





## Introduction

What's your first thought when you see this chapter title — 'The Constitution'? I guess you think of old, musty-smelling documents, archaic rules, old-fashioned language that is largely incomprehensible, and eighteenth-century men dressed in leather breeches and wigs. That's quite understandable. But the American Constitution is a far more dynamic document than those words and phrases would lead you to believe. After all, consider the following questions:

- Who decides on the racial balance permitted in America's schools and universities?
- Who decides on the rules under which campaign finance operates?
- Who decides what rights Americans have to own guns?
- Who decides on the rights of arrested persons?
- Who decides on the operation of the death penalty in America?
- Who decides on what rights women have in the matter of abortion?
- Who decides on whether same-sex marriages are permitted within America?
- Who decides on matters of freedom of speech?
- Who decides whether or not you have a right to burn the American flag?
- Who decides on whether the president or Congress has exceeded their powers?

The answer to those questions — and to many more — is, ultimately, the United States Supreme Court. But how do they arrive at these decisions? By interpreting and applying what the United States Constitution has to say on these matters. Yes, the Constitution is America's ultimate handbook. And although you won't find any mention of abortion, marriage or flag burning in this document, you will find all the principles from which decisions on these and other matters can, and must, be arrived at.

And there's more. Why could President Barack Obama not run for re-election in 2016? Answer: because the Constitution limits a president to two terms in office. Why did Jeff Sessions have to resign from the Senate when he became attorney general (head of the Department of Justice) in 2017? Answer: because the Constitution forbids someone being a member of the legislature and the executive at the same time. Why are elections to the House of Representatives held every two years? Answer: because the Constitution says so. Why do all those over 18 have the right to vote? Answer: because the Constitution says so. Why do Americans have such feeble gun control laws? Answer: because the Constitution states that 'the right of the people to keep and bear arms shall not be infringed'.

So, as we study the Constitution, forget the musty-smelling museum exhibit, and think instead of the most important eighteen pages of printed matter that are to be found anywhere in the United States. It really is the stuff of everyday life, now, in the twenty-first century.

## The nature of the Constitution: three key features

On 17 September 1787, the task of writing the new Constitution was complete. When the delegates emerged from their self-imposed silence in Independence Hall in Philadelphia, it is said that a woman approached Benjamin Franklin and asked: 'Well, Doctor, what have we got — a republic or a monarchy?' Replied Franklin: 'A republic, if you can keep it.'



## Box 2.1

### What the Constitution provided

<b>Article I</b>	'All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.'
<b>Article II</b>	'The executive Power shall be vested in a President of the United States of America.'
<b>Article III</b>	'The judicial Power of the United States shall be vested in one Supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish.'
<b>Article IV</b>	Federal–state and state–federal relationships
<b>Article V</b>	Amendment procedures
<b>Article VI</b>	Miscellaneous provisions, including the 'supremacy clause'
<b>Article VII</b>	Ratification procedure

## Key term

**Codified constitution** A constitution that consists of a full and authoritative set of rules written down in a single text.

## A codified constitution

There are three key features that we need to understand about the nature of the United States Constitution. First, it is a **codified constitution**. A code is a systematic and authoritative collection of rules. So, for example, the Highway Code is the collected and authoritative set of rules for all road users. In much the same way, the United States Constitution is the collected and authoritative set of rules of American government and politics. By definition, a codified constitution is also a written constitution, though as we shall see later, not everything about the ordering of American government and politics is to be found in the Constitution.

## Box 2.2

### The nature of the Constitution

- 1 It is a codified constitution.
- 2 It is a blend of specificity and vagueness.
- 3 Its provisions are entrenched.

## Key terms

**Supremacy clause** The portion of Article VI which states that the Constitution, as well as treaties and federal laws, 'shall be the supreme law of the Land'.

**Enumerated (or delegated) powers** Powers delegated to the federal government under the Constitution. Generally these are those enumerated in the first three Articles of the Constitution.

This new codified constitution consisted of seven Articles (see Box 2.1), the first three of which explained how the three branches of the federal (national) government would work and what powers they would have. Article I established Congress as the national legislature, defining its membership, the qualifications and method of election of its members, as well as its powers. Under Article I, Section 8, Congress was given specific powers such as those to 'coin money' and 'declare war'.

Article II decided — somewhat surprisingly — on a singular, rather than a plural, executive by vesting all executive power in the hands of 'a President'. The president would be chosen indirectly by an Electoral College.

Article III established the United States Supreme Court, though Congress quickly added trial and appeal courts. Although not explicitly granted, the Court was to have the role of umpire of the Constitution, implied in the **supremacy clause** of Article VI and the provision in Article III itself that the Court's judicial power applies to 'all Cases...arising under this Constitution'. The Court would make this more explicit in its landmark decision of *Marbury v Madison* in 1803.

These three Articles contain what are called the **enumerated (or delegated) powers** granted to the federal government. The significance of this is that the



federal government does not possess unlimited power, but only such power as is given it in the Constitution. But it was also given much less specific powers.

## A blend of specificity and vagueness

This brings us to our second feature of the United States Constitution — that it is a blend of both specificity and vagueness. So far we have focused on the specifics. But not everything in the Constitution is quite so cut and dried. We need to be aware of what are known as **implied powers** — powers of the federal government that the Constitution does not explicitly mention, but that are reasonably implied from the delegated powers. So, for example, the power to draft people into the armed forces may be implied from Congress's enumerated power to raise an army and navy. Congress was also given the power to 'provide for the common defence and general welfare of the United States'. From this was implied that Congress had the power to levy and collect taxes to provide for the defence of the United States.

Many of the implied powers are deduced from what is called the **necessary and proper clause** of Article I, Section 8. This is often referred to as the 'elastic clause' of the Constitution because, by it, the powers of the federal government can be stretched beyond the specifically delegated or enumerated powers. So in this sense, although some parts of the Constitution are very explicit, there are other parts where it is very vague and the Constitution has therefore been able to adapt to the ever-changing circumstances of the nation. As we shall see in Chapter 5, much of this adaptation has been done by the Supreme Court.

We have seen, therefore, that the Constitution delegated certain powers to the federal government alone. The Constitution also includes what we call **reserved powers** — that is, powers that are reserved to the states alone or to the people. This provision is found in the Tenth Amendment (see Box 2.3), added to the original Constitution in 1791. This again limits the power of the federal government by stating that all the powers not delegated to the federal government, or prohibited to the states, 'are reserved to the States, or to the people'. Then there are also the **concurrent powers** of the Constitution — those powers shared by the federal and state governments, such as collecting taxes, building roads and maintaining courts.

### Key terms

**Implied powers** Powers possessed by the federal government by inference from those powers delegated to it in the Constitution (see also 'Necessary and proper clause').

**Necessary and proper clause** The final clause of Article I, Section 8, which empowers Congress to make all laws 'necessary and proper' to carry out the federal government's duties.

**Reserved powers** Powers not delegated to the federal government, or prohibited by it to the states, are reserved to the states and to the people.

**Concurrent powers** Powers possessed by both the federal and state governments.

### Box 2.3

#### The Tenth Amendment

'The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.'

Alongside the specific granting of powers there is the supremacy clause of Article VI, mentioned earlier. This enshrines into the Constitution a key principle of American government that asserts the supremacy of national law. In this clause, the Constitution provides that the laws passed by the federal government under its constitutional powers are the supreme laws of the land. Therefore any legitimate national law automatically supersedes any conflicting state law.

## Its provisions are entrenched

So far we have been introduced to two important features of the Constitution — that it is codified, and that it is a blend of specificity and vagueness. But there is



## Key term

**Entrenchment** The application of extra legal safeguards to a constitutional provision to make it more difficult to amend or abolish it.

a third important feature which we call **entrenchment**. And that leads us into a consideration of the process for amending the Constitution.

Perhaps the best way to help us understand what the word 'entrenchment' means is to remember its non-political meaning. In the time, say, of the First World War, an entrenchment was the establishment of a military force in trenches (hence the word) or other fortified positions so as to protect against enemy attack. So when we say that various governmental or political provisions are entrenched, it means that they are, as it were, protected from enemy attack — from those who would wish to change or abolish them. The way this is done is to insist upon some kind of complicated system, as well as on super-majorities, in order to make amending such provisions exceedingly difficult, thereby affording them special protection. In the United States Constitution, entrenchment is provided through the complex amendment process.



Frieze depicting the signing of the Constitution

## Amendments to the Constitution

### The amendment process

The Founding Fathers, while realising the likely need to amend the Constitution, wanted to make doing so a difficult process. Thus, it was to be a two-stage process requiring super-majorities of more than 50%, such as two-thirds or a three-quarters majority (see Table 2.1). The process is laid out in Article V. Stage 1 is the proposal and stage 2 is the ratification. Constitutional amendments can be proposed either by Congress or by a national constitutional convention called by Congress at the request of two-thirds of the state legislatures. All constitutional amendments thus far have been proposed by Congress. No national constitutional convention has ever been called, although by 1992, 32 state legislatures had petitioned Congress for a convention to propose a balanced budget amendment — just two states short of the required two-thirds.



**Table 2.1** The amendment process

	Proposed by	Ratified by	How often used?
1	Two-thirds of the House and Senate	Three-quarters of the state legislatures (38)	26 times
2	Two-thirds of the House and Senate	Ratifying conventions in three-quarters of the states	Once (Twenty-First Amendment)
3	Legislatures in two-thirds of the states calling for a national constitutional convention	Three-quarters of the state legislatures	Never
4	Legislatures in two-thirds of the states calling for a national constitutional convention	Ratifying conventions in three-quarters of the states	Never

During the presidency of Bill Clinton (1993–2001), there were 17 votes on proposed constitutional amendments, an unusually high number. All these votes occurred during the six-year period when the Republicans controlled both houses of Congress — 1995–2001. A proposal to amend the Constitution requires a two-thirds majority in both houses to be successful. During this period, the House of Representatives agreed to a balanced budget amendment (1995) and a flag desecration amendment (1995, 1997 and 1999). However, the Senate agreed to neither of these, although it was only one vote short of the two-thirds majority required to pass the balanced budget amendment in 1997 and four votes short of passing a flag desecration amendment in 2000.

During the presidency of George W. Bush (2001–09), there were six further attempts to amend the Constitution. But only three of these six votes — the three in the House of Representatives to ban the desecration of the American flag — received the required two-thirds majority. This means that the House has now voted on this amendment six times since 1995. Almost every time, the number of 'yes' votes has declined. When the Senate voted on the amendment in June 2006, the vote was 66–34, just one vote short of the required two-thirds majority. But with the Democrats retaking control of both houses of Congress in the 2006 midterm elections, passage of the amendment became much less likely as it is mostly Republicans who vote 'yes' on banning the desecration of the flag. This is the reason why these votes took place when the Senate and House of Representatives were controlled by the Republicans. Democrats tend to vote 'no' on such proposals.

