

# Politics Higher

## Political Structures



NQ Support Material

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Scottish Further Education Unit

## **Acknowledgements**

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## **National Unit Specification**

### **Unit: Political Structures**

#### **Course: Politics (Higher)**

#### **Summary**

This Unit is a mandatory Unit in the Higher Politics Course although it can also be taken as a freestanding Unit. This Unit will enable candidates to gain an understanding of the political structures of the UK and either Scotland or the USA – the legislative, executive and judicial branches of government. Comparison is the foundation of any systematic branch of knowledge. It provides context. It alerts candidates to similarities and differences in institutions and processes. It improves our classification of Politics.

For those new to the subject, the Unit should stimulate interest and enjoyment, and may serve as an introduction to the discipline of Politics. For candidates progressing from Units at Intermediate 2 the Unit provides the opportunity to study some familiar topics related to the UK and Scotland, and some new topics involving the USA, and will promote development of more in-depth knowledge and understanding.

As part of Higher Politics, the Unit provides suitable preparation for entry to higher education courses in Politics or further study in other subjects. Whether as part of a Course or on a freestanding basis, the Unit may offer preparation for employment or career advancement. The topics and the political contexts chosen for study in this Unit are likely to be of relevance and interest to candidates personally and socially.

#### **Outcomes**

1. Demonstrate knowledge and understanding of the legislative and judicial branches of government in the UK and either Scotland or the USA.
2. Analyse and evaluate the political executives of the UK and either Scotland or the USA.

#### **Outcome 1**

Demonstrate knowledge and understanding of the legislative and judicial branches of government in the UK and either Scotland or the USA.

#### **Performance Criteria**

- (a) The role and structure of political assemblies is described accurately.
- (b) The relationship between the legislative and judicial branches of government is explained accurately.

## **Outcome 2**

Analyse and evaluate the political executives of the UK and either Scotland or the USA.

### Performance Criteria

- (a) The roles, powers and functions of the Prime Minister of the UK with those of the First Minister in Scotland or the President of the USA are compared and contrasted accurately.
- (b) The relationship between the executive and legislative branches of government in the UK and either Scotland or the USA is evaluated accurately.

### **Evidence requirements for this unit**

Evidence Requirements apply to the Unit as a whole, and therefore apply holistically to all Outcomes of the Unit. To demonstrate satisfactory attainment of all Outcomes of the Unit, candidates must produce written or recorded oral responses to items that cover Performance Criteria from all Outcomes. These will typically be produced in response to specific questions in an assessment comprising a mixture of short-answer, restricted response and more extended response items; questions may be structured, and may be based on stimulus material. This will take the form of a closed book, supervised test, with a time limit of one hour and will be holistic, covering all Outcomes and Performance Criteria.

Each assessment will sample the range of possible content. The sample will be unpredictable, in order that the complete Unit is covered in learning and teaching. The sampling will be balanced so that no assessment is any easier or more difficult than any other in terms of the spread of content covered or the nature of the items. If the candidate is able to demonstrate attainment in a random selection of items, it can be inferred that attainment in the areas not sampled would also be satisfactory. If reassessment is required, it should consist of a fresh assessment instrument. This should sample different areas from the range of content.

Achievement can be determined by a cut-off score. The standard to be applied and the breadth of coverage are illustrated in the National Assessment Bank items available for this Unit. If a centre wishes to design its own assessments for this Unit, they should be of a comparable standard. It is recommended that such an instrument of assessment should be submitted to SQA for prior moderation.

## Guidance on Learning and Teaching Approaches

**Constitutions** – Candidates should be introduced to this Unit by looking at the key features of the UK constitution and either how these relate to and involve Scotland or how they compare with the key features of the American constitution. The UK's constitution is conservative compared with the liberal nature of the American constitution. How devolved power in Scotland is accomplished within the UK constitution needs to be examined. Many liberal ideas and principles are fixed in the American constitution – limited government, government by consent, the separation of powers, the desire to safeguard individual rights and the need to establish legal and political equality. The conservative traditions in the UK have demanded that the system should be more flexible; the constitution should be allowed to grow with the system and therefore cannot be a fixed set of ideas and principles. The Scottish Parliamentary powers and those policy areas 'reserved' for Westminster provides a good source of examples of how flexible the UK constitution is. Candidates should explore how these approaches affect the status of the constitutions; the distinction between 'written' and 'unwritten', flexible and rigid constitutions; a very brief look at constitutional amendments and judicial reviews is required.

**Political Assemblies** – There is a need to clarify the definition and role of assemblies; Heywood uses the term 'assemblies' to refer to both houses or chambers and points out that it is also used interchangeably with the terms legislature and parliament; use the principle of the separation of powers to identify the three branches of government before comparing and contrasting the role and structure of assemblies in the UK and either Scotland or the USA. Candidates should appreciate that the role of assemblies is much more than simply a debating and representative body. Assemblies cover a number of functions – legislation, representation of interests, finance, and scrutiny of the government. Underpinning all of these is a system of checks and balances and a party system in each country.

**Legislation** – Congress may initiate, draft, amend or reject legislation whereas very little legislation originates in Parliament (Private Members' Bills are mostly rejected); government legislation is virtually guaranteed success in the UK and to a large extent in Scotland but this is not always so in the USA; the influence of lobby groups is extensive in the USA but weaker in Scotland and the UK.

**Representation of interests** – Candidates need to be able to describe, discuss and exemplify the differences and/or similarities for lobbyists in the chosen countries in terms of access, sponsorship of representatives and the workings of the committee system; the link between representatives and their constituencies and how they support or oppose legislation that affects their constituencies.

**Finance** – A very brief review of the role of finance is required in the chosen countries.

**Scrutiny of Government** – The differences and similarities in the committee systems of the UK and either Scotland or the USA in terms of openness, profile and publicity should be looked at; the differences on the appointment of government members and opportunities open to representatives to question the executive are important.

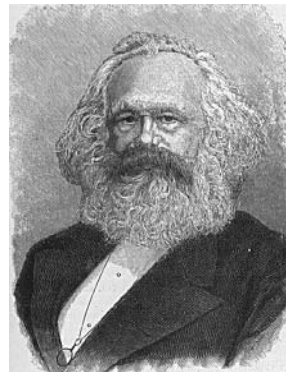
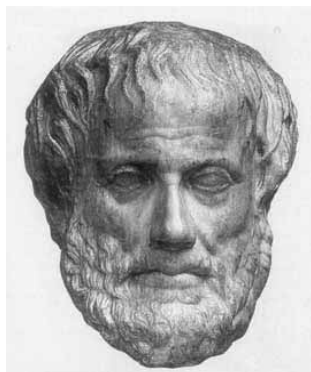
**Structure of assemblies in the UK and either Scotland or the USA** – Candidates should be aware of the distinction between bicameral and unicameral legislatures and the advantages and disadvantages of each, with examples from the UK and the chosen country for comparison; they should be able to discuss and comment on how members are selected in these chambers and the strengths and weaknesses of the committee system in the UK and Scotland or the USA.

**Relationship between the Legislature and Judiciary** – This topic should be at an introductory level. It is expected that in looking at constitutions the importance of the judiciary and its independence will be explored; its place in the separation of powers debate will also be explored, depending on the country chosen for comparison; the constitutional importance of the Supreme Court in the USA and the creation of such a body in the UK could be covered. The unusual position of Scotland and the UK parliament and judiciary could be covered.

**Political Executives** – Historically, executives predated the emergence of separate legislatures, judiciaries and bureaucracies. These bodies developed to aid, advise and later to constrain executive rulers. Our concern here is with core executives, defined as the ‘commanding heights’ of the state apparatus. At the core is the top leader and his or her ministers and key officials. The major task of the political executive is leadership and this involves several functions – making policy; mobilising support for policies; supervising the implementation of policy and ceremonial and crisis leadership. The study of political executives in the UK and Scotland or the USA involves looking at how the executives are aided and constrained by political assemblies and judiciaries. A brief comparison of constitutional and authoritarian executives will aid understanding of how more democratic states have reasonably effective restraints on the exercise of power and succession to executive office. With authoritarian executives constitutional and electoral controls may be either unacknowledged or ineffective. Comparing the UK’s Prime Ministerial executive with either Scotland’s First Minister or the American President will lead to some similarities and differences and interpretations/conclusions about which is more or less ‘powerful’ in one area or another – if Scotland is chosen it should be clear the First Minister lacks power in several critical areas. Their relationship with their respective political parties, cabinets and the administrations of each of the countries are very different – the doctrine of collective responsibility is a useful comparative device here; the method of election and constitutional position regarding removal from office are other areas for comparison.

**Relationship between the Executive and the Legislative branches of government in the UK and either Scotland or the USA** – Generally the relationship can be described as one of executive dominance in the UK and Scotland but a more balanced relationship in the USA. Candidates should examine the relationship and evaluate where the power lies and why; the checks and balances that operate and their effectiveness.

## Introduction



The Greek philosopher Aristotle stated that ‘a **social instinct** is implanted in all men by nature’, and that ‘man is by nature a **political animal**’.

By saying this, Aristotle was echoing his great tutor Plato who also held that human beings were social by nature. Plato argued that societies are formed for a particular purpose, as individual human beings are not self-sufficient; and no one working alone can acquire all of the genuine necessities of life. As a result, in order to resolve this difficulty, human beings gather together into communities for the mutual achievement of their common goals.

In the same context, the 19<sup>th</sup> century philosopher Karl Marx explicitly rejected the idea of what he called the concept of the ‘isolated human individual’. According to Marx, human beings **only** exist in a relationship with other human beings. Marx argues that people do not exist in isolation from other people, and can only be studied and understood on that basis. According to Marx, the human being is a completely **social** being.

Such observations are quite profound and have fundamental implications if they are correct. If correct, then it means that human beings are, **by nature**, both **social** and **political**. So what?

If humans are indeed social and political by nature, then that means that both social, collective living, and **politics** are a direct result of human nature. In other words, politics is **natural** to the human condition.

Politics is, therefore, a natural human activity and human beings will always engage in political activity, as that is their nature. As a result, **government** is also a natural human activity as government is the organisation and institutionalisation of political decision-making.

### Conflict

When people live in social situations, they often disagree. In other words, conflict exists because of social living. People disagree about many things; some disagreements are small and sometimes appear petty, where others are serious and can lead to violence between people. Whatever the level, or form, of conflict, people have erected mechanisms for resolving such conflicts and re-establishing order. Forms of conflict also arise out of the distribution of resources; who should get what, how much, and what should they pay for it?

## Political Structures

As a result, human beings develop institutions and mechanisms for conflict resolution and the regulation of human social living. They erect decision-making structures that involve making laws, rules and regulations, and ensuring that the rules and regulations are respected and obeyed.

In addition, humans erect mechanisms to allow for judgement between disputes and disagreements. People are, in other words, **regulatory** beings. We regulate our environment and our behaviour both individual and collective, erecting mechanisms for decision-making, conflict resolution and the distribution of resources. To this end, we establish political structures such as **political assemblies, governments** and **judicial systems**.

The British political assembly is known as its **Parliament** and is Britain's **legislative body**, ie. the political structure responsible for legislating or passing laws. The British government is the British **executive body** ie. the political body responsible for the actual day-to-day government of the country, and British judges are obviously **the judiciary**.

The American political assembly and legislative body is known as **Congress** and the American executive is known as the **Presidency**.

The Scottish political assembly is known as the **Scottish Parliament**, and the Scottish executive is known as the **Scottish Executive**.

## Activity

Students should complete the following activity as a way of preparing them for the questions that will be asked at the end of the section.

Using pages 7 and 8, compile a **mind map** showing the:

**Natural development of political structures.**

## Activity – teachers’ guide

### Jigsaw (or group and share) – proactive involving the whole class

- Assuming a class of 25 students (adjust according to class size).
- Divide class into five groups of five.
- Each group will be given a topic to briefly study and summarise.
- Each group will be given an information sheet from the following pages.

<b><u>Groups</u></b>	<b><u>Topic</u></b>	<b><u>Page</u></b>
Blue group	Constitutions	10
Green group	Political Assemblies	11
Yellow group	British Constitution	12
Orange group	Prerogative powers	13
Red group	Statute law	13

- Give groups 10 minutes to absorb information and summarise, using either mind maps, bullet points or flow charts.
- Ensure students are aware that they are each going to report their findings to another group.
- After completion of summary, students will move into new groups.
- Each new group should consist of one person from each of the original group colours.
- Each student, according to their original group colour, will report their findings to the new group members.
- Allow approximately four minutes for each person to report to the group, therefore 20 minutes for completion of reporting.
- Each student should now have knowledge of all five topics under discussion.

## Constitutions

We have said that humans are regulatory beings and that they develop institutions and mechanisms for conflict resolution and the regulation of human social living. One of the mechanisms human beings have developed for the regulation of human behaviour is **the constitution**.

In this unit we will be studying constitutions. Constitutions are sets of rules and regulations governing collective institutions and bodies. Many collective bodies establish constitutions, such as clubs, political parties, business organisations, etc. Nation states also develop constitutions. In this unit we will be looking at the constitutions of nation states such as the United Kingdom and the United States.

The Oxford Dictionary of Politics describes a constitution as:

**‘The set of fundamental rules governing the politics of a nation or subnational body.’**

John Kingdon, in his book *Government and Politics in Britain* (1991), states that a constitution is a:

**‘Set of rules and prescriptions establishing the legal framework in which governments operate.’**

Max Beloff, the British political theorist, describes a constitution as:

**‘The sum of those norms and values which prescribe the nature of relationships between the several institutions of authority in a state – for example between central and local government or between the executive and the legislature – and also between public authorities and the individual. In other words, a country’s constitution is the whole body of rules which govern and shape the distribution of authority within the political system. The rules may derive from a number of sources – from a written constitutional text, from a declaration of independence, from statutes, from judicial decisions, and from political habit or practice.’**

As a result, we may summarise the above description by saying that a nation’s constitution is the whole body of rules which govern and shape the distribution of authority within the political system. It provides a framework describing the basic rules, procedures and principles governing the exercise of power in any given political community. We can also see that all of the above descriptions of what a constitution **is** are in agreement that a constitution is a set of rules for regulating and controlling political behaviour.

Therefore, whilst we have said that we erect political assemblies, governments and judicial systems, these institutions are themselves regulated by a constitution, and we will be studying the way in which different constitutions operate and function in different political systems.

## Political Assemblies

In this teaching pack we will also be examining political assemblies.

We will be examining the political assemblies of **The Houses of Parliament, the United States Congress** and **the Scottish Parliament**.

Throughout this teaching pack, in order to avoid confusion of terms, when we are referring to the British Houses of Parliament we will speak about **WESTMINSTER**.

We will also distinguish between the two Houses of the British Parliament by speaking about the **COMMONS** and the **LORDS**.

The reason for this differentiation is because we will also be studying the **SCOTTISH PARLIAMENT**, which we obviously wish to distinguish from the **UK PARLIAMENT**.

When studying the United States political assembly we will be speaking about the United States Congress, which is again divided into two different Houses. As a result we will be referring to the **SENATE** and the **HOUSE OF REPRESENTATIVES**.

**Therefore** – the terminology we will be employing throughout this unit on political assemblies will be:

**Westminster** – in reference to the UK Parliament

**The Scottish Parliament**

**The Commons** – in reference to the House of Commons

**The Lords** – in reference to the House of Lords

**Congress** – in reference to the United States political assembly

**The Senate** – in reference to the United States Senate, one of the Houses of Congress

**The House of Representatives** – the other House of the United States Congress.

**Unicameral and bicameral**

Political assemblies can be referred to as unicameral or bicameral. This means that they are either composed of one house (unicameral) or two houses (bicameral). The Scottish Parliament is an example of a **unicameral** political assembly, and the Westminster Houses of Parliament are an example of a **bicameral** political assembly. The United States Congress is also a bicameral structure.

## The British Constitution

The first key feature of the British constitution that commentators normally refer to is that it is said to be **unwritten**. What this means is that there is no single document that a student of politics can refer to that will provide a clear description of the British Constitution. However, much of the constitution in Britain **is** written. Acts of Parliament, for example, contribute to the British constitutional settlement (we will return to this later).

Another key feature of the British Constitution is its **flexibility**. In Britain, there are no special procedures for changing or amending the constitution as we find in countries (such as the United States) with a written constitution. Constitutional law in Britain is subject to exactly the same procedures as ordinary law.

However, such flexibility can be seen as a source of both strength and weakness.

As a **strength**, the flexibility of the British constitution allows the political system to adapt and change to meet the demands of a modern dynamic world as is necessary, allowing the Westminster parliament to take measures it deems appropriate speedily, if necessary, and free from external constraints.

As a **weakness**, the system is always vulnerable to abuse by governments. This happens because the British system is largely based on trust. Because the British constitutional settlement is subject to the same procedures as ordinary law, it can be changed and amended by any grouping in Parliament with an appropriate majority. This can be done with little or no consultation, and with no reference to any form of external scrutiny. An extreme example was when Prime Minister Edward Heath took Britain into the European Economic Community without even the agreement of Parliament. Such is the power available to Prime Ministers if they seek to utilise it. That is why British politics is so dependent on trust. We trust our governments to respect our rights and traditional freedoms and to carry out their functions in a lawful and disciplined manner, given that there are no constitutional authorities to challenge their actions, other than Parliament itself which is, of course, under the control of the Prime Minister and the government.

### Sources of the British Constitution

We have said that the British Constitution is described as **unwritten**. However, we also qualify that statement by pointing out that **much** of the constitutional framework in Britain **is** written. By unwritten, we mean that there is no single authoritative document in existence that defines and explains the British Constitution such as the American people have available to them. So what is the British Constitution?

The British Constitution is therefore said to be composed from five sources:

1. Prerogative powers (sometimes called **the royal prerogative**).
2. Statute law.
3. Judicial decisions (sometimes called **common law**).
4. Convention.
5. Authoritative opinion.

## Prerogative powers

Prerogative powers are derived from the fact that Britain is a monarchy. The royal prerogative was a set of privileges enjoyed by successive monarchs that were progressively transferred to what we term **the Crown**.

Successive conflicts between the monarch and Parliament resulted in the monarchy being transformed into what we term a **constitutional monarchy**. Historically, the powers of the monarch suffered increasing restrictions, until we reached the situation where the powers of the monarch were, in effect, being exercised by the Prime Minister, the government and Parliament. The monarch still reigned, but now occupied a constitutional role and exercised almost no political power. The wide-ranging prerogative powers traditionally associated with the monarchy were retained by the Crown.

When we speak of the Crown in the context of modern British politics we are referring to the collective institutions of Parliament, the government and the Prime Minister. Thus, all of the powers of the royal prerogative are exercised in modern Britain by the Prime Minister and ministers, both individually and collectively, on behalf of the Crown.

Some examples of prerogative powers include the right to declare war, the conduct of foreign affairs such as making treaties and issuing passports, and the deployment of troops. The government's decision to deploy troops to Iraq in 2003 was put to a vote in Parliament. This was put to Parliament because it was a very controversial decision, and was considered to be politically necessary by the Prime Minister. It was not legally required however, and the government could have deployed the troops without the consent of Parliament using the prerogative powers available to them. Most people are familiar with the concept of the Home Secretary declaring that people are to be detained 'at Her Majesty's pleasure' for criminal offences. This is a good example of prerogative powers. The Home Secretary would not dream of actually consulting with Her Majesty on such a decision. However, he/she will still claim to be acting on the authority of the Crown when taking that decision.

## Statute Law

Statute law consists of Acts of Parliament and what is known as secondary legislation. Acts of Parliament begin their life as **Bills**. A bill is the draft proposal of an act, and, after a bill has gone through the 11 parliamentary stages required for any measure to become law, it becomes an Act of Parliament. **Secondary legislation** (which is also known as delegated legislation, or statutory instruments) is legislation that is made as an amendment to the original legislation or additional to it. It may be amended by the provisions of the original Act. An example of this is health and safety legislation which allows the authorities to alter provisions as and when required, such as reducing the permitted levels of asbestos dust in the air in any given environment if it is found that the original levels are now considered unsafe. This allows alterations to be made to the legislation without the need to go back to parliament and pass a brand new Act. Thus, the power to alter the provisions of the original Act is **delegated** to the appropriate authority.

## Judicial decisions

We said earlier that another name for judicial decisions was **common law**. Judges make common law. Judges, and in particular those judges who operate in the higher courts, often have to make judgements on difficult cases where the law is perhaps unclear, or, in the judge's opinion is 'unfair.' In addition, in the absence of a codified constitution, or a codified bill of rights, the judiciary have long been the citizen's main protection in the area of civil liberties, upholding the rule of law, and protecting the people from an executive who may attempt to breach the limits of their powers and responsibilities.

In the execution of such duties, the judiciary have, over many hundreds of years, as a result of deciding cases that have come before them and providing reasons for their decisions, built up a massive body of law which acts as a **precedent** to other judges to guide their decisions in any future cases that present similar legal problems.

In 1966, Britain's Law Lords issued a 'Practice Statement' in which they declared:

'Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases.'

## Convention

Conventions are unwritten rules, governing the conduct of political affairs. Conventions do not have any legal force, but the political authorities are expected to adhere to them and to respect their provisions.

The political theorist AV Dicey in his work *Introduction to the Study of the Law of the Constitution*, published in 1885, argued that conventions had a crucial role to play in the political process since they ensured:

**'in a roundabout way, what is called abroad the "sovereignty of the people".'**

He argued that this ensured that the British people enjoyed a system of government in which:

'the will of the electors shall by regular and constitutional means always in the end assert itself as the predominant influence in the country.'

