a landmark case for the women's movement, giving women a constitutional right to personal choice regarding their bodies

- abortion became a hugely divisive political issue in US politics, with most Democrats identifying as 'pro-choice', and most Republicans and evangelical Christians as 'pro-life'
- the ruling had the same effect as passing a law to legalise abortion, so Conservatives criticised unelected justices for 'legislating from the bench'
- some argued that a law passed by Congress would have proved broader support and a democratic mandate for abortion rights



In 1989 Norma McCorvey (left), the 'Jane Roe' in *Roe v Wade*, campaigned outside the US Supreme Court in support of *Roe*. McCorvey later became a born-again Christian and campaigned against abortion, before her death in 2017

Following *Roe v Wade*, the Supreme Court made several important judgements that defined abortion rights further.

Planned Parenthood v Casey (1992)

Health provider and non-profit organisation Planned Parenthood challenged the right of Robert Casey, governor of the state of Pennsylvania, to introduce several regulations on abortions. The Court had a conservative majority, but to the relief of liberals, it applied *stare decisis* and did not overturn *Roe*. However, the Court accepted the right of states to regulate abortion in the early stages of pregnancy, provided that regulation was not an 'undue burden' on women seeking an abortion. This weakened abortion rights, as the first trimester was no longer protected from restrictions. Most of Pennsylvania's regulations were allowed to stand.

Gonzales v Carhart (2007)

This was a challenge by doctors to the Partial-Birth Abortion Ban Act 2003. The Act had been passed by Congress and signed into law by George W. Bush. It banned a certain type of abortion used in late-term pregnancies, in which the head or upper body of the foetus is extracted from the mother's womb before the foetus dies. The ban did not include an exception for the health of the mother and was ruled unconstitutional in the lower federal courts before it reached the Supreme Court.

The Court's 5-4 judgement upheld the ban. This reduced women's abortion rights, as that type of abortion was no longer available to them, even if their health was affected. All five justices in the majority were Catholic. The only woman on the Court, liberal Ruth Bader Ginsburg, opposed the decision and argued that the Court was hostile to women's abortion rights. The judgement was a triumph for religious and conservative pressure groups. Many switched to a strategy of eroding abortion rights through legislation and legal challenges as opposed to simply overturning *Roe v Wade*.

Whole Woman's Health v Hellerstedt (2016)



A crowd gathers in front of the Supreme Court Building as the Court's decision on *Whole Woman's Health v Hellerstedt* was about to be announced. Signs read 'I stand with Whole Women's Health', 'Stand with Planned Parenthood' and 'Keep Abortion Legal'.

The conservative strategy of using legislation to reduce access to abortions led state legislatures to pass a series of restrictions. Pro-choice advocates labelled these Targeted Regulation of Abortion Providers (TRAP) laws, and criticised them as medically unnecessary and intended to reduce the availability of abortions. Examples include restrictions on the corridor width of the medical facility where the abortion is carried out, a specific size requirement for the room where the procedure is done, and a minimum distance from the nearest hospital (which clinics in rural areas could not comply with). These restrictions led to the closure of many abortion clinics in states with legislatures hostile to abortion. By 2017 six states had only one abortion provider.

Woman's Health v Hellerstedt (2016) was a challenge to several TRAP laws enacted by the Texas state legislature. The Court ruled 5-3 that these restrictions placed an 'undue burden' on women by failing to provide a medical benefit significant enough to justify limiting access to abortion. The case was hailed as the greatest success for the 'pro-choice' movement in decades. It seemed the Court was defending abortion rights. The composition of the Court had indeed changed considerably since *Gonzales v Carhart* (2007). The three liberal female justices (Ruth Bader Ginsburg, Eleanor Kagan and Sonia Sotomayor) all voted with the majority, as did liberal Stephen Breyer and the crucial 'swing vote' on the Court, Anthony Kennedy. However, the election of Donald Trump in 2016 presented the greatest challenge yet to *Roe v Wade*.

Trump's conservative Court

In his 2016 presidential debate against Hillary Clinton, Trump claimed that *Roe v Wade* would be overturned 'automatically' if he were president, as he would be appointing 'pro-life' justices. However, the first two justices appointed by Trump, Neil Gorsuch and Brett Kavanaugh, both expressed their commitment to 'following precedent' during their confirmation hearings. This suggested that they would practice judicial restraint and respect the Court's previous decisions, including *Roe v Wade*. Some found this reassuring. Moderate 'pro-choice' Republican senator Susan Collins cast one of the key votes to give Kavanaugh his narrow 50-48 victory after being assured that he would not overturn *Roe*. However, *Roe* can be eroded by subsequent Court judgements, even if not directly overturned.

Kavanaugh's appointment in 2018 gave the Court a conservative majority. In an attempt to provide the Supreme Court with the opportunity to overrule or weaken *Roe*, many state legislatures with conservative majorities passed laws in 2019 that severely restricted abortions. These included 'heartbeat bills', which banned abortion from the point at which a foetal heartbeat can be detected (about 6–7 weeks), and a near-total ban on all abortions in the state of Alabama. These laws were blocked by federal courts for violating *Roe v Wade*, and the states then appealed those decisions. The campaign to remove federal abortion rights received support from more than 200 members of Congress, who signed an **amicus curiae brief** at the start of 2020 asking the Supreme Court to reconsider *Roe v Wade* and potentially overrule it. The first of the highly restrictive abortion laws was considered by the Court in *Medical Services v Russo* (2020), but to the surprise of conservatives the Court ruled 5-4 that the restrictions were unconstitutional. The appointment of Amy Coney Barrett to the Supreme Court in 2020 gave conservatives

USEFUL CONCEPT

Amicus curiae brief A written submission to the court from an outside party (executive branch, academics or pressure groups) that includes key information relevant to the case, and that the group hopes will influence justices in their favour.

new hope that *Roe* would be overturned by the 6-3 conservative majority Court. Barrett explained in her confirmation hearings that she did not consider *Roe v Wade* to be a 'super precedent' as it was too controversial to be established law, although she emphasised that this didn't automatically mean it should be overruled.

KNOWLEDGE CHECK

- 17 Which landmark case legalised abortion across the USA?
- 18 Which Supreme Court ruling upheld the Partial-Birth Abortion Ban Act 2003, which banned a certain type of abortion used in late-term pregnancies?
- 19 Why did many state legislatures pass laws severely restricting abortions in 2019?

SUMMARY

- The nine justices on the Supreme Court are appointed by the president and confirmed by the Senate, in a highly politicised process.
- Since 2020 the Court has had a 6-3 conservative majority.
- The Supreme Court's power of judicial review allows it to rule that laws or executive actions are unconstitutional.
- The Supreme Court acts as the guardian of the Constitution and citizens' rights.
- There is much debate regarding the Supreme Court's political significance, which focuses on the politicisation of the Court and the differing approaches of the justices, the Court's record of making controversial rulings and the extent to which it acts as a quasi-legislative body.
- Landmark rulings deliver fundamental changes to US law, e.g. *Brown v Topeka* (1954) and *Obergefell v Hodges* (2015).
- The Supreme Court has shaped public policy, e.g. *Roe v Wade* (1973) made abortion legal and was the first of a series of important judgements on this issue.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three aspects of the selection and appointment of Supreme Court justices. (9 marks)
- 2 Explain and analyse three ways that the Supreme Court performs its role as the guardian of the Constitution. (9 marks)
- 3 Explain and analyse three ways that the Supreme Court is politically significant. (9 marks)

Paper 2 Section B style question

Read the extracts below and answer Question 4 that follows.

Judicial review

In June 2020 one of the candidates for the Democratic presidential nomination, Pete Buttigieg, called for limited reform of the Supreme Court but did not suggest limiting the power of judicial review. This led to a debate about the role of judicial review.

Why Pete Buttigieg is wrong about the Supreme Court

Judges nominated by Trump will be making law, and interpreting the Constitution, for at least a generation... There's no depoliticizing an institution that deals with political questions and operates in the context of political struggles and conflicts. The Supreme Court has always been political, and no reform short of ending the power of judicial review will disentangle it from ordinary, partisan politics... It's not the high-stakes, overheated spectacle of the nomination process but the prospect of government by justices that threatens to undermine both the court and our democracy. After decades of railing against 'activist judges,' Republicans are poised to reverse the hard-won gains of activists and ordinary people through judicial fiat.

Source: adapted from an article written by Jamelle Bouie, political opinion columnist, and published in the *New York Times* in June 2019

Judicial review solves a problem of power

Under judicial review... the postwar Supreme Court has struck down Jim Crow segregation, prohibitions on interracial marriage, laws denying the right to an abortion, laws prohibiting sodomy, and laws forbidding same-sex marriage. Today it is short-sighted and reckless [to call for an end to judicial review], as anyone old enough to have lived through 9/11 and its aftermath ought to know... The Supreme Court ought to thwart the will of democratic and legislative majorities by fiat whenever a law or an action violates the Constitution. Justices will not always interpret the Constitution correctly, of course. Judicial review has led to wrongheaded results in the past and will again in the future. But the check it imposes on the tyranny of majorities is indispensable.

Source: adapted from an article written by Conor Friedersdorf, a political staff writer at *The Atlantic* magazine, and published in *The Atlantic* in June 2019

- 4 Analyse, evaluate and compare the different arguments in the extracts regarding the significance of judicial review in the USA.

(25 marks)

FURTHER READING

Articles

Bennet, A. and de Souza, N. (Feb 2020) 'Debate: does the US Supreme Court wield too much power?', *Politics Review*, Vol. 29, No. 3, pp. 10–11.

Kilheeny, E. (2019) 'The US Supreme Court: too powerful and too political?', *Politics Review*, Vol. 29, No. 1, pp. 10–11.

Websites

BBC — 'How has Donald Trump's Court changed America?': <https://www.bbc.co.uk/news/world-us-canada-53357590>

NPR — 'A brief history of Anthony Kennedy's swing vote': <https://www.npr.org/2018/06/27/623943443/a-brief-history-of-anthony-kennedys-swing-vote-and-the-landmark-cases-it-swayed>

TIME magazine — 'Justice Neil Gorsuch: why originalism is the best approach to the constitution': <https://time.com/5670400/justice-neil-gorsuch-why-originalism-is-the-best-approach-to-the-constitution/>

17

Comparing the judiciaries

KEY QUESTIONS ANSWERED

- What are the similarities and differences between the supreme courts?
- What impact do the supreme courts have on government and politics?
- What is the relative extent of the powers of the UK Supreme Court and the US Supreme Court and what are the bases of those powers?
- How does the relative independence of the judiciaries in the UK and USA compare?
- How can the three theoretical approaches be used to analyse the similarities and differences between the judiciaries?

BACKGROUND INFORMATION

Could most British people name a UK Supreme Court case, or one of its judges? Possibly yes, since the activist Gina Miller's high-profile challenge to the UK government over Brexit in 2017 and 2019. Then-president of the Supreme Court, Lady Hale, became a household name after declaring Boris Johnson's prorogation of parliament unlawful. However, members of the public might struggle to think of many more examples. Until as recently as 2009, the UK Supreme Court did not even exist.

In the USA, landmark judgements *Brown v Topeka* (1954) and *Roe v Wade* (1973) are a part of public consciousness, as are the Supreme Court justices. The USA's culture wars over abortion, LGBTQ + rights, gun control and religion are fought in its Supreme Court as much as in Congress. Indeed, the Court's role as interpreter of a sovereign constitution gives it the power to overrule laws passed by Congress if it deems them to be unconstitutional. In *Bush v Gore* (2000) the Supreme Court even decided the result of the presidential election. The US Supreme Court has had an enormous impact on the lives of ordinary Americans over the course of its long history.

Similarities and differences between the supreme courts

History

The rationale behind the creation of the UK and US supreme courts was the same, although they were set up hundreds of years apart. Each was intended to provide an independent judiciary that was fully separate from the other two branches of government. The US Supreme Court was included in the Constitution as an integral part of the new republic, and sat for the first time in 1790. The UK Supreme Court is a very young institution. Prior to its creation, the UK Law Lords had sat in the Appellate Committee of the House of Lords and were not physically independent from parliament. The establishment of a

new supreme court was part of a programme to modernise the judiciary and separate it from parliament.

Selection and appointment of justices

Although both systems involve detailed scrutiny of potential candidates, there is a fundamental difference in the way in which justices are selected in both countries:

- US justices are political appointees who are nominated by the president and confirmed by the Senate.
- UK justices are selected by an independent selection commission before being presented to the Lord Chancellor (a government minister) for approval.

The US appointment process is highly politicised, whereas the UK equivalent is independent and receives far less media attention. In fact, the position of UK Supreme Court justice is advertised and candidates apply as they would for any other job. An independent selection committee recommends one name to a government minister (the Lord Chancellor), who asks the prime minister to recommend them to the Queen for formal appointment. The Lord Chancellor can reject one name with good reason, or ask the committee to reconsider once, but then must confirm the appointment.



Brett Kavanaugh (left) and Neil Gorsuch, both conservative justices appointed by President Trump, share a joke with Elena Kagan, a liberal who was appointed by President Obama

Characteristics of justices

UK justices must have been either a senior judge for at least 2 years, or a solicitor in one of the UK's highest courts, or a barrister, for 15 years. In the USA there are no official requirements to be a Supreme Court justice but modern appointees always have significant legal or judicial experience.

Women and ethnic minorities are underrepresented on both courts. The US Supreme Court has a higher proportion of women but has never had a female chief justice, whereas the UK Supreme Court had a female president, Lady Hale, from 2017 to 2020. There are no justices from ethnic minorities

on the UK Court, but two on the US Court. Overall, the US Court is more diverse and representative. This is partly explained by the higher proportion of women and ethnic minorities in lower US courts, the main recruitment pool for justices.

Tenure of justices

UK and US Supreme Court justices both enjoy security of tenure. They can only be removed during their term of office for wrongdoing, by impeachment in the USA or via the judicial complaints procedure in the UK. Security of tenure allows them to make judgements against the government without fear of repercussions. However, there is an important difference in the length of tenure. UK justices must retire by age 70 (unless they were appointed before 1995), whereas US justices have life tenure — they can choose to retire but many continue on well into their eighties. It can be difficult for justices to retire: octogenarian liberal justice Stephen Breyer would have been anxious to avoid vacating a seat on the Court while Trump was president, as Trump would have appointed a conservative replacement. On the other hand, the UK age limit has been criticised for forcing the unnecessary retirement of justices in their prime, such as Lady Hale.

ACTIVITY

Discuss the differences between the two courts with a partner and evaluate which is the most significant.

Judicial approach

Some US justices, who are mainly conservative, practise judicial restraint. This is similar to the approach of UK justices, who usually follow precedent and defer to parliament. However, some US justices believe their role is to interpret the 'living constitution' (see page 382) in a modern context. This loose constructionist approach can lead to judicial activism, when justices make decisions to improve society. In the UK, justices have a much more limited interpretative role.

KNOWLEDGE CHECK

- 1 When was each supreme court established?
- 2 What is the main difference in the appointment processes of the two courts?
- 3 Which supreme court has a higher proportion of women and ethnic minorities?

Impact on government and politics

Both supreme courts have made politically controversial rulings, including declaring the government's actions unlawful and ruling against laws passed by the legislature. The US Supreme Court has had a greater impact on government and politics because it has the power to interpret the Constitution and strike down laws passed by Congress or state legislatures. As a relatively new institution, the UK Supreme Court is still in the process of defining its role. However, its impact on government and politics is unlikely to ever compare to that of the US Court because parliament can ignore or overturn any controversial ruling it makes.

USEFUL CONCEPT

Fundamental laws The basic laws that make up the constitution of a country. In the USA these are superior to laws passed by Congress, which can be struck down if they conflict with the fundamental laws entrenched in the Constitution.

Impact on culture and society

During its long history, the US Supreme Court has made important judgements on public policy. *Brown v Topeka* (1954) led to the end of racial segregation in the American South. *Roe v Wade* (1973) legalised abortion and *Obergefell v Hodges* (2015) made same-sex marriage legal across the USA. The UK Supreme Court has not made judgements that have had a comparable impact on culture or society or politics.

Impact on the executive and the legislature

The Constitution is sovereign in the USA and provides a set of '**fundamental laws**' for US justices to interpret when ruling on government action or laws passed by Congress. When they make politically controversial judgements of how the Constitution should be applied, they are often accused of 'legislating from the bench'. This does not occur in the UK, where the principle of parliamentary sovereignty gives the Supreme Court a narrower remit. In fact, two of the UK Supreme Court's most politically controversial judgements were a defence of parliamentary sovereignty against government action. First, in *R Miller v Secretary of State for Exiting the European Union* (2017), the Court found that the government could not trigger Article 50 (the mechanism for the UK to leave the EU) without approval from parliament. A couple of years later, in *R Miller v the Prime Minister* (2019), the Court ruled unanimously that Boris Johnson acted unlawfully by asking the Queen to prorogue parliament weeks before the UK was due to exit the EU. Prorogation ended the parliamentary session and prevented parliament from carrying out its constitutional function of scrutinising and debating the government's plans for Brexit. The Court ruled that parliament was no longer prorogued.

Impact on federalism and devolution

Both supreme courts have played an important role in defining the rights of the constituent parts of the two nations. In the USA, all three of the cases mentioned above extended the scope of federal law at the expense of states' rights, strengthening the power of the federal government. In *UK Withdrawal from the EU (Scotland Bill)* (2018), the UK Supreme Court ruled that the Scottish Parliament had gone beyond its devolved powers by seeking to write its own laws for certain areas of EU law that were to be returned to the UK after Brexit. The Court ruled that the sovereignty of the UK Parliament meant that the Scottish Parliament could not exceed its powers granted in the Scotland Act 1998.

Bases and extent of powers

Bases of powers

Article III of the US Constitution established the US Supreme Court and gave it 'the judicial power of the United States'. The Supreme Court's powers come from the Constitution, with the important exception of judicial review of the legislature, which the Court awarded itself by striking down an Act of Congress in *Marbury v Madison* (1803). The UK Supreme Court was created by

an Act of Parliament, the Constitutional Reform Act 2005. The UK Supreme Court's powers were therefore given to it by parliament, although the two institutions are separate and independent. The UK Court's power of judicial review is much more limited than that of the USA as it cannot rule Acts of Parliament unconstitutional.

As the UK does not have a codified constitution, the UK Supreme Court also reviews legal precedent (previous law made by judges) and decides how it applies to new cases. It considers parts of the British Constitution that are written, such as the Human Rights Act 1998, alongside constitutional conventions and common law (law that comes from precedent and tradition rather than parliamentary statute). UK justices defer to parliament's intentions when interpreting the law. In contrast, the US Supreme Court is concerned with the wording in a single document: the Constitution. This gives the US Court a stronger basis for its power as it does not need to take the wishes of Congress into account.

Extent of powers

STUDY TIP

Be clear about the differences between the European Convention on Human Rights (ECHR), the Human Rights Act (HRA) 1998 and EU law. The ECHR is separate from the EU, so the UK continued to be a signatory to the ECHR after it left the EU. The HRA incorporated most ECHR law into UK law so that citizens could pursue human rights cases through the UK courts.

Final courts of appeal

The US and UK supreme courts are both final courts of appeal for those seeking justice. However, there are two areas in which the UK Court has not acted as the final court of appeal. First, while the UK was part of the EU, and during the transition period following its withdrawal, EU law superseded UK law. In cases relating to EU law the European Court of Justice was the final court of appeal, not the UK Supreme Court. When the UK left the EU, all EU legislation that applied to the UK was transferred into UK law. This means that the UK parliament now has the final say on UK law, and the UK Supreme Court is the final court of appeal. Second, the UK is a signatory to the European Convention on Human Rights (ECHR), which is separate to the EU. The ECHR was signed in 1950 and commits its 47 signatories to abide by its articles protecting human rights. People can seek justice for breaches of their human rights at the European Court of Human Rights (ECtHR) in Strasbourg. The UK has added the ECHR to its Constitution as the Human Rights Act 1998. This allows individuals to bring human rights cases to UK courts. However, they still have a right of appeal to the ECtHR, so this is one area of law in which the Supreme Court is not the final court of appeal.

SYNOPTIC LINK

One of the main arguments for leaving the EU was the need to 'take back control'. Many Leavers objected to the European Court of Justice acting as the final court of appeal for UK cases that were based on EU law, as this meant that the UK Supreme Court could be overruled by EU judges. You can learn more about the EU in Chapter 10.

Judicial review

Judicial review is an important check on the power of the government and used by both the US and UK supreme courts. Justices consider the legality of the government's actions and may find them unconstitutional in the USA, or

USEFUL CONCEPT**Retrospective legislation**

A law to legalise something that occurred before it was passed. In the USA the Court's judgement can only be overruled by a constitutional amendment, which is very difficult to achieve.

STUDY TIP

Judicial review is a key concept for this exam paper, so you need to understand it. Be aware that both supreme courts review their government's actions but that judicial review is more powerful in the USA, where the Supreme Court's ruling cannot be overridden or ignored and Acts of Congress are also subject to judicial review.

USEFUL CONCEPT**Human Rights Act 1998**

Incorporated the rights within the European Convention on Human Rights into UK law.

SYNOPTIC LINK

To amend the Constitution, two-thirds of both houses of Congress must propose the amendment and three-quarters of state legislatures must vote to ratify it. The Constitution has only been amended 27 times. You can learn more about constitutional amendments in Chapter 11.

rule them to be *ultra vires* (see page 113) in the UK. The US Supreme Court's power of judicial review is greater than that of the UK Court. In theory, a government with a majority in parliament could override the UK Supreme Court's ruling. Parliament can pass **retrospective legislation** to authorise actions which the Supreme Court has ruled *ultra vires*. UK governments generally comply with decisions made by the Court, as they wish to be seen to be respecting the rule of law. Indeed, if the government lacks sufficient support in parliament it will be forced to comply, as in the two Miller cases. However, the government can choose to simply ignore the decision.

In the USA, Acts of Congress are also subject to judicial review, and can be struck down if the Supreme Court finds them to be unconstitutional. In the UK, parliament is sovereign so its laws cannot be struck down. Judicial review only applies to government actions, not to Acts of Parliament, so is a more limited power.

Protection of rights

The two supreme courts have an important difference in their ability to protect citizens' rights. The US Supreme Court can strike down laws that infringe the Bill of Rights, whereas the UK Supreme Court can only identify a law as being incompatible with the **Human Rights Act (HRA) 1998** and invite parliament to consider redrafting legislation. Crucially, parliament can ignore the UK Supreme Court's 'declaration of incompatibility' if it wishes to.

Unlike the Bill of Rights in the USA, the HRA is not entrenched in the British Constitution, so parliament could pass a new law to modify it or scrap it completely. Similarly, parliament could withdraw the UK from the ECHR if it wanted to. This makes it possible for parliament to pass laws that infringe human rights, or for a majority government to pass retrospective legislation to legalise any breach of human rights. In the USA, rights are entrenched in the Constitution so cannot be removed except by a constitutional amendment, although they can be reinterpreted by the Supreme Court.

Constitutional interpretation

The US Supreme Court has a much greater role in interpreting the Constitution than the UK Court. Landmark cases effectively change the meaning of the Constitution by acting as 'interpretative amendments' that can only be reversed by a constitutional amendment or a subsequent decision by the Court. The UK Supreme Court cannot make sweeping interpretative changes to the Constitution, although it can clarify its *meaning*, as it did in both Miller cases with regard to the limitations of the government's royal prerogative power.

KNOWLEDGE CHECK

- 4 Why is the US Supreme Court's power of judicial review greater than that of the UK Court?
- 5 Which term is used to describe the ruling by the UK Supreme Court that the government has acted 'beyond the powers' granted to it by parliament?
- 6 Where do the US and UK supreme courts get their authority from?

Relative independence of the US and UK judiciaries

Judicial independence

An independent judiciary is essential for the rule of law. US and UK systems both encourage judicial independence, meaning that judges are free from any external pressure, improper influence or interference. This should allow them to make decisions based solely on the law, and to hold even the most powerful members of the government to account.

In both legal systems, tenure ensures that the position of justices is protected from government interference. The judiciaries are also structurally and physically independent from the other two branches of government. This independence allows the judiciaries to rule against the government as they see fit. For example:

- *United States v Texas* (2016) struck down Barack Obama's executive order giving millions of illegal immigrants an indefinite delay in deportation.
- *R (on the application of The Public Law Project) v Lord Chancellor* (2016) ruled that the Lord Chancellor was acting *ultra vires* by imposing a residence test for legal aid (state support with legal costs).

Judicial politicisation

Politicisation describes a situation in which judges are drawn into politics. This compromises their neutrality as guardians of the law. Politicisation can happen when judges make controversial judgements that are criticised by politicians or the media, or if they are motivated by their own political beliefs as opposed to a strict reading of the law.

Judicial politicisation can threaten judicial independence in the following ways.

Politicised courts

In the USA, the ability of presidents to appoint either 'liberal' or 'conservative' justices means that the Supreme Court usually has a political leaning. A Republican president is likely to be challenged on fewer occasions by a conservative-majority court than a liberal-majority court, a situation that does not apply in the UK as judges rule on a narrower basis of constitutional interpretation, and their political views are not a focus of public interest in the same way.

In perhaps the most politically controversial decision taken by the US Supreme Court, *Bush v Gore* (2000), the conservative-majority Court ruled 5-4 against an election recount in Florida, a decision that made George W. Bush president. This led to a barrage of criticism that the Court lacked the necessary independence to rule on the case.

On the other hand, several pieces of evidence suggest that politically appointed judges can act independently in the USA:

- The president has no influence over justices once they have been appointed, as they have tenure.
- Justices may rule against the political interests of the politicians who appointed them, as associate justices Neil Gorsuch and Brett Kavanaugh did against Donald Trump in *Trump v Vance* (2020).

STUDY TIP

There is a subtle difference between judicial independence and judicial neutrality. The latter means that judges should be neutral and make decisions based on the law and not personal opinions. In effect, it describes their internal decision-making process. Judicial independence means that judges should be free of *external* influences when making decisions.

ACTIVITY

Read the article 'What Trump has done to the courts, explained' from the website www.vox.com. The article is written from a liberal perspective. What are the most important points it makes and how would a conservative respond to these criticisms of Trump and the Republicans?

SYNOPTIC LINK

Citizens United v Federal Election Commission (2010) ruled that corporations, unions and associations had the same rights to free speech as individuals. You can learn more about campaign finance in Chapter 18.

ACTIVITY

Boris Johnson suggested that the UK might benefit from moving towards a US-style system of appointing justices. List the advantages and disadvantages of each country's system for selecting and appointing justices, and evaluate whether the UK system needs changing.

- Two of the dissenting justices in *Bush v Gore* (see above) were Republican appointees, who became part of the liberal wing of the Court.
- The Court does not always split neatly along ideological lines and frequently makes unanimous rulings. The 6-3 conservative majority Court unanimously declined to hear a case in which Trump challenged the 2020 election results, even though three of the justices were his appointees.

However, Trump's frustration with what he saw as 'liberal' judicial rulings led him to reshape the composition of US appeals courts while he was president. Senate Republicans blocked Obama's nominations to the judiciary at the end of his presidency, ensuring that some 100 seats were waiting to be filled when Trump took office. By the end of his presidency, Trump had appointed 54 appeals court judges, only two fewer than Obama managed to appoint during his entire two-term presidency. Trump deliberately picked young justices, with an average age of 50, to ensure a long-term legacy of conservative judges. Although this new generation of justices may act independently once appointed, there seems little chance they will be completely neutral in their rulings.

Political or public pressure

A second way that judicial politicisation could affect judicial independence is through political or public pressure. If judges make certain judgements to avoid negative publicity, or criticism from key politicians, then they are not acting independently. It is impossible to know exactly what motivates justices to make the rulings they do, but there has certainly been an increase in hostile criticism of the judiciary in recent years. This changing political culture has been driven partly by social media. In 2017 the UK's lord chief justice said that social media 'abuse' put judges under 'intolerable pressure'. Trump used Twitter to criticise 'so-called judges' and 'slow and political courts' in 2017, condemned the court system as 'broken and unfair' in 2018 and described *Trump v Vance* (2020) as 'a political prosecution', comparing it to a 'witch hunt'.

Trump was not the first US president to publicly criticise the judiciary — Obama had criticised the Supreme Court's *Citizens United v Federal Election Commission* (2010) judgement, for example. However, Trump's sustained criticism was unprecedented.

Political criticism of the UK judiciary has also evolved during the lifetime of the UK Supreme Court. Initially, it was mainly criticised for its interpretation of the HRA. In 2013, then home secretary Theresa May accused judges of 'ignoring' deportation law by making it more difficult to deport foreign nationals who were criminals. The Brexit debate led to the judiciary being much more politicised. In 2016 the *Daily Mail* used a front-page headline to condemn High Court judges as 'Enemies of the People' after they ruled that the government could not trigger Article 50 and leave the EU without parliament's consent.

The Court's decision to rule against the government in the second Miller case, *R Miller v the Prime Minister* (2019), led to public criticism of the judiciary by Prime Minister Johnson, who suggested that he was considering reforming the judiciary, possibly introducing a style of political appointments similar to that used in the USA:

'I think, if judges are to pronounce on political questions in this way, then there is at least an argument that there should be some form of accountability...The lessons of America are relevant.'

KNOWLEDGE CHECK

- 7 How does the tenure of justices help to ensure judicial independence?
- 8 Why are US justices more politicised than UK justices?
- 9 In which controversial case did the US Supreme Court determine the outcome of an election?

The outgoing president of the Supreme Court, Lady Hale, made it clear that any such changes were not welcome:

‘We do not want to turn into the Supreme Court of the United States, whether in powers or in process of appointments...there is no member of the judiciary...who would favour the politicisation of judicial appointments.’

Lady Hale also rejected the idea that justices are swayed by public criticism, such as the *Daily Mail* headline, saying, ‘We have to continue to do the job according to our judicial oaths...we certainly do not pay any attention to attacks of that nature.’

The US Supreme Court also showed its resilience when it ignored presidential criticism and unanimously declined to hear Trump’s challenge to the 2020 election results. The president expressed his frustration by tweeting ‘The Supreme Court really let us down. No wisdom! No courage!’.

Theoretical approaches to the judiciaries

We can use structural, rational, and cultural theory to compare and analyse the similarities and differences between US and UK politics. For an explanation of the three theoretical approaches, see Chapter 12.

Structural: the role of political institutions

Structural similarities are crucial to judicial independence:

- Security of tenure allows justices to make independent judgements.
- Separation of powers gives the judiciaries independence from the other two branches of government.

Structural differences between the USA and the UK lead to important differences between the two judiciaries:

- Entrenched ‘fundamental laws’ in the US Constitution have produced a more powerful judiciary than in the UK. The US Court may use its interpretative powers for judicial activism if it wishes.
- Parliamentary sovereignty limits the power of the UK Supreme Court, as it cannot override parliament. In contrast, the sovereignty of the US Constitution means that its Supreme Court can strike down laws passed by Congress.
- Appointing US justices is a political process, which leads to more politicised and higher-profile US justices. UK justices are independently appointed and do not have an obvious ‘conservative’ or ‘liberal’ leaning.



President of the Supreme Court (2017–20) Baroness Hale stands with her colleagues before they process from Westminster Abbey to the Houses of Parliament to mark the start of the legal year

Rational: the role of individuals acting to advance their interests or personal preferences

Justices should take a rational approach to the law, analysing the merits of each case, and making a logical judgement. If the meaning of the law was clear, then justices should reach unanimous judgements, which they do on both courts in a significant proportion of cases. However, the meaning of the law is often difficult to determine, so justices make an individual judgement based on their personal analysis. This can result in divided judgements, with justices writing strong opinions and dissents on both sides of the argument.

Individual justices make decisions based on their own legal preferences and philosophy. In the USA, the presence of strongly liberal and conservative justices means that judgements are frequently controversial and justices may be accused of judicial activism. UK justices generally follow a more restrained judicial approach.

The judiciaries are often censured by individuals aiming to advance their own interests. This politicises the judiciary and puts justices under pressure. The leaders of both countries have also shown a willingness to reform the judiciaries to their own benefit. Trump appointed unprecedented numbers of appeal court judges, choosing more conservative candidates than previous Republican presidents. Johnson appointed an attorney general, Suella Braverman, who had argued that parliament needed to 'take back control' from the judiciary, which she felt was acting as a 'political decision-maker' and 'supplanting parliament'.

Cultural: the role of shared ideas and culture

Both cultures prize the rule of law and judicial independence. This tradition dates back to Magna Carta (1215), which established the principle that no one can be imprisoned unlawfully. The new US republic inherited these values from its previous existence as 13 British colonies. Both countries pride themselves on representing the best of the Western liberal legal tradition, in which a strong judiciary holds the government to account and the rule of law applies.

In recent years, populism was on the rise in the form of Trumpism in the USA, and the UK electorate's decision to leave the EU and then give Johnson a majority general election victory in 2019. Populists paint themselves as the true representatives of the people, and have criticised the judiciary for supposedly thwarting the will of the people. The *Daily Mail*'s 'Enemies of the People' headline suggested a cultural battle between overly liberal judges and the people. This politicises the judiciaries, and may diminish public respect for their decisions.

The US Supreme Court's definition of citizens' rights via key landmark judgements has generated bitter cultural battles between liberals and religious groups over issues such as abortion and same-sex marriage. The UK Supreme Court has a lower public profile and its deference to parliament means that

its judgements are less significant. The creation of an independent Supreme Court was intended to make the judiciary more accessible to the public. Its role is certainly clearer than that of the Law Lords, and high-profile judgements such as the Miller cases have raised public awareness of the Court's role, but it remains less politically significant, and less politicised, than its US counterpart.

SUMMARY

- The US Supreme Court has a much longer history than the UK Court, and a more prominent role as guardian of the Constitution.
- The US Supreme Court has had a much greater impact on government and politics than the UK Court, and is more politicised.
- The UK Supreme Court was given its power by parliament, which can overrule its decisions, whereas the US Supreme Court gets its authority from the US Constitution and so can only be overruled by a further ruling by the Court or a constitutional amendment.
- Justices in both systems have security of tenure and can make independent judgements.
- Structural, rational and cultural approaches give different perspectives on the similarities and differences between the judiciaries.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways that cultural theory could be used to study the similarities and difference between the US and UK supreme courts. (9 marks)
- 2 Explain and analyse three ways that rational theory could be used to study the impact of the US and UK supreme courts on government and politics. (9 marks)
- 3 Explain and analyse three ways that structural theory could be used to study the relative independence of the judiciary in the USA and UK. (9 marks)

Paper 2 Section C style questions

- 4 'The US Supreme Court has a far greater impact on government and politics than its UK equivalent.' Analyse and evaluate this statement. (25 marks)
- 5 'The UK judiciary is significantly less powerful but considerably more independent than the US judiciary.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

BBC — a 2018 article comparing the US and UK supreme courts: <https://www.bbc.co.uk/news/world-us-canada-45632035>

Supreme Court — a 2019 speech by then president of the Supreme Court Lady Hale, in which she outlines her view of how the Court should operate (note, her argument begins on page 3 of her speech, as the introduction is a

tribute to a lawyer): <https://www.supremecourt.uk/docs/speech-191008.pdf>

The Conversation — 'UK Supreme Court: 10 years of treading the knife edge between politics and law': <https://theconversation.com/uk-supreme-court-ten-years-of-treading-the-knife-edge-between-politics-and-law-123223>

The electoral process and direct democracy

KEY QUESTIONS ANSWERED

- What is the format of US elections?
- What are the main characteristics of US election campaigns?
- How are candidates selected and nominated?
- How well does the Electoral College work?
- What factors affect the outcome of US elections?
- Why do Americans vote the way they do?
- What link is there between parties and their core voting coalitions?
- How important is campaign finance in US elections and should it be reformed?
- How does direct democracy (referendums, initiatives, propositions and recall elections) work at state level in the USA?
- What is split ticket voting and what best explains high levels of abstention in US elections?

BACKGROUND INFORMATION

In 2017, when Prime Minister Theresa May called a snap election, the video clip reaction from Brenda in Bristol went viral. 'You're joking. Not another one. Oh for God's sake! There's too much politics going on at the moment.' Most Americans, however, would have little sympathy for Brenda. For them, constant campaigning and frequent high-stakes elections are largely par for the course. US election campaigns are high-octane affairs and seemingly omnipresent. They also consume ever increasing amounts of dollar bills, although whether 'more' is 'better' is debatable.

The electoral system in the USA

The main elections in the USA are:

- **Presidential elections:** indirectly (using the Electoral College process) select the occupant of the White House every 4 years.
- **Congressional elections:** directly elect members of both chambers of Congress.
- **Primaries (and increasingly rarely caucuses):** select candidates for each party, most importantly, for the presidential elections, but also for congressional and state elections.
- **Direct democracy:** various types of direct democracy include ballot initiatives, referendums and recall elections.

Timings of elections

The timings for major elections are set down clearly in the Constitution. Presidential elections take place every 4 years in November, with the formal inauguration taking place the following January. If a president dies or resigns mid-term, as Nixon did in 1974, the vice president steps up and completes the rest of the term without another election.

KEY CONCEPT

Primaries Formal secret ballot elections that select delegates for parties' presidential nomination conventions. They are also used to choose party candidates for state and congressional elections. Most states today hold primaries rather than caucuses.

Congressional elections take place every 2 years when the whole of the House and a third of the Senate is up for election. Those taking place between presidential elections are known as midterms. The timings for all other elections such as state, local and primary elections (**primaries**) are decided by individual states and often occur once or twice a year. For example, Wisconsin — controversially at the height of the COVID-19 pandemic — went to the polls in April 2020 for its primaries and local elections. The latter included a bitterly fought contest for a position on the state supreme court. It polled again in November 2020 for the presidential elections (presidentials) and Congress. Most voters in the USA, therefore, have plenty of opportunities to cast their ballot, often twice in some years.

STUDY TIP

It can be useful when evaluating the US electoral system to note that many states elect judges up to state supreme court level. This arguably removes the independence of the judiciary. Although such elections officially are normally non-partisan, in reality many candidates clearly identify as conservative or liberal.

SYNOPTIC LINK

The timing for elections to Congress is set out in the Constitution, precluding calling a 'snap election' as in the UK. This is another example of the USA's constitutional rigidity. You can learn more about the US Constitution in Chapter 11.

Role of states

Many other electoral issues are decided at a state level. There are federal rules in place concerning, for example, the requirement that all polling stations are accessible to people with disabilities, and there is no racial or gender bar to voting. Beyond that, there is plenty of scope for variation, and sometimes a degree of political ingenuity such as manipulating boundaries for House districts (a process called **gerrymandering**, covered in more detail later in this chapter). Individual states have leeway too in areas such as voter ID laws and how primary elections are organised. The latter also highlights further the complexity of the system. Although the elections themselves are conducted by state authorities, the parties also have input, such as determining the procedure for awarding delegates to the **national nominating convention**.

KEY CONCEPTS

Gerrymandering The deliberate manipulation of electoral districts for party advantage at elections. It only applies to House districts, as the Senate is elected by the state as a whole. Recently, states such as North Carolina and Maryland have been subject to significant partisan gerrymanders. Gerrymandering usually occurs after the 10-yearly national census, when districts are often reapportioned between states due to population changes.

National nominating convention The occasion when the successful candidate is formally endorsed as their party's candidate for the forthcoming presidential election.

KEY CONCEPT

Write-in Some states leave a blank space on ballot papers so voters can write the name of another candidate other than those who appear on the ballot paper.

In addition, separate states have considerable discretion on important areas such as voter registration requirements. For example, North Dakota does not have any formal voter registration system, although voters must produce ID when voting. Ballot access laws are another example of this variation between states. Tight regulations in a few states, such as Oklahoma, meant that in 2020, Green Party candidate Howie Hawkins did not formally appear on the ballot in 21 states, being a **write-in** candidate in 17, while in 4 there was simply no opportunity to vote Green.

In summary, although there are national elections in the USA, there is no national system of elections.

KEY CONCEPT

Electoral College Formally elects the president. It is state-based and does not directly reflect the overall popular vote across the entire country.

The electoral system

In practice, nearly all US elections employ a majoritarian electoral system. This is true for most congressional elections where the candidate with the largest number of votes wins. But there are exceptions, as the arrangement of elections is state-based and there are no federal requirements for electoral systems (other than for the **Electoral College**). For example, Georgia's election law requires a top-two election for its Senate seat. This means that if the top candidate fails to get over 50% of the vote first time round, there follows a runoff 8 weeks later between the top two candidates. This happened in 2020 when in two hotly contested Senate races (unusually, Georgia had both Senate seats up for grabs at that point due to a special election and the routine election), no candidates secured over 50% of the vote, leading to a runoff race in January 2021.

Another example is California, where there is non-partisan blanket primary law. This means that the top two candidates regardless of party affiliation are selected in a state primary, and then go head to head in the actual Senate election. This can have some odd consequences. As a heavily Democratic state nowadays, two Democrats came top in the blanket primary held in June 2018, so the November Senate election was between two Democrats. California's Republicans had no candidate on the ballot.

A final variation is the state of Maine, which since 2018 uses a ranked-choice voting system, broadly similar to single transferable vote (STV), for congressional and local elections. The 2018 midterms saw one House district (2nd) not being won by the candidate who secured the most first preference votes (see Table 18.1).

Table 18.1 Maine 2nd congressional district results, 2018

Party	Candidate	Round 1		Transfer	Round 3		
		Votes	%		Votes	% (gross)	% (net)
Democratic	Jared Golden	132,013	45.6%	+10,427	142,440	49.18%	50.62%
Republican	Bruce Poliquin	134,184	46.3%	+4,747	138,931	47.97%	49.38%
Independent	Tiffany Bond	16,552	5.7%	-16,552	<i>Eliminated</i>		
Independent	Will Hoar	6,875	2.4%	-6,875	<i>Eliminated</i>		
Total active votes		289,624	100%		281,371		100%
Exhausted ballots		—		+8,253	8,253	2.85%	
Total votes		289,624	100%		289,624	100%	

It can lead to some complex ballot papers as well. Not necessarily democracy at its most straightforward.

For presidential elections only, an indirect method of election is used. Each state (plus DC) receives an allocation of Electoral College votes (ECVs) equivalent to the size of their congressional delegation. Therefore, every state has a minimum of three ECVs (all states have at least two senators and one House member). California has the largest number (55) equating to its two senators and 53 House members. Washington, DC has no voting members of Congress but the Twenty-first Amendment (1961) gave it three ECVs. The allocation by state of Electoral College votes is recalculated every 10 years following the national census, when the number of House districts per state is also reviewed. So, states with above average population growth gain both ECVs and House districts over time, due to this process called reapportionment. After the 2010 census, Texas, for example, gained four ECVs in time for the 2012 election, while Ohio and New York lost two apiece. The debate over the pros and cons of the Electoral College is covered later in this chapter.

Significance

The USA has lots of elections. They can vary considerably between states and although most are decided on a winner-takes-all basis, that is not always the case. The strengths and weaknesses of the country's electoral system are debated below.

DEBATE

How effective is the US electoral system?

Strengths	Weaknesses
A huge number of elections and elected offices offer many opportunities for political participation.	US electors often suffer from 'voter fatigue'. So many elections can lead to apathy and a degree of cynicism regarding the political process.
An almost entirely majoritarian electoral system usually ensures clear results and single-party control of legislative chambers.	The electoral system used tends to favour a two-party dominant system, with little scope for third parties and true independents.
The electoral system reflects the federal nature of US government with individual states having much discretion over aspects of elections. This is within a broad national framework, however, to avoid blatant bias and discrimination.	The two parties often control one chamber each of Congress or a state legislature, making deadlock more common.
Primaries and caucuses enable ordinary voters to play the key role in selecting candidates for political parties.	There is plenty of scope for electoral manipulation (for example, with gerrymandering and voter ID laws) in individual states. A fully national electoral system could work far better.
The Electoral College again reinforces the federal nature of the USA and ensures smaller states are not overlooked in election campaigns.	Primaries and caucuses increase the amount and length of elections and campaigning, but this also encourages divisions within parties.
	There is electoral distortion via the Electoral College, which can considerably exaggerate the power of smaller states.



Individually or in pairs, decide what is the most significant strength and weakness respectively of the US electoral system, and why.

KNOWLEDGE CHECK

- 1 How often do congressional elections occur?
- 2 What are primary elections used for?
- 3 What body elects the US president?

The main characteristics of American election campaigns

US election campaigns have a number of significant characteristics. These include:

- regularity and ‘constant campaigning’
- more of an emphasis on individual candidates than on party
- more of an emphasis on ‘getting out the vote’ than changing voters’ minds
- a huge focus on ‘swing states’ in presidential elections and early voting states in the presidential primaries
- huge expense, which includes some congressional and state level elections, not just presidentials
- midterm elections and an absence of term limits for many elected offices

Frequency

As we’ve already seen, candidates and parties are almost constantly on a ‘war footing’ in US elections. It is commonly said that campaigning for the next presidential election begins straight after the midterms. This is when the ‘invisible primaries’ start, and a president seeking a second term has a strong eye on their policies’ impact on their re-election prospects. In the midst of the COVID-19 crisis, Trump’s initial reluctance to promote a national lockdown and his talk about churches being open again for Easter (they weren’t!) were ascribed to his fears about the economic impact of a prolonged shutdown. The economic situation is normally seen as crucial to re-election chances, and Trump had earlier played up the USA’s economic performance during his unsuccessful 2020 re-election bid.

Individuality

Many US election campaigns fail to mention the party allegiance of the candidates — in part because it is usually widely known, but it also reflects a political form of ‘rugged individualism’. If you want to run for any elected office in the USA you do not apply to a party and get directly selected. Instead, the onus is on the individual to create a campaign team and get themselves on the ballot by securing enough nomination signatures and raising campaign funds for placards, publicity and political ads on social media and television. In that sense, all candidates are ‘self-starters’.

Clearly, state and national parties can play important roles in channelling finance and directing donors. They can also help secure important endorsements from other party figures. But ultimately, as Trump’s victory in 2016 showed, with enough money, public profile and campaigning skill, it is possible to come out of the political desert and become president. Trump had never held elected office before. Initially, he was strongly opposed to much of

the Republican political establishment. Yet in the end he triumphed. Why? A very sizeable minority of Americans put their trust in him as an individual and not necessarily as a Republican. His slogans were deeply personal, even if not that creative or always inclusive — ‘Build that wall’, ‘Lock her up’ (with reference to his Democrat opponent Hillary Clinton) and, above all, ‘Make America Great Again’. He also stressed and certainly never undersold his self-proclaimed ability as a great business person and dealmaker. The victory of a TV reality star with excellent branding and marketing skills tells us a great deal about how US elections can work, and what often defines them.



Trump in full campaign mode as he speaks at a rally in Miami, Florida on 1 November 2020

Many congressional and state election ads also emphasise key qualities in candidates, such as military service (duty and patriotism), success in their chosen profession (ability and a strong track record), and family and faith (integrity, commitment and values). Those seeking re-election naturally stress achievements in government to date, pledges fulfilled and their accumulated experience. One recent and slightly quirky example was Iowa Senate Republican candidate Joni Ernst, whose memorable 2014 ad ‘Squeal’ featured her gazing into a camera and boasting of castrating hogs on the farm where she grew up. ‘So when I get to Washington, I’ll know how to cut pork [a reference to pork-barrelling – see page 460],’ she said. Then came her punchline. ‘Washington is full of big spenders. Let’s make ‘em squeal.’ Iowa has a large agricultural sector and Ernst went on to win, and was re-elected in 2020.

Getting the ‘right’ people to turn out and vote

Much work in US elections goes into ensuring that core supporters turn out and vote. Most candidates have a strong appeal to certain segments of the electorate, whether that be white evangelicals, African-Americans, college students or single female graduates. Although a substantial number of Americans self-identify as independents, most largely lean towards one party or another. Hence, a lot of time and effort is put into persuading those likely to vote for a candidate to cast their ballot. For example, in 2004, the Republicans ran a national campaign promoting state ballot measures banning same-sex

marriage in the hope this would incentivise white conservative evangelicals to vote and thereby support George W. Bush's re-election bid.

'Get Out the Vote' plays a large role in many campaigns. Equally, 'Get Rid of the Vote' also plays a part. Many individual campaigns have sought indirectly to discourage or suppress certain groups of voters. Cynically, given their core support base, few Republicans actively want African-Americans to vote in increased numbers, as the community overwhelmingly votes Democrat. This probably explains why in some Republican-controlled states, there have been tighter voter ID laws, and less enthusiasm for the postal voting that tends to be more popular with younger or lower-paid workers with long hours, both groups less likely to vote Republican. In 2017, for example, Indiana passed a law allowing the state to purge voters from the rolls without notifying them. However, this was overturned by the courts as it was deemed to violate the National Voter Registration Act 1993. The argument used to justify this restriction centred on allegations of voter fraud, and the promoters denied any attempt at voter suppression. There were renewed accusations from some Republicans following the 2020 election that fraudulent votes had been counted. 'If you count the legal votes, I easily win,' said Trump. 'If you count the illegal votes, they can try to steal the election from us.' Subsequent investigations showed no credible evidence to substantiate these claims.

SYNOPTIC LINK

The court case in Indiana was brought by the pressure groups the Indiana National Association for the Advancement of Colored People (NAACP) and the League of Women Voters. Further information on US pressure groups can be found in Chapter 21.

ACTIVITY

In June 2013, the *Shelby v Holder* case ushered in a wave of tighter laws on voter ID in some states. Research the case and find out why it had the impact it did.



Supporters of President Trump in the crucial swing state of Pennsylvania protest against the 2020 election, alleging voter fraud

The swing movement

One consequence of this state-based electoral system and the Electoral College is that although the USA is a vast country, most campaigning in US national elections takes place in a relatively small number of states. For the presidentials, far more money and time is spent in crucial 'swing states' (those that could vote either way), including Florida, Ohio and Pennsylvania. As Figure 18.1 shows, relatively little energy is spent on 'safe states', such as California or Texas, relative to their size and number of ECVs.

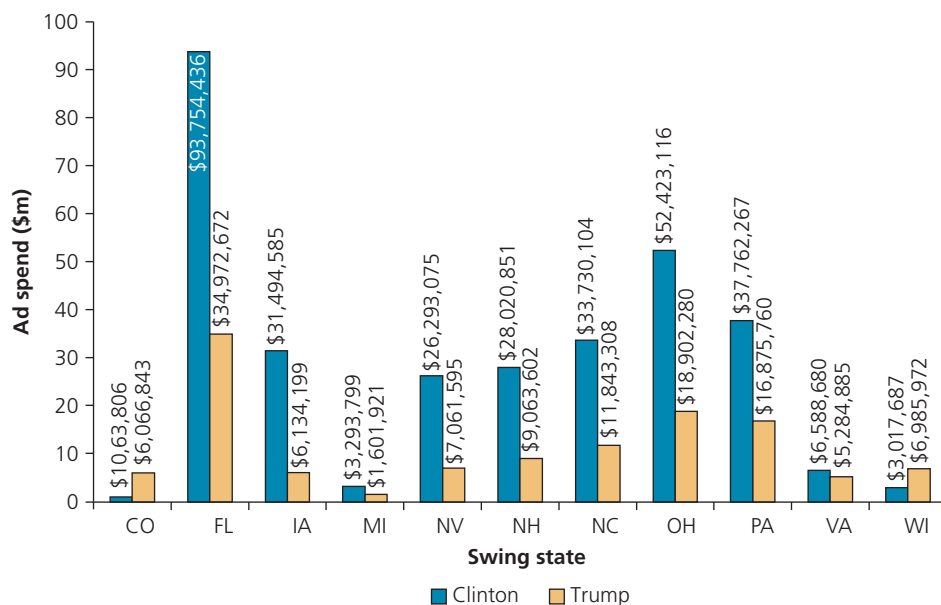


Figure 18.1 Ad spend in the critical swing states, 2016 general election

Source: data from AdAge analysis

The number of campaign rallies and other events also demonstrates this focus on battleground states. Nationalpopularvote.com found that two-thirds (273 of 399) of campaign events in the 2016 presidential race were held in just six states (Florida, Michigan, North Carolina, Ohio, Pennsylvania and Virginia), each a large, crucial swing state.

Figure 18.2 shows the number of campaign visits to individual states made by both 2020 presidential candidates between 28 August and Election Day (3 November). The pandemic reduced the number of visits and rallies that could take place.

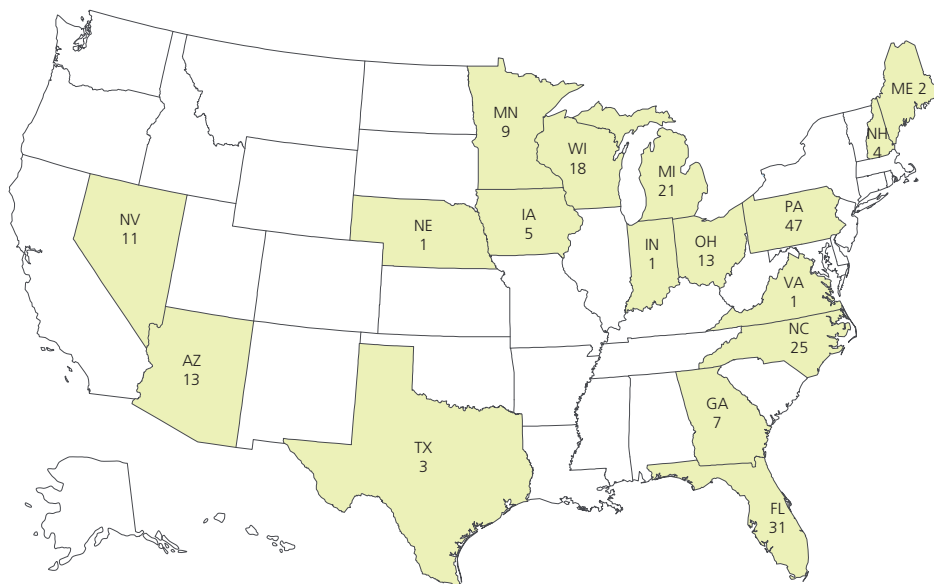


Figure 18.2 Number of campaign visits to individual states made by both 2020 presidential candidates

Source: data from FairVote

ACTIVITY

Study Figure 18.2 and identify the states that have received the most visits. Why do you think this was the case?

By contrast, in primary campaigns the emphasis is on states that come first in the primary and **caucuses** diary, such as Iowa, New Hampshire, Nevada and South Carolina. Not surprisingly, the most money and attention is paid to those states that hold their primaries or caucuses early. Victory in these early states can often build up a candidate's momentum, particularly by Super Tuesday when traditionally large numbers of states hold primaries or caucuses. Momentum usually creates added funding and further endorsements. It also leads to early exits by more marginal candidates. In the 2020 Democrat primaries four contenders withdrew after the first two contests: Deval Patrick, Andrew Yang, Michael Bennet and Tom Steyer.

KEY CONCEPT

Caucuses Informal meetings of party supporters at a local level to decide the awarding of delegates. There are a series of tiered meetings at state level culminating in a convention that chooses the delegates for the national nominating convention. The precise rules for caucuses are complex and differ between states and the two parties.

'Money, money, money'

One disturbing aspect of the US electoral system is the huge and ever-increasing cost of campaigning and elections. The total price tag for the 2020 elections was around \$14 billion, of which over \$7 billion was spent on races for the Senate and the House. Earlier in 2020, although ultimately losing his fight for the Democrat presidential nomination, Bernie Sanders pulled in \$46 million in donations in February 2020 alone. This came from 2.2 million separate donations, suggesting that many ordinary Americans, and not just the mega-rich, contribute to political campaigns.

While money by no means guarantees an election outcome (the Clinton campaign heavily outspent the Trump campaign in the 2016 presidential election), lack of funds to run an effective nationwide campaign is a significant handicap for most candidates. The reasons for high spending are partly practical and down to the vast size of the USA, but also reflect the absence of effective laws to limit and regulate such spending. This topic is analysed in more depth later in the chapter.

Midterm blues without limits

Midterms take place every 4 years mid-way through a president's term. They are an important indicators of public confidence in the president's performance 2 years in to their presidency and, like most UK local elections, generally result in a bit of a drubbing for the governing party. Most presidents see their party lose ground in the midterms (although in the aftermath of the 9/11 terror attacks George W. Bush was a notable exception). Nearly all presidents make dramatic policy promises to secure election, promises they often can't keep. Even more crucially, midterms often result in the president's party losing control of Congress, thereby making it much harder to pass legislation. Obama lost control of the House in 2010 and of the Senate in 2014, making him a 'lame duck' president for the remainder of his second term. Trump lost control of the House in 2018.

In addition, senators and House representatives, unlike the president, are unconstrained by term limits. Many of those elected to Congress are long-time veterans who have built up a strong local base and effective campaign team over many years.

CASE STUDY

The 2018 midterms

The 2018 midterms were inevitably a verdict on Trump's first 2 years in office. They also offered an opportunity for Democrats angered by his election to work hard to secure defeat for his Republican Party. One poll showed that 34% of voters nationwide viewed their midterm vote as a vote against Trump compared with 26% who considered it a vote for the president. In the end, the net results were mixed for both parties —the Democrats captured an impressive 40 districts from the Republicans, yet conversely in the Senate, they lost ground, conceding two seats and bolstering the existing Republican majority from two to six. In the House, there were particularly strong Democrat gains in California where seven districts 'flipped', and Virginia where three districts went blue. There was also evidence that Trump had made losses in some suburban districts that traditionally voted Republican, such as Georgia's 6th District.

Gaining control of the House was significant for the Democrats as it enabled them to launch impeachment proceedings soon afterwards, as well as investigations into other areas of Trump's administration. Therefore, in September 2019 the House Oversight and Reform Committee investigated transportation secretary Elaine Chao (whose husband, Mitch McConnell, was the Republican Senate leader) and her alleged abuse of office for personal family gain. In particular,

she was accused of favouring Foremost Group, a shipping company founded by her father. A Democrat-controlled House also made it much harder for Trump to get his legislation through Congress.

In the Senate the apparent Republican advance was perhaps not the great victory Trump claimed. As it is elected by thirds, there can be variations in how many seats each party is defending. In 2018, the Democrats were defending 26 of the 35 seats up for election, including 10 in states won by Trump in 2016. A net loss of two was a satisfactory result, all things considered.

In addition, the Senate elections confirmed the importance of personality and **incumbency** over party name. West Virginia was the most pro-Trump state in 2016, yet its voters re-elected Democrat senator Joe Manchin. The results also gave indications of future problems for the Republicans in states once considered safe and now shifting into the competitive column, due largely to changing demographics. Ted Cruz eked out a narrow win in Texas, while Arizona elected Krysten Sinema, its first Democrat senator since 1995.

Regarding turnout, the 2018 midterms were impressive. Around 49% of those able to vote did so, compared with just 37% in 2014. In part this may reflect the 'Trump effect' — many Democrats especially appeared incentivised to get out, vote and 'send a message to the White House'.

