

4.1 Democracy in America Equality, liberty and republicanism. Aspect: How the US Constitution upholds the fundamental principles it was designed to protect.

Introduction

This resource covers Unit 4.1.1, aspect: The principles underpinning the Constitution.

This resource does not cover the Bill of Rights, which is the subject of a further 'deep' resource. Both teacher and students will also need to undertake their own research/reading in order to provide a fully comprehensive coverage of the principles underpinning the Constitution. This additional research is especially important in updating current material on the topic, which was not known or available when this unit was prepared.

Aims and Objectives:

Aim:

How the US Constitution upholds the fundamental principles it was designed to protect.

Objectives:

- 1. To identify the purposes of the constituent parts of the Constitution.
- 2. To analyse the importance of separation of powers.
- 3. To illustrate how the system of checks and balances works and examine its strengths and weaknesses for US government in practice.
- 4. To examine how the Constitution upholds the principle of federalism.
- 5. To evaluate the main principles underpinning the Constitution.

WJEC Government and Politics Assessment Objectives:

AO1: Knowledge and understanding of the text of the Constitution; the main checks and balances.

AO2: Connections between the text of the Constitution and the aims of the Founding Fathers regarding key principles.

AO3: Analysis and synthesis of arguments about the impact of separation of powers and checks and balances; conclusions about the relative importance of the key principles of the Constitution.



Links to other parts of the WJEC specification:

AS Unit 1, 1.1.1 – the nature of the British Constitution (by contrast to that of the US as illustration only).

AS Unit 1, 1.2.1 – parliamentary/prime ministerial government (contrasting with that of the US as illustration only).

AS Unit 2, 2.1.1 – concepts around citizenship in a democracy.

A2 Unit 3, 3.1.1 and 3.1.2 – the fundamental values and main ideas and views of liberalism.

Further guidance:

All students need their own copy of the US Constitution in the original. This is easily available online and a copy is provided as a PDF file. They will need to annotate it throughout this unit, so a hard copy may be preferable to an e-version.

The teacher should introduce this resource by re-activating students' prior understanding of the purposes of political constitutions and the circumstances in which countries adopt them (from AS study), and by setting the establishment of the US Constitution briefly in its historical context. This could include: that constitutions should establish governmental institutions and structures for the state, define the relationships between institutions and layers of government, define the relationship of citizens to the state, establish how power is to be exercised and by whom, and how power is to be controlled. The historical context might include: the 18th century revolutionary experience and the imperative to avoid unlimited and autocratic power, the philosophical context of the time – ideas of citizenship rather than subjects, ideas of republicanism, liberty, equality etc. Students should already have undertaken the 'light' resource identifying the main principles on which the US Constitution was founded, so this could also be briefly revisited.

Suggested extension tasks for this unit:

Students could:

- 1. Research the origins of the principles underpinning the Constitution in particular the concept of a citizen and citizens' rights.
- 2. Further explore the concept of limited government and how it relates to the ideology of liberalism.
- Investigate how some checks and balances have been used in recent times,
 e.g. examples of presidential veto and override by Congress; examples of presidential appointments and non-confirmation or difficult confirmations in Congress; examples of



- judicial review by the Supreme Court.
- 4. Explore how some of President Trump's actions can be said to conflict with the Constitution.
- 5. Debate the relevance of an 18th century Constitution for a 21st century global superpower.

Conclusion:

The teacher should remind students of:

- The purposes for which the Constitution was written and interpretations of its purposes today.
- The complex nature of separation of powers, partial agency and checks and balances;
 the positive and negative implications of these.

Debates about which principle(s) are the most significant for the Constitution to protect today.



Exercise 1: The purposes of the Preamble and the parts of the Constitution



The aim of this exercise is to identify the purposes of the constituent parts of the Constitution.

Task 1 - Students should watch the 2-part video *The US Constitution*, *5 Key Concepts Everyone Should Know*

https://www.youtube.com/watch?v=ggXSO0ETvq4 https://www.youtube.com/watch?v=eLQxigKFa5k

Note: the videos use the term 'principles' loosely when they really mean 'features'. Whilst watching each part, students should make their own notes.

Task 2 – Interactive activity: reflection task – *Which features of the Constitution are found where?*

See further guidance notes in the table below.



Which features of the Constitution are found where?

Preamble	Article 1	Article 2	None of these

Features to drag and drop:	Current location above:	Notes for teachers:
Statement that the Constitution	Preamble	Discuss the significance of 'We,
is granted by the people of the		The People'
United States.		