At the start of the 113th Congress in January 2013, bills to amend the Constitution were introduced on a range of subjects, including amendments to:

- require a balanced federal budget
- ban flag desecration
- reverse recent Supreme Court decisions on campaign finance
- guarantee equal rights for men and women
- introduce congressional term limits

In November 2016, outgoing Democratic senator Barbara Boxer of California introduced a bill to abolish the Electoral College in the aftermath of the presidential election result earlier in the month that saw Democrat Hillary Clinton win the popular vote but lose in the Electoral College.

Once an amendment has been successfully proposed, it is sent to the states for ratification. An amendment can be ratified either by three-quarters of the state legislatures or by state constitutional conventions in three-quarters of the states. Of the 27 amendments added to the Constitution, only one has been ratified by state constitutional conventions — the Twenty-First Amendment,



## Advantages and disadvantages

### The amendment process

#### Advantages

- Super-majorities ensure against a small majority being able to impose its will on a large minority.
- The lengthy and complicated process makes it less likely that the Constitution will be amended on a merely temporary issue.
- It ensures that both the federal and state governments must favour a proposal.
- It gives a magnified voice to the smaller-population states (through the Senate's role and the requirement for agreement of three-quarters of state legislatures).
- Provision for a constitutional convention called by the states ensures against a veto being operated by Congress on the initiation of amendments.

#### Disadvantages

- It makes it overly difficult for the Constitution to be amended, thereby perpetuating what some see as outdated provisions: for example, the Electoral College.
- It makes possible the thwarting of the will of the majority by a small and possibly unrepresentative minority.
- The lengthy and complicated process nonetheless allowed the Prohibition amendment to be passed (1918).
- The difficulty of formal amendment enhances the power of the (unelected) Supreme Court to make interpretative amendments.
- The voice of small-population states is over-represented.

which repealed the Eighteenth Amendment and thus ended the prohibition of alcohol. Of the 33 amendments passed to them for ratification by Congress, the states have ratified 27. Thus, once an amendment has been successfully proposed by Congress, it stands a good chance of finding its way into the Constitution.

Only six amendments have failed at the ratification stage in over 210 years. The most recent was the District of Columbia voting rights amendment, which would have granted the District — the federal capital — full representation in Congress as if it were a state. Only 16 states — rather than the 38 required — had voted to ratify this amendment when it expired in 1985. Three years earlier, the equal rights amendment for the rights of women had fallen just three states short in the ratification process.

## The Bill of Rights and later amendments

Of the 27 amendments to the Constitution, the first ten were proposed together by Congress in September 1789 and were ratified together by three-quarters of the states by December 1791. Collectively, they are known as the Bill of Rights (see Box 2.4). Many states had somewhat reluctantly signed up to the new federal Constitution with its potentially powerful centralised government. The Bill of Rights was designed to sugar the constitutional pill by protecting Americans against an over-powerful federal government.



**Box 2.4**

**Selected amendments to the Constitution**

**Amendments I–X: the Bill of Rights (1791)**

- I Freedom of religion, speech, the press, and assembly
- II Right to keep and bear arms
- III No quartering of troops in private homes
- IV Unreasonable searches and seizures prohibited
- V Rights of accused persons
- VI Rights of trial
- VII Common-law suits
- VIII Excessive bail, and cruel and unusual punishments prohibited
- IX Un-enumerated rights protected
- X Un-delegated powers reserved to the states or to the people

**Some later amendments**

- XIII Slavery prohibited (1865)
- XIV Ex-slaves made citizens — including 'equal protection' and 'due process' clauses (1868)
- XVI Federal government granted power to impose income tax (1913)
- XVII Direct election of the Senate (1913)
- XXII Two-term limit for the president (1951)
- XXV Presidential succession and disability procedures (1967)
- XXVI Voting age lowered to 18 (1971)



The United States Bill of Rights



Seventeen further amendments have been passed since the Bill of Rights. The Twelfth Amendment (1804) revised the process for electing the president and vice president. The Thirteenth (1865), Fourteenth (1868) and Fifteenth (1870) Amendments were proposed and ratified immediately after the Civil War to end slavery and guarantee rights to the former slaves. The Fourteenth Amendment, as we shall see later, has become increasingly important in American society through its 'equal protection' and 'due process' clauses. The Sixteenth Amendment (1913) is of crucial importance in understanding how the federal government's power increased during the twentieth century. It allowed the federal government to impose an income tax. The Seventeenth Amendment (also 1913) provided for the direct election of the Senate. Previously, senators were appointed by their state legislatures. The Twenty-Second Amendment (1951) limited the president to a maximum of two terms in office. The Twenty-Fifth Amendment (1967) dealt with issues of presidential disability and succession, which had come to the fore following the assassination of President Kennedy four years earlier. The Twenty-Sixth Amendment (1971) lowered the voting age to 18.

## Why has the Constitution been amended so rarely?

With only 27 amendments passed, and only 17 of those in the last 210 years, the question is raised as to why so few amendments have been passed. There are four significant reasons.

- The Founding Fathers created a deliberately difficult process. The need for both Congress and the states to agree, and the need for super-majorities, make the amendment process difficult. Hundreds of amendments have been initiated, but very few have made it successfully through the process.
- The Founding Fathers created a document that was, at least in parts, deliberately unspecific and vague, such as Congress's power 'to provide for the common defence and general welfare' of the United States. This has allowed the document to evolve without the need for formal amendment.
- The most important reason, the Supreme Court's power of judicial review, is considered in Chapter 5. Suffice it to say here that this power allows the Court to interpret the Constitution and thereby, in effect, change the meaning of words written over two centuries ago — to make what one might call 'interpretative amendments' rather than formal amendments. Thus, for example, the Court can state what the phrase in the Eighth Amendment, which forbids 'cruel and unusual punishments', means today.
- Americans have become cautious of tampering with their Constitution. They hold it in some degree of veneration. In the early decades of the last century, they got themselves into difficulties by amending the Constitution to prohibit the manufacture, sale and importation of alcohol. Fourteen years later, 'Prohibition' was discredited and the offending amendment was repealed. This experience proved to be an important lesson for subsequent generations.

### Activity

- Go to the website of the National Constitution Center at: <https://constitutioncenter.org/interactive-constitution>.
- Click on the 'Explore it' button, then use the cursor to select any of the constitutional amendments.
- Read the debate articles presented.
- Write a 500-word piece (250 words on each side of the debate) concerning any of the amendments.



# Constitutional rights

## Key term

### Constitutional rights

Fundamental rights guaranteed by the Constitution, including freedom of speech and religion, and freedom from arbitrary arrest.

The Constitution guarantees certain fundamental **constitutional rights**. Just listing rights in a constitution does not, in itself, mean that these rights are fully operative. The government — be it federal, state or local — must take steps to ensure that these rights are effectively protected. As we shall see later, all three branches of the federal government — the legislature (Congress), the executive (the president) and the judiciary (the courts, and especially the Supreme Court) — play an important role in trying to ensure that these constitutional rights are effective for all Americans. So what rights are granted by the Constitution?

The First Amendment guarantees the most basic and fundamental rights: freedom of religion; freedom of speech; freedom of the press; freedom of assembly. Debates such as those concerning prayers in public (i.e. state) schools, pornography on the internet, flag burning and press censorship all centre upon First Amendment rights. The Second Amendment guarantees that 'the right of the people to keep and bear arms shall not be infringed'. It is on this amendment that the debate about gun control focuses. The Supreme Court weighed in with a major decision on the meaning of this amendment in 2008. The Fourth Amendment guarantees the right against unreasonable searches — either of your person or of your property. You might well have heard of Americans 'pleading the Fifth Amendment' — the right to silence, protecting the individual from self-incrimination. The Eighth Amendment, which states that 'cruel and unusual punishments' shall not be inflicted, is the focus of the death penalty debate. The Tenth Amendment tends to be an article of faith of the modern Republican Party, in standing up for states' rights over the increasing power of the federal government in Washington DC.

Later amendments have been added to guarantee other fundamental rights and liberties. Voting rights were guaranteed to women by the Nineteenth Amendment in 1920 and to those over 18 years of age by the Twenty-Sixth Amendment in 1971. Voting rights were also guaranteed to previously discriminated minorities — notably black voters — by the Twenty-Fourth Amendment passed in 1964. It is largely up to the courts, especially the United States Supreme Court, to ensure that these rights are effective. We shall examine this in Chapter 5.

# The principles of the Constitution

The Constitution is based on three key principles — fundamental and foundational ideas — that form its very core and basis: namely, the separation of powers, checks and balances, and federalism. Linked with the first two is another principle, that of bipartisanship, and linked with federalism is the principle of limited government. The following sections will consider each of these principles.

## Key term

**Separation of powers** A theory of government whereby political power is distributed among the legislature, the executive and the judiciary, each acting both independently and interdependently.

## Separation of powers

The first key principle is the **separation of powers**. This is a theory of government whereby political power is distributed among three branches of government — the legislature, the executive and the judiciary — acting both independently and interdependently. This framework was put in place by the Founding Fathers because of their fear of tyranny. The framers of the Constitution were influenced by the writings of the French political philosopher Montesquieu (1689–1755). In his book *De L'Esprit des Loix* (*The Spirit of the Laws*), published in 1748, Montesquieu argued for a separation



# DE L'ESPRIT DES LOIX

OU DU RAPPORT QUE LES LOIX DOIVENT AVOIR AVEC LA  
CONSTITUTION DE CHAQUE GOUVERNEMENT, LES MOEURS  
LE CLIMAT, LA RELIGION, LE COMMERCE, &c.

à quoi l'Auteur a ajouté.

Des recherches nouvelles sur les Loix Romaines touchant les  
Successions, sur les Loix Françaises, & sur les Loix féodales.

TOME PREMIER.



A GENEVE,  
Chez BARILLOT, & FILS.

Title page to *De L'Esprit des Loix* by Montesquieu

of powers into legislative, executive and judicial branches in order to avoid tyranny. 'When the legislative and executive powers are united in the same person...there can be no liberty,' he wrote.

The Founding Fathers had the idea that each of these three independent yet co-equal branches should check the power of the others. It was decided that no person could be in more than one branch of the federal government at the same time — what we might call 'the separation of personnel'. When, in 2008, Senator Barack Obama was elected president, he had to resign from the Senate, as did his newly elected vice president Senator Joe Biden. In this sense, the three branches — the institutions of government — are entirely separate.