KEY CONCEPT

Incumbency An incumbent is a politician already elected and standing for re-election. Incumbents have key advantages over challenger candidates, including funding and name recognition.

KNOWLEDGE CHECK

- 4 What individual qualities do candidates often emphasise in campaign publicity?
- 5 What are battleground states?
- 6 How can midterms be significant?

The selection and nomination of candidates

One distinctive quality of the US political system is the use of primaries and caucuses to select candidates. Primary elections emerged from the 'Progressive era' at the turn of the twentieth century and represented a desire to break away from the 'smoke filled' rooms where many candidates were selected behind closed doors in meetings of local party bosses. They did not however become widespread and powerful in determining the outcome of presidential nomination campaigns until the early 1970s. Before then, they were rarer, optional and often used as 'beauty contests' to gauge public attitudes towards

various candidates. For example, in 1960 John F. Kennedy entered and won the West Virginia Democrat primary, which proved important in showing that a Catholic candidate could win in a largely Protestant state. Kennedy would go on to become the USA's first Catholic president.

Caucuses are a diminishing political species. Only a shrinking minority, mainly more rural and sparsely populated states, still use them. In 2020, just three states retained them for the Democrat presidential candidate campaign: Iowa, Nevada and Wyoming. A number of others, such as Washington state, switched over to primaries for 2020.

Key features

The purpose of presidential primaries and caucuses is to select delegates who are pledged to vote for a particular candidate at their national nominating convention, usually held in the summer of an election year. Primaries are also used to select party candidates for state and congressional elections. Presidents planning re-election bids rarely face serious primary opposition. That was certainly true for Trump in 2020 and Obama in 2012.

Turnout is often low and tends to consist largely of each party's core supporters. This means that frequently candidates have to veer to the right (Republicans) or the left (Democrats) to attract enough votes from their more ideologically hardened supporters.

Although primaries are electoral contests between candidates from the same party, the level of personal animosity and negativity can be considerable. Candidates are often accused of being out of touch, too old, too moderate, not conservative/liberal enough by rivals. The 2016 Republican primaries saw Trump attach unflattering labels to his rivals, including 'Lyn' Ted' (Ted Cruz) or 'Cry Baby Rubio' (Marco Rubio). Watching primary debates, one could be forgiven for not realising candidates belonged to the same party.

The nature, eligibility and format of primaries and caucuses varies enormously from state to state.

- Some states, including Oregon and New York, only allow voters pre-registered to a particular party to participate in that party's primary. These are known as closed primaries.
- Other states, such as Georgia, allow all registered voters to vote in any party's primary, but they can only vote in one party's primary. These are termed open primaries.
- Finally, some states operate a semi open/closed system where voters pre-registered with a party can only vote in that party's primary, but independent, non-affiliated voters can choose on polling day which party primary to vote in.

Timings

The timetable for primaries/caucuses changes with each election cycle, although Iowa (caucus) and New Hampshire (primary) jealously guard their 'first in the nation' status. States often practise 'frontloading' — moving their primary/caucus closer to the start in order to gain more influence over the final outcome. For example, in 2020, California moved its primary date from June to March. National parties are often unhappy with too much frontloading, preferring a slightly lengthier contest, and only four states are allowed under

STUDY TIP

Be careful to refer to registered/affiliated voters, not party members, when discussing who can vote in primaries. Registering as a Democrat or Republican does not mean you are a party member, only that you are eligible to vote in that party's primary elections.

the rules of both parties to select their candidates in February: Iowa, Nevada, New Hampshire and South Carolina. Occasionally, the parties hold their primaries on different days in the same state. For example, in 2016, the Democrat primary in South Carolina was a week later than the Republican one.

Many states bunch their contests together on one day in March, known as 'Super Tuesday'. In 2020, this occurred on 3 March when 14 states held their Democrat primaries, which between them awarded over a third of delegates.

The year or so in the build-up to the primaries is often just as crucial as the actual primary season. Known as the **invisible primaries**, this is when potential candidates may announce their intention to run, set up an exploratory committee/campaign team, seek to raise their public profile, buy TV airtime in early voting states and build a 'war chest' of political donations. Many candidates never even make it to Iowa and drop out beforehand.

Although primaries and caucuses are crucial to securing nomination, the Democrats still have what are termed 'superdelegates' or, more accurately, 'automatic delegates' who attend and vote at their national nominating convention. These are senior party officials such as serving members of Congress, former presidents and the chairs/vice chairs of state parties. In 2020, they numbered around 770, which represented about 16% of the total delegate count.

SYNOPTIC LINK

The huge variety of arrangements for primaries and caucuses is a good example of federalism in practice, and how the Constitution delegates the running of elections to individual states. You can read more about federalism and the US Constitution in Chapter 11.

CASE STUDY

The 2020 Democrat primaries



Democratic presidential candidates debate in Miami, June 2019. From left to right: Pete Buttigieg, Joe Biden, Bernie Sanders, Kamala Harris

The Democrat primaries started out with no clear frontrunner and 29 candidates in the running. These included a record six women and the first openly gay major party candidate (Pete Buttigieg), alongside two billionaires including Michael Bloomberg. The initial field was therefore wide and diverse, containing as it did senators, governors, ex-mayors and a former vice president.

The contest was long and gruelling in the early stages. Candidates steadily fell by the wayside and the surviving candidates sought endorsements from them.

Eventually, though, the contest came down to two ideals – the heart and the head of the Democrat Party. For many, the heart told them to go for a liberal progressive candidate, who would confront the political and business establishment head on and embrace a radical expansion of federal welfare programmes – a liberal populist to take on the conservative populist President Trump. Here, the favourite was veteran Vermont senator Bernie Sanders, who had challenged Hillary Clinton in the primaries in 2016. The Democrat 'head', however, tilted towards a more moderate and mainstream candidate, namely former vice president Joe Biden. Though he was a political insider and unlikely to enthuse the radical wing of the party, many realised he was probably best placed to make inroads into the crucial blue-collar states, such as Michigan, that the Democrats needed to win back to secure victory in the 2020 presidential election.

Biden, however, initially performed poorly, coming fourth in Iowa and fifth in New Hampshire. His fortunes began to change in South Carolina with an endorsement from African-American congressman Jim Clyburn, the most powerful Democrat in the state. A strong showing there renewed his political viability, a status reinforced by his winning 10 out of 14 Super Tuesday contests. Biden's campaign gained pace, and he picked up endorsements from, among others, Buttigieg, Tulsi Gabbard and Kamala Harris as they dropped out of the race. So, despite the growing

diversity of its party base, the Democrat frontrunners were two white men in their seventies — and they would be up against another white male aged over 70.

What's more the Iowa caucus proved a fiasco. The new app created to report precinct results malfunctioned and the reporting hotline was overwhelmed with callers. The party did not officially certify the results until nearly a month after Iowans caucused and the chair of the Iowa Democratic Party, Troy Price, resigned. The state party chair resigned and Iowa's status as 'first in the country' was placed in jeopardy. The last stages of the primary

contest were partly wiped out by the COVID-19 crisis. Many states in the latter part of the schedule postponed their primaries until June or, as with Alaska, went for an entirely mail-in ballot.

In the end, the 'head' won out — Sanders suspended his campaign in April 2020 and Biden emerged victorious. The contest revealed how different candidates appealed to particular groups. Sanders scored highly with younger voters and some Hispanics, Biden with African-American and blue-collar voters.

There has been much debate on the merits or otherwise of the primary system in the USA. The key points are outlined in the following debate.

DEBATE

What are the main advantages and disadvantages of the primary/caucus system?

Advantages	Disadvantages
It boosts the opportunities for political participation as it allows ordinary voters to choose their party's candidate.	It increases the focus on candidates as opposed to party or policies, and exacerbates divisions and divides within parties, such as between Bill Clinton and Bernie Sanders in 2016. Many debates are heated and often personal.
It allows political outsiders to run for major office, Trump being a prime example. Less well-known candidates can build up momentum and name recognition over time.	Outsiders can often lack the DC connections and experience necessary for such a demanding job. Insiders often win the nomination: witness former vice presidents George H. W. Bush in 1988 and Joe Biden in 2020.
In a democracy, surely it is better to 'let the people choose' than to leave it to party hacks and the political establishment?	In a March 2016 Pew Research Center poll, just 35% of voters said primaries are a good way of selecting the best-qualified nominees. Turnout is also pretty low.
They effectively 'road-test' candidates' qualities for the office, e.g. fundraising ability, media presence, stamina and grasp of policy issues.	Fellow political professionals are better placed to understand candidates' true qualities, especially those required for government as opposed to campaigning. The general public is bombarded by political ads and campaign slogans.
The staggered length of primary campaigns enables a wide range of states to influence the outcome, especially as larger states such as New York sometimes tend to vote later.	Primaries add to the overall cost and length of campaigns and increase 'voter fatigue'. States later in the timetable play a minimal role in influencing the outcome. Too much importance is placed on the two earliest states, Iowa and New Hampshire, which are demographically untypical of the wider USA.
Caucuses provide an opportunity for ordinary voters to discuss the relative merits and weaknesses of candidates and promote political engagement and awareness of issues.	Caucus meetings lack voter secrecy, involve a lengthy time commitment and are not suited to the modern age of politics. Plus, the 2020 Democrat Iowa caucus proved farcical.

 In pairs or a group, decide whether the disadvantages of primaries and caucuses are outweighed by the advantages. Are some more important than others?

STUDY TIP

When evaluating primaries/caucuses, it is good to be able to quote relevant statistics. For example, during the 2020 campaign, the top ten Democrat candidates spent an estimated total of 621 days in Iowa during the state's caucus.

As with many areas of political controversy, even if you decide the current system is flawed, how to replace it is unclear. A number of possibilities have been suggested:

- 1 A single national primary election on one day, while the most obvious alternative, would remove the federal aspect of the process and disadvantage both small states and relatively unknown candidates seeking to build up momentum over a series of contests by gaining endorsements and donations along the way.
- 2 Rotating regional primaries whereby the country is divided into four regions, with each region taking turns at holding all their primaries on the same day. The regions would rotate as to which went first, last etc. However, candidates with strong support in a particular region might gain a clear initial advantage/disadvantage.
- 3 The Delaware Plan, which would allow small states to go first, followed by the larger states. There would be four categories of state grouped by population size, with voting taking place in increasingly bigger states in a four-stage process.

ACTIVITY

Research these and other alternatives to the current primary system. What are the strengths and weaknesses of the various plans put forward? You could begin your research by reading the article 'No way to pick a president?' on the NPR website (see Further reading, page 447).

National nominating conventions

National nominating conventions are effectively the formal 'coronations' of the successful candidates. They often take place in swing states — the Democrat 2020 convention took place, albeit largely virtually, in Milwaukee, Wisconsin, a state only narrowly won by Trump in 2016. They are held in July/August of an election year, around 2–3 months before the November poll. In theory, conventions could still play a direct role in choosing the candidate, although usually the results of the preceding primaries/caucuses mean that the delegate vote is a foregone conclusion. If no candidate has an overall majority among pledged delegates, a 'brokered convention' occurs. Although often rumoured when a race looks tight, in reality none has taken place since 1984, when Democrat Walter Mondale fell 40 votes short of an overall majority. Even then, he secured a swift and clear formal victory. The modern party convention, therefore, fulfils the following roles:

- 1 It is a chance to unite a divided party as former rivals line up to endorse and congratulate the eventual winner. The atmosphere is largely that of a rally as opposed to a forum for serious political debate.
- 2 It gives momentum to the candidate's campaign via publicity and a chance to explain and outline their main policy themes. Most conventions are followed by a temporary boost in poll ratings. However, this was not the case in 2020, as neither candidate received a post-convention 'bounce'.
- 3 It marks the formal beginning of the presidential campaign.

KNOWLEDGE CHECK

- 7 What are the main differences between primaries and caucuses?
- 8 How can primaries/caucuses be said to boost political participation?
- 9 What is still played by the national nominating convention?

KEY CONCEPT

Popular vote The total number or percentage of votes cast for a candidate by voters across the entire USA.

The Electoral College

It might surprise many to learn that the US president is elected by just 538 people, the voters who comprise the presidential Electoral College. This indirect method of election is set down in the Constitution and reflects the Founding Fathers' fears concerning a mass **popular vote**. There was also the worry that, in a period before mass media and reliable, swift transport, the presidential candidates would not be known to most voters.

Therefore the idea was that the people would elect voters on a state by state basis who would then vote on their behalf. The concept of an electoral college also cast a nod towards earlier institutions, albeit in very different situations, such as the College of Cardinals who elect the Pope and the seven-strong imperial electors who chose the Holy Roman Emperor. The important thing to recall is that at the time of the Philadelphia Constitutional Convention, no other country in the world directly elected its chief executive, so the delegates were wading into uncharted territory. The outcome was more a compromise between a leader chosen by the masses and one selected purely by Congress. It was designed not as a carefully crafted or precise system but rather as one broadly acceptable to all.

The lack of precision is shown by how states were left free to decide how to elect their voters, as is still the case today. The main features of today's Electoral College are as follows:

- The number of electors per state is equivalent to the overall size of their congressional delegation. It will always be a minimum of three, as every state has two senators and at least one House representative. A handful of states have this minimum number, including Alaska and Wyoming. The distribution of Electoral College votes (ECVs) and results in the 2020 election is shown in Figure 18.3.

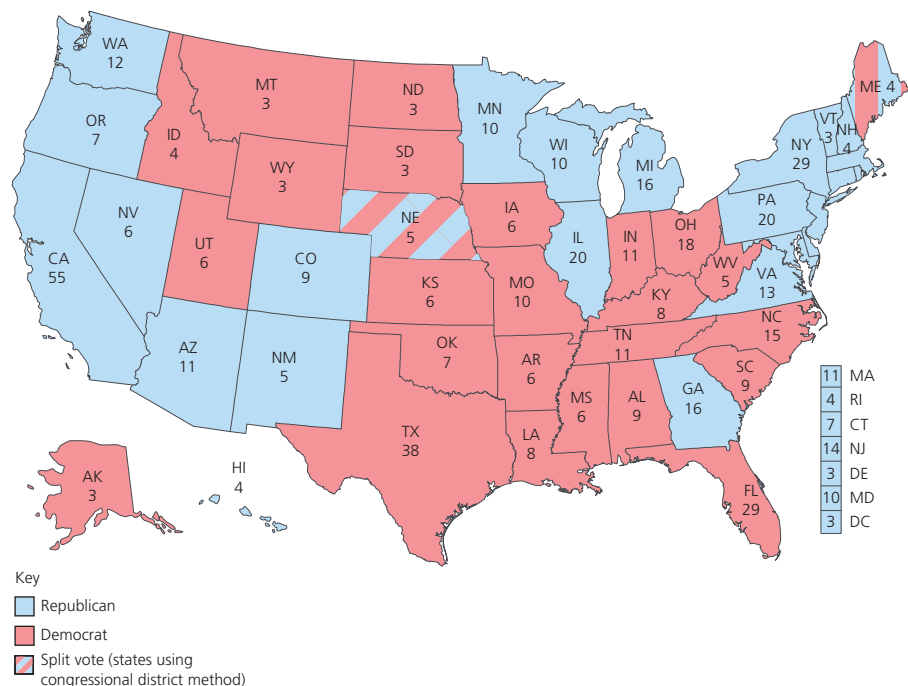


Figure 18.3 Distribution of Electoral College votes in the 2020 US presidential election

ACTIVITY

The allocation of Electoral College votes (and of congressional House districts) to individual states is revised every 10 years following the US national census. This is to ensure that their distribution adapts to population changes. The most recent census took place in 2020 so the Electoral College map will be slightly altered ahead of the 2024 presidential election. Research what adjustments have been made to the allocation of ECVs once the census is published and reapportionment of ECVs and house districts has taken place.

- Washington, DC also has three ECVs, explaining why the total size of Electoral College is 538 electors — this represents the total congressional delegations from all 50 states (100 senators, 435 House members) plus three for DC.
- Nearly all states award their voters on a winner takes all basis, but Maine and Nebraska allocate their electors using the **congressional district method**. This entails the winner of each district being awarded one electoral vote, and the winner of the statewide vote being awarded the state's remaining two electoral votes. This has usually resulted in one candidate winning all the ECVs anyhow, but in Nebraska in 2020 Joe Biden won a single electoral vote from Nebraska's 2nd congressional district. By way of electoral compensation, Donald Trump won a single electoral vote from Maine's 2nd congressional district in the same election. There is nothing constitutional to prevent states awarding their ECVs on a proportional basis, though none has yet done so.
- The electors are real people, chosen from among the local party faithful. For example, Bill and Hillary Clinton were two of New York state's electors in 2020. Although pledged to vote for their party's candidate, they can choose to disregard this and vote instead for another candidate, even one not on the ballot. Such electors are dubbed 'faithless electors', of whom there were a record seven in 2016. They included four Democrats in Washington state, three of whom voted for the moderate Republican ex-secretary of state Colin Powell and one who opted for the South Dakota Indigenous American activist, Faith Spotted Eagle. Faithless electors have never affected the outcome of the election, therefore amounting principally to a protest vote. Writing back in 1949, senator Henry Cabot Lodge Jr observed that the electors 'are like the appendix in the human body. While it does no good and ordinarily causes no trouble, it continually exposes the body to the danger of political peritonitis'. In the event, despite concerns over the personal security of electors due to earlier threats, Arizona's electors met at an 'undisclosed location' and the 2020 Electoral College vote passed off smoothly. There were also no faithless electors. So far, US presidential elections have survived such an emergency, but many would argue, why take the risk?
- It can be the case that the winner of the national popular vote loses in the Electoral College. Having not happened since 1888, more recently it has occurred twice: 2000 and 2016. On all three occasions, Republican candidates emerged victorious.
- The final results can in reality hang on just a few thousand votes. Although Biden ended up winning the Electoral College in 2020 by a clear margin of 306-232, this was down to some very slender victories in a handful of states. Had, for example, Trump won 67,000 more votes in Pennsylvania, 25,000 more in Georgia and 20,000 more in Wisconsin (112,000 votes in total), he would have won the Electoral College by 278-260 votes but lost the popular vote by over 5.5 million!
- There is potential for a stalemate in the Electoral College if no single candidate has an outright majority. This last happened in 1824. In those situations, the House would choose the president and the Senate the vice president. To occur, it would require a third-party or independent candidate to win some ECVs. However, this has not happened since 1968 when segregationist ex-Democrat George Wallace won five states, all in the Deep South, and 46 ECVs. Even then, Republican Richard Nixon won comprehensively elsewhere, so easily secured an overall majority in the Electoral College.



Then-Democratic presidential candidate and former vice president Joe Biden and vice presidential candidate Senator Kamala Harris make their first joint appearance after Biden named Harris as his running mate, 12 August 2020

Not surprisingly given its uniqueness among Western democracies, the Electoral College has been subject to much debate and discussion, with plenty of arguments advanced for its abolition or at least reform. Ultimately, although the abolitionist cause is loudly heard after 'rogue results' such as in 2016, there is no consensus on alternatives nor any likelihood of it being replaced in the immediate future. Given that 2020 saw a return to the clear winner of the popular vote also gaining a clear victory in the Electoral College, calls for its reform have perhaps become less pressing.

DEBATE

Should the Electoral College be abolished?

Arguments for the Electoral College

The winner of the popular vote can fail to be elected president, as happened with Al Gore in 2000 and Hillary Clinton in 2016.

It frequently exaggerates margins of victory. This was spectacularly evident in 1984 when Ronald Reagan won just under 59% of the popular vote but over 97% of the ECVs.

Smaller states are overrepresented, e.g. California has one electoral vote per 712,000 people, while Wyoming has one electoral vote per 195,000 people.

It was drawn up by the Founding Fathers in a very different era politically and when the USA was much smaller and less diverse.

It encourages candidates to focus all their campaigning on a small number of swing states such as Florida and Ohio.

Arguments against the Electoral College

It normally delivers the 'right' result, e.g. in 2012 and 2020. Reform or abolition only becomes a live issue on those relatively rare occasions when the system 'gets it wrong'.

The Electoral College reflects the federal nature of the USA and ensures candidates have to campaign in a range of states, not simply the most populated.

No superior method has gained widespread and bipartisan support. The alternatives have their own problems.

A nationwide popular vote would lead candidates to focus instead just on large urban areas. The phrase 'Go hunting where the ducks are' (from Barry Goldwater, 1964 Republican candidate) still applies.

Faithless electors have never affected the final election outcome. Also, the issue can be remedied by passing laws requiring electors to vote for their pledged candidate. In addition, it remains a rare occurrence overall. There were none in the 2008, 2012 or 2020 elections, and only one apiece in 2004 and 2000.

Arguments for the Electoral College

Faithless electors pose a threat to the democratic process, and a growing one at that. There were a record seven such electors in 2016 so it is not a declining problem.

The Electoral College depresses turnout, especially in safe states as most states use 'winner takes all' to choose their electors. Many votes are effectively 'wasted'.

Polls suggest a majority of Americans want to replace the Electoral College with a direct popular vote. A Gallup poll in September 2020 showed 61% supported abolition.

It discriminates against independents/third parties, again reflecting the 'wasted vote' syndrome and discouraging turnout.

Trump tweeted in November 2012: 'The electoral college is a disaster for a democracy.'

Arguments against the Electoral College

Laws could be passed to award electors proportionally in each state without the need to abolish the Electoral College. A proportional system would remove the potential for wasted votes and boost turnout.

Much of the support for reform comes from 'bad losers' and peaks after 'rogue results'. Most Americans would prioritise other political reforms such as greater regulation of campaign finance.

It produces a clear winner — the presidency cannot be shared out proportionally. In addition, with the Electoral College there is no chance of a runoff election or a protracted national recount. When there was controversy over the final result in 2000, recount issues were confined to one state (Florida).

Trump tweeted in November 2016: 'The Electoral College is actually genius in that it brings all states, including the smaller ones, into play. Campaigning is much different!'



Individually or in pairs, discuss whether you agree or disagree on balance that the Electoral College should be abolished. Evaluate the arguments for and against to reach your recommendation.

STUDY TIP

If discussing the future of the Electoral College, make a distinction between abolition and reform, such as states allocating electors proportionately. Only abolition would require a constitutional amendment — reform could be undertaken by states individually. Maine and Nebraska show reform is possible.

Why has the Electoral College not yet been abolished?

This boils down to two key factors. First, there are the practicalities of abolition, and second, the problems of agreeing a better alternative method of choosing the president, or even a reformed college system.

Among the practicalities, abolition would require a constitutional amendment, which requires a two-thirds supermajority in Congress plus ratification by three-quarters of the states. As smaller states would undoubtedly lose out from abolition, they would almost inevitably veto any such proposals. An even bigger obstacle, arguably, is what would replace it. While there are alternatives including those listed below, all have their own drawbacks.

SYNOPTIC LINK

There is a link between faithless electors and the Supreme Court. In July 2020 the Court unanimously decided that states can punish members of the Electoral College who break a pledge to vote for a state's popular vote winner in presidential elections.

The most obvious alternative is the direct popular vote, whereby all the votes cast are tallied up nationally and the winner is the candidate with the largest number of votes overall. Alternatively, a ranked voting system could be used, if say no one candidate secured over half the first preference votes. The main flaws are that campaigning would centre on large urban centres and it would undermine the federal nature of the USA. Also, any irregularities or a tight finish could result in an extremely complex and fraught national recount.

Another possibility would be to retain the Electoral College but expand the Maine/Nebraska system nationwide. However, this could well incentivise more gerrymandering.

STUDY TIP

If evaluating reforms to the Electoral College system, it is worth noting that awarding electors proportionately is unlikely to find much favour with either of the two main parties, as it would probably encourage more voters to plump for third-party or independent candidates. It would go against both their vested political interests.

Had the Maine/Nebraska system been used for the 2020 presidential election, ironically it would have reduced Biden's winning margin to a much narrower 277-261 ECVs, and produced a more disproportionate result.

The final reform mooted is the National Popular Vote Interstate Compact, where states pledge to cast their Electoral College votes to whichever candidate wins the national popular vote. By March 2021, 15 states plus DC, representing 196 ECVs or 36% of the total College, had signed up. Interestingly, not one traditionally 'red state' is among those that have signed to date.

KNOWLEDGE CHECK

- 10 How many votes are there in the Electoral College?
- 11 What are 'faithless electors'?
- 12 In which years has the Electoral College delivered the 'wrong result'?

Key factors that affect the outcome of American elections

As with elections in all democracies, no single factor explains election outcomes in the USA. Key factors include:

- incumbency
- issues
- media
- leadership and other individual qualities of candidates
- voter profile
- money

Incumbency

Being an existing elected representative up for re-election helps one's chances considerably. In the 2018 midterms, of those Senate and House incumbents who sought re-election 90.5% were victorious. Similarly, most incumbents cruised to re-election victory in 2020, often by bigger margins than their party's presidential candidate. For example, in Maine, Trump lost the statewide poll to Biden but long-term incumbent Republican senator Susan Collins was re-elected with ease. Incumbents possess a number of significant advantages. First, they are more likely to have a higher level of name recognition — voters know who they are. Second, they can boast of past achievements, of federal funding and jobs secured for their state or district, or 'bringing home the bacon' as it is often termed. Many serve on relevant congressional committees that influence policies particularly relevant to their region. They can also boast experience and a commitment to public office and service. Finally, they benefit from an established campaign organisation and donor base. Many incumbents build up considerable campaign 'war chests', partly to dissuade would-be challengers from either within (via primaries) or outside their party. Incumbency is, however, no guarantee of job security. In the 2018 midterms, four incumbent Democrats, including Joe Donnelly for Indiana, and one Republican, Dean Heller for Nevada, lost re-election bids. In part, their seats were seen as vulnerable so large amounts of money, often from outside the state, were poured into the campaigns. The tight Senate race in Florida, where incumbent Democrat Bill Nelson was ousted, saw a total campaign spend of around \$118 million.

At a presidential level, incumbency also helps. Since 1945 there have been very few truly one-term presidents. Carter (1976–80) and Trump (2016–20) are the only genuine examples, since other one-term presidents such as George H. W. Bush (1988–92) followed a two or more term president from the same party. Most presidents also enjoy a higher tally of votes and ECv's the second time round. Obama in 2012 was very unusual in being re-elected by a lower margin than for his first term.

Issues

A key element of any election is policy issues, and particularly the matters of competence and trust. Bill Clinton's 1992 campaign strategist, James Carville, may have been putting it a little too simply when he placed a sign over the desk in the Little Rock headquarters which said 'It's the economy, Stupid!', to remind everyone on the campaign team what to focus on. But he was not that far off the mark. Clinton won in part by attacking the incumbent president's economic record. As a rule of thumb, the economy is probably the key issue in most election campaigns for most voters. Low taxes, falling unemployment and a sense of economic optimism help many candidates to secure re-election often on the coattails of their party's presidential candidate. The reverse is equally true. Yet, many other issues also feature.

The competence and surety to handle unexpected crises at home and abroad looms large. George W. Bush's response to the 9/11 terror attacks was lauded at the time for bringing the USA together. His approval ratings soared to 90% in the short term and undoubtedly helped his re-election bid in 2004. His handling of Hurricane Katrina in 2005, widely seen as lacklustre and late, had the opposite effect on his poll ratings, which were already much lower and had slumped to an average of 38% by November 2005.

Another issue worth emphasising is what is loosely termed the 'October surprise'. This is a news event, either deliberately timed or sometimes occurring spontaneously a short time before the polls open in early November, which can influence a presidential election. These can work either way — they can boost support for one candidate, or reduce it for another. In October 2016, two such significant 'surprises' emerged. First, a tape from 2005 emerged featuring Trump making vulgar and disparaging comments about women, the infamous 'Hollywood Access' tape. This certainly unsettled his campaign, as there could be no plausible denial about its authenticity. The best and probably only response was for Trump to state, 'This was locker room banter, a private conversation that took place many years ago. Bill Clinton has said far worse to me on the golf course — not even close. I apologize if anyone was offended.' Yet, within a few days, it was Hillary Clinton's turn to face a 'surprise' in the form of accusations that she had used a private email server while serving as secretary of state, and the FBI was launching an inquiry. The net significance of all this on the actual outcome is necessarily hard to gauge. Perhaps in normal campaigns and with a more conventional candidate, Trump's remarks might have fatally holed his campaign. In the end, few in the USA deep down on both sides of the political divide were entirely surprised to hear their future president utter such language. As one white evangelical female voter put it, 'I'm looking for a bodyguard not a husband.' A vote even through slightly gritted teeth is still a vote.

ACTIVITY

Research some of the 'October surprises' from other US presidential elections. A Google search of 'Hurricane Sandy' and 'Mitt Romney 47% income tax' provides two examples from 2012. For the 2020 election, research about Trump contracting COVID-19 in early October that year.

ACTIVITY

Watch several presidential attack ads, which you can find by searching on YouTube. What messages and themes do they project? What makes an attack ad effective/ineffective?

Media

Political ads

The media remain an important component of any election campaign. They can be split into a candidate's own publicity material and staged debates. Those under the direct control of the candidate are important for projecting a desired image and, perhaps just as importantly, attacking the integrity and record of opponents. For instance, in 2012, Obama's campaign released a 30-second ad titled 'Remember'. It began by lauding Obama's record in raising US oil production while also promoting renewable energy and closing tax loopholes for oil companies. It then went on to attack his opponent, Mitt Romney, for being 'in the pocket' of the big, wealthy oil companies. The majority of campaign ads are 'attack ads', portraying rivals as untrustworthy, corrupt, dangerous or the prisoner of special interest groups. The classic 'Daisy' ad from 1964 probably set the modern tone, implying that a vote for Lyndon B. Johnson's opponent, the strongly conservative Republican Arizona senator Barry Goldwater, might lead the USA into the abyss of nuclear war.

Televised debates

Televised candidate debates are also a longstanding feature of presidential campaigns. They have come a long way since the first one in 1960, when Nixon refused to have his face made up, unlike his opponent John F. Kennedy. The result was that on television, Nixon came across as pale, pasty and sweaty in contrast to the tanned and healthy-looking Kennedy. Those watching the debate on TV thought Kennedy had won, while those listening to the same debate on the radio favoured Nixon, showing the power of public image. Nowadays, so much preparation goes into these set-pieces that the result is rarely sensational or decisive. But before presidential debates are written off altogether, it is worth recording that the first one in 2016 broke viewing figures when 84 million tuned in to watch, breaking the previous record set in 1980 when 80.6 million watched the debate between Ronald Reagan and Jimmy Carter. The first, and most chaotic, Biden–Trump debate of the 2020 campaign saw 73 million viewers tune in, making it the third most viewed televised debate.

Social media

The arrival of social media has altered the playing field considerably. Most digital users tend to follow, like or retweet candidates whose views they already share. Social media is arguably far more important at reinforcing the base than swaying allegiances. It also allows candidates to air their views without much of a filter.

The mainstream media

In recent years we have seen growing partisanship in the mainstream media. News outlets such as Fox (Republican) and MSNBC (Democrat) tend to reflect one side of the political spectrum, and even news reports feature a partisan dimension. In 2016, right-wing outlets leapt on the news surrounding Hillary Clinton's email servers, while those of a more liberal disposition dwelt on Trump's verbal indiscretions.

Leadership and other individual qualities of candidates

Former House speaker Tip O'Neill coined the well-known phrase 'All politics is local', but he could just as well have said that 'All politics is personal'. One particular characteristic of US politics that differs to that in the UK is the focus on personality often at the expense of party. Most campaign ads and publicity material barely if ever mention a candidate's party affiliation. Instead the emphasis is on a candidate's own qualities, experience and policies. A party label arguably acts as the wrapper rather than dictating the ingredients for a candidate's campaign — 'Hope and Change' was an Obama not a Democrat slogan in 2008, and the same with 'Make America Great Again' for Trump in 2016 and 2020. This emphasis on personality and individual leadership in part reflects the role of primaries in which candidates run and fund their own campaigns. Here, a candidate's wins owe much to their own efforts, contacts and organisational abilities and not their ability to convince a selection committee.

Moreover, the nature of the presidential office itself encourages a focus on the individual — it is preeminently a personal not party office, even if party is vital in getting there and party links remain important once in office, especially for liaising with Congress.

Social media further underlines this 'cult of personality'. It is overwhelmingly individuals, not parties, that secure followers on Facebook or Twitter. By early 2020, Trump had 42 million Twitter followers and had sent around 42,000 tweets from his personal Twitter account, @realDonaldTrump. Becoming president did not alter his Twitter handle. By contrast, the Republican Party's own Twitter account, @GOP, had just under 2.4 million followers.

Yet, the qualities required and sought after in a leader are often paradoxical and even contradictory. Candidates must be principled yet pragmatic, compassionate yet prepared to make tough decisions, calm and clear-headed in a crisis, yet also consultative and urgent in their actions. Candidates who stress family life and traditional values, or indeed more explicitly liberal values of tolerance and respect for all, inevitably put themselves at risk if extra-marital affairs or accusations of sexual harassment emerge. In the wake of the #MeToo movement a number of Democrat as well as Republican lawmakers saw their careers ended. This included long-serving Michigan Democrat congressman John Conyers who, following allegations he had sexually harassed female staff members and secretly used taxpayer money to settle a harassment claim, resigned from Congress in December 2017. Personal qualities, and mistakes, remain central to election campaigns.

Voter profile

Voting behaviour in the USA is discussed more fully in the next section of this chapter, but it is important to remember that voter background is crucial when understanding who votes for whom. Many US voters, as elsewhere, are to varying degrees predisposed to vote for a certain party. Gender, race, religion, education, geography, age as well as self-identification as conservative, liberal or centrist are all important when analysing voting behaviour. While it is easy if somewhat lazy to dwell on stereotypes, generalisations are there for a reason. When one combines the characteristics of a voter, their voting disposition becomes ever more likely. For example, an older, white male and regular

KEY CONCEPT

Voting behaviour Analysis of why people vote the way they do, often broken down into distinct groups, e.g. race, gender, age, geography, to allow comparison between different categories of voters.

churchgoer in the rural Midwest is unlikely to be an ardent Democrat. Equally a young single graduate female with no religious affiliation living in a large city on the Atlantic or Pacific coastline is unlikely to be a cheerleader for the Republicans.

Money

This topic is also discussed more fully later in the chapter but suffice to say that while money cannot buy outcomes, it helps a candidate make a strong bid for office. There are many examples of lower-spending candidates still winning. For example, Trump was heavily outspent by Hillary Clinton in 2016. Heidi Heitkamp for North Dakota in 2016 is an example of an incumbent legislator heavily outspending her challenger, yet losing. Though it could also be argued that Biden heavily outspent Trump in 2020 and won.

Without access to decent funding, candidates have a slimmer chance of success, especially in higher-tier elections. Money buys professional advice, airtime, advertising and much more. It can often affect outcomes: in 2012, Obama outspent his challenger Mitt Romney. Would he have won anyhow? Probably on balance yes, since he had the benefit of incumbency and arguably Romney was not the most charismatic or inspiring candidate.

KNOWLEDGE CHECK

- 13 What advantages do incumbents possess?
- 14 What is an 'October surprise'?
- 15 Why has social media increased the focus on personalities in politics?

Voting behaviour in the USA: why Americans vote the way they do

When discussing US politics, the terms 'red America' and 'blue America' are frequently used, implying a nation split into two opposing political camps. There is much to support this idea of a divided nation. Even on a matter such as the COVID-19 pandemic, Americans sharply disagreed. In 2020, 82% of registered voters who supported Biden said that the outbreak would be 'very important' to their vote. Only 24% of registered voters who support Trump said the same. Democrats and Democratic-leaning independents consistently expressed far more concern over the virus than Republicans. Before the election, most Republicans said the pandemic had been exaggerated and that the USA had controlled the outbreak as much as it could have — positions rejected by most Democrats. Such seismic divides beg the question: what defines and explains US voting behaviour and partisanship?

Two main factors affect the way in which Americans vote:

- Voter profile (**primacy factor**)
- Issues, the candidates' personalities and how effectively they are marketed during the campaign (**recency factors**)

Voters can also cast a negative vote. For example, many white evangelicals were hardly natural supporters of the thrice-married Trump. Unlike most recent Republican candidates, such as George W. Bush or Reagan, Trump could not authentically claim to have 'found God' somewhere along life's journey. Yet his promise to take a pro-life stance on abortion, appoint conservative Supreme Court justices and generally oppose much of the liberal social agenda was enough to convince many to back him. Perhaps above all, his supporters were united to stop Clinton getting into the White House. So, what determines how Americans vote in terms of profile? Table 18.2 shows examples from the main categories.

Table 18.2 Voter profiles and 2020 election examples

Category and statement	2020 examples to support the point
Race: African-American people overwhelmingly vote Democrat, along with Hispanic people and Asian people.	87% of African-American people voted Democrat, as did 65% of Hispanic people and 61% of Asian-American people.
White voters support the Republicans, but by smaller margins.	58% of white voters voted for Trump.
Gender: more women vote Democrat while men trend Republican.	57% of women voted for Biden. 53% of men voted for Trump.
Religion: white evangelical Christians ('born-again') strongly back the Republicans.	76% of white evangelicals supported Trump.
Non-religious voters strongly trend Democrat.	65% of those without a religious affiliation voted for Biden.
Wealth: there is less of a difference than might be expected. Richer voters do not overwhelmingly vote Republican, nor do poorer voters strongly trend Democrat. Much depends on race and region. Republicans get a lot of support from white voters in some of the poorest states, such as Mississippi and West Virginia. By contrast, some of the wealthiest states, such as New Jersey and Maryland, are Democrat strongholds.	54% of those earning over \$100,000 pa voted for Trump. 55% of those earning under \$50,000 pa voted for Biden.
Age: young voters largely vote Democrat, while older voters are more likely to support the Republicans.	60% of under 30s voted Democrat. 52% of over 65s voted Republican.
Self-declared political philosophy: most who call themselves liberals vote Democrat, and vice versa for conservatives and the Republicans.	85% of conservatives backed Trump. 89% of liberals backed Biden.
Sexual orientation: most Americans who identify as LGBTQ+ vote Democrat.	64% of LGBTQ+ people voted for Biden.
Geography: small-town, suburban and rural areas favour the Republicans. Large urban areas are usually Democrat strongholds.	60% who lived in towns/cities with a population of over 50,000 backed Biden. 57% of those living in small towns and rural areas backed Trump.

Realigning elections

Not all elections are of equal interest and significance when studying voting behaviour. The most significant are termed 'realigning elections'. Political realignment occurs when a particular group of voters changes or realigns with a fresh political party or candidate, and these changes have a lasting impact and set a pattern in voting behaviour for a significant period afterwards. They are sometimes called a 'critical election'. The two main realignments in US politics since 1945 have been the following:

- The realignment of the conservative white vote in the South away from the Democrats and towards the Republicans. This is often known as the 'Southern strategy' and is most associated with Republican candidates Barry Goldwater and Richard Nixon and their campaigns in 1964, 1968 and 1972. In effect, this broke up the Democrat 'Solid South' and replaced it with a new Republican 'Solid South'. The Southern strategy targeted conservative white southerners who felt betrayed by the Democratic Party's support of civil rights measures in the 1960s. They didn't promise a return to segregation, but instead an emphasis on 'states' rights' more generally, and a tough line on law and order, both of which some commentators have viewed as **dog whistle politics**.

KEY CONCEPT

Dog whistle politics Term used to describe political messaging employing coded language that appears to mean one thing to the population at large while also simultaneously having an additional meaning for a targeted group.

STUDY TIP

When discussing realigning elections in US politics, with the sole exception of 1932, it is best to see it as an evolving process over two or three elections rather than a single election. The transformation of voting patterns in the South, for example, can be seen to begin in 1964 but did not become fully evident until the 1972 presidential election. It took even longer to work through into congressional elections.

- The switch in much of the western and eastern coastal areas from being pretty competitive for Republicans to being Democrat strongholds. Take Vermont, today associated with probably the most liberal (even socialist?) member of the Senate, Bernie Sanders, and a Democrat stronghold (Sanders was technically elected on an independent ticket but is closely aligned with the Democrats). It might therefore be surprising to learn that from 1856 to 1974, Vermont elected Republicans to the Senate. As the Republicans nationally have moved to the right, many of their more liberal supporters on the east and west coasts have become disillusioned with the party and moved towards the Democrats.

CASE STUDY**The 1932 election**

To find a truly realigning single election one must go back to 1932. For most of the previous 30 years the Republicans had been the dominant party. They had won three presidential elections in a row, including a virtual clean sweep outside the 'Solid South' in 1928. This was completely 'flipped' in the presidential election of 1932. It was a significant election, not just because the Depression began under the Republican president Herbert Hoover's watch. It also had much to do with the party's response. Hoover failed adequately to address the crisis effectively or dynamically, a case of 'too little too late'. Meanwhile, the Democrats nominated New York governor, Franklin Delano Roosevelt, who had a solid reputation of his own, having mobilised his state government much more effectively to fight the impact of the Depression. The economic crisis and the unprecedented rise in unemployment and poverty were the reasons behind the complete turnaround in party support. Hoover and the Republicans had gained much popularity during the boom years of the 1920s by minimising government involvement and regulation of the business and banking sectors. However, there was much reckless lending, and an artificial inflation of stock values. When the 1929 Wall Street Crash hit the USA, it took the Republicans and their 'laissez-faire' economics with them.

By any measure, the election represented a dramatic change in political fortunes. In 1928 the Republicans had won by a margin of over 6 million votes and by 444-87 ECVs. In 1932, Roosevelt and the Democrats won by 7 million votes and by 472-59 ECVs. Figure 18.4 shows just how great the swing was between the two elections.

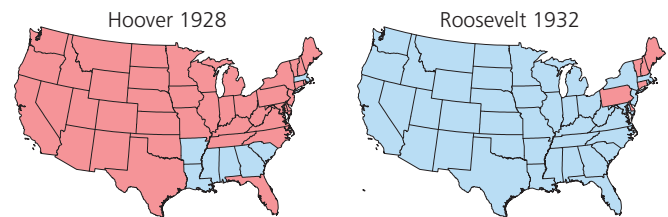


Figure 18.4 Swing between 1928 and 1932 US elections

Roosevelt promised a far more interventionist government, a New Deal, though without going into great detail in the campaign. Due to Hoover's huge unpopularity over the economic downturn, Roosevelt simply had to avoid making any major gaffes and to relentlessly attack the inadequacies of his opponent. Crucially, he also built up a broad coalition of voters, termed the 'New Deal coalition'. This combined conservative southern Protestants (often known as 'Dixiecrats'), northern Jews, Catholics and the urban African-American population, labour union members, small farmers in the Midwest and Plains states, liberals and radicals. The broad grouping enabled the Democrats to dominate US politics until well into the 1960s. Aside from Dwight D. Eisenhower (1952-60), every US president between 1932 and 1968 was a Democrat. The party also controlled both houses of Congress for nearly this entire period — it controlled the Senate for all but 4 years between 1932 and 1980. This dominant voter coalition began to break up in the 1960s, largely as a result of the civil rights movement when the support for civil rights legislation by President Johnson effectively 'signed away the South' for the Democrats.

CASE STUDY

The 2016 election

In many ways, it is still too early to tell if 2016 will in the long term prove to be a realigning election, but there are certainly grounds for suggesting that it marks some significant shifts in voting behaviour, although in part this may reflect the personalities of the two main candidates. Clinton was widely seen as a political insider, which arguably limited her appeal among white blue-collar voters, especially in the Rust Belt where Trump picked up several key states including Ohio, Pennsylvania and Wisconsin. Among its key features were the following:

- It was the first example since Eisenhower in 1952 of victory by a political outsider, someone with no previous political or experience. In addition, Trump couldn't boast of a record of distinguished military or public service in other arenas as Eisenhower could.
- It was generally viewed as a victory for populism over experience and mainstream politicians. On the Democrat side, outsider candidate Bernie Sanders came quite close to defeating Hillary Clinton in the primaries.
- Many previously loyal Democrat white blue-collar workers in Rust Belt states such as Michigan and Ohio swung behind Trump, attracted by his promises of more jobs and trade. It was his (narrow) victories in states such as Wisconsin (last won by a Republican back in 1984) that pushed Trump over the winning line in 2016, despite him losing the popular vote.
- It revealed the growing gap between the urban and multi-ethnic USA, and the largely white exurban/small-town/rural USA. Each voted in record numbers for 'their' candidate.
- However, the main shifts in voting behaviour need to be carefully analysed. Many voter blocs roughly stayed the same as 2012. For example, white evangelicals remained largely loyal to the Republican candidate, despite Trump's well publicised moral lapses, including several affairs. Equally, African-Americans continued overwhelmingly to back the Democrats.
- The main change was among less well-educated white people in Upper Midwest states such as Michigan and Wisconsin, and also Ohio. For example, white voters in Ohio went for Trump 62%–33%, a considerable improvement from 2012 when Romney won 57% of the white vote. The biggest shift in a single county there was in Monroe County, where the Republican vote shot up from 52% [2012] to 72% [2016].

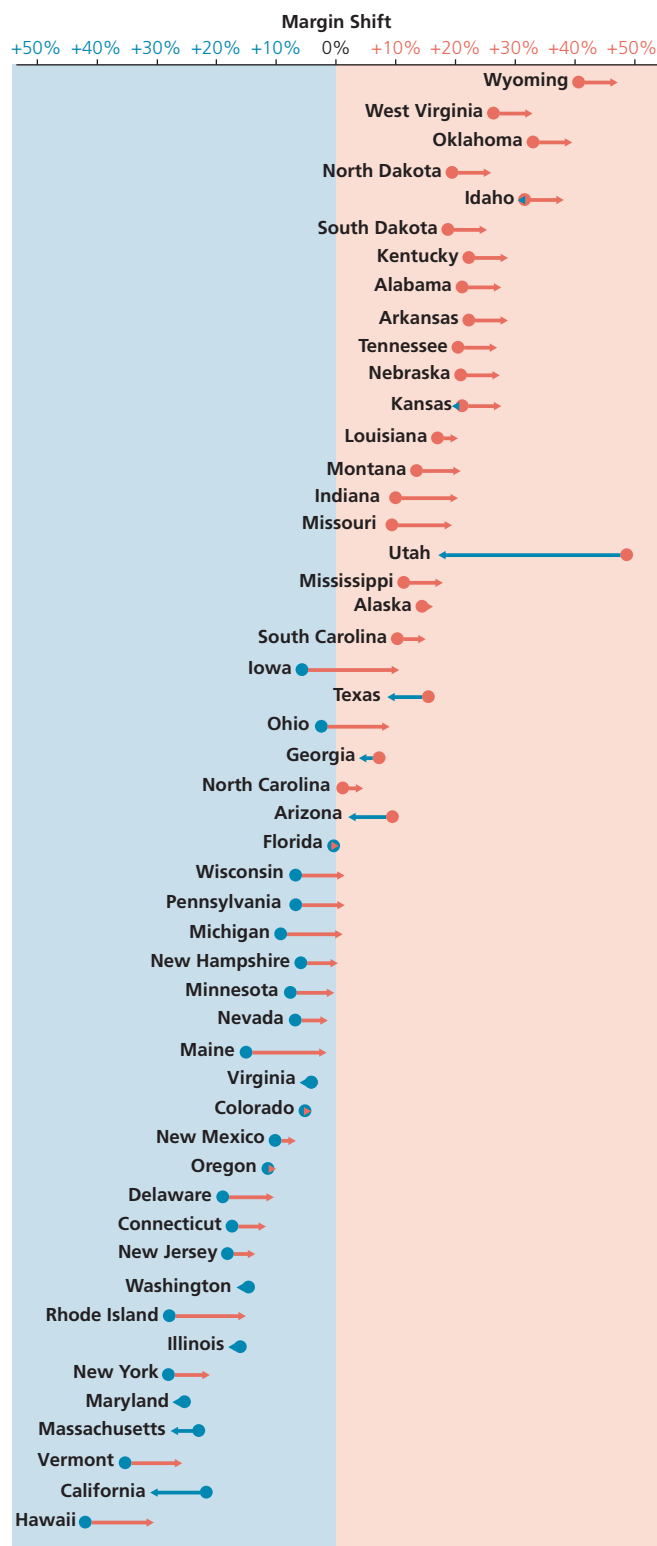


Figure 18.5 Presidential election results swing by state, 2012 to 2016

Source: adapted from Zifan, A. <https://commons.wikimedia.org>

- There was some suggestion that white people in the Upper Midwest/Rust Belt states might be voting more like white people in the south, i.e. Republican. This could in part be caused by the decline of organised labour (trade unions), which traditionally played a key role in getting out the white blue-collar vote for the Democrats.

Figure 18.5 shows the swings in individual states. It clearly depicts the pro-Trump swings in several Rust Belt states as well as elsewhere.

2016 in light of the 2020 election

There is a case, though, for being cautious about 2016 being a truly realigning election. The three Rust Belt

states that flipped for Trump in 2016 reverted back to the Democrat column in 2020. However, the swings were small in each case. Also in 2020, it became apparent that the Republicans were continuing to lose ground in both Arizona and Georgia, in large part due to demographic changes. Figure 18.6 shows the swing against the Republicans in the five states they lost in 2020.

Perhaps in conclusion, it is truer to see certain post-war elections as displaying elements of evolving political realignment, even if these can shift in the short term. Few would doubt that the Rust Belt states are proving less reliable for the Democrats to win. Equally, the Republican grip on some Sun Belt seats looks increasingly precarious.

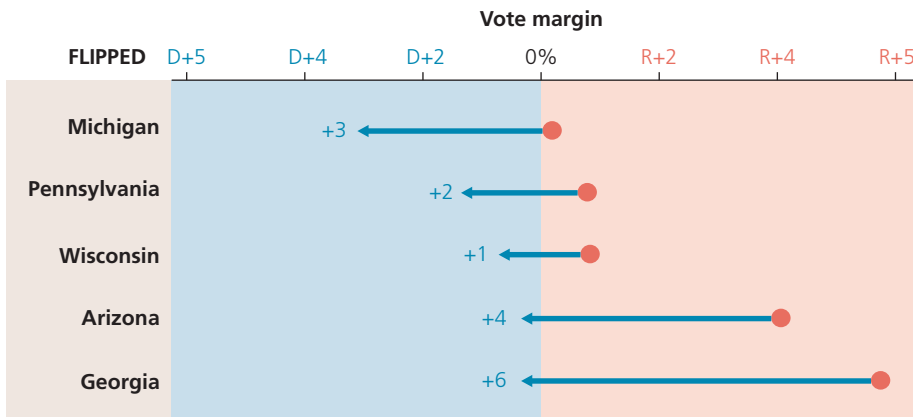


Figure 18.6 The swing against the Republicans in 2020

Source: <https://www.politico.com/2020-election/results/president/>

ACTIVITY

There are one or two 'outliers' in Figure 18.5, such as Utah and Texas. Investigate why some states go against the national trend in elections. The result in Utah is analysed in an article 'Presidential election 'Trumps' biggest stories of 2016 in Utah' on the Deseret News website.

KNOWLEDGE CHECK

- What is a 'realigning election'?
- Give two examples each of both recency and primacy factors in US elections.

The link between parties and their core voting coalitions

Both main parties rely to a very large extent on core voter groups. Although realigning elections may cause shifts in how certain groups vote, core voters are the bedrock of each party's support. The key electoral trick is to keep them on board while not being dominated by them, since a US party that only appeals to a small segment of the electorate cannot hope to win national elections. Therefore, the parties aim to fuse together a number of different but complementary groups, while also appealing to the more moderate and independently minded voters crucial to victory. This involves delicate political juggling. Adopting more radical policies beloved of core supporters and the

party risks alienating mainstream voters. Yet equally, parties cannot afford to ignore their base support as they risk disincentivising them from campaigning, donating and generally actively supporting the campaign. The real danger with the core is not so much that they will defect to the other side, but ‘defect to abstention’ (not turn out and vote). Traditional core voting groups and their particular policy objectives are detailed in Table 18.3.

Table 18.3 Traditional core US voting groups and their policy objectives

Core voting group	Party	Key policies
White evangelical Christians	Republican	Pro-life, pro-Israel, promotion of traditional social values especially in the areas of LGBTQ+ and transgender rights
Gun owners	Republican	Defence of the Second Amendment, opposition to most gun control measures
African-Americans	Democratic	Continued support for civil rights, opposition to ‘voter suppression’ tactics such as tougher ID laws, support for fair non-discriminatory policing (Black Lives Matter), tackling poverty
Public sector labour unions	Democratic	Increasing minimum wages, greater investment in public services such as education, protection of workers’ rights in areas such as healthcare and pensions

In all these cases, voters’ policy objectives need to be both recognised and also balanced. Hence when it came to Obama and healthcare reform, he stopped short of a radical approach such as a single national health insurance scheme. This would not only have proved costly, with an obvious impact on taxes, but might also have aroused hostility from union groups that had negotiated good private healthcare deals with employers. One example is the Culinary Workers Union, which is powerful in Nevada. In the 2020 Democrat primary season, the union opposed Sanders’s ‘Medicare for All’ plan, fearing it would jeopardise hard-won healthcare packages already negotiated for their members.

STUDY TIP

In answers about core voting groups, be aware that the Hispanic vote is often referred to as the ‘sleeping giant’. Although growing fast in numbers, and largely backing Democrat candidates, this group is less firmly aligned than most other racial minorities. They form important voting blocs in several key states including Florida and Texas. They also comprise a number of distinct subcategories, e.g. Cuban-Americans do not tend to vote in the same way as those of Mexican heritage. In 2020, for example, 58% of Cuban-Americans identified as Republicans. This proved a major factor in Trump retaining Florida in 2020 and the Republicans picking up a couple of House districts in the state.

KNOWLEDGE CHECK

- 18 What is a core voter group?
- 19 Why must parties maintain a delicate balance between core voter groups and other voters?

Overall, core voter groups remain vital to a party’s chance of success, and recent elections suggest that this link is being largely reinforced, even if the percentage of both white evangelicals and African-Americans backing Trump and Biden respectively fell slightly in 2020.

Campaign finance: its importance in US elections, and the case for reform

There is no doubt that US elections are big business and mightily expensive. There is also little doubt that elections are full of legal complexities, ambiguities and loopholes.

ACTIVITY

Georgia held two runoff Senate elections in January 2021, which cost a record total of around half a billion dollars, more than even the South Carolina race. Research why so much was spent on these Senate races, and whether the highest-spending candidates won.

Cost-based evidence

The 2020 election broke all records, with a total campaign bill for all the elections of just under \$14 billion according to some tallies. To put that in perspective, this was greater than the entire GDP for certain countries, e.g. Armenia and Mauritius. It was also over double the estimated \$6.5 billion cost of the 2016 election. A total of \$6.6 billion was spent on the presidential race and the rest on congressional races (see Figure 18.7). Huge amounts of the spending on congressional campaigns went on a relatively small number of tight races. In 2020, the most expensive Senate race was in South Carolina, with a total expenditure of \$227 million.

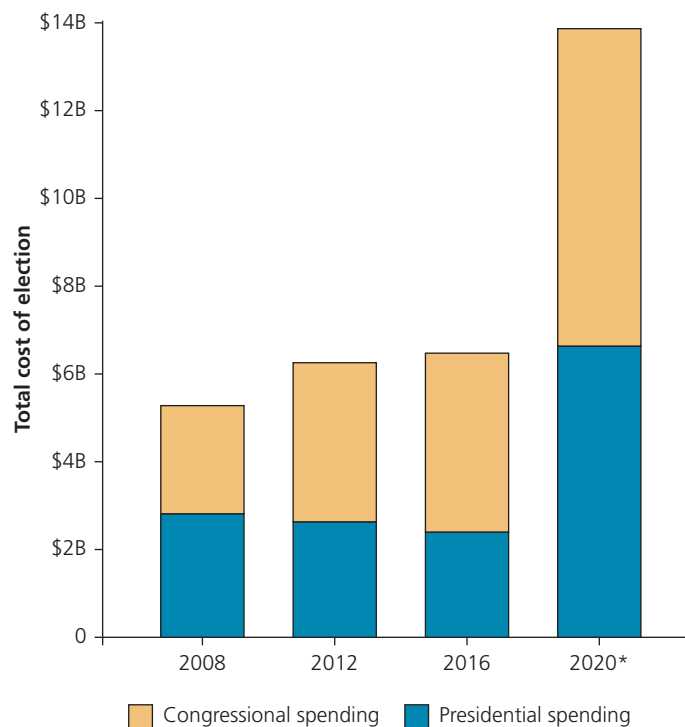


Figure 18.7 The 2020 election spend

* 2020 is an estimated total.

Source: data from OpenSecrets.org

The 2020 Democrat primaries also proportionately saw a record outlay of cash. Despite not winning a single state (he won a grand total of just five delegates before dropping out, all from the territory of American Samoa), multimillionaire Michael Bloomberg spent over \$1 billion of his own vast personal fortune (estimated at \$64 billion) on campaign ads and staffing. Second-placed contender Bernie Sanders had raised close to \$170 million in total by the start of March, almost double that raised by the eventual winner, Joe Biden.

Where does the money go?

The short answer is predominantly on people and publicity. Professional campaigns need to employ a whole range of specialists, from political strategists to web designers. They also need to open and staff offices across the nation. National campaigns involve thousands of miles of travel usually by air, and buying up airtime on television stations for political ads, especially in swing states. Finally, there are ads to be purchased on social media. By mid October 2020, the Biden and Trump teams combined spent around \$175 million on Facebook ads. This compares to around \$750 million spent on television ads.

Where does the money come from?

One of the main problems facing campaign reform measures in the USA is that the current system faces very little effective regulation or ways to restrict or cap political donations. In effect it means that any donors, rich or small, can find ways to help fund their preferred party or candidates. The main sources of funding include self-funding and donations great and small from both individuals and PACs (see Figure 18.8).

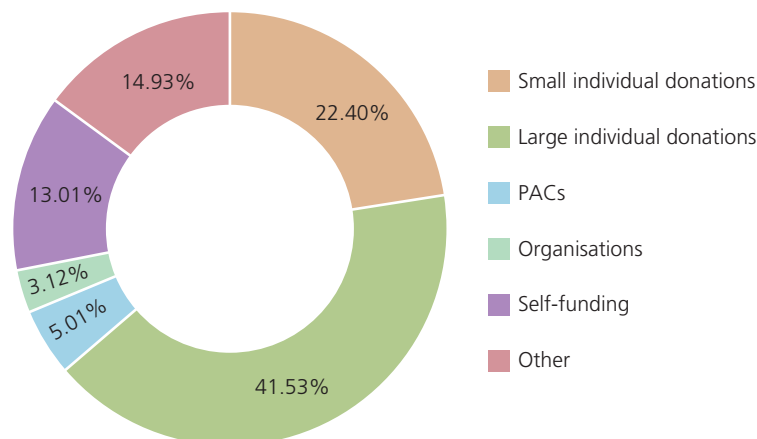


Figure 18.8 Source of funding for the 2020 election

Source: data from OpenSecrets.org

Wealthy candidates may either wholly or partially self-fund

Many billionaires and millionaires have adopted this approach, for example Trump pumped an estimated \$66 million of his own money into the 2016 campaign, though reportedly contributed just \$8,000 of self-funding in the 2020 campaign. The advantage of self-funding is freedom from influence or favours from donors, and therefore accusations of corruption and cronyism. It is also completely free of any government restrictions other than disclosing funds to the Federal Election Commission (FEC). The disadvantages are that it encourages the perception that US politics is purely an activity for the wealthy, and it may also be counterproductive to the campaign. Voters may well shun a hugely wealthy candidate, seeing them as arrogant to presume that votes and elections can be bought without wider popular support.