The power of Congress to declare war.	Article 1	Section 8
Guarantee of a republican form of government.	None of these	Article IV Section 4
The power of the President to 'take care that the laws be faithfully executed.'	Article 2	Section 3. Note the wide power this can give the President.
Statement of the aims of the Constitution.	Preamble	
Power of Commander-in-Chief.	Article 2	Section 2
Power of the purse.	Article 1	Sections 7 and 9
Procedures for formally amending the Constitution.	None of these	Article V
Presidential veto.	Article1	Section 7
The Commerce Clause, the Elastic Clause and the Necessary and Proper Clause.	Article 1	Section 8
Procedure of the Electoral College.	Article 2	
The Supremacy Clause.	None of these	Article VI
Composition of the Senate and House.	Article 1	Sections 2 and 3
Establishment and power of the Judicial Branch.	None of these	Article III. Note the brevity compared to the other two branches. Discuss the Supreme Court's power of judicial review (Marbury vs Madison 1803).
Presidential powers of appointment (patronage).	Article 2	Section 2



Exercise 2: The significance of Separation of Powers and the concept of 'partial agency'.

The purpose of this exercise is to analyse the importance of separation of powers in several respects – the separation of functions of the branches, separation of personnel and the requirement for branches to not be completely separate (partial agency).



Teacher informs the students that in the USA nobody can be a member of more than one branch of government at the same time (separation of powers and personnel). It is useful to contrast this with the UK's situation – the executive in the UK is drawn from the legislature; there is a high proportion of fusion of personnel. It is also useful to contrast the UK system where the executive emerges from the legislature but is also accountable to it, to USA's situation where the President does not have to answer to Congress for his actions and cannot control Congress as a party leader.



Match the branches of government with their features and functions

BRANCH OF GOVERNMENT	FEATURE/FUNCTION
LEGISLATIVE BRANCH	TO DEBATE NEW LAWS
LEGISLATIVE BRANCH	TO PASS ALL LAWS
EXECUTIVE BRANCH	TO PROPOSE NEW LAWS
EXECUTIVE BRANCH	TO ENSURE ALL LAWS ARE CARRIED OUT
JUDICIAL BRANCH	TO UPHOLD THE LAWS
JUDICIAL BRANCH	TO UPHOLD AND GUARD THE CONSTITUTION





Discuss with the students what the advantages of separation of personnel and functions are. These might include – clarity of responsibility; focus on one task/ set of tasks = efficiency; no chance that one branch can dominate the others etc.

Discuss with students what might be the drawbacks of complete separation of powers. This should include the lack of communication and a 'joined up' approach if each branch pursues its own area without taking into account the other two branches. Point out that the Founding Fathers anticipated this problem and linked the functions of the three branches through 'partial agency'. The mechanism for this was the checks and balances (see exercise 3).



Key Question: Does separation of powers make the US Constitution work better or not?



Discuss with the students why would separation of powers, on its own, have been a disaster for US government? Answer: Because each branch would have undertaken its role separately from the other branches leading to a disjointed and inefficient government; there would have been the possibility of dominance by one branch (probably the legislature).

The Founding Fathers linked the branches together through the checks and balances. Discuss what checks and balances of the branches on each other can the students remember from their study of the Constitution.

[They may remember the presidential veto over Congressional legislation, or the fact that the President can make treaties but Congress has to ratify them, etc.]

Introduce students to the widely held assumption that separation of powers/checks and balances works in a *negative way and frustrates government:*

"Negativity is the chief characteristic of the separation of powers doctrine, as it is concerned with producing limitations and constraints on government."

A. Grant, The American Political Process, 1994.





Activity 2b - Constructive Purpose of Separation of Powers and Partial Agency See Worksheet 2b

Students should read the extract below annotating and highlighting it as appropriate.

Separation of Powers and Partial Agency in the US system of government.

The Founding Fathers looked at the example of Great Britain in the late 18th century and decided that if their new union of states were to work, the branches of government needed to be separate. They were influenced by the ideas put forward by Baron de Montesquieu in De l'Esprit des Lois in 1748 where he developed the earlier ideas of John Locke regarding separating the branches of government¹. The Founding Fathers were determined to preserve democracy and republicanism for the new United States of America, prevent the possibility of tyranny and of one branch becoming so powerful that it could override the others. They believed, at this stage, that they needed to control the legislative branch in particular.

