

# The Constitution

In this section you will be examining aspects of the UK political system:

- how it operates
- how it has evolved over time
- in particular, how it has changed as a result of reforms introduced since the election of the New Labour government in 1997.

There will be a particular focus on one of the most important developments: the process of devolution, which includes the dispersal of power from the central government in London to new bodies in different parts of the UK.

You will also be considering the arguments for making further changes in the future.

## Key term

### Constitution

a set of laws and guidelines setting out how a political system works, and where power is located within the system. It defines the powers and functions of government and the rights of ordinary citizens in relation to the government.

## 1.1 The development, nature and sources of the UK constitution

### The development of the constitution

The UK constitution is different from those of most of its neighbours because, for a long period, the country has not undergone a fundamental, transforming change, such as a revolution or a military defeat followed by occupation by a foreign power. Instead the political system of the UK has evolved gradually and, at least since the civil wars of the 17th century, without dramatic breaks in continuity. This contrasts, for example, with the United States, whose constitution dates from 1787 after the American people had established their independence from Britain and their leaders had decided how they wanted to govern themselves.

Elements of the UK constitution can be traced back more than a thousand years. In the Middle Ages power was concentrated in the hands of the monarch. However, in order to govern the country, the Crown required the co-operation of a class of landowning nobility, who gradually gained more rights over time. From the 13th century the nobles and other interest groups gained representation in an assembly – Parliament – that met to advise the monarch, pass laws and give consent to taxation. Parliament consisted of an upper house, made up of the hereditary aristocracy and senior members of the Church (the House of Lords), and an elected House of Commons, which initially consisted of representatives of the landed gentry and prosperous merchants. The Commons increasingly took on a representative function, and expected to be heard when it presented grievances to the monarch.

The balance of power between Crown and Parliament was adjusted in favour of the latter as a result of the civil wars of the mid-17th century. By the 19th century, Britain was governed by a constitutional monarch who acted on the advice of ministers. The ministers were accountable to Parliament as the country's supreme law-making body. Voting rights were progressively extended to the middle- and working-classes, creating a more democratic society by the early 20th century, and ending the monopoly of power traditionally enjoyed by the aristocratic elite. Within Parliament this was reflected in the emergence of the elected House of Commons as the more powerful of the two chambers.

In parallel with these developments, it was recognised from the 17th century that the judiciary should be independent of political influence and control. Judges became increasingly important through their role in upholding the rule of law; the idea that no body, including the government, should be above the law.

Even if it lacks a single founding document, the UK constitution does have important written components. Table 1.1 shows the most important historical 'landmark' documents that have influenced the growth of the UK's political system, some of which date back several centuries. The overall effect of these developments has been to:

- reduce the powers of the monarchy, and to extend those of Parliament
- increase the rights and freedoms of the ordinary citizen
- draw together the component parts of the United Kingdom
- increase the power of the elected House of Commons at the expense of the unelected House of Lords
- define the UK's relationship with the institutions that later evolved into the European Union.

Document	Date	Overview	Development of constitution
<b>Magna Carta</b> also known as the Great Charter	1215	Agreement between King John and the barons, who had rebelled against the abuse of royal power. Largely a concession to specific demands of the nobility. Many clauses have been repealed or superseded by later legislation. Remains a powerful symbol of English liberties.	Magna Carta stated the principle that no one should be deprived of liberty or property without due process of law.
<b>The Bill of Rights</b>	1689	Passed by Parliament in reaction to the arbitrary rule of King James II, who was driven from the throne in the 'Glorious Revolution'. His successors - William III and his wife, Mary II - affirmed the rights of Parliament when they accepted the throne.	The Bill of Rights included provisions for: <ul style="list-style-type: none"> <li>• regular parliaments</li> <li>• free elections</li> <li>• freedom of speech within Parliament.</li> </ul>
<b>The Act of Settlement</b>	1701	Motivated by a desire to exclude from the throne James II and his heirs. At the time their adherence to the Catholic religion was widely associated with tyrannical rule.	The act established the right of Parliament to determine the line of succession to the throne.
<b>The Acts of Union</b>	1707	United England and Scotland, which had had a shared monarch since 1603 but had retained two separate parliaments. Both countries were now placed under one Parliament based in Westminster.	This was the basis of the United Kingdom until Tony Blair's New Labour government passed legislation to set up a Scottish Parliament once again in 1997.