However, the term 'separation of powers' is misleading, for it is the *institutions* that are separate, not the *powers*. Professor Richard Neustadt was the most helpful in clearing up this potential confusion. Neustadt (1960) wrote: 'The Constitutional Convention of 1787 is supposed to have created a government of "separated powers". It did nothing of the sort. Rather, it created a government of separated institutions *sharing* powers.' Quite right. So the concept is best thought of as the doctrine of 'shared powers'. And those 'shared powers' are what checks and balances are all about, for the Founding

Fathers set up an intricate system whereby each branch of the federal government would check and balance the other two. This is especially important in terms of the legislature and the executive, which Professor S.E. Finer (1970) described as being 'like two halves of a bank note — each useless without the other'.

## Key terms

**Checks and balances** A system of government that gives each branch — legislative, executive and judicial — the means to partially control the power exercised by the other branches.

## Checks and balances

The second key principle of the Constitution is **checks and balances**. This principle gives each branch of the federal government — the legislature, the executive and the judiciary — the means to partially control the power of the other branches, largely to resist encroachments on its own powers and to maintain democratic government. The main checks and balances exercised by each branch are detailed in Box 2.5. We shall look at these in turn.



**Box 2.5****Checks and balances: how they work**

Because the Constitution creates a system of separate institutions that share powers, each institution (or branch) can check the powers of the others. The major checks possessed by each branch are as follows.

**President**

- 1 Can check Congress by vetoing a bill it has passed
- 2 Can check the federal courts by nominating judges and by the power of pardon

**Congress**

- 1 Can check the president by:
  - amending/delaying/rejecting the president's legislative proposals
  - overriding the president's veto
  - the power of the purse
  - refusing to approve the president's appointments (Senate only)
  - refusing to ratify the president's treaties (Senate only)
  - using the impeachment and trial powers to remove the president from office
- 2 Can check the federal courts by:
  - proposing constitutional amendments to overturn a judicial decision
  - refusing to approve a person nominated to the federal courts (Senate only)

**Federal courts**

- 1 Can check Congress by declaring a law unconstitutional
- 2 Can check the president by declaring the president's actions — or the actions of any of the president's subordinates — unconstitutional

As well as these formal checks, there are also informal checks, such as Congress's check of investigation through its committee system.

**Key terms****State of the Union Address**

An annual speech made by the president to a joint session of Congress, setting out his proposed legislative programme for the coming year.

**Presidential veto** The president's power under Article II of the Constitution to return a bill to Congress unsigned, along with the reasons for his objection.

**Checks by the president on Congress**

The president is given the power to recommend legislation to Congress. They do this formally in January of each year in what is known as the **State of the Union Address**. Presidents use this set-piece speech, delivered to a joint session of Congress — as well as cabinet members, the justices of the Supreme Court, and other invited guests — before a nationwide audience on primetime television. It is the president's main opportunity to lay out their legislative agenda, in effect saying to Congress, 'this is what I want you to debate and pass into law'. President Obama used his State of the Union Address in January 2010 to focus on his healthcare reform proposals, urging Congress: 'Let's get it done!' Two months later, Obama signed the bill into law.

In addition, the president has the power to **veto** bills passed by Congress. During his eight years in office, President Obama used the regular veto on 12 occasions including, in 2016, his veto of a bill that would have rescinded parts of his healthcare reform legislation.





President Barack Obama delivering his 2011 State of the Union Address

### Checks by the president on the courts

Here the president has two significant checks. First, the president nominates all federal judges — to the trial courts, appeal courts and Supreme Court. It is the last that are the most important. During his first term, President Barack Obama was able to make two appointments to the Supreme Court — Sonia Sotomayor (2009) and Elena Kagan (2010). By choosing justices whose judicial philosophy matches their own, presidents can hope to mould the outlook of the Court for years to come.

Second, the president has the power of pardon. This has become controversial in recent times. In 1974, President Ford pardoned his predecessor — President Nixon — for any crimes that Nixon might have committed in the so-called Watergate affair. On the final day of his presidency, President Clinton pardoned 140 people, including Mark Rich, a notorious tax fugitive. President Obama pardoned 142 people during his final three weeks in office.

### Checks by Congress on the president

The Founding Fathers were most anxious about the possible power of the singular executive they had created — the president. As a result, they hedged this branch of government with the most checks. Congress exercises eight significant checks on the president.

- Congress can amend, block or even reject items of legislation recommended by the president. In 2010, it passed — but in a significantly amended form — President Obama's healthcare reform bill. But Congress blocked Obama's attempt at immigration reform and rejected every proposal he made regarding meaningful gun control legislation.



- Congress can override the president's veto. To do this, it needs to gain a two-thirds majority in both houses of Congress. During President George W. Bush's two terms, Congress overrode four of his 11 regular vetoes, including his vetoes of the 2007 Water Resources Development Bill and the 2008 Food Conservation and Energy Bill. It was not until the last four months of his eight years in office that Congress first overrode one of President Obama's vetoes — his twelfth. In September 2016, Obama vetoed the Justice Against Sponsors of Terrorism Act that would have allowed American families of the victims of the September 11 terrorist attacks to sue the government of Saudi Arabia for any role they played in the plot.
- Congress has the significant power that is referred to as 'the power of the purse'. All the money that the president wants to spend on the president's policies must be voted for by Congress. Its refusal to vote for this money will significantly curtail what the president can do — be it in domestic or foreign policy. In 2007, the Democrat-controlled Congress attempted to limit President George W. Bush's spending on the military operations in Iraq.



President Franklin D. Roosevelt signs the declaration of war on Japan, 8 December 1941

- In the field of foreign policy, Congress has two further checks on the president. Although the Constitution confers on the president the power to be 'commander-in-chief' of the armed forces, it confers on Congress the power to declare war. Although this power seems to have fallen into disuse — the last time Congress declared war was on Japan in 1941 — Congress has successfully forced presidents since then to seek specific authorisation before committing troops to situations in which hostilities are likely or inevitable. In October 2002, President George W. Bush gained specific authorisation from Congress to use military force in Iraq. The House approved the use of troops in Iraq by 296 votes to 182, while the vote in the Senate was 77 votes to 23.



- The Senate has the power to ratify treaties negotiated by the president. This requires a two-thirds majority. In 2010, the Senate ratified the new START Treaty with Russia by 71 votes to 26. In 1999, the Senate rejected the Comprehensive Test Ban Treaty by 48 votes to 51 — that is, 18 votes short of the 66 votes required to ratify it. This was the first major treaty to be rejected by the Senate since the rejection of the Versailles Treaty in 1920. Five minor treaties had been rejected in between. Then in December 2012, the Senate rejected the Convention on the Rights of Persons with Disabilities by 61 votes to 38 — just five votes short of the two-thirds majority required to ratify it.
- Another check exercised by Congress over the president is an important power held by the Senate alone — the power to confirm many of the appointments that the president makes to the executive branch and all the appointments he makes to the federal judiciary. Executive appointments subject to Senate confirmation include such high-profile posts as cabinet members, ambassadors and heads of important agencies such as the Central Intelligence Agency (CIA) and the Federal Bureau of Investigation (FBI). Only a simple majority is required for confirmation. Rejections are unusual, but only because presidents usually consult informally with key senators before announcing such appointments, naming only those for whom confirmation is a fair certainty. In 1987, the Senate rejected (42–58) President Reagan’s nominee, Robert Bork, for a place on the Supreme Court (see Chapter 5). In 1989, the Senate rejected (47–53) John Tower as secretary of defense. In October 2005, Harriet Miers withdrew as a nominee to the Supreme Court following widespread criticism by Republican senators of her lack of qualification and conservative credentials. When in March 2016 President Obama nominated Judge Merrick Garland to the Supreme Court to replace Justice Antonin Scalia who had died the previous month, the Republican-controlled Senate refused to proceed with confirmation hearings on Judge Garland, claiming that the nomination should await the new president who would take up office in January 2017.



President Obama nominates Judge Merrick Garland to the Supreme Court, March 2016



**Key term**  
**Impeachment** A formal accusation of a serving federal official by a simple majority vote of the House of Representatives.

- Two further important checks on the president are given to Congress. The first is the power of investigation: Congress — usually through its committees — may investigate the actions or policies of any member of the executive branch, including the president. Following a terrorist attack on the American diplomatic compound in Benghazi, Libya, in September 2012, in which the American ambassador Christopher Stevens was killed, no fewer than seven congressional committees held hearings on the events that had led up to it and the way both President Obama and then secretary of state Hillary Clinton had handled the matter.
- Finally, in the most serious circumstances, investigation may lead to **impeachment** — the ultimate check that Congress holds over the executive. Congress may impeach any member of the executive branch, including the president. Two presidents — Andrew Johnson (1868) and Bill Clinton (1998) — have been impeached by Congress. It is the House of Representatives which has the power of impeachment. In 1998, it passed two articles of impeachment against President Clinton — for perjury (228–206) and obstruction of justice (221–212). Just a simple majority is required. Once the House has impeached, the Senate then conducts the trial. If found guilty by a two-thirds majority, the accused person is removed from office. In President Clinton’s case, the Senate found him not guilty on both articles of impeachment — the votes being 45–55 on perjury and 50–50 on obstruction of justice, respectively 22 and 17 votes short of the required two-thirds majority. In the 1860s, President Johnson escaped conviction by the Senate by just one vote. In 1974, President Nixon resigned rather than face near certain impeachment by the House and conviction by the Senate. Thus, through impeachment — what someone has described as ‘the political equivalent of the death penalty’ — Congress can remove the president. This is the ultimate check. The president holds no similar power — he cannot remove Congress.



The New York Times announces President Nixon's resignation



## Checks by Congress on the courts

Congress has two important checks on the courts. First, there is again the power of impeachment, trial and removal from office. In the space of three years (1986–89), Congress removed three federal judges from office — Harry Claiborne for tax evasion, Alcee Hastings for bribery, and Walter Nixon for perjury. In March 2010, the House of Representatives impeached federal judge Thomas Porteous for corruption, and following guilty verdicts in the Senate on four counts, Judge Porteous was removed from office later that year.

A more subtle but still significant check is that Congress can propose constitutional amendments to — in effect — overturn a decision of the Supreme Court. When in 1896 the Supreme Court declared federal income tax to be unconstitutional, Congress proposed the Sixteenth Amendment granting Congress the power to levy income tax. It was ratified and became operative in 1913. Congress has more recently attempted unsuccessfully to reverse Supreme Court decisions on such issues as flag burning and prayer in public schools. Following a controversial ruling by the Supreme Court on the subject of campaign finance in 2010, Senator Tom Udall (Democrat, New Mexico) introduced a proposed constitutional amendment to reverse the effects of this decision. But the amendment got no further than an unsuccessful vote on the Senate floor.