Donations from supporters

Nearly all candidates for national office accept donations from supporters. Money contributed directly to a specific candidate, known as hard money, is limited by the Bipartisan Campaign Reform Act (BCRA) 2002. No individual can donate more than \$2,800 (2019–20 figures) per annum directly to a single candidate's own campaign, and no more than \$35,500 to a national political party. However, there are numerous ways around this.

First, **Political Action Committees (PACs)** were established in the 1940s. These are perhaps best described informally as candidate supporters' groups. They can raise and distribute money to favoured candidates, up to a maximum of \$5,000. Many established politicians also form Leadership PACs as a way of raising money to help fund other candidates' campaigns.

Second, the largest bulk of money donated is in the form of **soft money**. Also known as independent expenditure, it is money spent indirectly to promote candidates or, more frequently, to attack opponents. The one criterion is that Super PACs (see Chapter 21) or other groups that raise and spend this money must not formally coordinate with a candidate's own official campaign. As a result, all major candidates have large wealthy Super PACs behind them, such as Future Forward USA, which backed Joe Biden's 2020 campaign, or the pro-Trump Super PAC Preserve America PAC. A total of 38% of those Trump appointed to posts in his administration were campaign donors. Linda McMahon, the wrestling magnate who chaired America First Action PAC, also served in his cabinet as administrator of the Small Business Administration.

ACTIVITY

As well as the landmark *Citizens United* and *SpeechNow* cases, there have been a number of other court cases that dealt with campaign finance. These include *Buckley v Valeo* (1976), *McCutcheon* (2014) and *Bennett* (2011). Research what each decided about campaign finance regulations. The National Conference of State Legislatures' article 'Campaign finance and the Supreme Court' should provide a useful starting point (see Further reading, page 447).

Federal government funding

The least significant source of political funding derives from the federal government. Attempts have been made in the past to introduce voluntary caps on campaign expenditure by dangling the carrot of matching federal funding for campaigns in return for a candidate limiting their overall spending. The theory was that if candidates knew the state would match their own fundraising dollar for dollar up to a set limit, they would be far less consumed by constant fundraising. Although it worked well for a time, Obama rejected it in 2008, calculating (correctly as it transpired) that he could raise more by his own efforts than the funding ceiling that accepting federal funding would impose. His opponent, John McCain, was therefore the last major party candidate to date to accept matching federal funding. In a sense, he had no option — he was, after all, one of the co-sponsors of the BCRA, also known as the McCain–Feingold Bill, which attempts to regulate the financing of political campaigns. Neither Biden nor Trump accepted state funding for the 2020 election.

Does money make a difference?

A word of caution is needed here: Figure 18.9 shows a very high level of correlation between the biggest spenders and the eventual winners, but all is not quite as it seems. Aside from high-profile examples of the biggest spenders going on to lose, such as Clinton in 2016, the link between spending and outcome is more nuanced. The highest-spending candidate won in only four out of the ten most expensive 2020 Senate races. By contrast, incumbent candidates won seven.

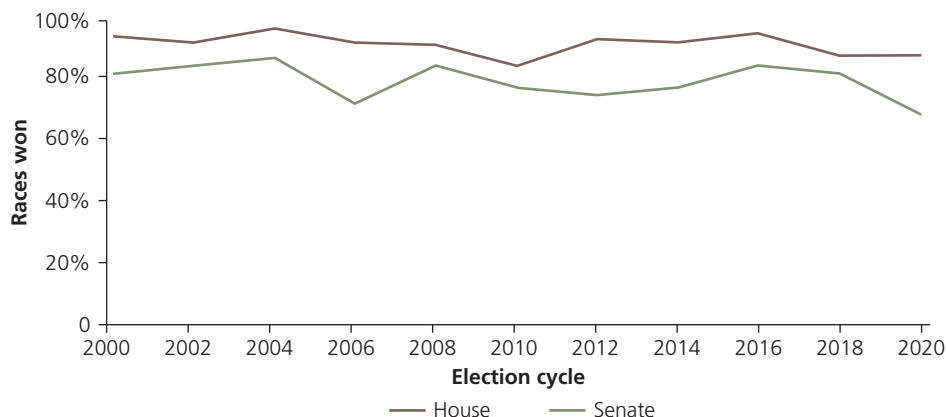


Figure 18.9 Percentage of races won by top-spending candidate

Source: adapted from <https://www.opensecrets.org/elections-overview/did-money-win>

Often, money simply follows the most likely winner. For many, especially those in industry and business, having decent access to a lawmaker is what really matters. It is important to distinguish here between highly ideological groups such as EMILY's List or the NRA (see pages 502 and 508–09 respectively) that have clear policy objectives, and other interest groups. Of course, highly ideological groups channel funding to candidates who share their platform. Others prefer to back likely winners and split funding between parties. A good example is the National Association of Realtors (NAR), which is not a highly partisan group — homebuyers and realtors (estate agents) are probably as likely to be Democrat as they are Republican. As Figure 18.10 shows, NAR members tend to split their donations pretty evenly between candidates of different parties.

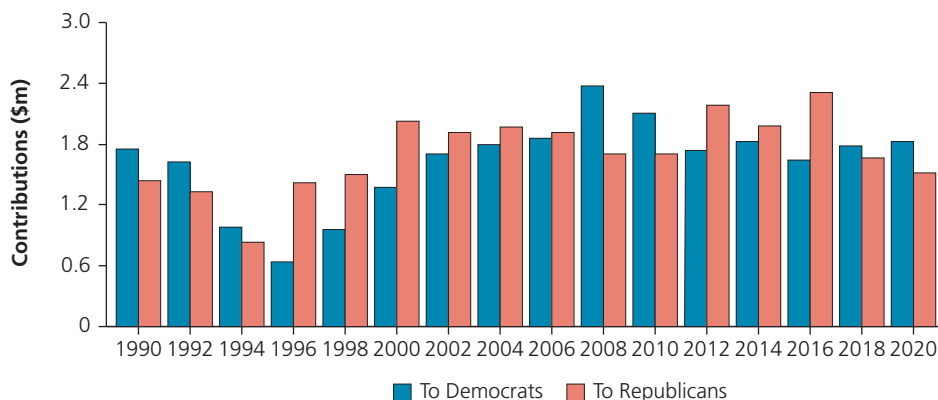


Figure 18.10 Campaign contributions by the National Association of Realtors PAC

Source: adapted from <https://www.opensecrets.org/pacs/lookup2.php?strID=C00030718>

CASE STUDY**Maryland's 7th Congressional District 2020**

Although it remains the case that incumbents raise more money and are more likely to win, exceptions do exist. In 2020, the safely Democrat 7th district in Maryland saw Republican challenger, Kimberly Klacik, greatly outspend Democrat candidate, Kweisi Mfume, by \$4.8 million to \$602,000. Yet, Mfume held on to the seat with ease, securing over 72% of the vote. Mfume maintained his seat was 'not for sale'. He was proved correct.

Republican candidate Kimberly Klacik heavily outspent her Democrat opponent but also heavily lost



As Trump himself once said, 'As a businessman you wanna be friendly with everyone.' In 2020, incumbent senators raised an average of \$22.2 million, while their challengers could only muster an average of just over \$3.7 million. This is another example of the powerful incumbency advantage. In the end, money cannot buy an American election, but there remains a strong sense that one has to 'pay to play'.

Should campaign finance be reformed?

This is another much-contested issue in US politics. Much of the debate boils down to the 'constitution v corruption' debate. Opponents of regulation would point to the First Amendment right to freedom of political expression and argue that political donations are just another example of legitimate political activity. Supporters of greater regulation would argue that the current approach promotes political corruption of the worst sort. The old saying 'There's no such thing as a free lunch' is never truer than when applied to political gifts. Those who give expect something back in return. Since not all are in the position to give due to the inequalities in wealth, such a system is rigged in favour of the already rich and powerful.

SYNOPTIC LINK

The issue of the First Amendment and campaign finance is one where the actual meaning and intention of the Constitution is open to debate. It raises the question of whether political donations are a valid form of political expression on a par with free speech. The issue of civil rights and the US Constitution is explored more fully in Chapter 23.

SYNOPTIC LINK

This in many ways parallels the elitist v pluralist argument regarding pressure groups. How level is the playing field, and how far do all groups in society enjoy equal access to policy-makers? You can find out more about US pressure groups in Chapter 21.

DEBATE

Should US campaign finance be regulated?

Yes, it should be regulated

Election expenditure has got out of control in recent years. It needs to be brought under control. 2020 saw more money spent than in the previous two elections combined.

The emphasis on fundraising distracts elected representatives from focusing on doing their real job, which is making laws and listening to all their constituents. This is especially true for the House where representatives must seek re-election every 2 years. Constant campaigning also means constant fundraising.

The cost of elections means that only the personally wealthy or well connected, e.g. Trump and Bloomberg, can really afford to enter politics and get anywhere. It heightens the elitist nature of US politics.

Business groups far outspend labour groups. When looking at PACs, that margin is roughly 7:1.

The Supreme Court's recent decisions, such as *Citizens United*, have added to the problem. The issue needs to be tackled by a constitutional amendment that expressly allows Congress to limit campaign finance.

There are plenty of instances of non-disclosure such as with 'dark money'. Several funding platforms, such as 501 (c) groups, do not require the names of donors to be made public.

Reforms are desperately needed to plug loopholes, like the emergence of Super PACs, 527 and 501 (c) groups. There is too much political influence already with wealthy vested interests, which raises the issue of corruption and 'buying votes' in Congress.

Matching funding, first offered in the 1976 presidential election, has all but died out. In 2000, the Federal Election Commission paid out nearly \$240 million in matching funds. In 2016, it paid out only \$1 million.

No, it should not be regulated

2016 saw slightly less spent than in 2008 and 2012 in the presidential campaigns. Campaign finance inflation is not continual.

Campaign finance reform is unnecessary since candidates must in reality listen to a wide range of their voters, and often call town hall meetings to hear constituents' views. They are unwise in the extreme to ignore the concerns of ordinary voters and be influenced by wealthy donors only.

Fundraising and political donations are a crucial part of the democratic process. They allow supporters to show additional loyalty to their favoured candidates and causes.

Political donations are part of the free market. Causes and candidates who are popular attract the most funding and vice versa.

The Supreme Court has merely upheld crucial First Amendment rights regarding freedom in political activity when striking down some campaign reform laws. It also upheld the BCRA in 2003 (*McConnell v the Federal Election Commission*).

Political donation comes with transparency and disclosure. Nearly all political funding is traceable.

Whatever reforms are passed, the wealthy will always find loopholes: according to former Supreme Court justices John Paul Stevens and Sandra Day O'Connor, 'Money, like water, will always find an outlet.'



In pairs or in groups, discuss whether you think campaign finance should be regulated more tightly in the USA. If you agree it should be more regulated, what changes would you introduce to achieve this?

Perhaps the last word in campaign finance should go to a *New York Times* reader who, commenting on the \$14 billion cost of the 2020 election, lamented: 'The mind boggles. They could have fixed climate change for that. Fixed Iran. Fixed the health service. All that money wasted.'

KEY CONCEPT

Direct democracy Form of democracy in which people decide on policy initiatives directly, as opposed to indirectly through their elected representatives.

ACTIVITY

The 2020 California ballot initiative over the status of Uber drivers is a very interesting one to research in more detail. Find out the arguments on each side, watch some related campaign ads and investigate the unequal funding and final outcome. The website Ballotpedia.org is an excellent starting point for research.

How direct democracy works at state level in the USA

Direct democracy in the USA takes three main forms.

- **Ballot initiatives** (also known as propositions): laws or measures are proposed by voters, and if enough signatures are obtained, are placed on the ballot at election time, usually in November alongside local, state and national elections. Ballot initiatives have been held over a vast array of issues including the legalisation of marijuana, same-sex marriage, expanding Medicaid and restoring voting rights to ex-felons. The compulsory wearing of condoms by actors appearing in adult movies also featured on the list of California's ballot initiatives in 2016. Ballot initiatives are the most significant and widely used form of direct democracy in the USA.
- **Recall elections**: voters can force an elected state official such as a mayor, judge or governor to face re-election before their full term has expired. The most high-profile recall bid in recent years was that in 2012 for Wisconsin's Republican governor, Scott Walker. This was in opposition to legislation that curtailed bargaining rights of public sector workers. Although enough signatures were collected to force a recall election, Walker survived. The last governor, and only the second ever in US history, to be successfully removed in a recall election was Gray Davis for California. He was replaced by Arnold Schwarzenegger, also known as the 'Governator'. A California state judge, Aaron Persky, was successfully recalled in 2018. This was due to his comments and the leniency of a sentence handed out to a Stanford University student found guilty of sexual assault.
- **Referendums**: can occur where the state legislature passes a law but is then required to submit this directly to voters for approval. Legislatures in every state regularly refer state constitutional amendments to voters. In 2018, one example was in Alabama where 78% of voters supported an amendment to the state constitution allowing the display of the Ten Commandments in state courthouses. In addition, around half of states allow groups who can collect enough signatures, the ability to demand a vote asking for an existing law to be vetoed.

Unlike many other Western democracies, including the UK, the USA only has direct democracy at state level. There is no constitutional provision for national referendums or for the recall of federal judges such as those in the Supreme Court, nor of the president and members of Congress. The laws concerning direct democracy also vary considerably from state to state. California is the most high-profile state to make frequent use of ballot initiatives, and where the most campaign money is spent.

Just as with the UK, the arguments for and against direct democracy in the USA take on a number of points, but in the USA there is the added complexity of federalism, meaning significant differences between states, and also the issue of money. Even getting an initiative on the ballot takes time and money. Most ballot measures are therefore the product not so much of ordinary citizens but of interest groups. It takes money and organisation to collect

the thousands of signatures often required to get an initiative on the ballot. Many groups employ professional petition consultants to collect signatures from eligible voters, for example by going door to door or visiting a shopping mall. Direct democracy is a reminder that it is not just presidential, primary and congressional elections that soak up the cash in US politics. Vast sums are often spent particularly on high-profile ballot initiatives. In 2020, the total raised on campaigning over direct democracy measures was close to a staggering \$1.2 billion. Over \$220 million was spent on a single California ballot initiative alone, to do with whether app-based taxi drivers, e.g. those who worked for Uber, should be classified as employees.

DEBATE

How well does direct democracy work in the USA?

Works well	Does not work well
It allows voters to have a direct say in framing laws. It represents a 'purer' form of democracy. It allows variation in laws between different types of states that reflect their different political priorities and complexion. It improves the accountability of state-level officials between elections, especially where promises have been broken or their actions have produced strong opposition. It adds an additional check and balance to state executives and legislatures between elections. It increases opportunities for political participation. It also provides additional opportunities for pressure groups to get involved in decision-making, e.g. the NRA publicly backed a 2014 measure in Alabama to strengthen Second Amendment rights. Direct democracy is popular in the USA. There was a total of 120 measures on ballots in 2020 including 13 in California alone. It can cover issues where parties and individual candidates have not made a prior promise.	It can lead to the 'tyranny of the majority', namely voters passing laws that negatively impact on a minority, e.g. requiring driving tests to only be in English. It can lead to inconsistencies and variation in laws between states, e.g. with same-sex marriage before the <i>Obergefell</i> verdict. It is often simply a political tactic used by 'sore losers', or those unhappy with specific policies. It also undermines representative government. Many would argue there are enough checks and balances already as governors have a veto. It simply adds another opportunity for stalemate and stalling over important issues. It can also limit the ability of state governments to do their job properly. It promotes 'democratic overload' and makes many ballots long and complicated, and so arguably depresses participation. Many would argue that pressure groups already have too much influence in US politics. It also adds to the overall cost of US elections. Turnout is often low, and parties often exploit direct democracy to influence the outcome of other elections. For instance, in 2018 in North Dakota, Democrats used an initiative on the legalisation of cannabis to attract young voters and liberals to vote for incumbent Democrat senator Heidi Heitkamp. On the other side, Republicans appealed to anti-immigrant instincts and introduced an initiative that would make it illegal for non-citizens to vote in North Dakota elections. Ordinary voters may not always fully understand complex laws. They may also vote for unsustainable measures such as cutting state taxes while increasing spending on public services, which can lead to huge budget deficits.

 Individually or in pairs, discuss how well you think direct democracy works in the USA. Make sure that you evaluate the significance of the arguments presented in the debate above.

KNOWLEDGE CHECK

- 20 What is the difference between referendums and ballot initiatives/propositions?
- 21 What is meant by 'tyranny of the majority' in the context of direct democracy?
- 22 How and why do political parties often get involved in ballot initiatives?

Split ticket voting and high levels of abstention in US elections

US politics is also characterised by split ticket voting and high levels of abstention, despite the many and frequent opportunities to vote.

KEY CONCEPT

Split ticket voting When a voter decides to vote for candidates from different parties in the same election.

Split ticket voting

Split ticket voting is when voting for candidates from different parties in different types of elections is held at the same time. In 2020, it might mean voting for Biden as president but for a Republican in the Senate or House elections. This used to be a regular feature of voting behaviour in the USA but has sharply declined in recent times, as Figure 18.11 indicates. Note, the y-axis shows the percentage of congressional districts that voted for a presidential candidate from the opposite party to its representative in the House.

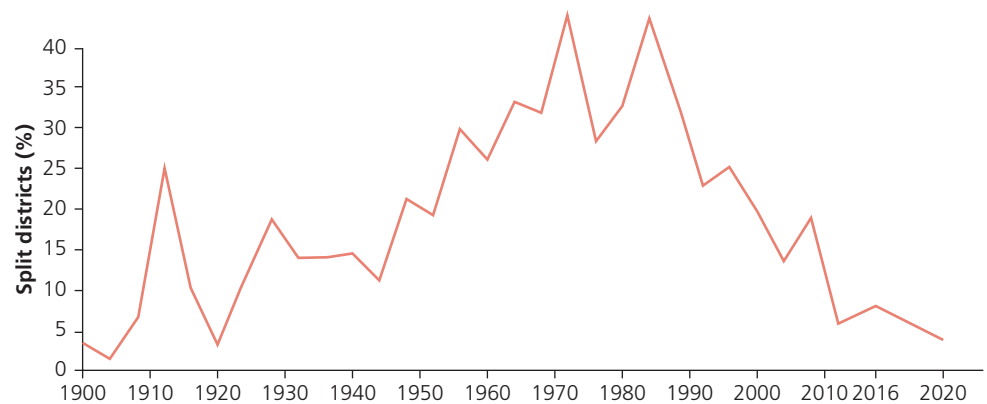


Figure 18.11 The percentage of split districts 1900–2016

Source: adapted from https://ballotpedia.org/Split-ticket_districts_in_the_2016_presidential_and_U.S._House_elections

The year 2016 was the first time in modern US politics when every Senate race corresponded with how that state voted in that year's presidential election. This trend was almost repeated in 2020, although Republican Susan Collins held her Senate seat, while Maine itself voted for Biden. This contrasts sharply with how things used to be. In the 1982 midterms, for example, Democrats won 17 of the 28 Senate contests held in states Reagan had won 2 years earlier. The same phenomenon can also be observed in recent House contests. In 2020, just 16 districts 'split' their vote — a record low of under 4% of House districts. In 2016, just 35 House districts voted for the presidential candidate from a different party from the House representative it elected.

There are, as ever, some individual quirks, such as Democrat Collin Peterson (Minnesota 7th District), who was re-elected in 2016 despite his district backing Trump by a margin of over 30% in 2016. Three points to note though: first, Peterson was the most conservative Democrat in the House and one of only two to vote against Trump's impeachment — the other Democrat subsequently defected to the Republicans. Second, he was a long-serving incumbent of 30-plus years. Third, his winning streak against the odds finally faltered in 2020 when he lost by a sizeable margin to his Republican challenger. With personalities still playing an important role in

US politics, many voter choices may be built on the likeability/experience of a particular candidate.

The main reasons usually associated with split ticketing are as follows:

- It reflects preferences for personalities over parties in some cases.
- US parties have traditionally been quite 'broadchurch', although this is much less true today.
- The sheer number of elected offices offers many opportunities to split one's ballot.

The main consequences of split ticketing are threefold. First, as mentioned above, it can lead to 'divided government' at either state or national level. A second consequence can be split Senate delegations, where there is one senator from each party. This is far less common than in the past, but in the 2020–22 Senate Ohio, Montana and West Virginia were among the six states with split Senate representation. Third, as the example of Peterson shows, it can affect voting behaviour and actions. An elected representative from a split district or state must be careful about how they vote, and the amount of support they offer even to 'their' president. Some of the least enthusiastic supporters of Trump among Republican senators were from 'split states'.

Why then has split ticketing declined? The main answer is there is an ever-widening divide between Democrats and Republicans on fundamental political values, as well as the fact that Americans are more consistently liberal or conservative in their views than in the past. In short, the USA has become more partisan, more polarised and less likely to 'vote across the aisle'.

High abstention levels

The final defining feature of US elections is that despite more opportunities for voters to participate and vote than those in many other Western democracies, the USA has relatively low turnout rates. In 2016, only 55.7% of the voting age population (VAP) turned out for the presidential race, although this did represent around 87% of registered voters. By contrast, the 2019 UK general election saw a turnout of just over 67%. Turnout is even lower for primaries, typically under 30% even in a close and competitive primary such as that for the Democrats in 2020 — even in an early and important state such as New Hampshire, turnout among eligible voters was only around 26%. It is also traditionally low for the midterms, with around 42% voting in 2014, but this rose to a 40-year record in 2018 so one should be careful of pointing to a steady decline in turnout.

Another important corrective is needed here in respect of the 2020 election, when turnout soared to a record 66.4%, reaching as high as 79.9% in Minnesota. This can be ascribed to two key factors:

- Trump was a deeply polarising figure. Many millions of liberals were energised to vote him out of office, while just slightly fewer conservatives were equally incentivised to keep him in office.
- The COVID-19 pandemic meant many states made it much easier to vote by mail or to vote early in order to maintain social distancing.

Figure 18.12 shows the national voter turnout for presidential elections between 1960 and 2020.

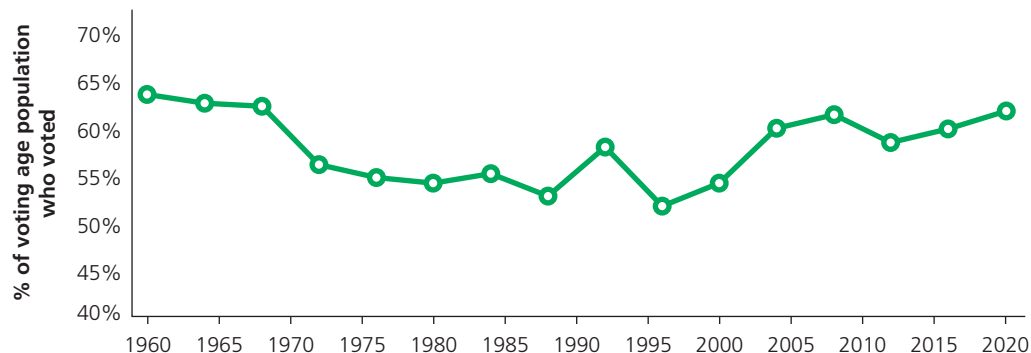


Figure 18.12 National voter turnout in presidential elections 1960–2020

Source: United States Elections Project, adapted from 'Referendum on Trump shatters voter record', at <http://apnews.com>

USEFUL CONCEPT

Abstention Not turning out to vote.

What factors best explain the relatively high **abstention** rates in US elections? Some reasons are primarily structural and include:

- The requirement for Americans to proactively register to vote. In the UK, all eligible citizens are required by law to register (although exercising the vote remains entirely optional), and the process is undertaken by the government. In the USA, the onus is on the individual to get registered.
- In certain states, ex-felons are barred from voting.
- Some states do not make postal voting easy and require an excuse for an absentee or early voting ballot. By contrast, several states (e.g. Colorado, Oregon and Washington) have all-mail voting systems. States that make a lot of use of alternative voting methods not surprisingly have the highest turnouts. In 2020, around 68% of ballots were cast early or by post.
- Many states have relatively high thresholds in terms of deposit/nomination signatures, in order to get on to the ballot. This can limit the range of candidates standing, which has implications for turnout and voter choice. In Indiana, one of the toughest ballot access states, a candidate for statewide office from a minor party must collect 26,699 signatures — not an easy task.
- Some states have introduced tougher voter ID laws to discourage what they term voter fraud. Others, such as Georgia, have pursued an active campaign of purging voter rolls. For example, more than 1.4 million voter registrations were cancelled in Georgia between 2012 and 2018. While some of those removed from the rolls had moved or died, others were removed for simply not voting in several election cycles. Democrats tend to oppose such measures, arguing that this disproportionately affects groups least likely to vote for Republicans, including African-Americans and younger voters.

There are other reasons as well, which include the following:

- There is a lack of viable choice in a political system dominated by just two parties.
- The USA almost exclusively uses a majoritarian electoral system. This discriminates against third-party and independent candidates.
- The issue of 'voter fatigue' or democratic overload. With so many elections and often lengthy ballot papers, many Americans feel disenchanted with politics not least because of the predominantly negative mode of much campaigning.

- The issue of political efficacy. Many voters probably feel that their vote changes very little.
- Finally, many states and districts are uncompetitive. Victory nearly always goes to the same party, so a vote makes very little difference to the outcome.

The impact of relatively low turnout is most significant for primaries. As only a small minority bother to vote in them, and these are the most ideological and committed voters, there can be a tendency for candidates to pitch to the more extreme wings of their respective parties. In the actual election, however, they may need to move more to the political centre so as not to put off more moderate voters. Where they neglect to do this, or primary voters plump for an extreme candidate, it can lead to political upsets. This was seen in December 2017 with Alabama and its Senate special election (by-election). The Republicans had selected the controversial judge Roy Moore in their primary. When it came to the actual election, Moore lost to the Democrat candidate. At a wider level, the relevance of low turnout is what it says about the state of US politics more generally: an apathy about politics and politicians, a lack of choice regarding viable parties and the fact that many Americans for a range of reasons find it difficult to vote. None of this presents a particularly flattering picture for a 'beacon of democracy'.

KNOWLEDGE CHECK

- 23 Why might some Americans split their ticket?
- 24 What evidence is there that voter turnout in the USA is not constantly falling?
- 25 What is the connection between gerrymandering and low turnout?

SUMMARY

- Elections are numerous in the USA and vary in their frequency. Some of this is set out in the Constitution, the rest is determined by state law.
- The chief characteristics of US election campaigns include 'constant campaigning' and a focus on personalities. Money has a considerable but not absolute impact on election campaigns.
- Primaries and caucuses are used to select candidates and have both advantages and disadvantages.
- The Electoral College elects the president but has a number of intrinsic flaws.
- Voting behaviour in the USA is impacted by a number of factors, including aspects of voter profile such as race, religion and region as well as primacy factors such as the campaign and 'October surprises'.
- Some of the core voting coalitions in the USA include the religious right and African-Americans, and how they relate to the political parties in terms of policy and messaging.
- Campaign finance has a hugely significant role in US elections. Debates continue as to whether or not it needs tighter regulation.
- Direct democracy only operates at a state not national level in the USA, and takes three main forms: ballot initiatives, referendums and recall elections.
- Split ticket voting has declined in recent years due to growing political polarisation and the rise of straight ticket voting.
- Relatively few Americans vote despite a plethora of elections, although 2020 was a notable exception to this trend.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three factors that can affect the outcome of presidential elections in the USA. (9 marks)
- 2 Explain and analyse three arguments that are used to justify the Electoral College. (9 marks)
- 3 Explain and analyse the voting behaviour of any three groups in US elections. (9 marks)

Paper 2 Section B style questions

Read the extract below and answer Question 4 that follows.

How well do primaries work in the USA for choosing presidential candidates?

Americans rarely pause to consider just how bizarre the presidential nominating process has become. No other major democracy routinely uses primaries to choose its political candidates, nor did the Founders of this country intend primaries to play a role in the political system they devised. Abraham Lincoln did not win his party's nomination because he campaigned well in New Hampshire. Republican elders saw in him a candidate who could unite rival factions within the party and defeat the Democratic nominee. Today's system amounts to a radical experiment in direct democracy, one without precedent even in America's own political history.

Political professionals — insiders such as county and state party chairs, elected officials such as governors — are uniquely positioned to evaluate whether contenders have the skills, connections, and sense of responsibility to govern capably. Only they can reduce the element of sheer randomness that plagues today's primaries, where a stroke of bad luck in a single state can sink a candidacy. The voters need their help.

Then came 2016. Neither Donald Trump nor Bernie Sanders changed the system all by themselves. Both saw and exploited the invisible primary's fragility. The electorate had come to view the establishment's seal of approval with scepticism or outright hostility, allowing outsider candidates to tout their lack of endorsements as a mark of authenticity. Candidates have learned to bypass traditional funders by securing online donations or just self-financing.

Restoring the old era of smoke-filled rooms is neither possible nor desirable. Primaries bring important information to the nominating process. They test candidates' ability to excite voters and campaign effectively; they provide points of entry for up-and-comers and neglected constituencies; they force candidates to refine their messages and prove their stamina.

Source: adapted from an article in the *The Atlantic* magazine, December 2019

Note: *The Atlantic* is a long-established political and cultural monthly publication that, although generally non-partisan politically, endorsed Clinton for president in 2016, and is seen as critical of Trump's presidency.

- 4 Analyse, evaluate and compare the arguments in the extract over the extent to which it could be argued that primaries are not a good method for parties to choose presidential candidates. (25 marks)

FURTHER READING

Articles

Kilheaney, E. (2017) '2016 US election results', *Politics Review*, Vol. 26, No. 4, extra resources archive.

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Edwards, G. (2019) *Why the Electoral College Is Bad for America* (3rd edn), Yale University Press.

Kamarck, E. (2018) *Primary Politics*, Brookings Institution Press.

Ross, T. (2017) *The Indispensable Electoral College: How the Founders' Plan Saves Our Country from Mob Rule*, Gateway Edition.

Websites

National Conference of State Legislatures — 'Campaign finance and the Supreme Court': <https://www.ncsl.org/research/elections-and-campaigns/campaign-finance-and-the-supreme-court.aspx>

NPR — 'No way to pick a president': <https://www.npr.org/2016/01/26/463870736/no-way-to-pick-a-president-here-are-6-other-ways-to-do-it>

US political parties

KEY QUESTIONS ANSWERED

- What do the two main US parties, Democratic and Republican, stand for? What are their key values and ideas?
- How are the two main parties organised?
- How have US parties changed and evolved in the last 50 years?
- How united are the Republicans and Democrats, and what are the main factions in each?
- How relevant and healthy are political parties in the USA? Are they in decline or being renewed?
- What are the key weaknesses of US parties?
- How far is US politics dominated by just two parties?
- What significance do third parties and independents play in US politics?

BACKGROUND INFORMATION

One attraction of farewell or retirement speeches in politics is that there is no longer any need for the speaker to pander to public opinion or win votes. Consequently, they can reveal the speaker's deeper thoughts and fears. They frequently offer prophetic comments with the benefit of experience and hindsight. Nowhere is this truer perhaps than with George Washington's farewell speech in September 1796. He took a dim view of political parties, which were already beginning to emerge in the newly founded republic. He foresaw the dangers of parties as follows:

'They are likely in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines which have lifted them to unjust dominion.'

In other words, Washington believed parties would undermine representative government and that US citizens would become loyal to parties over the nation. Having done their best to wipe out the tribes of Indigenous Americans by a combination of disease and bullet, the USA would effectively reinvent tribalism based around warring political factions to the detriment of the national interest and unity. History has proved Washington to have been largely, if perhaps inevitably, correct in his fears.

The key values, ideologies, traditions and policies of the Democrats and Republicans

While UK political parties have always had a strong degree of **ideology**, the clue being in their names (liberal, conservative, nationalist), US parties had until the second half of the twentieth century been less easy to pigeonhole. Given the country's size and diversity, parties had to be broad and 'big tent'. The classic example was the New Deal Coalition put together by Democrat president Franklin D. Roosevelt in the 1930s, which would dominate US

KEY CONCEPT

Ideology The core beliefs and ideas of political parties. US parties were traditionally seen as much less ideological than their UK equivalents.

politics between the 1930s and 1960s. Among the groups represented by the party were blue-collar workers and unionised labour, minorities (including Jews, southern and eastern Europeans, and African-Americans), conservative white segregationists from the Deep South, the poorer sections of society dependent on welfare and liberal intellectuals.

Second World War hero and leader General Dwight D. Eisenhower was approached by leading figures from both parties encouraging him to run on their party's ticket. Democrat president Harry S. Truman effectively offered to stand aside for Eisenhower in 1948. However, Republican senator Henry Cabot Lodge Jr successfully persuaded Eisenhower to run in 1952 for the Republicans. This example reflects the relatively non-ideological nature of US parties over 70 years ago. Matters have since moved on.

Today, the two parties' policies and principles are largely diametrically opposed to each other, and reflect the different profile of Americans who tend to vote for each party. In a land where one poll revealed that 67% of Republicans thought the 2020 election was rigged and certain prominent senators, including Ted Cruz, openly challenged the legitimacy of Electoral College voters from some disputed states, US parties are seemingly often separated by the political equivalent of the Grand Canyon.

The Democratic Party

Key Democratic Party values, principles and policies include the following:

- Large government programmes are often necessary to lift the poorest Americans out of poverty and despair. Bigger government can enable, not restrict, individual enterprise and freedom.
- Higher taxes on the wealthiest are acceptable to fund social welfare programmes. The 2020 tax policy pledged, 'Democrats will take action to reverse the Trump Administration's tax cuts benefiting the wealthiest Americans and rewarding corporations for shipping American jobs overseas. We will make sure the wealthy pay their fair share in taxes.'
- Expansion of affordable healthcare to all Americans. For Democrats, it is a disgrace that millions of Americans remain uninsured.
- Civil rights for minorities should be embraced and extended, including those for LGBTQ+ Americans.
- Democrats tend to have a strongly pro-choice position on abortion.
- A separation between church and state is both desirable and constitutional.
- Gun control measures need to be tightened up. The Second Amendment is not sacrosanct.
- Supreme Court judges who favour a 'living' and judicial activist position to the Constitution should be appointed to the bench. The Constitution provides a source for discovering new rights and protections, beyond those specifically stated by its framers.
- A diverse multicultural and multi-religion USA is not just a reality but something to positively celebrate.
- Humane and sensible reforms to the immigration system should be introduced, including support for measures such as the Deferred Action for Childhood Arrivals (DACA) policy, and a DREAM Act that would regularise the status of many, currently illegal immigrants resident and working in the USA.
- There should be reforms to policing in particular with regard to racial issues, especially after the murder of George Floyd in 2020.

STUDY TIP

When discussing the growing polarisation of the parties and their platforms, abortion is a good litmus test. Today it is almost essential to be pro-choice to win a Democrat primary. As an example, in 2020, pro-life incumbent Illinois Democrat congressman Dan Lipinski lost a primary challenge to Marie Newman, a more socially progressive Democrat.

ACTIVITY

Research the DREAM Act and DACA measures more fully. What are the main terms of each? Why are both strongly backed by most Democrats but resisted by many Republicans? A good starting point for your research could be the American Immigration Council website.

- The USA should work with international organisations and cooperate/engage with other nations in areas such as climate change and nuclear proliferation.
- Environmentalism and climate change are very real and imminent dangers. The USA needs a 'Green New Deal' and urgently.

STUDY TIP

If writing about the Democrats' approach to religion, do not say they are anti-religion. Many Democrats have a strong religious faith personally. What they are wary of is bringing faith into areas of public life, and the state favouring one religion over another. For Democrats, religion and the state should remain separate.

The Republican Party

Key Republican Party values, principles and policies include the following:

- Major government programmes are often wasteful and inefficient, and poverty is best solved by incentivising Americans to get jobs and help themselves. Many share a strong suspicion of too much government interference and intervention.
- There is a preference for limited government involvement in economic decisions and regulation. The economy does best when left alone.
- Republicans are predisposed towards lowering taxes, including for the richest, reflecting the belief in 'trickle down' economics.
- Healthcare provision should, in part at least, reflect personal choice and the ability to pay, although most Republicans support the existing federal Medicare programme for older Americans and younger people with certain disabilities.
- Civil rights have probably gone far enough and no further extension is necessary. Measures such as affirmative action are patronising to minority groups who should be able to succeed like all other Americans by their own efforts.
- There is strong antipathy to much of the LGBTQ+ rights agenda. Many Republicans accept the reality of same-sex marriage after the *Obergefell* case, but they oppose liberals who want to push the cause further, e.g. transgender rights. Some Republican-controlled states have sought to pass 'bathroom bills' to slow down the LGBTQ+ rights agenda.
- Republicans tend to have a strongly pro-life position on abortion. Most favour greater restrictions on access to abortion and many wish to see *Roe v Wade* overturned.
- Republicans believe that religion should have a place in public life and support issues such as prayers in public schools.
- The Second Amendment should be upheld in principle and practice. Gun ownership is an individual's right both for recreational activity such as hunting and, in certain cases, for legitimate self-defence. Even moderate gun control measures are viewed by many Republicans as a first step to restricting the rights of all law-abiding Americans to own a gun. The party has strong ties to the National Rifle Association (NRA).
- Supreme Court judges who favour a more 'originalist' and judicial restraint position on the Constitution should be appointed to the bench.

ACTIVITY

Research what 'bathroom bills' are and which states have passed them. Why do you think Republicans often support them and Democrats usually oppose them? Use the search function on the Ballotpedia website to begin your research.

STUDY TIP

When analysing Republican policies, note some of the less typical Republican changes brought about by Trump in areas such as foreign trade, e.g. tariffs/protectionism. In addition, a more isolationist foreign policy is a departure from the 'hawkish' language of the Bush/Cheney/Rumsfeld era at the start of the century. Also, mention how in 2020, the party simply re-adopted its 2016 platform.

- Republicans fear that the USA has become too diverse culturally and racially, and traditional national identity has been partially sacrificed at the altar of multiculturalism and a multi-religion agenda.
- Immigration needs to be much more tightly regulated and enforced. There is general suspicion towards amnesty measures for illegal immigrants already in the USA. Republicans tend to support measures such as an enhanced border wall on the Mexican border and swift deportation of illegal immigrants.
- Republicans have been less well disposed, particularly recently, towards international organisations such as the UN, World Health Organization (WHO) and even NATO. There is strong feeling that the USA overly subsidises these bodies, which they believe poorly serve US interests. There was a growing emphasis particularly under Trump of 'America first'.
- Many Republicans are more sceptical both of the science behind some aspects of climate change and the need to break away from fossil fuels, especially when many of these resources can be sourced within the USA.

KNOWLEDGE CHECK

- 1 How do the parties differ in their policies over social issues?
- 2 How do the two parties view taxation differently?

The organisation of the main parties

The key organisational features of political parties in the USA include:

- the lack of a clearly identifiable leader
- they remain largely state-based, with relatively weak central bodies and a more decentralised structure
- a plethora of associated organisations and interest groups play a significant role in the parties, but are not necessarily institutionally affiliated or formally part of them

Leadership

Unlike political parties in the UK, US parties do not have a clear leader as such. This partly reflects both the separation of powers and the federal framework of the USA, and the broader political culture. The separation of powers means that even the inhabitant of the White House is not the formal party leader — they usually have a high level of authority within the party and set the tone of much of the political agenda but lack any direct control over their party in Congress.

Both parties have their own party leaders in each chamber. In 2021 Mitch McConnell was the leader of Republicans in the Senate, a role filled by Chuck Schumer for the Democrats. In the House, Nancy Pelosi as speaker led the Democrats, while Kevin McCarthy was House Republican leader. The president or indeed the challenging party's nominee has no direct power over their party's legislators in Congress. While there is clear logic to a

coordinated approach and most members of Congress have political views that align with the president/presidential candidate, in reality much negotiation and persuasion takes place. The relative lack of party discipline also means presidents can find their will thwarted by congressional opposition from within their own party. Such opposition explains, for example, why Trump was unable to pass his own healthcare reforms during his first 2 years in office despite Republican majorities in both chambers of Congress.



Senate Minority Leader Mitch McConnell (Republican) and, right, Senate Majority Leader Chuck Schumer (Democrat)

USEFUL CONCEPT

Primaried When an incumbent congressional legislator faces a strong primary challenge from within their own party.

Any leadership that exists is therefore largely informal and based around strong personalities. Arguably, any influence Trump exerted over the Republican Party was due to his strong personal following among much of the grassroots, and Republican lawmakers largely remaining loyal to him in part out of fear of being **primaried** for not following his lead. Leadership is even less visible and effective when the party does not control the White House.

SYNOPTIC LINK

The lack of a single leader in the main US parties contrasts sharply with the UK, where national ballots of party members are usually held to choose the leader. You can find out more about UK parties and how they select leaders and candidates in Chapter 8.

State-based parties and weak central structures

It is sometimes said that there are not two parties in the States, but 100, i.e. 50 state Republican parties and 50 state Democrat parties. It is certainly true that state parties have a degree of autonomy and independence. In Minnesota, for example, local Democrats run on the ticket of the Minnesota Democratic–Farmer–Labor Party, reflecting a 1944 party merger. State parties play an important role in organising primaries and have their own structures, but

KEY CONCEPT

Party organisation Formal structures of a political party such as the RNC and DNC.

ACTIVITY

Visit the websites of the Hill committees and research some of their current campaigns and stated aims.



Alexandria Ocasio-Cortez was the youngest woman ever elected to Congress in 2018

they have a minimal direct role in candidate selection. Local parties do not themselves tend to endorse a primary candidate, although leading local party officials may often endorse individuals in primaries.

The Democratic National Committee (DNC) and the Republican National Committee (RNC) are national **party organisations**. Their main roles are to organise the national convention that formally nominates the party's presidential candidate and to draw up the party's national platform. Beyond that, their role in national politics remains limited, not least as they have no power over candidate selection. Therefore, their chairs (in 2021, Jaime Harrison (DNC) and Ronna McDaniel (RNC)) are rarely household names or major political players.

Yet they are not the sole central party bodies. Four 'Hill committees' aim to get members of their party elected to Congress on Capitol Hill. These are the:

- Democratic Congressional Campaign Committee (DCCC)
- National Republican Congressional Committee (NRCC)
- Democratic Senatorial Campaign Committee (DSCC)
- National Republican Senatorial Committee (NRSC)

These committees primarily coordinate campaigns and donors, helping to direct supporters' financial donations either to target seats or to shore up vulnerable incumbents. They also sometimes run their own ads and campaigns, often attacking opponents in competitive races. In the lead-up to the 2020 Senate elections, the NRSC ran a billboard campaign in several states using the same format, simply changing the name of the Democrat candidate to reflect the individual state.

Although these committees have no direct role in choosing candidates, they often encourage and aid promising candidates, particularly those fighting their first national election.

Associated groups

A final ingredient when analysing party organisation is the existence of many loosely affiliated groups. These share many characteristics with pressure groups but are more overtly party political. A good example is the Democratic Socialists of America (DSA) organisation. While independent of official Democratic Party structures, with a membership of around 50,000 it works to secure the victory of very progressive Democrats in primaries. In 2018 it saw two of its endorsed candidates, Rashida Tlaib and Alexandria Ocasio-Cortez, get elected to the House. A similar organisation on the Republican side is the conservative/populist/libertarian Tea Party movement.

SYNOPTIC LINK

Many more traditional pressure groups, such as the NRA and NARAL Pro-Choice America, throw influence, endorsement and funding behind candidates they see as supportive of their positions. This feature of US politics again weakens the power of national party bodies. You can find out more on US pressure groups in Chapter 21.

One should be careful, therefore, not to ignore the combined role of central party structures, associated groups and donors in wielding influence. In June 2020, controversial Republican House member Steve King (Iowa 4) lost his primary. This was in part due to his track record of racist comments, and because he had consequently become largely

ostracised by the Republican House leadership — Mitch McConnell commented after one of King's comments that he was 'unworthy of his elected position'. King had also been removed from House committee assignments including Agriculture, an important sector in his largely rural district, and was widely seen to have 'lost his voice' in Congress. He lost several important endorsements, including from conservative evangelical leaders in the state, and was seen as electorally vulnerable in a usually safe Republican district. King's primary defeat, therefore, was a rare example of primaries being used to select less polarising and extreme candidates.

KEY CONCEPT

Factionalism Different groups within the same party that often compete for power and influence. Most factions reflect either moderate or more extreme positions within the party.

All these groups, committees and organisations exemplify the 'unity within diversity' model of the modern US party. There is a strong common purpose, namely to secure election victories for 'their' party, but with parallel avenues of giving and activism. When added to the campaign committees of every individual legislator/candidate, the impression is of a complex network of party organisations and supporters' groups, rather than a single hierarchical party with state branches.

Perhaps the organisation of US parties resembles mighty rivers fed by many separate tributaries and streams. They are all headed in the same direction, despite the whirlpools of internal **factionalism**, and are also awash with cash.

KNOWLEDGE CHECK

- 3 What role is performed by the Hill committees?
- 4 What are the main functions of the DNC and the RNC?
- 5 Why was King's primary defeat unusual?

Significant changes in US parties over the last 50 years

Political parties in all democracies including the USA are evolving institutions that change and develop over time. The parties in the USA have certainly undergone significant change over the past 50–60 years, including in the following ways:

- **Geography:** where in the USA they gain most of their support
- **Ideology:** what the core values are of each party
- **Demographics:** which voters support each party
- **Cohesiveness:** how united and uniform their respective representatives in elected office are

The causes and consequences of these developments are complex and significant.

Geography

As Figures 19.1 and 19.2 demonstrate, one of the most visually dramatic shifts is the regional support enjoyed by each party. The South has become more reliably Republican while the East and West coasts are much more solidly Democrat. The presidential election of 1976 was the last time a Democrat won comprehensively across the South (see Figure 19.1). Even when a southern

Democrat (Bill Clinton, former governor of Arkansas) ran and won in 1992 and 1996, he only picked up a handful of southern states. By contrast, Republican support has pretty much collapsed on the West Coast at a presidential level and has dropped considerably in the northeast. Or, using as examples the two largest states in terms of Electoral College votes, the Democrats last won Texas in 1976 with Jimmy Carter, while the Republicans last won California in 1988 with George H. W. Bush.

1976 presidential election

Figure 19.1 shows the results of the 1976 presidential election.

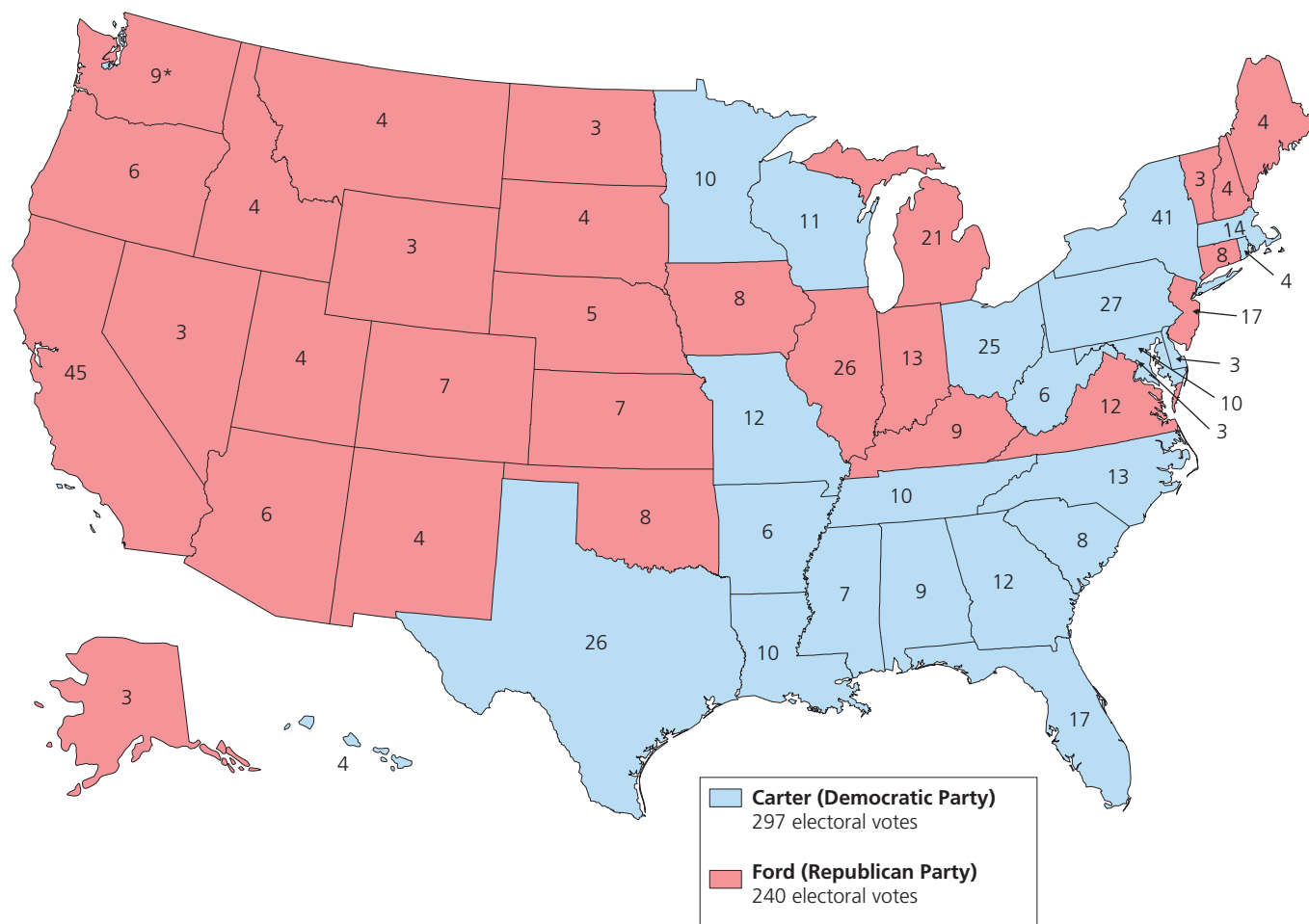


Figure 19.1 Results of the 1976 presidential election (numbers represent electoral voters for each state)

SYNOPTIC LINK

The geographical shift in party support is in large part a result of realigning elections. Arguably, 1972 was the first time a major Republican breakthrough in the South occurred in terms of states won, although Barry Goldwater picked up a number of Deep South states, including Alabama, in 1964. Until then, the South had been solidly Democrat since the major realigning election of 1932. You can find out more about realigning elections in Chapter 18.

2016 presidential election

Figure 19.2 shows the results of the 2016 presidential election.

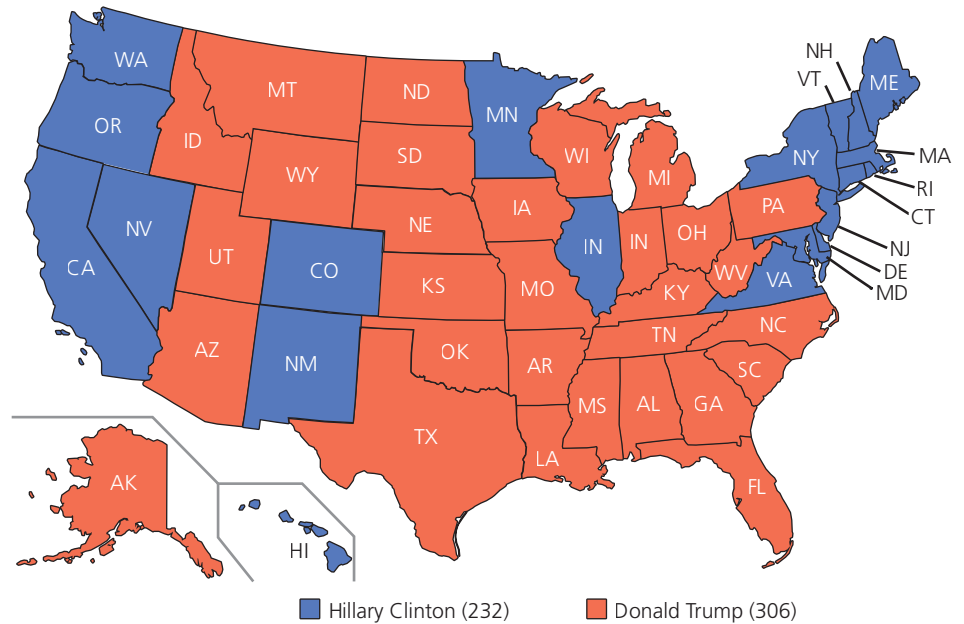


Figure 19.2 Results of the 2016 presidential election

Until the early 1960s, one could safely talk of a Democrat ‘Solid South’. But by the first decade of the twenty-first century, the Solid South had flipped to the Republicans, even if the Republicans lost Georgia in 2020 due in part to its shifting demographics. However, the geographical distribution of votes and support only tells the ‘how’ and not the ‘why’ behind this sweeping change. The answer to the latter lies in what type of voter supports each party and their changing policy platforms.

Ideology

The shorthand story is that the Republicans have become more conservative over the past half century, while the Democrats have become more liberal. The longer narrative revolves around political developments in the 1960s. When Democrat president Lyndon B. Johnson signed off the Civil Rights Act 1964, he allegedly said to an aide, 'We (Democrats) have lost the South for a generation.' The South, though, did not immediately 'flip' to the Republicans. Yet, conservative Republicans such as Goldwater and Nixon deliberately targeted disillusioned white southerners. While there could be no return to formal segregation, and overtly racist language was largely absent, this 'Southern strategy' played a key role in transforming the US electoral and ideological map. Supporters of Goldwater drove out black Republicans from state party leadership posts across the South, while at the 1964 convention itself they rebuffed efforts to have the Republican Party take a stronger pro-civil rights stance. While Goldwater lost by a landslide in 1964, he arguably lost the battle but won the war for the soul of the modern Republican Party.

The Republican ideological transformation, consolidated, advanced and refined by Nixon and Reagan and given a more overtly populist tweak by Trump, revolved around a number of key policy areas.

- First, against the background of serious urban riots in 1967 and 1968 often with racial overtones, many Republicans adopted a strong law and order platform.
- Second, the fallout from desegregation continued. Many Republican candidates aligned themselves in opposition to sensitive issues such as forced educational integration involving ‘busing’, whereby schools were required to become more racially diverse at the expense of parental choice.
- Finally, with a growth in liberal ideas in matters such as sexual morality and abortion, many Republicans embraced a strongly conservative stance, opposing much of the feminist and sexual revolutions. Strong links began to develop with (white) evangelical preachers, and the rise of the ‘religious right’ commenced.

ACTIVITY

Research some high-profile party defectors. Many have a track record in frequently switching between parties. Chafee, for example, ended up briefly seeking the Libertarian Party presidential nomination in 2020. Strom Thurmond also switched parties more than once. Why in each case did they defect?

STUDY TIP

When discussing the ideological shifts in both parties, it is important to note that the process has been gradual not sudden.

Unsurprisingly, some conservative southern Democrats, such as Jesse Helms (North Carolina) and Strom Thurmond (South Carolina), swapped party labels. One other consequence of these ideological shifts was that more liberal and moderate Republicans were defeated in primaries or switched to the Democrats. One, John Lindsay, a former congressman and mayor of New York, noted when he left the Republicans in 1971, ‘Today the Republican Party has moved so far from what I perceive as necessary policies...that I can no longer try to work within it.’ In addition to social and race issues, Republicans also increasingly adopted a stance protective of the Second Amendment and hostile towards ‘big government’.

An almost parallel story could be told for the Democrats. The party became more liberal, more racially diverse and, by the turn of the millennium, a cheerleader for causes such as gun control, pro-choice, LGBTQ+ rights and universal healthcare provision. As the party shed much of its southern conservative wing from the 1960s onwards, so it picked up more support from moderate Republicans. This trend continued into the twenty-first century, as witnessed by the defections of Republican politicians Arlen Specter (Pennsylvania) in 2009 and Lincoln Chafee (Rhode Island) in 2013.

One quote neatly sums up this ideological shift. Senator Edward Brooke reflected on the position in the 1950s: ‘[The Republican Party] was, I believe, much more progressive than the Democratic Party.’ No one could claim the same today, and it is perhaps just as surprising to learn that Brooke was himself African-American and a Republican senator for Massachusetts from 1967 to 1979.

Demographics

The ideological and geographical shifts identified above translate into changing support bases for each party. Republican voters are more likely to be white, live in rural or small-town America and attend church regularly. They are also less likely to be educated to degree level or above. Democrats, by contrast, are much more likely to be found in urban areas and to be from a diverse range of backgrounds and cultures, and less likely to be religious. They are also disproportionately more likely to have higher levels of formal education. These trends act as mutual reinforcers, as the two parties become more distinct and represent different aspects of US citizens. Party campaigns increasingly play (some might say pander) to the prejudices and principles of different voter groups. For example, Democrat ads encourage supporters to view Republicans as racists, bigots and hostile to women’s rights. By contrast, Republican-leaning voters are fed a diet that sees Democrats as fundamentally unpatriotic,

subversive socialists, and enemies of faith-based values who are coming to take away the guns of all law-abiding citizens while simultaneously defunding the police.

Cohesiveness

A final result of this growing partisan divide between the parties is how they function and operate in Congress. The parties are far more (but not completely) united in how they vote. There is far less bipartisanship and major policies, such as Obamacare and the Trump tax cuts, were passed with very little support from the opposing party.

By contrast, when Johnson passed civil rights measures including the Civil Rights Act 1964 and the Voting Rights Act 1965, he relied on Republican votes to get the legislation through. The Civil Rights Act was more popular in the Senate with Republicans — 81% backed it compared with just 69% of Democrats. Such reliance on opposition party votes in Congress is pretty much unthinkable in twenty-first-century US politics.

Impeachment offers another example of how parties have become much more cohesive. In 1974, the House moved to begin impeachment proceedings against President Nixon in the aftermath of Watergate. Seven out of 17 Republicans on the House Judiciary Committee broke party ranks and voted with Democrats to impeach Nixon on the article concerning abuse of presidential power. When the House voted to proceed with Trump's impeachment in 2019, not one out of 195 Republican lawmakers sided with the Democrats.