Dicey felt that the political conventions that operated in the context of British parliamentary democracy had:

**'one ultimate objective. Their end is to secure that Parliament, or the Cabinet that is indirectly appointed by Parliament, shall in the long run give effect to the will of that power which in England is the true political sovereign of the state – the majority of the electors.'**

Examples of conventions are that the monarch will always give his/her consent to Bills that have been approved by Parliament, and that the leader of the majority party following a parliamentary election will be invited to form the next government.

### Authoritative opinion

An example of authoritative opinion which is usually found in written texts or commentaries on the constitution is the writer, AV Dicey, whom we have just quoted. Some commentators on the nature of British democracy and parliamentary government have been particularly influential in establishing how government should operate and conduct its affairs.

Dicey is a good example of that, as is Walter Bagehot, a Victorian commentator on British government. When writing in *The English Constitution* (1867), Bagehot drew a distinction between what he called the constitution's:

#### 'paper description and its living reality.'

He differentiated the different parts of the constitution into the **dignified** and the **efficient**.

The dignified were the parts that were seen to be powerful, and '**impressed the many**.'

The efficient were not seen as so powerful but, according to Bagehot, were, in actuality, the parts that exercised the **real** power so that they '**governed the many**' in practice.

As a result, the **paper description** of the constitution consisted of the dignified parts, whilst the **living reality** was contained within the efficient.

Writers such as Bagehot and Dicey have assumed a prominence in the development of the British constitution and are considered to be legitimate and authoritative sources we can turn to for clarification and reference.

### Key features of the British Constitution

The above make up the principal **sources** of the British constitution. However, the constitution also displays several **key features** that distinguish it as particularly British.

- It is unwritten.
- It is unitary.
- It involves Parliamentary sovereignty.
- It includes partial separation of powers.
- It is based on the Rule of Law.

### Unwritten

As we touched on earlier, when we say that the constitution is unwritten we mean that there is no specific book or reference we can turn to, to explain what the constitution is. Of course, much of the British constitution **is** written. All forms of statute law, judicial interpretations, etc., are included in the constitution. As a result, it is made up of different sources of reference, some of which are written, (such as Acts of Parliament), but it is **uncodified**; which means that there is no legal written document we can refer to (such as the American Constitution), which outlines, or details, the legal rights and liberties of the British citizen.

## Unitary

This refers not only to the concept of a **united** kingdom, but also to the principle that there is only one source of legality – Parliament. British constitutional theory stresses that all political and legal power resides with Parliament. Other bodies, such as the judiciary, local government or the Scottish Parliament, only exercise rule and authority with the permission of, and within the parameters set by, Parliament. This differs significantly from **federalism** which grants significant levels of independence to constituent parts of the state.

## Parliamentary Sovereignty

This principle establishes the supremacy of Parliament over all other forms of institutional power. It is based on the assumption that parliament can pass any legislation it wishes to, and that no parliament can bind its successors. This means that whatever legislation a parliament passes can be undone or overturned by a new incoming parliament. This is because each parliament derives its legitimacy and strength from the electorate. It is also assumed that each parliament enjoys the consent of the people it governs, and is therefore accountable to the voters. Because of this it is considered that there are adequate checks and balances within the British political system to prevent the emergence of a dangerously autocratic executive.

## Partial separation of powers

Eighteenth century philosophers, particularly Locke and Montesquieu, maintained that to attain pure democracy in a nation state, the three branches of government, the Legislature, the Executive and the Judiciary, should be separated completely and a system of checks and balances devised as a prescription to prevent a tyranny developing. This was developed by the United States, but in Britain, total separation was never considered desirable. In the British political system, the Executive and Legislature are both contained within Parliament and the judiciary are appointed by the Lord Chancellor who is a member of the Executive. In addition, our judiciary have no constitutional rights of legislative scrutiny or veto.

Thus, under the principle of the separation of powers, in the United States for example, no person can hold office in any more than one branch of government. As a result, if a Senator or a Representative is elected to the Presidency, they must vacate their seat in Congress. In the United Kingdom however, the Prime Minister must be a Member of Parliament. Therefore the British Prime Minister is both a member of the **legislature**, and a member of the **executive**. In the case of the Lord Chancellor who we have just discussed, this person is a member of the legislature with a seat in the House of Lords, is a member of the executive with a seat in the government, **and** is a member of the judiciary. As a result, it is possible for someone in Britain to be a member of all three branches of government at the same time.

So, we can conclude that, in Britain, the separation of powers does not really function and is said to be partial.

## The Rule of Law

The 1983 election manifesto of the British Conservative Party stated that the rule of law is '**the foundation of all our liberties**'. According to the political theorist Dicey, there are certain unwritten principles which transcend any law passed by a particular parliament. For example, British citizens are supposed to exercise what are known as '**residual freedoms**'. This means that there are certain freedoms which naturally 'reside' with an individual, and upon which the onus lies with government to justify diluting or removing them. We shall return to these, but an example would be freedom of speech. The principle of the rule of law argues that it is, by definition, illegitimate for any authority to arbitrarily interfere with such freedoms. These freedoms reside with each individual by right.

The rule of law also requires that the makers of law, and the guardians of the law, are themselves bound by the law. Therefore the government, the police and the legal system are all under the same rules and regulations as the rest of society. The binding principle of the rule of law is that **no-one** in society is above the law.

It is argued that the principle of 'rule of law' lies at the heart of individual freedom and liberal democracy. David Beetham and Kevin Boyle (1995: 71) describe this principle in the following way:

'The rule of law embodies the simple principle that all state officials, whether elected or non-elected, should act within the law and the constitution, on the basis of powers that are legally circumscribed . . . The principle can be traced back to the Aristotelian idea that the best government involves the 'rule of laws, not of me'. In its modern form the principle evolved from the struggle to limit the arbitrary discretion of the monarch and his or her officials, by requiring legal authorisation for all executive action.'

An important point to note, as the 1983 Conservative manifesto admitted, is that in terms of the British constitutional position, individual liberties depend on the rule of law. In addition, the successful application of the rule of law depends on the role of trial by jury and the impartiality of judges. AV Dicey argued that the key features of the rule of law were that:

- the rights of individuals are determined by legal rules and not the arbitrary behaviour of authorities
- there can be no punishment unless a court decides there has been a breach of law
- everyone, regardless of his or her position in society, is subject to the law.

Contemporary critics of the concept of the rule of law argue that it has been rendered virtually meaningless in modern Britain. One of the principles of the rule of law is that the law should be fair, non-discriminatory and procedurally neutral. Supporters of a written and clearly defined constitution with a Bill of Rights, believe that British society has had its liberties more and more encroached upon by central government, thus not only weakening the rule of law and our individual liberties, but also making the principle of the rule of law more important than ever. They claim that central government has sought, and seeks, to undermine the three basic tenets of Dicey's code with an increase in measures such as:

- the Official Secrets Act
- the attempt to remove an individual's right to trial by jury
- the activities of the government and its intelligence services following the events on September 11<sup>th</sup> 2001 in the name of the government's 'war on terror,' such as, arresting people **before** they are guilty of committing an offence and imprisoning them without charge or trial or even access to a lawyer
- removing what were considered traditional rights, such as the removal of the workers right at GCHQ to belong to a trade union under the Thatcher government (though brought back since 1997)
- the gagging clause that now has to be signed by those in the Civil Service after the Clive Ponting and Belgrano issue shortly after the end of the Falklands War.

## The British Constitution and Scotland

With regards to the relationship between the British constitution and the political system as it now exists in Scotland, the principle that must be borne in mind by the student of politics in Britain is **parliamentary sovereignty**.

Although Scotland has its own parliament, that parliament only exists because it was established by the authority of the Westminster parliament (it was established by an Act of Parliament), and only exercises **its** authority under parameters set by Westminster. Under the principle of parliamentary sovereignty, the Scottish parliament only performs the duties and functions it is allowed to under the legislation passed in Westminster setting it up in the first place.

We will be looking at the powers and functions of the Scottish Parliament later in this pack when we look at political structures. However, for the moment let us note that Westminster defined what it termed **reserved** and **delegated** powers when it established the Scottish Parliament. Reserved powers are those powers reserved to Westminster, and delegated powers are those powers that have been delegated to the Scottish Parliament. The important point to note, is that these powers are **delegated**, which means that, if it chooses to, Westminster can step in and challenge, or even abolish, any measure proposed or taken by the Scottish Parliament.

The principle of parliamentary sovereignty even allows the Westminster parliament to abolish the Scottish Parliament by another Act of Parliament if it wishes to do so. It is important we remember that the Scottish parliament does **not** have a constitutional **right** to exist.

Thus in relation to the British constitution, the Scottish system is still an integral part of that constitutional settlement, and is still governed by it, despite having its own parliament. The Scottish parliament has its own rules and procedures that are often different from Westminster, but such rules and procedures are still subject to Westminster scrutiny.

The Scottish system of government is known as **devolved** government. We will be looking at this in more detail later, and we will draw distinctions between **devolved** government, and **federal** government.

## **Activity**

- a) Define a constitution.
- b) Describe the strengths and weaknesses of the British constitution.
- c) In 50 words each, describe four of the sources of the British constitution.
- d) In 50 words each, describe four key features of the British constitution.
- e) In no more than 100 words, describe how the British constitution impacts on Scotland.

## The American Constitution



**'We are under a Constitution, but the Constitution is what the judges say it is.'**  
(Charles Evan Hughes – Former Chief Justice of the US Supreme Court.)

We should note at the beginning of our study of the United States, that one of the remarkable features of the United States political system is that it operates under a constitutional structure that was created at the end of the 18<sup>th</sup> century and which remains, in essence, intact, and relevant in the 21<sup>st</sup> century. In other words, it works.

The 13 British colonies in America declared their independence from Britain in 1776. In 1775, a war for independence had broken out that lasted for six years. While still at war, the colonies, now calling themselves the United States of America, drafted an agreement that bound them together as a nation. This agreement was known as the 'Articles of Confederation and Perpetual Union', and was adopted by a congress of the states in 1777 and formally signed in July 1778.

The Articles of Confederation served their purpose of declaring the thirteen colonies independent and establishing a new nation state, but they were not regarded as a satisfactory basis for a future American government and political system. As a result, an American Constitution was developed by a Constitutional Convention consisting of 55 delegates representing the thirteen former British colonies. They met in the city of Philadelphia in the summer of 1787 and completed writing the Constitution which was then adopted by the Constitutional Convention on September 17<sup>th</sup> 1787.

The federal government of the United States was based on the new constitution which created a much more unified government than the group of thirteen semi-independent states who operated under the Articles of Confederation. The new Constitution came into effect on March 4<sup>th</sup> 1789.

### Principles

The American constitution can be said to be composed of five basic principles:

- Federalism.
- Separation of powers.
- Checks and balances.
- Judicial review.
- Bill of Rights.

American government is founded on the liberal principle of **limited** government, and on the belief that one of the most important ways in which to limit government and ensure that it remains democratic and non-tyrannical, is to separate the powers of government into three distinct branches, legislative, executive and judicial. In this, it reflects the influence of liberal political theorists, particularly John Locke and Baron de Montesquieu. An examination of the five basic principles above should allow us to examine how this is achieved in the American context.

### **Federalism**

The main feature of a written constitution, such as the United States, is that it defines the powers of the several branches of government in addition to legitimising the political actions of such branches. It defines the divisions of governmental authority within and between different levels of government.

NB. when discussing the national, central government in America, we will call it the **federal** government. When discussing state governments we will refer to them as **states**.

The Tenth Amendment to the Constitution states that:

‘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.’

This reflects the American resistance to a unitary state structure such as Britain’s, and to the political principle of centralised government.

The Federal government in the United States has been described as being one of no fewer than 85,000 governments. This is not idealistic, but rather describes an actual condition. These governments fall into eight categories.

1. Federal government.
2. State governments.
3. County, borough and parish governments.
4. City governments.
5. Township governments.
6. School district governments.
7. Special district governments.
8. Regional governments.

For example, there are 50 state governments, 3,043 county, borough and parish, 19,000 city, 16,000 township, 14,400 school district, and 33,000 special district governments.

(For a fuller explanation of the roles and functions of these governments we recommend *Government and Politics of the United States* by Nigel Bowles (1998).)

Federalism is much more than the devolution of powers that exist in the British system between Scotland and Westminster. The American principle of federalism is based on the concept of **dual sovereignty**. This concept guarantees a constitutional independence for the different levels of government in the policy areas that each level has responsibility for. For example, we have already shown how Westminster could abolish the Scottish Parliament if it chose to do so. No federal government could do a similar thing. Nor can the federal government interfere with policies it dislikes or disapproves of.

If the federal government felt so strongly about an issue that it was determined to try to alter it, it would either have to seek an amendment to the US Constitution, or ask the Supreme Court to intervene on its behalf. The Supreme Court would only rule in the federal government's favour if it felt that the lower government was in breach of the constitution.

Federalism seeks to ensure that governments are responsive to the people who elect them, that lower levels of government preserve and reflect local cultures and differences, and that the central government's powers are limited by transferring decision-making to lower levels whenever possible and applicable. In addition, federalism seeks to increase political participation throughout the political system by this division of decision-making.

The US Constitution does not actually mention federalism. However, its Articles do outline the principles of federalism that must be applied. We have already noted the Tenth Amendment that:

**'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.'**

In addition, Article IV of the Constitution states that:

**'the United States shall guarantee to every State in this Union a republican form of government.'**

And:

**'no new State to be formed from an existing State or States, nor an existing State to be abolished or to have its boundaries altered without the consent of the Legislatures of the States concerned as well as of the Congress.'**

And:

**'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'**

These are a few examples of how the constitution sought to guarantee state and local government independence, and freedom from central control and federal interference. As a result, by establishing the principles of federalism, the framers of the constitution attempted to design a political system that would give the states and local government as much independence as was necessary to guarantee the constitutional rights of all the citizens of the United States and protect their welfare and democracy.

We began this section on American government by quoting Charles Evan Hughes:

**'We are under a Constitution, but the Constitution is what the judges say it is.'**

The Founding Fathers of the constitution could obviously have had no idea that the United States would grow into the enormous economic and political superpower that it is in the 21<sup>st</sup> century. The growth in federal government powers and responsibilities, coupled with the massive growth in population since the 18<sup>th</sup> century, has transformed the United States from 13 states into 50 dynamic political structures that could be countries in their own right.

As a result, the American federal system of politics is incredibly dynamic and is ever changing. The institution that supervises such changes, and referees the disputes that naturally arise from such a complex political and economic system is the Supreme Court.

The US constitution empowers the judiciary to decide:

**‘all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority ... to Controversies between two or more States ... between a State and Citizens of another State ... between Citizens of different States ... between Citizens of the same State claiming Lands under Grants of different States.’**

So, the judiciary, and particularly the Supreme Court, was given constitutional authority to decide all disputes relating to the legal and political power and authority of the federal and state governments. As a result, the development of the US political system and the interpretation of federal and state powers and authority can be credited to the Supreme Court far more than to the framers of the Constitution. The dynamic nature of the American federal system of government has meant that, since the founding of the American republic, many of the cases brought before the Supreme Court have resulted in the Court deciding on the powers the federal government can exercise over the states, and federal and state powers over US citizens. **Chief Justice Marshall** remarked in 1819 that:

**‘the question respecting the extent of the powers actually granted to Congress is perpetually arising, and will probably continue to arise, as long as our system shall exist.’**

As a result, power and authority in the United States is largely a matter of interpretation, and the final decision on what the Constitution actually means lies with the Supreme Court. Interestingly, the Supreme Court will sometimes overturn decisions that it has itself made in the past. This again highlights the dynamic nature of the American system. The Supreme Court will sometimes admit that it got it wrong, and will change its mind. An example of this, in relation to civil rights, was when the Supreme Court, in 1954, under **Chief Justice Earl Warren**, overturned a Supreme Court decision of 1896.

In a case known as **Brown vs. Board of Education Topeka Kansas (1954)** the Supreme Court ruled that its decision in 1896 in a case known as **Plessey vs. Ferguson** was wrong and unconstitutional. The 1896 case had established the ruling that black people were subject to the concept of ‘separate but equal’ access to facilities, such as education. This established and justified the system of racial segregation. The 1954 case overturned this ruling and ordered the integration of black people **‘with all deliberate speed’**. In his ruling, Chief Justice Warren argued that **‘in the eyes of the law, justice was colour-blind’**. Warren argued that segregation violated the 14<sup>th</sup> Amendment to the Constitution.

We shall return to a more in-depth examination of the US judiciary later, but trust that this gives an insight into the role the courts play in the development of the American federal system.

## The Separation of Powers

The principles underpinning the Separation of Powers are not new, and have a long historical pedigree. However, the American Revolution coincided with a renewed interest by influential political thinkers in Europe in the concept of the separation of powers. These political philosophers, in their turn, influenced the Framers of the American Constitution, and this was reflected by the inclusion of the principle of the separation of powers in the new constitution.

In his writings, the Greek philosopher **Aristotle** argued for a mixed government composed of monarchy, aristocracy, and democracy. In the 'Commonwealth of Oceana,' in 1656, the Englishman **James Harrington**, developed Aristotle's proposals and argued for a governmental system based on the separation of power, advocating a division of the powers of government, a written constitution, and the principle of rotation in office. **John Locke**, writing in *Civil Government* in 1690, proposed the separation of the powers of government into an executive and a legislature, and in 1748 in *The Spirit of the Laws* **Montesquieu** expanded on Locke's proposals by adding a judiciary as a separate branch of government. The framers of the American Constitution developed such ideas in an attempt to design a governmental system that ensured that each of the three branches of government would have a significant constitutional independence from each other. As we have just discussed, this resulted in the federal system we find in the United States today, which not only guarantees significant independence for the three branches of federal government, but extends such guarantees to the states as well. It should be noted here that each state within the United States has its own constitution in addition to being subject to the federal constitution.

As a result, the United States constitution established a system whereby the three branches of American government, the Presidency, Congress and the Judiciary, enjoy constitutional powers and a significant degree of independence that cannot be interfered with, nor modified, by any of the other branches. The only way that such powers can be modified or amended is by amending the constitution itself. However, it must also be stressed that separation is not complete. The constitution also requires a certain amount of **interdependence** between the three branches of government. They are not **completely** independent of each other. For example, we will be examining in detail later how, as well as exercising an executive function, the presidency also exercises a legislative function. In addition, we will see how Congress can intervene in executive matters.

The final safeguard in this system against the threat of a government attacking the constitutional rights and liberties of the citizens and the individual states is the federal judiciary. Federal judges have powers and authority under the constitution to declare unconstitutional actions of the president, federal and state legislatures. If any of the political institutions of the United States either fail to protect, or are themselves a threat to, civil liberties and property rights, then the federal courts have the power and authority to intervene. As a further safeguard, federal judges are appointed; they are not elected, and, once appointed, can only be removed by a process known as **impeachment**. As a result, judges cannot be simply removed from office if someone does not like the decisions they reach. Impeachment is, however, a difficult and rarely used procedure.

## Checks and Balances

As we showed earlier, based on their experience under British rule, the framers of the constitution were conscious not to give any branch of government too much power. The separation of powers provides the system with what we term, checks and balances. As it suggests, there are inbuilt mechanisms in the American system to **check** the power of governmental institutions, and **balance** the powers of each against the other.

To give some examples:

- the President appoints judges and departmental secretaries, makes treaties and appoints ambassadors, but these appointments and treaties must be approved by the Senate
- congress can pass a law, but the President can veto it
- congress can impeach the President
- the Supreme Court can rule a law to be unconstitutional, but the Congress, with the States, can amend the Constitution if they feel strongly enough about a Supreme Court decision.

There are many such checks and balances in the American system, all deliberately designed to force each branch of government to be accountable to the others, and ultimately to the American people, and to ensure that no one branch can become so powerful that it renders the others ineffective. As a result, separation of power with its inbuilt system of checks and balances, prevents a concentration of power (seen as the root of tyranny) and provides mechanisms whereby each branch can resist, and if necessary, fight, any interference in its constitutional rights by the other two branches.

James Madison, one of the Framers of the constitution, argued that:

**‘ambition must be made to counteract ambition’**

and that the American system:

**‘was not designed to maximize efficiency, but to maximize freedom.’**

## Judicial Review

Judicial review is the principle that allows the courts to declare acts by the executive or legislative branches of government unconstitutional. The Supreme Court has exercised this power to overrule state laws denying civil rights guaranteed by the constitution. We will look at this principle in more detail later, but we have already given an example of this in the case of *Brown vs. the Board of Education*.

## Bill of Rights

In 1791, the states ratified what they called the Bill of Rights. The Bill of Rights is the name given to the first 10 amendments to the Constitution of the United States. These amendments were proposed by James Madison who felt that they would provide democratic safeguards that he felt were missing in the original Constitution. The main purpose of the Bill of Rights was to define the scope of individual freedom in the United States and to make the political system more democratic.

As a result, the Bill of Rights provided such protections as freedom of speech, freedom of the press, and freedom of religion (first amendment), protection against self-incrimination in criminal cases (fifth amendment), and the guarantee of a fair, open, and speedy trial for people accused of crimes (sixth amendment). These are some examples of the civil rights guaranteed by the Bill of Rights. There are of course others, but the point we wish you to grasp here, is that the Bill of Rights establishes basic American civil liberties that the government cannot violate.

## The American Constitution and Scotland

As we have discussed, the Scottish system is a devolved system, which means that it operates under the principle of parliamentary sovereignty. This, as we have also discussed, differs significantly from the American system of federalism. Each state in the United States has its own state constitution. Each state also operates under the separation of powers, and has its own 'president' in the shape of the state Governor. The Governor is an elected official who operates at state level in a very similar fashion to the US President. In addition, each state has its own state judicial system. We will be looking at the state system later and seeing how they have lawmaking powers under the federal structure.