## Checks by the courts on Congress

The judiciary — headed by the Supreme Court — possesses one very significant power over Congress: the power of judicial review. This is the power of the court to declare Acts of Congress to be unconstitutional and therefore null and void. In the 1997 case of *Reno v American Civil Liberties Union*, the Supreme Court declared the Communications Decency Act (1996) unconstitutional. In 2013, in the case of *United States v Windsor*, the Court declared the Defense of Marriage Act (1996) unconstitutional.

## Checks by the courts on the president

The courts have the same power of judicial review over the executive branch. Here the power of judicial review is the ability to declare actions of any member of the executive branch to be unconstitutional. In *United States v Richard Nixon* (1974), the Court ordered President Nixon to hand over the so-called White House tapes and thereby stop impeding investigation of the Watergate affair. Nixon obeyed, handed over the tapes and resigned just 16 days later, once the tapes showed his involvement in an intricate cover-up. In the 2006 case of *Hamdan v Rumsfeld*, the Supreme Court declared unconstitutional the military commissions set up by the administration of President George W. Bush to try suspected members of Al Qaeda held at Guantánamo Bay in Cuba. Then in 2014, in *National Labor Relations Board v Noel Canning*, the Court ruled that President Obama had acted unconstitutionally in making three appointments to the National Labor Relations Board without the approval of the Senate. In 2017, in the case of *State of Washington v Donald J. Trump*, the federal courts placed a temporary restraining order on President Trump's executive order that banned people from seven Muslim-majority countries from entering the United States.



## Key terms

**Bipartisanship** Close cooperation between the two major parties to achieve desired political goals. In the US system of government, it may be crucial for political success.

**Divided government** When the presidency is controlled by one party, and one or both houses of Congress are controlled by the other party.

## Bipartisanship

The checks and balances between the three branches of the federal government — especially those between the legislature and the executive — have important consequences for US politics. The framers of the Constitution hoped to encourage a spirit of **bipartisanship** and compromise between the president and Congress. Laws would be passed, treaties ratified, appointments confirmed and budgets fixed only when both branches worked together. President George W. Bush managed to achieve his education reforms in 2001–02 because he worked with leading congressional Democrats such as Senator Edward Kennedy. The trouble is that gridlock can result. Most recent presidents have accused the Senate of either rejecting or blocking their judicial nominations for partisan reasons. As a consequence, a large number of posts in both the federal trial and appeal courts remain unfilled for months, even years, slowing down the work of the courts.

This raises the issue of **divided government**, a term used to refer to the situation in which one party controls the presidency and the other party controls one or both houses of Congress. Of late, this has become the norm. The 48 years between 1969 and 2016 have seen 35½ years of divided government, and for 24 of those years the president's party controlled neither house. For only 12½ years of this period did one party control the presidency and both houses of Congress: 1977–81 (Jimmy Carter) and 1993–95 (Bill Clinton) for the Democrats; January–June of 2001 and 2003–07 (George W. Bush) for the Republicans; and 2009–11 (Barack Obama) for the Democrats. It is worth noting, too, that divided government has not always been the norm. In the previous 48 years — from 1921 to 1969 — there was divided government for only ten years.

Does divided government make the checks and balances between Congress and the president more or less effective? There are arguments on both sides. Some think that divided government leads to *more* effective government. Bills are scrutinised more closely, treaties checked more carefully and nominees questioned more rigorously in the confirmation process. There is some evidence that when Congress and the president are of the same party, legislation, nominations, budgets, treaties and the like are noddled through without as much careful scrutiny as there should be. Not since 1935 has the Senate rejected a treaty of a president of its own party. Only twice in the last 50 years has Congress overridden a veto of a president of its party. In 1964, Democrat President Johnson managed to persuade a Congress with Democrat majorities in both houses to pass the Tonkin Gulf Resolution which authorised him to take whatever action was deemed appropriate in South Vietnam. During the years of Republican control from 2003 through 2006, Congress was fairly feeble in exercising its oversight function of Republican president George W. Bush's war in Iraq.

Others, however, think that divided government leads to *less* effective government. Examples such as the treatment of Republican Supreme Court nominees Robert Bork (1987) and Clarence Thomas (1991) by a Democrat-controlled Senate, and the impeachment proceedings conducted against Democrat President Bill Clinton by a Republican-controlled Congress (1998–99) seem poor advertisements for effective checks and balances. We shall see what happens under the return of united government from January 2017 as a Republican president governs with his own party in the majority in both houses of Congress.



## Debate

### Does the US Constitution still work?

#### Yes

- Federalism has proved to be an excellent compromise between strong national government and state government diversity.
- The text has proved very adaptable to changes in American society.
- The demanding amendment process has usually prevented frequent and ill-conceived proposals for amendment.
- Rights and liberties of Americans have been protected.
- The Supreme Court's power of judicial review has made it even more adaptable through 'interpretative amendment'.

#### No

- The amendment process is too difficult, making it almost impossible to amend parts that are no longer applicable or to add parts that a majority desires.
- The power of judicial review gives the Supreme Court too much power to 'amend' its meaning.
- It is too negative, giving too much power to those who oppose change.
- Some parts make little sense in today's society (e.g. the Electoral College).
- Some parts don't work as the framers of the Constitution would have envisaged (e.g. war-making powers).

## Key term

**Federalism** A theory of government by which political power is divided between a national government and state governments, each having their own areas of substantive jurisdiction.

## Federalism

The third key principle of the Constitution is **federalism**. 'We the People of the United States, *in order to form a more perfect Union...*' So began the preamble to the new Constitution. Certainly, the first attempt at union was weak and almost disastrous. The Articles of Confederation showed just about how far the newly independent peoples of America were prepared to go in the formation of a national government — not very far, but the experience of confederacy had been educative. The compromise between a strong central government and states' rights was to be federalism. It was what James Madison called 'a middle ground'.

## Key terms

**Limited government** A principle that the scope of the federal government should be limited to that which is necessary for the common good of the people.

**Popular sovereignty** The principle, inherent in both the Declaration of Independence and the Constitution, that ultimate political authority rests with the people.

## Limited government

The framers of the Constitution wanted **limited government**, whereby government would do only what was essential, leaving the citizens' fundamental rights and freedoms as untouched as is possible in an organised and orderly society. The seventeenth-century English philosopher John Locke had grounded the case for limited government on the twin foundations of individual rights and **popular sovereignty**.

At the Philadelphia Convention, there was considerable disagreement between those who wanted the states to remain sovereign and others who wanted to create a more centralised, federal arrangement. In order to bring about agreement between the anti-federalists and the federalists, the delegates agreed on a compromise by which the power of the new federal government would remain limited in its reach. The Founding Fathers had not thrown off one tyranny in Great Britain in order to create another nearer home.

Thus the principle of limited government remains central to political debate today about the proper scope of the federal government. One sees it today in debate over the federal government's role in such issues as healthcare provision, education, immigration and gun control legislation.

James Madison, writing later in *The Federalist Papers*, put the debate this way:

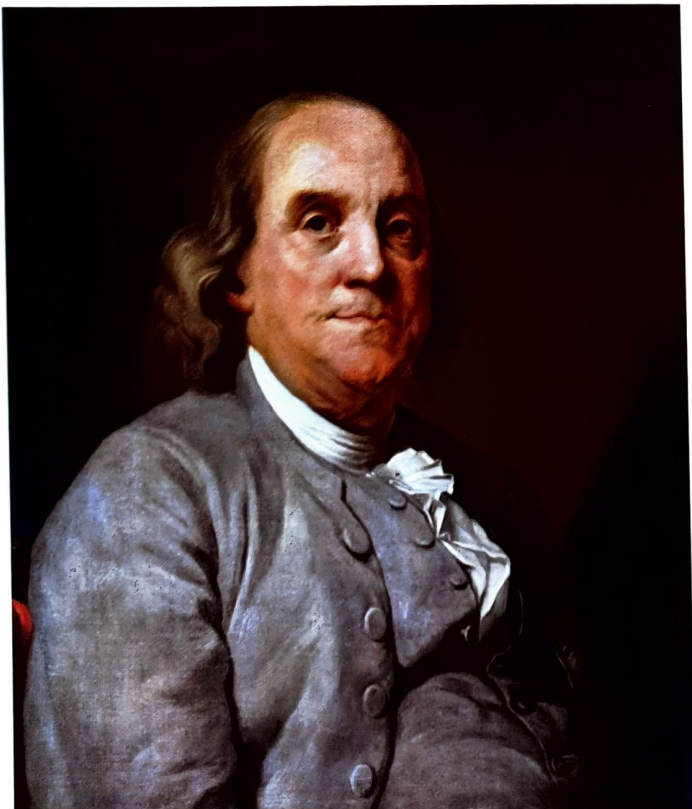
If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.



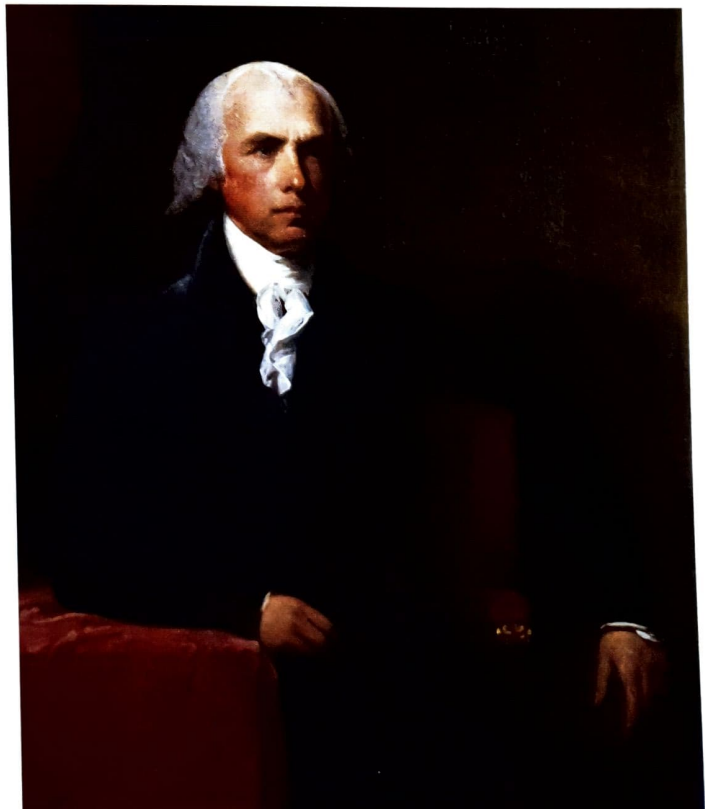
Federalism involves a degree of decentralisation, which has proved suitable for a country as large and diverse as the USA has become. As Benjamin Franklin knew at the signing of the Declaration of Independence, a certain level of national unity was vital: 'We must all hang together, or, most assuredly, we shall all hang separately.' Thus, out of the disunity of the Articles of Confederation came the *United States of America* — *E Pluribus Unum* — 'Out of Many, One'.