KNOWLEDGE CHECK

- 6 What was the 'Southern strategy'?
- 7 Why would the parties' voting patterns over civil rights measures in the 1960s be very unlikely today?

STUDY TIP

It is worth remembering that the parties are far more united in opposing a policy of the other party than in agreeing on an alternative when in power themselves. Republicans were completely united in opposition to Obamacare, while some House Democrats also rebelled. By contrast, when implementing their own plans for healthcare under Trump, Republicans failed to agree among themselves and no reforms were passed.

The extent of unity among Republicans and Democrats, and the main factions in each

Given recent trends towards hyperpartisanship and an ever greater distinction between the two parties, it would be tempting to view both as single uniform entities. This is misleading, however, since while the gap between the parties has grown considerably of late, divides and tensions within them also remain. Both parties retain elements of the internal coalition, which is particularly evident in primary contests and in legislating in Congress.

The main divides largely arise for the following reasons:

- **Ideology:** where elected representatives stand politically within their party, whether it be moderate, mainstream or extreme, wields huge influence over how they vote.
- **Geography:** where a legislator comes from often influences how they vote.
- **Personalities:** many internal divides reflect loyalty and support for prominent figures within each party.

DEBATE

How united are US parties today?

Very united

Many key congressional votes reflect high levels of party unity. In 2018, in the House, Republicans stuck with their party an average of 91% of the time and Democrats 89% of the time.

The trend towards growing party unity votes in Congress is relentless and consistent. Far fewer legislators break with their party compared with previous decades. Trump's victory in 2016 intensified this partisan divide.

In terms of policy, both parties are increasingly cohesive on controversial policy issues such as abortion and gun control. It is increasingly difficult, for example, to find pro-life Democrats or pro-choice Republicans.

Many political commentators have referred to Trump's effective takeover of the Republican Party, despite starting out as an outsider. Very few Republican legislators showed much enthusiasm for openly criticising the president in a clear indication of the party uniting around a controversial and often unpredictable figure.

There is a growing emphasis on a unified party platform. Arguably this was first seen with the Republicans in 1994 with Newt Gingrich's 'Contract with America', but the trend has continued since then. For the 2018 midterms, the Democrats campaigned under the 'Better Deal' programme, which focused on 'Better Jobs, Better Wages, Better Future'.

Very divided

Bipartisan votes and party rebellions still occur. In February 2020, the Senate passed a resolution to limit Trump's power to order military action against Iran without first seeking Congress's permission. Eight Republicans joined Democrat senators to pass the measure. In March 2020, the House passed a bipartisan bill (CARES Act) in response to the COVID-19 pandemic. Ten House Republicans voted to impeach Trump in January 2021.

The *Congressional Quarterly* annual vote study for 2018 showed that in the Senate, the total number of party unity votes — defined as those with each party's majority on opposing sides — fell from 69% in 2017 to just under 50% in 2018, the second lowest figure since 2002.

There are policy areas, such as financial regulation of Wall Street and lowering prescription charges, where there is common ground. The same is sometimes true of criminal justice issues even if the motives might differ. Republicans want to cut jail numbers to save money, Democrats because they favour more emphasis on rehabilitation.

Some of Trump's less conventional policies have led to unease in some Republican quarters. This includes areas such as foreign policy and US commitment to NATO, and the introduction of tariffs.

There is no real compulsion for a party's candidates to subscribe to the party's entire policy platform. As candidates secure their candidate nominations by campaigning and winning their own primary races, they can afford to be selective in their campaign pledges.



Individually or in pairs, study the evidence in the debate above and other relevant information to decide whether on balance US parties can be called united today. What score out of 5 (with 1 being very divided and 5 being very united) would you award?

SYNOPTIC LINK

The personal and aggressive nature of some primary campaigns suggests both main parties are divided over more than just personalities. The Republican Party witnessed the Tea Party insurgency during the Obama years, while the advent of Trump saw several successful primary challenges by progressive Democrats, such as Ayanna Pressley in Massachusetts. You can find out more about primaries in Chapter 18.

When analysing party unity, it is important to note the role of context. Very often, parties and individuals are most loyal when seeking their party's nomination. For example, nearly all the most loyal and partisan Democrat senators, such as Cory Booker and Elizabeth Warren, sought the 2020 presidential nomination. Conversely, lawmakers are often most willing to work together in the lead-up to congressional elections to prove to their voters that they can 'govern and deliver' without, of course, straining party unity too much. The second half of a two-term

presidency, the so-called ‘lame duck period’, can also see reduced levels of party loyalty, as legislators have far less incentive to ‘keep in’ with the president. The ending (officially at least) of ‘**pork-barrelling**’ has also reduced some of the more direct incentives for party loyalty. As former Republican Senate majority leader Trent Lott put it in 2013, ‘Trying to be a leader where you have no sticks and very few carrots is dang near impossible.’

KEY CONCEPT

Pork-barrelling Term applied to elected officials using their influence to ensure some federal funding in spending bills goes to their home state or district. This helps re-election prospects. The term derives from the phrase ‘bringing home the bacon’.

The main factions in each party

Having concluded that US parties are not always as united as one might assume, this begs the question: what are the main groupings within them? Some factions are easy to pinpoint as they are formally organised congressional caucuses such as the Democrat Blue Dog Coalition, which in 2020 had 25 House members, or the Republican House Freedom Caucus with an estimated 30 or so members in 2020. Other groupings are less distinct and reflect a broader, looser outlook such as libertarian Republicans or progressive Democrats. In addition there are associated interest groups that help support certain wings in each party (see Table 19.1).

Table 19.1 Examples of Democrat- and Republican-associated interest groups

Examples of Democrat factions	Example of Republican factions
Blue Dog Coalition: supports ‘fiscal responsibility’ and today adopts a more neutral line on social issues such as gun control and gay rights compared with the assertive positions of more progressive elements in the party. As moderate Democrats, they are more willing to seek common cause with Republicans in Congress. Leading members in 2020 included Stephanie Murphy and Lou Correa. Many represent Republican-leaning districts.	Tuesday Group: a grouping of moderate/centrist Republicans. Its members stand for a pragmatic approach to government and are committed to a solution-oriented approach. Similar to Democrat Blue Dogs, they are keen to find bipartisan approaches to issues. In 2020, they numbered around 15 House members including John Katko and Elise Stefanik. Members often represent swing districts.
New Democrat Coalition: this is the largest Democrat House caucus with 104 members in 2020. They describe themselves as committed to pro-economic growth, pro-innovation and fiscally responsible policies. Members come from a wide range of states, and they could be said to represent the broad middle or centrist wing of the party. There is some overlap with membership of other caucuses. For example, Henry Cuellar belongs to both the Blue Dog Coalition and the New Democrats.	Republican Study Committee: this grouping of 147 conservative Republicans represented the largest caucus in the whole of the House in 2020 and comprised around three-quarters of all House Republicans. It stands for limited government, high defence spending, preserving traditional values and the Second Amendment, and balancing the federal budget. Although starting off in 1973 as one wing of the party, arguably today it represents the main bulk of the party. Its chair in the 116th Congress was Louisiana congressman Mike Johnson.
Congressional Progressive Caucus: this is the most liberal and progressive caucus in today’s Democratic Party. In 2020, it comprised 98 members and was co-chaired by Pramila Jayapal and Mark Pocan. Vermont senator Bernie Sanders is also associated with this grouping. Its policy stances largely align with the pressure group Justice Democrats, promoting economic justice and security for all, and advancing environmental protection and energy independence. Most members represent solidly blue districts.	Freedom Caucus: this is the most right-wing Republican grouping in the House with about 30 members, although its membership list is not formally published. Created in 2013, it shares many members in common with the Republican Study Circle and in 2019 was chaired by Andy Biggs from Arizona. It blends a mixture of social conservatism in areas such as abortion and LGBTQ+ rights with a passion for small government and libertarianism. Biggs was one of just two Republicans who in March 2020 voted against the \$8.3 billion emergency COVID-19 measure, which included funds for research into a vaccine. Not surprisingly, like its equally ‘hard-core’ equivalent in the Democratic Party, most of its members represent strongly partisan districts.

STUDY TIP

Some textbooks and articles may make reference to DINO/RINO (Democrats/Republicans in name only), but such terms are essentially obsolete today. In that sense, both parties have lost much of their overlapping wings, with the result that nearly all Democrats are more liberal than the most moderate Republican, and vice versa.

CASE STUDY**Justice Democrats**

Justice Democrats are a progressive political action committee. In 2020, they endorsed 16 Democrat candidates in House races. Most did not mount liberal primary challenges, but ran to fill open (solidly Democratic) seats or against Republican incumbents.

One exception was Jessica Cisneros, a 26-year-old immigration attorney whose 2020 challenge they endorsed against Henry Cuellar, an eight-term Blue Dog incumbent from South Texas. Cuellar was one of the few anti-abortion Democrats in the House with an 'A rating' from the National Rifle Association. His

opponent dubbed him 'Trump's favourite Democrat' and publicised that he voted with the president nearly 70% of the time in the last Congress. Cisneros narrowly lost the primary challenge by 52%–48%.

Successful candidates endorsed by Justice Democrats include Alexandria Ocasio-Cortez and Ilhan Omar. Among their specific pledges are 'Fighting for the Green New Deal, Medicare for All, free college, ending mass incarceration and deportation and rejecting all corporate PAC money.'

Some of these policies are to the left of mainstream Democrat policy positions.

Both main parties, despite greater polarisation in recent times, continue to have a range of often competing factions within them. Such groups along with allied pressure groups and PACs play a particularly significant role in primary elections and seek to support their favoured candidates. In both parties, the principal distinction is between those who might loosely be termed pragmatic centrists, willing to work with the other party on occasion, and the more 'ideologically pure', who are more inclined to equate compromise with a 'selling out' of the party's soul.

KNOWLEDGE CHECK

- 8 What are some of the key policies advocated by the Justice Democrats?
- 9 Which type of districts do the most extreme legislators from each party represent?

The debate over party decline and party renewal in US politics

It was traditionally argued that the US party system meant very little in practice. The parties lacked clear ideological substance and, organisationally, played second fiddle to individual candidates, special interest groups and wealthy donors. Lord Bryce, writing in 1888, made the following famous remark in his classic work *The American Commonwealth* when he referred to the parties as 'Two bottles, each having a label denoting the type of liquor it contains, but each being empty.' As late as 1972, in response to an opinion poll question, 'Are there any important differences in what the two parties stand for?' 44% said No, only just behind the 46% that answered Yes. In the twenty-first century, no one could remotely accuse the two main parties of being

similar in ideology and values, but that is not necessarily to say that US parties are themselves alive and well.

The phrase 'The Party's over' is probably one of the most easily misunderstood in US politics. The title of an important work by David Broder published in 1972, it did not foretell or warn of the demise of US political parties. The main point it sought to make was that the party system was not working effectively and had contributed to a dysfunctionality in US politics. This notion of whether US parties are any more than vote-winning machines bereft of any positive functions is central to this debate: do US parties still matter, do they have a soul, or are they merely 'badges without meaning'?

The Broder thesis, the argument for party decline

Broder was writing at the time of the Vietnam War but before the Watergate crisis broke. He made the following main observations about **party decline**.

First, parties had largely abdicated their role in formulating policy and positions in the area of foreign policy, and too much had been left to 'experts'. As Broder himself wrote:

'Elections are held and party control of the presidency shifts, but the technicians and "experts" — the Walt Rostows and Henry Kissingers — never seem to lose their grip on the foreign policy machinery.'

Second, the parties needed to be reinvigorated and their congressional leaderships given greater powers, with less emphasis on seniority. Again, to quote Broder directly:

'Leadership ought to be held accountable for bringing legislation to which the party is committed to a floor vote in orderly and timely fashion, with adequate opportunity for debate and particularly for consideration of opposition party alternatives.'

He also argued for an end to the Senate filibuster and the Electoral College, to better enable the elected to govern and the direct will of the people to be reflected in the presidential election. The slightly smug British reader might observe that he was essentially arguing for many of the essentials of traditional party parliamentary government observed in the UK.

Broder was also alert to the dangers of ignoring a **renewal** of the responsible party system, when he warned that power might otherwise become centralised in the White House with a president:

'who exploits skilfully the arts of demagoguery, who uses the whole country as his political backyard, and who does not mind turning into the embodiment of personal government...A plausible demagogue may appear and say, "Give me power and I will make things work again. I will restore order to your lives. I will see that there is discipline again. I will make the streets safe, and I will remove those who are disturbing our peace of mind. It may not be pleasant, but I promise you it will be effective. If those demonstrators try to tie up our cities, my police will know how to deal with them so they will not try again...And the press will cooperate with us, and stop its carping and sniping, if it understands what is good for it. And we will save our country" — but, of course, destroy freedom and democracy in the process.'

KEY CONCEPTS

Party decline This approach argues that parties have become weak and enfeebled, with little real power or grip on US politics.

Party renewal By contrast, this approach argues that parties remain central to US political life and have grown in importance and relevance in recent times.

SYNOPTIC LINK

A lot of Broder's concerns were linked with a fear similar to that of the Founding Fathers, that the USA could lapse into 'presidential tyranny' without a strong reinvigorated Congress. However, unlike Washington, Broder saw a strong yet responsible party system as part of the solution not the problem. You can find out more about the intentions of the Founding Fathers in Chapter 11.

ACTIVITY

The main tenets of Broder's work can be found in an easily accessible article published at the same time in *The Atlantic* magazine. It is well worth reading to get the full picture of his thesis. What additional insights about his analysis do you get from reading the full article?

Does this ring any bells?

Finally, Broder also argued for restrictions on campaign finance and for it to be mostly channelled through party campaign committees and not individual candidates, alongside a reduction in the number of directly elected offices especially at state and local level. He concluded by urging:

'The cure for the ills of democracy truly is more democracy; our parties are weak principally because we do not use them. To be strong and responsible, our parties must be representative; and they can be no more representative than our participation allows. Millions more of us need to get into partisan political activity.'

Many of Broder's observations and prophecies ring eerily true, but perhaps some of his reforms remain out of reach. Having established what Broder actually meant, the question is how far are US parties in decline?

DEBATE

Are US parties in decline or enjoying renewal?

Parties in decline

The growth of primaries at all levels of US politics has rendered the candidate selection role of parties largely redundant. This simply reinforces a sense of party weakness and intra-party divisions.

Most political campaigns are candidate not party focused. Party names and symbols are largely absent from personal ads and posters. The emphasis is on the qualities and vision of individuals, not the wider party platform.

Parties play a small role in political communication. Aside from the national nominating conventions, most rallies and adverts are created, paid for and delivered by the candidates not the central party structures. The advent of social media has accelerated this process.

Many US voters have traditionally split their ticket (see pages 442–43), suggesting that the parties have less importance than individual candidates. Several states in 2020 voted for candidates from different parties in governor and Senate races. For example, New Hampshire re-elected its incumbent Democrat senator (Jeanne Shaheen) and its incumbent Republican governor (Chris Sununu).

Voter turnout has decreased in recent times, suggesting a wider disenchantment with US politics and its party system.

US parties remain broad, 'big tent' and often comprised of conflicting outlooks and policies. There remains considerable division within the parties, for example the various Democrat approaches to the Immigration and Customs Enforcement (ICE) agency, or defunding the police.

Parties in renewal

Primaries reinforce the 'party brand', as nearly all aspiring candidates choose to align themselves with one of the two dominant parties. It is simply the case that parties are opening their doors to a wider 'selectorate' rather than old-style 'machine politics'. When primaries are concluded the parties usually come together and coalesce around the winners.

Although campaigns are heavily focused on individuals, in nearly all cases their personal message reflects commonly held values and policies within their party.

The Hill committees and other associated groups run adverts, direct donor funding and seek to promote candidates, especially those seen as strong and who are fighting close races.

Split ticket voting has shown a marked decrease in recent decades. In 2016, every state holding a Senate election that year also voted for the presidential candidate from the same party — in other words, 100% straight ticket voting. In 2020, only Maine split its Senate and presidential votes.

In fact, voter turnout has not fallen consistently. For example, it went up considerably in the 2020 election.

US parties have become increasingly narrow and homogeneous in terms of both policy platform and support base. Polarisation and hyperpartisanship both in Congress and among the wider public now dominate the political scene.



Individually or in pairs, evaluate the points in the debate and decide whether on balance you think US parties as organisations are generally in decline.

Some conclusions regarding party decline and renewal

No one can deny the very real divisions within contemporary US society both politically and culturally. While 'purple America' still exists, there is a great deal of the USA that is distinctly red or blue. Through 'follows' on Twitter, 'likes' on Facebook, where they get their news from or how they vote, the US electorate is in no doubt that modern US parties are far from 'ideological vacuum flasks'. Both Republicans and Democrats have become much more ideologically distinct and different. Whether in terms of attitudes to immigration, guns or a host of other issues, the USA is sharply divided, and this is reflected in its parties. According to Professor Torben Lutjen, 'America has split into closed and radically separated enclaves that follow their own constructions of reality.'

But it is one thing to comment that the USA is politically divided, and quite another to see the parties at the forefront of this divide. Many of the essentials of the Broder thesis remain valid. Institutionally and organisationally, US parties remain weak. If anything, the problems Broder identified have escalated. In reality, what exists are loose ideological webs comprising interest groups, donors, individual candidates and party organisations. To prove this point, take a look at the candidate websites where one can normally find a long list of endorsements from a plethora of different groups. In 2020, Michigan congresswoman Debbie Dingall's list of formal endorsements included the Sierra Club, the National Education Association, NARAL Pro-Choice America, the Brady Campaign (gun control), several labour unions and the Detroit Federation of Musicians. No specific mention, though, of her party affiliation.

To sum up, perhaps one should talk instead of 'distinct parties but disparate structures'? Parties are clearly being renewed in terms of ideological depth and content, but not as centralised structures. The party is far from over, it has just moved into several different venues.

ACTIVITY

Research the website of a congressional Republican candidate. What groups and organisations tend to endorse them?

KNOWLEDGE CHECK

- 10 What did Broder's thesis warn were probably the biggest dangers with the declining effectiveness of US parties?
- 11 How can it be said that parties are both in decline yet also stronger?

The main weaknesses of American parties

Despite the growing partisanship and political polarisation, US parties still remain weak in terms of structure. Many of the reasons have already been covered but can be summarised as follows:

- US parties lack a single leader. The national nominating conventions formally select candidates not party leaders.
- Most election campaigns and political advertising focus on individual candidates not the party label.

- Power within parties is dispersed not concentrated. In this way they resemble the Constitution. Each congressional chamber has its own party leader, there are the chairs of the DNC and RNC and there are the leading figures in each of the state parties. Add to that, powerful state governors, the president and powerful pressure groups and PACs/Super PACs aligned with each main party, and any sense of a top-down hierarchical party is non-existent.
- The federal nature and size of the USA exacerbates this problem. State parties retain significant control, for example, over many aspects of primary elections.
- Above all perhaps, the rise of direct primaries as opposed to old-style machine politics to select candidates makes parties weaker. Most elected politicians are independent political operators whose main concern is not to upset powerful interest groups or their strongly ideological core voters (the very ones most likely to vote in primaries) back home. As with so much else in US politics, there is something of a paradox here. The candidature of Donald Trump was strongly opposed by nearly all the Republican Party establishment at the primary stage. When he prevailed, internal party dissent largely disappeared.
- One resultant key weakness is the absence of effective sanctions especially over rebel legislators. As the case of Steve King shows, pressure can be applied by the party leadership, but it was the Republican primary voters who in the end proved the stronger force in curtailing his political career.

In short, never has the platform/ideological gap between the parties been greater, but arguably never has the power of party structures been weaker in determining the course and candidates for each party.

KNOWLEDGE CHECK

- 12 How does the federal system help make US parties weaker?
- 13 What role do primaries play in weakening US parties?

The two-party domination of American politics

In terms of elected offices and election results, the USA remains, as it has been since its earliest days, a two-party dominant political system.

- There is no tradition of **third parties** or **independents** having a sustained presence in Congress or even in state legislatures. The two nominally independent senators in 2021, Angus King and Bernie Sanders, caucus with the Democrats and do not face serious electoral opposition from that party. In addition, Sanders made two (unsuccessful) bids for the Democrat presidential nomination. Justin Amash, the only non-Democrat or Republican in the House in 2020, was elected as a Republican in 2018, left the party in 2019 becoming an independent, and then joined the Libertarians in April 2020, subsequently choosing not to run for re-election in November 2020.
- No third-party or independent candidate has directly won any Electoral College votes since George Wallace in 1968. The last significant independent presidential contender was Ross Perot in 1992, who won around 19% of the vote. In 2020 the two-party share of the vote was 98%.

KEY CONCEPTS

Third parties Parties other than the Republicans and Democrats, such as the Green Party or the Libertarian Party.

Independent candidates

Candidates not affiliated with long-established parties. Usually such individuals, including Ross Perot, set up their own party (in Perot's case the Reform Party).

- Third parties lack a lengthy pedigree. The two principal third parties in the USA, the Greens and the Libertarians, are relatively recent: the Greens can trace their history back to the 1980s while the Libertarians were founded in 1971. Most third parties in the USA have a short-lived existence. According to Richard Hofstadter, 'The role of third parties is to sting like a bee then die.' Many are built around the ambitions and charisma of a single individual. The American Independent Party (AIP) was essentially the political vehicle of segregationist ex-Democrat Alabama governor George Wallace. When he returned to the Democrats, the AIP effectively disappeared.
- Even most high-profile independents have had close associations in the past with one of the major parties. Michael Bloomberg had previously been elected as a Republican as New York's mayor. When he ran and won as an independent in 2009 he did not face a Republican candidate. In 2019, he spent millions of dollars of his personal money contesting the Democrat presidential nomination rather than running as an independent. Equally, another millionaire with more successful presidential ambitions, Donald Trump, chose to run as a Republican and not an independent.

The only counterpoint to the two-party dominant thesis is that, given the decentralised nature of US parties, arguably there are 100 state parties and not just two monolithic parties. The prevalence of primaries enhances this dominance. It allows, indeed encourages, the politically ambitious to run their own independent campaign, fundraise and organise while also adopting a 'party wrapper' within which to market themselves. In many ways, the workings of the two main parties resemble that of the franchise model in business. Independently owned and financed while having a strong common and easily recognisable brand name — fast-food politics perhaps?

KNOWLEDGE CHECK

- 14 How many independent or third-party members were there in Congress in 2020?
- 15 Which are the two main third parties in the USA?

The significance of third parties and independents in US politics

Given their lack of electoral success and visibility, it is not surprising that the overall importance of third parties and independents is relatively limited. However, they are not entirely without significance.

DEBATE

The significance of third parties and independents

Arguments for significance

In certain close elections, third parties/independents can influence the final outcome, often acting as 'spoilers'. The most prominent recent case was in 2000 when victory in the Bush/Gore race came down to winning Florida. The Green Party candidate, Ralph Nader, secured more votes than Bush's final winning margin. Had Nader not stood, it might be accurate to assume most of his votes would otherwise have gone to Gore, who would then have become president.

Congressional elections can occasionally be directly influenced by the presence of independent/third-party candidates. This was true in 2018 for Maine 2nd District, where the Republican winner in the first round of elections failed to win the seat when the eliminated independent second preference votes were redistributed.

When third parties/independents have policies that prove attractive to voters, these are often co-opted by one or both of the main parties. This happened for example with Ross Perot's pledge for a balanced budget. In addition, the 'Green New Deal' found favour with many progressive Democrats in the elections of 2018 and 2020, thereby taking much of the wind power out of the Green Party's sails.

Arguments against significance

In most presidential elections, third-party and independent candidates fail to make any impact on the final outcome. That was certainly the case in both 2012 and 2016.

Maine is the only state currently using anything other than first-past-the-post (FPTP), for congressional elections. The prevalence of FPTP in the USA is a major reason for two-party dominance. Votes for other parties are effectively 'wasted votes'.

Third parties and independents lack a high-profile media presence and are rarely able to participate in televised debates. They are often labelled as extremist and/or irrelevant. With both parties still being coalitions, there is scope for the Democrats to contain self-proclaimed socialists and environmentalists and for the Republicans to include staunch libertarians.

 In pairs or groups, assess the points on both sides of the debate and decide whether or not you agree that third parties and independents are significant in US politics.

CASE STUDY

Third parties and the 2020 election

In many ways, 2020 proved a dismal election for third parties. Candidates from the two main parties gobbled up 98% of the vote, leaving few electoral scraps for others. Yet delve deeper and it gets interesting. The only significant third-party presence was the Libertarian Party. Its candidate, Jo Jorgensen, secured more votes in

key background states than Biden's margin of victory. For example, in Georgia, Jorgensen gained just under 62,000 votes while Biden won the state by fewer than 8,000 votes. A similar position was apparent in Arizona and Wisconsin. While it is always problematic to calculate where these votes would have gone otherwise, on balance it is a reasonable assumption that they might have acted as a potential spoiler to Trump's re-election.

ACTIVITY

Research the main policies of the Libertarian Party by accessing its website, www.lp.org. What evidence is there that it might be likely to take more votes from those who might otherwise vote Republican?

Perhaps the last word in summing up the plight of third parties should go to one of their seasoned veterans, Ralph Nader, who ran for president three times in 2000, 2004 and 2008, twice for the Greens and once as an independent. He lamented, perhaps not without good reason, that:

'In this rigged, two-party system, third parties almost never win a national election. It's obvious what our function is in this constricted oligarchy of two corporate-indentured parties — to push hitherto taboo issues onto the public stage, to build for a future, to get a young generation in, keep the progressive agenda alive, push the two parties a little bit on this issue and that.'

So perhaps, like Nader, one might conclude that the main significance of third-party and independent candidates is the incremental influence they can have on the two main parties. In a political system that allows independent political operators to run and win major party nominations, where parties are still partially 'big tent', ballot access laws are often restrictive, a majoritarian electoral system prevails and political campaigning costs a great deal of money, a third party will always struggle even to get its voice heard, let alone its candidates elected.

KNOWLEDGE CHECK

- 16** How did Ralph Nader arguably influence the outcome of the 2000 election?
17 What is policy co-optation?

SUMMARY

- The two main parties in the USA are the Republicans and Democrats, both of which are generally more conservative than their UK equivalents.
- Each party has a decentralised and state-based organisation with relatively little central control over candidate selection.
- Both parties have changed considerably in the past half century and become more polarised and homogeneous in terms of policy platform and voter base.
- Both parties remain internal coalitions or 'big tent', containing a range of factions within them, primarily between their more moderate/centrist elements and those that are more ideologically extreme.
- Parties exhibit aspects both of decline, in terms of structure and organisation, and of renewal due to hyperpartisanship.
- Parties are relatively weak in the USA due to a variety of factors including the federal system, the absence of a single leader and the primary system.
- The USA remains dominated by just two parties, especially in elections and in its elected officeholders.
- Third parties/independents although weak overall can be significant, primarily as 'spoilers' in a few elections and in influencing some policies of the two main parties.

Practice questions**Paper 2 Section A style questions**

- 1** Explain and analyse three key values of the Democratic Party. (9 marks)
- 2** Explain and analyse three ways that third parties and independents can be significant in US politics. (9 marks)
- 3** Explain and analyse three reasons why US parties could be said to be weakly organised. (9 marks)

Paper 2 Section B style question

Read the extract below and answer Question 4 that follows.

How powerful is a US president over their party, and how far does party government exist?

In the study of modern US politics, the issue of party decline has aroused much debate. Many writing on this subject argue that US parties have been in long-term and irreversible decline. Others hold that US parties have merely changed their role in the political system and, although increasingly eliminated from presidential politics, have developed considerably as national political organisations. The latter argument has particular relevance to the Republican Party, which has won four out of the last five presidential elections. It has also developed its national party organisation to a level of effectiveness and sophistication unprecedented in US history. This has led some to claim that Washington was experiencing something akin to party government.

Advocates of Republican Party renewal claim that recent developments have established it as the precursor to a more centralised and ideologically focused political party. However, while the development of Republican national committees does constitute a new model of political organisation in the USA, there is no intrinsic connection between this and a renewal of strong partisan identities at the electoral level. Many who vote Republican at presidential level remain Democratic in congressional elections. In this new US political system, realignments in public opinion occur but these do not necessarily translate into enduring party alignments. Members of Congress and presidents of the same party have different roles to perform. Presidents are expected to set the agenda on a whole range of issues, while members of Congress above all are expected to look after the interests of their own state and district. The fact that Reagan, one of the most partisan presidents in recent years, had to endure increasing strife at the hands of members of his own party in Congress illustrates the massive problems facing party government in Washington, DC.

Source: adapted from Rae, N. C. (1988) 'The modern Republican Party: resurgence or decline?', *Journal of American Studies*

- 4 Analyse, evaluate and compare the arguments in the extract over the extent to which it could be argued that US parties today are centralised and effectively controlled by their leadership.

(25 marks)

FURTHER READING

Articles

Colclough, A. (2017) 'US focus on...Republican party factions', *Politics Review*, Vol. 27, No. 2, pp. 22–23.

Colclough, A. (2018) 'US focus on...Democratic Party factions', *Politics Review*, Vol. 27, No. 4, pp. 18–19.

Lemieux, S. (2019) 'Why do US political parties still matter?', *Politics Review*, Vol. 29, No. 2, pp. 8–10.

Shapiro, K. (2015) 'US politics: The values of Republican and Democrat voters', *Politics Review*, Vol. 24, No. 3, extra resources archive.

Singh, R. (2017) 'The Democratic Party: where from here?', *Politics Review*, Vol. 27, No. 2, pp. 8–12.

Books

Barrone, M. (2019) *How America's Political Parties Change (and How They Don't)*, Encounter Books.

Conrad, J. (2020) *What You Should Know About Politics ... But Don't: A Nonpartisan Guide to the Issues That Matter* (4th edn), Arcade.

Websites

BBC — a basic guide to the principles of US government: <https://www.bbc.co.uk/bitesize/guides/z2cy7p3/revision/6>

Easy Voter Guide: <http://www.easyvoterguide.org/>

Comparing electoral and party systems

KEY QUESTIONS ANSWERED

- How similar are elections and the electoral systems used in the UK and the USA?
- How does the two-party system compare and operate in the UK and the USA?
- Why is the USA still a two-party system while the UK is arguably moving towards a multiparty system?
- How significant are third-party and independent candidates in the UK and the USA?
- How far can we compare party policies in the UK and the USA?
- How far is there internal unity within the main parties in the UK and the USA?
- In what ways are there both similarities and differences between the UK and the USA concerning campaign and party finance?
- How can the three theoretical approaches be used to analyse the similarities and differences between the UK and the USA in their elections and party systems?

BACKGROUND INFORMATION

The UK and the USA have a lot in common in terms of elections. Both are liberal democracies with the basic democratic safeguards of the secret ballot, universal suffrage, free speech and a choice of parties. Direct bribery and corruption are also illegal. It is also fair to say that both countries also witness a regular rotation of power between the major parties, and that unlike the democracies of Sweden and Japan, neither since 1945 has experienced single-party dominance. Beyond those basic similarities, though, lie several important differences, both structural and cultural, which in turn feed into the rational dimension: how politics and elections play out in each country and how parties function in practice.

SYNOPTIC LINK

Before you compare the two constitutions, make sure you have studied chapters 7, 8, 18 and 19, which cover political parties and electoral systems in the UK and the USA.



I VOTED

Comparing elections and electoral systems in the UK and the USA

The structural aspect of elections and electoral systems

Terms of office

Both countries set limited terms for elected offices, for example 6 years for a senator and a maximum of 5 years for an MP. In the USA, term lengths for Congress and president are set down in constitutional stone. An extension to the term of House legislators, a move many think desirable to allow a longer-term perspective on policy and lessen 'constant campaigning', would require a formal constitutional amendment. If the UK wants to amend the maximum length of an MP's term, it simply requires an Act of Parliament. Under the Septennial Act 1716, a parliament could last up to 7 years, although this was reduced to 5 years under the Parliament Act 1911. There is also no overall term limit on the UK prime minister, unlike the two full terms imposed on the US president by the Twenty-Second Amendment. So, while no US president has served more than 8 years since 1945, two UK prime ministers, Blair and Thatcher, served 10 or more continuous years in office.

Elections and elected posts

There are a lot more elections and elected posts in the USA than in the UK. Also, while both countries elect national legislatures and local councils, the list of elected offices and ballot initiatives is far longer in the USA. First, there are primary elections, a system virtually untried in the UK aside from a handful of local polls to select Conservative candidates in the immediate aftermath of the MPs' expenses scandal. Primaries/caucuses are universal in the USA. While true that some UK cities such as London and Manchester have adopted directly elected mayors, and elected police and crime commissioners are another innovation, the array of local elected officials in the USA is truly vast: mayors, school board officials, agricultural commissioners, sheriffs and even state-level judges make up just part of that list. There are also regular state-level elections for governor and the state legislature. These latter posts also come with considerable powers and significance due to the USA's federal framework. The advent of devolution to parts of the UK since 1997 has, however, created a little more parity in this area. In Scotland, Wales and Northern Ireland, the Westminster elections are no longer the only elections of importance.

Electoral systems

Finally, it is worth comparing electoral systems. Here there is a high degree of similarity. Both countries mostly use a straightforward majoritarian or first-past-the-post (FPTP) system for their legislatures. Yet while that is true for the Commons and Congress (aside from Maine's ranked choice voting system), there is more variety in the UK. Regional assemblies and, until 2020, European Parliament elections use other electoral systems including the additional

member system (AMS) and single transferable vote (STV). Hence, coalition or minority governments are the norm in the devolved assemblies. This is not something apparent at any level of government in the USA.

The rational aspect of elections and electoral systems

Cultural and structural differences in turn impact on campaign strategies and the paths parties take to maximise their chances of victory at the polls.

There are clear similarities.

Policies for natural supporters

Parties and candidates in both countries appeal to core voters with policies designed to resonate with their natural supporters. Parties on the right, for example, play on concerns over immigration. The Republicans under Trump promised to tighten up the Mexican border through construction of a wall and to speed up the removal of illegal immigrants. In the 2010 prime ministerial campaign, Conservative leader David Cameron spoke of reducing net immigration to the 'tens of thousands'. Again in 2019, Boris Johnson talked of a points-based immigration system and reducing considerably the number of unskilled immigrants.

Meanwhile, parties on the liberal/left spectrum focus more on social justice and reducing poverty. Labour in 2019 promised to abolish Universal Credit and to 'End poverty by guaranteeing a minimum standard of living'. The 2020 Democrat platform talked of an economy 'rigged against working families and the middle class even before the novel coronavirus...Working families' incomes have been largely stagnant for decades...Meanwhile, the rich have been capturing a larger and larger share of the economic pie, with incomes for the top one per cent growing five times faster than those of the bottom 90 per cent' — clear echoes here of Labour's mantra under Jeremy Corbyn of 'For the many not the few'.

The use of social media

In both countries during election campaigns, there is increasingly sophisticated use of social media to send targeted ads to potential supporters. In the 2019 election campaign, the main UK parties made use of gender-specific ads. For example, among the Labour ads targeting females were three focusing on the party's policy of compensating the 'Waspi' women affected by a change in the state pension age. These ads, seen more than 3 million times collectively, were viewed exclusively by women aged 55 and over.

The same pattern can be seen in the USA. In the first 8 months of 2019 during the early stages of his re-election campaign, Trump's team controversially posted over 2,000 Facebook ads using the term 'invasion' in relation to immigration.

Leaders' personal qualities

Both parties emphasise the personal skills and qualities of their candidates/leaders in a bid to secure victory. Trump's skills as a 'dealmaker' in business and Johnson's experience as a two-term Mayor of London were frequently touted by their respective campaign teams.

Capturing swing states/marginal constituencies

In both countries swing states and marginal constituencies play a vital part in determining final election outcomes. A survey of campaign visits by party leaders during the 2019 campaign revealed that 36 out of 61 constituencies visited by Johnson were marginals and the corresponding figure for Corbyn was 58 out of 76. A similar pattern is evident in the USA, where in 2020, despite the unique circumstances of the COVID-19 pandemic, between September and election day Biden made 40% of his campaign visits to the crucial Midwest Rust Belt states including 16 to Pennsylvania alone. Trump, meanwhile, made 14 stops in Pennsylvania and 12 in Florida.

Differences between the two systems

Yet there are also marked differences too. While election campaigns in both countries frequently criticise the shortcomings of their opponents, the attacks are more personal and vitriolic in the USA. Although the Trump rally chants of 'Lock her up' were a new high (or low) in personal political assaults, US political campaigns are full of adverts and pamphlets that denigrate political rivals. Back in the 1968 campaign, opponents of independent segregationist candidate George Wallace used slogans including 'If you liked Hitler, you'll love Wallace.'

Also, given the importance of the midterms, far more time, money and focus is devoted in the USA to campaigning between presidential elections. Each party knows that winning or maintaining control of Congress midterm can be crucial in improving the chances of the executive delivering on promises that involve legislation such as tax cuts and healthcare reform. By contrast, in the UK the general elections remain the focal point of most electioneering, except for relatively infrequent referendums on controversial topics such as Brexit and Scottish independence. National referendums are not provided for in the US Constitution, and direct democracy is entirely state-based.

The cultural aspect of elections and electoral systems

Personalities

US elections have long been dominated by personalities as much as they have been by parties. This is partly down to the more individualist nature of US society and culture. It contrasts with a UK system in which elections, although increasingly highly personalised, are arguably still more party focused. This is partly due to the presidential system, which emphasises the personal qualities and skills of the candidates, and their own personal vision for the nation. This was as true for Franklin D. Roosevelt in 1932 with his New Deal and Brain Trust (a collection of expert advisers) as it was in 2020 for Donald Trump and his slogans.

Yet, the UK is perhaps not that different. In 1945, Winston Churchill campaigned (unsuccessfully as it transpired) on his personal record as a wartime leader. Margaret Thatcher and Tony Blair ran personalised campaigns in many of their elections, while Theresa May ('Brexit means Brexit') and Boris Johnson ('Get Brexit done') enjoyed varying degrees of success in the second decade of the twenty-first century.

Televised debates between presidential candidates/party leaders also emphasise a focus on personalities. They are, however, a much more recent feature (2010)

in the UK compared with the USA, where the first televised debate took place back in 1960. The structure of the debates also differs slightly, with a variety of formats in the UK usually including the leaders of parties other than Labour and the Conservatives. Third parties and independents are largely excluded from such debates in the USA, although independent Ross Perot did appear in the 1992 debates. There is also a vice presidential candidates' debate, which has no equivalent in the UK.

Candidate selection

In the USA primaries and caucuses are used for candidate selection, though these have only become fundamental to the process in the last 50 or so years. While the historic participation of UK voters in candidate selection has been limited to party members and in generally declining numbers, since the Progressive era the USA has had much broader opportunities for ordinary voters to get involved. Perhaps a legacy from the earliest days of the republic and town hall meetings?

Voting behaviour

Finally, the voting behaviour in both countries highlights some important historic and cultural differences as well as similarities. In both countries, the youth vote strongly favours the more liberal or progressive party. In the 2017 UK election, the gap between Labour and the Conservative Party among 18–29-year-olds was the largest on record — 60% to 27% respectively. Even in 2019, when the gap was smaller and Labour did much worse in terms of seats lost, they still won the majority of the youth vote, and the older the voter, the more Conservative they become (see Figure 7.2, page 181).

Age is an equally significant predictor of voting behaviour in the USA. In the 2018 midterms, according to exit polls, 68% of voters aged 18–24 chose the Democrats — a group also credited with helping to boost the overall turnout figure and secure many Democrat House gains. The pattern was evident too in the 2020 presidential election, as Figure 20.1 shows.

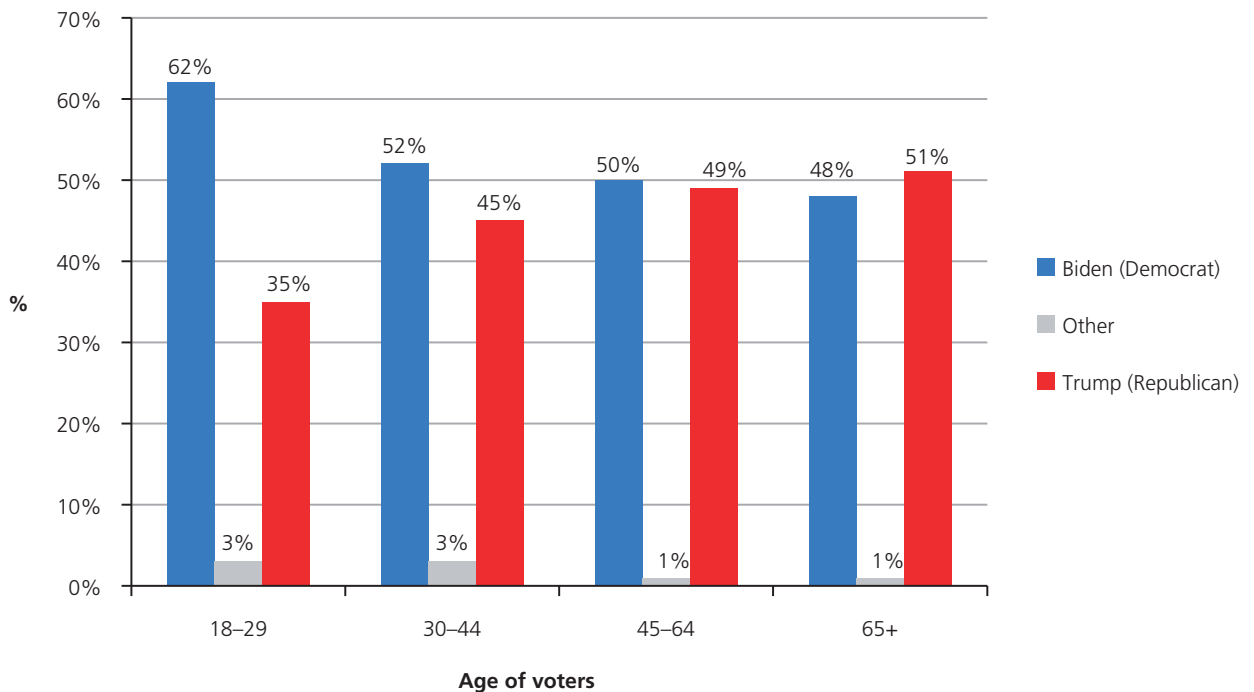


Figure 20.1 Voting profile by age in the 2020 presidential election

In both cases, younger voters opt for more liberal/left-wing parties for a number of reasons, including policies in key areas such as university/college tuition fees and because the under 30s are more liberal on issues connected to immigration than the wider population. Both Brexit and the Mexican border wall were linked to concerns over large-scale immigration.

There are some marked differences in how the youth in each country votes, too. Perhaps the most significant is religion: the UK does not really have the 'religious right' voting bloc seen in the USA, and issues such as abortion and same-sex marriage are more low key and less partisan in UK politics, perhaps a reflection of the country's more secular character overall.

Race is another interesting area for comparison. In both countries, ethnic minorities trend Labour/Democrat, but this is even more pronounced in the USA. Also, with the USA's more pronounced ethnic diversity, mobilising the minority vote there is arguably much more significant, especially in states such as Texas and Florida which have a significant Hispanic vote.

When it comes to household income, differences also emerge, although after the 2019 UK election these are perhaps diminishing. It used to be true that in the UK wealthier areas such as the Home Counties were solidly Tory, while Labour heartlands were in some of the most deprived areas such as the northeast. Yet 2019 saw something of a Tory breakthrough in certain seats in South Yorkshire and County Durham that were economically poor but ethnically lacking in diversity. This corresponds to a longer-established pattern in the USA, where some of the poorest and least ethnically diverse areas are also Republican strongholds, such as in the Deep South and West Virginia. A populist message of patriotism combined with 'taking back control' clearly appeals to many of the voters in these areas. By contrast, both Conservatives and Republicans are finding it increasingly hard to win wealthy middle-class suburban seats, or those with a large number of well-educated voters who often have a more cosmopolitan and globalist outlook.

KNOWLEDGE CHECK

- 1 Why is it much easier to change electoral structures in the UK?
- 2 What similarities are there in voting behaviour between the UK and USA?
- 3 Why do political leaders in both countries seek to appeal to core voters as well as floating/independent ones?

The operation of the two-party system in the UK and the USA

When it comes to how the two-party system operates in the UK and the USA, the pattern of similarities and differences can be seen again (see Table 20.1).

Table 20.1 The two-party system in the UK and the USA: similarities and differences

Similarities	Differences
Both parties cover a range of views and could be described as internal coalitions. These differences are frequently ideological, such as hard-left and Momentum (Labour Party) and one-nation Tories (Conservatives), or Tea Party Republicans and progressive Democrats.	The issues that create divides and tensions within the parties on either side of the Atlantic differ considerably. In the Conservative Party, the main split at least up to 2019 was Leave/Remain, while in the USA the main Republican divides are arguably foreign policy and trade, and how far to expand/reduce the reach of federal government, and therefore the budget deficit.
Each of the main parties in the USA and UK can now accurately be labelled as conservative or liberal/broadly progressive. They are ideologically distinct. For example, both Conservatives and Republicans generally favour lower taxes and tighter immigration policies and dislike 'big government'. By contrast, Labour and the Democrats both put greater stress on the rights of minorities as identified by race, sexuality etc., support environmental policies and are more willing to accept a degree of wealth redistribution from rich to poor via taxation.	The Conservative Party is more socially progressive than the Republicans on issues such as abortion and same-sex marriage. Also, Conservatives firmly support the NHS while no Republican would favour a 'socialised healthcare system'. By contrast, the Democrat Party is more moderate and centrist than the Labour Party was under Corbyn, although the election of Sir Keir Starmer in 2020 propelled it more towards the centre ground. Today, Republicans sit to the right of the Conservatives, especially on social issues, and Democrats remain more to the right than Labour. The UK parties have long been more ideologically based and distinct (as implied by their names, such as Liberal and Conservative), while this is a much more recent development in the USA.
Both parties exhibit internal party rebellions and revolts. It is a reflection of the broad spectrum of ideas and policy positions contained in all four parties, and also manifests in contests for the leadership and securing the presidential nomination. In the 2019 Democrat primaries, Bernie Sanders and Elizabeth Warren represented the progressive wing of the party, while Joe Biden and Pete Buttigieg were more centrist. In the 2020 Labour leadership contest, Rebecca Long-Bailey was considered heir to Corbyn while Sir Keir Starmer was seen as more centrist.	Party unity in the legislature generally remains lower in the USA compared with the UK, although the period 2015–19 saw considerable internal divides in both UK parliamentary parties. In 2016, Corbyn lost a vote of confidence in the parliamentary Labour Party, by 176–40 votes, while Theresa May in 2018–19 faced large-scale backbench revolts over her Brexit deals. By contrast, the US parties in Congress are becoming increasingly unified, with no House Republicans and only two House Democrats breaking party ranks in the Trump impeachment vote.
Both parties are strongly in favour of retaining the current electoral system because it greatly aids their dominance in parliament/Congress. The main parties in each country benefit from an electoral system that over-rewards them at the expense of third parties and independents.	The dominance of the central or national party is much weaker in the USA in part due to the size and diversity of the country. Primaries also contribute to weakened central control over local state parties.
	In some elections, primarily European and for the devolved assemblies, Labour and Conservatives compete under alternative electoral systems. The result is that neither dominates these elections to the same extent. The Scottish Parliament is dominated by three not two parties. There is no parallel to this in the USA.

Applying comparative theories to the operation of the two-party systems

Cultural, rational and structural theories can all be applied to the operation of the two-party systems.

KNOWLEDGE CHECK

- 4 Why can the main parties in the UK and USA be described as internal coalitions?
- 5 Why are the main parties in both countries opposed to electoral reform?

Culturally, both countries have historically been accustomed to two-party dominance. While this is more pronounced in the USA, with a two-party duopoly only temporarily suspended in the late 1850s, it is a longstanding feature of British, or at least Westminster, politics. Aside from periods of party realignment, such as the 1920s when Labour eclipsed the Liberals as the main opposition to the Conservatives, and the 2010–15 coalition government, parliament too, as its seating arrangements convey, has mostly been a two-party affair. In part, this is due to the structure of the electoral system being mostly majoritarian/FPTP. The official designation in the UK of 'Her Majesty's Official Opposition', and in Congress of House/Senate Minority Leader, also conveys this sense of a single main opposition party.

Rationally, two-party dominance translates into the main parties on each side of the Atlantic seeking to appeal to a broad spectrum of voters. Large parties by their very nature cannot be narrow and niche. It also means that votes for third parties, especially in the USA, are 'wasted votes', which in turn encourages voters to plump for one of the two dominant parties, often regarded as the 'lesser of two evils'. Two-party dominance therefore becomes a self-fulfilling political fixture.

How the USA is still a two-party system while the UK is arguably moving towards a multiparty system

While both parties, particularly at national level, dominate the executive and legislature, third parties are far healthier in the UK. The devolved regions in particular are normally run by one party working in an alliance or power-sharing agreement with another.

The cultural aspect to third parties

UK third parties have far deeper historical roots than their US counterparts. The Liberal Democrats can trace their origins back to the beginning of modern parliamentary government and were one of the two dominant parties until the early decades of the twentieth century. The nationalist parties in Scotland and Wales can trace their ancestry back to the interwar period, while in Northern Ireland the unionist/nationalist divide has its historical roots in the nineteenth century. Sinn Féin won its first Westminster seat back in 1918. By contrast, the two largest third parties in the USA are of much more recent origin. The Libertarians were founded in 1971 and the Green Party has its origins in the 1980s. US party politics has usually seen a succession of third parties rise and then quickly disappear, for example with George Wallace and the American Independent Party (see page 480).

Interestingly, regional and cultural diversity have different effects in each country. In the UK, the distinct culture (as reflected in language, legal and education systems etc.) of the devolved regions provides a natural setting for the existence and appeal of nationalist parties such as the SNP and Plaid Cymru. In the USA, there is even more cultural, ethnic and regional diversity, but arguably the country is so large and so diverse that either one would

encounter a plethora of local regional parties, which would make national politics unworkable. Or you have what in fact is the case — two national parties with distinct regional characteristics. In addition, independence, the priority for the UK's nationalist parties, is a complete non-starter in the USA — the outcome of the American Civil War put paid to any talk of secession from the Union.

How the structural dimension helps explain differences in party dominance between the UK and USA

While the use of FPTP for most elections in both countries cements the two-party grip on elected office and political power, there are some particular aspects of the structure of US politics that further promote two-party dominance.

The laws concerning ballot access often make it very hard for candidates from third parties to get on the ballot in the first place. Large numbers of signatures or a certain percentage of the vote in the previous election are often required. The lack of a national election system often translates into a significant handicap for smaller parties, as many states have particularly high thresholds. The third-party presidential candidate filing fee for Oklahoma for 2020 was a staggering \$35,000. The requirements in the UK are far lower and simpler, with all candidates requiring a £500 deposit (refundable if over 5% of the vote is achieved) and a nomination form signed by just ten voters.

A further obstacle for third-party candidates and independents in the USA is in how the televised presidential debates are structured. To qualify for a debating slot, a candidate must poll an average of at least 15% in five designated polls, which arguably creates something of a Catch-22 scenario. Third-party candidates and independents need the added publicity of participation in such debates to grow their support and visibility, yet lack of television exposure means they usually fail to register high poll numbers.

The rational aspect and party dominance

The dominance of the two-party system in the states creates its own reinforcement. Even high-profile independently minded candidates, such as Trump and Sanders, who conceivably could run outside the Democrat and Republican parties logically choose instead to run for the nomination in one of the two main parties. The existence of primaries and how they operate increases this incentive to run under a 'mega-party' label. With its emphasis on personalities, individual platforms and direct appeals to voters, the primary system attracts a wide spectrum of candidates vying for nominations at all levels who frequently owe little to the central party organisation. In many ways, it sometimes appears as if US parties are comprised of huge swathes of independent political operatives each with their own donor base, campaign team and particular message. This is still reflected in the weaker party unity often seen on some issues in Congress despite the rise of hyperpartisanship. When party defections occur, they are invariably between the two parties, a recent example being the New Jersey congressman Jeff Van Drew, who quit the Democrats for the Republicans in 2020.

KNOWLEDGE CHECK

- 6 Where in the UK is there not a two-party dominant system?
- 7 Which are the main third parties in the USA and the UK?
- 8 Why does the electoral system handicap third parties and independents in both countries?
- 9 What is one of the main differences in party defections between the UK and USA?

By contrast, without a primary system the UK holds far more attraction for candidates to seek election for parties other than Labour and Conservative. When party defections occur, they frequently involve the Liberal Democrats. Several former MPs from both main parties, including Chuka Umunna and Heidi Allen who set up the short-lived Change UK Party in 2019, ending up joining the Liberal Democrats. Other MPs disillusioned with the drift of their party have decided instead to stand as independents. In 2019, this included former Conservative attorney general Dominic Grieve and longstanding Labour MP Frank Field. However, in each of these cases the move arguably defied harsh electoral logic, as all were defeated at the general election. Many disaffected UK politicians feel it makes sense politically, and morally, to leave one of the main parties and plough their political furrow elsewhere.

There is also the sense in both political systems that it makes rational sense to vote for one of the two main parties in order not to waste one's vote. This is even truer in the USA, where every state is essentially a two-party contest at both state and national level. In the UK, while true for the majority of constituencies that are Labour/Conservative election battlegrounds, in many constituencies there is scope for tactical voting, which can benefit third parties, and especially the Liberal Democrats. One of the party's few gains in 2019 was in St Albans, where Daisy Cooper defeated the incumbent Conservative MP Anne Main. She was helped in no small part by a collapse in the Labour vote, which fell by over 8,000, suggesting that a large chunk of Labour voters had tactically switched votes.

The significance of third-party and independent candidates in the UK and the USA

This topic links with the section above and is probably one of the sharpest contrasts between the UK and US party systems. In summary, third parties are far more significant in the UK while independents are more important in the USA. UK politics has traditionally attracted greater support for third parties than is the case in the USA. In the 2019 UK general election, the two main parties received a combined vote share of just over 75% and won 87% of the seats, which enabled the Conservatives to enjoy a healthy working majority of 80. By contrast, the 2020 presidential election saw a combined vote share for Trump and Biden of 98%, with no third party winning a single state. Yet the return in the UK to two-party politics witnessed in 2019 was a departure from the three previous elections (2010, 2015 and 2017) in which neither of the two main parties won a strong majority. During 2010–15 and 2017–19, third parties held the balance of power and therefore had considerable importance.

Why are third parties more significant in the UK?

Balance of power

As previously stated, third parties have in recent times held the balance of power. This resulted in a formal coalition government between the Conservatives and Liberal Democrats in 2010–15. In addition, the Liberal Democrats also had a hand in policy direction, through the referendum on the alternative vote system and the scrapping of Labour's previous plans for compulsory ID cards. During May's minority government, a less formal 'confidence and supply' agreement was entered into with Northern Ireland's Democratic Unionist Party (DUP). Among other things, the deal secured an extra £1 billion of funding for Northern Ireland and an ongoing agreement by the Conservatives to safeguard the Union. There is no historical parallel for this in the USA, where control of Congress has always rested with one of the two main parties, often with one chamber controlled by one party and the other controlled by its opponents. This requires a different approach to political compromises if legislation is to be passed. The incentive among legislators is to try and secure bipartisan support, but third parties are entirely excluded from this process. Nor is there any equivalent to national elections won by a third party, such as the success in 2019 of the Brexit Party, the final European elections involving the UK.

Representation

In the devolved assemblies with their different electoral systems (single transferable vote (STV) and additional member system (AMS)), the two main parties struggle to dominate. In Northern Ireland, the party system is entirely different, with neither main party having any representation. In Wales and Scotland, the nationalist parties (SNP and Plaid Cymru) are significant players, and the Scottish government is dominated by the SNP, albeit often as a minority government. Given the growth in powers of the devolved assemblies, third parties are additionally significant in these institutions.

By contrast, no state government in the USA deviates from the norm of two-party control. One has to look deep and hard for examples of third-party candidates elected to major office even at state level. Former Republican senator for Connecticut Lowell Weicker won the 1990 Connecticut gubernatorial election for his newly formed A Connecticut party (the 'A' was apparently a deliberate ploy to get top placing on the ballot paper). Yet, like George Wallace's American Independent Party in 1968, the party was based around a single figure and soon slipped into the political mist once its founder moved on. When one looks at the Libertarian and Green parties, any elected posts held by their members are invariably at the lowest rung of local government such as district school board or town council. In 2020, Libertarian Charles Boust held the post of auditor in Upper Frankford Township, Pennsylvania. Former wrestler Jesse Ventura did win the 1998 governor's race in Minnesota on the Reform Party ticket in a tight three-way contest, but quit the party within a year and became an independent. By contrast, UK third parties have quite frequently run local councils from time to time, including major cities such as Liverpool and Portsmouth.

This lack of representation in turn means that third parties in the USA struggle to have any significant impact on national policies and legislation. Unlike the

UK, there is no example of policy compromise and shifts to accommodate coalition partners. The closest is co-optation of policies, when one of the main parties adopts a policy from a third party or independent that appears to be finding support among voters. One example was the pledge in his 1992 campaign by independent candidate Ross Perot to eliminate the federal budget deficit, subsequently adopted by both main parties. In 2019, the Democrats adopted the Green Party's New Deal, with its emphasis on tackling climate change and carbon emissions. This arguably lessened the distinctive appeal of the Greens, leading to a loss of potential votes for them, and saw their candidate Howie Hawkins receive just 0.2% of the vote in 2020.

Securing votes

Finally, there is little incentive for potential candidates in the USA to run outside the two-party system, with the main parties' traditional broad appeal and looser central structure (think 'catch-all' and 'big tent' parties). Where third parties and independents ironically have their main significance in US politics is as 'spoilers'. Occasionally they can spoil the chances of a party winning an election by syphoning off a few crucial votes and thereby handing victory to their rival. The highest-profile example of this occurred in the 2000 presidential election, when Green candidate Ralph Nader won enough left-leaning votes in Florida to spoil the chances of Democrat Al Gore, leaving George W. Bush to take the presidency. There is a certain irony here, since Gore is a committed environmentalist. When we look at the crucial battleground states in 2016 and 2020, third parties took more votes in the three Rust Belt swing states than the winning margins of the two victorious candidates.

There is evidence in the UK, too, of votes for third parties clearly determining the outcome of election, often in a way that voters might regret. In 2019, former Labour leader Ed Miliband, who was strongly Remain, clung on to his seat in Doncaster North with a majority of around 2,000 votes over the Conservatives, while the Brexit Party came third with over 8,000 votes, therefore 'spoiling' the result for the pro-Brexit cause.