American states therefore operate under a different constitutional settlement to the Scottish settlement, which is subject to the Westminster Parliament, and has no real independence similar to that enjoyed by states within the US federal system. Scotland has lawmaking powers, but these are what we have termed **delegated** powers. Any law passed by the Scottish Parliament is always liable to be annulled by Westminster. Scotland does not enjoy any independent right to make binding legislation.

States, within the United States, have a great deal of constitutional independence with regard to decision-making in the areas of policy-making granted to them by the federal constitution. If the federal government disagrees with any decision, and wishes to interfere, it must appeal to the Supreme Court on the grounds that the decision was unconstitutional. That is a function of the separation of powers and federalism, and Scotland has no similar constitutional guarantees or safeguards. Scotland is very much at the mercy of Westminster in a way that no US state is in relation to the federal government. To recap, this is one of the major differences between Britain as a **unitary** state, and the United States as a **federal** system. Finally, Scotland does not enjoy the protection of the judiciary from central government interference that states within the USA enjoy. If the US central government acts unconstitutionally against the states, or any single state, then any subsequent judicial decision that rules against the central government must be adhered to. The US government has no powers available to them to overrule the judiciary as the British government has.

## **Activity**

- a) In 50 words each, describe four basic principles of the American constitution.
- b) In not more than 100 words, describe the difference between the American federal constitution and the Scottish devolved political system.
- c) In not more than 100 words, describe what you understand by the Supreme Court ruling in *Brown vs. the Board of Education*.

## Political Assemblies

Throughout this unit we will be studying the political assemblies of Scotland, Westminster and the United States. As a result we will be studying the Scottish Parliament, the Westminster Parliament and the United States Congress. As we have already established, assemblies can be composed of more than one house – the Commons and Lords in relation to the Westminster Parliament – and the Senate and the House of Representatives in the case of the United States Congress.

Both Westminster and the US Congress are examples of what we have termed **bicameral** assemblies, whilst the Scottish Parliament is what we have termed a **unicameral** assembly. That is, both Westminster and Congress are composed of **two** houses whilst the Scottish Parliament is composed of **one** house.

The above three assemblies we will be studying all share certain common characteristics; **they make law, they enact law and they consult and deliberate.**

In Britain we refer to the Scottish and the Westminster Parliaments when we are speaking about the British political assemblies. The term **parliament** comes from the French verb **parler** meaning 'to speak'. That is why, one of the most important roles and functions of our parliaments and of Congress is that of consultation and deliberation. This consultation and deliberation always precedes legislation and continues throughout the legislative process. Throughout the process of legislating, our assemblies are involved in a constant process of consultation and deliberation. They consult widely with many different groups and organisations with an interest in whatever piece of legislation is under consideration, and then they spend a great deal of time deliberating on the information they have consulted on. We will be looking at the ways by which the three assemblies we will be studying conduct this consultation and deliberation.

### The British (Westminster) Parliament

Before we begin to examine the structure and functions of the Westminster parliament, there is one qualification we must stress in relation to British politics at every level: the **party system**.

#### British politics is party politics

This one political fact of life is of major importance when studying the British system, both at Westminster and in Scotland. Parties are an abiding and defining characteristic of British politics. As a result, in Britain, party politics is more defined and more intense than in other modern multi-party democracies such as the United States. At elections, the British electorate vote for parties. That is why we have the convention of choosing the Prime Minister and the government from the majority party in the House of Commons. As a result, no-one votes for a British Prime Minister, the Prime Minister is indirectly elected. A British Prime Minister, in common with the rest of the government, is an elected Member of Parliament for a constituency, and becomes Prime Minister because of the convention in British politics of the monarch asking the leader of the majority party to form a government. Many people may indeed vote for a party because they wish to have a particular person as Prime Minister, but many people may also be stuck with someone they disapprove of because they wish a particular party to win the election.

It is the same in Scotland. The position of First Minister will be filled by the person selected as leader of the majority party following elections to the Scottish Parliament.

By contrast, the American President is directly elected. Although America has two dominant political parties, party politics is not nearly as partisan in the United States as they are in Britain. As a result, the United States Congress can be dominated by one particular party, whilst the President can be elected from the other major party. In a presidential election the people make a much more personal choice as opposed to a party choice.

In Britain, because of the nature of the adversarial two-party system, it would be almost impossible for a Prime Minister and government to operate if they were not members of the dominant party in Parliament. However, in the United States, the same constraints do not exist. A Republican President can work quite amicably and successfully with a Congress dominated by Democrats, and vice versa.

As a result, the party nature of British politics has a big influence on the nature of British politics and policy-making at all levels of government. That is because **government** in British politics, at local level, Scottish level and at Westminster, is **government by party**.

## Westminster



The Westminster Parliament is a bicameral institution and is therefore composed of two houses, the House of Commons and the House of Lords.

### The House of Commons

According to a Conservative Party commission, appointed to look at parliamentary reform (Commission on Strengthening Parliament, 2000), Parliament is the 'essential and definitive link' between the government and the citizens. One reason for this is that each **parliament** is elected directly by the voters, and each **government** can only continue in office if it is able to command a majority in the House of Commons.

The Commons is composed of **646** elected members who are elected for a period of 5 years, or until the next general election, whichever comes first. They are elected by a voting system known as **first-past-the-post**, which means that the candidate who wins a majority of votes in any constituency is declared the winner.

At the **2001** general election the voters elected **659** members of the Commons. However, with the establishment of the Scottish Parliament the number of MPs elected from Scottish constituencies was reduced from **72 to 59** and the number of MPs elected to Westminster in **2005** was subsequently reduced to 646.

### Functions

Coxall and Robins (*Contemporary British Politics*, 1992) state that the Commons has five main functions:

1. Representation.
2. Legislation.
3. Scrutiny.
4. Debate.
5. Recruitment.

### Representation

Although our members of parliament are elected by the voters in each constituency, and are assumed to be elected to represent these constituents, this is where the British culture of party politics first shows its importance. It must be remembered, that in the context of British politics, MPs are elected as representatives of political parties. The overwhelming majority of British voters vote for a party, not for individuals.

As a result, British governments argue, that, since the electorate has elected them as a **party**, and not simply as a collection of individuals, then they have been given a **mandate** by the electorate to carry out their programme of policy-making.

In such a circumstance, individual MPs are expected to support the party leadership and the policies they put forward as legislation. This argument also applies to the opposition parties in the House of Commons. They are expected to **oppose** those policies opposed by their party leadership and **promote** their own party's alternatives. In order to ensure that MPs obey the leadership of whatever party they are members of, British political parties in Westminster operate a system of party discipline.

### The Whip System

Responsible, representative party government in the UK is portrayed as being founded on a united team of MPs responding to a strong leadership and operating sufficient party discipline to enable a government to carry out its policy programme. As a result, MPs are considered to be under a collective responsibility, not only to the party they stood for at the election, but also to the electorate who voted for that party to be in government.

As we just stated, the system of party discipline in the Commons is known as the **whip** system. Whips are the party managers, and are responsible for organising the weekly business of the Commons. Whips are official posts within the Commons and the government party's whips carry a salary. The Government Chief Whip is a salaried position within the Commons and enjoys a formal title, the **Parliamentary Secretary to the Treasury**. Since the election of 2001 the New Labour party in the Commons has had 16 whips, including the Chief Whip. In addition, some of the Opposition whips also receive a salary in addition to their salary as an MP.

The Chief Whip is directly accountable to the Prime Minister, attends Cabinet meetings and makes the weekly and daily arrangements for the government's programme in the Commons. These arrangements are conducted in consultation with the Opposition chief whip who receives advance notice of the government's business arrangements. This arrangement is taken seriously and the government will normally delay any final decisions of their weekly and daily business arrangements until after consultation with the opposition whips.

The principal duties of the whips are:

- a) Keeping MPs informed of forthcoming parliamentary business.
- b) Maximising the party's voting strength by ensuring maximum attendance for important votes.
- c) Ensuring that members are aware of the party's policy on the measure being voted upon.
- d) Keeping the leadership fully informed of the opinions of backbenchers in the party, and alerting them to any potential rebellions.

One of the ways in which any government can be persuaded to resign is if they lose a vote of confidence in the Commons. Another way would be if the government lost a vote on a policy it had placed all its prestige on, what is sometimes known as a 'flagship' policy. An obvious example would be if the government failed to have its budget passed in the Commons. If the budget was not passed, the government would have neither income nor expenditure, and, as a result, it could not function. It is therefore absolutely crucial that the whips organise a majority vote on such issues to ensure the government's victory, and therefore its survival.

Should the whips fail to recognise possible rebellions by their backbenchers on such issues, the result could be catastrophic for the government.

Each parliamentary week, the chief whip in each party sends out a weekly circular to their MPs informing them of that week's parliamentary business. MPs are informed of the seriousness that the party attaches to each item of business by underlining the debate or the division that is to take place. The business may not be underlined at all, and that signifies to the MP that the business is a free vote; that is, the member is free to vote as he/she wishes. Free votes normally take place on issues of morality or conscience, such as the issues of capital punishment or abortion.

If an item of business is underlined once (a one line whip) then this is considered as routine business and a member's attendance at the debate, or for a vote, is not considered as very important.

If an item of business is underlined twice (a two line whip) then the member knows that the party considers this important and that they will be required to attend for the debate and the vote. The exception to this is if the whip arranges for a member to '**pair**' with an opposition MP. This is an arrangement whereby if a member cannot attend (because they are ill for example) the opposition will be asked to arrange for one of its members to abstain from voting to maintain the balance of voting strength in the chamber.

If an item of business is underlined three times (a three line whip) then the member knows that this is a highly important item and that attendance is mandatory unless there are exceptional reasons why a member cannot be present. This is because the arrangements for pairing are not normally allowed in three line whips.

Rebellion on a three-line whip can be the equivalent of parliamentary suicide. The punishment for disobeying the party line on a three-line whip is normally having the whip withdrawn. This means that the member is effectively expelled from the parliamentary party. Whilst this does not mean that they are sacked as an MP (they can still continue as an MP since the only people who can dismiss an MP are their constituency electors at an election), it would normally be followed by the member being deselected as the parliamentary candidate for that party at the following election.

The seriousness with which parties approach a three line whip and the threat of losing such a vote can be illustrated by Edward Short, the Chief Whip in the Labour government of Harold Wilson, who had sick MPs, some of whom were unconscious, wheeled through the division lobby in the House of Commons whilst they were attached to oxygen tubes. This was deemed necessary by the opposition refusing to allow pairing.

As a result, we may conclude that representation in the British parliamentary context is **principally** (though not exclusively) by party.

However, members of parliament are also sometimes representatives of **interests** as well as of their party. The best-known examples of this are those MPs who are sponsored by trade unions. Such MPs are expected to promote and defend the interests of their union in Parliament. Many MPs represent outside interests and receive a fee or other perks for promoting a particular interest, especially during the preparation and progress of legislation. For example, tobacco companies hired MPs to try to influence the legislation affecting smoking. The business community gives directorships to MPs in order that they will promote their interests in Parliament.

Such behaviour is quite acceptable as long as the MP concerned declares that he/she has such an interest by entering their interest in the **Register of Members' Interests**. MPs are expected to be honest about their outside interests in order that other MPs recognise that they are expressing an opinion on behalf of an outside agency when they speak on related matters in the House.

The final form of representation conducted by MPs is the representation of their constituents. Raising constituent concerns and seeking solutions for both collective and individual problems in this manner is often referred to as **redress of grievances**. The main problem an MP will face in this area is when there is a large constituency complaint about any matter that conflicts with the views of the MP's party. An MP may be part of a government party that is committed to build a motorway, for example, through the MP's constituency, and the MP then discovers that there is very strong feeling in the constituency against such a plan. The MP is then faced with a dilemma as to whether he/she supports the constituency who elected him/her, or whether to support the government. If the MP is then faced with a three-line whip, he/she will almost certainly toe the government line.

So, we may conclude that, in the British context, representation is not clear-cut and non-problematic. Our representatives have various responsibilities that may often conflict; whether they represent their constituency, the interests they are sponsored by, or the party they were elected from.

## Legislation

A measure that passes the Parliamentary legislative process and becomes a law is known as an **Act of Parliament**. Before a measure becomes an Act it is known as a **Bill**. There are **eleven stages** in the making of an Act of Parliament, and any measure that is passing through these stages is referred to as a Bill. A **Bill** is therefore a **draft** of an **Act**.

Legislation is obviously a crucial function of the Commons, and we must note here that the legislative function is not restricted to the Commons, many pieces of important legislation begin in the Lords, and all Bills, regardless of where they originate from, must pass through both Houses of Parliament. One qualification to be mentioned here is that whilst all Bills must pass through both Houses, the Lords does not deal with any '**Money Bills**'. A money bill is any bill dealing with finance, of which the best-known example would be the Budget. Whilst money bills still pass through the full Parliamentary process, they pass through the Lords without discussion, that is, they are passed automatically. The Lords can neither delay, amend, nor veto them.

### Types of Bills

There are three main types of Bills presented to Parliament:

1. **Public Bills.**
2. **Private Bills.**
3. **Hybrid bills.**

**Public Bills** consist of two categories of bill:

**government bills** and

**private members bills.**

By far the largest part of the legislative process consists of public bills, particularly **government bills**. The majority of public bills that will become an Act of Parliament are introduced by a government minister.

However, individual MPs are also able to initiate legislation by sponsoring a **private members bill**. While government bills are almost certain to become law, given that the government enjoys a majority in the House, and can enforce the whip system, very few private members bills will become law.

In the Commons, on every **Friday** that the Parliament is in session, private members bills take precedence over government bills. If a member of parliament wishes to propose a piece of legislation, he/she announces their intention to do so, and applies to be included in a **ballot** to decide if they will have the opportunity.

Many MPs take this opportunity (normally around 400) and, as the legislative timetable is extremely busy, only **20** private members bills drawn in the ballot are considered in any parliamentary session. In fact, the time allocated to the consideration of private members legislation is limited by Standing Order. As a result, when the ballot is conducted early in the session, the first 20 members selected in the ballot will be given the opportunity to promote a private members bill.

Private Members Bills were not used before 1948/49 and in the last five years the success of such bills was:

1999 – 2000	6
2000 – 2001	0
2001 – 2002	8
2002 – 2003	13
2003 – 2004	5

**Private Bills** should not be confused with private members bills. Private bills are normally bills affecting outside interests, specified persons, categories or localities. They are introduced into Parliament through a petition by the individual persons or organisations, such as local authorities, desiring the Bill. Most private bills deal with local issues and are sponsored by local authorities or other statutory bodies seeking special powers.

**Hybrid Bills** are usually Government Bills which specifically affect particular individuals or groups. As a result, they represent a cross between a Public and a Private Bill as they are public bills that affect the specific private rights of people individually or collectively. Hybrid bills are fairly rare, but are normally introduced by the government. The most recent example of a hybrid bill was the **Channel Tunnel Act 1987** because it had a specific impact on landowners in Kent. However, as with private bills, the passage of such bills through Parliament is governed by special procedures which allow those affected to put their case.

## The Legislative Process

Many pieces of legislation begin their life as either a **Green Paper** or a **White Paper**. These are consultative documents designed to stimulate discussion and debate amongst interested parties. Governments may wish to test if a measure will be received favourably or with hostility before they commit to producing the measure in the form of a Bill. A Green Paper is an exploratory statement designed to test the reaction to a particular political idea that the government wishes to pursue, and to stimulate discussion amongst a wider audience. A White Paper is a statement of government intent and sets out the government's intentions in any given policy area. It is therefore more firm and robust than a Green Paper.

Green Papers, White Papers and Bills are prepared, on the instructions of the government, by civil servants referred to as parliamentary draughtsmen. As was stated, a bill passes through eleven parliamentary stages, five in the Commons, five in the Lords, followed by the Royal Assent. The five Commons stages are:

1. **First Reading.**
2. **Second Reading.**
3. **Committee Stage.**
4. **Report Stage.**
5. **Third Reading.**

If a bill passes all five stages in the Commons, it is then passed to the Lords for their consideration where it goes through the **same five** stages.

If the Bill passes all 10 parliamentary stages, it is then passed to the Monarch for their signature when it then becomes an Act of Parliament.

**The first reading** of a public bill is a formality. It is introduced in the House by a sponsor. If the Bill is a government Bill, the sponsor will be a government minister. Once formally presented, it proceeds to a second reading.

**The second reading** normally takes place within two weeks of the first reading if time permits. This provides the first occasion for MPs to debate the general principles of the Bill. Amendments and modifications to the Bill are not permitted at this stage. At this second reading stage, the Bill is normally presented to the House by a government minister from the department responsible for the measure contained in the Bill. The minister will outline the main principles of the Bill and summarise its most important clauses. The opposition parties will then respond and debate the measures in the Bill, with the government team present at the debate.

At the conclusion of the debate on second reading it is possible for the House to vote against the Bill. If this is passed, then the Bill will go no further. However, that virtually never happens.

**The Committee Stage** follows when a Bill has passed its second reading. A Bill will be referred to a **standing committee** (set up for that particular purpose) for detailed, clause-by-clause examination of the Bill. The standing committee will consist of 16 to 50 MPs chosen to reflect the balance of the parties represented in the Commons and the various qualifications of members. A standing committee is appointed for each new Bill by the **Committee of Selection**. The standing committee is able to recommend amendments to the Bill for the consideration of the House.

Standing Committees are not to be confused with **Select Committees**. Select Committees will normally take evidence from various interested parties, as well as from ministers, rather than just debate issues. Any recommendations or findings from Select Committees are then passed to the Commons in a form known as **command papers**.

Sometimes a Bill may be referred to what is known as a **Committee of the Whole House**. This means that such Bills will be considered by the whole House of Commons and will be considered within the chamber of the Commons. Bills that are considered by the whole House will be bills that have a major constitutional importance (such as the Bill for the ratification of the Maastricht Treaty or the establishment of the Scottish Parliament), bills which the Government needs to pass with unusual speed (such as The Prevention of Terrorism Bill), bills which are of a very uncontroversial nature of which the committee stage is expected to be very short and where it would not be worthwhile to establish a standing committee and private Members' bills which are not opposed and where all the stages are taken without debate

**The Report Stage** takes place, normally within two weeks after the standing committee has completed its examination of a Bill. The report stage is so-called, because the standing committee now reports its conclusions to the House. The MPs in the House now have the opportunity to consider any amendments recommended by the committee, or to propose amendments of their own. All MPs have the opportunity to speak and vote on the Bill at this stage, and a debate at the report stage can be quite lengthy, covering several days.

**The Third Reading** of the Bill now normally follows immediately after the Report Stage in the Commons. The third reading is a consideration and review of a Bill in its final, completed form, including any amendments that have been accepted by the House. Minor amendments can be made to a Bill at the third reading, but this is unusual. If the Bill is accepted by the House at third reading, it is then sent to the Lords for their consideration.

In the House of Lords, the Bill will progress through a very similar process to the Commons, passing through the same five stages. This is not to imply, however, that the passage of a Bill through the Lords is a formality. The Lords have the power to amend a Bill, and such amendments have then to be either agreed by the Commons, or a compromise reached. However, if either House digs its heels in and insists on its amendments when compromise cannot be reached, then the Bill may be lost. However, despite the objections of the Lords, the Commons has powers available to by-pass the Lords if it is determined to do so. If the Lords will not agree to any particular Bill, despite amendments and compromise, then the Commons can utilise the **Parliament Acts of 1911 and 1949** to present a Bill for its Royal Assent after one year, and in a new session. The principle behind such powers is that the unelected House of Lords is expected to revise legislation and complement, but not rival, the elected House of Commons. Since 1949, four acts have been passed into law without the consent of the House of Lords:

1. The War Crimes Act 1991.
2. The European Parliamentary Elections Act 1999.
3. The Sexual Offences (Amendment) Act 2000.
4. The Hunting Act 2004.

**The Royal Assent** – When a bill has completed all its parliamentary stages, it receives the Royal Assent from the Queen. After this the bill becomes part of the law of the land and is known as an **Act of Parliament**. The Royal Assent has not been refused since 1707, when Queen Anne refused it for a Bill for settling the militia in Scotland.

Finally, before we leave the subject of legislation we must mention a reform that was made in Parliament in the late 1990s. We noted that, normally, public bills not passed by the end of a parliamentary session are lost. However, following a recommendation of the House of Commons Modernisation Committee it was agreed that, in certain circumstances, public bills may be '**carried over**' from one session to the next. The first public bill to be treated in this way was the **Financial Services and Markets Bill 1998/9**.

## Scrutiny

The great English philosopher John Stuart Mill wrote in his *Considerations on Representative Government* (1861) that:

**‘instead of the function of governing, for which it is radically unfit, the proper office of a representative assembly is to watch and control the government.’**

One of the Commons most important functions is therefore the task of scrutinising the Government’s policies and the administration of its policies. Andrew Heywood (*Politics* 1997) states that:

**‘assemblies have increasingly become scrutinising bodies, the principal role of which is to deliver responsible or accountable government.’**

As a result we can say that a political assembly, such as the House of Commons should be in the business of monitoring, constraining and checking the power of the executive.

This situation has arisen because, historically, legislation and the implementation of that legislation has developed primarily as the task of the government. So it is therefore true to say that Parliament has few policies of its own and, because of the party system, no programme of its own to rival that of the government. We must remember that the majority of MPs were elected on a party basis, and therefore on the basis that they support the Government’s policies. The functions of the Commons are therefore to examine and react to the Government’s policies and actions.