Under the Articles of Confederation, America had a confederacy, a loose league of friendship among the states. But the Articles soon ran into trouble, as we saw in Chapter 1, mainly because there was only a very weak central government. But Americans had fought a long war against the strong central power of the British government. They were not about to exchange a foreign tyranny for one of their own making. To the framers of the Constitution, their newly devised federal system avoided both extremes — the extreme of disunity under the Articles and the extreme of over-centralisation under Britain. As James Madison wrote, dividing power between the federal and state levels meant a 'double security' for the people. 'The different governments', he wrote, 'will control each other, at the same time that each will be controlled by itself.'

Nowhere is the word 'federal' or 'federalism' mentioned in the Constitution. How, then, was it written into the document? First, it was written into the enumerated powers of the three branches of the federal government — Congress was 'to coin money', the president was to 'be commander-in-chief' and so on. Second, it was included in the implied powers of the federal government. These are the powers that flow from, for example, the 'elastic clause' of the Constitution. Third, the federal government and the states were given certain concurrent powers: for example, the power to tax. Furthermore, the Tenth Amendment reserved all remaining powers 'to the states and to the people'. Finally, the Supreme Court was to be the umpire of all disagreements between the federal and state governments. As Chief Justice Charles Evans Hughes wrote in 1907: 'We are under a Constitution, but the Constitution is what the judges say it is.'



Benjamin Franklin (1706–90)



James Madison (1751–1836)



# The changing federal–state relationship

Federalism is not, however, a fixed concept. It is ever changing. As America has changed, so has the concept of federalism. During the latter part of the nineteenth century and the first two-thirds of the twentieth century, a number of factors led to an increased role for the federal government.

- **Westward expansion.** From 13 colonies clustered up and down the Atlantic coast, settlement spread westwards across the Appalachian mountains, over the plains of the Midwest, across the Rockies and all the way to the Pacific coast.
- **The growth of population.** Simultaneously, the population grew from just under 4 million in 1790, to 76 million by 1900, and 322 million by 2016. A growing nation required management by a growing government.
- **Industrialisation.** This brought the need for government regulation — the federal executive Department of Commerce and Labor was formed in 1903 before being split into two separate departments just ten years later.
- **Improvements in communication.** While the nation grew in size, it shrank in terms of accessibility as modern methods of communication gradually developed. Journeys that had taken weeks eventually took only days or hours as roads, railways and aircraft opened up the nation. Radio, followed by television, brought instant communication and a feeling of national identity. People could communicate with others thousands of miles away, first by telephone and now by Twitter and e-mail.
- **The Great Depression.** Events influenced the federal–state relationship, too. When the Great Depression hit the USA in 1929, the states looked to the federal government to cure their ills. The state governments did not possess the necessary resources to reverse the huge levels of unemployment, launch vast public works schemes or rescue agriculture from the effects of the dust bowl conditions. It was Franklin Roosevelt's New Deal, with its ambitious schemes to build roads and schools and provide hydroelectric power, which helped get the USA back to work.
- **Foreign policy.** With the onset of the Second World War, the USA stepped out as a world superpower and the federal government — with exclusive jurisdiction over foreign policy — found its role enhanced significantly.
- **Supreme Court decisions.** Political changes occurred to alter the federal–state relationship. Decisions made by the Supreme Court — especially between 1937 and the 1970s — further enhanced the power of the federal government through their interpretation of the implied powers of the Constitution. This was possible through the Court applying a more expansive meaning to the powers allocated to Congress in Article I, Section 8 of the Constitution, especially the 'necessary and proper clause', the 'common defense and general welfare clause' and the **commerce clause**. From the mid-1980s, under the chief justiceships of William Rehnquist (1986–2005) and more recently John Roberts (2005–), the Court has sometimes taken a more restrictive view of these clauses, thereby limiting the role of Congress in particular and the federal government as a whole. This was most clearly seen in the 2012 decision of *National Federation of Independent Business v Sebelius*, in which the Court declared that President Obama's Healthcare Reform Act could not be justified under the commerce clause, but only under Congress's power to levy taxes.

## Key term

**Commerce clause** The clause in Article I, Section 8 of the Constitution empowering Congress to regulate commerce with foreign nations and among the states.



- **Constitutional amendments.** One of the three post-Civil War amendments, the Fourteenth, changed dramatically — although not immediately — the federal government's relationship with the states. For the first time, the Constitution had been amended to impose prohibitions directly on state governments. Two requirements of the Fourteenth Amendment in particular have, over time, revolutionised the federal–state government relationship. These requirements — referred to as the 'due process' and the 'equal protection' provisions — are found towards the end of Section 1 of the Amendment. They read: 'Nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

These provisions of the Fourteenth Amendment have been used by the Supreme Court to invalidate state laws requiring public (i.e. state) school segregation and other forms of racial discrimination. Moreover, the Supreme Court has employed them to outlaw a wide array of other state laws, ranging from certain restrictions on abortion, to Florida's attempt to order a recount in the 2000 presidential election between George W. Bush and Al Gore.

Equally importantly, the passage of the Sixteenth Amendment (1913) allowed the federal government to impose an income tax. This gave the federal government the means to launch all the grand programmes that would flourish from Roosevelt's New Deal through the presidencies of Truman, Kennedy and Johnson to the late 1960s.

## Phases of federalism

In the period from the 1780s to the 1920s, the individual state governments exercised most political power. The focus was very much on states' rights. But following the devastating effects of the Wall Street Crash and the Great Depression, the period from the 1930s to the 1960s saw a significant increase in the power and scope of the federal government. During this period, the federal government made increasing use of categorical grants — schemes by which it was able to stipulate how federal tax dollars were used by the states.

During the final three decades of the twentieth century, however, there was a discernible movement towards decentralisation — what President Nixon called **new federalism**. This era saw the rise of block grants — money given to states by the federal government to be used at their discretion within broad policy areas. This change in the federal–state relationship coincided with the administrations of four Republican presidents: Richard Nixon, Gerald Ford, Ronald Reagan and George H.W. Bush. But in some ways, the states did not benefit much from these new trends in federalism. As the federal deficit increased in the 1980s, federal programmes were cut. This gave rise to a new term — the **unfunded mandate** — by which the federal government would legally require states to perform some function without providing any money with which to fund it.

By the mid-1990s, however, with a new Republican majority in both houses of Congress, Washington was once again talking of devolving power back to the states. One might therefore refer to these decades as an era of 'zigzag federalism', for during this period, while in some policy areas states gained greater flexibility and autonomy to experiment with new policy approaches, in other areas Washington exercised stricter control. This kind of inconsistency was to be seen during the second Bush presidency, and especially after the events of 11 September 2001.

### Key terms

**New federalism** An approach to federalism characterised by a return of certain powers and responsibilities from the federal government to the states.

**Unfunded mandate** A federal law requiring states to perform functions for which the federal government does not supply funding.





Map of the USA in state licence plates

### Key term

**Great Society** Democratic president Lyndon Johnson's programme of economic and social reforms and welfare schemes — announced in May 1964 — to try to solve America's problems of poverty, malnutrition, poor housing and access to medical care.

## Federalism under George W. Bush (2001–09)

When George W. Bush arrived in Washington in January 2001, one would have presumed that as a Republican president he would continue the moves towards shrinking the size of the federal government and of decentralisation. But one of the most unexpected facts about the administration of George W. Bush was that he presided over the largest overall increase in inflation-adjusted federal government spending since Lyndon Johnson's **Great Society** programme of the mid-1960s. Total federal government spending grew by 33% during Bush's first term (2001–05). The federal budget as a share of the economy grew from 18.4% of gross domestic product (GDP) in 2000, Clinton's last full year in office, to 20.5% in 2008 — Bush's last full year in office. Four policy areas accounted for this expansion of the federal government under George W. Bush — education, Medicare, homeland security along with national defence, and finally the economy and jobs following the Wall Street and banking collapse of 2008.

### Education

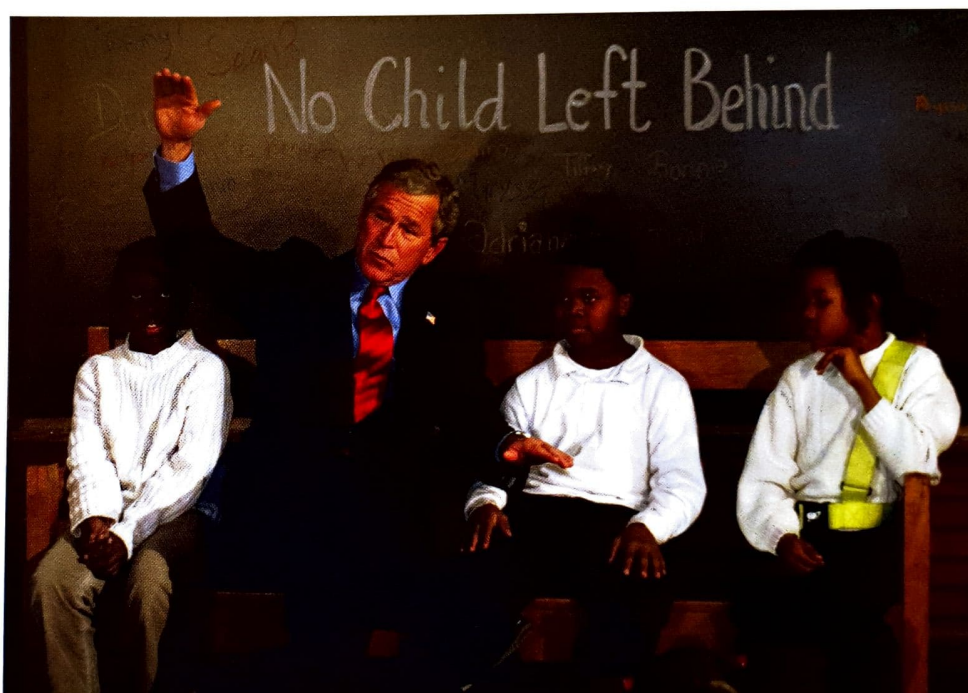
As governor of Texas, George W. Bush had focused on education as one of the most important areas of policy and he brought the same focus to Washington in 2001. Education had been a cornerstone of George W. Bush's 2000 election campaign with its slogan of 'No child left behind'. Now, as president, Bush wanted to use the re-authorisation of the 1965 Elementary and Secondary Education Act as a vehicle for his education reforms. The No Child Left Behind Act, signed into law by President Bush in January 2002, ushered in the most



sweeping changes in federal education policy since the 1960s. In what was a major expansion of the federal government's role in education, the new law mandated that the states test children annually in grades 4 to 8 (equivalent to Years 3 to 7 in the UK) using, in part, a uniform national test. It required that children in failing schools be moved to successful ones and provided for a 20% increase in funding for the poorest, inner city schools. It tripled the amount of federal funding for scientifically based reading programmes. For Bush, this was the federal government as enabler. At the bill-signing ceremony at the White House, he declared:

The federal government will not micromanage how schools are run. We believe strongly the best path to education reform is to trust the local people. And so the new role of the federal government is to set high standards, provide resources, hold people accountable, and liberate school districts to meet these standards.