The significance of independent candidates

Although third parties and independents are far less important in US politics, a case can be made that independents are occasionally more prominent in the USA. First, many US third parties, such as those of Weicker and Wallace, are focused on their founder, already a high-profile politician having originally been elected for one of the main parties. Therefore, although having a formal third-party label, in reality they ran as independents and not the nominee of an established third party. In 2020, the two senators not formally affiliated to either main party, Angus King (Maine) and Bernie Sanders (Vermont), were officially elected as independents, although both enjoy close relations with the Democrat Party, Sanders having run for the Democrat nomination in both 2015 and 2019 and both men having caucused with the Democrats. Neither faced significant Democrat opposition in their Senate races.

By contrast, very few true independents are elected in the UK, and when they are, it is normally because at least one other party has stood down for them. Former BBC reporter Martin Bell stood and won in 1997 as an independent in the safe Conservative seat of Tatton. Neither Labour nor the Liberal Democrats contested the seat, which helped him to victory. He was, however, the first truly novice independent MP to be elected since 1951. Party politics dominates

the UK political landscape as it does in the USA, with the additional obstacle in the UK that wealthy individuals wishing to run as independents are unable to spend unlimited amounts on their campaigns.

In summary, third parties and independents have considerably more influence and significance in the UK in terms of both electoral success and influencing policy-making. The USA, while seeing the occasional flurries of support for charismatic individual independent candidates, lacks established viable third parties that stand much chance of winning any major elected offices. A question to ponder, then: why did a high-profile, somewhat maverick populist such as Trump decide to run as a Republican and not as an independent or third-party candidate? The answer lies mainly in the lacklustre outcomes for third parties and independents in previous US elections.

KNOWLEDGE CHECK

- 10 What evidence is there that third parties and independents fare badly in the USA?
- 11 In which country do independent candidates generally fare better?
- 12 How have third parties affected election outcomes in both countries?

STUDY TIP

When comparing party policies, it is more accurate to use the term 'manifesto' for the UK and 'party platform' for the USA.

A comparison of party policies in the UK and the USA

At first glance, the comparisons look obvious: both the UK and the USA have a party on the right, Conservatives and Republicans respectively, and a party on the progressive/left strand, Democrats and Labour respectively. However, an examination of their respective manifestos, or party platforms in the USA, reveals a slightly different picture.

Areas of similarity

Conservatives and Republicans largely agree in the following areas:

- **Lower taxes for both business and individuals:** in 2018, Trump cut both income tax and the corporate tax rate, which was lowered from 35% to 21%. Indeed, Republican president George H. W. Bush's breaking of his promise 'Watch my lips, no new taxes' is widely credited as being a major factor in his 1992 election defeat. In the UK, recent Conservative prime ministers have also sought to cut taxes where possible. Thatcher reduced the top rate of income tax from 83% to 60% in 1980 and then to 40% in 1989. More recently, in 2012 then chancellor George Osborne abolished the 50p tax rate on earnings over £150,000, and since 2010 the Tories have cut corporation tax from 28% to just 19%. Both parties agree that lower taxes promote innovation and productivity, and that wealth will 'trickle down' to benefit all sectors of society.
- **Strong armed forces:** in Trump's first term the military budget leapt from just over \$600 billion to around \$700 billion, as part of his pledge to 'rebuild' the USA's military strength. While the UK budget has not seen anything like the same growth, the Conservatives were strongly committed to the renewal of the Trident nuclear submarine programme and retention of the nuclear deterrent.

- **Strong nation state:** Trump came to power partly on an ‘America First’ platform and sought to push for better trade deals, especially with China. The same enthusiasm for the nation state can be seen in the Eurosceptic wing of the Conservatives, and a desire to ‘bring back control’ from the EU in areas such as immigration (another area of policy similarity) and fishing policy. Both parties also share a wariness of international bodies: the Conservatives with the EU, and Republicans with the UN and the World Health Organization (WHO), both of which had their funding cut under Trump.
- **The importance of individual freedom, not least in the sense of ‘shrinking the state’:** Reagan famously quipped in a speech ‘The nine most terrifying words in the English language are: I’m from the government, and I’m here to help.’ Similar language can also be found in Thatcher’s promise to ‘roll back the frontiers of the state’. Both seek to decry what is often portrayed and parodied as the ‘nanny state’. Yet in office and in times of crisis, both Republicans and Conservatives have expanded the surveillance state in the interests of national security following terror attacks. This can be seen in the USA through the Patriot Act 2001 passed by George W. Bush in the wake of 9/11, and in the UK via the Counter-Terrorism and Border Security Act 2019. These examples suggest that for conservatives in politics, there must be a compromise between individual liberty and defence of the nation.
- **Abandoning fiscal prudence in times of crisis:** both parties are ready to abandon fiscal prudence and cut government spending when faced with a crisis. The COVID-19 pandemic saw both Trump and Johnson pass huge emergency measures of government support at great expense to keep businesses afloat and workers receiving an income. In essence they had no choice, but it does reveal that as with most democratic parties in the Western world, ideology and fixed political principles can on occasion be jettisoned in the name of pragmatism and the national interest.

Labour and Democrats largely agree in the following areas:

- **Reducing the economic gap:** both parties desire to reduce the gap between the richest and poorest in society and make the wealthiest and big corporations pay their fair share in taxes. The 2019 Labour manifesto contained a pledge to introduce a new 45% income tax rate starting at £80,000 a year, and a new 50% rate starting at £125,000. Meanwhile the Democrat platform in 2020 contained the following pledge: ‘We will make sure the wealthy pay their fair share in taxes. We will make sure investors pay the same tax rates as workers and bring an end to expensive and unproductive tax loopholes.’
- **Better public services for all:** both parties have a strong commitment to improving public services for all, but especially the poorest in society, and increasing public spending to achieve this goal. Blair’s administration sought ‘Education, education, education’, while spending on the NHS was greatly ramped up. Under Obama there was a concerted effort to extend healthcare to nearly all uninsured Americans, leading to the Affordable Care Act (Obamacare) being passed in 2010.
- **International cooperation:** on foreign policy, both Democrats and Labour can be seen as more enthusiastic about global bodies and internationalism. The bulk of the Labour Party was pro-EU in the referendum, although its then leader, Jeremy Corbyn, was noticeably less straightforwardly enthusiastic. Obama’s administration followed a more multilateral approach

to foreign policy. In the hope of persuading Iran's regime to abandon its nuclear ambitions, Obama pointedly rejected Bush's 'axis of evil' terminology and worked for better relations with countries traditionally less well disposed towards the USA. He also focused on reducing the US military presence in Iraq and Afghanistan.

- **Multiculturalism:** both parties are also open to and positive about the benefits of a multicultural and diverse society, and less focused on cutting immigration numbers. Democrats and Labour alike pride themselves on being inclusive and tolerant. Each draws substantial electoral support from ethnic minorities, especially the Democrats from African-Americans, and Labour from a range of voters from minority ethnic groups. In 2019, when Labour performed poorly overall it still led among voters from minority ethnic groups by 64% to 20%. Historically, the Democrats since the 1960s have been strong supporters of the civil rights movement and can count many prominent activists among their ranks, including Jesse Jackson and John Lewis. In the UK, Labour has long promoted racial equality measures, passing the original Race Relations Act in 1965. It should be noted, though, that more illegal immigrants were deported under Obama than under Bush.

Areas of difference

It would be wrong to assume, however, that both party pairings align exactly, as significant differences exist between them.

Policy

The Republican Party is considerably more conservative on social issues. While same-sex marriage was brought in by Conservative prime minister David Cameron (despite the majority of his party's MPs voting against it), the Republicans, especially those from the South and Midwest, are more wedded to traditional values. The evangelical 'religious right' still holds considerable sway among Republicans, a powerful voting bloc largely absent from UK politics. Furthermore, Republicans are much more uniformly pro-life and anti-abortion than is the case with British Conservatives. Gun rights and defence of the Second Amendment are also pretty much an article of faith for most Republicans, again in stark contrast to their UK counterparts, where the issue is rarely prominent and never partisan.

There is also a militant libertarian and anti-government streak among many Republicans that is largely absent from most Conservatives. While defence of the Second Amendment is perhaps the most obvious example, a fair number of Republican-inclined Americans have adopted anti-vaccination stances, and during the COVID-19 pandemic protested vehemently against imposed lockdowns and the compulsory wearing of masks. A poll by two academics in May 2020 found that 23% of Americans would not be willing to get vaccinated against COVID-19. The fears range from a (mistaken) belief that vaccinations cause childhood illnesses to the more outlandish claim that multibillionaire business magnate and philanthropist Bill Gates uses vaccinations as a tool to microchip the world's population. Many simply do not like being told what to do by their own government. By contrast, such a militant libertarianism is largely absent from the UK, and Conservatives focus much more on challenging international, primarily EU, interference in British affairs.

The debate and party positions over healthcare is also a clear difference between the UK and USA. Even within the Democrats, many oppose the

ACTIVITY

Undertake some research into the 'anti-vaxxer' movement in the USA and then see what if any equivalents there are in the UK. What does this suggest about the US view of freedom compared with that in the UK?

'socialist' healthcare plans advocated by its most progressive wing, and the likes of Bernie Sanders and Elizabeth Warren, who promoted a 'Medicare for All' option in the 2019 primaries. Many Democrats remain suspicious of a single dominant state-provided healthcare system. By contrast, in the UK, devotion to and protection of the NHS is a prerequisite for both Labour and Conservative parties. The political battleground of health is fought instead over areas such as funding and the role of private providers in delivering NHS services. Even during Brexit, the Leave campaign gained much support through its notorious 'Battle Bus promise' to spend an additional £350 million a week on the NHS, the amount it claimed the UK would save by leaving the EU. Additionally, the cross-party support during the COVID-19 crisis of clapping for NHS staff has no direct parallel in the USA.



The infamous 'Vote Leave' Battle Bus that promised to spend £350 million a week on the NHS instead of on the EU

SYNOPTIC LINK

The key thinkers and political ideas of socialism and conservatism are covered fully in Paper 3.

Ideology

UK parties have traditionally been more ideological and influenced by key political thinkers. The Labour Party, for example, owes a considerable ideological debt to socialist thinkers such as the Webbs, while its famous Clause IV (adopted in 1918 but modified and rephrased in 1995) was essentially taken out of the Marx and Engels playlist, with its commitment to wholesale nationalisation. Similarly, the Conservative Party, although historically less wedded to a formal ideology, has often embraced the ideas of Burke and the notion of Disraelian 'one-nation Toryism'.

Even the more strident conviction brand of conservatism seen in the 1980s owed a debt to classical liberalism and laissez-faire economics. The Conservative name assumes an affinity with the past and suspicion of abstract radical ideas, while Labour harks back to its 1900 origins as the party of and for the working class. Over in the USA meanwhile, party labels are meaningless — both support the notion of a republic and democracy. Their names give no real clue to their origins or policy positions.

Relationships between party leaders

We also gain insight into the parties through examining the relationships between their leaders. Conservative prime minister Margaret Thatcher and Republican president Ronald Reagan got on famously in the 1980s, which makes complete sense, given they shared a commonly held commitment to the free market and opposition to Soviet totalitarianism. Less obvious perhaps was

the close relationship between conservative Republican George W. Bush and Labour's Tony Blair, especially over foreign policy in the Middle East and the wars in Iraq and Afghanistan.

However, it is also assumed that there was a lack of any personal chemistry between Republican Donald Trump and Conservative Theresa May. Meanwhile, Democrat Barack Obama apparently turned down no fewer than five requests from Downing Street to hold a bilateral meeting with Labour prime minister Gordon Brown, at the UN in New York and during the G20 summit in 2009. Do not assume, therefore, that leaders from the 'equivalent' parties always get on well with each other, and vice versa.

In short, it might be argued that on most policy positions, the Republicans remain to the right of the Conservatives, while the Democrats are to the right of Labour. There is a clear amount of policy crossover but also important differences. In the main, these reflect some of the differences in the political culture and priorities of the two countries.

KNOWLEDGE CHECK

- 13 Give two examples of policy positions where the Republicans are more conservative than the UK Conservative Party.
- 14 Give two examples of policy positions where the Labour Party is more progressive than the US Democratic Party.

Internal unity within the main parties in both the UK and the USA

One consequence of both countries having two large parties that largely dominate the political landscape is that, by necessity, both contain a broad range of views and opinions. All four parties can be described as internal coalitions. With coalitions come fault lines, which predominantly boil down to divides over personalities and policies and a lot of crossover between the two. It would be tempting to devise two simple statements comparing and contrasting the internal unity of parties in both countries:

- 1 US parties are moving closer together and displaying internal unity.
- 2 UK parties are becoming increasingly divided and internally rebellious.

As with similar generalisations, there is a lot of truth in each statement but also some important qualifications to be made.

Arguments for greater party unity in the USA, and for growing party division in the UK

In terms of growing party unity in the USA, there has undoubtedly been a growth of hyperpartisanship in recent times. Since the 1980s, both parties have become more ideologically homogeneous and more geographically segregated. There are very few elected Democrats from the Deep South today, other than

House representatives such as Bennie Thompson (Mississippi 2), who represent majority-minority districts. Republicans are becoming equally thin on the ground on the West Coast and in the northeast. Race, religion, region and even media consumption are increasingly good predictors of party loyalty. Voting records in Congress are generally based around party lines, with far fewer moderates in either party. When it comes to key votes in Congress, such as that for Obamacare, Trump's impeachment, the Tax Cuts and Jobs Act 2017 or Supreme Court nominations, party loyalty holds sway, as Table 20.2 shows.

Table 20.2 Party loyalty in key votes in the US Congress

Vote	Democrat loyalists	Democrat rebels	Republican loyalists	Republican rebels
Affordable Care Act 2010	219 in House 60 in Senate	34 in House 0 in Senate	178 in House 39 in Senate	0 in House 0 in Senate
Tax Cuts and Jobs Act 2017	189 in House 48 in Senate	0 in House 0 in Senate	224 in House 51 in Senate	12 in House 0 in Senate
2018 confirmation of Brett Kavanaugh to the Supreme Court	48 in Senate	1 in Senate (Joe Manchin, West Virginia)	50 in Senate	1 in Senate*
2019–20 Trump impeachment votes (note: the vote cited here is for Article I — the abuse of power)	230 in House 47 in Senate	2 in House (Collin Peterson, Minnesota, and Jeff Van Drew, New Jersey)** 0 in Senate	195 in House 52 in Senate	0 in House 1 in Senate (Mitt Romney, Utah, who sided with his party for the Article II vote on the obstruction of Congress)

* Technically, no Republican voted against Kavanaugh's nomination. Lisa Murkowski, Alaska, announced she would have voted no, but withdrew her vote out of courtesy to Steve Daines, Montana, who missed the vote as he was attending his daughter's wedding.

** In addition, one Democratic House member, former presidential hopeful Tulsi Gabbard, Hawaii, deliberately abstained from the impeachment votes.

Now compare Table 20.3, which identifies some of the key votes in parliament that, by contrast, show the growing propensity for backbench MPs to break with the party line.

Table 20.3 Party loyalty in key votes in the UK parliament

Vote	Conservative loyalists	Conservative rebels	Labour loyalists	Labour rebels
2003 vote over invading Iraq (rebel motion opposing the Blair government)	139 MPs	15 MPs	245 MPs	139 MPs
2013 vote on allowing same-sex marriage	126 MPs	137 MPs	217 MPs	22 MPs
September 2019 opposition motion to take control of Commons business so as to delay Brexit*	287 MPs	21 MPs	240 MPs	2 MPs

* This vote was regarded by the new prime minister, Boris Johnson, as a crucial loyalty test for Tory MPs. Accordingly, 21 rebel MPs had the party whip withdrawn immediately afterwards.

Note that for the first two votes listed in Table 20.3, unusually the leadership of both main parties supported the motions, but the figures reveal how many of their own backbenchers rebelled. In the case of same-sex marriage, although introduced by Conservative prime minister Cameron, the majority of his own party failed to back it, so it was only passed thanks to the vote of opposition MPs.

Also worth noting is how in recent years both Labour and Conservative leaders have been directly subjected to leadership challenges. In June 2016, then Labour leader Jeremy Corbyn lost a no confidence vote among his own MPs by the huge margin of 172-40 following the unprecedented resignation from his shadow cabinet of 21 shadow ministers. He only survived following a leadership ballot of the entire party membership, which he won against challenger Owen Smith with nearly 62% of the vote. Both Thatcher and May were effectively removed in 1990 and 2019 respectively, by their own MPs. In all these cases, deep divisions over both policy and the quality of leadership were laid bare for all to see. The Conservatives were deeply divided over Europe in 2019 and the terms of any Brexit deal. In addition, many blamed May for their lacklustre performance in the 2017 election.

In 1990, Thatcher was blamed for a rigid leadership style that culminated in the introduction of the unpopular poll tax, and a wider perceived failure to listen to colleagues and their concerns. In addition, many believed that despite an unprecedented three successive election victories, it would not be fourth time lucky for Thatcher. With Labour, the majority perception of Corbyn among the parliamentary Labour Party (PLP) was that he would doom the party to certain defeat in the next election, with policies seen as too left-wing. Many were also frustrated by his apparent inability to provide strong leadership for the party over Brexit.

By contrast, US parties have not witnessed the same level of internal opposition to their leaders or open feuding as in the UK. Even as controversial a figure as Trump pretty much kept the Republican Party onside. Significantly, neither he, Obama nor any recent presidents seeking a second term faced a serious primary challenge to them doing so. One has to go back to 1980 for such a challenge, when Ted Kennedy challenged President Jimmy Carter for the Democratic candidacy.

Arguments against greater party unity in the USA, and for party division in the UK being longstanding

Some interpretations suggest that disunity among UK parties is not a recent phenomenon, and that increasing unity in US parties often obscures deeper internal divides. These revolve around two basic points:

- Deep divisions still remain in US parties.
- UK parties have long contained different factions, which have often been at odds with one another.

Deep division in US parties

For evidence of continued disunity and factionalism in US parties, look no further than recent primaries.

Democrats

The 2019 Democrat primaries revealed a deep divide over policy. There were those candidates, such as Biden and Warren, who advocated a more progressive policy platform, including writing off all student loan debts at the cost of \$1.6 trillion and introducing a single state-run healthcare system ('Medicare for All'). By contrast, many of the other candidates in the running, including eventual victor Joe Biden, were more cautious and centrist.

The battle over just how liberal and progressive the Democrats should be is also played out in often fiercely contested congressional primaries. In one of the greatest upsets of the 2018 midterms, Alexandria Ocasio-Cortez, a trailblazer for the most progressive wing of the party and endorsed by the Democratic Socialists of America organisation, won her ultra-blue New York district (NY-14) in 2018, beating longstanding establishment incumbent Joe Crowley. There are yet more factions within the Democrats, including moderate progressives and a smaller, more conservative wing often associated with the 'Blue Dog' caucus.

Republicans

The Republican Party also contains a wide range of bitterly opposing, often suspicious opinions. There is a libertarian streak, represented by Kentucky senator Rand Paul, and a more moderate wing, represented by the likes of senators Lisa Murkowski (Alaska) and Susan Collins (Maine). While Trump undoubtedly held sway across much of the Republican Party, especially following his 2016 victory, the inability of Republicans in Congress to agree on an alternative to Trumpcare says much about longstanding divisions over how far public healthcare should reach but also the range of views within the Republican Party.

SYNOPTIC LINK

Primaries are covered more fully in Chapter 18.

Party divisions in the USA are also fuelled by the primary system. This actively encourages intra-party competition and a focus on personalities. Watching some primary adverts and televised primary debates, one could be forgiven for thinking the candidates were on different teams.



The failure of both parties to unite on healthcare has caused a bitter divide in the USA

Division in the UK parties

Labour

The absence of a similar system in the UK undoubtedly makes intra-party feuding less public. It is worth recalling, too, how neither main party seeks to make it particularly easy for local parties or associations to deselect sitting MPs. For example, the Labour Party, which saw nine sitting MPs deselected between 1983 and 1992, has seen none formally deselected since 2010. In 1990, mandatory deselection was abolished in the party and replaced by trigger ballots. In short, incumbent legislators have a more precarious existence in the USA, while party leaders are more vulnerable in the UK.

ACTIVITY

Watch clips of speeches from Labour's 1985 party conferences to get a flavour of the deep divisions that existed in the party over the activities of Militant, at the time a far-left group within the Labour Party. Then watch clips from the 2016 Republican primary debates. What do they reveal about party disunity?

STUDY TIP

When referencing internal groups and factions, it is important to mention how these can often change name but still fundamentally represent different ideological stances within each party.

By contrast, one can also argue that UK parties have historically deep divisions within them, and that therefore recent rebellions and leadership challenges are not a new phenomenon. The Labour Party, for example, experienced deep divisions over the issue of unilateral nuclear disarmament. At the party conference in 1960, then leader Hugh Gaitskell implored delegates to reject the policy of the unilateralist, pacifist wing, famously declaring his determination to 'fight, and fight, and fight again, to save the party we love'. Fast forward to the early 1980s and Labour was again beset by factionalism, not just over how far to the left it should position itself policy wise, but also through Trotskyite infiltration and the antics of Militant.

Conservatives

Despite boasting in the past of loyalty as its 'secret weapon', the Conservative Party has also been historically split into factions. Europe is perhaps the most obvious recent fault line in policy, but in the Thatcher years much was made of the distinction between moderates ('wets') and her strongest supporters ('dries'). As prime minister in 1995, John Major was faced with such internal unrest from his own MPs, mainly over Europe, that he called (and won) a snap party leadership election along the lines of 'Back me or sack me'.

Both UK and US parties contain formal factions or intra-party groups/caucuses, some of which are listed in Table 20.4.

Table 20.4 Formal factions within the main US and UK parties

Republicans	Conservatives
Freedom Caucus	European Research Group
Liberty Caucus	Blue Collar Conservatives
Tuesday Group	One-Nation Conservatives
Democrats	Labour
Congressional Progressive Caucus	Campaign Group
New Democrat Coalition	Tribune Group
Blue Dog Caucus	Labour First

In summary, parties on both sides of the Atlantic exhibit considerable internal disunity, both historically and in the more recent past. All four parties have ideological fault lines, usually between moderates and those who desire a 'purer' kind of policy. Personalities and leadership styles also play a key role. Arguably, internal feuding is exacerbated by the knowledge that whoever obtains the leadership or candidate crown of a major party in turn gets a good shot at becoming president or prime minister. While shifts have occurred of late, with greater visible unity and homogeneity among US parties and more visible internecine conflict in their UK counterparts, beware of seeing these trends as either too novel or profound.

KNOWLEDGE CHECK

- 15** Give two examples of votes in Congress that suggest growing party unity in the USA.
- 16** Give two examples of votes in parliament that suggest growing party disunity in the UK.
- 17** What policy issues divide parties in both countries?

Similarities and differences between the UK and the USA concerning campaign and party finance

The first similarity is the most obvious: elections in both countries cost money and often lots of it. There are newspaper and social media ads to create and purchase space for, websites to maintain, publicity to print, venue space to hire and campaign staff to pay. In the USA, there is also the opportunity to purchase airtime on TV networks.

The second similarity is the assumption that to stand a strong chance of overall victory, one party/candidate needs to match, if not outspend, its opponents, especially in swing states and on influencing the undecided. Finally, where there are large amounts to be raised and spent comes the potential for undue influence. While all parties welcome small donations from the average voter, all are equally aware of the need to recruit and retain generous individual donors with deep pockets. It is therefore not surprising that those who give generously expect some reward, even if it is 'just' better access to the leadership.

Despite these obvious similarities, UK and US parties operate in distinctly different political cultures. We can analyse these using the three comparative theories.



Structural aspects of campaign finance

Campaign finance is legally regulated in different ways in both nations.

Campaign expenditure caps

In the UK, there are tight limits on campaign expenditure. In the run-up to elections, national parties are capped at a maximum spend of £30,000 per candidate standing. This effectively caps the legally allowed total at just over £19 million. In addition, there are clear limits on campaign spending by individual candidates. This is calculated by adding together a fixed amount of £8,700 plus either 9p or 6p per registered voter in their constituency, depending on how densely populated the constituency is. The names of all donors giving over £7,500 must be made public in the interests of transparency. The Electoral Commission issues fines for breaking these rules, including the failure to produce accurate quarterly donations reports. In February 2020, Plaid Cymru was fined over £29,000 for this breach in the rules.

By contrast, in the USA the rules concerning party finance are far more complex. Formal regulation by way of legislation, e.g. the Bipartisan Campaign Reform Act 2002, has been watered down by court rulings, such as the *Citizens United* and *SpeechNow* court cases. Put simply, there are rules that limit direct donations to parties and candidates (hard money) but few if any effective ones to restrict indirect or independent expenditure (soft money). Nor is there any limit on how much an individual candidate can spend of their own personal wealth (self-funding). This contrast comes down to differing notions

of sovereignty. In the USA, its Constitution and attendant First Amendment rights represent the 'supreme will' of the people. Any legislation must therefore be constitutional, which gives scope for numerous challenges over campaign finance measures, impacting as they do on freedom of speech and political expression. By contrast, due to parliamentary sovereignty the UK is governed by statute law, making change and regulation much more straightforward.

State funding of campaigns

The structure and scope for state funding of elections and campaigns differs in each country. In the UK, far more is done by the government nationally to assist with election costs on a politically neutral basis. For example, voter registration is undertaken centrally by the government, leaving no scope for parties to become involved. In the USA, much party energy and cash is absorbed by registration drives, especially by Democrats seeking to ensure that minority groups register to vote in the first place.

In addition, candidates in UK elections are legally entitled to free postage of one piece of election literature, at a cost to British taxpayers of £42 million (for the 2017 election). No equivalent exists in the USA and attempts at 'matched funding' have been weakened by court cases, such as the 2011 *Bennett* cases, but above all by leading candidates' reluctance to embrace voluntary caps on campaign expenditure. No major party presidential candidate has accepted matching funding since 2008 (see page 436).

Pressure groups

Pressure and interest groups in the UK are much more tightly regulated in terms of their political activities, especially at election time. The government regulator, the Charity Commission, seeks to ensure that charities do not spend money on campaigning for or against particular parties or candidates. UK charity law is quite clear — an extract from current guidance by the Charity Commission states that: 'A charity cannot have a political purpose. Nor can a charity undertake political activity that is not relevant to, and does not have a reasonable likelihood of, supporting the charity's charitable purposes.'

Put simply, this means UK charities cannot openly support or donate to parties or candidates. As you might expect, in the USA matters are more complicated. Many pressure groups donate, endorse and campaign for candidates using their political action committees (PACs) or associated **501/527 groups**.

Legal framework

The legal framework for what spending is allowed varies between the two countries. In the UK, under the terms of the Communications Act 2003, television airtime cannot be purchased for political ads. Instead, major parties are allocated free slots for party election broadcasts. No such restrictions exist in the USA, and candidates, parties and Super PACs pile in to buy up airtime — one estimate calculated \$10.8 billion was spent on such ads in the 2020 election.

The main structural and legal differences regarding campaign finance in the UK and USA

Table 20.5 summarises the main structural and legal differences regarding campaign finance in both countries.

USEFUL CONCEPTS

501/527 groups Independent political groups that exist to influence political issues or elections. Many political action committees and Super PAC groups are designated as 527 groups. 501 groups are more limited in their political campaigning but offer a higher degree of donor anonymity. The numbers refer to the relevant section of the US tax code that governs them.

Table 20.5 Campaign finance: structural and legal differences in the USA and the UK

	UK	USA
Main laws	Political Parties, Elections and Referendums Act (PPERA) 2000 Communications Act 2003 Charity Act 2011	Federal Election Campaign Act 1971 Bipartisan Campaign Reform Act (McCain–Feingold) 2002
Landmark court cases	None	<i>McConnell v Federal Election Commission</i> (2003) <i>Citizens United v Federal Election Commission</i> (2010) <i>Arizona Free Enterprise Club's Freedom Club PAC v Bennett</i> (2011)
Restrictions on campaign fundraising and expenditure	There are no limits on party fundraising outside election times. There are limits on both national and candidate spending in the period before elections. Large donors must have their names published. There is no scope for purchase of TV airtime for additional political broadcasts. All funding and expenses must be regularly submitted to the Electoral Commission.	There are limits on direct donations to parties and candidates. There are no restrictions on self-funding by candidates. There are no limits on independent expenditure by Super PACs. Most political donations and donor identities must be declared to the Federal Election Commission and are in the public domain. There are ways of circumventing this, such as 'dark money' raised and spent by some 501 groups.
Role of other groups	Pressure groups are not allowed by law to get actively involved in election campaigns.	Many pressure groups are actively involved in campaigns, endorsing and promoting favoured candidates.

Rational aspects of campaign finance

Interest groups and donors

The sheer scale of spending and involvement by interest groups and political donors in the USA far outweighs that in the UK. There is far more opportunity and therefore a greater rationale for wealthy individuals and pressure groups in the USA to donate and become actively involved in political campaigning. Billionaires such as the late Sheldon Adelson and George Soros are frequent donors.

The opportunities are more restricted in the UK, but there remain many wealthy individual donors such as banker Lubov Chernukhin, who in 2014 paid £160,000 to play tennis with Johnson and Cameron. Controversial groups of wealthy donors, such as the Leader's Group, originally set up in 2003, donate millions to Conservative Party coffers. Equally, some trade unions, such as Unite, swell the accounts of Labour.

Clearly in both countries, the wealthy (and others besides) donate partly out of political empathy, but also out of a desire to secure policies favourable, or at least not detrimental, to their personal interests. At the very least, they might be presumed to enjoy a higher degree of personal contact with political figures, if not quite an 'access all areas' ticket.

It is worth noting, however, that superior funding does not guarantee political success in either country. The winning Trump campaign spent less than team Clinton in 2016, while the various Remain groups outspent Brexit campaigners in the 2016 referendum. This is a refreshing indication perhaps, that voters are not always blindsided by the biggest spenders.

Electoral battlegrounds

Lastly, in both countries, spending is disproportionately but rationally focused on electoral battlegrounds, where national campaigns are won or lost. This is much easier to do in the USA, where vast sums are spent campaigning and advertising in swing states such as Florida. It is less easy in the UK, where expenditure is more tightly controlled. Nonetheless, the advent of digital ads has made it easier for UK parties to spend money on nationally funded but hyper-local ads through buying in data, especially on demographics, to target individual voters more effectively.

The cultural dimension to campaign finance

Culturally, campaign finance occupies a much more explicit place in US politics. And the fundraising never stops: 'only in America' could one expect to receive a digital invitation to a virtual reception with presidential candidates, like the one sent by Biden's team in May 2020 during the global pandemic.

The invitation presented an enticing offer for those who could shell out anywhere from \$1,000 to \$20,000: a private reception with Joe Biden and one of his former rivals. By mid-2020, Biden had hosted at least 20 such virtual fundraisers. Apparently, some of the trappings of a traditional in-person fundraiser remained — there was often a pre-event 'greet' for the high-dollar donors, which during the pandemic lockdown became a smaller and more exclusive Zoom call.

US politics is heavily influenced by First Amendment notions of individual rights and freedoms. This extends to the freedom to make political donations, which certainly since the *Citizens United* case has been viewed as a legitimate extension of political expression. Across the political divide there remains a suspicion, at least among the wealthy, of government interference and involvement in such areas. One could even talk of a 'right to spend'.

The UK's political culture in this area is more nuanced. There has long been a tradition of political donations, particularly by many trade unions to the Labour Party but also by private individuals to the Conservatives, and during the Blair years at least to Labour as well. Yet, there is a greater willingness to accept some state involvement in regulating campaign funding, even if wholesale reforms to party funding, including greater state funding of parties, remain stalled. There is also far less recourse to the courts as a means of expanding the scope for political donations.

Yet the UK's political culture is certainly not immune from controversy. 'Cash for honours' has been an allegation levelled at both Labour and Conservative leaders. In the USA, there is perhaps less squeamishness on such matters. The 'spoils systems' enables presidents, for example, to dole out ambassadorships to generous campaign donors. It is estimated that roughly 30% of diplomatic postings abroad go to political appointees over career Foreign Service diplomats. In the UK, there is perhaps a greater acceptance by politicians

to accept some levelling of the political playing field in terms of campaign finance. In the USA, by comparison, individual rights and initiative play a much bigger role.

In short, while the culture of election finance is more high-profile, explicit and problematic in the USA, the UK too has its traditions of trading cash for political favours, and with it the attendant problems. Perhaps the biggest historic and cultural difference is that of scale: US elections consume billions of dollars, with the total bill for 2020 around \$14 billion. By contrast, the 2019 UK general election saw the parties raise and spend a total of around £30.7 million.

KNOWLEDGE CHECK

- 18 What are the main laws regulating campaign finance in the USA and the UK?
- 19 Which country most regulates campaign spending?
- 20 What are the main dangers associated with large donations on both sides of the Atlantic?

Theoretical approaches to electoral and party systems

Elections

Structural approach

Structurally, both countries have fixed terms for elected offices, but these are much easier to alter in the UK. In the UK, the opportunity exists for 'snap' early elections, which are impossible in the USA's more rigid system. In addition, there are far more elected offices in the USA than the UK. Finally, both nations largely use majoritarian electoral systems, encouraging two-party dominance, but greater use is made of alternative electoral systems in the UK, especially in the regions.

Rational approach

In terms of rational theory, both countries see election campaigns focused primarily on marginal seats/swing states, where elections are won or lost. In addition, there is widespread use of the FPTP electoral system, which often encourages both UK and US voters to support one of the main parties in order to avoid a 'wasted vote'. Finally, in both countries much campaigning focuses on appealing to core voters and ensuring they turn out. Yet independent voters must also be courted, so mainstream parties usually avoid controversial policies that could alienate more moderate voters.

Cultural approach

Culturally, there is a stronger emphasis on individuals and personalities in US elections, although UK elections are arguably becoming more presidential in style. In addition, the USA has long had greater public participation in candidate selection via primaries and caucuses, whereas the UK has relied

much more on party members making such choices. Finally, voting behaviour in both countries has historically reflected different priorities and views among different groups. For example, in both countries the youth vote has traditionally favoured the more progressive party. The senior vote, meanwhile, has favoured the more right-wing party.

Campaign finance

Structural approach

In terms of structure, campaign finance laws and regulations are much tougher in the UK than in the USA. Also, much greater use is made of state funding for UK elections, including the use of free party election broadcasts. Finally, the courts in the USA have played a significant role in weakening Congress's attempts to regulate campaign finance. By contrast, UK courts are far more likely to investigate and convict for irregularities in election spending.

Rational approach

In terms of rational theory, greater opportunities for political donations in the USA mean many pressure and interest groups spend heavily on electoral campaigning. Charity law in the UK makes this much harder. In addition, although in both countries fundraising is seen as very important, it does not guarantee victory. Politicians must not neglect other aspects of campaigning. Finally, the most money is spent on close races in swing states/marginal constituencies, not in those regions considered safe for a party.

Cultural approach

Culturally, there exists a much greater culture of individual political donors in the USA, while in the UK it is more subtle and associated traditionally with bodies such as trade unions or businesses. In addition, the First Amendment culture and attraction to personal freedom in the USA extends to political donations. This is less prevalent in the UK. Finally, in both countries there is a longstanding suspicion of the link between political donations and buying favours whether in terms of policy outcomes or, especially in the UK, of honours such as peerages.

SUMMARY

- The USA and the UK both mainly use majoritarian electoral systems, but the frequency and structure of election cycles differs quite considerably between the two countries.
- Both countries largely retain a two-party dominant system but this is more pronounced in the USA, and the UK, certainly in the regions, is evolving more into a multiparty system.
- The two-party system is stronger in the USA, in part due to primaries and the 'big tent' nature of more decentralised parties.
- Third parties are more important and significant in the UK, in large part because they are more established and often regionally based, but independents fare better in the USA.
- The two main equivalent parties display both similarities and differences in their manifestos and platforms. In general, though, Republicans are more right-wing than the Conservatives, especially on social issues, and Democrats are more centrist and less socialist than is often the case with Labour.
- US parties have become more homogeneous and unified since the 1970s, while the main UK parties are becoming more openly divided, not least the Conservatives over Europe and Labour during the Corbyn years.
- The legal framework and political culture concerning campaign and party finance differs markedly in each country, with far less effective regulation in the USA and consequently much higher spending on elections there.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways that structural theory could be used to compare election cycles and terms in the UK and the USA. (9 marks)
- 2 Explain and analyse three ways that rational theory could be used to study campaign finance in the UK and the USA. (9 marks)
- 3 Explain and analyse three ways that cultural theory could be used to study elections in the UK and the USA. (9 marks)

Paper 2 Section C style questions

- 4 'It is impossible to equate the main political parties in the USA to their counterparts in the UK.' Analyse and evaluate this statement. (25 marks)
- 5 'The main US and UK parties are dominated by internal division and feuding.' Analyse and evaluate this statement. (25 marks)
- 6 'Third parties and independents have little impact and influence in UK and US politics.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Lemieux, S. (2018) 'Comparative politics: political parties in the UK and USA', *Politics Review*, Vol. 28, No. 1, pp. 28–31.

Wiseman, O. (2019) 'It's not just Boris and Trump. British political parties are starting to look more American', article on Politico website, published December: <https://www.politico.com/news/magazine/2019/12/12/britain-election-boris-johnson-american-082755>

Pressure groups

KEY QUESTIONS ANSWERED

- What is the extent of political pluralism in the USA?
- What typologies can be used to describe pressure groups?
- What methods and tactics do pressure groups use to influence decision-making?
- How do pressure groups fund elections?
- What is the role and significance of political action committees (PACs) and Super PACs regarding electoral finance?
- Why is there debate about the power of pressure groups in the USA?

BACKGROUND INFORMATION

In June 2019, Twitter followers of Alexandria Ocasio-Cortez, the young New York congresswoman beloved by the progressive wing of the Democratic Party, were startled to see one of her tweets enthusiastically retweeted by Ted Cruz, the ultra-conservative Republican senator. Cruz supported Ocasio-Cortez's proposal to ban former members of Congress from working as corporate lobbyists. It's hard to think of two politicians less likely to be allies: they hold opposing positions on climate change, the role of government, LGBTQ+ issues and abortion rights. However, they were able to find common ground on the issue of the 'revolving door' between Congress and wealthy pressure groups and businesses.

It's well known that in US politics money talks. Wealthy pressure groups pour millions of dollars into every election cycle and Supreme Court justice nomination. Pressure groups have a constitutional right to exist, and are integral to US democracy at the state and federal level. However, their ability to spend unlimited amounts of money in election campaigning has led to widespread fears that they are simply buying influence as opposed to contributing to genuine **political pluralism**.

KEY CONCEPT

Political pluralism Political philosophy that emphasises the benefits of many different groups influencing the decision-making process. Government takes into account the views of people from across the whole of society, many of whom are represented by pressure groups.



The Great Seal of the United States has been in use since 1782, a reminder that pluralism is central to the republic

Political pluralism in the USA

The Great Seal of the United States displays the traditional motto of the USA: *e pluribus unum*, meaning ‘out of many, one’. This illustrates the USA’s fundamental challenge: how to forge a united nation and a coherent government from such a diverse range of people, states and ideas.

From its inception, the USA was intended to be a pluralist society in which many voices were heard. Of course, initially the only voices that were allowed a hearing were male, white, wealthy and Protestant, much like the Founding Fathers themselves. Over time, a broader range of female, working-class and minority ethnic communities, and diverse religious voices began to gain an audience. Yet their struggle to be heard on equal terms continues today.

The First Amendment includes ‘the right of the people peaceably to assemble’. This freedom of association gives pressure groups their constitutional right to exist. Unlike political parties, pressure groups aim to influence those in power — whether the executive or the legislature — rather than winning that power for themselves through elections.

In theory, pressure groups deliver political pluralism by inducing politicians to take account of a broad range of ideas from across society. These ideas often conflict, and may pit different pressure groups against each other. For example, Americans United for Life campaigns against abortion and is diametrically opposed to the aims of pro-choice Planned Parenthood, which, although not a pressure group, is a major health provider that also operates as an interest group in the political sphere. Pluralists believe that this disagreement is healthy for a democracy as it allows the people and the government to hear both sides of the argument, and reach the best decisions after proper public debate and consideration. They argue that pressure groups provide broader opportunities for political participation than joining a political party. Many of the most significant developments in US society, such as racial desegregation and the legalisation of abortion, would not have happened without the work of pressure groups.

Proponents of elitist theory, however, are critical of the role that pressure groups play in the USA. Wealthy pressure groups spend heavily on advertising, legal challenges, professional lobbyists and electoral campaign spending, and as a result have much more influence than poorly resourced groups. In effect the country is still run by a powerful elite, albeit one that encompasses the leaders of wealthy pressure groups as well as the government. Some of the best-funded groups have prevented change that a majority of the US public supports. The National Rifle Association (NRA), for example, has been exceptionally successful in resisting the introduction of gun controls despite more than 60% of Americans supporting more restrictive gun laws in 2020. Progressives also argue that wealthy corporations are able to use their resources to influence politicians to their advantage, leading to a system that prioritises the needs of big business over policies that could reduce inequality.

Typologies of pressure groups

Pressure groups differ from political parties in that they aim to influence the politicians who wield power rather than winning elected office themselves. They do not put up candidates in elections but many choose to campaign actively for a candidate who supports their agenda. Different typologies can be used to describe pressure groups.

KEY CONCEPTS

Promotional groups

Pressure groups (or cause groups) that promote a particular cause they believe will benefit society. Members are driven by altruism and not self-interest.

Interest groups Pressure groups (sometimes known as sectional groups) that exist primarily to defend and advance the specific interests of their members, e.g. trade unions and business groups. They might be defined as more selfish in their aims, although would also justify their stance as being in the national interest.

STUDY TIP

Remember that not all groups fit neatly within a particular typology. The NRA, for example, can be described as an interest group, as it protects the interests of its members who are gun owners. However, it would also see itself as a promotional group, as it aims to protect the right of all Americans to bear arms (see case study, page 508).

Insider and outsider groups

Pressure groups can be divided into insider and outsider groups in the USA, just as they can in the UK. Insider groups have close ties to government or one or both of the main two political parties. Examples include the American Medical Association, the US Chamber of Commerce and the NRA. They may be well funded and spend heavily on lobbying and election campaigns, or possess specific professional expertise that ensures policy-makers listen to them.

Outsider groups do not enjoy close links to the political establishment, so instead attempt to influence politicians by generating public pressure, perhaps through marches or direct action protests. They are frequently anti-establishment, meaning they are fundamentally opposed to the existing political system. For example, the group Climate Direct Action ran 'valve turner' protests in 2016 in which members turned off the valves on 15% of US crude oil imports for nearly a day. Several members were convicted on felony charges and the group was subsequently classified as 'extremist' by the Department of Homeland Security.

Promotional groups and interest groups

Pressure groups can also be divided into promotional and interest groups.

Promotional groups (also known as cause groups) promote a particular cause they believe will benefit society. Members of these pressure groups are said to be driven by altruism and not self-interest. Examples include environmental groups such as Greenpeace USA, gun control groups such as Everytown for Gun Safety, and civil liberties groups such as the American Civil Liberties Union (ACLU).

Conversely, **interest groups** campaign for the interests of the members of the group. Interest groups include:

- Unions such as the AFL-CIO, which are focused on improving the rights, pay and working conditions of their members
- Business or trade groups, e.g. the US Chamber of Commerce
- Professional organisations, e.g. the American Bar Association
- Groups that represent individuals from the same social group, e.g. the National Association for the Advancement of Colored People (NAACP) represents African-Americans
- Religious groups, e.g. the Christian Coalition of America

In US politics the term 'interest group' is also sometimes applied to large corporations if they are acting in a similar way to pressure groups by lobbying government and funding election campaigns.

Social movements

In addition to traditional pressure groups, which are structured organisations with a clear hierarchy and formal membership, an alternative model of issue-based participation exists. 'Social movements' are much less formalised than pressure groups but play an important role in politics. Traditional social movements began in the nineteenth century and campaigned for political and economic change, often making significant gains in the twentieth century. They include the women's movement, the labour movement and the civil rights movement. Social movements that developed from the 1960s onwards have been described as 'new social movements' and include the environment movement and the anti-nuclear movement.

ACTIVITY

Research each of these social movements using the internet. Make a note of their main actions and what impact they have had on politics.

In the twenty-first century, social movements have proliferated, largely due to the invention of social media. Movements can be generated from a simple Twitter hashtag, and activists use social media to organise and recruit supporters at little or no cost. This has allowed 'start-up' social movements to mobilise large numbers of people and dominate the political agenda within months of being founded, a process that would previously have taken years or decades of painstaking campaigning and fundraising. Recent examples of social movements include the Occupy movement, #MeToo, Black Lives Matter, March For Our Lives and the youth climate movement.

KNOWLEDGE CHECK

- 1 Which term describes a state in which a broad range of people and ideas are able to participate in politics?
- 2 Which theory is used to argue that wealthy and well-connected pressure groups enjoy disproportionate influence?
- 3 Which type of pressure group is focused on campaigning for policies that will benefit the particular section of society to which its members belong?
- 4 What is the term for organisations like Black Lives Matter that are less formally structured than pressure groups?

Methods and tactics used by pressure groups to influence decision-making

The US system of government provides many different access points for pressure groups to potentially wield influence. There are 50 state governments and legislatures in addition to the federal government, Congress and the Supreme Court. Pressure groups may choose to work at the state or federal level, or both. They may focus on targeting the executive, the legislature, the judiciary, or all three.

US pressure groups use a wide range of methods to try to influence decision-making. These include electoral campaigning, lobbying, using the courts, grassroots campaigning and direct action.

Electoral campaigning

Many pressure groups play an important role in election campaigns in the USA. They do this by endorsing candidates, making campaign donations and releasing voting 'scorecards'. Pressure groups may openly endorse a candidate and encourage their members and the public to vote for them. As well as endorsing candidates, a pressure group with sufficient funds can donate money to political campaigning. The amount that candidates' official campaigns can raise is limited, so pressure groups tend to give money to political action committees (PACs) and Super PACs (see page 514). In 2018, the League of Conservation Voters spent \$85 million on electoral campaigning, more than any other single-issue group. It was able to achieve its aim of winning the House of Representatives back for the Democrats, with nearly 60 of their new congressional candidates being elected.

CASE STUDY**EMILY's List**

EMILY's List is a US pressure group that aims to 'ignite change by getting pro-choice Democratic women elected to office'. It goes further than most pressure groups by recruiting candidates for office, and then supports their campaign throughout the whole electoral process, including helping to 'get out the vote'.

The group was set up in 1985 and its name and mission is based on the acronym 'Early Money Is Like Yeast', a reference to the fact that campaigns which receive crucial early funding are more likely to grow successfully and attract further donations, in the same way that yeast makes bread rise.

EMILY's List endorsed Hillary Clinton in 2016 but did not achieve a female president. However, its \$37 million spend in the 2018 election cycle led to record numbers of female members of Congress. In 2020 EMILY's List spent \$5.5 million on digital

advertising for Kamala Harris, and celebrated her historic election as the first female vice president. Seven new EMILY's List candidates were also elected to the House.



EMILY's List candidates speak during a fundraiser in New York, 24 September 2018

In addition to endorsing candidates and providing finance to their campaigns, pressure groups may release scorecards to show voters how candidates score on certain key policies. This may be an analysis of their voting record, or a comparison of their positions with other candidates. Examples of voting scorecards include the following:

- The US Chamber of Commerce releases a 'How they Voted' scorecard for each member of Congress to allow voters to easily analyse candidates' record in advancing pro-business policies.
- The NRA allocates each candidate a grade from A to F based on their voting record on gun rights.
- The League of Conservation Voters releases a 'dirty dozen' list of politicians who have the worst environmental records. A total of 5 of the 12 candidates on the federal list were defeated in 2020, and 6 of the 12 candidates on the state 'dirty dozen' list lost their seats. The League's 'Dirtiest of all Time', President Donald Trump, was also defeated.

Lobbying

Lobbying is the process by which pressure groups try to influence members of the executive or legislature by meeting with them. Pressure groups share detailed up-to-date knowledge of their policy area, and therefore are a useful source of information for politicians or government officials. They try to convince the executive and legislators to adopt positions that favour them.

The right to lobby is protected by the Constitution. The First Amendment guarantees the right of the people to 'petition the government for a redress of grievances'. A 'grievance' is a complaint, which in the case of lobbying means an area of the government that the pressure group or corporation hopes to change.

SYNOPTIC LINK

You can learn more about the First Amendment and the Bill of Rights in Chapter 11.

Insider contacts

Many pressure groups have offices in Washington, DC that allow them to access the federal government and Congress. They develop relationships with members of Congress who might be persuaded to introduce or support legislation that would help their cause. They may also meet with key government officials connected to their policy area, including cabinet officers and senior figures in federal agencies. Representatives from investment banks J.P. Morgan and Goldman Sachs had over 350 meetings with federal agencies from 2010 to 2012, as the agencies were writing regulations for the banking sector in response to the recent financial crisis. Building relationships with the staff of important players in Congress or the White House can also be a way to win influence, as they may be able to convince their bosses. Some pressure groups have offices in other US states to allow them to carry out the same kind of work at state level.

Professional lobbyists

Pressure groups with sufficient financial resources often use professional lobbying firms. These firms are clustered on and around 'K-Street' in Washington, DC in what is known as the 'K-Street corridor of influence'.

In 2019, more than \$3.47 billion was spent on federal lobbying. Spending is generally concentrated on the key political issues of the day. For example, in 2019, companies and business pressure groups lobbied the government regarding Donald Trump's new trade deal with Mexico and Canada, and pharmaceutical companies opposed price controls on medical drugs. In 2010, the highest-value lobbying year on record, much of the \$3.51 billion spent was by healthcare companies and groups in an attempt to influence the format of Barack Obama's Affordable Care Act. There is evidence that lobbying is effective: one study estimated that lobbying spending by US corporate groups led to \$90 million of subsidies for businesses.

ACTIVITY

Go to <https://www.opensecrets.org/revolving/index.php> to read more about the 'revolving door'. Make a list of the different areas of government to which lobbyists have connections.

Revolving door syndrome

Lobbying firms try to hire lobbyists who have previously worked within the executive branch or Congress. This allows the firm to take advantage of ready-made contacts within the executive or the legislature. Lobbyists may return to political roles at a later stage in their careers. This rotation of personnel between government and lobbying firms is known as the 'revolving door syndrome'. An example of a high-profile 'revolver' is lawyer Eugene Scalia, who became the secretary of labor in 2019. Scalia first worked for George W. Bush's administration before lobbying on behalf of the US Chamber of Commerce, and represented companies such as Chevron, Facebook and Goldman Sachs.

Is professional lobbying elitist?

Congress has tried to regulate lobbying through legislation such as the Lobbying Disclosure Act 1995 and the Honest Leadership and Open Government Act 2007. Lobbying must be disclosed and there are tight restrictions on 'gifts' from lobbyists to members of Congress. Despite this, the lobbying industry is much criticised by progressives for being elitist and anti-democratic.

It is argued that pressure groups with deep pockets are able to buy influence. For example, the US Chamber of Commerce generally spends more on

STUDY TIP

When evaluating whether professional lobbying is elitist, it is tempting to look at all the advantages it gives to wealthy pressure groups and conclude simply that, yes, it is elitist. To bring some balance to your argument, remember the positive role that lobbying can have in making government and legislators aware of important issues facing pressure groups and corporations. Those groups often represent many thousands of US members or employees.

ACTIVITY

Research who the top spenders were in the most recent election cycle. Make a list of the types of companies and groups that are spending a lot of money on lobbying.

lobbying than any other organisation (\$77 million in 2019). One of its aims was to convince Congress to pass the United States-Mexico-Canada Agreement, which it achieved after meeting with 36 members of Congress. However, high spending does not automatically guarantee results. The Chamber could not convince Trump's administration to reverse tariffs on goods from China and the EU, and steel and aluminium imports, despite the negative impact of tariffs on US businesses.

During the 2016 presidential campaign, Trump used populist rhetoric to speak repeatedly about the need to 'drain the swamp' in Washington, DC. Once president, he did not show any inclination to 'drain the swamp' of lobbyists. On the contrary, after just two years in office Trump had hired 281 lobbyists to work in his government, one former lobbyist for every 14 political appointments. This was four times more lobbyists than Obama appointed in 6 years. Trump also had close ties to a number of practising professional lobbyists, allowing them access to his administration.

CASE STUDY**Ballard Partners**

Brian Ballard, the founder of Ballard Partners lobbying firm, was named by *Politico* magazine as 'the most powerful lobbyist in Trump's Washington'. Ballard spent years lobbying the Florida state government on behalf of The Trump Organization (a group of around 500 business entities of which Trump is the owner) and raised millions of dollars for Trump's presidential campaigns.

Once Trump became president, Ballard Partners gained 100 clients in less than 2 years, earning more than \$28 million. Top US companies Amazon, American Airlines and General Motors have all used the firm. Ballard Partners is a good example of the 'revolving door syndrome', as many of its lobbyists have worked for previous government administrations or within Congress.

Using the courts

Many pressure groups try to achieve their aims via the courts. This can be a very productive strategy because the Supreme Court has so much power to interpret the Constitution, and to check the power of the executive.

Legal challenges

Pressure groups can target an area of the law where they wish to see a change and support cases that hinge on this legal point. They may lose in the lower courts but then appeal the case all the way up to the Supreme Court, where they hope for a landmark ruling, a transformative change to the law, which accomplishes the pressure group's main objective. Pressure groups that have successfully used this strategy include the following:

- The NAACP funded *Brown v Topeka* (1954), in which the Supreme Court decided that the doctrine of 'separate but equal' was unconstitutional (see case study, page 388).
- The ACLU brought the legal case *Obergefell v Hodges* (2015). The Supreme Court's ruling on the case legalised same-sex marriage across the USA (see case study, page 389).

ACTIVITY

Read the story of how same-sex marriage was legalised in the USA on *The Atlantic* website and the website of the Freedom to Marry campaign: <http://www.freedomtomarry.org/> and analyse the reasons for the campaign's success.

STUDY TIP

When evaluating the effectiveness of different pressure group methods, remember that legal action is among the most potent. A landmark ruling can produce a sweeping change to the way the Constitution is interpreted, achieving many of the pressure group's objectives in a stroke, as occurred with same-sex marriage in 2015.

Legal challenges can target state laws that are aimed at eroding a previous ruling by the Supreme Court. Health provider and non-profit organisation Planned Parenthood has brought many cases together to defend the abortion provisions of *Roe v Wade* (1973):

- In *Planned Parenthood v Casey* (1992), the organisation filed a suit against the governor of Pennsylvania for enacting abortion restrictions based on legislation passed by the state legislature. The right to abortion was upheld and one of the restrictions was struck down, although the rest were allowed to stand.
- In 2019, the organisation brought legal cases against highly restrictive laws passed in states including Alabama, Georgia, Indiana and Ohio.

Pressure groups can also hold the executive to account by challenging its actions in the courts. For example, the ACLU mounted 56 legal challenges against Trump's administration from 2017 to 2018 including the following:

- Trump's ban on immigrants from a number of Muslim-majority countries was halted by a federal court in 2017. As a result, he modified his ban to include several non-Muslim countries, and it was upheld by the Supreme Court in 2018.
- The ACLU also challenged Trump's 2017 ban on transgender people in the military. This was initially halted by a federal court, but the Supreme Court allowed it to proceed in 2019 while further legal challenges took place.

Amicus curiae briefs

Pressure groups often submit information to court cases with the hope of influencing the outcome. They do not need to be involved in the case in any way to do this and can involve lawyers to write amicus curiae briefs on their behalf. Amicus curiae ('friend of the court') briefs set out specific evidence or research that the pressure group hopes will influence the justices. Amicus curiae briefs can also be submitted by academic legal experts, the executive or anyone else who has an interest in the case. Those that are non-governmental, including those written by pressure groups, are known as 'green briefs', as they are printed in green booklets.

Impact of amicus curiae briefs

It is impossible to know exactly how much impact amicus curiae briefs have on the decision-making process of justices, but the number submitted has increased in recent years. In the 1950s the average Supreme Court case received just one amicus brief, whereas a record 16 briefings were submitted per case in 2019–20. More briefs are also given to landmark cases: *Brown v Topeka* (1954) had just six amicus briefs, but a record 148 were submitted to *Obergefell v Hodges* (2015).

Some amicus curiae briefs clearly influence the decision-making process, as justices refer to them in their written opinions on cases. In 2019–20, justices mentioned 10% of the nongovernmental 'green briefs' submitted to them. In *American Legion v American Humanist Association* (2019), the Supreme Court ruled that a specific war memorial in the shape of a cross was constitutional and Justice Ruth Bader Ginsburg quoted from the amicus brief submitted by Jewish War Veterans of the United States of America to support her dissent against the Court's ruling. Justice Brett Kavanaugh wrote that he had 'great respect for the Jewish war veterans who in an amicus brief say that the cross on public land sends a message of exclusion'. Although this is evidence that these veterans were heard, the final judgement of Kavanaugh and the majority of the Court went against them.

Is the use of *amicus curiae* briefs elitist?

Amicus curiae briefs can give a voice to sections of society, such as Jewish war veterans in the previous example, who might otherwise be overlooked by the Court. However, *amicus* briefs are more likely to be cited by justices if they are written by legal experts. This favours pressure groups with specialist legal expertise and extensive experience of preparing *amicus* briefs, such as the ACLU and the National Association of Criminal Defense Lawyers (NACDL). In 2019–20 around 40% of cited green briefs were written by these types of pressure groups.

Writing an *amicus* brief is an expensive process, which has led to criticism that wealthy pressure groups are able to use this method more effectively than others. In an attempt to increase transparency, rules state that financial contributors to the brief must be published. Some pressure groups have used crowdfunding to fund their *amicus* briefs. While this does offer an opportunity for less wealthy pressure groups, this new method of funding is not without problems: in 2018 the Supreme Court rejected a brief by the US Alcohol Policy Alliance in 2018 as some of the crowdfunding donors were anonymous.

Grassroots campaigning

A pressure group's 'grassroots' is its membership. In addition to paying membership fees and therefore providing revenue for the group, members often play a crucial role in campaigning. Pressure groups can mobilise their members to contact members of Congress, the federal and state governments, or legislatures by writing, emailing, phoning or connecting with them via social media. This communications 'blitz' allows them to demonstrate that an issue has mass support, and can be very effective if targeted at politicians who are keen to secure the support of their constituents or the general public.

Members can also organise petitions or fundraising drives. They can share the pressure group's advertising material on social media, and use hashtags and likes to generate momentum for fire-brigade campaigns. Members' contacts on social media are a potential source of new membership and publicity for the pressure group.

Many pressure groups also encourage their members to participate in marches and demonstrations. These range from simply standing outside the Supreme Court or Congress holding signs in protest against a judgement or bill, to more extreme activities known as direct action.

Direct action

Direct action refers to any methods used by a pressure group that go beyond the standard constitutional methods of campaigning. The aim is to put public pressure on the executive to *force* concessions, whereas conventional constitutional methods, such as petitions and letter-writing campaigns, aim to *persuade* the executive (or legislature) to adopt the pressure group's agenda.