The Commons exercises scrutiny over the executive in three major ways:

1. **Parliamentary Questions.**
2. **The Committee System in the Legislative Process**
3. **Select Committees.**

## Parliamentary Questions

One of the major ways in which MPs can hold the government to account is by persistent questioning of government ministers, including the Prime Minister. Questions to the government take the form of **oral** or **written** questions.

In the parliamentary session 2003 – 2004, **58,562** questions were tabled to be asked of the government, of which number **3,687** were **oral** questions to be put directly to ministers in the Commons chamber at Question Time. The remaining questions required a **written** response from the government.

The House of Commons Information Office Factsheet P1 on Parliamentary Questions states that:

**‘parliamentary questions are tools that can be used by Members of Parliament to seek information or press for action. They oblige ministers to explain and defend the work, policy decisions and actions of their departments.’**

The first hour of Commons business, from Monday to Thursday is set aside for questions, and the Departments of the government are organised to answer questions by rota.

Prime Minister’s questions take place each Wednesday at 12.00 and are scheduled for approximately half an hour.

Question time can be quite testing for ministers. Although an **oral question** will be tabled in advance (MPs must submit their questions in advance to the **Table Office**), and the answer the minister gives will be prepared by a civil servant, the person asking the question will be allowed a **supplementary question**, to which the minister has no warning. In addition, other MPs are also allowed to put supplementary questions to the minister. This can often catch ministers unaware, and they have to be on their toes to handle what can be very searching questions on the matter under consideration.

**Written questions** are used by MPs to gain more (and more detailed), information from the government on any matter than they would get from an oral reply in the Commons. Dealing with questions can be an expensive matter for the government. In 2005, the average cost of answering an oral question was £369 and £134 for a written answer. Because of this, a maximum cost has been put on answering questions, and a government department can refuse to reply to questions that cost over £600

## The Committee System

A great deal of the work of scrutinising the executive is performed by the committees of parliament. For example, we have already noted how legislation is subjected to scrutiny at the Committee Stage of a Bill. Again we looked earlier at how MPs with outside interests, register such interests in parliament. Such interests are monitored by the **Committee on Standards and Privileges** who are tasked with policing the ethical standards of members in their conduct as elected members. This committee is an example of a **select committee** which is composed of members of all parties in the House.

Each government department has a select committee that will monitor its activities. Each of these committee are normally composed of 11 members. In 2005 there were 18 such committees. The role of a departmental select committee is to monitor:

**‘the expenditure, administration and policy’ of the department and ‘its associated public bodies’.**

The committee will gather written and oral evidence and information and report its findings to the Commons. The system in place for performing these duties was established in 1979.

In 2005 there were 18 select committees:

1. Constitutional Affairs.
2. Culture Media and Sport.
3. Defence.
4. Education and Skills.
5. Environment, Food and Rural Affairs.
6. Foreign Affairs.
7. Health.
8. Home Affairs.
9. International Development.
10. Northern Ireland Affairs.
11. Office of the Deputy Prime Minister (Housing, Planning, Local Government and the Regions).
12. Science and Technology.
13. Scottish Affairs.
14. Trade and Industry.
15. Transport.
16. Treasury.
17. Welsh Affairs.
18. Work and Pensions.

In their task of scrutinising a government department, select committees will adopt various different methods of investigation. They may initiate a full enquiry that will gather both written and oral evidence that will eventually be published in a report, or they may hold a single evidence session to examine one particular issue. They often hold informal meetings with experts from different areas such as transport, agriculture, etc. Another function of select committees is visiting different regions within the UK and visiting foreign countries to see how things work and operate in practice, and to examine how regions and other nations handle similar problems, again such as transport or agriculture. In addition, select committees often examine the draft of a piece of legislation affecting the area they are tasked with scrutinising.

As a result, we have three principal mechanisms whereby the Commons exercises scrutiny over the executive:

1. Parliamentary questions.
2. The committee stage of the legislative process.
3. Select committees.

## Debate

One of the principal functions of parliament is debating. Members of Parliament debate all the major issues of political life on a daily basis. We have already noted that the term parliament comes from the French parler (to speak), and it can be argued that the role of the Commons as a debating chamber on the issues affecting the nation represents the real essence of parliament. There are many opportunities for MPs to debate issues, but some of the principal ones are:

- **The Queen's Speech.** At the opening session of each parliamentary year, the monarch delivers a speech in the House of Lords in which she outlines the government's proposals for that parliamentary session. The government's programme is written by the Prime Minister. The Queen's Speech is followed by five days of debate on the proposals in the Commons.
- **Government debates.** The government will normally set 15 days aside each parliamentary session for debate on topics that the government wishes to be debated. It is in such sessions that the government will test the Commons reaction to Green and White papers and to policies it wishes to promote.
- **Opposition Days.** Some textbooks may refer to Opposition Days as 'Supply Days', but this term is no longer in usage. Opposition Days are 20 days set aside in each session to allow the opposition parties to select the topic for debate. Seventeen days are allotted to the largest opposition party in the Commons and three days to the second largest. These debates are an opportunity for the opposition to attack the government on issues of their choosing.
- **Adjournment Debates.** Four days per week, a one-half hour debate is allotted at the end of the day's business for MPs to debate a topic of their choice. The right to choose a topic for debate in an adjournment motion is determined by a ballot.
- **Private Members Motions.** Various Fridays throughout the parliamentary session are reserved for motions raised by private members. These sessions allow MPs to debate motions on government policy or constituency matters of their choice.

The above list is indicative of the main mechanisms available to MPs to debate issues in the Commons. These are not the only mechanisms, and for a fuller explanation we recommend:

***Government and Politics in Britain* by John Kingdom (3<sup>rd</sup> edition, pages 398-399).**

## Recruitment

We have highlighted the fact of party politics in the United Kingdom and how party politics is one of the defining characteristics of British politics. This led us to discuss how a government emerges out of the party system. We also saw that a Prime Minister is the leader of the largest party in the Commons following a general election and is not directly elected. As a result, the person occupying the office of Prime Minister at any given time is also the creation of the party system.

Thus, the Prime Minister is the result of the process by which the parties select their leaders. We can therefore say that parliament, through the machinery of the party system, recruits both the Prime Minister and his/her government.

It is the political parties who recruit people into the political process. Candidates are recruited by local party organisations from all walks of life, and from all areas of the country. The party will then encourage such people to attend meetings, hold office in the local party and work for the party at elections. In this way, such people develop political skills and undergo a form of training. Suitable people will then be approached and asked to stand as candidates themselves. If a suitable candidate is then fortunate enough to win a parliamentary seat, they will become part of the parliamentary party and subject to the parliamentary party discipline we spoke of earlier.

In parliament, the recruitment process will continue as the parliamentary party looks for suitable new members to be groomed for high office, both within the parliamentary party, and for government should the party be successful in a general election.

Parliamentarians not only scrutinise issues and measures, they are continually scrutinising each other. MPs continually assess their colleagues' performance in parliament in terms of their potential for promotion as ministers. A poor minister can expect the **public** support of their party, but will **privately** lose the confidence of their colleagues if they are consistently poor performers in the Commons or if they show little understanding of the case they are promoting. In circumstances like that, new members are constantly being assessed as possible replacements. MPs continually judge the personal character and performance of their colleagues and, by this process, those who merit the confidence of their fellow MPs emerge as candidates for promotion and potential replacements for poorly performing ministers. This process will produce the future leadership of the parties. Such people will then become known to the public, as journalists will seek out such potential leaders for interviews on policy matters, and for their personal opinions, and they will appear more and more on television as spokespersons of their party.

## **Activity**

- a) What are the common characteristics of the Scottish, Westminster and American political assemblies?
- b) What is the defining characteristic of British politics?
- c) In 50 words each, describe four of the main functions of the Westminster Parliament.
- d) How many stages does a Bill pass through the Westminster Parliament before it becomes an Act?
- e) List the stages that a Bill goes through before becoming an Act.

## The British Executive



We spoke earlier about how so much of British political life is developmental and based on convention, custom and practice. The executive branch of British government is another example of this.

The British executive is traditionally defined as the Prime Minister, Ministers and civil servants, and is normally defined as **Cabinet** government.

However, constitutionally, the Cabinet has no **formal** existence in British politics, it is another example of the developmental and conventional character of British government.

The Cabinet is composed of those senior government ministers who are the heads of government departments, such as the Home Office, the Treasury, etc., and is chaired by the Prime Minister.

Historically, the Cabinet evolved from a select group of ministers invited by the Prime Minister to give collective advice to the monarch on matters of government.

In the matter of day-to-day practical politics however, the Cabinet is traditionally described as the central part of the British style of government, linking the various parts of the political process, developing government policy and helping to determine the character of the government.

It is the country's top executive committee. The size of the Cabinet will depend on the structure that the current Prime Minister feels is necessary for the efficient running of government, but it rarely alters very much. In 1900 the Cabinet consisted of 19 ministers. This figure remained constant until 1970 (except for the Second World War years) when the Prime Minister, Edward Heath, appointed 21 ministers. In 1980 Mrs Thatcher appointed 22 ministers, and Tony Blair appointed 23 in 2003 and again in 2005.

However, the actual government of Britain today, involves over two hundred politicians operating from Cabinet level down, as well as a range of senior civil servants who form what is known as the **core executive**.

At the top of this government structure is the Prime Minister and the Cabinet. In 2002 the government structure consisted of:

- 23 Cabinet ministers
- 89 non-Cabinet ministers
- 88 Members of Parliament in paid government posts
- 24 Lords in paid government posts
- 42 Parliamentary private secretaries in the House of Commons.

A total of 266 members of parliament who are involved in the direct day to day government of the United Kingdom.

Not all ministers within the Cabinet are accorded the same status, with some ministers, for example the Foreign and Home Secretaries, considered more important than others, and who wield more influence, both in Parliament and in wider society. As a result, most Cabinets divide into a small circle – or ‘inner Cabinet’ – who may expect to be frequently consulted by the Prime Minister on their own and other specialisms, and an outer circle of ministers of lesser importance and influence.

A great deal of debate surrounds the powers and authority of the British Cabinet, particularly with reference to the Cabinet's relationships, both politically and constitutionally, with the Prime Minister.

As we said earlier, constitutionally British government is Cabinet government. However, in recent years, a debate has been taking place over the role and powers of the Prime Minister, and the extent to which the Prime Minister is conducting government and making government policy without particular reference to the Cabinet and individual ministers.

This debate has accelerated over recent years under Tony Blair's leadership, as Cabinet meetings now appear to be quite unimportant. They take place once a week on a Thursday and only last 30-40 minutes. Critics ask the question of how much important business can be discussed and decided by a committee of 23 meeting for 30-40 minutes once a week?

The principle convention governing Cabinet government is known as **collective responsibility**.

As the powers of the Monarch gradually passed into Parliament, and particularly the House of Commons, the powers of the Monarch and the body of senior advisers the Monarch consulted on a regular basis, were gradually adopted by the senior ministers of the Crown.

By this process, the Cabinet became the dominant source of executive power and, with particular reference to the circumstances created by the Industrial Revolution, the Cabinet, under the leadership of a Prime Minister, took effective responsibility for the government of the country.

The principle of collective responsibility means that Cabinet government should involve a sharing of authority, and that decision-making should be based on discussion, debate and compromise.

This type of collective decision-making is regarded as essential, particularly given that, since the executive has effectively inherited the powers of a Monarch, it is able to dominate Parliament because of the party system, and has no effective constitutional constraints on its actions. As a result, the possibility of tyranny always exists within the British system.

The concept of collective responsibility requires that Ministers accept responsibility collectively for the decisions made in Cabinet.

Once the Cabinet have reached a decision on any particular issue, however strong the controversy surrounding a particular issue and however much they may disagree with a decision, ministers are expected to support it publicly.

If a minister feels so strongly about an issue that he/she cannot bring themselves to support it, then they are expected to stay quiet and not express their lack of support publicly.

If they cannot do that, and feel that they have to oppose the measure publicly, then they are expected to resign. The reader may recall that this was the position taken by the late Robin Cook over his opposition to the Cabinet decision to go to war in Iraq.

The reason for this convention is to create and maintain the authority of the government and prevent it from damaging public conflict and dissent. It is considered vital that a government appear united and confident.

Another important aspect of collective responsibility is that Cabinet discussions are secret. Ministers need to feel free to be able to speak their minds on issues in Cabinet with the confidence that their views will not be divulged to the media and the general public. That is one reason why there are no formal minutes taken at Cabinet meetings, all that appears to be recorded are 'conclusions.'

The final convention of collective responsibility requires that the Prime Minister and the Cabinet should resign if defeated in a vote of confidence in the House of Commons.

## Cabinet Committees

Given the nature of Cabinet government outlined above, the real decision-making and policy formation related to the Cabinet takes place in cabinet committees. Cabinet committees took a central position in the decision-making process following the Second World War. It was not until after 1945 that they were given official status in the British system.

Cabinet committees, in common with most committee systems, take two forms, **standing committees** and **ad hoc committees**.

Standing committees are permanent committees that survive changes of governments (although the membership will change with a change of government, the actual formal committee will remain in place).

Examples of standing committees of the Cabinet would be the Economic Affairs, Committee (chaired by the Chancellor of the Exchequer), the Defence and Overseas Policy Committee (chaired by the Prime Minister), the Local Government Committee (chaired by the Transport and Local Government minister), etc.

Ad Hoc committees are those committees formed for a specific purpose and they become redundant after such business is either completed, or abandoned. Most such committees are created to formulate or examine policy in a specific area, or for a specific purpose. They are important given the massive amount of legislation a modern government produces, which has to be scrutinised.

Examples of Ad Hoc committees would be the committee formed by Mrs Thatcher to coordinate the government's strategy during the 1985-86 miners' strike, and Tony Blair's committee to oversee government strategy concerning biotechnology and genetic engineering.

Critics of this system argue that the growth of the committee system bypasses the Cabinet system and enhances the powers of the Prime Minister at the expense of his/her Cabinet colleagues. This is because the Prime Minister chooses who sits on such committees, and in the case of ad hoc committees, can manipulate the terms of reference of such committees.

In addition, by appointing their favourites to chair committees a Prime Minister can be sure of getting his/her own way on important policy. Such developments have caused many people to question the role of the Cabinet in modern Britain and to raise doubts about its effectiveness.

The columnist Peter Riddell, writing in 1997 stated that under Tony Blair:

**'the full Cabinet has lost even its residual role as a court of appeal or as a forum for discussing big issues.'**

As early as 1965, the former Lord Butler stated that:

**'most of my work when I was Minister of Education was done outside the Cabinet, and hardly referred to the Cabinet at all.'**

(Both quotes cited in *Kingdom, Government and Politics in Britain* (2003).)

## The Prime Minister



As with so much of the British constitutional framework of politics, the whole position of a Prime Minister is based on convention rather than statute.

With the continued extension of the right to vote throughout the nineteenth and twentieth centuries, and the nature of the party system in Britain, power within the parliamentary system became more concentrated within the government. This was because the electorate were now directly voting for their own representatives, and those representatives were themselves representing parties. The parties were the basis of the formation of governments.

As a result, governments were exercising an authority drawn from the electorate through the party system.

This process continued with governmental power becoming more concentrated within the Cabinet, and, by the mid-twentieth century, power within the Cabinet becoming more concentrated in the office of Prime Minister.

Writing in 1963, the former Cabinet Minister and diarist Richard Crossman commented that:

**‘the post-war epoch has seen the final transformation of Cabinet government into Prime Ministerial government.’**

Such developments have produced several significant factors in the determination of the extent of the Prime Minister’s power. Indeed, the modern office of Prime Minister embodies a formidable concentration of power.

However, what is also significant about the British Prime minister is that he/she is not elected as Prime Minister. An MP becomes Prime Minister because he/she is the leader of the majority party in the House of Commons following a general election. As a result, Tony Blair is Prime Minister because the Labour Party elected him as their leader and they won a general election. The only people amongst the electorate who actually voted for Mr Blair are the electorate in his constituency of Sedgefield in Durham. As a result, Mr Blair could be Prime Minister with a smaller vote from the electorate than many other people in the House of Commons.

It therefore follows that the only way to remove Mr Blair as Prime Minister is by the British people voting in another party at an election, or else for the Labour Party to remove him as their leader. Between elections, a British Prime minister is not subject to recall by the electorate.

In addition, should Tony Blair, or indeed any Prime Minister, resign their post between elections then the government party would appoint their successor with neither reference to the electorate, nor Parliament. In other words, Britain would be governed by a Prime Minister neither selected by the electorate, nor Parliament. Whilst it could be argued that this is what happens at a general election in any case, at least at a general election the public know which party leader will become Prime Minister in the event of that party winning.

Tony Blair became Prime Minister in 1997 with no ministerial experience. That is not unusual in Britain. If the present leader of the Conservative Party, David Cameron were to become Prime Minister after Blair, he would be in the same position. Thus in becoming Prime Minister in Britain, that person is not guaranteed to have the full support of the electorate nor of bringing experience to the most important job in British politics.

This is the significance of party politics. British Prime Ministers wield enormous power and influence, and, because of party support in the Commons, are guaranteed to have almost all of their proposed legislation and policy initiatives successfully passed.

This power and ability to press policies forward successfully, regardless of how contentious or controversial, is based on a minority vote from the electorate. For example, in 2005 the Blair government was re-elected on a New Labour vote that took **36% of the votes cast**. This was the lowest share of votes for a winning party since the Second World War. The turnout at the 2005 election was **61%** of the electorate, which means that only **22%** of the electorate supported Labour.

This means that fewer than **one in four** of the 44 million people entitled to vote in Britain actually supported the return of the Blair government in 2005.

This is not the fault of New Labour, it is the effect of the British system of voting, but what it does mean is that a Prime Minister, such as Blair, has a great deal of power at his disposal that is not reflected in the support of the electorate.

The significance of this is that British Prime Ministers continually claim the support of the British people in all that they do, based on the fact that they have won, what they claim to be **'a mandate'** from the British people for their policies.

## **Powers**

It is usually argued that the principal levers of power available to a Prime Minister are:

- the significance of party loyalty
- the power of patronage
- the complete personal control of the conduct of government business
- the right to choose the date of an election and the dissolution of Parliament
- the influence they wield over, their exposure in, and their exploitation of, the mass media.

**The significance of party loyalty** stems from the desire of the majority party to have a successful leader. A successful party leader will reflect on the party and on each MP within the party personally. If a leader is successful and his/her methods and policies are popular with the electorate, then the whole party will share the benefits.

This filters down through the party at all levels, for example, European, Scottish and local election results, will all tend to reflect the popularity or unpopularity of the national party and its leadership.

An example is the electoral disasters that befell on the Scottish Conservative Party as a result of Scottish perceptions of the Party at a national level, and of its leadership.

As a result, failure by the party leader will equally reflect on the whole party. If the leader of the party is also Prime Minister, then the electorate tend to identify a Prime Minister's performance with the whole party.

Therefore, the normal reaction of MPs is to support their leader, and even a weak and fairly exposed Prime Minister can expect the public support of the party as a whole in order to preserve the party's electoral credibility.

MPs have no wish to enter a general election under the most disadvantageous of circumstances, that of a discredited leader.

**The power of patronage** refers to the way in which a Prime Minister controls a significant number of appointments, many of which are accompanied by large salaries and perks.

The government's Chief Whip, one of the many appointments available to a Prime Minister, enjoys the official title of Patronage Secretary.

This patronage covers, first and foremost, the power to appoint the Cabinet and the whole range of Ministerial appointments which make up the government. In 2003, Tony Blair was responsible for appointing:

	House of Commons	House of Lords	Total
<b>Cabinet Ministers</b>	21	2	23
<b>Other Ministers</b>	52	14	66
<b>Law Officers</b>	2	1	3
<b>Whips</b>	15	7	22
<b>Total</b>	90	24	114

In addition, the Prime Minister has the ability to create peers, appoint the top civil servants at Permanent Secretary level, the heads of the security services, and the chairmen of Royal Commissions. Finally, the Prime Minister has ultimate responsibility for recommendations of baronetcies, knighthoods, CBEs, MBEs, etc., in the various honours lists.

As a result of this power of patronage, about one in four of the government party can expect to enjoy a salaried post in addition to their position as an MP, while a further group of about 25 unsalaried Parliamentary Private Secretaries are appointed. This group will expect to take over a salaried post as they regard their post as a form of apprenticeship.

Therefore, one in three of the government party are liable to be in a position that is the result of patronage. This will almost certainly make them guaranteed supporters of the leadership.

Obviously, most MPs (although not all) are very eager to obtain ministerial positions. So, the desire to hold office influences many more MPs than those who actually hold posts. This power also ensures that the Prime Minister can personally direct policy through the appointment of key supporters in influential positions. Any Prime minister is going to ensure that those people appointed to the top posts in government, particularly the Chancellor of the Exchequer, the Chief Secretary to the Treasury, the Home Secretary and the Defence Secretary, will all be guaranteed supporters of the Prime minister and his/her policies and approach.

**Control of Government business** refers to the way that the Prime Minister is at the centre of the organisation of the business of government.

As the Prime Minister controls the agenda of the government (what will be discussed, which policies will take priority, etc.) he/she can dictate the entire government programme, and the timetable by which each section of the programme can and will be implemented.

In addition, the Prime Minister supervises the flow of government information and the circulation of government papers, and appoints the Cabinet committees.

Thus, the Prime Minister can ensure that the policies brought forward and proposed are to a large extent his/her own.

The Prime Minister also enjoys a great degree of autonomy in foreign policy and has the ability to bind parliament to treaties without any requirement for formal ratification.

Finally, as we have had plenty of evidence of in this country in recent years, the Prime Minister alone is responsible for matters of national security which never go before Cabinet.