Significant questions remain as to the effectiveness of Bush's much-trumpeted education reforms. But whatever else the No Child Left Behind Act was, it signalled a whole new approach to federal–state relations for a Republican president.



George W. Bush's No Child Left Behind Act ushered in sweeping changes in federal education policy

### Key term

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

## Medicare

**Medicare** is a federal government healthcare programme for the over-65s introduced in 1965 by Democrat president Lyndon Johnson. In December 2003, George W. Bush signed a major Medicare expansion bill into law which included a new prescription drug benefit. The measure was estimated to cost \$400 billion in its first ten years and was written to benefit American seniors. That a Republican president should preside over the modernisation and expansion of Medicare was certainly something of an irony. But a number of conservative Republicans were critical of the price tag of the reforms as well as of the fact that a Republican president was supporting such a huge expansion of a federal government programme. In the House, 25 Republicans voted 'no' on its final passage, as did nine Republicans in the Senate.



## Homeland security and defence

Between 2001 and 2009, spending by the Department of Defense increased from \$290 million to \$651 million, an increase of 125%. Between 2001 and 2006, spending on homeland security increased from just \$13 million to \$69 million — more than a five-fold increase in five years. Both these increases were, of course, the direct result of the events of 11 September 2001, and the subsequent military operations in both Afghanistan and Iraq, as well as the 'war on terror' and the push to increase homeland security significantly. Defence spending rose during the George W. Bush years from 15% of the federal budget to 21%; homeland security from less than 1% to just shy of 3%.



Aerial view of damage caused at the Pentagon (Department of Defense), 11 September 2001

## Economy and jobs

There was yet another extraordinary example of big-government Republicanism in September 2008 when President Bush authorised Secretary of the Treasury Henry Paulson to take control of two troubled privately owned but government-sponsored mortgage companies — the Federal National Mortgage Association, known as Fannie Mae, and the Federal Home Loan Mortgage Corporation, known as Freddie Mac. Together Fannie Mae and Freddie Mac owned or guaranteed about half of the \$12 trillion US mortgage market and had suffered huge losses with the collapse of the housing market. 'In Crisis, Paulson's Stunning Use of Federal Power', headlined *The Washington Post's* front page the day after Paulson's announcement. 'Not since the early days of the [Franklin D.] Roosevelt administration, at the depth of the Great Depression, has the federal government taken such a direct role in the workings of the financial system,' wrote the *Post's* Steven Pearlstein in the related article. This was followed by the Bush administration's sponsorship of a \$700 billion so-called 'bail-out' package for Wall Street to alleviate the effects of the credit crunch. Again, this looked more like the policies of a New Deal Democrat than of a conservative Republican. The package was passed through Congress by mostly Democrat votes.

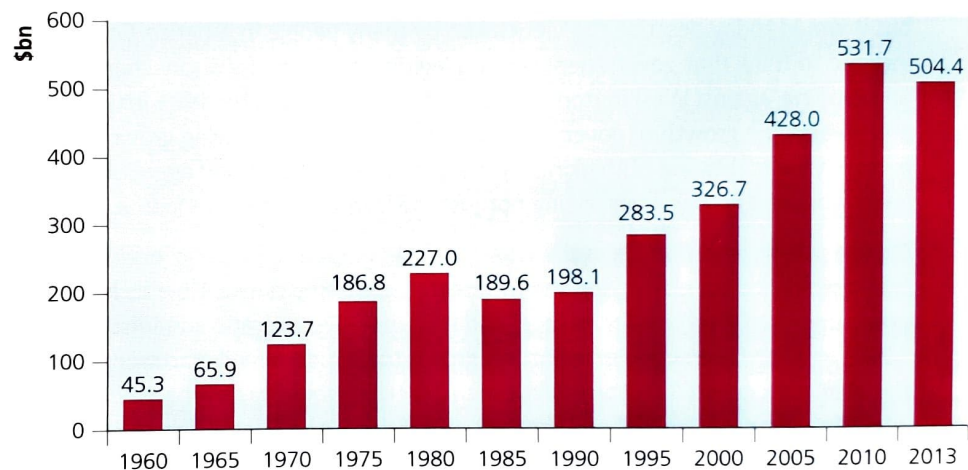
## Federalism under Barack Obama (2009–17)

Whereas the Bush administration concentrated in its second term on war and terrorism, the Obama administration was more focused on domestic policy as a way of delivering his 'change' agenda as announced during his 2008 presidential



campaign. This had a profound effect on the relationship between Washington and the states. War and security against terrorism are conducted exclusively by the federal government; domestic policy is increasingly the domain of the states. As a result of Obama's first-term policies, a number of changes in the federal–state relationship were observed.

By 2012 the ratio of state and local government employees to federal employees was the highest since before President Roosevelt's New Deal in the 1930s. Federal government assistance to the states increased from 3.7% of gross domestic product (GDP) in the last year of the Bush administration (2008) to 4.6% of GDP in the first year of the Obama administration (2009). Similarly, money from the federal government, which accounted for 25% of state government spending in 2008, accounted for 30% of such spending in 2009. Whereas under Bush's economic stimulus package (2003) just \$20 billion went to the states, under Obama's stimulus package (2009) \$246 billion went to or through the state governments. This significant increase in federal money going to the states between 2005 and 2010 (see Figure 2.1) came partly as a result of such programmes as: the re-authorisation of the State Children's Health Insurance (S-CHIP) programme in 2009; the expansion of Medicaid (a health insurance programme for the poor); and over \$4 billion invested in the Race to the Top programme to boost education in the states, as well as programmes like the Pell Grants for university education.



Source: United States Office of Management and Budget

**Figure 2.1** Federal grants to states and localities, 1960–2013 (in billions of 2005 dollars)

### Key term

**Tea Party movement** A conservative grassroots organisation formed to oppose the legislation passed by Congress in 2008–09 in the aftermath of the banking and financial collapse of 2008. It supported reducing government scope and spending, as well as the lowering of tax levels.

But the aspect of Obama's legislative programme which came in for most criticism regarding its implications for the federal–state relationship was his healthcare reform legislation. Many Republicans saw the passage of this programme in 2010 as 'the end of federalism' and there were those in the **Tea Party movement** who accused Obama of being more of a socialist than a federalist. The argument centred on the provision in the law whereby those Americans who could not afford to buy health insurance would be covered by an expansion of the federal–state Medicaid programme. States had to participate in this expansion of Medicaid or lose all their federal funding for Medicaid, the federal government's largest grant programme.

A number of states sued, arguing that this was a violation of the principles of federalism and was therefore unconstitutional. Their contention was that this



provision in the law amounted to coercion rather than persuasion. In *National Federation of Independent Business v Sebelius* (2012), the Supreme Court agreed with this argument and struck down the Medicaid provision in the law — a victory for the states. Thus Obama's expansive view of the federal government was somewhat curbed by the Supreme Court's decision. Although most of the Affordable Care Act was allowed to stand by the decision, the philosophical argument underpinning the decision was clearly based on a more limited role of the federal government than President Obama and the Democrats in Congress had claimed.

By the close of the Obama presidency, Americans' views on the federal government were decidedly negative. Exit poll data in the 2016 presidential election showed that only 29% of voters were either enthusiastic about or satisfied with the federal government, while 69% were either dissatisfied or angry. Furthermore, by a narrow margin, more thought that the government was 'doing too much' (50%) than that thought it 'should do more' (45%).

## Activity

Read the following article and then answer this question:

### Is Washington doing too much or too little?

Give reasons for your answer.

Thomas Paine wrote in *Common Sense* in 1776: 'Government, even in its best state, is but a necessary evil; in its worst state, an intolerable one.' The line helped to inflame the American Revolt against British government then, but it would today describe the view taken by many people in America. Conservatives have always been more inclined to think that government is not a legitimate engine for social change. Politicians have been campaigning and running 'against Washington' for years. Ronald Reagan in his 1981 inauguration speech said: 'It is time to check and reverse the growth of government which shows signs of having grown beyond the consent of the governed.' In recent years this line of thinking has become more strident and aggressive with the emergence of the Tea Party and associated groups, questioning not just the laws as passed by Obama, but even his entitlement to office.

On the other hand, liberals in the USA have laid great emphasis on 'elastic clauses' in Article 1, Section 8: the implied powers clause and the interstate commerce clause. Liberals have never questioned the role of government as a vehicle for change, and it is under Democratic administrations — in the New Deal era, and the 1960s — that federal government has grown to include new departments and agencies, tasked with regulating the economy, controlling the environment, tackling social problems. As is often the case, the left has been in awe of the populist appeal and rhetoric of the right, and Clinton felt obliged to promise in 1996 that 'the era of big government is over', but he could not have foreseen the events that were to follow.

During the George W. Bush administration:

- Federal grants to the states reached unprecedented levels, growing from \$318 billion to \$407 billion in the first term alone, largely as a result of 9/11 and Bush's No Child Left Behind education reforms.
- State initiatives in such policy areas as assisted suicide, medical use of marijuana and same-sex marriage were overridden by the federal government.
- The country's two largest mortgage companies — Fannie Mae and Freddie Mac — were effectively nationalised.