Many US pressure groups have used direct action, including the following:

- In the 1950s and 1960s the civil rights movement adopted Indian independence leader Mahatma Gandhi's idea of non-violent protest. African-American protesters used 'sit-ins' in segregated 'white-only' areas, and bus boycotts to put pressure on bus companies to desegregate their buses. In 1963, 250,000 people attended the historic 'March on Washington for Jobs and Freedom'.

- In the late 1960s and early 1970s the war in Vietnam motivated many anti-war pressure groups to engage in direct action. Some, such as Students for a Democratic Society, and the National Committee for a Sane Nuclear Policy (SANE), organised huge public protests. In 1967 a record 500,000 protested in New York city against the war. As time went on, the anti-war movement used illegal civil disobedience, including marching on the Pentagon and breaking through police lines, blocking access to recruitment offices. The pressure group Vietnam Veterans against the War organised protests including one that saw more than 800 veterans throw their medals in front of the Capitol, and another in which the group occupied the Statue of Liberty.
- In the twenty-first century a wide range of movements such as Black Lives Matter, the Women's March, March for Our Lives and #MeToo have led large marches and demonstrations across the USA.

Effectiveness of direct action

The efficacy of direct action has been much debated. It certainly generates publicity and media attention but may alienate policy-makers or the public. This is particularly the case if the direct action is violent, so most groups restrict themselves to non-violent civil disobedience.

Leaders cannot always prevent their cause from being linked to violence, as mass mobilisations can spiral out of control. Since 2013, Black Lives Matter has organised huge demonstrations and street protests against systemic racism and police killings of black people. The 2020 murder of George Floyd, an African-American, by a white police officer who knelt on his neck for 9 minutes 29 seconds led protesters to defy the risk of contracting COVID-19 to join large demonstrations in at least 140 cities across the USA. Some were peaceful while others were marred by rioting, looting, arson and violence against the police.

These spontaneous outbreaks of violence could have alienated public opinion against the Black Lives Matter movement. However, the authorities responded with curfews, tear gas, smoke grenades and rubber bullets, and even arrested a journalist covering the riots. President Trump tweeted 'when the looting starts, the shooting starts', and threatened to send in the military to end riots. The authorities' response appeared to make publicly visible many of the same attitudes that Black Lives Matter condemned as racist. Celebrities and the public continued to express support, and a top US Air Force general released a clip about the difficulties he experienced as an African-American in the military. A series of statues of Confederate figures were defaced or pulled down, generating international debate about the role of statues in glorifying racist individuals.

On rare occasions, pressure groups deliberately use violence to put pressure on the executive. The organisation known as Weathermen was a faction of Students for a Democratic Society that carried out a bombing campaign from 1969 with the aim of destroying 'US imperialism'. Bombing was mainly focused on government sites and aimed to bring down the government via revolutionary means. The group was pursued into hiding by the FBI's anti-terrorist task force. Such extreme actions can make it easier for the executive to maintain its policy, as perpetrators of violence are easy to discredit. Uniquely, the failed mob insurrection at the Capitol in January 2021 was intended to *protect* the incumbent executive, although at the expense of democracy. Far-right groups aimed to prevent Congress from certifying the 2020 Electoral College results. Shortly before the attack on the Capitol, President Trump told supporters 'if you don't fight like hell you're not going to have a country anymore', apparently giving executive approval to their plans.

KNOWLEDGE CHECK

- 5 What term describes a list released by a pressure group that shows how candidates score on key policies?
- 6 What term describes the situation in which many personnel move between professional lobbying jobs and working for government or Congress?
- 7 What term describes the 'green briefs' that are submitted by pressure groups to court cases in the hope of influencing the outcome?

Pressure group funding of elections

KEY CONCEPT

Electoral finance The money used to fund election campaigns, including individual donations to candidates' campaigns, which are capped, and independent expenditures, which are not. Pressure groups can therefore spend unlimited amounts on electoral finance.

US pressure groups collectively spend millions of dollars in **electoral finance** helping to get political candidates elected. They naturally focus their efforts on candidates who share their aims, so unions, pro-choice, LGBTQ+ and gun-control groups tend to support Democrat candidates, while conservative religious groups, pro-life groups and gun-rights groups generally fund Republican candidates. Some candidates may hold very different views from the majority of their party, and so receive support from groups who would usually donate to the opposition. In 2018 a pro-life Catholic Democrat, congressman Dan Lipinski, received the support of the pro-life group the Susan B. Anthony List (SBA List), which spent \$100,000 campaigning for his victory in a primary race against another Democrat. Their members canvassed 17,000 homes during the tight race. Lipinski won by just 2,000 votes, and the SBA List's input was seen as crucial.

CASE STUDY

The NRA

With around 5 million members, the NRA is seen as one of the most powerful pressure groups in US politics, largely because of its strategy of funding election campaigns. Its tactics have developed over time. In 1992, 37% of its congressional campaign spending went to Democrat candidates. As US politics has become more polarised the NRA has increasingly focused its efforts on Republican candidates, who received 98% of its 2016 congressional campaign funding. However, it is not entirely partisan. The NRA has spent money in primaries opposing moderate Republicans, as in 2012, when it spent more than \$169,000 successfully opposing the reselection of senator Richard Lugar, whose support of gun control had earned him an F rating from the group. The NRA has also made donations to Democrats from the 'Blue Dog' faction of the party, such as Texas congressman Henry Cuellar. However, this can be controversial, as not all 'Blue Dogs' support gun rights. In 2018 the

Blue Dog PAC returned a donation from the NRA after criticism from members.

In the 2016 election season the NRA spent an eye-watering \$52.5 million on electoral campaigning. Much of this funded television and radio adverts, including one in every eight television adverts in Ohio that October. However, the NRA's valuable electoral interventions have not automatically increased its power. Perhaps because of its success in electing a Republican president and Senate who supported gun ownership, its revenue from membership fell from 2016 to 2018, leading to the group spending about half the amount on the 2018 midterm elections that it did in the previous 2014 midterms. Gun control groups such as Giffords and Everytown for Gun Safety outspent the NRA for the first time in the 2018 midterms.

After spending \$30 million promoting Trump's 2016 presidential campaign, the NRA did not enjoy his unconditional support as it might have expected. After

the 2018 high school shooting at Parkland, Florida, the president accused a Republican senator of not including an age limit on his bill for background checks on guns because he was 'afraid of the NRA'. Trump also told state governors:

Half of you are so afraid of the NRA. There's nothing to be afraid of...if they're not with you, we have to fight them every once in a while, that's okay.

In March 2019 the NRA said that it was 'disappointed' that Trump's administration had introduced a national ban on bump stocks, devices that can be attached to semi-automatic rifles to make them fire much faster. The evidence from the NRA is that big spending does not guarantee influence, even with politicians who have benefited directly.

The NRA faced legal challenges relating to alleged financial impropriety in 2020, meaning that it was unable to match its 2016 spending as many of its funds

were tied up with court cases. However, it still spent more than \$16 million supporting Trump, of a total \$23 million spending pot.



President Trump addresses the NRA's annual meeting in April 2019

SYNOPTIC LINK

'Blue Dogs' are a centrist faction within the Democratic Party. You can learn more about Blue Dog Democrats and other US party factions in Chapter 20.

Pressure group funding of elections produces the following effects.

Funding of Washington insiders

Pressure groups focus their resources on key figures in Washington. In presidential years, much of their funds are spent on the campaigns of the main two presidential candidates, as the winner will have sole federal executive power. They also spend heavily on the campaigns of influential individuals within Congress, including high-profile party members, important committee chairs or rising stars within the party leadership hierarchy.

Senate campaigns increasingly receive more donations than House contests. Independent expenditure in Senate races was more than double House races in 2020 (\$1,547 million as opposed to \$702 million). Pressure groups prioritise Senate campaigns as they yield a 6-year term and therefore a better return on the group's investment. Senators also have greater individual influence as there are only 100 of them, and the upper house has slightly more power. A total of 96% of the NRA's 2016 budget was spent on six Senate races and the presidential campaign.

Many pressure groups, corporations and wealthy individuals prefer to finance Washington insiders, who will maintain the status quo to the benefit of their organisation. This can make it difficult for outsiders to break through,

and favours a certain type of candidate who is pro-business and generally supportive of the 'establishment'. Hillary Clinton was just that type of candidate, and managed to raise far more money in the 2016 presidential campaign than her rival, the anti-establishment Washington outsider Donald Trump. Her loss demonstrated that there are limits to the power of money and pressure groups in US elections.

Reinforcing incumbency

The tendency of pressure groups to fund Washington insiders has the effect of reinforcing the incumbency advantage in elections. In every election cycle, incumbent politicians run against challengers who hope to unseat them. Incumbents in the House or the Senate have a big advantage over challengers, as they have a higher profile, a record to run on and an existing relationship with their constituents. Incumbents find it easier to attract campaign donations, which gives them an advantage when buying advertising and producing promotional literature. Incumbency re-election rates reflect the considerable advantages of being an existing member of Congress: more than 90% of congress(wo)men are typically returned, and nearly as many senators.

KEY CONCEPT

Iron triangle The relationship between an interest group, Congress and the executive branch. The three players gain by supporting each other's interests, which could potentially lead to decisions that are not in the public interest.

Iron triangles

Commentators often use the term '**iron triangle**' to describe the close relationship between three key participants in the policy-making process: interest groups, Congress and the executive branch (see Figure 21.1). The theory is that they are bound together in a close network of mutual advantage, meaning that each benefits from supporting the others:

- Interest groups can influence Congress — and particularly members of relevant congressional committees — by making donations to their election campaigns. They may also be responsible for a large proportion of employment in certain congressional districts. This particularly applies to wealthy companies or corporate groups. Interest groups can also use their influence over Congress to put pressure on the executive branch.
- Congress is responsible for funding executive departments and for producing laws that affect those departments' policy areas. This gives government an incentive to develop policy that Congress will approve of. Congress can influence interest groups as it may pass legislation that affects them, and it carries out oversight of their activities via congressional committees.
- Executive departments have considerable power over interest groups as they create the regulations that those groups must follow. The executive branch can also influence Congress by setting the policy agenda and determining how the federal bureaucracy will implement Congress's laws.

Iron triangles may apply to any area of government. Two of the most-cited examples are defence and drug companies.

STUDY TIP

The concept of an 'iron triangle' can seem abstract, so students sometimes struggle to remember the different sides of the triangle. The triangle is simply a way of representing a three-way network of mutual interest. Copy the three 'points' of the triangle in Figure 21.1 and then bring it to life by reading the examples in the text and adding these to the 'sides' of the triangle.

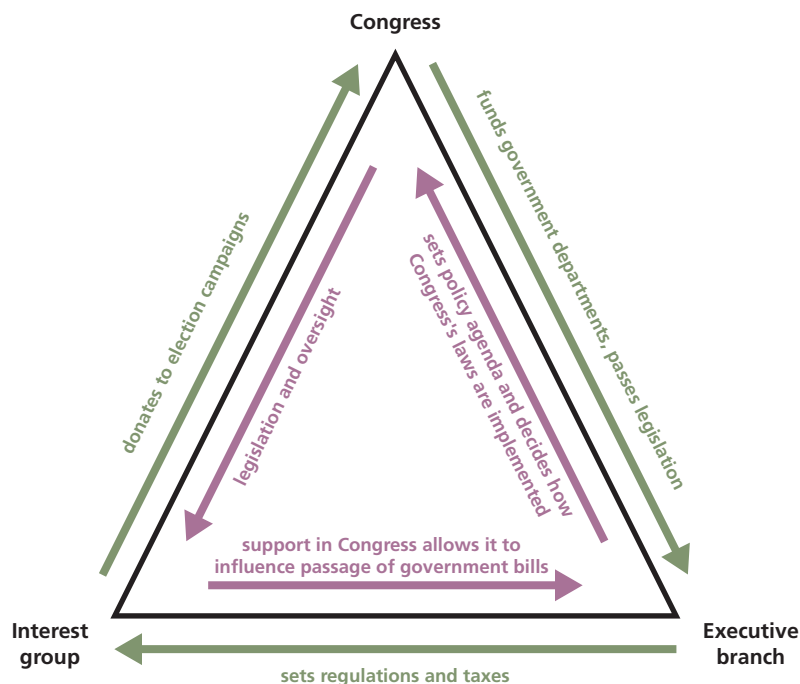


Figure 21.1 The iron triangle

Defence: the 'military-industrial complex'

The idea that powerful corporations could have a negative influence on government was raised by President Dwight D. Eisenhower in 1961. Eisenhower warned that the 'military-industrial complex' was growing too powerful and could lead to defence and foreign policies that were not in the public interest. He argued that the development in the 1950s of 'a permanent armaments industry of vast proportions' had 'grave implications' and could lead to 'the disastrous rise of misplaced power'. Despite being a former general, Eisenhower was keen that the military budget be reduced. Successive governments have been unable to do this, as it has been a political imperative to maintain the USA's position as the most powerful global military power. A small number of huge defence firms have become part of the military infrastructure, including Lockheed Martin, Boeing, Raytheon and Northrop Grumman. In 1981, Gordon Adams developed the concept of the 'iron triangle' in his book *The Iron Triangle: the politics of defence contracting*.

Today, defence companies spend millions on professional lobbyists to induce members of Congress to support their objectives. Lockheed Martin, the largest US defence company, spends around \$14 million a year on professional lobbyists. The defence industry is dominated by a handful of huge companies with operations in many different states and congressional districts. This gives them influence over a large number of members of Congress who are keen to ensure the companies keep receiving the government contracts that secure continued employment for their constituents. When bidding for the contract to build the USA's most expensive weapons system, the F35 fighter jet, Lockheed Martin claimed that the programme would create 125,000 jobs over 46 states, putting pressure on those states' members of Congress to support it.



President Trump in 2018 with Lockheed Martin's chief executive officer (right) and chief test pilot (centre) in front of an F35 fighter aircraft, the USA's most expensive weapons system

ACTIVITY

Investigate how Joe Courtney uses his record of procuring defence spending for his district in his campaigning at <https://www.joecourtney.com>.

Defence companies donate millions to the campaigns of members of Congress. In the 2018 election cycle these donations totalled more than \$30 million. They spread donations over many states and congressional districts, maximising their influence across Congress. Members of Congress who sit on powerful defence committees are likely to receive substantial donations. For example, Joe Courtney, the Democrat congressman for Connecticut's second district, is chair of the Seapower and Projection Forces Subcommittee of the House Armed Services Committee, which oversees naval and marine corps contracts. Defence contractors were the biggest contributors to Courtney's 2019–20 fundraising, with donations from multiple companies including Northrop Grumman, General Dynamics and Raytheon. Courtney earned the nickname 'two subs Joe' for helping to secure funding for the construction of two submarines a year in his district.

Members of Congress may also have personal investments in defence companies. In 2019, 51 members of Congress or their spouses owned a combined total of \$2.3–\$5.8 million worth of shares in defence companies, meaning that they profited directly if defence contracts were awarded to them. This included almost one-third of the Senate Appropriations Subcommittee on Defense, which is responsible for deciding how much funding is given to the US Department of Defense to spend on defence contractors. Senator Roy Blunt owned up to \$100,000 of stock in Lockheed Martin, so was doubtless pleased by his subcommittee awarding a \$1.85 billion contract to the company in 2020. When defence companies become integral to the economy of so many states, the federal government also has a strong incentive to ensure that they prosper. Academic William Hartung described Lockheed Martin as 'too big to fail', arguing that the company had made itself essential to so many weapons systems that it was militarily and economically imperative for the government to continue to support it with large contracts.

The revolving door syndrome also contributes to the formation of iron triangles. Personnel often move from one of the three institutions on the triangle to another. In the case of defence, personnel 'revolve' between the big contractors and the headquarters of the defense department, the Pentagon. Patrick Shanahan served as Trump's deputy defense secretary from 2017, before being made acting defense secretary in 2019. Shanahan was previously

Boeing's senior vice president. Once in government he oversaw defence spending that directly benefited Boeing, including 20 contracts worth \$13.7 billion in the month of September 2018 alone.

ACTIVITY

Find out which other sectors invest heavily in political campaigning at <https://www.opensecrets.org>. Make a note of the top sectors and explain why each would spend so much money on political donations.

Drug companies: 'big pharma' and the FDA

Big pharmaceutical companies pursue strong links with the federal government agency that regulates pharmaceuticals, the Food and Drug Administration (FDA), and with Congress. Pharmaceutical companies focus much attention on members of key congressional committees such as the House Energy Subcommittee on Health, whose chair, Democrat Anna Eshoo, received hundreds of thousands of dollars in donations from pharmaceutical and health companies in the 2020 election cycle.

As with the defence sector, the pharmaceutical industry's relationship with the executive branch benefits from the revolving door. Scott Gottlieb worked for the FDA from 2005 to 2007 before working for several pharmaceutical companies from 2007 to 2017. Trump appointed him to head the FDA in 2017. After stepping down in 2019, Gottlieb joined the board of directors of Pfizer, one of the largest pharmaceutical companies in the USA.

Relative power of pressure groups and political parties

DEBATE

Which are more powerful: pressure groups or political parties?

Pressure groups

Iron triangles allow some large corporations and influential interest groups to influence the executive and Congress.

Campaign donations and professional lobbyists allow pressure groups to influence members of Congress and the president.

Corporations provide essential jobs and can become 'too big to fail'.

The 'revolving door' of key personnel allows pressure groups to maintain close relationships with Congress and the executive.

Large, well-organised pressure groups can be more focused than large 'big tent' parties, which contain many conflicting ideas.

Political parties

Parties formulate policy for all areas of government, not just a specific sector or issue as pressure groups do.

They select and support electoral candidates for the legislature and the presidency.

They wield legislative power in Congress, especially if a party controls both houses.

They can determine federal government policy when their party holds the presidency.

 In pairs or groups, evaluate the points above, using your own knowledge of the topic to judge which is more powerful. Reflect on the different types of 'power' that pressure groups enjoy and remember that the USA has hundreds of thousands of pressure groups of varying types, so it is difficult to generalise about them. You may therefore need to break down what is meant by 'pressure groups' in your evaluation.

KNOWLEDGE CHECK

- 8 What type of electoral candidates do pressure groups tend to fund?
- 9 Which term describes the very close relationships that exist between interest groups, Congress and the executive?
- 10 Which industry includes the company Lockheed Martin and has exceptionally close links to the executive and Congress?
- 11 Which presidential election result demonstrates the limits to the power of money in US elections?

The role and significance of PACs and Super PACs regarding electoral finance

USEFUL CONCEPT

Independent expenditures

Money spent on campaigning to elect or defeat a candidate, but which is independent of any political candidate or political party. There are no restrictions on pressure group independent expenditures.

The USA has a complex system of electoral finance that allows pressure groups to play a central role in elections and political campaigning. In US politics, the term 'hard money' refers to donations to a particular candidate. 'Soft money' refers to money that is given to a political party or political action committee but which is not used for the election of specific candidates. It can, however, be used for 'party-building' activities, which may promote the party a candidate represents. Most importantly, 'hard money' is regulated and limited by the Federal Election Commission (FEC), whereas there are no limits on 'soft money' contributions. 'Soft money' includes '**independent expenditures**', which is money spent on campaigning for or against a particular candidate, but without involvement by a candidate or a political party. Pressure groups are able to make unlimited independent expenditures.

To manage their electoral spending, pressure groups use two types of organisation, **political action committees (PACs)** and **Super PACs**.

KEY CONCEPTS

Political action committee (PAC) Political committee that raises money for the direct purpose of electing or defeating candidates in elections, or for supporting other political campaigns for legislation or initiatives. They can make direct 'hard money' contributions to candidates. Donations to a PAC are limited to \$5,000 per donation, per year.

Super PAC A special type of political action committee that only deals with independent expenditures. Super PACs can raise and spend unlimited amounts of money for political campaigning but are forbidden from making direct contributions to candidates or parties.

SYNOPTIC LINK

Campaign finance is one of the most controversial aspects of US politics. You can learn more about campaign finance rules and the debates about campaign finance in Chapter 18.

Political action committees

Pressure groups and politicians use political action committees (PACs) to raise money for political campaigning. Interest groups spend millions of dollars every year through their PACs, which can make 'hard money' donations to individual candidates. However, the amount each individual, other PAC or party committee can donate to a PAC is limited to \$5,000 each year. This restricts the total amount PACs can raise.

Hard money spending by PACs is also limited: for example, a PAC cannot give more than \$5,000 to a candidate's campaign per year. This limits direct contributions to candidates' campaigns, although PACs can make unlimited independent expenditures.

ACTIVITY

Go to <https://www.opensecrets.org/pacs/toppacs.php> to view a list of top PAC contributors to political candidates. What explanations can you think of for interest groups favouring one party over the other, and why do some interest groups donate similar amounts to each party?

Super PACs

SYNOPTIC LINK

Justice Anthony Kennedy wrote the majority opinion for the Supreme Court judgement in *Citizens United v Federal Election Commission* (2010). The Court split 5-4 on ideological lines, with Kennedy providing the crucial 'swing vote'. You can find out more about Anthony Kennedy's role as the 'swing vote' in Chapter 16.

A landmark Supreme Court judgement in *Citizens United v Federal Election Commission* (FEC) (2010) transformed campaign finance. The Court ruled that the First Amendment right of free speech applies to corporations, unions and pressure groups in the same way it does to individuals. In US law, spending money on political campaigning is seen as free speech, so the Court's decision allowed pressure groups and corporations to spend an unlimited amount on political campaigning, provided that this was independent expenditure and not direct campaign contributions.

The landmark ruling led to the creation of a new type of independent expenditure-only political action committee, known as a Super PAC. Pressure groups and corporations can donate unlimited sums to Super PACs, meaning Super PACs are able to raise more money than PACs. Super PACs can spend an unlimited amount on independent expenditures to campaign for or against political candidates. In the 2020 election, Super PACs spent \$1.8 billion, including \$250 million by the conservative Senate Leadership Fund and more than \$225 million by the liberal Senate Majority PAC during the closely fought battle for control of the Senate.

Although pressure groups and corporations give millions of dollars to Super PACs, this does not automatically translate into political power. In 2016, Super PACs spent \$215 million supporting Clinton's unsuccessful presidential campaign, while Trump received comparatively less support, with Super PACs spending \$85.5 million on his behalf.

DEBATE

Do PACs and Super PACs have too much influence in US elections?

Yes	No
The right to spend an unlimited amount through Super PACs allows pressure groups to bypass campaign finance restrictions.	If the USA is to be a pluralist society, pressure groups must be able to participate fully in election campaigns.
PACs and Super PACs are funded by a tiny minority of citizens: less than 1% of American adults provided two-thirds of the funding for federal candidates in 2016.	Pressure groups represent a broader range of issues than those covered by the party platforms, and a diverse range of groups in society.
The creation of Super PACs has increased spending on US elections as pressure groups and corporations can make unlimited donations.	One of the largest increases in total election spending was from 2004 to 2008 and predated the creation of Super PACs: Obama rejected matching funds, which freed him from spending restrictions. Subsequent major presidential candidates have followed his lead.
A few wealthy individuals and donors are able to make enormous contributions to Super PACs, effectively buying outsize influence in politics, e.g. Sheldon Adelson and his wife donated over \$100 million to conservative Super PACs in 2020, including \$75 million to Preserve America, an anti-Biden Super PAC, and \$50 million to the Senate Leadership Fund.	Large donations do not guarantee victory, so may not translate into political influence: in 2016 Super PACs spent nearly \$129 million more in support of Clinton than Trump.
The election campaigns of individual members of Congress can be transformed by donations or support from a PAC or Super PAC, meaning that legislators may subsequently vote in the interests of their financial backers and not the public.	The public hold members of Congress to account for their actions at election time, so legislators need to vote with the public interest in mind.
The increased influence of pressure groups and corporations through PACs and Super PACs has reduced the importance of political parties.	Super PAC spending helps the campaigns of political parties, which raise and spend vast amounts of money in US elections: in the 2020 election cycle the Republican National Committee spent more than \$500 million, and the Democratic National Committee more than \$325 million.

 Individually or in pairs, evaluate the points above. Use your own knowledge of the topic to judge whether PACs and Super PACs have too much influence in US elections. Remember to consider the theoretical power that PACs and Super PACs enjoy, and the extent to which that has been limited in practice or countered by other factors.

KNOWLEDGE CHECK

- 12** Which landmark Supreme Court judgement increased the role of pressure groups in electoral finance?
- 13** Which term describes a political committee that raises money for election campaigns, and which can make direct contributions to candidates?
- 14** Which term describes a political committee that can raise and spend unlimited independent expenditures?

Debates concerning the power of pressure groups in the USA

Politicians across the political spectrum agree that pressure groups are important for political pluralism and participation. Debates about their power focus on the key question of whether the influence of pressure groups in US elections and government is excessive and undemocratic. For most Democrats, the answer is yes. Democratic presidential candidates Hillary Clinton (2016) and Joe Biden (2020) both promised to work to reverse *Citizens United v Federal Election Commission* via a constitutional amendment, with Biden tweeting in 2020 'We have to end Citizens United, but we can't stop there. It's time we eliminate all private dollars from federal elections and return our democracy to the people.' Republicans accused the two Democratic candidates of hypocrisy, as their campaigns were strongly supported by Super PACs. Many Republicans approved of the *Citizens United* decision because it protected the First Amendment right of free speech, and also freed wealthy corporate Republican supporters to make unlimited independent expenditures. However, a 2018 study showed that the public was deeply concerned by the role of money in US politics: 75% supported a constitutional amendment to reverse *Citizens United*, including 66% of Republican voters.

There are deep concerns about the influence that pressure groups and corporations are able to secure through lobbying, or buy with political donations. While it is not suggested that members of Congress regularly make direct swaps of political favours for cash, the academic Lawrence Lessig has described a state of 'dependence corruption' in which legislators prioritise the needs of the donors on whom they are dependent. According to Lessig, this distorts the original intentions of the framers of the Constitution, who wanted members of Congress to be dependent on the people so that they would act in their interests.

KNOWLEDGE CHECK

- 15** What did Democratic presidential candidates Hillary Clinton (2016) and Joe Biden (2020) both promise to do to *Citizens United v Federal Election Commission* (2010)?
- 16** Why is professional lobbying seen as exacerbating elitism in US politics?
- 17** How can pressure groups help the executive and Congress to make better regulations and laws?

DEBATE

Are pressure groups in the USA too powerful?

Yes	No
Pressure groups are elitist: well-funded interest groups and large corporations have far greater influence than smaller groups that may be more representative of society.	Pressure groups are essential to a pluralist society and protected by the First Amendment.
Pressure groups are elitist: well-funded interest groups The lobbying industry exacerbates the problem of elitism as only wealthy pressure groups can afford professional lobbyists.	Social movements can provide a cheap and effective alternative to the power of wealthy interest groups.
The revolving door gives corporations, interest groups and lobbying firms excessive influence over members of the executive and Congress.	The right to lobby is protected by the First Amendment and the lobbying industry is subject to regulations.
Iron triangles can lead to the executive and Congress taking decisions that benefit interest groups over the people.	Access does not automatically guarantee influence, and legislators and the executive branch can use the specialist information provided by pressure groups to write better laws and regulations.
Some pressure groups are able to develop extraordinary influence in Congress, e.g. the NRA successfully opposed gun control legislation from 2012 to 2016 despite support from the public and President Obama.	Pressure groups play an important role in scrutinising the executive and Congress.
The growing practice of submitting amicus curiae briefs in Supreme Court cases favours wealthy interest groups that can afford legal experts.	Legislators are accountable to the voters at elections so make decisions in their interests: pressure groups can help legislators protect citizens' constitutional rights and liberties, e.g. the NRA defends the right to bear arms.
The <i>Citizens United</i> case increased the role of pressure group funding in elections, which is elitist and unpopular with the public.	Pressure groups have brought many successful legal challenges to executive policy and federal laws, including important landmark cases that have updated the Constitution and improved civil rights.
Pressure group election campaigning reinforces incumbency and can lead to 'dependence corruption' in Congress.	Political election funding by pressure groups is a form of free speech and enables a pluralist political debate.
Direct action can lead to violence.	Pressure groups provide important information such as voting cues and scorecards to help voters decide whom to vote for.
Pressure groups can undermine the role of political parties.	Direct action can put important issues on the political agenda, and lead to lasting change.
	Pressure groups tend to support the political party that best serves their interests, so they contribute to the US system of 'big tent' parties.

 Individually or in pairs, evaluate the points above with your knowledge of the topic to judge whether pressure groups in the USA are too powerful. You need to weigh up the competing claims of freedom and fairness in a pluralist society. The Constitution gives Americans the right of freedom of speech and assembly, but many liberals believe that wealthy pressure groups are able to dominate the conversation, which they argue is unfair.

SUMMARY

- US pressure groups are important for a pluralist society, but wealthy interest groups have been criticised for having too much influence.
- Different typologies can be used to describe pressure groups, including interest and promotional groups, or insider and outsider groups.
- US pressure groups use a broad range of methods and tactics to influence decision-making, including electoral campaigning, lobbying, legal challenges, grassroots campaigning and direct action.
- When funding elections, pressure groups tend to support Washington insiders, which reinforces incumbency and can contribute to the formation of iron triangles.
- Pressure groups can make limited donations to election campaigns via political action committees (PACs) and unlimited independent expenditure through Super PACs.
- Pressure groups are protected by the First Amendment, but many argue that they have amassed too much power and are elitist.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways in which pressure groups contribute to political pluralism in the USA. (9 marks)
- 2 Explain and analyse three ways in which pressure group funding of elections affects politics in the USA. (9 marks)
- 3 Explain and analyse three methods used by pressure groups to influence the executive branch of government. (9 marks)

Paper 2 Section B style question

Read the extract below and answer Question 4 that follows.

The power of pressure groups

Interest groups' influence over policy comes through the presence of faithful legislative allies — not gifts to their campaigns

In the United States, we often attribute policy-making and political developments to the influence of powerful interest groups, whether shadowy corporations, 'big labor' or some other group that we assert is pulling the strings behind the scenes...In the public debate, we assume that interest group lobbyists 'purchase legislators' votes on particular bills. While interest groups certainly lobby and contribute to political campaigns, there is little evidence that either activity allows interest groups to move policy-makers' opinions or influence policy. Still, interest groups believe that their donations help. It may be that contributions give interest groups access to policy-makers or get them to spend time on issues that matter to interest groups, if not achieve specific voting outcomes. As to lobbying, opposing interest groups likely cancel out each other's efforts.

If lobbying and donating to campaigns don't give interest groups influence over policy, what does? In a famous paper published in the 1960s, two scholars conceived of two types of power — one that is exercised once issues are already on the table and the other that comes about through decisions made before the debate begins. Those with the former focus on persuading their opponents, while the latter can set the agenda, meaning that persuasion is unnecessary since the issue never reaches the state house floor...Despite the narrative of big campaign spenders and lobbyists controlling politics in the United

States, interest group strength comes from having legislative allies setting the policy agenda...The NRA... spends the most in battleground and blue states, such as Colorado, Washington, California, and Nevada. This is likely because the group already has the ability to set the agenda in the most conservative states through a large number of allies in the legislature and instead focuses funds where its influence is more tenuous...The real source of power [is] having allies setting the agenda.

Source: adapted from a blog post written by Leslie K. Finger, a lecturer on government and social studies at Harvard University who researches the influence of interest (pressure) groups, and published on the London School of Economics US Centre's daily blog on American Politics and Policy, February 2019

- 4 Analyse, evaluate and compare the different arguments in the extract regarding the power of pressure groups to influence policy. (25 marks)

FURTHER READING

Articles

Ashbee, E. (2018) 'US pressure groups: do they help or hinder pluralist democracy in the USA?', *Politics Review*, Vol. 27, No. 4, pp. 30–33.

Colclough, A. (2019) 'US pressure groups: what is their impact on the democratic process?', *Politics Review*, Vol. 28, No. 4, pp. 26–29.

Brown, S. and Gallop, N. (2015) 'Should political parties be funded by the state?', *Politics Review*, Vol. 24, No. 3, pp. 16–17.

Websites

Anzia, S. F. (2019) 'Most research finds little evidence that interest groups influence US politics, but that's because it's focused on the federal government': <https://blogs.lse.ac.uk/usappblog/2019/10/01/most-research-finds-little-evidence-that-interest-groups-influence-us-politics-but-thats-because-its-focused-on-the-federal-government/>

Mitnick, Professor B. 'Iron Triangles': <http://www.pitt.edu/~mitnick/MESM10/IrontrianglesrevEncyBusEthics.pdf>

Comparing pressure groups

KEY QUESTIONS ANSWERED

- What are the key similarities and differences in pressure group influence on government in the UK and the USA?
- How do the power, influence and methods of pressure groups compare in the UK and the USA?

BACKGROUND INFORMATION

Hundreds of thousands of pressure groups are active in both the UK and the USA. These range from tiny organisations protesting a local issue, such as a hospital closure, to well-funded institutions with large memberships and powerful connections with government. Pressure groups are essential to pluralism in both countries but play by very different rules. In the USA, pressure groups can spend an unlimited amount on electoral finance, whereas UK pressure groups are tightly restricted. The power of the US Supreme Court means US pressure groups use legal action more frequently than UK groups do in the hope of securing a landmark ruling.

The history and culture of the USA and the UK have influenced the types of pressure groups that are prominent. In the USA, the 'culture wars' over race, guns and abortion have meant that pressure groups like the National Association for the Advancement of Colored People (NAACP) and the National Rifle Association (NRA) are much more central to politics than similar groups in the UK. The UK's closest equivalent to a 'culture war' was perhaps the Brexit debate, which led to the formation of powerful pressure groups on both Leave and Remain sides of the argument.



More than 1 million people marched for a second EU referendum in March 2019, one of the biggest mass protests in UK history

The influence of pressure groups on government in the USA and the UK

Pressure groups are important to democracy as they allow citizens to participate in politics. In both countries, membership of pressure groups has increased over the last few decades, but well-funded groups and corporations appear to have a disproportionate influence on government.

Similar interest groups exist in both countries. The US Chamber of Commerce and the Confederation of British Industry (CBI) represent business. Unions represent workers: the AFL-CIO is a federation of US labour unions, and the Trades Union Congress (TUC) is the UK equivalent. Professional organisations exist in both countries: the British Medical Association (BMA) and the American Medical Association (AMA) both represent doctors, for example. There are women's groups such as the National Organization for Women (NOW) in the USA and the Fawcett Society in the UK.

Promotional groups defend many similar causes. The American Civil Liberties Union (ACLU) supports civil liberties, and Liberty has similar aims in the UK. Prominent environmental groups exist in both countries. Some are multinational, like Greenpeace, with organisations in the USA and the UK. The UK's Extinction Rebellion was founded in 2018 and quickly spread to the USA.

Pressure groups have similar organisational structures in both countries, although US pressure groups often have both federal and state-based offices. The insider/outsider and promotional/interest typologies can be applied to US and UK pressure groups. Both countries have seen a rise in social movements in recent years. Many of these, like Black Lives Matter and the youth climate movement, have an international reach.

There are important structural differences between pressure group influence in the USA and the UK.



Climate action campaigners demonstrating against global warming

Access points

The US federal system provides far more access points for pressure groups to focus on. The UK has general elections, elections to the devolved assemblies and local elections, whereas the USA has many more elections for pressure groups to campaign in:

- The USA has a directly elected president, and two elected chambers of the legislature.
- House seats are contested every 2 years (with one-third of Senate seats), so elections are normally more frequent than in the UK, where general elections should only occur every 5 years under the Fixed-term Parliaments Act 2011 (although there can be exceptions, as in 2015, 2017 and 2019).
- The USA has direct primary elections for the selection of party candidates.
- The USA has 50 state legislatures, 49 of which are bicameral and therefore have elections to both the state House and the state Senate. (Nebraska is the only unicameral state in the USA, whereas all UK devolved legislatures are unicameral.)
- Each state has a directly elected governor, resulting in 50 state governments that can be lobbied, as opposed to three devolved governments in the UK.
- At the local level, the USA has more than 19,000 directly elected mayors in addition to city councils. The UK also has local council elections but just 24 directly elected mayors.

ACTIVITY

Draw two diagrams: one to show the access points that US pressure groups can target, and one showing the access points available to UK pressure groups.

SYNOPTIC LINK

The 2016 EU referendum inspired passionate campaigning by pressure groups backing both Leave and Remain. You can learn more about the EU referendum in Chapter 7.

Direct democracy in the USA also provides more access points for pressure groups. Ballot initiatives and referendums are held on a broad range of issues from marijuana use to felony disenfranchisement. Pressure groups can campaign to get their priorities included as an initiative on the ballot, or on either side of the argument in the initiative or referendum vote. UK referendums are held much less often, and on constitutional issues that tend to apply to a narrower range of pressure groups. The EU referendum was an exception because the changes to UK law, government and politics were so sweeping that they engaged many promotional groups: environmental groups such as Greenpeace, for example, were keen to remain in the EU so that collective action could be taken on climate change.

Involvement in elections

The most striking difference between US and UK pressure groups is their involvement in elections. US pressure groups have the right to spend unlimited amounts of money on electioneering, and donate millions via PACs and Super PACs in each election cycle. In contrast, there are tight restrictions on campaign finance in the UK. Many pressure groups are registered charities, which must be independent of party politics so cannot make political donations or endorse political candidates. Trade unions must have permission from members to operate their political funds.

Any non-party campaigners, including pressure groups, who spend more than £20,000 in England on electoral campaigning in a single election (£10,000 in the devolved nations or in referendums) must be registered with the Electoral Commission and are subject to regulations and restrictions. During general elections pressure groups can spend a maximum of £319,800 in England, with spending in an individual constituency for a parliamentary general election capped at £9,750. Donations to a party of more than £7,500

SYNOPTIC LINK

Super PACs allow US pressure groups to spend an unlimited amount on elections and were created by the Supreme Court judgement in *Citizens United v Federal Election Commission* (2010). You can learn more about US campaign finance and pressure groups in Chapter 21.

SYNOPTIC LINK

You can find out more about television advertising in US elections in Chapter 18.

must be declared. There are fines for breaching regulations: after the 2016 EU referendum the Leave.EU campaign was fined £66,000 and the Vote Leave campaign £61,000.

US pressure groups spend far more on election campaigning than UK pressure groups. In the 2020 presidential and congressional elections Super PACs spent \$1.8 billion of the total \$14 billion spent on the election, whereas in the 2017 UK general election non-party campaigners spent £2.5 million of the total £41.5 million election spending.

Political advertising on television is banned in the UK, with the exception of a small number of party political broadcasts in the run-up to elections. Pressure groups in the USA spend large sums on television adverts attacking or endorsing candidates.

ACTIVITY

Use the BBC website to research the 2021 Greensill Capital lobbying controversy, in which former prime minister David Cameron lobbied government on behalf of the finance firm, and its links to the civil service came under close scrutiny. Note down evidence of a 'revolving door' similar to that described in US politics.

Lobbying

The professional lobbying industry has traditionally been more developed in the USA, where there are more than 11,000 professional lobbyists. The UK has around 140 registered firms and individuals, but its lobbying industry has grown in recent decades, particularly as a result of Brexit. Pressure groups and companies lobbied for their interests to be represented in the new agreement with the EU. The Alliance for Lobbying Transparency estimated that the UK lobbying industry was worth £2 billion a year in 2017, while [opensecrets.org](https://www.opensecrets.org) put the value of the US lobbying industry at \$3.47 billion in 2019.

The revolving door exists in the UK as it does in the USA, with former ministers and MPs regularly working for professional lobbying firms after they leave office, leading to several 'cash for access' scandals in which former ministers were caught boasting of their ability to influence government on behalf of private clients. Ministers' former staff may also use their contacts and expertise to work as lobbyists. Both countries have rules intended to reduce the influence of former government officials. In the UK, former ministers cannot lobby the government for 2 years after leaving office. In 2017 Donald Trump placed a 5-year ban on former officials lobbying the government. However, loopholes can allow former government officials to sidestep the rules in both countries.

SYNOPTIC LINK

Landmark rulings transform how the US Constitution is interpreted. For example, *Brown v Topeka* (1954) made racial segregation of education illegal. You can learn more about landmark rulings in Chapter 16.

Impact of legal challenges

Pressure groups in both countries use legal challenges to hold the government to account. Judicial review is a more limited power in the UK as it only applies to government and not to Acts of Parliament, whereas the US Supreme Court can rule that Acts of Congress are unconstitutional. The potential for landmark rulings to fundamentally change the law means that US pressure groups spend a great deal of time and money on legal challenges and preparing *amicus curiae* briefs.

Pressure groups in the UK have also successfully challenged the government in court on many occasions. For example, The Public Law Project, a UK legal charity, successfully challenged the government's imposition of a residence test for legal aid (state help with legal costs) in *R (on the application of The Public Law Project) v Lord Chancellor* (2016). Governments often accept the decision of the Court, as in this example, where the residence test was removed.

In the two Miller cases, *R (Miller) v Secretary of State for Exiting the European Union* (2016) and *R (Miller) v The prime minister* (2019), activist Gina Miller used crowdfunding to finance successful legal challenges to the government's

USEFUL CONCEPTS**Retrospective legislation**

A law to legalise something that occurred before the law was passed. In the USA the Supreme Court's judgement can only be overruled by a constitutional amendment, which is very difficult to achieve.

European Court of Human Rights Final court of appeal for human rights cases, based in Strasbourg. The UK is a signatory to the European Convention on Human Rights (ECHR). Individuals who feel their human rights have been breached have their case heard first in UK courts, but can appeal to the European Court of Human Rights. The UK's membership of the ECHR is not connected to the EU.

plan to withdraw the UK from the EU without legislation by parliament, and Boris Johnson's prorogation (suspension) of parliament in the run-up to the UK's withdrawal from the EU. Unlike in the USA, if the UK government has a majority in parliament with which to pass **retrospective legislation**, it can change the law in its favour, overruling the Supreme Court's decision. The Miller cases had the support of a majority in parliament, otherwise they could potentially have been overturned.

When the UK Supreme Court makes a declaration of incompatibility with the Human Rights Act (HRA) 1998, parliament can choose to ignore this ruling. Pressure groups campaigning for prisoners' voting rights have supported a series of legal challenges via the **European Court of Human Rights**. In judgements from 2005 to 2019 the Court has repeatedly found the UK in breach of the European Convention on Human Rights (ECHR). Other than a minor change announced in 2017 that planned to allow about 100 prisoners on temporary release to vote, successive UK governments and parliaments have ignored the ruling.

STUDY TIP

Remember that Brexit removed the option of pressure group legal challenges via the European Court of Justice. EU law is no longer superior to UK law now that the transition period for exiting the EU has ended. The UK remains a signatory to the ECHR, so pressure groups can still bring rights cases to the European Court of Human Rights.

KNOWLEDGE CHECK

- 1 Which type of organisation has been growing in both the USA and the UK in recent years, providing an alternative to traditional pressure group membership?
- 2 How does the range of access points available to pressure groups differ between the USA and the UK?
- 3 What is the key difference between US and UK rules on pressure group electoral spending?
- 4 What is the key difference in how pressure groups use the courts in the USA and the UK?

The relative power, influence and methods of pressure groups in the USA and the UK

Both countries have many different types of pressure groups, of varying sizes. However, it is possible to generalise about their relative power and influence. US pressure groups have greater opportunities to influence politics and are collectively more powerful. A comparison of the different methods used by pressure groups in the USA and the UK illustrates their differing power and influence.

Comparison of methods used by pressure groups in the USA and the UK

STUDY TIP

The differing cost of winning Senate and House seats is partly explained by pressure groups preferring to support candidates to the Senate. Senate seats are a longer-term investment (6 years as opposed to 2 years). Senators are also seen as more influential, as there are only 100 of them and they have sole power to confirm appointments to the Supreme Court.

Electoral campaigning

Differences in electoral law allow US pressure groups to spend an unlimited amount on electioneering, while UK pressure group electoral spending is heavily restricted. In the USA, the amount of money involved in elections means members of Congress spend up to 50% of their time fundraising. In 2016 the average cost of winning a House seat was \$1.5 million, and more than \$19 million for a Senate seat. Legislators therefore have a strong incentive to keep their financial backers happy when voting on legislation. The US government is also subject to similar forces, as pressure groups make large financial interventions in the presidential election.

US pressure groups can spend heavily on television advertising to influence the public directly. This gives pressure groups another form of leverage over legislators, who are ultimately accountable to their voters. In contrast, political television advertising is banned in the UK. Pressure groups in both countries use online and social media advertising during election campaigns.

Links to political parties

Promotional groups often have close links to political parties in the USA. Gun rights and pro-life groups tend to support Republicans, while gun control and pro-choice groups tend to support Democrats. In the UK, promotional groups are often charities and therefore not allowed to endorse political candidates.

Big business has traditionally been most supportive of the Republicans and the Conservative Party. However, the Democratic Party regularly receives large sums from big business and wealthy individuals. The Labour Party has also done so at times, particularly during Tony Blair's 'New Labour' government, whose centrist economic policies appealed to business.

Trade union activity

The Democrats and the Labour Party are both supported by trade unions, but unions have more influence on the Labour Party. Labour was founded with union support and many unions are affiliated members of the party, with voting rights, and play an essential role in its financing. A total of 93% (more than £5 million) of registered donations to Labour during the 2019 general election campaign came from unions. Trade union funding is less important to the Democratic Party, which receives large sums from big business and wealthy individuals.

Unions have more influence on government in the UK as some 23% of UK employees are union members (6.4 million in 2018) compared to only 10% in the USA (14.7 million in 2018). The power of unions has been decreasing in both countries as each has around 50% fewer union members than in the 1970s. This has reduced the ability of unions to exert pressure on the government through strike action, which has been historically low in recent years. In 2018, 2.8 million working days were lost to US strikes, and 273,000 in the UK.

Lobbying

Weaker party discipline and the separation of powers in the USA mean that there is more to be gained by lobbying legislators in Congress as well as the government. In the UK, party discipline is generally stronger, so lobbying tends to focus on the government and not MPs. There are many more access points for US lobbyists, as lobbying takes place at both federal and state levels.

Use of the courts

Legal action is used more by US pressure groups, as the US Supreme Court has greater power than the UK Supreme Court. US pressure groups have won landmark rulings, including desegregation (*Brown v Topeka* (1954)), abortion rights (*Roe v Wade* (1973)) and same-sex marriage (*Obergefell v Hodges* (2015)).

Pressure groups in both countries have used the courts to successfully defend citizens' rights. The US Alliance Defending Freedom represented cake baker Jack Phillips in *Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission* (2018) and the Christian Institute funded *Lee v Ashers Bakery Company Ltd* (2018). Both rulings protected the bakery owners' religious right not to make a cake promoting same-sex marriage.

ACTIVITY

Research Brett Kavanaugh's controversial appointment to the Supreme Court and make a list of the different types of pressure groups that supported and opposed him, and their reasons.

Campaigning for or against judicial appointments

This method is widely used in the USA, particularly for appointments to the Supreme Court. Pro-business groups such as the US Chamber of Commerce and Americans for Prosperity backed Brett Kavanaugh's 2018 appointment to the Supreme Court and were fiercely opposed by liberal groups. Pressure groups do not campaign for or against judicial appointments in the UK, as appointments are made by an independent selection committee and are not politicised.

Grassroots campaigns and direct action

Pressure groups in both countries use these methods widely. Grassroots campaigning is undertaken by all types of pressure groups to put pressure on elected representatives and raise revenue through membership donations. Direct action tends to be used by outsider groups that need to generate media attention and public support for their objectives.



Direct action is used by pressure groups in both countries when they are unable to convince government by other means — in 2019 the UK's Extinction Rebellion attempted to spray 1,800 litres of 'fake blood' on the UK Treasury building in Westminster, London, to highlight the climate emergency

Influence

US pressure groups are generally considered to have more influence than UK pressure groups. The separation of powers in the USA allows pressure groups to target the executive, the legislature and the judiciary. The right of US pressure groups to make unlimited independent expenditures in election campaigns gives wealthy groups significant power and influence over members of the legislature and the executive.

However, UK pressure groups can have considerable success if they convince the government to support their cause. The strict restrictions on election spending make it easier for small or poorly funded pressure groups to achieve their objectives, particularly if public opinion is with them. The UK's Gurkha Justice Campaign was catapulted to national attention in 2008 by support from the actress Joanna Lumley. It successfully convinced Gordon Brown's government to allow Gurkha veterans to settle in the UK. Furthermore, the sovereignty of parliament means that a pressure group that convinces the UK government to alter the law in its favour can achieve rapid and significant change that many US pressure groups would envy (see case study).

CASE STUDY

Gun control: the Brady Campaign v the Snowdrop Campaign

The Brady Campaign

Numerous US pressure groups campaign for gun control. The Brady Campaign is a prominent example, and received more than \$37 million of funding in 2019. It began life in 1974 under a different name, but was subsequently renamed to reflect the contribution of James Brady, Ronald Reagan's press secretary. Brady and the president were both shot during a 1981 assassination attempt.

The Brady Campaign convinced Congress to pass the Brady Handgun Violence Prevention Act in 1994, which introduced federal background checks on people buying guns. However, gun deaths and school shootings have increased since the 1990s.

Gun control groups such as the Brady Campaign have been unable to achieve substantive gun controls for several reasons:

- Gun rights are protected by the Second Amendment, and Congress cannot pass legislation that infringes those rights: only a constitutional amendment could do so.
- The Supreme Court has defined the Second Amendment as conferring an individual right to bear arms rather than a collective one (see *District of Columbia v Heller* (2008), page 383).
- The powerful National Rifle Association (NRA) (see page 508) has successfully defended gun rights and made donations to many members of Congress.
- Congress has been unwilling to pass even mild gun control legislation, including that proposed

by Obama after the 2012 Sandy Hook elementary school shooting (see page 338).

While a senator, Joe Biden supported the Brady Handgun Violence Prevention Act. In his 2020 presidential campaign he promised a plan to end the 'gun violence epidemic'.

The Snowdrop Campaign

The UK's Snowdrop Campaign provides a striking contrast to US gun control groups. It was formed in 1996 as a response to the massacre of 16 children, aged 5 and 6, and their teacher, at Dunblane Primary School in Scotland. This was the deadliest mass shooting in British history.

The Snowdrop Campaign was set up by local people and supported by many of the bereaved families. It lacked the huge funds, membership and complex organisation structure of US gun control groups, but achieved its objectives in just over a year. Its petition calling for a total ban on private handguns was signed by 700,000 people. Its advert calling on people to support the ban was voiced by Sean Connery and shown in around 1,000 UK cinemas. Members of the group travelled to London and met with Prime Minister John Major and leader of the opposition Tony Blair. The Conservative government was persuaded to introduce a ban on larger handguns, and after Blair's Labour government was elected in 1997 this was extended to all handguns.

Having achieved its objectives, the Snowdrop Campaign disbanded in 1997 after being described by its coordinator as 'one of the most successful single-issue campaigns ever seen in the UK'.

ACTIVITY

Read the news article 'Snowdrop withers but battle to curb guns lives' from the *Independent* newspaper online. Then watch the video clip *Dunblane's Snowdrops: How a School Shooting Changed British Gun Laws* on the NBC website. Make a list of reasons why the campaign was successful.



High school student Emma Gonzalez holds a minute of silence to remember her friends murdered in the 2018 shooting of 14 high school students and three staff in Parkland, Florida. Gonzalez was addressing the 2018 March for Our Lives protest, one of the largest in US history, with an estimated 1.2 million participants nationwide. US pressure groups have spent decades and millions of dollars campaigning for effective gun controls, but with little success

DEBATE**Do US or UK pressure groups have more influence?****US**

There are more access points to target because of the federal system, more regular elections and the separation of powers.

Weak party discipline encourages pressure groups to target Congress.

They can spend unlimited amounts on electoral campaigning.

'Iron triangles' exist between government, Congress and powerful interest groups.

Pressure groups can use legal challenges to achieve landmark rulings from the Supreme Court.

Amicus curiae briefs are used to lobby the Supreme Court.

Powerful 'K Street' professional lobbyists have influence with policy-makers.

Former lobbyists in Trump's government are an example of the 'revolving door'.

UK

A pressure group that convinces a majority government to pass legislation can achieve its objectives quickly.

The lack of an entrenched constitution means that pressure groups can influence parliament to make sweeping changes to the law, e.g. in the cases of same-sex marriage, gun control, abortion.

Tight electoral finance laws mean that poorly funded groups are at less of a disadvantage than in the USA.

Unions have considerable influence on Labour as they are the party's main financial supporters.

The professional lobbying industry is growing.

The revolving door exists in the UK as well as the USA, and 'cash for access' scandals demonstrate that influence can be bought.

🔧 Individually or in pairs, evaluate the influence of US and UK pressure groups by considering how successful different types of groups have been in influencing government, and the reasons for this.

KNOWLEDGE CHECK

- 5 In which country are pressure groups generally thought to have most influence?
- 6 Which political parties receive support from trade unions in the USA and the UK?
- 7 Why does UK lobbying tend to focus more on influencing the government than lobbying in the USA, which also targets the legislature heavily?
- 8 Why do US pressure groups campaign for or against appointments to the Supreme Court, but UK pressure groups do not?

Theoretical approaches to pressure groups

We can use structural, rational and cultural theory to compare and analyse the similarities and differences between US and UK politics (see Chapter 12 for an explanation of the three theoretical approaches).

Structural: the role of political institutions

Important structural differences between the political systems in the UK and USA explain many of the differences in the way pressure groups operate in the two countries. Table 22.1 is an overview of the impact of these differences.

Table 22.1 The impact on pressure group activity of structural differences between the UK and USA

Structural difference	Impact on pressure group activity
More access points in the USA	There are many more pressure groups in the USA, campaigning at federal and state level.
Separation of powers in the USA allows Congress to act more independently of government than UK parliament can	US pressure groups are more able to influence politics by lobbying the legislature; UK pressure groups tend to focus more on lobbying the executive. In the UK, some pressure groups have begun lobbying the House of Lords more intensively, as the Lords are less under the control of the party whips, and there are many crossbenchers.
Unlimited US election spending versus restrictive UK campaign finance and advertising laws	Vastly more money is spent by US pressure groups in elections. US pressure groups generally have more influence on members of the legislature than UK pressure groups do. Spending contributes to the formation of 'iron triangles' in the USA.
More powerful Supreme Court in the USA as the Constitution is sovereign	Legal challenges are a much more commonly used method for US pressure groups and can potentially lead to more significant victories than in the UK.
Weaker trade unions in the USA, stronger links to a political party (Labour) in the UK	Workers' rights are better protected in the UK, as successive governments have faced sustained pressure from unions and Labour governments have been partly funded by unions.

Rational: the role of individuals acting out of self-interest

Rational theory can help us to explain why pressure groups make many of the choices that they do.

Lobbying

The response of legislators to lobbying varies between the USA and the UK for rational reasons. Members of Congress are more likely to be influenced by lobbying as they may hope for the support of pressure groups during election campaigns, or fear condemnation. The NRA grades candidates on their support for the right to bear arms, which can influence the result of close elections. Tight UK electoral finance laws and a stronger party whip system mean that MPs are less likely to be influenced by lobbying. The revolving door exists in both countries as former legislators, ministers and government staff seek to monetarise their contacts and experience by working for private lobbying firms or corporations.

SYNOPTIC LINK

Iron triangles are the product of the close relationship between legislators, the government and interest groups. You can find out more about iron triangles in Chapter 21.

Political alliances

Unions help to fund Labour and the Democrats, and share many of their political objectives. Democrat or Labour-led executives generally allow unions more influence, whereas Republican or Conservative-led executives tend to listen more to big business. Pressure groups campaigning on abortion, gay rights, civil rights, gun rights and the environment receive very different receptions depending on the type of government in place. Presidents and parties favour pressure groups whose aims appeal to their voters, and may be influenced by previous or future donations.

Direct action

Direct action is generally seen as a tactic of last resort in both countries. Insider groups try to work to influence the government and legislature via lobbying, meetings and providing policy information. Direct action risks alienating the government, even if it is successful in generating media attention and changing public opinion.

Outsider groups, who are denied the opportunity to engage in a dialogue with the government, may feel forced to use direct action in order to put their issue on the political agenda. The Black Lives Matter mass protests in the USA and the UK in June 2020 had the effect of placing a spotlight on systemic racism and inequality in both societies.

Insider groups who cannot convince the government to agree with them may also be driven to direct action, as in 2016 when the BMA called a junior doctors' strike over government changes to UK junior doctors' contracts.

Cultural: the role of shared ideas and culture

Both cultures prize political pluralism, but in the USA, pressure groups are protected by the First Amendment and can spend unlimited amounts in elections. In the UK, charities are not allowed to be political, and election funding and advertising are highly restricted.

UK and US political cultures have both been criticised for elitism, because of the outsize role played by wealthy pressure groups. This is more pronounced in the USA, where pressure groups spend millions of dollars in each electoral cycle and 'iron triangles' are seen by many liberals as profoundly undemocratic. In the UK, the trade union movement provides a little more balance to the power of big business, particularly as the opportunity for electoral spending is limited. However, in the 2019 election the Conservative Party, traditionally well supported by big business, received nearly four times as much money in registered donations as the Labour Party.

Both cultures share a tradition of political protest using marches, demonstrations and direct action. Marginalised groups have used these methods to win civil rights.

SUMMARY

- The UK and the USA share a pluralist culture in which pressure groups are part of the government's decision-making process.
- Pressure group membership has risen in recent years in both countries, and social movements have grown.
- Pressure groups generally have more influence on government in the USA.
- Pressure groups in the USA can spend unlimited amounts on election campaigns and have more access points at which to target their campaigns.
- US pressure groups can use legal challenges to achieve more significant changes to the law than UK pressure groups, because of the ability of the US Supreme Court to make landmark rulings.
- UK trade unions are part of the Labour Party and generally enjoy more influence on Labour governments than US trade unions do on Democrat administrations.

Practice questions

Paper 2 Section A style questions

- 1 Explain and analyse three ways that structural theory could be used to study the similarities and differences between US and UK pressure groups. (9 marks)
- 2 Explain and analyse three ways that rational theory could be used to study the methods used by pressure groups in the USA and the UK. (9 marks)
- 3 Explain and analyse three ways that cultural theory could be used to study the influence of pressure groups in the USA and the UK. (9 marks)

Paper 2 Section C style questions

- 4 'Pressure groups in the USA and the UK do not contribute to political pluralism, and have a negative effect on democracy.' Analyse and evaluate this statement. (25 marks)
- 5 'US pressure groups are more powerful than those in the UK because they are more able to influence the result of elections.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Articles

Cooper, T. (2016) 'Why do UK pressure groups fail?', *Politics Review*, Vol. 25, No. 3 pp. 6–7.

Dawkins, M. (2019) 'Comparing UK and US pressure groups', *Politics Review*, Vol. 29, No. 2, p. 28–30.