**The right to choose the date of an election.** The Prime Minister has no requirement to consult with the party or even the Cabinet before resigning or requesting the dissolution of parliament, and can thus terminate the life of the whole government by simply tendering his/her resignation.

This obviously gives the Prime Minister a great deal of power and ability to exert pressure on the Cabinet or the party to support policy when the normal means of persuasion have failed.

If a Prime Minister threatens to call an election, particularly when the party is in difficulty, then how many MPs are guaranteed to hold their seats? This is a significant threat to MPs and will probably persuade them to support the Prime Minister, even when their common sense tells them they shouldn't.

**Influence over the Mass Media.** The growth of the mass media and the obvious power it wields has opened up a new and powerful tool for a Prime Minister. The government can now appeal directly to the electorate through the media (particularly through television) and simply bypass House of Commons and Parliament.

In addition, the obsession of the media with the political process has been responsible for the office of the Prime Minister developing into what many commentators have likened to a presidential style of government, with the Prime Minister developing a personality cult. Indeed, commentators have remarked on many occasions the manner in which both Mrs Thatcher and Tony Blair give the impression that they, personally, represent the government.

The media, especially television, now gives the Prime Minister direct access into every living room in the country. The public's attention has become more and more focused on the person of the Prime Minister, with the result that a Prime Minister's and also the Leader of the Opposition's, ability to master the media has become of primary importance in determining party fortunes.

The Prime Minister's constant public exposure has been responsible for concentrating the electorate's attention more and more on that one person, so that the public's association with a government's policies and performance has come to be associated with the person of the Prime Minister. As a result, the Prime Minister's television image has taken on an important dimension which clever politicians can, and do, exploit as they are able.

A fact of modern Prime Ministers however, is the extent to which government has come more and more under their own personal control.

Cabinet meetings, for example, are under the direct control of the Prime Minister. They decide what will be discussed, in what order it will be discussed, who shall speak, how long they will speak for, etc. The PM can even dictate where everyone in the Cabinet sits, so that they can avoid having to look at certain people.

As Prime Ministers have no specific '**portfolio**', that is, they have no particular area of policy that they are responsible for, then they can, and do, interfere in any area that they consider they should be involved in. This allows a Prime Minister to promote policies and take over initiatives that normally belong to someone else.

Margaret Thatcher was frequently criticised for her style of government and accused of being authoritarian, ignoring her Cabinet colleagues and often actually undermining them in order to get her own way.

Tony Blair famously interfered in Northern Ireland to take credit for policy initiatives away from his Minister in that area, Mo Mowlam. Ms Mowlam subsequently openly criticised Blair for taking decisions without consulting other members of the Cabinet.

His most controversial initiatives have been in foreign policy where he has intervened over Kosovo, Sierra Leone, Afghanistan, and Iraq.

Gillian Peele (*Governing the UK* (2004) p.135) states that:

**'Tony Blair based much of his reform of the Labour Party around a strengthened leadership and has embraced an intensely personal style in office.'**

This style has been responsible for the Prime Minister's Office expanding to employ over 200 people under Blair's premiership. In 1999 the government, in an answer to a question in the House of Lords, revealed that Number 10 Downing Street employed 27 special advisers and 175 other staff.

Although we speak of the Prime Minister's Office, these people are actually employed in:

**The Private Office**, responsible for No. 10 and its care and upkeep, and for managing its day-to-day affairs.

**The Political Office**, responsible for party and constituency matters.

**The Press Office**, under the direction of the Prime Minister's press secretary. These people are the famous '**spin doctors**' whose job is news management. Their role is to 'spin' all news and stories to make the government, and the Prime Minister in particular, look good. That is, they **spin** any story around until it comes out in a manner they wish it to appear, and in this way they **doctor** stories and news reports.

This function was made famous, and important, by Margaret Thatcher's press secretary Bernard Ingham, but became notorious under Blair's press secretary Alistair Campbell.

Campbell once, in an attempt to undermine Gordon Brown, the Chancellor under Blair, famously described Brown as 'psychologically flawed.' He was not sacked for that, nor forced to apologise.

Such is Tony Blair's concern for news management that in 1997, he insisted that all ministerial speeches, press releases, interviews and media appearances had to be cleared by his press office before they could be released or interviews and media appearances be undertaken.

It should be noted that the press secretary and other special advisers are not elected members of parliament; they are employees of the Prime Minister's personal staff.

Obviously, critics regard such activities as seriously undermining elected cabinet ministers and MPs and bringing control of the government's activities under the personal control of the Prime Minister.

Ally such concerns with the seemingly brief, once a week, meetings of the Cabinet, and critics argue that Cabinet government has been replaced by Prime Ministerial government.

British Prime Ministers enjoy greater domestic political power than American Presidents. They do not operate within the constitutional constraints that American Presidents do.

Congress exercises greater control over the Executive than Parliament is able to exercise over the British Executive. We will be looking at such constraints later in the American section.

A President's budget must be ratified by Congress, and, whilst the British government's budget must be ratified by Parliament, the government's majority ensures that this is a formality. Not so in the United States, where a Democratic President can be facing a Republican Congress and vice versa. In addition, in Britain, the upper house is not allowed a veto on money bills.

Presidential appointments can similarly be vetoed in Congress as President Bush discovered when Congress vetoed his choice of a judge for the Supreme Court.

To recap on some of the powers available to a Prime Minister that are not available to a President:

- a Prime Minister can win over a hostile Cabinet by threatening to resign and call an election
- he/she can pack the Cabinet with supporters, and sack opponents at will
- he/she can dictate the legislative programme as well as its content
- he/she sets all the government's agenda, and therefore dictates all items for discussion and debate.

Mrs Thatcher, for example, utilised all of the above powers as Prime Minister.

## **Prime Ministerial or Presidential Britain?**

As we noted earlier, it is often suggested that British Prime Ministerial government has been so manipulated, especially by Margaret Thatcher and Tony Blair, that we are now being governed in a Presidential manner.

However, we must never lose sight of the fact that the fundamental characteristic of British politics is party. British politics are party politics.

Politicians who progress through the British system do so within parties. They are recruited by parties, trained by parties, financed by parties and sponsored by parties. As a result, politicians who have made it to the top of the political system, such as Cabinet Ministers, have done so through a party system.

As we have seen, Prime Ministers take office because of their position within the party system.

In addition to the Prime Minister, other top party politicians, particularly at Cabinet level, will represent different factions within the party, and have supporters of their own who may prefer their policy stance to that of the Prime Minister.

Such politicians are all aspiring Prime Ministers and are therefore potential rivals of the Prime Minister. They are powerful party figures in their own right

Should a Prime Minister alienate such people, they will alienate the factions and the other MPs who look to the Prime Minister's rival for leadership.

That is what happened to Margaret Thatcher. Thatcher's brand of leadership tolerated no opposition and so she imposed sets of policy options on the party that did alienate people. The most controversial was the poll tax.

This process reached the point where the party decided that she had become an electoral liability and was thus jeopardising many MPs re-election prospects and therefore their political careers.

As a result, whilst there is plenty of evidence within the British system of what appears to be a shift towards a Presidential style of leadership, at the end of the day, in the case of Mrs Thatcher, the most dominant Prime Minister since the Second World War, the party system again prevailed.

The party reasserted itself, her Cabinet colleagues moved to remove her and she lost.

In conclusion, it would appear that a Prime Minister is still only as powerful as the party will tolerate.

The important political fact of British politics is that a Prime minister holds their position because of the party, not the electorate.

The British still vote for parties, not personalities.

## The Judiciary



As we will be discussing later, in the United States, the federal judiciary in the Supreme Court has the power and authority to declare Acts of Congress unconstitutional.

The United States refers to this as **judicial review**.

British judges also refer to the concept of judicial review, but it is different from the American concept as it is much more limited in its scope. The power to rule legislation unconstitutional is not available to British judges. As Britain has no written constitution, then it is considered that all Acts of Parliament are by definition constitutional.

In British terms, judicial review is the process that monitors the legality of governmental measures. Decision-makers must act within their powers and measures must be procedurally fair. Judges will also consider if measures are unreasonable.

We have discussed the concept of the parliamentary sovereignty, and it is this concept that limits the British concept of judicial review, as British judges are unwilling to challenge parliamentary sovereignty.

Having said that, there is scope within the British system for a British version of judicial review of legislation and government actions.

As local government activity has always been delegated activity, judicial review of local government administration has always been a feature of British politics. Parliament required that the courts ensured that local government activity conformed to what Parliament had delegated to them and that they were not straying into areas forbidden to them.

Beginning in the 1960s however, the judiciary began to take a more active role in reviewing government decisions. This followed a decision in the House of Lords on a case known as **Ridge vs. Baldwin** (for a good summary of this case we recommend *Governing the UK* by Gillian Peele (4<sup>th</sup> ed.) p.475).

This form of judicial activity was given a further boost when Britain became a member of the European Economic Community (now the European Union) and when British law incorporated the European Convention on Human Rights into the Human Rights Act 1998.

Under the concept of parliamentary sovereignty, it is Parliament who makes the law but it is the courts that have to interpret them.

Membership of the European Union allows the judiciary to scrutinise domestic legislation to ensure that it meets the requirements of European legislation and is not in conflict with it.

In addition, the Human Rights Act requires that when the courts are interpreting legislation, they must do so in a way that does not lead to people's rights under the European Convention being breached. In addition, the courts are now under a duty to develop the common law, that is, the law which has been developed through decisions of the courts themselves, in such a way that they ensure that **their** decisions are themselves compatible with Convention rights.

What is different from the United States is that if a law is an Act of Parliament, then the courts must still apply it as Parliament desires. However, the higher British courts have the power to issue what is termed '**a declaration of incompatibility**'.

This can be issued by the High Court, the Court of Appeal, or the House of Lords.

A declaration of incompatibility is a statement by the courts to the effect that they consider that a law is in breach of Convention rights.

This is designed to encourage Parliament to amend that particular law, or measure.

It must be noted however, that, unlike in the United States, British judges cannot force the government, or Parliament, to change the law.

However, a great deal of British legislation takes the form of what is termed '**secondary legislation**'.

Secondary legislation is law that is decided by ministers. Acts of Parliament will often have measures included in them giving ministers the power to make laws in the form of regulations and orders. Rather than make detailed provisions in the Act itself, Parliament will allow ministers to take '**secondary**' measures to suit particular circumstances. This is considered necessary in circumstances where the law has to be flexible and able to be adapted to suit changing circumstances. Health and Safety law and Social Security law are good examples of the use of secondary legislation, where 'the law' takes the form of regulations as opposed to detailed Acts of Parliament.

So what? Well, this is an area where the British judiciary can rule that a law is incompatible and therefore inapplicable, and where they have the authority to 'strike it down.' The only exception to this is where a piece of secondary legislation simply repeats a requirement of an Act of Parliament.

## Judicial Structure

- The British legal system distinguishes between civil law and criminal law.

### Civil Law

- Civil law deals with disagreements between individuals or companies and organisation.
- Civil cases are heard in **England and Wales** in either:
  - The County Courts, or
  - The High Court – which has three Divisions for civil cases:
    - The Queen’s Bench Division
    - The Family Division
    - The Chancery Division.
- County Courts handle all but the most complicated civil law cases.
- County Court cases involve debt, personal injury, breach of contract, divorce, adoption, etc.
- The High Court deals with those civil cases that are too complex for the county courts.
- The High Courts sit in either the Royal Courts of Justice in London or at high court centres throughout England and Wales.
- The Family Division of the High Court deals with divorce and child welfare matters that cannot be settled in County Courts. It also deals with the administration of wills.
- The Chancery Division deals with disputes over wills, bankruptcy, land laws, intellectual property and copyright and corporate laws. It has a specialist sub-division that deals with company law.
- The Queen’s Bench Division deals with all the remaining civil business of the high court such as disputes over contracts. It also has some specialist sub-divisions such as a commercial court, a Crown Office court that deals with actions against public authorities, and an admiralty court that deals with shipping matters.
- Appeals from a county or a high court will go to the civil division of the court of appeal, but it will only hear an appeal on a point of law. It will not review the whole case.
- Appeals from the high court can also go to the House of Lords, but only on matters of legal importance.
- From a county court or a high court there is an appeal to the civil division of the court of appeal on law only. From the high court there may be an appeal to the House of Lords on a matter of legal importance. From the court of appeal, there can be appeals to the House of Lords on fact of law but usually this is only allowed on matters of legal importance.

## Criminal Law

- Prosecution in England and Wales is handled by the Crown Prosecution Service.
- Criminal law involves the state and criminal offences are punished by the state.
- The lowest criminal courts are Magistrates Courts which deal with minor offences such as minor theft or shoplifting.
- Magistrates Courts involve what are known as **summary trials**.
- Summary trials have no jury and do not normally involve imprisonment. They are heard before magistrates.
- If the magistrates consider that a harsher sentence is required than they are authorised to give, then they can commit the case to a Crown Court.
- The Crown Court deals with more serious criminal offences.
- There is only one official Crown Court but it operates out of 78 centres in England and Wales.
- Crown Courts will deal with cases such as murder, rape and robbery.
- Crown Court trials are before a judge and jury.
- Crown Courts also hear appeals from Magistrates courts.
- Appeals on points of law are referred to the High Court (Queens Bench Division).
- Appeals against sentencing and conviction are referred to the Court of Appeal (Criminal Division).
- The House of Lords sits as the highest court of appeal.

All judicial appointments below the level of the Court of Appeal are made by the Lord Chancellor, a member of the government, whilst appointments to the two highest judicial bodies, the Court of Appeal and the House of Lords are made by the Prime Minister, normally in consultation with the Lord Chancellor.

Senior judges are permanent appointments who are expected to hold office 'during good behaviour'.

They can only be removed from office by the Monarch, and only then after an address to both Houses of Parliament.

This has only happened once, in 1830 to a Judge, Jonah Barrington, who had 'misappropriated' money.

Judges are almost exclusively appointed from the ranks of barristers. This reflects Britain's class structure and what is known as 'the old boys' network'. Indeed the lack of women and ethnic minorities in the judiciary has become something of a scandal.

The first female judge in England was appointed in 1945.

In the United Kingdom in 2003:

- there were no female law lords
- 6 out of 107 high court judges were women
- 171 out of 1,356 recorders were women
- 60 out of 621 circuit judges were women
- 79 out of 426 district judges were women.

British judges are expected to operate by the principle of judicial independence. Judicial independence is considered a crucial part of the British constitutional settlement, and vital for the administration of justice.

Judicial independence means that judges are supposed to decide each case on its merits, free from external influence.

It also means that they must be free of political interference, and should not be politically involved in society.

Judges cannot hold directorships in companies, nor may they judge a case in which they could have an interest.

Judicial independence also means that judges must be independent of each other. Whilst they may seek advice from fellow judges, and must apply binding decisions reached by higher courts, no judge can instruct another judge how to exercise judgment in any individual case.

## The Scottish Legal System

- Criminal offences in Scotland are prosecuted by the Lord Advocate and Procurators Fiscal.
- Procurators Fiscal are also responsible for the investigation of sudden or suspicious deaths.
- There are two types of criminal procedure in Scotland:
  - solemn procedure where in both the High Court of Justiciary and the Sheriff Court, a trial takes place before a judge sitting with a jury of 15 people.
  - summary procedure takes place in Sheriff and District courts where a Justice of the Peace or a Sheriff sits without a jury and decides questions of both fact and law.
- There are three levels of criminal court in Scotland:
  - District Courts deal with minor offences and are normally presided over by a Justice of the Peace. They are administered by a local authority.
  - Sheriff Courts deal with less serious offences.
  - The High Court of Justiciary.
- There are 49 Sheriff Courts in six Sheriffdoms.
- In summary cases, Sheriffs can impose fines and prison sentences.
- Under the solemn procedure they can impose heavy financial penalties.
- If heavier sentences are required, they will refer it to the High Court.
- The High Court of Justiciary is the supreme criminal court.
- It tries serious crimes and has exclusive jurisdiction over murder, treason and rape.
- It also sits as the Scottish Court of Criminal Appeal.
- The High Court of Justiciary is described as '**peripatetic**'.
- This means that it has no fixed location and will sit wherever it is required to in towns or cities.
- The Court of Session is Scotland's highest civil court.

## The Scottish Parliament



We have already noted that the Scottish Parliament is what we have termed a unicameral legislature, that is, it is composed of one house. The original Scottish Parliament was dissolved following the Acts of Union in 1707. The Acts of Union were in actual fact twin Acts of the Parliaments of Scotland and England which created a new state, the United Kingdom, and dissolved both parliaments, replacing them with a new Parliament of Great Britain.

In 1997, the Scottish people were asked to vote in a referendum on Scottish Devolution. In that referendum they were asked two questions, the first question asked if they wanted a devolved Scottish Parliament to be established. The second question asked them if they agreed to that Parliament having tax-varying powers. **60.4%** of the Scottish electorate took part in the referendum. Of those who voted, **74.3%** voted **yes** to setting up a Scottish Parliament, and **63.5%** voted **yes** to giving the Parliament tax-varying powers.

Following this referendum, the **Scotland Act 1998**, was passed and Scottish elections were held for a Scottish Parliament on **May 6<sup>th</sup> 1999**. The Parliament assembled on **12<sup>th</sup> May 1999**, and was officially opened by the Queen on **1<sup>st</sup> July 1999**.

The majority vote agreeing to give the Parliament tax-varying powers allowed for a section of the 1998 Scotland Act (section 75(5)) to empower the Scottish Parliament to increase or reduce the basic rate of income tax for Scottish taxpayers by up to 3p if they wished to do so. However, only a member of the Scottish Executive is allowed to move such a resolution.

The Scotland Act 1998 was unusual in that it did not attempt to list the powers that would be available to the new Scottish Parliament. What it did was to list a series of powers available to Westminster with regard to Scotland under Schedule 5 of the 1998 Act and allowed the new Scottish Parliament to legislate for, and exercise control over, all the areas of Scottish political, economic and social life, not reserved to Westminster. The 1998 Act dealt with the reserved powers of Westminster, the details of the Scottish electoral system, the sovereignty of Westminster, and the new Scottish Parliament's legislative competence, and financial powers.

As a result, we can say that the powers of the Scottish Parliament are **implicit** within the 1998 Act rather than **explicit**. As the Act contained a lengthy list of the powers reserved to the Westminster government, we can say that the Scottish Parliament began its political life on the basis of what it **could not do**. It was felt that this approach would avoid any conflict over which government was responsible for any particular policy area. However, as is usual in politics, things did not emerge as clearly as the framers of the Act wanted, as, in reality, the two governments actually share power in some areas, such as transport, law and health.

For example, both the Scottish Executive and Westminster are responsible for road and passenger transport, but Westminster is responsible for air and rail transport. Scotland has control of civil and criminal law, but Westminster has control of drug issues and firearms. These are a flavour of the kinds of area in which there can be overlap. The 1998 Act itself listed shared competences between the two governments, such as employment and training, and road safety information and training.

A primary objective of the Scottish Parliament is to improve control of policy relevant to Scottish affairs, and to provide accountability, in that, the Scottish Parliament will be accountable to the Scottish people for their actions. Scottish decisions on Scottish issues will now be taken by Scottish governmental institutions based in Scotland. It is an admission by Westminster that certain areas of Scottish life are sufficiently distinctive to merit separate decision making procedures and separate institutions. It is therefore designed to bring much of the government of Scotland closer to the Scottish people.

**Powers** – The Scottish Parliament has control over **47** separate areas of decision making which fall under **9 broad headings**:

1. Health.
2. Education and Training.
3. Local government, Social work and Housing.
4. Economic development and Transport.
5. Law and Home affairs.
6. Sport and the Arts.
7. Agriculture, Forestry and Fishing.
8. Environment.
9. Other Matters.

‘Other Matters’ are matters that are not reserved to the Westminster Parliament. This amounts to giving the Scottish Parliament the right to legislate on any issues, areas, or problems that are not reserved by Westminster.

### **Reserved Matters**

The 1998 Act setting up the Scottish Parliament also listed what we have referred to as ‘**reserved matters**’. These reserved matters are the areas that were to remain under the complete control of the Westminster Parliament. Reserved to the UK Parliament are such matters as:

- Defence and national security
- Macroeconomic, monetary and fiscal affairs other than Scotland’s tax-varying powers
- Employment
- Social security
- Transport safety and regulation.

As we stated in the section dealing with Constitutions, the Scottish Parliament will still be constitutionally inferior to Westminster. What this means is that the British Parliament will still retain the right to overturn any legislation the Scottish Parliament passes, if Westminster wishes to. Sovereignty will not be shared as it is in a federal system such as the United States. The United Kingdom Parliament will retain the right to ‘**veto**’ (Latin, ‘I forbid’) any legislation it disagrees with.

## The Scottish Parliament

The Scottish Parliament is a 129-member unicameral Parliament elected every four years.

- The Scottish Parliament passes laws on devolved issues and also scrutinises the work of the Scottish Executive.
- The Scottish Parliament has a chairperson, known as the **Presiding Officer** who is elected by the Parliament itself.
- The Scottish Parliament has a **First Minister** who performs a role similar to that of the Prime Minister at Westminster.
- The First Minister is the head of the Scottish Executive. Along with the Deputy First Minister, the First Minister is responsible for the development, implementation and presentation of Scottish Executive policies.
- The Scottish Parliament scrutinises the work and the policies of the Scottish Executive.

One of the 129 Members of the Scottish Parliament (MSPs) is elected by the other members to act as the Presiding Officer. This post is similar to that of the speaker of the House of Commons.

The first Presiding Officer elected by the Parliament in 1999 was the Liberal Democrat MSP David Steel.