Document	Date	Overview	Development of constitution
The Parliament Acts	1911, 1949	Reduced the power of the House of Lords to interfere with the agenda of the House of Commons. The 1911 act was provoked by the action of the Lords in rejecting the radical tax-raising 'People's Budget', introduced by the Liberal Chancellor of the Exchequer, David Lloyd George.	1911 act affirmed that the Lords could not delay money bills. For non-financial bills, the power of veto was replaced with a two-year delaying power.  1949 act reduced this delaying period to one year.
The European Communities Act	1972	Passed by Edward Heath's Conservative government, took Britain into the European Economic Community, the forerunner of the European Union (EU).	Established the principle that EU law would take precedence over UK law where a conflict occurred. This act is expected to be repealed after a majority of people in the UK voted to leave the EU in a referendum in 2016.

Table 1.1: Key historical documents

## Link

For more on **devolution**, see Sections 1.2 and 1.3.



William III and Mary II accepting the throne in 1689 on the basis of the Bill of Rights. This established the principle that the Crown's authority rests on the consent of Parliament.

## The nature of the UK constitution

The UK constitution is distinctive in several important respects.

- It is **uncodified** – there is no single legal code or document in which its key principles are gathered together. Instead, it is derived from a number of sources, some written down, while others are unwritten.
- It is **unentrenched** – it can be altered relatively easily, by a simple majority vote in Parliament. It therefore has a higher degree of flexibility than a **codified** constitution. There is no special legal procedure for amending the UK constitution. In the UK all laws have equal status. By contrast, a codified constitution has a higher status than ordinary laws and some or all of its provisions are said to be **entrenched**. For example, an amendment to the United States constitution requires the support of two-thirds of Congress and of three-quarters of the states to become law.
- It is **unitary** – sovereignty (or ultimate authority) has traditionally been located at the centre, with the component parts of the country – England, Scotland, Wales and Northern Ireland – all essentially run from London and treated in a similar way. This has been modified since the introduction of **devolution** in the late 1990s.

## Key terms

### Codified

a constitution in which laws and practices are set out in a single document.

### Entrenched

a constitution protected by a higher court, and requiring special procedures to amend it.

### Unitary

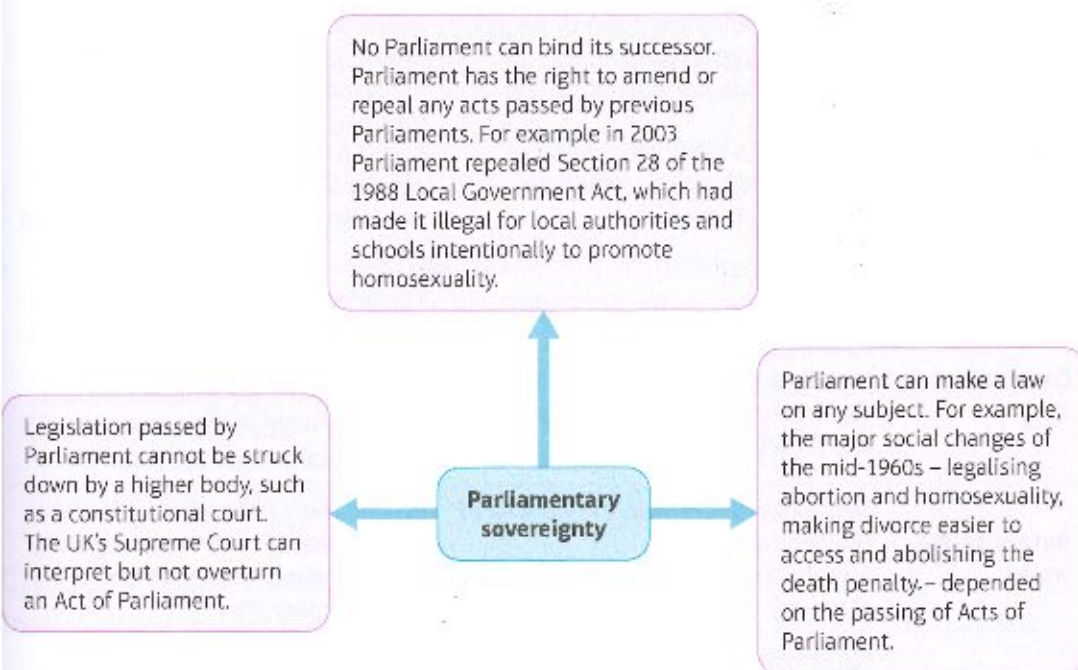
a political system where all legal sovereignty is contained in a single place.