Fairclough, P. (2016) 'Democratic participation: has the nature of political participation changed?', *Politics Review*, Vol. 26, No. 2, pp. 12–15.

Website

Democratic Audit, 'How democratic is the interest group process in the UK?': <https://www.democraticaudit.com/2018/08/24/audit2018-how-democratic-is-the-interest-group-process-in-the-uk/>

Civil rights

KEY QUESTIONS ANSWERED

- How are civil liberties and rights protected in the USA?
- How do pressure groups promote and support rights?
- What impact have salient political issues concerning civil rights and liberties had on race in US politics?

BACKGROUND INFORMATION

In April 2018, the Trump administration announced a 'zero tolerance' policy against illegal immigrants, with more than 50,000 a day taken into custody. Nearly 3,000 children were separated from their parents. Photographs emerged of children sleeping in cages in detention centres, and at least seven children died while detained. After a public outcry and criticism by human rights organisations, the separation policy was ended. It became part of a long national debate about rights in the 'land of the free'.

US **civil rights** and liberties date back to the Declaration of Independence (1776), but have never been enjoyed equally by all. Slavery was only abolished after a bloody civil war (1861–65). Women eventually secured the right to vote in 1920 and to an abortion in 1973. The **civil rights movement** of the 1950s and 1960s achieved racial desegregation and rights to protect African-Americans from discrimination. Same-sex couples finally gained the right to marry in 2015.

Today, African-Americans and people of colour experience racism and deep inequality, sometimes with fatal consequences. Muslims faced increased discrimination after 9/11, and particularly following Trump's election. Women's rights campaigners demand true equality, and the battle for LGBTQ+ and transgender rights has been particularly fierce. Across this wide range of issues, the struggle for civil rights is urgent and bitter.

USEFUL CONCEPT

Civil rights Protections introduced by the government to ensure that groups of citizens are not discriminated against.

KEY CONCEPT

Civil rights movement The historic campaign for equal rights for African-Americans. It originated in the late nineteenth century but was at its height in the 1950s and 1960s, during which time a series of new federal laws were passed to ban discrimination.

STUDY TIP

The term 'civil rights' applies to equality rights for African-Americans, but also to rights for other groups, such as equal voting rights for women and the right to same-sex marriage. In contrast, the 'civil rights movement' is a much more specific term, and refers to the historic campaign for equal rights for African-Americans.



A young Mexican boy looks out from a detention centre room after he and his parents were intercepted illegally crossing the US border in Texas

Protection of civil rights and liberties

In 1776, 13 American colonies declared their independence from the British and in the process made one of the most important statements on rights in modern political history:

'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.'

It is easy for a modern reader to criticise this declaration. Women, Native Americans and enslaved people were excluded: equality and 'unalienable' rights did not apply to them. Furthermore, the right to 'life, liberty and the pursuit of happiness' may seem unremarkable, given our modern focus on individual self-fulfilment and happiness, and our rights-based culture. In the eighteenth century, however, it was truly revolutionary. The Declaration led to the creation of a new republic, the United States of America, with individual liberties at its core.

The terms '**civil liberties**' and 'civil rights' are often used interchangeably but refer to slightly different things. Civil liberties are fundamental individual freedoms, such as freedom of speech, religion and association. Many of these are detailed in the **Bill of Rights**. They are generally intended to give individuals freedom from government authority.

Civil rights are additional protections that ensure groups of citizens are not discriminated against. Many civil rights originate from the 'equal protection' clause of the Fourteenth Amendment (1865). This gave former enslaved people the equal protection of the law, but has subsequently been used to protect the rights of other groups. Landmark **Supreme Court** decisions used the Fourteenth Amendment to ban racial segregation in education (*Brown v Topeka* (1954)) and to give women abortion rights (*Roe v Wade* (1973)). Civil rights were also created

KEY CONCEPTS

Civil liberties The freedoms enjoyed by individual Americans, e.g. the right to freedom of speech.

Bill of Rights The first ten amendments to the Constitution that were agreed by Congress in 1789 and finally ratified in 1791. These amendments focus on individual rights such as freedom of speech and religion. They protect the civil liberties of US citizens from the actions of government.

Supreme Court The highest federal court in the USA. The Supreme Court is the final court of appeal and is responsible for interpreting the Constitution.

by laws passed by Congress. For example, the Voting Rights Act 1965 outlawed discrimination that prevented African-Americans from voting.

Civil liberties and rights are protected in the USA in the following ways.

The Constitution

Inspired by their experiences of British rule, the framers of the Constitution sought to protect US citizens from an overly powerful government. A codified system of checks and balances limited the powers of each branch of government. Citizens who felt that their rights had been infringed could seek justice through the judicial system. Article III of the Constitution established the Supreme Court as a court of final appeal.

The framers believed that people had **inalienable rights**, so designed a constitution with a complex amendment process. This prevented **entrenched rights** from being easily removed by future governments or legislatures. The original Constitution entrenched rights for some groups, including gun owners, but not the rights of women or African-Americans. It has also been criticised for how difficult it is to update.

SYNOPTIC LINK

You can find out more about how effectively the Constitution protects civil rights in Chapter 11.

The Bill of Rights (1791)

The ten amendments in the Bill of Rights were intended to protect the civil liberties of individual US citizens from the actions of government. They are shown in Table 23.1.

Table 23.1 The Bill of Rights

Amendment	Rights protected
I	Freedom of religion, speech, press, assembly, petition the government for a redress of grievances
II	Right to keep and bear arms
III	Right not to have military troops quartered in private homes
IV	Right not to have unreasonable searches and seizures
V	Right of people accused of a crime
VI	Right to a fair trial
VII	Rights to a trial by jury in common law suits over a certain value
VIII	Right not to face excessive bail or fines, nor cruel or unusual punishments
IX	Rights that are not enumerated by the Constitution are still held by the people and are protected
X	Rights of the states to retain powers that are not delegated to the federal government by the Constitution

The Third Amendment was a response to the actions of the British government, which, prior to the American Revolution, had forced people in the 13 colonies to have British soldiers quartered (accommodated) in their homes.

The First, Second and Eighth Amendments remain highly controversial and are much debated in the modern USA.

Subsequent amendments to the Constitution

When the Bill of Rights was ratified in 1791, it only applied to free persons: slavery still existed and women were not treated equally. Subsequent amendments to the Constitution were intended to extend these rights to further groups of Americans.

- Thirteenth Amendment (1865): abolished slavery.
- Fourteenth Amendment (1868): gave former enslaved people full citizenship. The Fourteenth Amendment contains two crucial clauses within it. One clause grants all citizens 'equal protection' under the law and the other states that the government cannot remove a citizen's life or freedoms without 'due process'. The 'equal protection' clause has provided the basis for many important civil rights judgements by the Supreme Court.
- Fifteenth Amendment (1870): gave men of all races the right to vote, including former enslaved people.
- Nineteenth Amendment (1920): gave women the right to vote on the same terms as men.
- Twenty-Fourth Amendment (1964): gave Americans the right to vote without needing to pay a tax. African-Americans tended to be poorer than white people, so this amendment prevented them from being disenfranchised (prevented from voting) in greater numbers.

The Equal Rights Amendment

The unratified **Equal Rights Amendment (ERA)** was one of the most controversial civil rights amendments and was never ratified, so is not part of the Constitution. The ERA would have made it illegal to discriminate on the grounds of sex. The campaign for the ERA was led by the National Organization for Women (NOW) pressure group. The ERA was passed by Congress in 1972, and ratified by 35 states. However, opposition from Conservative women led by Phyllis Schlafly meant that it was not ratified by the necessary three-quarters of state legislatures (38/50) within the timeframe set by Congress.

The final deadline for ratification expired in 1982, but in recent years a new campaign for the ERA led to its ratification by Nevada (2017), Illinois (2018), and Virginia (2020). In February 2020 the Democrat-majority House of Representatives voted to extend the deadline, meaning that the ERA could become law as it had been ratified by the required 38 states. However, approval from the Republican-held Senate would still be needed in order to extend the deadline, an unlikely prospect. The amendment does have popular support, with around three-quarters of Americans backing it in 2020.

ACTIVITY

Research the ERA and make a list of arguments for and against it. Decide which you find most convincing and why.

STUDY TIP

You might assume that, without the ERA, women's rights are unprotected in the USA. In fact the civil liberties of all Americans are protected by the Constitution, and particularly the Bill of Rights and other subsequent amendments. However, women are not mentioned explicitly, except in the Nineteenth Amendment. The ERA was a missed opportunity to entrench equal rights specifically for women. Although Congress has passed laws to prevent sex discrimination, these laws are not entrenched.

KEY CONCEPT

Landmark ruling A judgement by the Supreme Court that establishes a new legal principle, or fundamentally changes the way in which the Constitution is interpreted. This effectively changes the meaning of federal law.

ACTIVITY

Research one of the landmark cases in Table 23.2 and evaluate its impact on civil rights.

STUDY TIP

Many landmark civil rights judgements focus on the Fourteenth Amendment and the 'equal protection' clause. The Bill of Rights has tended to form the basis of landmark cases that have defined Americans' civil liberties and not their civil rights.

STUDY TIP

Civil rights can also be protected by Acts of Congress, such as the Civil Rights Acts of 1957, 1964 and 1968, and the Voting Rights Act of 1965. However, legislation passed by Congress is not entrenched in the Constitution, so can easily be overturned by a subsequent Act. Consequently, Acts of Congress do not provide the same protection of rights as a constitutional amendment or a Supreme Court judgement.

Landmark rulings of the Supreme Court

The Supreme Court applies the Constitution to civil rights and civil liberties legal cases as they arise. It has made **landmark rulings** that have fundamentally changed the civil rights of Americans (see Table 23.2).

Table 23.2 Key landmark civil rights rulings

Supreme Court case	Rights provided
<i>Shelley v Kraemer</i> (1948)	Restrictive covenants which banned the sale of homes to African-Americans were ruled unconstitutional
<i>Brown v Board of Education of Topeka</i> (1954)	Right of students not to be segregated by race
<i>Reynolds v Sims</i> (1964)	Right of voters to vote within a legislative district that is equal in population to other legislative districts (Alabama was found to be underrepresenting voters in districts with large urban populations, which particularly affected African-American voters)
<i>Griswold v Connecticut</i> (1965)	Right to use contraceptives within marriage (states were no longer able to ban contraceptives for married people)
<i>Miranda v Arizona</i> (1966)	Right of suspects to be informed of their Fifth Amendment rights before being questioned by the police
<i>Loving v Virginia</i> (1967)	State laws on interracial marriage were declared unconstitutional
<i>Roe v Wade</i> (1973)	Right to an abortion in the first two trimesters of pregnancy
<i>Regents of University of California v Bakke</i> (1978)	Affirmative action in university applications processes could be constitutional in certain cases
<i>Lawrence v Texas</i> (2003)	Right to engage in private consensual homosexual activity between adults (prior to this, some states had anti-sodomy laws)
<i>District of Columbia v Heller</i> (2008)	Individual right to bear arms
<i>Obergefell v Hodges</i> (2015)	Right of same-sex couples to marry
<i>Masterpiece Cakeshop v Colorado Civil Rights Commission</i> (2018)	Right of a business owner to refuse service on the basis of religious beliefs (in this case, a baker refused to make a wedding cake for a same-sex marriage as it violated his Christian beliefs)
<i>Altitude Express v Zarda</i> (2020)	Right of employees not to be discriminated against for their sexual orientation
<i>R.G. & G.R. Harris Funeral Homes Inc. v Equal Opportunity Employment Commission</i> (2020)	Right of employees not to be discriminated against for being transgender
<i>Espinosa v Montana Department of Revenue</i> (2020)	Right of parents to access state aid to send their children to a private religious school (the Court ruled that state aid could not be denied to a school purely because it was religious, in a victory for religious rights)

SYNOPTIC LINK

You can learn more about how the Supreme Court has interpreted the Bill of Rights in Chapter 16.

KNOWLEDGE CHECK

- 1 Which part of the Constitution provides many important civil liberties including freedom of religion and the right to bear arms?
- 2 Which constitutional amendment provides the basis for many landmark Supreme Court civil rights judgements?
- 3 Which landmark Supreme Court case gave same-sex couples the right to marry?

The role of pressure groups in promoting and supporting rights

The right of citizens to form pressure groups is itself an important civil liberty, part of the rights of free speech and assembly defined in the First Amendment. Citizens have used this right to form pressure groups that defend civil rights and liberties. Liberal groups have worked for the rights of African-Americans and people of colour, immigrants, women and the LGBTQ+ community. Conservative groups have campaigned for religious rights, the rights of the unborn child and gun rights.

Pressure groups use a variety of methods to promote and support rights, including:

- fundraising to pay for advertising campaigns to influence the public, politicians and judiciary
- public campaigning including online campaigns, social media, rallies and marches, television advertising and, in some cases, direct action
- political campaigning including lobbying Congress and the federal government (and state legislatures and state governments), and making donations to electoral candidates.
- legal campaigning including sponsoring legal cases or writing amicus curiae briefs

SYNOPTIC LINK

Many of the methods used by pressure groups are expensive, which favours wealthy groups. You can read more about the impact of money on pressure group activity in Chapter 21.

Examples of pressure groups that promote and support rights in the USA

CASE STUDY**American Civil Liberties Union**

The American Civil Liberties Union (ACLU) is the most significant defender of individual civil liberties in the USA, with more than 1.5 million members and a staff of nearly 300 lawyers who defend civil liberties in the courts. It has affiliates in every state and is involved in more US Supreme Court cases than any other non-governmental organisation.

The key difference between the ACLU and many civil rights groups is that the ACLU defends the civil liberties

of **all** Americans, even members of white supremacist organisations such as American Nazis or the Ku Klux Klan. In 1978 the ACLU successfully defended the right of a neo-Nazi group to march through an area of Chicago where many Holocaust survivors lived. The ACLU therefore represents individuals or groups with views that many people find abhorrent, or who seek to reduce the civil rights of others. It argues that every individual must have their rights protected, or there will be nothing to stop the government from taking away Americans' civil liberties entirely.

The ACLU's objectives usually align with those of liberals and civil rights campaigners. It has contributed to key landmark civil rights cases, including the ending of racial segregation in *Brown v Topeka* (1954), in which the ACLU joined the National Association for the Advancement of Colored People (NAACP) to support the case, and the legalisation of abortion in *Roe v Wade* (1973).

In the twenty-first century the ACLU won court rulings protecting the right to privacy of gay people, and against the teaching of intelligent design in science lessons in schools. It mounted multiple legal challenges to US national security measures that were introduced after 9/11, including the waterboarding of terrorist suspects. However, despite a number of legal victories, this campaign was of limited effectiveness. The Bush, Obama and Trump administrations continued the imprisonment without trial of suspects at Guantanamo

Bay, and expanded the use of drones and targeted killing overseas, claiming the right to kill US citizens overseas if they are believed to pose a terrorist threat.

The ACLU had filed more than 230 lawsuits against the Trump administration by July 2020. Its challenge to Trump's 2017 ban on immigration from Muslim-majority countries led to a federal court blocking the ban, which was then modified by the government and ruled constitutional by the Supreme Court.

The ACLU has also defended the rights of individuals against private employers. In *R.G. & G.R. Harris Funeral Homes Inc. v Equal Opportunity Employment Commission* (2020) it defended a woman who was fired for being transgender, leading to the landmark Supreme Court ruling that discrimination on the grounds of gender orientation is unconstitutional.

SYNOPTIC LINK

Thurgood Marshall later became the first African-American Supreme Court justice. You can find out more about Supreme Court justices and the landmark case *Brown v Topeka Board of Education* (1954) in Chapter 16.

ACTIVITY

Use the ACLU's website <https://www.aclu.org> to make a list of the different civil rights areas in which the group campaigns. Read about its recent campaigns and evaluate the impact that the ACLU has had on civil rights.

CASE STUDY

National Association for the Advancement of Colored People

Founded in 1909, the National Association for the Advancement of Colored People (NAACP) is the USA's oldest civil rights pressure group and today has more than half a million members.

The group achieved major successes in the 1950s and 1960s as part of the civil rights movement. It provided legal representation for protesters arrested by the government and helped to plan the 1963 March on Washington. It lobbied Congress to pass the Civil Rights Acts of 1957, 1964 and 1968, and the Voting Rights Act 1965, and ran successful voter registration campaigns to increase the numbers of African-American voters. It focused on winning civil rights by conventional campaign methods, whereas Martin Luther King and other leaders employed direct action. The NAACP led a legal campaign to end racial segregation and the legal principle of 'separate but equal'. Its special counsel, lawyer Thurgood Marshall, won a series of important victories, including *Shelley v Kraemer* (1948) and *Brown v Topeka* (1954).



Thurgood Marshall

CASE STUDY**The NAACP in the twenty-first century**

In the twenty-first century, the NAACP has been focused on ensuring that African-Americans receive equal economic, education, health, criminal justice and voting rights, and expanding youth engagement in civil rights. In May 2020 it launched the social movement #WeAreDoneDying to campaign against institutional racism. This was a response to the fatal shooting of unarmed 25-year-old Ahmaud Arbery while he was jogging through Brunswick, Georgia, and the disproportionate number of African-American deaths from COVID-19. During the 2020 presidential election, the NAACP ran a national voter mobilisation programme that contributed to record levels of black voter turnout and the election of the first black vice president, Kamala Harris.



Kamala Harris is sworn in as vice president by Supreme Court Justice Sonia Sotomayor on 20 January 2021 at the US Capitol in Washington, DC

The role of social movements in promoting and supporting rights

Social movements have played an increasingly important role in promoting and supporting rights in recent years. Examples include Black Lives Matter campaigning for racial equality, the Women's March campaigning for civil rights for women, #MeToo campaigning for an end to sexual harassment and assault, and the anti-lockdown movement.

The anti-lockdown movement was a campaign for civil liberties, not civil rights. Civil liberties are often defended by liberals but also by conservative republicans, and particularly libertarians who are keen to protect individual freedoms such as the right to bear arms. The presence of far-right protesters and white supremacists at anti-lockdown demonstrations shows how the aims of civil liberties protesters may conflict with those of civil rights campaigners (see case study).

CASE STUDY**The anti-lockdown movement**

During the COVID-19 crisis, a number of state-based social movements sprang up in protest against the lockdown. Protesters argued that state governors' stay-at-home orders violated their constitutional civil liberties. By May 2020 estimates suggested that some 2 million people were associated with the anti-lockdown movement, with demonstrations in more than half of US states. Protesters breached lockdown rules to attend crowded demonstrations in state capitals, many carrying guns. In April 2020, armed protesters even entered the Capitol in Michigan, and in October 2020 the FBI arrested members of a militia who were planning to kidnap Michigan's governor, Gretchen Whitmer.



Armed anti-lockdown protesters inside the Michigan State Capitol, April 2020

KNOWLEDGE CHECK

- 4 Which rights do liberal pressure groups tend to campaign for, and which rights do conservative pressure groups usually focus on?
- 5 What do the initials ACLU stand for?
- 6 What do the initials NAACP stand for?

The impact of salient political issues concerning civil rights and liberties: race

US politics has been affected by many civil rights issues including abortion, race, immigration, religion, freedom of speech, gender, sexual orientation, privacy, disability and the right to bear arms. Here we focus on the impact of race on US politics.

Slavery was legal in southern US states until 1865, when northern abolitionist states triumphed in a bloody civil war against the southern pro-slavery Confederate states that attempted to secede from the union. The Thirteenth Amendment (1865) abolished slavery across the USA, and the rights of former enslaved people and people of colour were further expanded by the Fourteenth and Fifteenth Amendments, and the Civil Rights Act 1875. However, southern states responded by passing 'Jim Crow laws' that ensured racial segregation. The Supreme Court ruled that the doctrine of 'separate but equal' facilities for white people and people of colour was legal in *Plessy v Ferguson* (1896), although in practice the facilities for people of colour were hugely inferior. The USA's history of endemic racism has meant that its modern politics are heavily influenced by race and civil rights.

CASE STUDY**Native Americans**

The treatment of the indigenous Native Americans by European settlers in America is widely described as a genocide. Over centuries, Native Americans were slaughtered and forced from their lands. The US government systematically attacked their culture and communities, imposing policies of forced assimilation on them. In 1851 the governor of California said that 'a war of extermination will continue to be waged between the two races until the Indian race becomes extinct'. The Native American population of North America dropped from an estimated 5–15 million in 1492 to 238,000 by the end of the nineteenth century.

Some Native Americans obtained US citizenship in the 19th century, but it was not until 1924 that all became

citizens. The Indian Civil Rights Act 1968 extended the protections of the Bill of Rights to Native Americans in tribal governments, but was resented by many because it gave the federal courts authority over tribal governments if rights were being infringed.

Today there are more than 5 million Native Americans in the USA. Around 1 million live on 326 reservations across the country, which together occupy an area the size of the state of Idaho. Each reservation is managed by a different tribe with its own laws and government. Unemployment and limited educational opportunities are major problems on reservations, where the poverty rate is more than twice the national average. Native Americans continue to face racist stereotyping and discrimination.

SYNOPTIC LINK

Brown v Topeka Board of Education (1954) is probably the most significant landmark ruling by the Supreme Court. You can learn more about the case in Chapter 16.

The civil rights movement

The civil rights movement began in the late 1940s and was led by pressure groups, campaigners and religious groups. It achieved landmark Supreme Court victories, including *Brown v Topeka Board of Education* (1954), which led to the ending of the policy of segregation in the American South.

The danger faced by ordinary black Americans was graphically demonstrated by the murder of 14-year-old Emmett Till in 1955 by white men. Till's killers were acquitted by an all-white jury, although they subsequently admitted the crime. This demonstrated the profound failings of the criminal justice system to convict those responsible for killings or lynchings.

Some civil rights campaigners used direct action such as sit-ins and bus boycotts. This tactic publicly exposed the brutality of police and many white people, who frequently used violence against civil rights campaigners. Martin Luther King led a non-violent campaign of civil disobedience, inspired by Mahatma Gandhi's tactics in India. King helped to develop changing public attitudes to race and built popular support for the civil rights movement. His 1963 'I have a dream' speech articulated a vision of a world in which people would be judged 'not by the colour of their skin but by the content of the their character'. King won the Nobel Peace Prize, but his assassination in 1968 was yet another example of the violence inflicted on African-Americans, and particularly those at the forefront of the civil rights movement. King's modelling of black leadership would ultimately lead to the 2008 election of the first black US president, Barack Obama.



Martin Luther King at the March on Washington, 1963, where he made his famous 'I have a dream' speech. King was murdered less than five years later, aged 39

STUDY TIP

You should be aware that the era of the civil rights movement continues to influence modern US politics. In the 2019 Democratic presidential primary debates, Joe Biden was strongly challenged by Kamala Harris on his stance on 'school busing', a desegregation policy that saw African-American students bused into white areas for schooling. Biden opposed busing while he was a senator in the 1970s, but Harris had herself been bused to school, as she revealed.

The moral authority of the civil rights movement built an effective coalition of support in government and Congress. Congress passed the Civil Rights Acts of 1957, 1964 and 1968, and the Voting Rights Act of 1965. The necessary three-quarters of US states voted to ratify the Twenty-Fourth Amendment (1964), which protected African-Americans from discrimination in voting. Some southern states resisted desegregation, and African-Americans continued to face widespread racism and structural inequalities.

USEFUL CONCEPT

Affirmative action Positive discrimination to favour racial minorities by employers or universities, or federal or state governments.

ACTIVITY

Read 'Affirmative Action Fast Facts' on the CNN website and make a note of the key developments in affirmative action since the 1950s. Decide whether you agree with affirmative action policies and write a paragraph to justify your view.

Affirmative action

In an attempt to reverse deep inequalities faced by African-Americans, Democrats in the 1960s argued for the use of **affirmative action**. This is a positive form of discrimination, which makes it easier for people from racial minorities to get a job or win a place at university.

Affirmative action is a polarising issue in US politics. Liberals generally consider it to be fair, as it takes account of the economic and social disadvantages faced by many people of colour. Most Democrats support it, including Obama and Biden. Most Republicans are highly critical of affirmative action, including George W. Bush and Trump. Conservatives argue that it is a form of reverse discrimination because if African-Americans are given enhanced opportunities simply because of their race, this simultaneously infringes the right of other groups not to be discriminated against on the basis of race. White people from the majority group, or people from economically successful minority groups such as Asian-Americans, may effectively need to meet a higher standard for entry than African-Americans. Affirmative action varies by state and is banned in nine. In 2020, California voters rejected proposition 16, which would have removed the 1996 ban on public sector affirmative action.

The Supreme Court has frequently been asked to define constitutional affirmative action. It has been divided on the issue, but in *Fisher v University of Texas* (2016) it ruled that racial affirmative action was legal, provided that certain criteria were met. However, at that time Associate Justice Anthony Kennedy provided the crucial 'swing vote' in the decision. Since the Supreme Court gained a conservative majority in 2018, opponents of affirmative action have been hopeful that the Court will take a different approach. In 2020 Trump's administration filed an amicus brief with a federal court, arguing that Harvard University's use of race in admissions was unconstitutional. The federal court ruled in Harvard's favour, but the addition of Amy Coney Barrett to the Supreme Court in October 2020 provided a 6-3 conservative majority with the potential to rule against affirmative action in future, should the Court decide to hear the case.

Voting rights

The Voting Rights Act 1965 made it much easier for African-Americans to vote, by removing the restrictions on voting in place in most states in the American South. As a result, African-American turnout grew dramatically, particularly in states where they faced extreme discrimination, such as Mississippi, where turnout increased from 7% in 1964 to 67% in 1969. African-Americans became an important group of voters, particularly in the South where their numbers were greater. Politicians began to tailor their policies to attract African-American support, and African-American candidates were elected to office.

However, in *Shelby County v Holder* (2013) the Supreme Court ruled that states could impose restrictions on voting, arguing that the country had changed since 1965. More than 25 states have introduced voter restrictions since 2010, including strict voter photo identification requirements. Hispanics and African-Americans are less likely to have the required identification, so their turnout has fallen in states with strict voter identification laws, while white turnout has hardly been affected. African-Americans and Hispanics are most likely to vote Democrat, meaning that voter identification laws make it easier for Republicans to win elections. In 2016, black voter turnout fell by

7 percentage points, reversing a trend of increasing turnout since 1996 and contributing to Hillary Clinton's defeat. While this may have been influenced by the absence in 2016 of an African-American presidential candidate after two elections of record high turnout for Obama, many commentators also pointed to the impact of voting restrictions. In 2020 there was a huge effort to mobilise black voters by pressure groups such as the NAACP, African-American churches and the Democratic Party. The resulting record African-American turnout was crucial to Joe Biden's victory, particularly that of black 18–30-year-olds (88% voted for Biden, 9% for Trump) and black women (91% Biden, 8% Trump).

Incarceration rates

The incarceration rate for African-Americans is more than five times that of white people. In 2018, 12% of the US adult population but 33% of prisoners were African-American. In contrast, 63% of adults and just 30% of prisoners were white.

One possible explanation could be a higher rate of crime committed by African-Americans. Evidence from the Bureau of Justice and FBI suggests that African-Americans are statistically more likely to commit certain types of crimes than white Americans, and some sociologists have suggested that this may be because African-Americans are also more likely to be socio-economically disadvantaged.

However, the difference in crime rates does not fully explain the difference in incarceration rates. Although African-Americans and white Americans both use drugs at a similar rate, African-Americans are six times more likely to be incarcerated for drug charges. During the COVID-19 crisis African-Americans received more than 80% of summonses for social distancing violations in New York City. This all suggests that the law is not being applied equally. More than half of all low-income African-American men have spent time in prison, which has a vast impact on their lives and future employment prospects. A black man born in 2001 has a 1 in 3 chance of spending time in prison over his lifetime. A white man born that year has a 1 in 17 chance.



African-Americans are disproportionately likely to be imprisoned in the USA

USEFUL CONCEPTS**Felony disenfranchisement**

The loss of the right to vote by people who have been convicted of a felony. This may be temporary or permanent, and varies from state to state.

Ballot initiative A petition signed by a certain number of registered voters which leads to the electorate voting on a proposed law or constitutional amendment.

Felony disenfranchisement

African-Americans' disproportionately high rate of incarceration has an important impact on voting. All but two US states prohibit people convicted of a felony (a serious crime) from voting, the majority of states deny the vote to people on probation or parole, and 11 states extend this ban until after the sentence, probation and parole periods have ended.

The increasing size of the prison population since the 1970s meant that **felony disenfranchisement** increased. By 2016, 1 in every 13 African-Americans of voting age was no longer eligible to vote because of a previous criminal conviction. However, pressure groups campaigning for reform won a significant victory in 2018. Voters in Florida, the state with the highest rate of felony disenfranchisement, passed a **ballot initiative** restoring the right to vote to people who had fully completed their sentences. This amendment to Florida's state constitution restored the vote to around 1.4 million people, many of whom were African-American, although subsequent legal challenges meant that they were not able to vote in the 2020 election. Changes to other states' voting rules reduced felony disenfranchisement by nearly 15% from 2016 to 2020, but still left more than 5 million Americans unable to vote. The rate at which African-Americans are disenfranchised also fell to 1 in 16 in 2020, but this remains 3.7 times greater than that of other Americans.

SYNOPTIC LINK

Ballot initiatives are an example of direct democracy in the USA. You can find out more about direct democracy in the USA in Chapter 18.

ACTIVITY

Read the report on felony disenfranchisement on the website of the pressure group The Sentencing Project. Make a note of the reasons for felony disenfranchisement and the impact it has.

SYNOPTIC LINK

Amendment IV, the initiative that gave former felons in Florida voting rights, united a broad range of pressure groups, including the liberal ACLU and NAACP, and the conservative Christian Coalition of America. The Christian Coalition was motivated by Christian redemption and forgiveness, although many other conservative groups opposed the initiative. You can find out more about pressure groups in Chapter 21.

Black Lives Matter

This influential social movement began in 2013 after George Zimmerman was acquitted for shooting dead unarmed teenager Trayvon Martin. The hashtag #BlackLivesMatter started trending on Twitter. President Obama spoke movingly about Martin's death, and expressed frustration at the racial bias within US society. Subsequent police shootings of unarmed African-Americans resulted in street protests, some of which turned violent, including unrest in Ferguson, Missouri in 2014.

Black Lives Matter has had a significant political impact by exposing the violence faced by African-Americans across the USA and the difficulties that African-Americans face in obtaining justice. Black Americans are two and a half times more likely to be killed by the police than white Americans. Numerous smartphone videos have been posted online showing brutality

towards unarmed African-Americans by both the public and the police, often with lethal consequences.

The fatal shooting by two white men of 25-year-old Ahmaud Arbery, an unarmed African-American jogger, sparked a national outcry in 2020. Several months later, a white police officer was filmed kneeling on George Floyd's neck for 9 minutes 29 seconds during an arrest as Floyd pleaded for his life, repeating 'I can't breathe.' Floyd's death led to one of the biggest protest movements in US history, with an estimated 23 million people attending demonstrations across the country, despite the COVID-19 pandemic. Some protests included rioting, looting, arson and violence against the police. The authorities responded with curfews, tear gas, smoke grenades and rubber bullets, while Trump threatened to send in the military, a response widely condemned as inflammatory. The protests did have an impact: the police officer, Derek Chauvin, was convicted of murder and three other officers were charged with aiding and abetting him, plans for police reform were outlined, crowds toppled statues of figures connected to slavery and colonialism, and the use of the Confederate flag was banned in the US Navy. Black Lives Matter protests spread to other Western democracies, including the UK, France, Germany, Canada and Australia.



In June 2020, supporters of George Floyd and the Black Lives Matter movement marched in cities across the USA against the institutional racism that led to his death

The Alt-Right and domestic terrorism

Far-right extremists and white supremacists were responsible for two-thirds of terrorist activity in the USA in 2020. This type of domestic terrorism has been increasing: 50 people were killed by the far right in 2018 and, according to the Southern Poverty Law Center, the number of white nationalist groups in the USA increased by 50% in 2018 to 148. African-American churches have been burnt down, and in 2015 nine African-Americans were killed in a shooting massacre at their church in Charleston, South Carolina. In 2018 the NAACP wrote to the House Committee on Homeland Security to highlight the danger posed to African-Americans by domestic terrorism, and held an emergency tele-town hall on the issue in 2019.

Trump's association with some leading **Alt-Right** figures quickly led to fears that civil rights were at risk under his administration. His failure to clearly

USEFUL CONCEPT

Alt-Right Political movement made up of individuals who hold a range of different far-right beliefs, including white supremacists, neo-Nazis and neo-Confederates (people who support the pro-slavery states from the US Civil War).

condemn the far right after a liberal protester was killed at a 'Unite the Right' rally in Charlottesville in 2017 was widely criticised, as was his tweet 'when the looting starts, the shooting starts' during the 2020 Black Lives Matter protests. Far-right groups and individuals targeted numerous Black Lives Matter protests, using weapons to attack demonstrators or driving vehicles into crowds.

Far-right extremism is also a grave threat to other minority groups, particularly Hispanics who have been targeted since Trump identified stopping illegal immigration from Mexico as a major policy priority. Twenty-three people were murdered in a 2019 shooting at a Walmart in El Paso, Texas, with Hispanics the main target. In 2018 and 2019 Jews were targeted in two synagogue shootings that killed a total of 12 people. Hate crimes against Asian-Americans rose by 150% in large cities in the USA in 2020. Many argued that Asian-Americans were facing racial scapegoating for the global pandemic after Trump described COVID-19 as the 'Chinese virus'.

Ultimately the rise of the far right poses a threat to democracy itself. Swastikas and confederate flags were on display when armed militia members entered the Michigan Capitol in April 2020, and again in January 2021 when a mob attempted to take over the US Capitol.

KNOWLEDGE CHECK

- 7 When was the civil rights movement at its height?
- 8 What is affirmative action?
- 9 Which type of restriction on voting affects African-Americans disproportionately because they have higher incarceration rates?

SUMMARY

- Civil liberties and rights are protected within the Constitution and its amendments, and by subsequent landmark Supreme Court cases.
- Pressure groups promote and support rights by public and political campaigning, including electioneering and lobbying, and by pursuing legal challenges through the courts system.
- The struggle for equal civil rights and liberties in relation to race has been fundamental to US politics and continues to be so today.

Practice questions**Paper 2 Section A style questions**

- 1 Explain and analyse three ways in which landmark rulings of the Supreme Court have protected civil rights and liberties in the USA. (9 marks)
- 2 Explain and analyse three ways in which political issues concerning rights and liberties have had an impact on US politics. (9 marks)
- 3 Explain and analyse three ways that pressure groups have contributed to the development of civil rights and liberties in the USA. (9 marks)

Paper 2 Section B style question

Read the extract below and answer Question 4 that follows.

Protection of civil rights and liberties

Our democracy's founding ideals were false when they were written. Black Americans have fought to make them true

The United States is a nation founded on both an ideal and a lie. Our Declaration of Independence, approved on July 4, 1776, proclaims that 'all men are created equal' and 'endowed by their Creator with certain unalienable rights.' But the white men who drafted those words did not believe them to be true for the hundreds of thousands of black people in their midst. 'Life, Liberty and the pursuit of Happiness' did not apply to fully one-fifth of the country... This nation's white founders set up a decidedly undemocratic constitution that excluded women, Native Americans and black people, and did not provide the vote or equality for most Americans... Anti-black racism runs in the very DNA of this country.

...Yet despite being violently denied the freedom and justice promised to all, black Americans believed fervently in the American creed. Through centuries of black resistance and protest, we have helped the country live up to its founding ideals. And not only for ourselves — black rights struggles paved the way for every other rights struggle, including women's and gay rights, immigrant and disability rights... The bloody freedom struggles of the civil rights movement laid the foundation for every other modern rights struggle. But the laws born out of black resistance guarantee the franchise for all and ban discrimination based not just on race but on gender, nationality, religion and ability.

Source: adapted from an article written by Nikole Hannah-Jones, a journalist who covers US civil rights, and published in the *New York Times Magazine*, August 2019

- 4 Analyse, evaluate and compare the different arguments in the extract regarding the extent to which the Constitution protects civil rights and liberties. (25 marks)

FURTHER READING

Articles

Center for Strategic and International Studies (2020), 'The war comes home: the evolution of domestic terrorism in the United States': <https://www.csis.org/analysis/war-comes-home-evolution-domestic-terrorism-united-states>

Lemieux, S. (2020) 'Gun control in the USA', *Politics Review*, Vol. 29, No. 4, pp. 2–5.

Websites

You might also want to consult websites relating to some of the specific rights and liberties discussed in this chapter, including:

American Civil Liberties Union (ACLU): <https://www.aclu.org/>

Black Lives Matter: <https://blacklivesmatter.com/>

Christian Coalition of America: <https://cc.org/>

National Association for the Advancement of Colored People (NAACP): <https://naacp.org/>

The Sentencing Project: <https://www.sentencingproject.org/>

Comparing civil rights

KEY QUESTIONS ANSWERED

- What are the key similarities and differences regarding the protection of civil rights in the UK and the USA?
- What are the main debates about civil rights issues in the UK and the USA?
- How do the methods, influence and effectiveness of civil rights campaigns in the UK compare with those in the USA?

BACKGROUND INFORMATION

In the summer of 2020 George Floyd was murdered by a police officer kneeling on his neck. Black Lives Matter protests spread across the USA and to the UK. Most were peaceful, some turned violent. Crowds tore down statues of historical figures with connections to slavery. Debate raged about structural racism in both countries, and what could be done about it.

All this happened during a global pandemic. Demonstrators ignored government demands to stay at home. Earlier that year, thousands of Americans protested against the lockdown itself, although this attracted much less support in the UK.

Meanwhile, conservatives in the USA were deeply disappointed by a Supreme Court ruling on women's abortion rights, while UK liberals celebrated the recent legalisation of abortion in Northern Ireland. The US Supreme Court ruling against employees discriminating against transgender people was balanced by the Trump administration's removal of Obama-era healthcare protections for the same group. Boris Johnson's government cancelled changes that would have made it easier to legally change gender.

Currents of rage swept through social media platforms on both sides of the Atlantic. On the streets, in the courts and online, civil rights battlegrounds in the USA and the UK overshadowed all other politics.



Black Lives Matter protesters tore down slave trader Edward Colston's statue in Bristol, June 2020, and flung the statue into Bristol Harbour

STUDY TIP

Know the difference between the US Bill of Rights (1791) and the UK Human Rights Act (HRA) 1998. The Bill of Rights is the first ten amendments to the US Constitution and is therefore entrenched. The HRA is much less well protected as it is an Act of Parliament, so can be repealed by a simple majority of any future parliament.

The protection of civil rights in the UK and the USA

Civil liberties and civil rights are protected by the US and the British constitutions, particularly the US Bill of Rights and the UK Human Rights Act 1998. The **entrenched rights** in the US Constitution can only be removed by a formal amendment, whereas civil liberties and rights are not entrenched in the UK's flexible constitution.

STUDY TIP

Citizens' rights are also protected by the European Convention on Human Rights (ECHR), to which the UK is a signatory. Citizens who feel their rights have been infringed may therefore appeal to the European Court of Human Rights (ECtHR) in Strasbourg if they are not satisfied with a ruling made by the UK Supreme Court.

ACTIVITY

Research the different milestones in UK rights. Make a list of the different groups that have had their rights added to UK law.

Both US and UK legislatures have passed legislation to protect citizens' rights, such as the UK's Equality Act 2010 and the US Civil Rights Act 1964:

- **Equality Act 2010:** law passed by parliament to bring together many different pieces of equality legislation. These included the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Employment Equality Regulations (2003 and 2006).
- **Civil Rights Act 1964:** signed into law by President Lyndon B. Johnson, it banned racial discrimination in voting. It prohibited voting restrictions such as the literacy tests used to prevent African-Americans from exercising their right to vote.

USEFUL CONCEPT

Rule of law The principle that the law is enforced, and that it is applied equally to everyone.

The USA and the UK have independent judiciaries who can defend the rights of citizens against the government. In general, the **rule of law** applies in both countries, meaning that legal rights are usually upheld. One obvious exception to this is the injustices faced by African-Americans when dealing with the police and judicial system, which has echoes in the experiences of many black Britons.

The US Supreme Court has far more power to protect civil rights than the UK Supreme Court does, for two important reasons:

- The US Supreme Court can strike down legislation that infringes citizens' constitutional rights. The UK Supreme Court can only declare an Act of Parliament incompatible with the HRA, and refer the matter back to parliament for consideration.
- The US Supreme Court can make **landmark rulings** on civil rights. These effectively act as 'interpretative amendments' to the Constitution. The UK Supreme Court has a narrower interpretative role.

KNOWLEDGE CHECK

- 1 Which parts of the US and British constitutions deal specifically with rights?
- 2 Why are rights better protected in the US Constitution?
- 3 Which Supreme Court has more power to protect and define civil rights?

Debates about civil rights issues

Civil rights issues are debated with great intensity in both the USA and the UK. The most significant debates are covered below.

STUDY TIP

Remember that civil liberties are a core feature of British law and culture, even though they are less well protected than those entrenched in the US Constitution. British liberal values, the rule of law, ECHR membership and the HRA all protect civil liberties and rights. However, the UK's flexible constitution would allow an illiberal government with a majority in parliament to remove liberties and rights with far greater ease than an equivalent US government.

Civil liberties during periods of national emergency

Both countries have regular debates about how best to balance civil liberties with the government's duty to protect its citizens in a time of crisis or emergency.

9/11 terror attacks

After 9/11, both governments used controversial new laws to increase their powers and protect citizens from terrorist threat. The USA Patriot Act 2001 allowed the police and government to carry out searches of homes, businesses, telephones and email without a court order. In the UK, the Prevention of Terrorism Act 2005 introduced government control orders on terrorist suspects (although the Act was repealed in 2011).

Debates about civil liberties do not neatly follow ideological lines. In the UK, the Prevention of Terrorism Act was introduced by a Labour prime minister, Tony Blair, while the Patriot Act was introduced by a Republican president, George W. Bush. Both argued the measures were necessary to protect the public. In the USA, Democrats are generally more likely to support civil liberties over government control. However, libertarians such as Republican senator Rand Paul also defend civil liberties: Paul held a 13-hour filibuster in 2013 to challenge Democrat president Barack Obama's use of drone strikes.

STUDY TIP

Protecting the civil rights of one group can mean limiting the rights of another group. The 'right to life' movement supports the right to 'personhood' of the unborn foetus or embryo, in direct contradiction to the right of a woman to have an abortion.

Women's rights

Historically, both countries have had similar debates over women's suffrage, feminism, equality and anti-discrimination. More recently, the #MeToo and #TimesUp campaigns have focused on sexual harassment and assault in both countries.

The debate over abortion in the two countries has differed most sharply. In most of the UK abortion has been legal since parliament passed the Abortion Act in 1967. None of the main political parties want to remove women's right to an abortion. Abortion debate in Northern Ireland is closer to that of the USA, with intense opposition from pro-life religious leaders and politicians. Abortion was finally legalised in Northern Ireland in 2019.

In contrast, abortion has been one of the most contentious and divisive issues in US politics since it was legalised by *Roe v Wade* (1973). It is a partisan issue: most Republicans are pro-life, while most Democrats are pro-choice. The debate is particularly fierce because of the USA's highly religious society. Around 56% of Americans consider themselves religious, but just 30% of British people do.

SYNOPTIC LINK

Abortion rights in the USA have largely been determined by the Supreme Court. You can learn more about the role of the US judiciary in shaping abortion rights in Chapter 16.

Race

ACTIVITY

Read about the Bristol Bus Boycott and analyse the reasons for it, the tactics used and its effectiveness. The article on www.blackhistorymonth.org.uk is a good starting point (see Further reading, page 557).

SYNOPTIC LINK

You can learn more about debates in US politics about race in Chapter 23.

Both the USA and the UK have had long-term debates about the rights of ethnic minorities. Black people face a range of inequalities, prejudices and disadvantages, as do many other minority ethnic groups. In recognition of the socio-economic disadvantage faced by African-Americans and other minority ethnic groups, affirmative action policies were developed in the USA. These do not exist in the UK, where top universities are regularly criticised for not admitting enough students from certain minority ethnic communities.

Debates over civil rights and race have been far more central to US politics, with its history of segregation and racial discrimination followed by the civil rights movement in the 1950s and 1960s. While the UK had its own civil rights campaign against racial discrimination, including the 1963 Bristol Bus Boycott, there was no policy of formal segregation, although racism was widespread in the UK and underpinned its empire. The UK civil rights movement was successful in convincing parliament to pass the Race Relations Act 1965, which banned discrimination on the grounds of race.

The Black Lives Matter campaign has highlighted the unprovoked police violence that black people regularly face. Racial discrimination by the police has had a lower profile in the UK, where police are usually unarmed. Three people were killed by police in the UK in 2019 compared with 1,004 in the USA. In the 1970s, UK police used 'sus' laws to stop, search and even arrest anyone considered to be loitering with the intent to commit an offence — in practice, this was disproportionately applied to young black men. Protests and riots in 1981 spread to many UK cities and led to the 'sus' laws being repealed. In 1993 the murder of teenager Stephen Lawrence exposed institutional racism in the Metropolitan Police Force charged with finding his killers. When UK police shot dead 29-year-old Mark Duggan in London in 2011, a week of riots and looting in response resulted in over a thousand criminal charges and more than £200 million of property damage, side-lining meaningful public debate on police attitudes.

Today, debates focus on the disproportionately high number of prisoners from minority ethnic groups in the UK, and the fact that black men are nine times more likely than white men to be stopped and searched by police, and three times more likely to be tasered. The issue is not limited to the police: pupils of black Caribbean ethnicity or mixed race white and black Caribbean ethnicity are three times more likely to be permanently excluded from school than their peers of white British ethnicity. There was also debate about the extent to which structural racism could explain the higher death rates of people from minority ethnic groups during the COVID-19 pandemic.

Structural and institutional racism was put on the UK's political agenda by the 2020 Black Lives Matter protests, inspired by those in the USA. Thousands of protesters, including actor John Boyega, ignored lockdown restrictions across the UK to take to the streets. This triggered a national debate about how black history and culture is taught in schools, and whether statues of historical figures with racist backgrounds should be allowed to remain.

The rights of immigrants

US debate has focused on the estimated 11 million illegal immigrants living in the country, particularly those who arrived as children. The Trump

administration's policy of separating children of illegal immigrants from their parents was modified after a public outcry. However, children continued to be held in detention centres and many were separated from their parents. At least seven child migrants died in US government custody from 2018 to 2019.

Donald Trump's attempt to end Obama's Deferred Action for Childhood Arrivals (DACA) programme was overruled by the Supreme Court in June 2020, meaning that around 650,000 undocumented immigrants who were brought to the USA as children before 2007 would remain free to work in the USA without fear of deportation.

In the UK there has been debate over whether immigrants should have equal rights to use the National Health Service and council housing, and whether deporting immigrants who commit a crime constitutes a breach of their human rights under the HRA. Public concern about immigration was a major cause of the UK public's decision to leave the EU in 2016.

The rights of LGBTQ+ people

There was heated debate in both the UK and USA about same-sex marriage prior to its legalisation in 2013 and 2015 respectively. In recent years there have been impassioned arguments about the right of religious people to withhold services from LGBTQ+ customers, and whether or not school pupils should learn about LGBTQ+ issues.

Transgender rights have been debated in both countries. Trump introduced a ban on transgender people in the military and removed Obama-era healthcare protections for transgender people. However, in June 2020 the US Supreme Court ruled 6-3 in *R.G. & G.R. Harris Funeral Homes Inc. v Equal Opportunity Employment Commission* (2020) that employers could not sack workers for being transgender, a decision against the wishes of the US government. In 2020, Johnson's government cancelled plans to make legal gender change easier.

Gun rights

The debate over Second Amendment rights is one of the most prominent issues in US politics, whereas gun control is almost universally accepted in the UK.

Religious groups

Religious groups in both countries have argued that anti-discrimination legislation can infringe on their right to practise their religion. In two similar cases, *Lee v Ashers Bakery Company Ltd* (2018) and *Masterpiece Cakeshop v Colorado Civil Rights Commission* (2018), the UK and US supreme courts respectively gave Christian bakers the right not to make a cake promoting same-sex marriage.

STUDY TIP

Civil rights and liberties can conflict. In the US and UK baker cases, the civil rights of gay people to buy a cake with their chosen message on it came into conflict with the freedom of Christian bakers to refuse to make a cake for a cause that was incompatible with their religious beliefs.

KNOWLEDGE CHECK

- 4 Which controversial women's right generates much more debate in the USA than the UK?
- 5 How much more likely are black men to be stopped and searched by UK police than white men?
- 6 Which issue is largely missing from debates in the UK, but is continually and fiercely debated in the USA?

Comparison of methods, influence and effectiveness of civil rights campaigns

Methods

Pressure groups and social movements campaign for civil rights using many similar methods in both countries, including marches, rallies, lobbying politicians, direct action and civil disobedience.

US pressure groups use the courts more frequently, as their Supreme Court can strike down legislation as unconstitutional or make interpretative amendments to the Constitution. However, UK pressure groups have used judicial review more frequently since the introduction of the HRA. Pressure groups spend far more in the USA than in the UK, which has limits on election spending, on supporting and opposing political candidates.

Influence and effectiveness

Civil rights campaigns have changed public attitudes in both countries: today, open displays of racism, homophobia and misogyny are generally considered unacceptable in most of modern society. There have been significant changes to the law for people of colour, women and the LGBTQ+ community.

Religious campaigns have had much more influence in the USA. Pro-choice abortion campaigners in the UK have successfully extended abortion rights to Northern Ireland, whereas in the USA, rights have been threatened by state-led abortion restrictions and the possibility of a Supreme Court reversal of *Roe v Wade*.

Campaigners for women's rights have been more successful in the UK. Many US conservatives, including conservative women, have opposed reforms including the Equal Rights Amendment. The USA remains the only developed country not to give women any right to paid maternity leave whereas UK women are entitled to some pay for 39 weeks.

The ability of the National Rifle Association (NRA) to use its financial resources for electioneering has given it a degree of influence over US politicians unparalleled by any civil rights group in the UK.

SYNOPTIC LINK

The NRA spent \$52.5 million in the 2016 election. You can learn about the NRA in the case study in Chapter 21.

ACTIVITY

Research the story of Stephen Lawrence and his family's fight for justice, and make a note of what it tells us about race in the UK. See Further reading, page 557.

Civil liberty campaigns have highlighted illiberal measures taken by governments. However, neither US nor UK campaigners have prevented their government from using controversial methods to deal with terrorist suspects or immigrants, although they have likely helped to limit these.

The attitude of the government undoubtedly influences the extent to which civil rights campaigns can be successful, as demonstrated by Trump's approach to illegal immigrants, transgender people and the Alt-Right. However, the attitude of wider society is just as important. The Black Lives Matter campaign has shown the underlying racism in US society, and to a certain degree in the UK. #MeToo exposed the widespread experience of sexual harassment and assault faced by women on both sides of the Atlantic, but misogynistic attitudes run deep in both societies, with women facing a greater risk of domestic abuse and murder and a gender pay gap. Homophobia, transphobia, Islamophobia and anti-Semitism exist in both the USA and the UK. To be truly effective, civil rights campaigns need to challenge these underlying attitudes and ensure that the rule of law is applied fairly at all levels of the justice system.



Members of the Alt-Right group Proud Boys clash with counter protesters

KNOWLEDGE CHECK

- 7 Which two methods do civil rights campaigns use much more in the USA than the UK?
- 8 What evidence is there that campaigns for women's rights have been less successful in the USA than the UK?
- 9 Which social movement is a response to racism in both US and UK societies, and worldwide?

Theoretical approaches

We can use structural, rational and cultural theory to compare and analyse the similarities and differences between US and UK civil rights (for an explanation of the three theoretical approaches, see Chapter 12).

Structural: the role of political institutions

Important structural differences between the USA and the UK explain some of the differences in civil rights.

Entrenched v flexible constitutions

The entrenchment of civil liberties in the US Constitution means that liberties and rights are more protected than in the UK's flexible Constitution.

Sovereignty of the US Constitution v parliament

Parliament is sovereign, so ultimately decides what civil rights UK citizens enjoy. In the USA the Constitution is sovereign, not Congress, so landmark rulings by the Supreme Court play a key role in delivering civil rights.

Campaign finance rules

Different rules regarding political donations and spending have resulted in pressure groups spending far more on political campaigning in the USA, giving them more influence over elected representatives.

Rational: the role of individuals acting out of self-interest

Individuals play a key role in civil rights campaigns in both countries. The infringement of an individual's liberties or rights has provided the spark for many campaigns, including Linda Brown of *Brown v Topeka Board of Education* (1954) and Norma Corvey of *Roe v Wade* (1973).

Individual civil rights leaders have had a transformative impact on the political agenda. The US civil rights movement benefited from the inspirational leadership of Martin Luther King, whereas postwar UK civil rights campaigns lacked a figure of the same political stature.

Some politicians have chosen to expand civil rights, as Democrat presidents John F. Kennedy and Lyndon B. Johnson did in the 1960s with civil rights legislation, and UK parliamentarians did in 1967 when they passed the Abortion Act (and in 2019 when they legalised abortion in Northern Ireland). Others have chosen to restrict civil liberties, as George W. Bush and Tony Blair did for terrorist suspects, and Trump did for illegal immigrants.

Cultural: the role of shared ideas and culture

US and UK cultures value individual liberty, as reflected in the USA's Bill of Rights and the UK's Human Rights Act. Respect for the rule of law generally underpins the protection of rights in both countries, and a culture of pluralism allows pressure groups to campaign for rights and liberties. However, US political culture is typically more suspicious of government control, as

demonstrated by the larger anti-lockdown protests in the USA during the COVID-19 pandemic. Civil rights have been threatened by far-right groups in both countries, at times resulting in violence. This has been on a greater scale in the US, even leading to an attack on democracy itself in the 2021 failed US Capitol insurrection.

Religious groups are much more prominent in US culture, meaning that rights with religious implications are more controversial, particularly in the case of abortion. In both countries, some religious groups feel their rights are threatened by liberal policies that condone behaviours (such as same-sex relationships or abortion) contrary to their beliefs.

The culture of both countries can be problematic for women and minority groups, although there is significant variation between and within the USA and the UK. Feminists point to misogynistic or sexist attitudes in both societies, which persist in spite of the undoubted gains for women's rights over the last century. Campaigners for racial equality emphasise the racism, microaggressions, prejudice and unconscious bias experienced by people of colour in both the USA and the UK. LGBTQ+ people face homophobia and transphobia in both cultures. This is often associated with conservative religious beliefs, which are more prevalent in the US. The 'bathroom wars' have seen US conservatives vehemently oppose allowing transgender students to use the public bathroom of their choice. There has been considerable debate over transgender issues in the UK, including a controversial 2020 intervention by author J. K. Rowling, which generated considerable media attention.



A man wearing a red 'Make America Great Again' hat and a sign that reads 'All lives matter' clashes with people attending a rally in Boston, 19 June 2020

SUMMARY

- Civil rights are entrenched within the US Constitution whereas the UK's flexible constitution allows parliament to add, amend or remove rights as it pleases.
- The US Supreme Court has enormous power to define rights, whereas the UK Supreme Court has a much more limited interpretative role.
- Civil rights campaigns use similar methods, but US campaigns use the courts and electioneering much more frequently.
- Debates about race and civil rights have been important in both countries, although they are more prominent in the USA.
- The Black Lives Matter campaign spread from the USA to the UK and generated unprecedented national debate about racism.
- US campaigns for gun rights and the right to life of the unborn have been far more influential than their UK equivalents.