Two other MSPs are elected to serve as Deputy Presiding Officers.

The role of the Presiding Officer and his/her Deputies is to:

- chair meetings of the Parliament
- convene and chair meetings of the Parliamentary Bureau (see below)
- decide on questions about the rules for Parliamentary proceedings
- represent the Parliament in discussions with other parliamentary or governmental bodies.

The Presiding Officer also chairs what is known as the Scottish Parliamentary Corporate Body (SPCB).

As with the Speaker of the House of Commons, the Presiding Officer must always act with impartiality. This is, of course, also a requirement of the two Deputy Presiding Officers when they are chairing parliamentary proceedings.

When not chairing meetings, they are allowed to play a full part in all parliamentary business.

## **The Parliamentary Bureau**

This is the body charged with arranging the business of the parliament. They arrange the meetings and the schedule of business. The Parliamentary Bureau is composed of MSPs from political parties and groups within the Parliament with five or more members (independents and/or smaller parties may form a group, or groups, which will allow them to participate in the bureau if they have at least five MSPs).

The Parliamentary Bureau draws up the parliamentary agenda and prepares the parliamentary business timetable, such as deadlines for stages of Bills, or amendments to Bills or any other legislation. It also sets the daily order of business, such as the timetable and programme for any statements by Ministers, or for parliamentary debates.

Once the Parliamentary Bureau has decided on any given agenda and/or timetable for events it is put to the full Parliament for ratification.

## **The Scottish Parliamentary Corporate Body (SPCB)**

Is composed of four MSPs elected by the Parliament. It is chaired by the Presiding Officer.

The SPCB is responsible for the operating finances of the Parliament and for arranging the accommodation and services required by the Parliament to carry out its work. As a result, the work of the Parliament is supported by its own staff, headed by the Chief Executive of the Parliament who is an employee and is not an elected official. All the staff employed by the Scottish Parliament are independent of the Executive and are expected to act impartially on behalf of the whole Parliament.

It was the SPCB who were responsible for the new Holyrood building and had to account for the soaring costs and time of building.

## Scottish Parliamentary Committees

The Parliament was established with a committee structure. These committees were established with the purpose of combining the roles of Westminster Standing and Select Committees with the following functions:

- to consider and report on the policy and administration of the Scottish Administration
- to conduct inquiries into such matters or issues as the Parliament may require
- to scrutinise primary and secondary legislation and proposed European Union legislation
- to initiate legislation
- to scrutinise financial proposals and administration of the Scottish Executive (including variation of taxes, estimates, appropriation and audit)
- to scrutinise procedures relating to the Parliament and its Members (including adherence to those procedures).

Thus, the 1998 Act established the following:

- a Business Committee
- a Procedures Committee
- a Standards Committee
- an Audit Committee
- a Finance Committee
- a European Committee
- an Equal Opportunities Committee
- a Public Petitions Committee
- a Delegated Legislation Committee.

The Parliament has the authority to create other committees as it requires, but the above are the principal standing committees that oversee the work and organisation of the Parliament and its business.

## **Public Petitions Committee**

As can be seen in the above list, one of the major innovations introduced into the Scottish Parliament was the ability of the public to directly influence policy and legislation through the mechanisms of public petitions. The principles behind this innovation were outlined as:

- public petitions should be encouraged by the Parliament
- any member of the public should be able to petition the Parliament
- there should be clear and simple rules as to form and content
- it should be clear to petitioners how and to whom petitions should be submitted
- there should be clear expectations of how petitions will be handled, the form of response which can be expected and the time in which such a response can be expected
- all petitions and responses should be in the public domain.

In the year, May 2004 – May 2005 the Committee considered 110 petitions and heard oral evidence on 51 of these.

Many of the public petitions considered by the Committee lead to action and changes in policy. However, one example that is quite unusual should serve to highlight the unique nature of this innovation.

The residents of Blairingone, a village near Dollar, petitioned the Parliament and complained that their lives were being made miserable and their health endangered by the legal spreading of raw blood and offal from abattoirs on adjacent fields. This practice was eventually outlawed.

This type of initiative and subsequent response is of course inconceivable under Westminster rules. Indeed, some Scottish Westminster MPs are not happy about this. However, in a report on how Westminster might be improved, the Hansard Society recommended that the House of Commons set up a Public Petitions Committee.

As a result, the Scottish Parliament has introduced some new democratic practices that have met with the approval of the electorate and appear to be working well. The Public Petitions Committee and the introduction of the Additional Member system of voting are good examples of this.

## Some measures taken by the Parliament

The following are examples of some of the measures initiated in the Scottish Parliament since 1999

- On 2<sup>nd</sup> July 1999 the Parliament set up The Cubie Committee, an Independent Committee on tuition fees.
- The Cubie Committee Report was published on 21 December 1999.
- On 27<sup>th</sup> January 2000 the Parliament abolished tuition fees in Scotland on a vote of 68 – 53. This resulted in the abolition of up-front student tuition fees and the introduction of a form of graduate tax.
- On 29<sup>th</sup> October 1999, Wendy Alexander, Minister for Communities announced the abolition of Section 28/Clause 2A which bans the ‘promotion’ of homosexuality in schools.
- On 21<sup>st</sup> June 2000 Parliament voted 99 – 17 to abolish Section 28/Clause 2A of the 1986 Local Government Act which had been passed by the Conservatives who were fearful that children were being corrupted by sinister homosexual teachers.
- Parliament considered this to be nothing more than a piece of senseless discrimination. The Parliament was savaged by the *Daily Record* and the Catholic Church for this move and Brian Souter, the wealthy owner of the Stagecoach bus company spent a fortune running a private postal referendum against the planned abolition.
- On 27<sup>th</sup> April 2000 Tommy Sheridan’s Abolition of Poidings and Warrant Sales Bill passed in the Parliament by 79 – 15. This Act abolished the practice of debt recovery by the process of warrant sales and poidings, which means the seizure of a debtor’s goods and then the compulsory sale of those goods in order to pay off the debts.
- This practice was seen as particularly harsh as, for example, if a man had run off and left his spouse with considerable debt, the wife and family could have their house and goods sold off to pay debts they had not been responsible for.
- On 25<sup>th</sup> January 2001 the Parliament agreed to support the Sutherland Commission proposals for free care for the elderly. This measure resulted in the gradual extension of free bus travel, free personal care and free installation of central heating to the elderly where it was lacking.
- On 21<sup>st</sup> May 2002 MSPs voted 89 – 15 for a 13.5% pay increase.
- On 26<sup>th</sup> November 2002 Richard Simpson resigned as junior Justice Minister after calling striking firemen ‘fascist bastards’.
- In January 2003 the Parliament passed the Land Reform Act which gave community groups the right to purchase land that they lived on when it is put on the market. It also gave crofters absolute rights to buy croft land and fishery rights and gave the public rights of ‘responsible’ access to walk on land.

- This move was presented as being completely in tune with Scottish values concerning community and public (as opposed to individual) rights.
- On 9<sup>th</sup> January 2003 the Executive lost a vote on closing fire stations after a tied vote 56 – 56 when George Reid the Deputy Presiding Officer used his casting vote with the opposition.
- On 17<sup>th</sup> January 2003 the Parliament voted 67 – 51 to support Westminster in the Iraq war.
- On 29<sup>th</sup> October 2003 an Executive bill on anti-social behaviour was introduced into Parliament.
- In March 2004 Parliament passed Lord Watson's Bill to ban foxhunting.
- Commentators have compared this measure to the similar measure introduced in Westminster and attribute the Scottish success to the fact that the House of Lords has been removed from the Scottish legislative process.
- *The Economist* argued that the creation of the Scottish Parliament has (when considering this measure together with the Land Reform Act), in abolishing the role of privileged landed interest in law-making, completed reforms in Scotland, ahead of the rest of Britain, that began with the 1832 Reform Act.
- In 18<sup>th</sup> March 2004 the Parliament voted 60 – 59 to support the Executive's decision to allow the commercial production of GM crops in Scotland.
- In 24<sup>th</sup> March 2004 the Local Governance (Scotland) Bill Stage One introducing the Single Transferable Vote for local government elections (from 2007) was passed by 95 – 19.
- In November 2004 the Executive announced plans to prohibit smoking in all public places in Scotland.
- On 30<sup>th</sup> June 2005 The Smoking, Health and Social Care (Scotland) Bill was passed by 97 – 17.
- This ban will come into force on 26 March 2006.

## The Scottish Executive

The Scotland Act created a new Scottish government in addition to a new Scottish Parliament. The Scottish Executive is the devolved Government in Scotland and comprises the Scottish Ministers and civil servants. However, when we refer to the Scottish Executive in this pack, we will be referring, from now on, to the Scottish Executive Cabinet of elected representatives.

Thus, for our purpose of studying the decision-making machinery in Scotland, we can say that the Executive is formed from the party or parties holding a majority of seats in the Parliament.

If one party does not command a majority of the MSPs in the Parliament, then it may enter into a coalition government with other parties. This is what happened in 1999 when New Labour formed a coalition government with the Liberal Democrats, and again in 2003.

The members of the Executive are collectively known as the Scottish Ministers. The Executive are:

- The First Minister
- The Lord Advocate and the Solicitor General for Scotland (also known as the Scottish Law Officers)
- The Scottish Law Officers advise the Scottish Executive on legal matters and represent its interests in court. They do not have to be elected members of the Scottish Parliament
- Other Ministers appointed by the First Minister.

In 2005 the Scottish Executive was made up of 11 Ministers and the two Law Officers.

The 11 Ministers were supplemented by nine Deputy Ministers.

The Scottish Executive Ministerial posts in 2005 were:

- First Minister
- Deputy First Minister and Minister for Enterprise and Lifelong Learning
- Minister for Justice
- Minister for Health and Community Care
- Minister for Education and Young People
- Minister for Finance and Public Service Reform
- Minister for Environment and Rural Development
- Minister for Communities
- Minister for Parliamentary Business
- Minister for Tourism, Culture and Sport
- Transport and Telecommunications
- Lord Advocate
- The Solicitor General.

It should be noted that in 2005 the post of Deputy First Minister was combined with the post of Minister for Enterprise and Lifelong Learning. However, this is not a requirement, and they could, in future, be regarded as two separate posts. Indeed, when the first Executive Cabinet was formed, it combined the two posts of Deputy First Minister and Minister for Justice.

In 2005, the Ministerial posts of Tourism, Culture and Sport, and Transport and Telecommunications had no Deputy posts attached to them.

Responsibility for all devolved matters was passed to the Scottish Executive from the Scottish Office and other UK Government departments in 1999.

The relationship between the Scottish Executive and the Scottish Parliament is similar to the relationship between the UK Government and the UK Parliament at Westminster.

Should the Parliament pass a motion of no confidence in the Executive, then the Executive must resign; this includes the law officers on the Executive.

Should the Parliament fail to agree on a nomination for a successor to the first minister, then a general election must be called.

## **Activity**

- a) What were the two questions that constituted the 1997 devolution referendum?
- b) Describe the result of the 1997 referendum.
- c) When was the official opening of the Scottish Parliament?
- d) List the powers of the Scottish Parliament.
- e) List the reserved powers retained by Westminster.
- f) How many constituency MSPs are elected to the Scottish Parliament?
- g) How many additional members are elected to the Scottish Parliament?

## The Scottish Electoral System

- The Scottish Parliament has 129 elected members.
- The Scottish electoral system is composed of 73 constituencies.
- 73 of the Parliament's 129 members are elected for constituencies and the other 56 are elected as **additional members**.
- These elected members are known as Members of the Scottish Parliament, or MSPs and are elected for four years.

### Note

When we looked at the Westminster Parliament, we stated that Scotland returns 59 MPs to that Parliament. We also noted that the 2005 general election was the first time that Scotland had returned 59 MPs. Before 2005, Scotland returned 72 MPs to Westminster.

As a result, when the 1998 act establishing the Scottish Parliament was passed, Scotland had 72 Members of the Westminster Parliament representing 72 parliamentary constituencies. One of these constituencies was Orkney and Shetland. However, for the elections to the Scottish parliament, it was felt that, in order for Orkney and Shetland to be properly represented in the new Parliament they should be designated as separate constituencies, and so, that is why, for electoral purposes, the Scottish parliament has 73 constituencies.

MSPs are elected by a system of proportional representation known as the **Additional Member** system.

## The Additional Member System

- The Additional Member system is a system of proportional representation under which a voter casts **two** votes.
- In addition to having 73 Scottish Parliamentary constituencies, the Parliament created **eight** large electoral regions called **Scottish Parliament Regions**.
- These regions are the same as the current European Parliament constituency boundaries.
- Each of these eight parliamentary regions is entitled to **seven additional** seats in the Parliament making a total of 56 additional seats.
- The MSPs elected to these seats are therefore known as **additional members**, that is, they are additional to those MSPs elected in the constituency seats.
- As a result, each voter in Scotland lives in both a parliamentary constituency and a parliamentary region.
- So, when a voter casts his/her vote in an election to the Scottish Parliament they vote for both a constituency MSP and a regional additional member.
- The additional 56 MSPs are elected from party lists, or as independents.
- When the voter goes to the polling station, he/she is given two ballot papers, one for the constituency vote and one for the additional member regional vote. The two papers are normally different colours.
- The constituency vote is conducted by the traditional British method of voting known as first-past-the-post. First-past-the-post simply means that in each constituency the candidate with the largest number of votes wins the seat, even if that means they have only one vote more than their nearest rival.
- Prior to the election, each of the main parties submit a **Regional List** of up to 12 candidates. How the parties select their list is up to them, however, it is normal for these candidates to be elected onto the list by the party members.
- It is important to note, that a '**party list**' can be an individual person, for example an independent candidate, who is standing at the regional level rather than in a constituency.
- It is quite normal for several candidates to stand in both a constituency and on a regional top-up list. If they succeed in a constituency this takes priority and their name will be removed from the regional list so they cannot be elected twice.
- The candidates are then listed on the **constituency** ballot paper along with any independent candidates who are also listed individually.
- The **regional** ballot paper then lists the **main parties** and any individual independent candidates.

- In the regional ballot, the voter can then select the same party as the party of the candidate the voted for in their first constituency vote, or they can change their vote and select a different party, or they can vote for an independent. It was estimated that in 1999, 80% of voters selected the same party as the one they chose in the first vote, but significantly, 20% didn't.
- Following the election, the constituency ballot papers are counted first. This means that the 73 constituency MSPs are elected first. Once the number of constituency seats won by **each party in each region** under first-past-the-post is known, the system to elect the additional 56 members begins.
- A formula is now used to decide which parties, or independent candidates, win the regional top-up seats. This formula is known as the d'Hondt system and is used widely across Europe. It is also used in the Northern Ireland Assembly to allocate positions on the executive.

In order to determine who wins the additional 56 seats:

**the number of votes cast for each party in the regional vote is divided by the number of seats won in the constituency seats in each region – plus one.**

Number of votes cast in the regional vote

Number of seats + 1

- Thus, if a party wins nine seats in the constituency section of the vote **in any region**, the number of their votes in the regional second vote is divided by  $9 + 1 = 10$ .
- The figure 10, which is the result of the nine constituency seats won in the region plus one, is known as **the denominator**.
- As a result, if a party (party A) wins, for example, nine constituency seats in any of the eight Scottish Parliament Regions, then the denominator for party A within that parliamentary region will be  $9 + 1 = 10$ .
- If one of the smaller parties (party B) fails to win a constituency seat then their denominator for the additional seats will be  $0 + 1 = 1$ .
- As a result, if party A wins 100,000 votes in the regional vote, then those 100,000 votes will be divided by the denominator of 10 to give the party 10,000 votes in their quest to secure an additional member seat.
- If the smaller party B wins 30,000 votes in the regional ballot, then their vote is also going to be divided by the denominator, in this case 1.
- This will then give party B 30,000 votes towards securing an additional member seat.
- As party A now has 10,000 votes and party B 30,000 votes, then the smaller party B will gain the first additional member seat.
- As each Parliamentary Region has seven seats to be filled, in our example there are still six seats available.

- Counting now takes place for the second round. In this round, party A still has 10,000 votes available, but party B has won a seat, so its denominator now becomes  $1 + 1 = 2$ .
- Party B now has its vote determined by 30,000 divided by  $2 = 15,000$ . Party B will now be given another additional member seat.
- This process will continue with the divisor being increased by 1 every time a party wins a seat, until all the seven available seats in the Parliamentary Region have secured additional members.
- In our example, by the time party B has won three additional members, its denominator will become  $3 + 1 = 4$ .
- As a result, its allocation of votes towards securing another additional member will become 30,000 divided by  $4 = 7,500$ .
- However, party A has 10,000 votes still available, so it will now secure the next additional member as party B has only 7,500 votes available.
- Party A now has 10 seats, the original nine plus one additional member. Its denominator now becomes  $10 + 1 = 11$ .
- So we can see, that for the purpose of determining the additional members, any party with a large number of constituency seats in a region will have a large denominator (in our example 10) while those parties with a smaller number of constituency seats will have a much smaller denominator (in our example 1).
- It is estimated that any party or individual with at least 5 to 7% of the second votes will win a Regional seat. That is why the Scottish Socialist Party leader Tommy Sheridan was successful in 1999.

## Activity

Based on the information you now have on the additional member system, in groups, work out the final total of seats for each party in the Scottish Parliamentary Elections for the West Central Scottish Parliamentary Region.

**Remember** – each parliamentary region has seven additional members.

<b>Table A Scottish Parliament Elections for West Central Scotland Parliamentary Region</b>		
<b>Party</b>	<b>Regional Vote</b>	<b>Constituency Seats</b>
<b>Labour</b>	<b>100,000</b>	<b>9</b>
<b>SNP</b>	<b>88,000</b>	<b>7</b>
<b>Lib Dems</b>	<b>60,000</b>	<b>4</b>
<b>Conservatives</b>	<b>30,000</b>	<b>0</b>

### Total Seats after regional additional member distribution

**Labour** -

**SNP** -

**Lib Dems** -

**Conservatives** -

## Summary and Analysis

We can now look briefly at the effects of proportional representation in Scotland as it has been applied through the Additional Member System since its introduction in 1999.

The first table we can look at shows the number of seats gained for each party in General Elections in Scottish constituencies since 1974.

**Table B**  
**Number of Seats won in Scotland at General Elections 1974-2001**

	<b>Lab.</b>	<b>Cons.</b>	<b>Lib/Dem</b>	<b>SNP</b>
<b>Feb. 1974</b>	<b>40</b>	<b>21</b>	<b>3</b>	<b>7</b>
<b>Oct. 1974</b>	<b>41</b>	<b>16</b>	<b>3</b>	<b>11</b>
<b>May 1979</b>	<b>44</b>	<b>22</b>	<b>3</b>	<b>2</b>
<b>June 1983</b>	<b>41</b>	<b>21</b>	<b>8</b>	<b>2</b>
<b>June 1987</b>	<b>50</b>	<b>10</b>	<b>9</b>	<b>3</b>
<b>Apr. 1992</b>	<b>49</b>	<b>11</b>	<b>9</b>	<b>3</b>
<b>May 1997</b>	<b>56</b>	<b>0</b>	<b>10</b>	<b>6</b>
<b>June 2001</b>	<b>56</b>	<b>1</b>	<b>10</b>	<b>5</b>

At the May 2005 UK General Election the figures were:

<b>Labour</b>	<b>41</b>
<b>Conservatives</b>	<b>1</b>
<b>Liberal Democrats</b>	<b>11</b>
<b>Scottish Nationalists</b>	<b>6</b>

We have not included these figures in the above table because, as we have already noted, the Scottish constituencies had been reduced from 72 to 59 following the 2001 election, and so do not reflect a true comparison.

However, as we can see from the above table B, in the eight general elections shown in the table, Labour steadily increased their vote reaching 56 seats gained in 1997. In comparison the Conservatives suffered an increasing decline in their vote, culminating in 1997 when they won no seats at all in Scotland. The Liberal Democrats enjoyed a modest gain throughout these years, whilst the Scottish National Party's fortunes fluctuated around a slight downward trend.

We can now compare the above results with the number of constituency seats won, together with the number of regional seats won, under the Additional Member System in 1999.

**Table C**  
**Scottish Parliament Elections 1999**

<b>Party</b>	<b>Constituency Seats</b>	<b>Regional Seats</b>	<b>Total</b>
<b>Labour</b>	<b>53</b>	<b>3</b>	<b>56</b>
<b>SNP</b>	<b>7</b>	<b>28</b>	<b>35</b>
<b>Lib Dems</b>	<b>12</b>	<b>5</b>	<b>17</b>
<b>Conservative</b>	<b>0</b>	<b>18</b>	<b>18</b>
<b>Independent</b>	<b>1</b>	<b>2</b>	<b>3</b>

The above table shows that whilst Labour maintained their 56 seat total, they actually declined in the constituency section, whilst the Scottish Nationalists and the Conservatives gained significantly in the regional list vote. In fact, proportional representation appeared to be the saviour of the Conservative Party as they again failed to win any seats in the first-past-the-post constituency vote and all their gains were in the additional member list vote.

What we wish you to note here is the significance of the independent gain in the constituency vote, and two independent gains in the regional vote. The independent constituency gain was by Denis Canavan in the Falkirk West constituency, who had been de-selected by the Labour Party, and who then fought as an independent and defeated the official Labour candidate.

The next two tables show the results of the 2003 Scottish Parliamentary election.