Some would now use the term 'union state' to describe the UK since, although the centre remains strong, the individual sub-national units are governed in different ways. The distribution of power between the central and regional governments of the UK can still be altered by act of Parliament. This is an important difference with a federal constitution like that of Germany or the USA.

## The twin pillars of the UK constitution: parliamentary sovereignty and the rule of law

Writing in 1885, the Victorian constitutional theorist A.V. Dicey identified two key principles of the UK constitution. The first of these was **parliamentary sovereignty**: the idea that ultimate political authority rests with Parliament, which exercises that authority on behalf of the people who elect it. In the absence of a codified constitution it is Parliament that defines what the constitution is.

There are three main ways in which Parliament can be said to be sovereign.



**Figure 1.1:** Three main ways Parliament can be said to be sovereign

The other major principle identified by Dicey was **the rule of law**, the idea that the actions of the state are limited by law. Dicey argued that this was the main way in which the rights and liberties of citizens are protected. Respect for the rule of law is important because it acts as a check on parliamentary sovereignty, which in theory might take away people's liberties. Under the rule of law:

- everyone is entitled to a fair trial and no one should be imprisoned without due legal process
- all citizens must obey the law and are equal under it
- public officials are not above the law and they can be held to account by the courts
- the judiciary must be independent of political interference.

### Link

For more on **sovereignty**, see Section 4.4.

### Key terms

**Parliamentary sovereignty**  
the principle that Parliament can make, amend or unmake any law, and cannot bind its successors or be bound by its predecessors.

**Statute law**  
laws passed by Parliament.

**Common law**  
laws made by judges where the law does not cover the issue or is unclear.

**Conventions**  
traditions not contained in law but influential in the operation of a political system.

**Authoritative works**  
works written by experts describing how a political system is run, which are not legally binding but are taken as significant guides.

**Treaties**  
formal agreements with other countries, usually ratified by Parliament.

**The rule of law**  
the principle that all people and bodies, including government, must follow the law and can be held to account if they do not.

## The five main sources of the UK constitution

In the absence of a single document, the origins of the UK's constitutional practice can be found in five main areas, as Table 1.1 shows.

Source	What is it?	Examples
<b>Statute law</b>	The body of law passed by Parliament. Not all laws are constitutional, only those that affect the nature of the political system and citizens' rights. It is the most important source as it is underpinned by the concept of parliamentary sovereignty.	The 1998 Scotland Act, Government of Wales Act and Northern Ireland Act created devolved legislative bodies, which were given some powers previously held by Westminster.
<b>Common law</b>	Legal principles laid down by judges in their rulings in court cases, which provide precedents for later judgments. Important in cases where it is not clear how statute law should be applied in practice.	The presumption that a person accused of a crime is innocent until proven guilty. The medieval concept of <i>habeas corpus</i> (a Latin phrase meaning literally 'you may have the body') is a common-law protection against unlawful imprisonment, which was converted into a statute in 1679.
<b>Conventions</b>	Customs and practices that do not have legal force, but which have been broadly accepted over time. Can be challenged and changed by Act of Parliament.	The principle, established since the 2003 Iraq War and subsequent parliamentary votes, that except in an emergency, the government will not order military action without prior parliamentary approval.
<b>Authoritative works</b>	Textbooks that explain the working of the political system. A useful guide, but lacking legal standing.	Erskine May's <i>Parliamentary Practice</i> , first published in 1844 and regularly updated, explains the rules of parliamentary life.
<b>Treaties (including European Union law)</b>	Agreements with other EU member states, which UK governments have signed since joining what is now the EU in 1973. Following the 2016 referendum, preparations are being made for the UK to leave the EU.	Arguably the most important treaty was Maastricht (1992), which transformed the European Community into the European Union.

**Table 1.1:** Origins of the UK constitution

### Pause & reflect

Review the information contained in this section and make a list of the ways in which the power and importance of the UK Parliament developed up to the late 20th century.