Hence the first aspect of Separation of Powers: that no person can belong to more than one branch of government simultaneously. There is no requirement in the USA that the leader of the executive branch (the president) should also be a member of the legislature, as in the parliamentary model of the UK system. In fact, in the USA this is forbidden. Until 2005 in the UK there was also overlap between the legislature and the judiciary (and the executive in the case of the Lord Chancellor), yet in the USA this was prevented from the start and the independence of each branch from the others was assured, as the Founding Fathers wished, because there was no crossover of personnel. One of the results of this is that government in the USA is always a compromise as the president can propose but cannot control Congress' reactions to his proposals. He is not a party leader, and party discipline in Congress acknowledges that Congressmen and Senators differ on issues and will vote differently even though they may have the same party label. There is no built-in executive dominance in the US system, unlike the parliamentary system in the UK where there is no separate election of the executive – it emerges from the legislature through general elections and has to be the party capable of commanding a majority there. In the UK the parliamentary model provides for the executive to also be accountable to the legislature (parliamentary sovereignty) whereas there is not the same sort of accountability of the president to Congress in the US system. The president and his administration are not required to answer questions in Congress as the Prime Minister and government ministers are in the UK, although Congress does perform oversight of the executive through committees etc.

There is, however, a second and often overlooked aspect to separation of powers. The



Founding Fathers could see the inherent danger of *complete* separation of the three branches for the quality and cohesion of policy-making: if all three branches were completely separate then each could get on with its own job but be potentially oblivious to what the other branches were doing. The result would be chaotic government at best, with a resulting lack of consultation, consistency and integrity to policy and laws. In other words, complete separation – whilst admirable for preventing tyranny – would probably lead to poor governance.

The Founding Fathers therefore built a system of checks and balances between the three branches that has the effect of binding all three branches together, and stops any one of them pursuing its own agenda in isolation from the other two branches. The effects of this system are usually thought of as negative: slow and cumbersome policy-making, logrolling, veto and veto override, the necessity for compromise and negotiation, divided government and possible gridlock, lengthy consideration and possible overturn by the Supreme Court etc. However, whilst all of these can be seen as drawbacks (to the modern observer) to the system of checks and balances that governs separation of powers in the US system, what is often overlooked are the positive advantages of this arrangement. The original purpose of it was to make governance better, not worse. The fact that governance is sometimes difficult is a quite deliberate construct because the Founding Fathers believed this would make governance better. All three branches have 'partial agency' in the work of each of the other branches and this means that no law can come into force unless all three branches are happy with it. Each branch has its own role to play in the legislative process. The United States is a huge and diverse nation with many shades of opinion across it. For a law to work, and for government to be truly with the consent of the governed, all three branches need to agree it is appropriate and approve it. This improves the validity of legislation. Additionally, legislation is the result of lengthy negotiation between the executive and legislative branches, which invigorates them both and improves its quality. The possibility of override by one of the other branches makes the actions of each branch more deliberative, more considered and better.

Of course, the Constitution was written in a simpler age. Critics argue that this elaborate system of separation and checks no longer works. In particular, they argue that it frustrates the executive branch too much when today's problems (such as healthcare, gun control, environmental regulation etc.) can only be solved by greater federal action across the entire nation to ensure equity and resolute action. In the face of constant frustration the executive branch, in particular, seeks out methods of circumventing the checks on its power. However, these checks are so numerous, and at so many levels, that it has so far proved impossible for this branch or any of the others to dominate completely.

¹ Second Treatise of Government, John Locke, 1689.

² The Federalist No 47, James Madison, 1788.



Valid arguments for the constructive purpose of separation of powers and partial agency.

Which of the following statements are **valid arguments** for the constructive purpose of separation of powers and partial agency?

Valid	Invalid
It is necessary for the branches to	Separation of powers leads to gridlocked
communicate effectively with each other.	government.
It is a means of avoiding the dominance of	Constant interference by each branch
the legislative branch over the other two	in the work of the others weakens US
branches, preventing tyranny.	government.
It provides a restraining influence of each	It makes everything too time-consuming and
branch over the others.	US government cannot do anything radical
	quickly.
Each branch contributes a specific sort of	'Separate institutions sharing power' is an
expertise to the whole through a division of	ineffective and inefficient way of getting
labour that results in efficient government.	things done.
The threat of non-compliance of the other	
branches makes each branch improve the	
quality of its work, making US government	
as a whole more effective.	

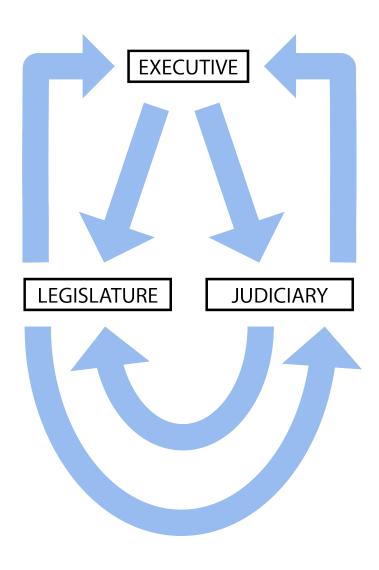


Exercise 3: The impact of checks and balances

The purpose of this exercise is to illustrate how the system of checks and balances works and examine its strengths and weaknesses for US government in practice.