Practice questions

Paper 2 Section A style question

- 1 Explain and analyse three ways that structural theory could be used to study the similarities and differences regarding the protection of civil rights in the UK and the USA. (9 marks)
- 2 Explain and analyse three ways that rational theory could be used to study the methods used by civil rights campaigns in the UK and the USA. (9 marks)
- 3 Explain and analyse three ways that cultural theory could be used to study the debates about civil rights issues in the UK and the USA. (9 marks)

Paper 2 Section C style questions

- 4 'Civil rights are better protected in the USA than the UK.' Analyse and evaluate this statement. (25 marks)
- 5 'Civil rights campaigns have been more influential and effective in the USA than the UK.' Analyse and evaluate this statement. (25 marks)

FURTHER READING

Black History Month — a history of the Bristol Bus Boycott: <https://www.blackhistorymonth.org.uk/article/section/bhm-heroes/the-bristol-bus-boycott-of-1963/>

Equality Human Rights — a history of human rights in the UK: <https://www.equalityhumanrights.com/>

[en/what-are-human-rights/history-human-rights-britain](https://www.theguardian.com/uk-news/2018/apr/19/stephen-lawrence-timeline-of-key-events)

The Guardian — a timeline of Stephen Lawrence's murder and his family's fight for justice: <https://www.theguardian.com/uk-news/2018/apr/19/stephen-lawrence-timeline-of-key-events>

Index

- A**
- abortion
Planned Parenthood v Casey (1992) 505
Roe v Wade (1973) 390, 392–93, 536
 and women's rights 550
 Abortion Act (1967) 39, 550, 555
 abstention from voting **444**
 access points for pressure groups 522
 accountability **96**
 and democracy in the UK 146
 and electoral systems, UK 175
 of the PM and cabinet to parliament 100
 to the legislature 363
 Act of Settlement (1701) 9
 additional member system (AMS) 169–71
 evaluation of 173–77
 advertising, political 426
 backfiring, demon eyes poster campaign (1997) 191–92
 digital ads, UK 494
 by pressure groups 525
 on social media 195–96, 223, 472
 spending on, UK 223
 spending on, US 413, 435, 492
 on television, banned in the UK 523
 affirmative action **542**
 Affordable Care Act (2010) 275, 280, 311, 350, 483
 party loyalty in Congress 487
 professional lobbying 503
 Trump's attempt to repeal 335, 363
 Afghanistan, invasion of (2001) 333, 367
 African-Americans
 and affirmative action 542
Brown v Topeka Board of Education (1954), desegregation 388
 civil rights movement 532, 540–41
 core US voting group 433
 felony disenfranchisement 544
 incarceration rate 543
 murder of by far-right extremists 545
 and the NAACP 538, 539
 police killings of unarmed 507, 544
 representation in Congress 307, 308
 voting behaviour 429, 433
 and voting rights 535, 536, 542–43
 age
 and voting behaviour 180–82, 194–95, 474–75
 and voting rights 151, 155
Al Rawi v the Security Service (2011), secret hearings 119
 Alt-Right **545–46**
 alternative vote (AV), UK 172
 evaluation of 173–77
 referendum (2011) 12, 16, 21, 75, 148, 158, 200
 ambiguity in the US Constitution 267–68
 amendment of US Constitution *see also* Bill of Rights (1791)
 formal 276–78
 informal 278–79
 subsequent amendments 535
 American Civil Liberties Union (ACLU) 537–38
 American parties, main weaknesses of 464–65
amicus curiae briefs **392**, 505–06
 Amsterdam Treaty (1999) 249
 appointments, presidential 332, 361
 Senate confirmation of 283, 305, 312–13, 319, 339
 appointments to judiciary 396
 UK Supreme Court 105–07
 US Supreme Court 373–78, 526
 Astor, Nancy, first female MP 28–29
 asylum seekers, Europe 253
 asymmetry **136**
 authoritative opinions **7**
 authority
 direct authority, presidents 336–37, 352
 over cabinet, prime ministers 85
 Supreme Court, UK 121
-
- B**
- Backbench Business Committee 47
 backbench MPs (backbenchers) 32
 day in the life of 56
 influence on legislation 38–40, 57
 PMBs (private members' bills) 39
 rebellions 32, 292, 487
 use of PMQs (Prime Minister's Question Time) 49
 Bagehot, Walter, *The English Constitution* 6
 balance of power 28
 between states and federal government 281–82
 third parties in the UK 480
 Ballard Partners, lobbyists for Trump 504
 ballot bills 39–40
 ballot initiatives 440, 441, **544**
 Barrett, Justice Amy Coney 375, 376, 378, 392–93
Begum v Special Immigration Appeals Commission (2020) 120
 Biden, Joe 329, 417–18, 422
 'big pharma' and the FDA 513
 Bill of Rights (1689) 9, 294
 Bill of Rights (1791) **265, 533**
 amendments 277, 534
 and entrenchment 284, 549
 Supreme Court's interpretation of 383
 bills
 and the Brexit process 36–38
 English votes for English laws (EVEL) 35–36
 passage into UK law 33–35
 passage of into US law 305–06, 311
 presented by backbench MPs 38–40
 Bipartisan Campaign Reform Act (BCRA) (2002) 436, 491, 493
 bipartisanship, attempts to increase 318–19
 black Americans *see* African-Americans
 Black Lives Matter 238, 507, 544–45, 551
 Blair, Tony (1997–2007) 66
 1997 election 188, 189–90, 191, 192
 Iraq War 80–81, 95, 367
 New Labour project (1997–2010) 211–12
 presidential style 70, 367
 Blue Dog Coalition (Blue Dogs) 460
 NRA donations to 508
 Brady Campaign/Handgun Violence Prevention Act (1994) 527
 Brexit
 2019 election dominated by 193, 195
 age distribution of voters 181
 call for second referendum 520
 Labour's policy on 196–97
 legislation 36–38
 Liberal Democrats promise to stop 197
 referendum (2016) 181, 250
 and Supreme Court's power 116–18
 Breyer, Justice Stephen 377, 378, 382, 392, 397
 British Constitution 2–3
 authoritative works 6–7
 codification debate 20–21
 comparison with US 291–94, 298–99
 and conventions 6
 general features of 3–4
 history and development of 8–10
 impact of devolution on 138
 individual and collective rights 21–23

laws, statute and common 4–5
 main sources of 4–7
 and protection of citizens' rights 18–20
 recent changes (since 1997) 11–18
 reform of 17–18
 royal prerogative 5
 Broder thesis, party decline 462–63
Brown v Topeka Board of Education (1954), desegregation 386, 388, 504, 536
 bureaucracy of government, UK–US comparison 365
 bureaucratic power of the president 337
 Burkean theory of representation **43–44**
 Bush, George W. (2001–09)
 abuse of powers 330
 approach to federal bureaucracy 350
 'war on terror' 211, 333, 352, 367
Bush v Gore (2000) 385, 401
 Butskellite conservatism **206–07**

C

cabinet committees **67**, 85–87
Cabinet Manual (UK government, 2010) 7, 92
 Cabinet Office, UK 87
 cabinet reshuffle **83**, 84, 90, 364
 cabinet, UK **64**
 accountability to parliament 100
 and collective responsibility 92–93
 inner 71
 and patronage powers 84, 362
 power to dictate policy and events 77–82
 powers and resources of 90–91
 prime minister's authority over 85
 relationship with prime minister 70, 83–90, 364
 cabinet, US 345–46
 president's use of EXOP to dominate 349
 relationship with president 364
 Cameron, David (2010–16) 46, 66, 71, 192
 debate over honours list 89
 and EU referendum (2016) 75, 209
 political judgement 89
 resignation 81
 responding to a weak legislative position 366
 campaign finance
 comparative theories 496
 cost-based evidence 434
 donations from supporters 436
 and electoral outcome 436–38, 494
 federal/state funding 436, 492
 independent expenditure 436
 PACs and Super PACs 436, 514–15

by pressure groups in the US 508–13
 regulation debate, US 438–39
 regulation of, UK 219–21
 self-funding by wealthy candidates 435
 sources of 435–36
 UK–US comparison 491–95
 campaigns **56**, **178**
 Capitol building, storming of (January 2021) 341, 507, 556
 CARES Act (2021), US 275, 318–19
 caucuses 316, **414**, 416–17, 460, 490
 cause (promotional) pressure groups **500**
 Change UK Party, UK 194, 215, 479
 Chartists, Six Points 152–53
 checks and balances **271**, **337**
 Congress's checks on the courts 274
 Congress's checks on the president 273–74
 importance of 274–75
 judicial checks on Congress 274
 presidential checks on Congress 272
 presidential checks on judiciary 272
 UK parliament 29
 in the US federal government 272
 chief executive role, UK and US leaders 358–59
 chief of staff, White House **346**
 relationship with president 348
Citizens United v Federal Election Commission (2010) 383, 402, 493, 494, 515, 516, 517
 city mayors, England, direct election of 134–35
 civil liberties **533**
 American Civil Liberties Union (ACLU) 504, 505, 537–38
 anti-lockdown movement, US 539
 Liberal Democrat values and principles 214
 presidents' powers to limit 330, 352
 protection of by US Constitution 285–87
 civil rights **532–33** *see also* race in US
 politics
 campaign methods, influence and effectiveness 553–54
 debates 550–52
 landmark Supreme Court rulings 536
 pressure groups' role in promoting/ supporting 537–39
 protection of 533–36, 549
 theoretical approaches 555–56
 Civil Rights Act (1875), US 540
 Civil Rights Act (1957), US 310, 538
 Civil Rights Act (1964), US 456, 458, 538
 Civil Rights Act (1968), US 538
 civil rights movement **532**, 540–41
 class and the franchise 152–53
 class dealignment **180**

Clause IV, Labour Party 210, 212
 Clegg, Nick 44, 71, 84, 214
 climate change
 direct action of outsider groups 233, 500
 Extinction Rebellion 235–36, 526
 influence of public opinion 76
 UK Committee on 86
 Clinton, Bill (1993–2001) 280, 313, 332, 333, 425
 Clinton, Hillary 320, 425, 456, 510
 cloture 310, **311**, **374**
 coalition government (2010–15), UK 11, 71, 366, 480
 cabinet committees importance under 86
 passage of Fixed-term Parliaments Act 15
 cohesiveness, US parties 458
 collective executive **359**
 collective responsibility **85**
 importance of 92
 suspension of 92–93
 unwillingness to accept, reason for resigning 94–95
 collective rights **3**
 versus individual rights 21–23
 commander-in-chief of the military, president as 332–33, 360
 committee system, US Congress **319**
 conference committees 321
 House Rules Committee 320–21
 select committees 320
 standing committees 319
 committees, UK, scrutiny role 50–55
 common law **5**
 Communications Act (2003) 492, 493
 commutations **273**
 competences **253**
 Comprehensive Test Ban Treaty (1999) 313
 conference committees 321
 confidence and supply arrangement **67**
 Congress 302, **303**
 checks and balances on president's power 337–41
 committee system 319–21
 composition of 306–08
 effectiveness of 310–11
 House and Senate differences 324
 House and Senate joint powers 323
 legislative process 305–06
 oversight function 312–14
 party allegiance 310
 party system 316–19
 power of the purse 314–15
 relationship to executive 324–25
 relationship to Supreme Court 325–26
 representative role of members 321–23

- structure, role and powers 303–05
 - terms of office 309
 - underrepresentation, reasons for 308–11
 - congressional caucuses 316, 460
 - congressional district method 421
 - Congressional Progressive Caucus 316, 460
 - Conservative Party 206
 - divisions within 209
 - leadership selection 218–19
 - manifesto and policy (1983) election 184–85
 - one-nation conservatism 206
 - postwar consensus with Labour 206–07
 - structure at local and national levels 216–17
 - Thatcherism 207–08
 - today's policies and principles 208–09
 - traditional values 207
 - Constitutional Reform Act (2005) 12, 106
 - constitutional sovereignty, US **18**, 266
 - constitutions *see also* British Constitution; US Constitution
 - comparing American and British 291–94
 - evaluating 2–3
 - Convention of the Rights of Persons with Disabilities (2012), Senate failure to ratify 274, 313, 339
 - conventions **6**
 - Cook, Robin, resignation over Iraq War 95
 - Corbyn, Jeremy 32, 197, 210, 211, 213, 488
 - core executive, UK **67** *see also* prime minister
 - key roles of 67–68
 - main powers of 68–69
 - core voting coalitions, US 432–33
 - Coronavirus Act (2020), rapid passage of 68, 76
 - corporations
 - campaign funding 515
 - financing of Washington insiders 509–10
 - influence on government 243
 - and the iron triangle 510–13
 - Council of the European Union 257
 - Council of Europe 20, 116–17
 - council houses, privatisation and sale of, UK 74
 - countervailing forces **242**
 - Court of Justice of the European Union (CJEU) 258
 - Courtney, Joe, defence spending 512
 - COVID-19 crisis
 - anti-lockdown movement, US 539
 - anti-vaccination stances 484
 - CARES Act (2021), US 275, 318–19
 - EU response to 254
 - regional variations in response to, UK 139
 - responses to 75–76
 - US response 281–82
 - US–UK differences in response to 263, 484
 - Crichel Down affair (1954) 94
 - Crouch, Tracey, resignation on a point of principle 96
 - cultural theory, comparative politics 291
 - campaign finance 494–95, 496
 - civil rights 555–56
 - the constitutions 299
 - devolution and federalism 300
 - elections and electoral systems 473–75
 - the executives 368–69
 - the judiciary 404–05
 - the legislatures 300
 - pressure groups 530
 - third parties 477–78
-
- D**
 - DACA (Deferred Action for Childhood Arrivals) policy 379, 449, 552
 - Data Protection Act (2018) 13
 - dealignment
 - class 180, 194
 - partisan 160
 - death penalty, US 281, 295, 383
 - debates (bills) **33**
 - debates, parliamentary 45–48
 - defence *see also* foreign policy; the military
 - and the iron triangle 511–13
 - spending on, US 339
 - Defense of Marriage Act (DOMA) (2013), US 325
 - delegate **43**
 - theory of representation **44**
 - delegated/enumerated powers **266**
 - democracy **144**
 - threatened by rise of far right 546
 - democracy and participation, UK 144–45
 - see also* electoral systems, UK
 - direct democracy 147–49
 - features of 145–46
 - participation forms and patterns 157–61
 - representative democracy 147
 - suffrage as a human right 155–56
 - suffrage (since 1832) 150–55
 - in UK political system, constitutional reform 12, 16
 - Democratic Party (Democrats)
 - policy differences to UK parties 484–85
 - similarities with UK Labour Party 483–84
 - values, principles and policies 449–50
 - of Republican voters 457–58
 - derogation **114**
 - devolution, UK **125**
 - comparing to federalism 295, 299–300
 - and COVID-19 measures during first lockdown 139
 - creating alternative voting systems 139
 - English parliament, arguments for and against 136–37
 - and EU membership 29
 - existing regional devolution 134–35
 - impact on UK government 138–39
 - key features of devolved assemblies 131–32
 - Northern Ireland 129–31
 - policy variation resulting from 138–39
 - and pressure groups 140
 - referendums 200, 201
 - Scottish legislation 126–27
 - successes and failures 17, 133
 - Welsh legislation 127–28
 - Dicey, A.V., 'twin pillars' of the English Constitution 4, 6–7, 109
 - direct action **233**, 506–07, 530
 - civil rights campaigners 540
 - effectiveness of 507
 - Extinction Rebellion 235–36
 - outsider pressure groups 233–34, 235, 526
 - direct authority 336, 352
 - executive agreements 337
 - executive orders 336
 - signing statements 337
 - direct democracy **145, 440**
 - access points, US 522
 - ballot initiatives 544
 - in the UK 147–49
 - in the USA 440–41
 - disabilities, rights of people with 287, 313, 339
 - District of Columbia v Heller* (2008), gun rights 278, 383, 386, 536
 - diversity 477–78
 - of Congress 296, 307
 - judicial 111, 380
 - MPs in parliament 28–29, 155
 - divided government 275, 310, **311**, 334, 363, 443
 - dog whistle politics **429**
 - domestic terrorism 545–46
 - drug companies, links with the FDA 513
 - Dugdale, Sir Thomas, Crichel Down affair (1954) 94

- E**
- e-petitions, direct democracy 148
 - Early Parliamentary General Election Act (2019) 15, 38, 193
 - ECHR *see* European Convention on Human Rights
 - ECJ *see* European Court of Justice
 - economic socialism 210, 212
 - economics
 - Labour and Democrat similarities 483
 - ECtHR *see* European Court of Human Rights
 - Eighth Amendment: the death penalty Supreme Court's interpretation of 383
 - election campaigns, UK 182
 - 1983 election 182–87
 - 1997 election 188–92
 - 2019 election 193–99
 - election campaigns, US 410
 - core supporters, encouraging voting by 411–12
 - cost of 414
 - frequency 410
 - individuality 410–11
 - midterms 414–15
 - the swing movement 412–14
 - election outcome, US 424–28
 - see also* voting behaviour
 - incumbency 424–25
 - the media 426
 - money 428
 - personality 427
 - policy issues 425
 - voter profile 427–28
 - elections and electoral systems
 - compared 470
 - cultural aspect 473–75
 - rational aspect 472–73
 - structural aspect 471–72
 - elective leadership* **360**
 - Electoral College **408**, 409, 420–22
 - arguments for and against abolition of 422–23
 - reform possibilities 423–24
 - electoral finance **508**
 - see also* campaign finance
 - electoral systems, UK 167
 - see also* voting behaviour
 - additional member system (AMS) 169–71
 - alternative vote (AV) 172
 - calculation of election results from different 167–68
 - evaluation of 173–77
 - first-past-the-post (FPTP) 168
 - key issues and debates 165–66
 - List PR 168–69
 - reform debate 165–66, 177–78
 - significance of in general elections 187, 192, 198–99
 - single transferable vote (STV) 171–72
 - electoral systems, US 406
 - congressional elections 408–09
 - effectiveness of 409
 - presidential elections 409
 - primary elections (primaries) 407
 - role of states 407–08
 - timings of elections 406–07
 - variations between states 408–09
 - elitism
 - amicus curiae briefs 506
 - of pressure groups 238, 517
 - and professional lobbying 503–04
 - Supreme Court membership 107
 - versus pluralism 237, 499
 - emergencies, national
 - and debates about civil liberties 550
 - declaration of by presidents 352
 - lack of a clear definition 352
 - responses to 75–76
 - emergency debates, parliament 47
 - EMILY's List, US pressure group 502
 - enfranchised **150**
 - English Constitution, The* (Bagehot, 1867) 6
 - English parliament, arguments for and against 136–37
 - English votes for English laws (EVEL) [2015] 35–36, 136
 - entrenched rights **284**, **534**
 - enumerated/delegated powers **266**, 329
 - 'equal justice', Dicey 109
 - Equal Rights Amendment (ERA) 535
 - Equality Act (2010) 13, 18, 549
 - ethnic minorities *see* minority ethnic groups
 - European Central Bank (ECB) 256
 - European Commission 256
 - European Communities Act (1972) 10, 113
 - repealed during Brexit process 37, 259
 - European Convention on Human Rights (ECHR) 399
 - and Brexit 116–17, 118
 - and Human Rights Act 13, 114
 - and protection of rights 19–20
 - 'welfare to work' scheme case 113
 - European Council 257
 - European Court of Human Rights (ECtHR) **524**
 - and Brexit 116–17, 118
 - final court of appeal 399
 - ruling on prisoners' voting 156
 - and *ultra vires* 113
 - European Court of Justice (ECJ) 117, 118, 256
 - Factortame case 113–14
 - final court of appeal 399
 - European Parliament 257–58
 - European Parliamentary Elections Act (1999) 12
 - European Union (EU) 248
 - aims of 251, 254
 - and economic growth 251–52
 - 'four freedoms' 251
 - impact on UK politics and policy-making 259–60
 - individual rights and freedoms 252–53
 - institutions of 255–59
 - integration, areas of 253, 254–55
 - peace and stability 251
 - response to COVID-19 pandemic 254
 - European Union (Withdrawal) Act (2018) 4, 10, 37
 - European Union (Withdrawal Agreement) Act (2020) 4, 38
 - European Union (Withdrawal) (No.2) Act (2019) 37, 360
 - executive **329**
 - executive agreements 337
 - preference over treaty negotiation 274–75, 313, 339
 - Executive Office of the President (EXOP) 337, 346–47
 - president's use of to dominate cabinet 349
 - staff acting as political operatives 349
 - executive orders 336
 - executive powers 68, 331
 - see also* presidential powers
 - royal prerogative 5
 - UK–US comparison 293
 - the executive, UK 67
 - see also* prime minister
 - domination of parliament 59–60
 - effectiveness of scrutiny 60–61
 - key roles of core executive 67–68
 - main powers of 68–69
 - scrutiny by opposition MPs 45–55
 - the executive, US *see* the presidency/president
 - the executives, comparative analysis 357
 - accountability to legislatures 363–64
 - relationship to other institutions in government 364–65
 - roles and powers 358–62
 - theoretical approaches 365–69
 - Extinction Rebellion (XR), direct action 235–36, 526
 - extremists 545–46
- F**
- factionalism **454**
 - factions
 - Conservative Party 209, 490
 - Democratic Party 460–61, 488–89, 490

Labour Party 489–90
 Republican Party 460–61, 489, 490
 Factortame case (1990) 112, 113–14, 116, 260
 fake news/misinformation 87, 196, 245, 343, 368
 far-right groups, US 341, 507, 539, 545–46, 556
 federal bureaucracy and agencies 347
 expansion of 353
 president's view of 349–50
 federalism **279–80**
 current power balance between states and central government 281–82
 Supreme Court's role in development of 386
 felony disenfranchisement **544**
 Female Genital Mutilation Act (2003) 22
 filibuster 310, **311, 374**
 final courts of appeal, Supreme Courts 399
 First Amendment: freedom of expression 286, 383
 see also free speech and expression
 First Amendment: freedom of religion 383
 see also religion
 first-past-the-post (FPTP) electoral system 168
 evaluation of 173–77
 Fixed-term Parliaments Act (FTPA) (2011) 12, 15
 and 2017 snap election 81
 new law circumventing 193
 floating (swing) voters **180**
 Floyd, George, murder of 507, 544, 545
 Food and Drug Administration (FDA) 513
 Ford, Gerald (1974–77) 273, 351
 foreign policy
 international cooperation 483–84
 National Security Council (NSC) 346
 president's powers 332–33
 Thatcher's government 185, 207
 formal amendment of US Constitution 276–78
 formal powers of the president **329**, 331–33
 'four freedoms' of the EU 251
 free speech and expression 285, 286
 MPs and peers in parliament 9
 political donations interpreted as 383, 515
 and rights of citizens to form pressure groups 537
 Freedom Caucus 316, 460
 Freedom of Information (FOI) Act (2000) 13, 14
 freedom of movement, EU 251, 252
 fundamental laws **398**, 403
 funding
 see also campaign finance

from federal government to states 322
 unfunded mandates 280
 fusion of powers, UK 292, 365

G

Garland, Merrick, Obama's nomination as a Supreme Court justice 376
 campaign ads targeting women 472
 voter profiles 429
 women in Congress 307, 308–09, 317, 335
 gender issues *see* women's rights
 General Data Protection Regulation (GDPR) 13
 gerrymandering 379, **407**
 globalist internationalism, Labour Party 210–11
 Goldwater, Barry, 1964 Republican 422, 426, 429, 456
Gonzales v Carhart (2007), abortion 391
 Good Friday Agreement (1998) 129–30, 201
 Gorsuch, Justice Neil 378, 396
 on originalism 381–82
 government shutdowns 314–15, **339**, 353
 grassroots campaigning 526
 Great Reform Act (1832) 150
 Great Seal of the United States 499
 Greater London Authority Act (1999) 12
 Green Paper **34**
 gridlock 310, **311**
Griswold v Connecticut (1965) 536
 Guantanamo Bay, imprisonment without trial 352, 384
 Guardianship (Missing Persons) Act (2017) 40
 gun control
 Brady and Snowdrop campaigns 527
 NRA opposing legislation for 342, 499, 517
 gun rights, Second Amendment 267–68, 284, 383, 450, 527, 552

H

Hale, Lady, UK Supreme Court president 396–97, 403
 hard money (donations from supporters) 436, 491, 514
 Harris, Kamala, vice president 325, 422
 hate crimes 546
 heads of state, UK monarch and US president 359
 healthcare issues 433, 484–85, 489
 hereditary peers 10, 27, 294
Hirst v UK (2005), prisoner voting 156
 Hispanic people
 murder of by far-right extremists 546
 underrepresented in Congress 307, 308

voting behaviour 542
 holacratic pressure group **235**
 honesty, Ministerial Code 97
 honours, prime ministers awarding 88–89, 362
 House of Commons **26** *see also* parliament
 House of Lords **26**
 composition of 27
 failure to reform 16
 honours awarded by prime ministers 88–89
 Law Lords 104, 106, 108, 109, 121, 260
 legislation to modernise 11–12
 party allegiances in 28
 role in passage of bills into law 35
 House of Representatives **303** *see also* Congress
 comparison with Senate 323–24
 impeachment of president 340–41
 speaker of 316–17
 terms of office 309
 House Rules Committee 320–21
 House Select Committee on Benghazi (2014–16) 320
 human rights 13
 British Constitution's protection of 19–20
 success and failures 17
 suffrage 155–56
 Human Rights Act (HRA) (1998) 13, 18, **320, 400**
 Brexit and Supreme Court's power under 116–17
 and politicisation of the judiciary 111
 and the Supreme Court 114–15

I

identity politics **17**
 rise of 180
 ideology 206, 449
 Democrats 449–50, 457
 and pressure group success 241
 Republicans 450–51, 456–57
 UK political parties 205, 485
 UK versus US 448–49
 US party divides and tensions 458
 illegal immigrants
 Obama's attempt to protect from deportation 350, 384
 Republican views 451
 sanctuary cities 282, 343
 immigration
 concern about, right-leaning parties 472
 Democrat views 449
 fears over growing, and Brexit support 252
 from Muslim-majority countries, Trump's ban of 272, 341, 505, 538

immigrant rights 551–52
 Labour's 2019 manifesto 213
 landlord regulation squashed by
 pressure group 241
 Republican views 451
 impartiality of judiciary 110–11
 impeachment 274, 275, 305, 313, 314,
 340–41, 458
 imperial presidency **351**
 versus imperilled 351–54
 imperilled presidency **351**
 versus imperial 351–54
 implied powers **266**, 329, 330
 oversight as 312
 stretching of 336
 inalienable rights **534**
 incumbency **415**
 and election outcome 424–25
 pressure groups reinforcing 510
 independence of judiciary 110, 377, 401
 politicisation affecting 401–03
 independent expenditures **514**, 515
 independents **465** *see also* third parties
 absence of in the US 465–66
 excluded from TV debates 474, 478
 significance of in US 467, 481–82
 indicative vote 37, **38**
 individual (ministerial) responsibility **92**
 individual rights **3**
 1791 Bill of Rights (constitutional
 amendments) 265, 277, 285–87
 EU's promotion of 252–53
 UK–US comparison 294
 versus collective rights 21–23
 individualism, presidential candidates
 410–11
 informal amendment of US Constitution
 278–79
 informal powers of president **329**,
 334–37
 inherent powers of president 329, 330
 inner cabinet **71**
 insider groups **229**, 230–31, 500
 advantages and disadvantages
 231–32
 direct action tactic 530
 National Trust 232–33
 Washington insiders, funding of
 509–10
 institutional powers of prime minister
 83
 institutional racism 539, 545, 551
 institutions of the EU **255–59**
 integration, Europe 253–55
 integrity principle of the Ministerial
 Code 96, 97
 interest groups **229**, **500** *see also*
 pressure groups
 and iron triangles 23, 51
 international agreements **7**
Introduction to the Study of the Law of the
Constitution (Dicey, 1885) 6–7

investigations, congressional 274, 297,
 312, 320, 340
 invisible primaries 410, 417
 Iraq War [2003] 80–81, 82, 95, 367
 iron triangles **510–11**

J
 Johnson, Boris (2019–)
 2019 election 193–99
 attempted prorogation of parliament
 120, 398, 524
 response to media criticism 367–68
 judicial activism **386**
 judicial impartiality **110–11**
 judicial independence **110**, 401
 political or public pressure affecting
 402–03
 judicial politicisation 112, 401–03
 judicial restraint **385**
 judicial review **112**, **268**, **373**
 UK–US comparison 399–400
 ultra vires rulings, UK 113
 US Supreme Court 372–73, 380, 384
 judiciary, UK 103–04 *see also* Supreme
 Court, UK
 influence on government 115–22
 organisation of 105
 judiciary, US *see* Supreme Court, US
 Justice Against Sponsors of Terrorism
 Act (2016), US 273, 338
 Justice Democrats 461

K
 Kagan, Justice Elena 374, 378, 380, 396
 Kavanaugh, Justice Brett 341, 378, 379,
 382, 396
 amicus curiae brief of Jewish war
 veterans 505
 appointment of giving Trump a
 conservative majority 392
 controversial nominee 376–77
 Kennedy, Justice Anthony (1988–2016),
 'swing vote' 374, 379, 387, 542
 King, Martin Luther, civil rights
 movement 540–41
 King, Steve, racist Republican 453–54,
 465
 Klacik, Kimberly, Republican candidate
 438

L
 Labour Party 209–10
 and the 1983 general election 184,
 186–87
 and the 1997 general election
 188–90, 191–92
 and the 2019 general election 196–97
 and Clause IV 212

current policies and principles 212–13
 economic socialism 210, 212
 globalist internationalism 210–11
 leadership selection 218–19
 New Labour/Third Way socialism 211
 structure at local and national levels
 216–17
 trade unionism 210
 labour unions *see* trade unions
 lame duck president 350, **351**
 landmark rulings **384**, **536**
 Law Lords 104, 106, 108, 109, 121, 260
Lawrence v Texas (2003) 536
 Leader of the House of Commons 31
 leadership/leaders
 challenges/opposition, UK 488
 impact on UK election campaigns
 186, 191, 197–98
 legislative powers 359–60
 personalities and styles 223–24, 472
 and presidentialism, UK 70–73
 UK parties 218–19
 US parties 316–17, 451–52
Lee v Ashers Bakery Company Ltd (2018)
 526, 552
 legal challenges, pressure groups
 523–24
 legislation **33**
 and powers of UK and US leaders
 359–60
 president's power to influence
 331–32
 UK legislative process 33–40
 US legislative process 305–06
 legislatures
 comparing Congress and parliament
 296–98
 leaders' accountability to 363
 LGBTQ+ rights 552, 556
 antipathy to 450
 and religious faith 22
 Liberal Democrats 213–14
 candidate selection 217–18
 current situation 215
 donations to 221
 formal structure of 216–17
 leadership selection 218–19
 manifesto pledges 197, 198
 spending on advertising 195, 223
 values and principles 214–15
 votes in 1997 general election 189,
 192
 votes in 2019 general election 194,
 199
 Libertarians, US 465, 466
 Life Peerages Act (1958) 27
 life peerages, awarding of 88–89
 life peers **27**
 limited government 369
 Lisbon Treaty (2009) 250
 List PR electoral system 168–69
 evaluation of 173–77

living constitution **382**
 lobbying/lobbyists 345, 502–04, 523, 526, 529
 influence on government 243–44
 local government, England 134–35
 loose constructionism **382**
 leading to judicial activism 397
 Lord Chancellor 105–06, 107, 396, 401
 Lords **27**
 Lords committees 55
Loving v Virginia (1967), interracial marriage 536
 loyalists/unionists **130**

M

Maastricht Treaty (1992) 249
 Magna Carta (1215) 8, 294, 404
 Major, John (1990–97) 66
 ‘Back to Basics’ campaign 207
 defeat by Blair (1997) 188
 image problem 191
 leadership contest 87–88
 party division 191, 490
 majoritarian electoral system **166**
 and electoral reform debate 165–66
 most US elections 408, 444
 versus devolved assemblies 471–72
 majority opinion **379**
 mandate theory of representation **44–45**
 manifestos **164**
 Conservatives 74, 184–85, 190–01, 196, 217
 Labour Party 184, 190–91, 196–97, 212–13
 Liberal Democrats 197, 214–15
 role in outcome of UK general elections 184–86, 190–91, 196–97
 SDP–Liberal Alliance 186
Marbury v Madison (1803) 119, 268, 384
 marginal constituencies/swing states 473
 Marshall, Thurgood, African-American justice (1967–91) 388, 538
 mass democracy, fear of, US Constitution 265
Masterpiece Cakeshop, Ltd. v Colorado Civil Rights Commission (2018) 526, 552
 May, Erskine, *Parliamentary Practice* 7
 May, Theresa (2016–19) 65–66, 154
 2017 early election 81–82
 and Brexit bills 37
 forced out of office over Brexit deal 72, 75
 mayoral elections/referendums 134–35, 201
 McCain–Feingold, Bipartisan Campaign Reform Act (2002) 436, 493
 McConnell, Mitch, Republican leader in the Senate 339, 451, 452, 454
 media *see also* social media
 broadcasting of parliament 29
 constraining president’s actions 343
 political alignment, newspapers 222–23, 245
 role in UK general elections 183–84, 189–90, 195–96
 role in US election campaigns 426
 TV debates 426
 members of parliament (MPs) **26**
 as constituency problem solvers 42–43
 as part-time representatives 42
 representative role of 41–43
 representing particular interests 42
 role and influence of 56–58
 Merchant Shipping Act (1988) 114, 260
 #MeToo movement 98, 427, 539, 550, 554
 midterm elections **275**, 414–15
 the military
 budgets, US versus UK 482
 defence firms and the iron triangle 511–13
 and National Security Council (NSC) 346–47
 military action
 prerogative power of prime minister 46
 presidents initiating without Congress’s approval 268, 332–33, 352, 360
 War Powers Act (1973), US 332–34, 340, 351, 352, 360
 without multilateral support, Robin Cook 95
 Miller, Gina, Brexit challenges 37, 38, 523–24
 miners’ strike (1984–85), UK 186, 207–08
 ministerial accountability **92**
 Ministerial Code, breaking 96–98
 ministerial resignations 93–94
 minor parties **224**
 minority ethnic groups
 civil rights issues 551
 Democrats and Labour
 multiculturalism 484
 increased representation in legislatures 295
 members of parliament 29
 representation in Congress 307, 308
 underrepresentation in judiciary 111, 396–97
 voting rights 155
 ‘Miranda rights’, right to remain silent 278
Miranda v Arizona (1966) 536
 misconduct and ministerial resignations 96–98
 Misuse of Drugs Act (1971) 38
 Mitchell, Andrew, resignation over rudeness to police officer 99

modernisation of UK political institutions
 success and failures 16
 monarch/monarchy, UK
 commander-in-chief of the armed forces 360
 as head of state 359
 Queen’s Speech 34, 50, 363
 royal assent to bills passed by parliament 6, 35
 royal pardon 362
 royal prerogative 5
 Succession to the Crown Act (2013) 12
 money *see* campaign finance
Morse v Frederick (2007) 286
 movements *see* social movements
 multiculturalism 484
 multiparty systems, UK 225–26

N

Nader, Ralph, on third parties 467
 National Association for the Advancement of Colored People (NAACP) 388, 538, 539, 545
 National Association of Realtors (NAR), campaign donations 437
 national emergencies
 and civil liberties 550
 core executive as first responder 68
 coronavirus pandemic 75–76
 presidents’ use of emergency powers 352
 response to 9/11 terror attacks 367
 National Emergencies Act (1976), US 352
 national nominating convention **407**
 National Rifle Association (NRA) 508–09, 553
 opposing introduction of gun control legislation 342, 499, 517
 strong ties to Republican Party 450
 use of voting scorecards to grade candidates 502, 529
 National Security Council (NSC) 346–47
 National Trust, insider pressure group 232
 nationalist/republican paramilitaries **130**
 Native Americans 533, 540
 New Democrat Coalition 460
 new federalism 280
 New Labour 211
 Nixon, Richard (1969–74)
 ‘imperial’ actions taken by 351
 and public image, TV debate 426
 resignation and impeachment 275, 313, 333, 458
 ‘Southern strategy’ 429, 456
 Watergate scandal 340
 No Child Left Behind Act (2002), US 280

Northern Ireland Assembly and Executive **130**
nuclear weapons 313, 333

O

Obama, Barack (2009–17) 328, 329
gun-control legislation, failure to pass 273, 338
multilateral approach to foreign policy 483–84
reliance on executive orders 336
responding to a weak legislative position 366
use of emergency powers 352
vetoes 272, 273
waxing and waning of power 350
Obamacare *see* Affordable Care Act (2010)
Obergefell v Hodges (2015), rights of LGBTQ+ 325, 372, 386, 389, 504, 536
objectivity principle of the Ministerial Code 96, 97
Ocasio-Cortez, Alexandria, congresswoman 307, 341, 453, 489, 498
'October surprises' 425
Official Opposition, UK 57–59
oligarchy **150**
one-nation conservatism 206, 209
openness
and the Freedom of Information Act 14
Ministerial Code 96–97
the opposition, UK **29** *see also*
backbench MPs (backbenchers)
and electoral outcome 224
role and importance of 57–59
state funding of 220
order paper **40**
originalism **381–82**
Osmotherly Rules **20**, 21, 53
outsider groups **229**, 233–34, 500
advantages and disadvantages 235
Extinction Rebellion (XR) 235–36
use of direct action 233, 526, 530
oversight by Congress 305, **312** *see also*
checks and balances
confirmation of nominees 312–13, 339
effectiveness of 314
impeachment 313, 340–41
investigations 312, 340
ratification of treaties 313, 339

P

pardons **273**, 333, 362
Paris Agreement on climate change (2015) 335
Trump's withdrawal from 337, 343

parliament 25
developments since nineteenth century 28–29
functions of 33
key positions in 29–32
legislative process 33–40
opposition role 57–59
relationship with government 59–60
representation role of 41–44
role of MPs 56
scrutiny of the executive 45–55, 60–61
strengths and weaknesses 296–98
structure of 26–28
Parliament Acts (1911 and 1949) 10, 28, 471
parliamentary debates 45–48
Parliamentary Practice (May, 1844) 7
parliamentary privilege 9, **46–47**
parliamentary questions 48–50
parliamentary sovereignty **3–4**
limited by EU membership 10, 259
limiting Supreme Court's power 398, 403
significantly reduced outside England 138
versus US constitutional sovereignty 18, 403
Partial-Birth Abortion Ban Act (2003), US 391
participation **144**, **165**
crisis of in the UK 157–61
electoral systems promoting 174
and electoral volatility 160
forms and patterns of, UK 157–61
modern 157
through party membership 159–60
through voting 158–59
traditional 157
partisan dealignment **160**, 180
partisan gerrymandering **379**
partisanship, US parties 318–19
party allegiances
Congress 310
House of Commons 26–27
House of Lords 27–28
party control of the presidency and Congress 342–43
party decline **461–62**, 464
Broder thesis 462–63
debate over 463
party discipline
in Congress 317–18
and lobbying 526
separation of powers limiting president's control 360
strength of 300, 452
whip system, UK 31, 359, 363
party division *see also* factions
UK parties 209, 487–88, 489–90
US parties 488–89
party functions **205–06**
party funding **219–21** *see also*
campaign finance
party leader(s)
majority and minority 316–17
president as 335
prime minister as 87–88
relationships between 485–86
party loyalty 342, 460, 487
party membership, UK 159–60
party organisation **453**
associated groups 453–54
state-based parties 452–53
party policies
Conservatives 208–09
Democrats 449–50
Labour 212–13
Liberal Democrats 214–15
Republicans 450–51
UK–US comparisons 482–86
party renewal **461–62**, 464
debate 463
party structure **216–17**
party support for president in Congress 342–43
party system **225** *see also* two-party dominance
in Congress 316–19
party unity, UK 224
party unity, US 458–60
arguments against greater 488–89
arguments for greater 486–87
Patriot Act (2001), US 280, 284, 483, 550
patronage powers **68**, 84
payroll vote **48**
peers **27**
roles and influence of 56–57
Pelosi, Nancy, House Speaker 317
personal powers, prime ministers 89–90
personality/personalities
and election campaigns 473–74
important role in US politics 442–43
and leadership 223–24, 427
persuasive powers, president 334
pharmaceutical companies, US 513
Philadelphia Constitutional Convention (1787) 264, 285, 294, 303–04, 420
Planned Parenthood v Casey (1992) 391, 505
Plessy v Ferguson (1896) 268–69, 386, 388, 540
pluralism **237**
political pluralism in the USA 499
versus elitist debate, pressure groups 237–38
pocket veto 306, **331**
Police Reform and Social Responsibility Act (2011) 12
police violence towards black people 507, 544–45, 551
'policy czars', White House 349
policy-making, UK
factors influencing 74–77
impact of EU on 259–60

- in three main parties 216, 217, 219
- political action committees (PACs) 435, 436, **514**
- influence on US elections 515
- Super PACs 436, 515–16
- political agenda **224, 228**, 334–35
- political institutions, role of 365–66, 403, 529, 555
- Political Parties and Elections Act (PPEA) (2009) 220–21
- Political Parties, Elections and Referendums Act (PPERA) (2000) 219, 493
- political parties, UK 205–06
 - candidate selection 217–18
 - Conservative Party 206–09
 - and electoral outcomes, factors affecting 223–24
 - funding of 219–21
 - Labour Party 209–13
 - leadership elections 218–19
 - Liberal Democrats 213–15
 - and the media 222–23
 - minor parties 224–25
 - multiparty systems 225–26
 - structure and policy-making 216–17
- political parties, US 448
 - changes in over last 50 years 454–58
 - main weaknesses of 464–65
 - organisational features of 451–54
 - party decline and renewal debate 461–64
 - third parties and independents 466–67
 - two-party dominance of political system 465–66
 - unity and division 458–61
 - values, ideologies, traditions and policies 448–51
- political pluralism **498**
- political powers, prime minister 89–90
- political pressure and ministerial resignations 98–99
- political realignment, USA 429–32
- politicisation **111**
 - confirmation process, Senate 313
 - judicial 112, 401–03
 - judicial appointment process, US 373, 396
- poll tax controversy, UK 78–79
- popular vote **420**, 421, 422, 423, 424
- populist **367–68**
- pork-barrelling **460**
- power of the purse, Congress 314–15, 324, 339
- precedent **385**
- prerogative powers
 - dispensing honours 88–89
 - importance of 68–69
 - royal prerogative 5
- presentation bills 40
- the presidency/president **328**
 - Congress's checks on 337–41
 - imperial or imperilled 351–54
 - institutions supporting 344–54
 - judiciary's checks on 341
- presidential powers
 - agenda setting 334–35
 - appointment of officials 332
 - bureaucratic power, EXOP 337
 - constraints on 337–44
 - deal-making 334
 - direct authority 336–37
 - foreign policy 332–33
 - formal powers 331–33
 - granting pardons 333
 - influencing passage of legislation 331–32
 - informal powers 334–37
 - leadership powers 335
 - of persuasion 334
 - sources of 329–30
- presidential style, US presidents 353
 - imperial versus imperilled 351, 354
- presidentialism, UK prime ministers 70–73, 367, 369
- pressure group comparison 520
 - access points 522
 - direct action 526
 - electoral campaigning 525
 - grassroots campaigning 526
 - influence on government 521–24
 - influence over executive and legislature 527–28
 - involvement in elections 522–23
 - links to political parties 525
 - lobbying 523, 526
 - power, influence and methods 524–28
 - theoretical approaches 529–30
 - trade union activity 525
 - use of the courts 526
 - use of legal challenges 523–24
- pressure groups, UK 228
 - and campaign finance 492
 - categories of 229–37
 - and democracy 239
 - elitist vs pluralist debate 237–38
 - factors in failure of 242
 - helping vs hindering democracy 239
 - links with political parties, government and media 246
 - main functions of 228–29
 - methods of, link to success or failure 240–42
 - outsider groups 233–37
 - reasons for success of 241
- pressure groups, US 498
 - debates on power of 516–17
 - and electoral finance 508–13
 - methods and tactics 501–07
 - PACs and Super PACs 514–15
 - and political pluralism 499
 - promoting and supporting rights 537–39
 - types of 499–501
- pressure participants 242
 - corporations 243
 - lobbyists 243–44
 - media 245
 - think tanks 244–45
- Prest v Petrodel Resources Ltd* (2013), separation of assets 119
- Prevention of Terrorism Act (2005) 35, 550
- primacy and recency models, voting behaviour 179, 428
- primaried **452**
- primary elections (primaries) 406, **407**
 - 2020 Democrat primaries 414, 417–18, 434
 - for candidate selection 415–19
 - invisible 410, 417
 - key features 416
 - main advantages and disadvantages 418
 - suggested reforms 419
 - timetable for 416–17
- prime minister **64** *see also* the executive, UK
 - accountability to parliament 100
 - 'elective dictatorship' 360
 - ministerial responsibility, individual v collective 92–99
 - origins of the post of 65
 - policy-making, factors influencing 74–77
 - power to dictate policy and events 77–82
 - presidentialism 70–73
 - presidentialism accusations 70–73
 - recent role of, change in 69–73
 - relationship with cabinet 83–91, 364–65
 - roles and powers, comparing to US president 358–64
 - selection of 65–66
- Prime Minister's Question Time (PMQs) 49–50
- primus inter pares* **64, 359**
- prisoner groups, insider status 231
- prisoners' right to vote 156, 524
 - ex-felons 544
- private members' bills (PMBs) 39
 - ballot bills 39–40
 - presentation bills 40
 - ten minute rule bills 40
- privatisation, Conservative government 74, 87, 185, 191
- 'pro-choice' movement 390, 392, 449, 502, 550
- 'pro-life' supporters 390, 450, 484, 508, 550
- professional lobbying 503–04, 511, 523
- progressive **316**
- promotional (cause) groups **500**
- promotional groups **229**
- proportional electoral system **165–66**
 - evaluation of List PR 173–77

prorogation (suspension) of parliament 5, 103, 120, 148, 398, 524
 Protection of Freedoms Act (2012) 13
 protests/riots
 against the poll tax, UK 79
 Black Lives Matter 548
 March for Our Lives, US 528
 storming of US Capitol building 341
 Vietnam War 507
 Public Accounts Committee (PAC) 51
 public attitudes, 1960s liberalisation 77
 public bill committees 50–51
 public bills **33**
 public opinion
 constraint on the president 343–44
 and direct action, US pressure groups 507, 530
 and pressure group success 241

Q

qualifications for a justice of the Supreme Court 106
 qualified majority voting (QMV) 249, **250**, 253
 quasi-legislative, Supreme Court as **121**, 385
 Queen's Speech 34, 50, 363

R

R (on the application of The Public Law Project) v Lord Chancellor (2016) 401, 523
R (Factortame Ltd) v Secretary of State for Transport (1990) 112, 113–14, 116, 260
R Miller v the Prime Minister (2019) 398, 402, 523–24
R Miller v Secretary of State for Exiting the European Union (2017) 398, 523–24
R (Nicklinson) v Ministry of Justice (2014), right to die 119
R v Horncastle & Others (2009), hearsay evidence 119
 race debates, USA and UK 551
 Race Relations Act (1965) 484, 551
 race in US politics 540
 affirmative action 542
 Alt-Right and domestic terrorism 545–46
 Black Lives Matter 544–45
 civil rights movement 540–41
 felony disenfranchisement 544
 incarceration rates 543
 Native Americans 533, 540
 segregation in the South, landmark ruling 388
 voting rights 542–43
 rational theory, comparative politics 291
 campaign finance 493–94, 496
 civil rights 555

devolution and federalism 299
 dominance of two-party systems 477, 478–79
 elections and electoral systems 472–73, 495
 the executives 366–68
 the judiciary 404
 the legislatures 300
 nature of the constitutions 299
 pressure groups 529–30
 Reagan, Ronald (1981–89) 315, 332, 353, 483, 485
 realigning elections 429–30
 1932 election 430
 2016 election 431–32
 recency and primacy models of voting 179, 428
 redress of grievances **42–43**
 referendums **25**, **181**
 advantages and disadvantages 201–02
 alternative vote (2011) 75, 148, 200
 Brexit (2016) 75
 in the UK 200–01, 250
 Wales (2011) 128
 regional differences in party support, US 454–56
Reilly v Secretary of State for Work and Pensions (2016) 113
 religion
 and abortion rights 550, 553, 556
 and discrimination against LGBTQ+ people 22, 536, 552
 freedom of, First Amendment 383, 533
 representation in Congress 308
 and voting behaviour 429, 475
 representation
 evaluating 323
 pressure groups 239
 representative role of MPs 41–43
 role of Congress 321–23
 theories of 43–45
 and third parties 480–81
 and UK democracy 146
 and UK electoral systems 165, 175, 176
 Representation of the People Act (1918, 1928 and 1969) 151
 representative democracy **145**, 147, **200**
 republican/nationalist paramilitaries **129–30**
 Republican Party (Republicans)
 different policies to UK Conservatives 484
 similarities with UK Conservatives 482–83
 values, principles and policies 450–51
 Republican Study Committee 460
 reserved powers 279
 resignations
 Trump's staff 348–49

of UK ministers, reasons for 93–99
retrospective legislation **400**, **524**
 revolving door syndrome, lobbying 503
 Ballard Partners case study 504
 contribution to iron triangles 512–13
 in the UK 523
 rights protection *see also* civil rights;
 human rights
 Bill of Rights (1791) 534
 UK and US Supreme Courts 400
 Roberts, Chief Justice John 378–79, 383
 acting as a 'swing vote', 2019–20 term 379
Roe v Wade (1973) 376, 384, 386, 390, 392–93, 505, 536
 royal prerogative **5**
 rule of law **3**, 4, 109, 146, **549**
 and democracy in the UK 146
 and judicial independence/
 impartiality 110, 401, 404

S

same-sex marriage
 Coalition for Marriage pressure group 242
 Defense of Marriage Act (DOMA) opposing 325
 Lee v Ashers Bakery Company Ltd (2018) 526
 Obergefell v Hodges (2015) legalising 386, 389
 sanctuary cities 282, 343
 Sanders, Bernie 310, 414, 417, 418, 430, 434, 465, 481
Schenck v United States (1919) 286
 Scotland
 additional member system (AMS) 169–70
 legislation 13, 126–27, 138
 Scottish Parliament and government **127**
 scrutiny of the executive **45**
 committees 50–55
 debates 45–48
 effectiveness of 60–61
 by legislators 297
 questions 48–50
 Second Amendment: gun rights 267–68
 Republican stance 450, 457, 484
 Supreme Court's interpretation 383, 527
 Second Reform Act (1867) 150, 152
 secondary legislation 38, 128
 segregation **389**
 post-Civil War (1861–65) era 279–80
 select committees 51–53
 civil servants giving evidence to 53
 effectiveness in scrutinising government 54
 in the US, investigative role 320

- self-interest, individuals acting out of 366–68, 529–30, 555
- Senate **303** *see also* Congress
 comparison with the House 324
 confirmation of executive appointments 283, 305, 312–13, 319, 339
 confirmation of justices 374–77
 joint powers with the House 323
 ratification of treaties 274, 313, 337, 339
- Senate Judiciary Committee* 300, **374**, 377
- Senedd and Elections (Wales) Act (2020) 129
- separation of powers **108–09**, **271**
- sexual harassment, #MeToo movement 98, 427, 539, 550, 554
- shared ideas and culture 368–69, 404–05, 530, 555–56
- Shelby County v Holder* (2013), voting rights 542
- Shelley v Kraemer* (1948) 536, 538
- shutdowns, US government 314–15, 353
- signing statements 337
- silence, ‘Miranda rights’ 278, 536
- Single European Act (1987) 10, 249
- single transferable vote (STV) electoral system 171–72
 evaluation of 173–77
- singular executive **359**, 366
- Smith, Iain Duncan, resignation of 94, 95
- Snowdrop Campaign, ban on handguns, UK 527
- social class
 and party membership 160
 and voting behaviour 179, 180, 183, 194–95
 and voting rights 152–53
- social media
 Facebook ads, spending on 195, 223, 435
 fake news/misinformation 87, 196, 245
 reinforcing views of supporters 426
 targeting ads to potential supporters 472
 Trump’s use of Twitter 427
 use of during 2019 UK general election 195–96
- social movements 500–01
 anti-lockdown movement 539
 Black Lives Matter 544–45
 civil rights movement 540–41
 climate change 76
 #MeToo 98–99, 427, 554
 promoting and supporting rights 539
 suffrage movement 153–54
- soft money (independent expenditure) 436, 491, 514
- Sotomayor, Justice Sonia 378, 380, 382–83, 539
- sovereignty *see also* parliamentary sovereignty
 constitutional sovereignty, US 18, 403
- the speaker
 House of Commons 30
 House of Representatives 316–17
- special advisers (SpAds) 71, 72–73
- split ticket voting **442–43**
- standing committees
 Congress 319
 House Rules Committee 320–21
 public bill committee, UK 51–55
 Senate Judiciary Committee 374
- stare decisis* **385**
- Starmer, Sir Keir, Labour Party leader 50, 210, 213, 218
- State of the Union Address 273, 300, 331, 363
- state legislatures **303**
- states, role of in elections 407–08
- statute law **4**
- statutory instruments (SIs) 38
- strict constructionism **381**
- structural theory, comparative politics 290
 campaign finance 491–93, 496
 civil rights 555
 devolution and federalism 299
 elections and electoral systems 471–72, 495
 the executives 365–66
 the judiciary 403
 the legislatures 300
 nature of the constitutions 299
 party dominance, two-party system 478
 pressure groups 529
- Sturgeon, Nicola, first minister of Scotland 131, 132
- suffrage **150**, **200**
- Super PACs 436, **514**, 515–16
- Super Tuesday 414, 417
- supermajority **273**
- Supreme Court, UK **103–04**
 appointment of justices 105–07
 authority and influence of 120–21
 composition of 104–05, 107–08
 and European Union law 113–14, 118
 evolution of 118–19
 functions of 109
 and the Human Rights Act 114–15, 116–17
 impact of Brexit on 116–18
 independence and impartiality 110–11
 and judicial review 112
 key doctrines and principles 109–12
 overall impact of 119–20
 politicisation debate 111, 112
 prorogation ruling (2019) 120
 qualifications for appointment to 106
 reasons for setting up 108
 rule of law 109
ultra vires cases 113
- unelected nature of 121
- Supreme Court, US **371–72**
 checks and balances on president’s power 341
 conservative majority 392–93, 542
 constitutional role of 381–83
 controversial/landmark rulings 384–85, 388–89
 current composition of 378–80
 and federalism, overruling of state laws 386
 judicial activism 386
 judicial restraint 385
 and judicial review 380, 384
 politicisation debate 384–87
 position within judicial branch 372–73
 and public policy, abortion example 390–93
 ‘quasi-legislative’ body 385
 selection and appointment of justices 373–78
- Supreme Courts compared 122, 395
 bases of powers 398–99
 characteristics of justices 396–97
 extent of powers 320, 399
 history 395–96
 impact on the executive and the legislature 398
 impact on federalism and devolution 398
 judicial approach 397
 selection and appointment of justices 396
 tenure of justices 397
- Sutherland v Her Majesty’s Advocate (Scotland)* (2020) 120
- swing movement 412–14
- swing states, election campaigns 412–13
 capturing 473
 spending focused on 493
- ‘swing vote’, Supreme Court 379, 383, 392, 542
- swing voters **180**
- Syrian air strikes, parliamentary debate over 46

T

- Tax Cuts and Jobs Act (2017), US 275, 280, 487
- taxation
 for big corporations 243, 483
 higher for the wealthy 449, 483
 Labour Party manifesto 190
 Liberal Democrat views 215
 lowering of 450, 482
 poll tax (1990), UK 78–79, 82
 Scottish Parliament’s legislation 127
- televised debates *see also* media
 obstacle for third-party candidates and independents 478

in the UK 55, 196
 in the US 426, 473–74
 ten minute rule bills 40
 tenure of justices 110, 397
 term limits
 2 years for congress(women) 309, 324
 5 years for an MP 471
 6 years for senators 309, 324, 471
 none for UK prime ministers 361, 471
 two-term limit for presidents 361, 471
 terms of office 309, 324, 471
 terrorism
 anti-terror legislation 17, 23, 35, 273, 338, 483, 550
 Bush's 'war on terror' 211, 333, 367
 extreme outsider groups 233
 US domestic 545–46
 Thatcher, Margaret (1979–90)
 and the 1983 election 182–87
 Falklands War (1982) 89, 182, 185, 207
 policies and manifesto 185
 and the poll tax 78–79
 presidential style 70, 72, 73
 selling off council houses 74
 strong media presence 184, 185, 186
 Thatcherism 207–08
 think tanks 244–45
 third parties **465** *see also*
 independents; Liberal Democrats
 cultural aspect 477–78
 FPTP system penalising 187
 more significant in UK 479–81
 no tradition of in USA 465–66
 significance of in US politics 466–67
 TV debates as obstacle, USA 478
 Third Reform Act (1884) 151
 Third Way socialism 211
 Thomas, Clarence, African-American
 justice (1991–) 378, 380, 381
 controversy over nomination of 376–77
 Thunberg, Greta and climate change policy 76
Tigere v Secretary of State for Business, Innovation and Skills (2015) 114
 trade unionism 210, 213
 trade unions
 alliance with Labour/Democrats 530
 decline in membership of 525
 as insider pressure groups 230
 interest groups 521
 and Labour party funding 221, 230, 525
 and miners' strike (1984–85), UK 186, 207–08
 transgender people's rights 450, 505, 536, 552, 556
 TRAP (Targeted Regulation of Abortion Providers) laws 392

treaties
 EU development 249–50
 Senate ratification of 274, 313, 337, 339
 Treaty of Paris (1952) 249
 Treaty of Rome (1958) 113, 118, 249
 Treaty of Versailles (1920) 313, 339
 Trump, Donald (2017–21)
 attitude to COVID-19 pandemic 335
 California's resistance to 343
 conservative Supreme Court 392–93, 402
 controversial justice nomination 376
 impeachments of 341
 imperial style of 353
 international agreements 335–36
 limitations of power 353
 pardons 333
 political agenda setting 334–35
 relationship with his chief of staff 348
 response to media criticism 367–68
 travel ban, Muslim-majority countries 272, 341, 505
 use of emergency powers 352
 use of policy czars 349
 use of veto power 332, 338–39
Trump v Mazars (2020) 274, 377
Trump v Vance (2020) 274, 377, 401, 402
 trustee **43**
 theory of representation 43–44
 Tuesday Group 460
 turnout *see* voter turnout
 two-party dominance *see also*
 independents; third parties
 American politics 465–66
 comparative theories 476–79
 extent of in Britain 225–26

U

Uber drivers, individual vs collective rights 22
ultra vires (beyond the law) **113**, 400
 uncoded, British Constitution **3**
 advantages of 21
 unified government 310, **311**
 unionists/loyalists **129–30**
United States v Texas (2016) 384, 401
United States v Windsor (2013) 274, 325
 universal suffrage **150**
 US Constitution 263, **264**
 amendment process 276–79, 284–85
 checks and balances 272–75, 284
 comparison with British 291–94, 298–99
 formal amendment of 276–78
 and gridlock 269
 informal amendment of 278–79
 judicial review 268–69
 key features of 264–66
 origins of 264

problematic clauses in 283–84
 protection of civil liberties and rights 285–87
 and separation of powers 271, 284
 state-based focus for elections 269–70
 suitability to twenty-first-century America 282–85
 Supreme Court's interpretation 400
 vagueness and silence in 266, 267–68, 284

V

veto powers of president 273, 331–32, 338
 Vietnam War (1955–75) 351, 507
 vote of no confidence (in prime minister) 363–64, 488
 voter turnout
 African-Americans 542–43
 Electoral College depressing 423
 and electoral system, UK 174
 low for presidential elections 443–45
 for referendums 16, 149, 202
 in the UK 158–59
 voting behaviour **178–79, 427–28**
 core voting coalitions 432–33
 factors affecting, US 428–29
 primacy and recency models 179, 428
 and profile of voters 427–28, 429
 realigning elections 429–32
 recent trends, UK 179–82
 UK-US comparison 474–75
 voting rights
 amendments to Constitution 535
 of ex-felons 544
 impact of voting restrictions on ethnic minorities 542–43
 for prisoners 156, 524
 suffrage 155–56, 200
 UK's lowering of voting age 151
 Voting Rights Act (1965), US 267, 458, 533, 538, 542, 549
 voting systems
 alternatives for devolved assemblies, UK and Europe 139
 and Electoral College reform 423–24
 postal voting 444
 regional variations, US 408–09

W

Wales
 COVID-19 measures 139
 devolution legislation 13, 126–29
 direct democracy 148
 judiciary in 105
 M4 relief road case study 133
 referendums 200, 201
 vote for 16- and 17-year-olds 155

- Wallace, George, American Independent Party 466, 473, 477, 480
- Walpole, Robert (1676–1745), first prime minister 65
- war
 Iraq War (2003) 80–81, 95, 367
 PM's power to declare 360
 power of Congress to declare 283, 305, 332–33, 340, 368
- War Powers Act (1973), US 332–34, 340, 351, 352, 360
- 'war on terror' 211, 333, 367
- Warren, Justice Earl 386, 388
- Washington, George 264–65, 278–79, 309, 330, 448
- Washington insiders, funding of 509–10
- Watergate scandal 340, 351
- weapons
 chemical, Syrian civil war 46
 nuclear, use of 333
 and Second Amendment 267–68
 WMDs and Iraq invasion 80, 95, 192
- Welsh Assembly and government **128–29**
- West Lothian Question **136**
- Westminster Hall debates 47, 48
- whips 31
- White House chief of staff **346**
 president's relationship with 348
- White House Office 346, 358
- White Paper **34**
- Whole Woman's Health v Hellerstedt* (2016) 391–92
- women's rights 550
 and abortion in the US 390–92
 civil rights, UK–US comparison 553, 554, 556
 Equal Rights Amendment (ERA) 535
 suffrage movement 153–54
- works of authority, British Constitution 6–7
- world leader, president's role as 335–36
- write-in candidates **408**

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