**Table D**

**Scottish Parliament Elections 2003**

<b>Party</b>	<b>Constituency Seats</b>	<b>Regional Seats</b>	<b>Total</b>
<b>Labour</b>	<b>46</b>	<b>4</b>	<b>50</b>
<b>SNP</b>	<b>9</b>	<b>18</b>	<b>27</b>
<b>Conservative</b>	<b>3</b>	<b>15</b>	<b>18</b>
<b>Liberal Democrat</b>	<b>13</b>	<b>4</b>	<b>17</b>
<b>Scottish Socialist</b>	<b>0</b>	<b>6</b>	<b>6</b>
<b>Scottish Green Party</b>	<b>0</b>	<b>7</b>	<b>7</b>
<b>Others</b>	<b>2</b>	<b>2</b>	<b>4</b>

**Table E**

**% of Seats and Votes 2003**

<b>Party</b>	<b>Seats</b>	<b>Constituency vote</b>	<b>Regional vote</b>
<b>Labour</b>	<b>38.8</b>	<b>34.6</b>	<b>29.3</b>
<b>SNP</b>	<b>20.9</b>	<b>23.8</b>	<b>20.9</b>
<b>Lib Dems</b>	<b>13.2</b>	<b>15.0</b>	<b>11.8</b>
<b>Conservative</b>	<b>14.0</b>	<b>16.6</b>	<b>15.5</b>
<b>Green</b>	<b>5.4</b>	<b>0</b>	<b>6.9</b>
<b>Scottish Socialist</b>	<b>4.7</b>	<b>6.2</b>	<b>6.7</b>

**It should be noted** that the Green Party did not contest any seats in the constituency section.

The next table, Table F, shows the difference in the share of the votes between 1999 and 2003.

**Table F**

**Differences between share of votes 1999-2003**

Party	Constituency Vote		Regional Vote		Difference	
	1999	2003	1999	2003	Con.	Reg.
<b>Labour</b>	<b>38.8</b>	<b>34.9</b>	<b>33.6</b>	<b>29.3</b>	<b>- 4.2</b>	<b>- 4.3</b>
<b>SNP</b>	<b>28.7</b>	<b>23.8</b>	<b>27.3</b>	<b>20.9</b>	<b>- 4.9</b>	<b>- 6.0</b>
<b>Lib/Dems</b>	<b>14.2</b>	<b>15.1</b>	<b>12.4</b>	<b>11.8</b>	<b>+1.0</b>	<b>- 0.6</b>
<b>Conservatives</b>	<b>15.5</b>	<b>16.5</b>	<b>15.3</b>	<b>15.5</b>	<b>+ 1.0</b>	<b>+ 0.2</b>
<b>Greens</b>	<b>0</b>	<b>0</b>	<b>3.6</b>	<b>6.9</b>	<b>0</b>	<b>+ 3.3</b>
<b>Scottish Socialist</b>	<b>1.0</b>	<b>6.2</b>	<b>2.0</b>	<b>6.7</b>	<b>+ 5.2</b>	<b>+ 4.7</b>

One of the significant features of the above tables, is, that as the Scottish electorate became more familiar with the system, the Scottish Socialists increased their representation to six MSPs, all elected in the regional vote, in the elections to the Scottish Parliament in 2003, whilst the Green Party won seven seats without contesting any constituency seats.

**Remember**, if you deliberately do not contest the constituency seats, then you will obviously fail to win any constituency seats. This becomes important when you remember the formula for the distribution of additional member seats. If you fail to win any constituency seats in any region, you will have a denominator of 1 when counting starts for the additional members. Thus, you will have a denominator of 1 in every region you are contesting for additional members.

It is also important to note, that, as we saw in the 1999 election, an independent, Denis Canavan won the constituency seat of Falkirk West against all the major parties. He was re-elected in 2003 and, in addition, another independent, Dr. Jean Turner won the constituency seat of Strathkelvin and Bearsden for the Save Stobhill Hospital Campaign. In total, four independents were elected in 2003, Denis Canavan and Dr. Turner in the constituency vote, and Mr John Swinburne and Ms Margo McDonald in the regional vote. Mr Swinburne was elected on the Central Scotland list as the representative of the Scottish Senior Citizens' Unity Party, and Margo McDonald was elected as an independent on the Lothian Regional list.

As a result, the Additional Member system has demonstrated that independents can win in the constituency vote against the might of the big party machines, and independents and the smaller parties can be successful in the regional vote.

As can be seen from the tables of election results, the establishment of a Scottish Parliament by proportional representation has had real effects on the Scottish political culture, some of them quite significant.

An important and significant development demonstrated by the introduction of PR has been the effect on the Conservative Party's fortunes.

Ironically, given that it was the Conservative Party that were so steadfastly opposed to the introduction of PR, they were the most immediate beneficiaries of this system. The 1997 General Election saw the Conservative representation obliterated in Scotland as they won no seats and only polled 17.5% of the vote. In 2001 they actually **gained** one seat despite their share of the vote **falling** to 15.5%, a fall of 2% from 1997.

However, in the 1999 Scottish Parliamentary elections, whilst their constituency vote (that part of the vote determined by first-past-the-post) was 15.5% and resulted in them again failing to win any seats, they were awarded 18 seats in the new Parliament by dint of polling 15.3% of the regional vote (the additional member vote). As a result, we can see that they:

- won no seats in the Westminster general election in 1997 with 17.5% of the first-past-the-post vote
- won no seats in the 1999 Scottish Parliament elections with 15.5% of the FPTP vote
- won 18 seats in the 1999 Scottish Parliament elections with 15.3% of the regional vote
- won one seat in the Westminster general election in 2001 with 15.5% of the FPTP vote
- won 3 seats in the 2003 Scottish Parliament elections with 16.5% of the FPTP vote
- won 15 seats in the 2003 Scottish Parliament elections with 15.5% of the regional vote.

As a result, the additional member system of proportional representation gave the Conservative Party 18 seats in 1999 when the FPTP system gained them none, and 15 seats in the 2003 regional vote with a smaller vote than they gained in the constituency vote where they gained three seats, thus allowing them to maintain a presence of 18 MSPs in the Parliament. Is it any wonder that the Conservatives no longer mention proportional representation?

With regards to the effect of the electoral system on the other Scottish parties, Labour have retained their dominant position, but with a reduced influence. Remember, PR requires that any party forming a government on their own, must win over 50% of the votes cast.

In the Scottish Parliament elections of 1999 Labour totalled 56 seats, and in 2003, 50. As the Parliament consists of 129 seats, then obviously a majority requires 65. Thus, whilst Labour maintains their **dominant** position in terms of votes cast and seats won, they are no longer in a position to **dominate** in terms of power and decision-making.

Another implication for the Labour vote we can see from the tables is that in the 1997 UK general election, Labour polled 45.6% of the vote in Scotland, and in the 2001 election, 43.3%. However, even although the Scottish electorate was faced with a new unfamiliar system in 1999, they immediately began to discriminate in a more sophisticated manner and Labour only polled 38.8% of the constituency (FPTP) vote in 1999, down almost 7% from 1997. Again by 2003, although Labour could boast that they had recovered in the 2001 UK general election to 43.3% of the vote, in the Scottish Parliament election their constituency vote was again reduced to 34.9%, down 3.9% from 1999, suggesting that the electorate were giving much more consideration to their vote in the context of the Scottish Parliament, and that the 1999 vote was not an aberration.

Another aspect of the Scottish elections has been the willingness of the Scottish electorate to feel comfortable giving votes to previously so-called no-hopers. The Scottish Socialist Party have been significant beneficiaries of the new system, increasing their share of the constituency vote from 1999 to 2003 by 5.2% and their regional vote by 4.7%. This means that, the SSP has actually gained a greater percentage increase from FPTP than from the additional member element. This must give the major parties pause for thought, particularly if we consider that in the constituency vote, Labour fell 4.2% from 1999, the SNP fell 4.9% from 1999 and the Lib Dems and the Conservatives only increased by 1% from 1999.

The SSP gains are probably thanks to the performance of their one MSP Tommy Sheridan who gained his seat from the regional vote in 1999. Whilst they still failed to gain any seats by FPTP in 2003, the SSP share of that vote increased significantly to 6.2%, and the regional vote of 6.7% gave them six seats. The point to consider is that, if this sort of progress continues, the SSP can expect to begin winning FPTP seats in the near future. We can probably assume with some element of safety, that this will be at the expense of Labour or the SNP, or both.

This shows that the PR system is working and providing a greater representation of the electorate's wishes. That, of course, is its whole purpose.

The SNP have also gained from this system, but, as they are the second major party in Scotland, they have suffered losses in terms of actual seats, falling from 35 in 1999 to 27 in 2003. It would appear that the gains by the lesser parties through the list system have been mostly at the expense of the SNP who saw their share of the regional vote suffering the most, dropping from 27.3 in 1999 to 20.9 in 2003. This, as we saw earlier, is the effect the additional member system has on the more successful parties. The only party maintaining a steady presence being the Liberal Democrats, whose marginal loss in the constituency vote was offset by a slightly higher marginal gain in the regional.

As we have seen, without the introduction of the Additional Member system a major party (the Conservatives) and two minor parties (the Scottish Socialists and the Greens) would have gone unrepresented.

The introduction of the Scottish Parliament has altered Scotland's traditional political culture. The Scottish Parliament is now a six-party pluralist chamber in which coalition government has, so far, been the norm.

In addition, the coalition governments have worked well.

It has also had a cultural effect on the political parties, with Labour taking measures, such as the abolition of tuition fees and free care for the elderly, that have placed them in a conflict situation with the national Labour party, whilst the Conservatives have discovered an enthusiasm for proportional representation and measures they previously regarded as almost communist such as the role of the state in the provision of public services.

As a result of the erosion of the traditional Labour dominance in Scottish politics, and their need to share government with the Liberals, some sections of the Labour party in Scotland were so convinced that, prior to the 2005 general election, three Westminster Labour MPs, David Marshall in Shettleston, George Foulkes in Carrick, Cumnock and Doon Valley, and Brian Donohoe in Cunninghame South, attempted to propose changing the electoral system back to the first-past-the-post system in order to reassert Labour's dominance.

This was of course portrayed by the other parties in Scotland, and by many commentators, as arrogance and completely refusing to accept the reality that all political parties in Scotland are minorities.

It also assumed that Labour had a right to speak for Scotland by dismissing all other parties as unimportant and irrelevant.

Another innovation in the Scottish Parliament has been in the manner by which committees combine both the scrutiny and legislative functions which are separated at Westminster.

This ability to initiate legislation in committee resulted, in the first session of the Parliament, on laws being enacted setting up a children's commissioner, a parliamentary standard's commissioner, and legislation on the subject of domestic violence.

As a result, this measure allows back-benchers a real place in the law-making process.

## The Scottish Parliament – Legislation

What becomes apparent when we examine the powers of the Scottish Parliament is that the Scotland Act 1998 did not actually involve any new powers for the Parliament. The powers given to the Parliament were essentially the same as those powers previously exercised by the Scottish Office. What the 1998 Act did was to establish a different set of arrangements for the implementation of these powers. The Parliament was given the ability to design new structural arrangements for exercising their powers.

As we have already stated, rather than determine the powers of the new Scottish Parliament, Schedule 5 of the 1998 Act sets out the functions of the Westminster government, and establishes the various areas of Westminster's authority. Schedule 5 attempts to establish the power of Westminster in the various policy areas that a national government considers necessary to retain control over, such as defence, international affairs, and the currency of the state (Westminster retains control over what we call fiscal policy and macro-economic management). Schedule 5 is therefore intended to define the areas of Westminster sovereignty and to **indicate**, rather than **define**, the devolved responsibilities of the Scottish Parliament and its subordinate status.

The provisions of Schedule 5 are designed to provide a practical approach to the administration of a nation state with devolved functions.

The reserved powers available to Westminster are reserved in order that uniformity and continuity in policy-making and policy management can be preserved. The principle of reserved powers attempts to eliminate the possibility of conflict between Westminster and the Scottish Parliament, and provide continuity in those areas of policy-making that Westminster considers essential for nationwide stability and prosperity.

Macro-economic areas of policy-making such as employment and consumer law are reserved functions to ensure that the whole of the UK is operating under the same procedures and policies. This therefore retains, and ensures, uniformity in the operation and application of such policies. Another example is social security. This ensures a universal benefits system is being applied throughout the UK.

Thus, not only are such matters universal, but they ensure a harmonisation across the whole of the UK.

All this is achieved because Schedule 5 provides a division of power and authority in policy areas between Westminster and Scotland therefore making a more clearly defined definition of devolved and reserved power and responsibility.

## Legislative Competence

In order for the Scottish Parliament to propose and pass legislation, the proposals must first be deemed to be **legislatively competent**. That means, that any proposed legislation must be ruled to be within the competence of the Scottish Parliament to propose and pass it. It must fit into the criteria that are considered permissible for the Parliament to deal with.

For the purposes of studying the legislative competence of the Scottish Parliament, the important section of the Scotland Act 1998 is **Schedule 5**.

Legislation passed by the Scottish Parliament is only valid if it is within its legislative competence. As we have seen, Schedule 5 of the Scotland Act 1998 sets out a range of reserved matters that are outwith the Scottish Parliament's competence. Similarly, much of the legislative and policy matters that originate from the European Union are also outwith the Parliament's competence. As a result, the Parliament is deemed to be competent to legislate on any other matters not covered by such restrictions.

The Scottish Parliament has the power to enact both primary legislation (what we refer to as Acts) and approve or reject secondary (what we have referred to earlier as subordinate or delegated) legislation. The Scotland Act 1998, provides that:

'the Parliament may make laws, to be known as Acts of the Scottish Parliament.'

Legislative competence is defined according to five criteria:

1. That the Parliament can only legislate for, or in relation to, Scotland.
2. That it cannot legislate in relation to the 'reserved matters' set out in Schedule 5 of the Act.
3. That it cannot modify certain enactments set out in Schedule 4 of the Act (which include the Human Rights Act 1998 and certain provisions of the Acts of Union and the European Communities Act 1972).
4. That its legislation must be compatible with the European Convention on Human Rights and with European Community law.
5. That it cannot remove the Lord Advocate from his position as head of the system of criminal prosecutions and the investigation of deaths.

As we said earlier, while it may appear that the limits of legislative competence are quite clear and precise, this is not always the case and can be subject to interpretation. In cases where disagreement cannot be resolved, the limits of competence can only be decided by the courts. The Scotland Act requires that the legislative competence of any Bill to be introduced in the Parliament is considered by the Parliament's legal section, but, because of the possibility of disagreement over the interpretation of competence, the Act also provides an opportunity for the Bill to be challenged after it has passed the Parliamentary process, but before it can become law. We will look at this provision later.

We must always remember, however, that although the Scottish Parliament has the power to legislate on the wide range of matters not reserved to Westminster, the Westminster Parliament still retains the power (under section 28(7) of the Scotland Act) to legislate on all matters, both reserved and devolved.

However, Westminster was conscious of the need to avoid undermining the authority of the Scottish Parliament and agreed a mechanism to minimise any conflict over legislative competence.

Where Westminster feels the need to legislate on matters that are within the Scottish Parliament's devolved legislative competence, it can use a mechanism that was designed to allow it to do so with the consent of the Scottish Parliament – the Sewel Motion.

### **A Sewel Motion**

A Sewel motion is a motion passed by the Scottish Parliament, in which it agrees that the Westminster Parliament may pass legislation on a topic extending to Scotland over which the Scottish Parliament has legislative control. It is used when Westminster is considering legislation that will only extend to England and Wales, but where the Scottish Parliament considers that the proposals of the legislation would be beneficial to Scotland as well. A Sewel motion allows Westminster to extend them to Scotland. This avoids the Scottish Parliament having to draft separate, but similar, legislation.

The motions are named after Lord Sewel who was a Scottish Office minister at the time when the Scotland Act was passing its Westminster Parliamentary stages. He announced the policy in the House of Lords during the passage of the Scotland Act 1998. Lord Sewel noted that the Act recognised the Parliamentary sovereignty of the UK Parliament, but argued that the UK Government:

'would expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.'

## The Legislative Process

In 1998, the Secretary of State for Scotland established a committee known as the **Consultative Steering Group** whose task it was to provide the Scottish Parliament with a set of draft standing orders, and working procedures prior to the establishment of the Parliament itself. The idea of this was to allow the Parliament to become active right away without having to go through the process of creating its own working procedures and standing orders.

However, in addition, one of the principle aims of the Consultative Steering Group was to establish a Parliament that was:

**‘accessible, open, responsive’**

and would:

**‘develop procedures which make possible a participative approach to the development, consideration and scrutiny of policy and legislation.’**

As a result, the legislative process of the Scottish Parliament was designed to reflect the stated goals of openness and accountability. In addition, the Parliament was designed to exercise a far greater scrutiny of the Executive than the Westminster Parliament is able to exercise.

Thus, whilst the Parliament was to be accessible, open, responsive and accountable to the Scottish people, so the same principles were to be applied to the Executive who would in turn be accountable to the Parliament.

One of the principal reasons for this approach was the fact that the Parliament is a unicameral chamber, and lacks the inbuilt checks and balances of a bicameral structure. Therefore, in order to ensure a proper democratic process and democratic procedures, all of the above principles were reflected in the legislative process.

In essence, the Scottish Parliament is a committee-based legislature and we will see this in the legislative process. It is the Scottish Parliament’s numerous committees that fulfil the revising role that is performed by the second chamber in a bicameral system.

There are in essence four types of Scottish Parliament Bills:

1. Executive Bills.
2. Committee Bills.
3. Members Bills.
4. Emergency Bills.

**Executive Bills** – are public bills that are introduced by a Minister or a junior Minister of the Scottish Executive.

**Committee Bills** – are public bills that are introduced by the Convenor of a Committee of the Scottish Parliament.

**Members Bills** – are public bills introduced by an MSP who is not a member of the Executive.

**Emergency Bills** – are Executive bills that require to pass the legislative process quickly. They must be introduced as an Executive bill and then be converted to an Emergency Bill by the Parliament.

We said that the legislative process was meant to enhance the role and input of MSPs and the committees of the Parliament, in order that the Parliament could exercise an effective scrutiny of the Executive. As a result, the Scottish Parliament has erected mechanisms that allow for greater scrutiny and accountability of legislation:

- Pre-legislative Scrutiny
- Memoranda to Bills.

### **Pre-legislative Scrutiny**

All proposed legislation in the Scottish Parliament is subject to what is known as pre-legislative scrutiny. This mechanism in effect reverses the consultation process that exists at Westminster, with detailed discussions of proposals taking place before they become Bills, rather than after.

This pre-legislative scrutiny brings all interested parties, particularly pressure groups, into the consultative process at the earliest stages of the legislative process. It furthermore guarantees access to such parties and groups. This innovation actually allows for amendment and alterations to policy to be included prior to any proposal even taking the form of a Bill, and gives the Executive the opportunity to ‘float’ proposals and test the public’s reaction to them. This provides for increased openness and allows proper scrutiny of proposals. It also helps to ensure greater public acceptance of Scottish Parliamentary legislation given that there has been far more advanced publicity and debate than is normal under Westminster procedures.

**Note** – One note of caution to be made here is that, whilst the Executive is bound to consult, it is not bound to accept the results of such consultation.

## Memoranda to Bills

The Scotland Act, in its desire to produce openness and accountability, requires Bills placed before the Scottish Parliament to be accompanied by additional explanatory documents. These documents are:

- **Explanatory Notes**  
Explanatory Notes outline the main purpose of the proposed legislation and provide a brief overview of what the Bill is designed to achieve. This is then followed by a more detailed explanation of the different provisions of the Bill.
- **A Financial Memorandum**  
This will detail the costs of the proposed legislative measure, and, in addition, indicate where such costs are likely to fall (departments, local authorities, individuals, businesses, etc.).
- **An Executive Statement on legislative competence**  
This statement is always in a standard form of words. It simply states that the relevant Minister considers the Bill to be within the Parliament's legislative competence.
- **A Policy Memorandum**  
This sets out the Bill's policy objectives together with an outline of any alternative approaches that were considered. It must also detail why the proposal contained within the bill is being recommended as opposed to the other proposals considered. It also highlights the consultation process that was undertaken and must include an assessment of the effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development and other matters considered relevant.

**Finally** – All Bills must also be accompanied by a statement by the Presiding Officer on legislative competence. The Presiding Officer's statement is different from the Executive statement. The Presiding Officer may be in agreement with the Executive's position, but alternatively he/she may disagree with the Executive that the Bill (or parts of the Bill) is legislatively competent, and his/her statement will give reasons for this. This does not prevent the Bill going forward as this statement is only an opinion. It may lead to close legal scrutiny of the provisions later however.

The benefits of such additional material are that they are designed to facilitate the process of pre-legislative scrutiny, as they are required to be written in plain English, as opposed to the normal legal and technical language employed in such matters. In addition, as we stated earlier, these memoranda set out the aim of a Bill, its expected impact on Scottish society, the costs involved, and the reasons why the particular options chosen in the Bill were preferred to alternatives.

All this material is invaluable to those sections of the public concerned with, and affected by, any proposed legislation.

The Scotland Act requires that a Bill must pass **at least** three distinct stages before it can become an Act. This three stage model can be altered for specific types of Bill and an additional stage must be included if a Bill is subject to a challenge after it has passed.

The three stages are

1. A stage when MSPs can debate and vote on the general principles of the Bill.
2. A stage when they can consider and vote on its details.
3. A final stage when the Bill can be passed or rejected.

Following a statement on legislative competence by the Presiding Officer, the Bill will be formally introduced in the Parliament. The Bill must be signed by the member introducing it and by any supporters whose names are to appear on the published version

After its introduction, the Bill will then be referred to an appropriate committee for examination and debate. This committee is known as the 'lead committee'. The lead committee can then convene meetings where it can take evidence from witnesses. The committee is then expected to report back to the Parliament within a given timescale.