Students should research using any USA government textbook or the internet for what the checks and balances are of each branch against the other two. They could represent their findings as below:







Rank the checks and balances of each branch in order of significance:

LEGISLATURE	EXECUTIVE	JUDICIARY
Overturn of presidential veto.	Presidential veto	Interpretation of the laws.
Ratification of treaties.	Power to propose legislation	Interpretation of the Constitution.
Confirmation of presidential appointments.	Patronage and appointments.	Judicial review.
Power of the purse.	Issue of pardons.	

Note: there is no definitively correct order here, but below would be one correct way to rank them

LEGISLATURE	EXECUTIVE	JUDICIARY
Power of the purse.	Patronage and	Judicial review.
	appointments.	
Confirmation of presidential	Presidential veto.	Interpretation of the
appointments.		Constitution.
Overturn of presidential veto.	Power to propose legislation.	Interpretation of the laws.
Ratification of treaties.	Issue of pardons.	



Discussion and debate afterwards should focus on key checks and balances such as the presidential veto (which can only be overturned in Congress by a supermajority); Congress' power of the purse which can effectively leave government gridlocked or can pull the funding from key presidential policies, or Congress' power of confirmation which can stop the President's favoured candidates; and the Supreme Court's power of judicial review from which there is no appeal by the other two branches.



Students should independently investigate examples and assess the effects of the checks and balances in upholding divided government (they should investigate instances of gridlock over budgets and government shutdown, e.g. 1995 and 2013; times when Congress and the presidency have been divided politically; the extent of partisanship and bipartisanship in Congress; legislation passed or blocked by a divided federal government, using examples from circa the last 30-40 years with the emphasis on recent times).

Students should then **debate** the extent to which the checks and balances **hinder effective government** in the USA and the extent to which, on the other hand, they **ensure that the fundamental principles of liberty and limited government are upheld** by ensuring debate, pluralism and sufficient oversight and restraint on each branch. **They should consider whether the Constitution is now outdated in this respect**.



Exercise 4: An investigation of how the Constitution upholds federalism



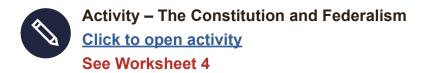
The purpose of this exercise is to examine how the Constitution upholds the principle of federalism.

More detailed study of theories, history and modern federalism can be found in the light activity supporting 4.1.2 of the specification.

Task 1 - Students should be asked in preparation for this session to re-read their copy of the Constitution and note how many times it mentions the word 'federalism'. Answer: 0 times. Guided by the teacher, students should identify where and how the Constitution upholds federalism and check their understanding by completing the interactive task below.

Task 2 - Interactive activity: Match the parts of the Constitution with how they uphold federalism.

On completing Task 2 it would be appropriate now for students to investigate theories of federalism, how federalism has worked in practice and assess whether it impacts the United States positively or negatively (see separate light resource on this).



Match the parts of the Constitution with how they uphold federalism.

Part of the Constitution	How it upholds the principle of federalism
Article 1 section 3	Each state has 2 Senators regardless of the size of the state. The role of the Senate is to uphold the interests of the states.
	of the Senate is to uphold the interests of the states.
Article 1 section 4	Each state has its own method of elections to Congress.
Article 1 section 8	The Elastic, Commerce, and Necessary and Proper Clauses allow
	flexible judgements about what is the jurisdiction of the federal
	government and what is the jurisdiction of the states.



Article 1 section 10	Statements of what the individual states cannot do – powers reserved to the federal government and not to the individual states.
Article 2 section 1	The Electoral College (representing the states) elects the President, not the straight forward popular vote.
Article 2 section 2	The Senate has to ratify treaties by a supermajority.
Article 4 section 1	The 'full faith and credit clause' – each state must respect the others equally.
Article 5	Both procedures for formally amending the Constitution require the approval of a supermajority of the states.
Article 6	Laws and treaties made by the federal government take precedence over those of the individual states.
Amendment 10	Any powers not specifically granted in the Constitution to the federal government are reserved to the states and the people, i.e. the federal government has enumerated rights and powers whereas the states and people have unenumerated rights and powers.



Exercise 5: Which is the most important fundamental principle that underpins the US Constitution?



The purpose of this exercise is to evaluate and debate the main principles underpinning the Constitution.

There is no right answer to this activity, although it could be argued that 'limited government' is the one from which everything else flows and that some others are more a method of achieving limited government than a principle in their own right (separation of powers and checks and balances, for instance).



In a diamond shaped design students should rank the following factors.

Sovereignty of the people and the rights of citizens
Federalism
Liberty
Limited government
Equality
Separation of powers and checks and balances
Republicanism
Pluralism
Democracy