During the Obama administration:

- The American Recovery and Reinvestment Act (2009) provided \$275 billion in economic aid in such areas as transportation, energy, public safety and IT provision.
- The Patient Protection and Affordable Care Act (2010) — commonly known as Obamacare — cost the federal government \$938 billion over ten years.
- The American Jobs Act (2011) provided \$140 billion in federal government grants for modernising schools and repairing roads.



- The President signed an Executive Order — Deferred Action for Childhood Arrivals (2012) — that conferred non-immigrant legal status on around 1.7 million illegal immigrants who came to the United States before their 16th birthday, were under 31 years of age, had completed high school, and had no serious criminal record.
- The President signed an Executive Order — Deferred Action for Parents of Americans (2014) — offering temporary legal status to millions of illegal immigrants, along with an indefinite reprieve from the threat of deportation.

So is Washington doing too much or too little? The answer to this question will depend on how Americans feel about the economic and social developments since 2008. If the person asked is left-leaning, or has one of the jobs created by the stimulus package, or newly has health insurance, or may benefit from changes in immigration policy, or is alert to the economic difficulties of the global financial crisis, then they will likely think favourably of the federal government. On the other hand, if one starts from a position of fiscal conservatism, worried about the deficit, worried about paying it back, paranoid that the federal government will introduce gun controls, opposed to immigration reform, and fearful that it also promotes activities considered immoral, then the answer will be very different. One thing is for certain — the debate is a potent one, and strong feelings are held on both sides.

Source: an abridged and updated version of an article by Robert Fletcher, *Politics Review*, Vol. 22, No. 1, September 2012

## Consequences of federalism

Federalism has consequences throughout US government and politics.

- **Legal consequences.** There is tremendous variety in state laws on such matters as the age at which people can marry, or can drive a car, or have to attend school. Laws vary on drugs and whether the death penalty is used. There are both federal and state courts.
- **Policy consequences.** The states can act as policy laboratories, experimenting with new solutions to old problems. Of late we have seen this in such areas as healthcare provision, immigration reform, affirmative action programmes and environmental policies. Healthcare reform in Massachusetts and immigration reform in Arizona have both received considerable national attention, though much of the latter was declared unconstitutional by the Supreme Court in 2012.
- **Consequences for elections.** All elections in the United States are state-based and run under state law. Even the presidential election is really 50 separate state-based elections with the outcome decided by a state-based Electoral College. Each state decides such matters as: how candidates will be chosen for elections in their state; the procedures for getting a candidate's name on the ballot paper; what mechanisms are used in polling stations — punch cards or touch-screen computers. Arizona has experimented with on-line voting while both Washington State and Oregon have moved to an entirely postal ballot.
- **Consequences for political parties.** It is important to realise that political parties in America are essentially decentralised, state-based parties. Texas Democrats are more conservative than Massachusetts Democrats; Vermont Republicans more liberal than South Carolina Republicans. One can see the effects of federalism in the United States Congress with its state-based representation. The consequences of federalism were highlighted in the 2016 presidential nomination contest when Republicans in Colorado, North Dakota and Wyoming decided not to hold either a primary or a caucus, but to choose their national convention delegates through a state party convention, much to Donald Trump's chagrin. There was nothing the national Republican Party could do about it.





The Affordable Care Act ('Obamacare') significantly expanded federal funding of Medicaid and was widely opposed by Republicans.

- **Economic consequences.** These are seen not only in the huge federal grants going to the states, but also in the complexity of the tax system in America. Income tax is levied by both the federal government and some state governments, different property taxes are levied by the state governments, and sales taxes vary between cities.
- **Regionalism.** The regions of the South, the Midwest, the Northeast and the West have distinct cultures and accents, as well as racial, religious and ideological differences. There is a distinct difference between the conservatism of the Deep South and the liberalism of the Northeast. What plays well in 'the Bible Belt' may not be popular in 'New England'.

When all is said and done, federalism has proved to be an appropriate system of government for the United States. It has adapted itself to the ever-changing nation. Despite its frustrations, there are few who question its future. Some Americans may think the federal–state relationship has at times got out of kilter, but most believe that its strengths far outweigh its weaknesses.

## Debate

### Does federalism work today?

#### Yes

- It permits diversity.
- It creates more access points in government.
- It provides a 'double security' for individual rights and liberties.
- It makes states 'policy laboratories', experimenting with new solutions to old problems.
- It is well suited to a geographically large and diverse nation.

#### No

- It can mask economic and racial inequalities.
- It can frustrate the 'national will'.
- It makes problem solving more complicated.
- The relationship between federal and state governments can become a source of conflict and controversy.
- It is overly bureaucratic — and therefore costly to run and resistant to change.



## Comparing the US and UK constitutions

A constitution is a framework within which a country's system of government is conducted — the rules that govern the relationship between the government and the governed. Constitutions establish the duties, powers and functions of the various institutions of government. They define the relationship between the state and the individual.

### The origins of the two constitutions

'If the British Constitution developed in the mists of time, the American Constitution emerged in the mists of gunpowder smoke, the creature of a revolution' (Walles, 1988). Thus the two constitutions are partly shaped by their origins — the British Constitution by evolution, the American Constitution by revolution. The American Constitution burst onto the political stage in 1789 almost fully grown. The British Constitution has emerged piecemeal over centuries. Both constitutions are therefore partly a product of the culture and societies that shaped them. The kind of national and political upheaval seen in America in the late eighteenth century has not been seen in Britain since the Norman Conquest of the eleventh century. The English Civil War of the seventeenth century failed to have similarly long-lasting effects as the monarchy was quickly restored and the evolutionary development continued. Even the so-called Glorious Revolution of the 1680s, accompanied as it was by the drawing up of a Bill of Rights, failed to give birth to any new formal statement of governmental relationships.

The differences in their origins, and the differences in the two cultures from which they grew, shape the two constitutions. The US Constitution is largely shaped by the expectations, fears and culture of America in the late eighteenth century. It is shaped by the expectations for such ideas and beliefs as liberty, individualism, equality, representative democracy, limited government, states' rights and the rule of law. These form the core values of America's political culture. The Constitution is shaped by a society that had broken free from a distant and autocratic monarchy, and that was largely accepting of slavery, fearful of state-organised religion, and deferential to fundamental rights and liberties, including gun ownership. All these — and many other — characteristics of late eighteenth-century American society can be found in the original seven Articles and the first ten Amendments. We can see these cultural and societal norms in such constitutional provisions as:

- the federal system of government
- the strict separation of personnel between the three branches of the federal government
- the First Amendment requirement that 'Congress shall make no law respecting an establishment of religion'
- the Second Amendment's provision that 'the right of the people to keep and bear arms shall not be infringed'

And as American society and culture changed, so the Constitution was further amended to reflect these changes, such as:

- the Thirteenth, Fourteenth and Fifteenth Amendments following the Civil War and the emancipation of the slaves
- the Eighteenth and Twenty-First Amendments reflecting the era of Prohibition
- the Nineteenth Amendment reflecting the emancipation of women
- the Twenty-Fourth Amendment reflecting the civil rights movement



The British Constitution, on the other hand, is different largely because it is the product of a different culture. It has been shaped by and has evolved within a society and culture dominated by a belief in a constitutional monarchy, a deferential class system and an established church. We can see these effects of British society and culture in:

- the role and power of the monarchy
- the presence of hereditary peers in the House of Lords (although now in much-reduced numbers)
- the inclusion of the two archbishops and 24 of the bishops of the Church of England in the House of Lords



Archbishop of Canterbury, Justin Welby, in the House of Lords

In these and others ways, these two sharply different constitutions reflect the sharp differences between the cultures of the two nations they serve.

## The nature of the two constitutions

The constitutions of the USA and the UK are fundamentally different not only in their origin but in their nature. They are structurally different. Whereas the USA — like the vast majority of democracies — has a codified constitution, the UK has an uncoded constitution. A codified constitution is one in which most of the rules concerning the government of the nation are drawn together in one document. The United States has a single document running to no more than 7,000 words which contains most of the country's constitutional arrangements. However, even a codified constitution often contains parts that are uncoded. For example, the US Constitution contains no mention at all of such important matters as primary elections, congressional committees, the president's cabinet, or the Executive Office of the President, nor even of the most significant power of the Supreme Court — judicial review.

Convention can become part of the constitution even in a codified arrangement. When President George Washington declined to seek a third term of office in 1796, he put in place the convention of a two-term limit on the presidency — a convention that held for well over a century until broken by Franklin Roosevelt in 1940. It was only after Roosevelt had been elected to a



third (1940) and a fourth (1944) term that the convention was formalised in the codified document as the Twenty-Second Amendment (1951).

### Advantages and disadvantages

#### The codified constitution

##### Advantages

- All the constitutional provisions can be found easily in one document.
- The provisions within the constitution are entrenched and therefore protected from arbitrary change.
- It provides more significant and effective checks and balances between the various branches of government.
- It can be made surprisingly flexible by judicial interpretation.

##### Disadvantages

- It tends to elevate the importance of unelected judges over elected officials.
- It can be inflexible and therefore fail to change as society changes.
- The enumeration of rights and liberties does not necessarily mean that those rights and liberties are safeguarded in reality.
- It tends to be less 'evolutionary'.

Similarly, although the UK is said to have an uncodified constitution, it is certainly not entirely unwritten. Indeed, much of the UK Constitution is written down — for example, in Acts of Parliament, Common Law, and works of authority such as those by Erskine May (1815–86) and Walter Bagehot (1826–77). It is simply not collected together into a document called 'a constitution'.

Another important difference relates to the matter of entrenchment (see page 22). Entrenchment is a feature of most written constitutions that makes amendment deliberately difficult. The reason for this is a belief that the specific rights and provisions that are enshrined in the constitution should not be subject to change by a passing whim, even if the change is supported by a majority of the electorate. Indeed, entrenchment means that not only is the process for amending a constitution a difficult one, but it must be supported by a super-majority. Two examples will illustrate this point.

Under Article I of the United States Constitution, the length of terms for members of the House of Representatives and the Senate is fixed at two and six years respectively. So to change the length of those terms of office would require a constitutional amendment with the necessary super-majorities in both houses of Congress and among the state legislatures. The length of terms for members of the UK House of Commons is fixed at five years. But this is fixed merely by an Act of Parliament — the Fixed-Term Parliaments Act (2011). So all that would be required to change the length of that term of office would be another Act of Parliament — passed by simple majorities in both houses of Parliament. In the United States the provision for legislators' terms of office is entrenched, while in the UK it is not.

The United States Constitution also entrenches a number of rights and liberties, including the Second Amendment right to 'keep and bear arms'. But in the United Kingdom, the rights of gun owners have no such entrenched protection and can be changed simply by Act of Parliament. Following the Dunblane Massacre in 1996 in which 16 children and a teacher were killed, Parliament passed the Firearms (Amendment) (No. 2) Act (1997) banning





The US Supreme Court chamber

high-calibre handguns. Here again we see the difference in the cultures of the countries. Whereas in the United States a culture enshrining belief in individualism is careful to protect the right of individuals to own firearms, in Britain where the culture is quite different such a liberty is regarded by most as a weird anachronism bordering on extremism and paranoia.

## Democracy and sovereignty in the two constitutions

Here again, the US and the UK constitutions differ significantly. Although both constitutions can be said to be based on the principle of democracy, the two have evolved at different speeds to different conclusions. In the USA, as a result of the culture of the nation, the concepts of direct democracy and popular sovereignty are — and always have been — more in evidence. So, although both constitutions are based on democracy, the shared ideas and beliefs that shaped them are different.

The US Constitution allows Americans a much greater role in the electoral processes of their nation than does the UK Constitution for people in Britain. Between the 1780s and the 1880s, the US House of Representatives was elected on a far wider franchise than the UK House of Commons. The Senate has been directly elected since 1914 whereas Britain's second chamber still has no elected members at all. The election of the US president has evolved from an indirect to a virtually direct election. The significant growth of the direct primary through the twentieth century allows ordinary voters to participate in candidate selection for elections at all levels of government. Moreover, in the states, the initiative, referendum and recall procedures allow a high level of direct participation. The Tenth Amendment clearly sets out where power resides — with the people.

By contrast, the UK Constitution emphasises representative democracy and parliamentary sovereignty. British citizens — who are, strictly speaking, 'subjects of the Crown' — have fewer opportunities for democratic participation than their American counterparts. Again, this reflects the cultural heritage of the UK. They can elect members of only one of the two houses in Parliament and the UK prime minister is not subject to any direct election. The second chamber is still appointed and the hereditary monarch and Parliament remain sovereign, not the people. A recent innovation, however, has been the use of referendums,



of which there have now been 13 since 1973, but only three of these (in 1975, 2011 and 2016) have been nationwide.

## The provisions of the two constitutions

Despite these significant differences, the two constitutions make some very similar broad provisions. Both provide for systems of government that could be described as representative democracies. Both provide for national governments divided into three branches — a legislature, an executive and a judiciary. Both provide for a bicameral legislature. Both — now — provide for a Supreme Court, for fixed-term elections (with some wiggle room in the UK) and for sub-national governments: state governments in the USA, and devolved governments for Scotland, Wales and Northern Ireland in the UK.

But those similarities mask a host of differences. Both constitutions provide for three branches of government, but the way in which they share power, and the way in which their personnel are either separate (in the USA) or fused (in the UK) makes a substantial difference to the way things work. Both provide for bicameral legislatures, but the US Senate bears little resemblance in selection, membership or powers to the UK House of Lords. The two supreme courts may share the same name, but if one were to allow canine illustrations, the one in the United States is a mastiff compared to the UK's chihuahua. From 2011, the UK House of Commons was subject to fixed-term elections, but as we discovered in April 2017, the terms were not that fixed. When Prime Minister Theresa May announced her intention to call an early election — in June of that year — all she required was a two-thirds majority vote in the House of Commons as laid down in the 2011 Act. The vote was 522–13. May then announced at the launch of the Conservative Party manifesto that if returned to government, it was their intention to repeal the Act. Furthermore, the relationship between London and the devolved governments in Scotland, Wales and Northern Ireland is in no way the same as that between Washington and the states. Thus although the provisions of the two constitutions may be superficially similar, they are marked by significant differences. We shall now proceed to consider these differences in three important areas: separation/fusion of powers, checks and balances, and federal/devolved systems.

### Separation/fusion of powers

The US Constitution is said to be based on the doctrine of the separation of powers. But as we have seen, this is better understood as the doctrine of shared powers. This is especially important when considering the relationships between the legislature and the executive under each constitution. Under the US Constitution, both these branches are entirely separate. Neither the president, nor the vice president, nor any of the department or agency heads can be serving members of the legislature, nor may any serving member of Congress hold any executive office. The president cannot prematurely end a Congress and call new elections, and neither can Congress remove members of the executive branch, except for 'high crimes and misdemeanours' by impeachment. And even were the president to be removed from office, the vice president would immediately and automatically take over. There would be no new elections.





The UK Supreme Court in London, with a statue of Abraham Lincoln in the foreground

But under the UK Constitution there is said to be a fusion of powers. British ministers operate in both the executive and legislative branches, heading government departments at the same time as being members of Parliament. As MPs they pass legislation and as members of the executive they are also responsible for its implementation. The prime minister is both head of the executive branch as well as leading their party in the House of Commons. Parliament can cause the downfall of an entire government through a No Confidence vote, as occurred to the Labour government of Prime Minister Jim Callaghan in 1979. Until the setting up of the UK Supreme Court in 2009, the Law Lords in the House of Lords served concurrently in both the legislature and the judiciary, and the Lord Chancellor served in all three branches, being also a member of the cabinet. These differences are largely the product of the structural differences between the two systems of government, reflecting the cultural differences at work in the two countries.

But this is only one side of the coin. The other side is what we call checks and balances, and this is especially pertinent when it comes to relations between the executive and the legislature.

## Checks and balances

Checks and balances is the principle that gives each of the three branches of government the means to partially control the power exercised by another branch. This principle runs like a seam through the US Constitution and it speaks eloquently of the fears of the Founding Fathers — fears of executive power, and the tyranny of the government over the people. 'Ambition must be made to counteract ambition,' wrote James Madison. By an intricate series of checks and balances, 'a double security arises to the rights of the people,' he continued. So, once more, we see that constitutional differences between the USA and the UK reflect cultural differences between the two nations as they developed. To put it somewhat crudely, the US Constitution was written to protect the rights of the governed; the UK Constitution evolved to protect the powers of the government. Checks and balances were the means by which the rights and freedoms of Americans would be protected. They would limit the power of government. The



end result is diffusion of power and the obstruction of strong government. But give it a more contemporary name, and one often ends up with gridlock.

Under the UK Constitution, things are quite different. The prime minister draws up legislative proposals which their ministers then introduce into and shepherd through Parliament with a (virtually) guaranteed parliamentary majority. The prime minister is leader of the largest (usually the majority) party in the House of Commons. The five-yearly general election decides both the make-up of the House of Commons and the identity of the prime minister. The end result is concentration of power and the promotion of strong, usually one-party government. But the danger — certainly to the eyes of American observers — is of an overly autocratic government that is careless of the rights of individuals and minorities.

## Federalism/devolution

The USA has a federal system of government in which political power is divided between a national government and state governments, each having its own area of substantive jurisdiction. Americans think of themselves as Floridians, Virginians, New Yorkers or whatever. Federalism is very appropriate to a country as large and diversified — in race, culture, language and economy — as the USA. It also adds yet another layer of checks and balances, and thereby further limits governmental power.



New York State Capitol, Albany, New York

### Key term

**Devolution** The statutory granting of powers from the central government to a sub-national government.

For centuries, the UK could be described as a unitary system of government with all political power emanating from the central government in London. But nowadays it can best be described as a **devolved** form of government in which certain powers are the prerogative of the central government while the exercise of other powers is devolved to the principalities of Scotland, Wales and Northern Ireland. Once again, the differences emanate from the structural differences between the two systems of government as well as the cultural differences which were at work as the two nations developed their respective systems of government.

But federalism and devolution are two quite different political animals. In a federal system, certain powers are granted solely to the national government, other specific and substantive powers are granted solely to the state governments, and some powers are shared. The states are not subservient to the national





The chamber of the Scottish Parliament

government. Diagrammatically, the states are not *below* the national government but *alongside* it, sovereign in their own areas of substantive jurisdiction.

But in a devolved system such as exists in the UK, the national government is sovereign. All devolved governmental power exists only with the agreement of the national government. It may cede more powers to the devolved government. Equally, it may reclaim them. In 1972, the UK government suspended the Northern Ireland Parliament at Stormont and replaced it by direct rule from the Westminster Parliament. Devolution is essentially no more than decentralisation on a grander scale within a unitary system of government.

That said, both federalism in the USA and devolution in the UK seek to serve the same purpose — to give power and legitimacy to local communities in the nation and to give voice to growing regional or, as in the case of Scotland, nationalist pressures. They are both mechanisms for answering calls for government to be 'nearer to the people' and to attempt to overcome a feeling of distant alienation from those furthest from the centre of national power.

Both systems also encourage a debate as to how much autonomy the sub-national governments should be granted. In the USA, this has been seen in a debate between the centralising tendencies of the first half of the twentieth century as the Democrats' programmes sought to increase the power and economic clout of Washington at the expense of the states, as compared with moves towards more decentralisation and 'states' rights' by Republican presidents such as Richard Nixon and Ronald Reagan. Likewise in the UK, there was a lengthy debate during the second half of the last century as to whether devolved powers should be granted to Scotland and Wales. But since these principalities were granted their own legislative and executive powers, there has been a continuing debate — especially in Scotland — as to how much these powers should be increased. Devolution has also led to calls by some for Scotland to become an independent nation, showing another significant difference between federalism and devolution within a unitary system.



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## Further reading

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 Singh, R., 'The US Constitution: does it ensure limited government?' *Politics Review*, Vol. 23, No. 3, February 2014.

There are a number of websites you can consult to follow up topics raised in this chapter. To find information on the US Constitution as well as on proposed and failed amendments, the following sites will be useful:

[www.constitutioncenter.org](http://www.constitutioncenter.org)  
[www.usconstitution.net/constam.html](http://www.usconstitution.net/constam.html)

Other sites of interest are:

[www.governing.com](http://www.governing.com)  
[www.usa.gov](http://www.usa.gov)  
<https://fedstats.sites.usa.gov>  
[www.nga.org](http://www.nga.org)  
[www.census.gov](http://www.census.gov)  
[www.ncsl.org](http://www.ncsl.org)

As regards the three branches of government — Congress, the president and the Supreme Court — you will find information on websites relating to each at the beginning of the relevant chapters.

## Exam focus

### Edexcel

#### Section A (Comparative)

- 1 Examine the extent to which the US and UK constitutions adhere to the doctrine of the separation of powers. (12)
- 2 Examine the provision of checks and balances in the US and UK constitutions. (12)

#### Section B (Comparative)

*In your answer you must consider the relevance of at least one comparative theory.*

- 1 Analyse the significant differences between the US and UK constitutions. (12)
- 2 Analyse the differences between federalism in the US Constitution and devolution in the UK Constitution. (12)