### **Stage 1 Report**

As we stated above, the lead committee's role is to report to the Parliament on the general principles of the Bill. At this stage Parliament will consider the general principles rather than the detail of the Bill. The Stage 1 report may also include a recommendation from the lead committee as to whether the Parliament should, or should not agree to the general principles of the Bill.

Following the lead committee's report to the Parliament (with any recommendations), time is allocated within the Parliament for a debate on the general principles of the Bill.

If any member of the Parliament is unhappy with the lead committee's report, he/she can lodge a motion before the date for the debate on the general principles of the Bill that the Bill should be returned to the lead committee for a further report on the section(s) of the Bill they are unhappy with. If the Parliament agrees to this motion, then the Bill is sent back to the lead committee for a further report.

If such an objection is not made, then the general principles of the Bill will be debated and decided on. This does not necessarily involve a vote.

### **Stage 2 Committee**

If the Parliament agrees to the general principles of the Bill at Stage 1, the Bill proceeds to Stage 2.

Once the proceedings at Stage 1 have agreed the general principles of the Bill, any member of the Parliament can submit amendments to the Bill at Stage 2. There is no limit to the number of amendments that may be submitted.

At this point, Parliament may refer the Bill back to the Stage 1 lead committee or to a different committee. The stage 2 committee can be a Committee of the Whole Parliament, which means that all MSPs are included and that the proceedings are chaired by the Presiding Officer. Alternatively, the Bill can be divided between more than one committee, with each committee dealing with different parts of the Bill.

Again Parliament may set a timescale for the completion of Stage 2. As the main purpose of Stage 2 is to consider amendments to the Bill, in order to allow the proper scrutiny of the Bill, more evidence can be gathered at this stage. If any of the amendments are agreed to, the Bill is then re-printed in its amended form.

### **Stage 3**

Stage 3 of the Bill involves the whole Parliament.

Again, as at Stage 2, amendments for Stage 3 may be lodged as soon as Stage 2 is completed. However, such amendments can only relate to the Bill as it was amended at Stage 2.

As at Stage 2, any member can submit an amendment at Stage 3 and there is no limit to the number of amendments that can be submitted. However, at Stage 3, only those amendments selected by the Presiding Officer will be debated in the Parliament.

After all the proceedings relating to the amendments submitted at Stage 3 are concluded, then Parliament must decide whether to pass the Bill or not.

A debate then takes place on the motion:

‘That the Parliament agrees that the (name of the) Bill be passed.’

If a vote is required on this motion, then the result is only valid if at least one-quarter of MSPs vote. If there is a majority vote against the Bill, or if the result is invalid, then the Bill falls.

If the Bill passes a vote it is ready to become an Act of the Scottish Parliament.

### **Reconsideration Stage**

Before the Bill can become an Act, it is now subject to what is called a Reconsideration Stage.

Section 32 of the 1998 Scotland Act provides that a Bill, once passed, may be submitted for Royal Assent by the Presiding Officer after the expiry of a four-week period.

This four-week period is the reconsideration stage. During this period, the Bill can be the subject of a legal challenge by the Advocate General for Scotland, the Lord Advocate or the Attorney General. It can also be subject to an order made by the Secretary of State.

The Bill can be submitted for Royal Assent in less than four weeks however, if all three law officers and the Secretary of State notify the Presiding Officer that they do not wish to challenge the Bill.

The Secretary of State would only challenge the Bill if he/she considered that it was incompatible with international obligations, or defence and security matters, or if it interfered with a reserved matter. The law officers would only challenge the Bill on the grounds of legislative competence.

### **Royal Assent**

Once a Bill has satisfied the reconsideration stage it is submitted for the Royal Assent and becomes an Act of the Scottish Parliament.

The Parliamentary process we have just outlined is the standard way in which a Bill will progress through the Scottish Parliament. However, as we said earlier, there are some exceptions to this basic process. The process just outlined applies particularly to **Executive Bills**.

### **Members' Bills**

There are two ways an individual MSP who is not a member of the Executive can introduce a Bill.

One way is to convince a committee of the Parliament to make a proposal for a Committee Bill. The other way is to submit a proposal for a Member's Bill under **Rule 9.14**.

If an MSP submits a proposal for a Members Bill, the proposal will be printed in the Parliament's **Business Bulletin** for **one month**. If, during that month, the proposal can attract **11** supporters, the member who lodged it has the right to introduce a Bill to give effect to that proposal at any time during the four year parliamentary session.

If the Member's proposal fails to attract the necessary support within a month, then the proposal will fall and no similar proposal may be introduced for a period of six months.

There is no limit to how many proposals that each Member may submit, but each Member can only introduce two Member's Bills in any four year parliamentary session.

This rule includes any Committee bills that result from proposals submitted by a Member.

A Member's Bill is then subject to most of the provisions applicable to an Executive Bill. A slight difference is that a Member's Bill only needs to be accompanied by a Financial Memorandum and a statement by the Presiding Officer on legislative competence. If relevant to the Member's Bill, it will also require an Auditor General's report.

The requirements for a Policy Memorandum and Explanatory notes are optional with a Member's Bill but may be produced if desired by the Member responsible for the Bill.

### **Committee Bills**

Any committee may make a proposal for a Bill to the Parliament.

Proposals for Bills can be submitted by individual members of the Committee who must raise the matter with the Committee Convener.

Alternatively, proposals may originate from within the committee itself.

If a committee submits a proposal, it should do so in the form of a report to the Parliament.

If the Parliament agrees to the proposal, the committee convener will instruct that a Bill be drafted to bring the measure for initiating as a piece of legislation.

## The American Congress



In our discussion of the American constitution, we highlighted that a central concern of the American system of government was the idea that a fundamental cause of tyrannical government, indeed, the essence of tyrannical government, is the centralisation of power in the hands of the same person or a narrow faction of people. That such a concentration of control over the powers and functions of government is to be avoided at all costs, is one of the most important principles underpinning the American system of government.

Embedded in American political culture from the foundation of the American system right up to the present day, is a belief that such concentrated political power poses a serious danger to civil liberties and popular rights. Indeed, it is one of the most persistent characteristics of American political ideology and is a dominant feature in popular thinking about politics.

As a result, when framing the structure of a federal state, the design behind it was summarised by James Madison that:

‘the power surrendered by the people is first divided between two distinct governments (the Federal government and the governments of the several states), and then the portion allotted to each subdivided among distinct and separate departments (the executive, the legislative, and the judicial).’ (Madison, *The Federalist* no.51.)

**Congress** is the legislative branch of the federal government of the United States. It is bicameral, comprising the **House of Representatives** and the **Senate**.

The structure of Congress was developed out of the desire of the Founding Fathers to establish an accountable legislature that would reflect the real wishes of the American people. To that end they sought to create a ‘house of the people’ (the House of Representatives) that would closely resemble and follow public opinion, and a more deliberative and learned Senate which would not be so closely subject to public opinion and mass sentiment and would be able to take a longer and more detailed view of legislation and public policy. James Madison stated in 1787 that:

‘the use of the Senate, is to consist in proceeding with more coolness, with more system, and with more wisdom, than the popular branch.’

In addition, the Founding Fathers designed the Constitution to ensure that the approval of both houses is necessary for the passage of legislation.

The Constitution entitles each State to at least one Representative and two Senators. There are 435 seats in the House of Representatives that are distributed according to population. There are two seats in the Senate for each state in the United States. As a result there are 100 seats in the Senate that are distributed equally among the 50 states.

Members of the House of Representatives must be at least 25 years old, U.S. citizens for at least seven years, and residents of the state from which they are elected.

Members of the Senate must be at least 30 years old, a U.S. citizen for at least nine years, and a resident of the state from which he or she is elected.

Article 1 Section 8 of the Constitution invests the following powers in Congress:

- to levy taxes
- collect revenue, pay debts, and provide for the general welfare
- borrow money
- regulate interstate and foreign commerce
- establish uniform rules of naturalisation and bankruptcy
- coin money and regulate its value
- punish counterfeiters
- establish a postal system
- enact patent and copyright laws
- establish Federal courts inferior to the Supreme Court
- declare war
- provide for the armed forces
- impeach and try Federal officers
- consent to the ratification of treaties
- confirm the nomination of public officials
- to enact such laws as may be 'necessary and proper' to implement its mandate in Article I.

### **Note**

- Impeachment is the process by which the President, Vice President, Federal judges and Justices, and all civil officials of the United States may be removed from office.
- The President and other civil officials may be impeached and convicted for:  
'Treason, Bribery, and other high Crimes and Misdemeanors.'
- The House of Representatives has the sole authority to bring charges of impeachment. The House can initiate impeachment procedures by a simple majority vote.
- The Senate has the sole authority to try impeachment charges.
- An official can only be removed from office by conviction in the Senate. Such a conviction requires a two-thirds majority vote in the Senate.
- The Constitution provides that the Chief Justice shall preside when the President is being tried for impeachment.

## The House of Representatives

- Consists of 435 members who are directly elected by the American people for two years.
- The Congress decided on 435 members of the House in 1911. In 1959 this figure was temporarily increased to 437 due to the admission of Alaska and Hawaii to the United States, but returned to 435 four years later in 1963.
- Each member of the House of Representatives represents what is known as a congressional district whose boundaries are determined after each census. Following the census in 2000, each congressional district has approximately 640,000 people.
- Some smaller states have only one congressional district, whilst other larger states can have several since they are based on population.
- By the same principle, the 435 seats in the House of Representatives are **apportioned** between the states by population although each state must be represented in the House by at least one member. For example seven states have only one representative each.
- Following each 10-year census, the United States Census Bureau uses a mathematical formula to apportion the number of representatives for each state.
- What this means is that states with large populations will be apportioned more of the 435 seats than states with smaller populations. For example whilst we said that seven states have only one seat, California has 53 seats in the House.
- Following the 2000 census, eight states gained seats whilst 10 states lost seats as the seats were re-apportioned to reflect population changes.
- Members of the House tend to come from wealthier family backgrounds than the average American.
- The House has very few working class members.
- It is overwhelmingly white, male, and middle to upper class.
- Racial minorities and women are disproportionately under-represented.
- The House has the sole power to initiate impeachment proceedings against the President and other officials (but it is the Senate who conducts the trial).

## **The Senate**

- Each state of the United States is equally represented in the Senate by two members regardless of the population of the state.
- Senators serve a six-year term of office.
- Elections to the Senate are held every two years.
- Thus the six-year terms of office are 'staggered' so that approximately one-third of senators are elected every two years.
- This 'staggering' is arranged so that both seats in any state are not up for re-election at the same time.
- The Vice-President of the United States sits as the Presiding Officer of the Senate, however, the Vice President is not an elected senator and is not allowed a vote unless there is a tied vote when, in his/her role as Presiding Officer, is allowed a casting vote.
- The Senate has powers under the Constitution that are not available to the House.
- One such power is that the President requires the 'advice and consent' of the Senate to make important appointments (such as Supreme Court and federal judges) and ratify treaties.
- The Senate has sole powers to confirm Cabinet and key government posts.
- The Senate conducts the trial process if the President or other senior officials face impeachment (but it is the House that has the sole power to initiate impeachment).

## Congress – Legislative Functions

Article One of the Constitution begins by stating that:

‘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.’

The powers that Congress enjoys are quite specific because the Framers were careful that Congress should not be able to exercise those powers that are entrusted to the states. We remarked on this point earlier when looking at the federal system in America when we considered the Tenth Amendment to the Constitution, which states that:

‘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.’

In addition to the above powers, Congress has the authority to decide a winner if no presidential candidate achieves an electoral majority. If no candidate receives a majority of electoral college votes, the **House** may elect the President from the **three** candidates with the highest numbers of electoral votes. If no Vice-Presidential candidate achieves an electoral college majority, the **Senate** may elect the Vice President from the **two** candidates with the highest numbers of electoral votes.

Congress alone has the authority to pass laws, but in addition, the President has the power to **formulate** and **propose** legislation. However, all such proposals must pass through Congress where they are subject to debate and amendment.

Article 1 section 7 of the Constitution requires that all bills passed by Congress must be signed by the President before they can become law. In addition, it allows the President to refuse to sign a bill if he/she has serious objections to it. In this situation, the President returns the bill to Congress, unsigned, stating the reasons for the veto.

If this happens, then Congress can only over-ride the Presidential veto by securing a two-thirds majority vote in both Houses of Congress.

Because the American Revolution was ignited over the issue of ‘**no taxation without representation**,’ the Framers of the Constitution (Article 1 Section 7) required that:

‘all Bills for raising revenue shall originate in the House of Representatives.’

As a result, all **taxation legislation** begins in the House which is invested with special authority over taxation and spending. This is based on the principle that the national purse strings should be controlled by a body directly responsible to the people. This is the House of Representatives who are directly elected every two years.

**We must always remember** that the American system of government is based on the principle of the separation of powers. As a result, such distinctions that occur in the legislative process between the several branches of government are all designed to maintain the system of checks and balances required for a meaningful separation of powers.

## **Bills and Resolutions**

- All bills must pass both Houses of Congress in exactly the same form.
- A proposal for legislation will be introduced into Congress as a bill, or a joint resolution.
- A bill is the form used for most legislation.
- Bills may originate in either the House of Representatives or the Senate.
- The term 'joint resolution' is misleading as such measures originate in either the House or the Senate, but not, as is sometimes incorrectly assumed, jointly in both Houses.
- There is little practical difference between a bill and a joint resolution and the two forms are often used interchangeably.
- Both bills and joint resolutions are subject to the same procedures, except for a joint resolution proposing an amendment to the Constitution.
- When a joint resolution amending the Constitution is approved by two-thirds of both Houses, it is not presented to the President for approval.
- Following two-thirds approval by both Houses of Congress, a joint resolution to amend the Constitution is sent directly to the Archivist of the United States. The proposal is then sent for submission to the states.
- For such a joint resolution to become a successful amendment to the US Constitution, it must be ratified by the legislatures of three-fourths of the states within the period of time prescribed in the joint resolution necessary for the amendment to become part of the Constitution.
- The Constitution provides that all bills for raising revenue should originate in the House of Representatives.
- There are two types of bills, public and private.
- A public bill is one that affects the public generally.
- A private bill is a bill that affects a specified individual or a private entity rather than the whole population.
- No bill or resolution is considered as being officially introduced until it has been assigned a number and is printed in the Congressional Record.

## How a Bill becomes a Law

In order to become an Act of Congress, every bill must pass both houses of Congress by a majority vote.

Once a bill is approved by one house, it is sent to the other, which may pass, reject, or amend it. In order for the bill to become law, both houses must agree to identical versions of the bill.

After it has passed the Congressional procedures, it is sent to the President (this is known as **enrollment**). If the President signs the bill, it becomes law.

However, as we saw, the President is not obliged to sign a bill into law.

First, the President can **veto** a bill. This requires the President to send the bill back to Congress with a written explanation as to the reasons why the President disagrees with the measure.

Should the President veto a bill, then Congress must pass the original bill again with a two-thirds majority vote in both Houses. Should Congress fail to get a two-thirds majority for the bill in either House, then the bill will fall.

Next, the President can '**sit**' on a bill, which means he/she will do nothing.

If the President decides to sit on a bill, the bill will become law automatically without the President's signature after 10 days (not including Sundays).

However, if Congress adjourns before the 10 days pass (for example, the Congressional term finishes and they all go off on holiday) and the President hasn't signed the bill, then the bill will fail. This process is known as the President's **pocket veto**. It comes from the notion that the President has simply put the bill in his/her pocket and forgotten about it.

What we wish to emphasise at this point is that almost all of the process involved for a bill to become a law in the United States is completed in committees.

The House of Representatives has 20 committees, the Senate 16.

However, each of these committees can appoint sub-committees to closely scrutinise legislation and call witnesses to give specialist advice and opinion.

- Bills can originate from several different sources, but they are usually submitted by individual members of Congress.
- For example, a proposal for a bill may be brought to a member of Congress by a constituent or a group of constituents.
- Another way for a proposal for a bill to be brought to Congress is for the proposal to be submitted to a member of Congress by one or more state legislatures.
- Alternatively, the President or his/her administration might suggest a bill.
- Regardless of how such a proposal is brought to the attention of a member of Congress, it can only be submitted to Congress for their consideration by a member.

### **The following is the progress of a bill through the House of Representatives**

- In the House, a Representative submitting a bill, places a copy of the bill into a bin (known as a 'hopper') specifically placed to receive new bills.
- In the Senate, the bill is given to a clerk at the Senate President's desk.
- When a bill is introduced into the House, it is assigned to a committee of the House that will have the specialist task of considering the bill in detail.
- This committee may then delegate the scrutiny of the bill to a specialist sub-committee.
- Following sub-committee scrutiny of the bill, the sub-committee will return the bill to the standing committee for its approval with a report and/or recommendations.
- If the standing committee and/or the sub-committee are satisfied with the bill it is then reported back to the House with recommendations or amendments.
- Either of these committees can accept the bill, reject it, or amend it as they consider appropriate.
- If at any stage in the committee process, a committee rejects the bill, then the bill will simply 'die' at that time.
- Should the appropriate committee(s) approve the bill and decide to recommend it to the House, it will either be reported back to the House in its original form or with recommended amendments from the committee.
- Once a bill has been reported back to the House, a written report about the bill will be published.
- The written report will include such information as, the purpose of the bill, financial implications of the bill, any new taxes or tax increases that may be required, and its impact on existing legislation.
- The whole House will then debate the bill and vote on whether to accept or reject the bill.
- Once the bill has passed the procedures in the House of Representatives, it is then sent to the Senate for its consideration.
- The Senate will again refer it to an appropriate committee(s) for consideration.
- If the Senate committee(s) agrees with the bill, it will be reported back to the Senate, again, either in its original form or with appropriate amendments.
- The whole Senate will now debate the bill and vote to accept or reject the bill.
- If the Senate passes the bill, it is then returned to the House of Representatives.
- If one of the Houses of Congress does not accept the amendments to a bill by the other House, the bill is then referred to a **conference committee**.

- This conference committee is made up of members of both Houses and its function is to agree a compromise that will be acceptable to both Houses.
- If the conference committee cannot agree on changes to satisfy both Houses, the bill will die.
- However, when the conference committee is satisfied with the bill it will refer it back to both Houses of Congress for their approval.
- When the bill is finally approved by both Houses, it is signed by the Speaker of the House, and by the Vice President on behalf of the Senate.
- The bill is then **enrolled**, which means that it is presented to the President for his/her approval.
- Once the President signs the bill, it becomes a law.

**If a bill originates in the Senate, then the process is the same as that just described for a bill originating in the House of Representatives.**

As a result, if the bill originates in the House it will process through all the House procedures outlined above, and then be submitted to the Senate.

If the bill originates in the Senate, then the reverse is true.

## Presidential Electoral System

Map A



The above Map A is a map of the United States showing the 50 states.

The following Table B gives the number of Electoral College votes per state (including the District of Columbia) in the 2004 Presidential election.

**Table B – Numerically from the highest number of Electoral College votes to the smallest**

State	Electoral vote	State	Electoral vote	State	Electoral vote
California	55	Arizona	10	Nevada	5
Texas	34	Maryland	10	New Mexico	5
New York	31	Minnesota	10	Utah	5
Florida	27	Wisconsin	10	West Virginia	5
Illinois	21	Alabama	9	Virginia	5
Pennsylvania	21	Colorado	9	Hawaii	5
Ohio	21	Louisiana	9	Idaho	5
Michigan	17	Kentucky	9	Maine	4
Georgia	15	South Carolina	8	New Hampshire	4
New Jersey	15	Connecticut	7	Rhode Island	4
North Carolina	15	Iowa	7	Alaska	3
Virginia	13	Oklahoma	7	Delaware	3
Massachusetts	12	Oregon	7	D.C.	3
Indiana	11	Arkansas	6	Montana	3
Missouri	11	Kansas	6	North Dakota	3
Tennessee	11	Mississippi	6	South Dakota	3
Washington	11	Nebraska	5	Vermont	3
				Wyoming	3

## **An explanation of electoral college votes will now follow**

The President and Vice President of the United States are said to be '**indirectly**' elected because the method of election involves what is known as an '**electoral college**.'

Each state in the United States has an electoral college. This is composed of a number of 'electors' who themselves are directly elected in each state, during the November general election in Presidential election years.

Each state is assigned a number of electors equal to the total of its Senators and Representatives in the U.S. Congress.

As a result, if you compare **Map A** with **Table B** you will see that in the 2004 Presidential election, **California** had **55** electors and **Wyoming** had **3**.

This is because California has 53 Representatives in Congress and 2 Senators, whilst Wyoming has 1 Representative in Congress and 2 Senators.

In addition, the 23<sup>rd</sup> Amendment to the Constitution gave the District of Columbia, the right to choose a number of electors for an electoral college, equal to the number of the least populous state.

23<sup>rd</sup> Amendment (Section1):

'The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.'

Because of this, the District of Columbia has three Electoral College votes at its disposal.

As a result, the total of electors in the United States number 538:

- 435 reflecting the number of Representatives in Congress
- 100 reflecting the number of Senators in Congress
- 3 allowed for the District of Columbia.

What this means, is that the American people go to the polls and vote for a candidate for the Presidency in exactly the same way as voters in Britain would do at a general election.

However, in a Presidential election, the votes are not counted nationally, but by each state.

Thus, when a candidate wins the popular vote in any state, that candidate is given all of the Electoral College votes for that state.

The result of this is that the candidate elected as President is not elected by the popular vote of the American people, but by the number of Electoral College votes they amass.

## What does this mean?

As each state declares its election result, its Electoral College votes are allocated to the candidate who wins in that state.

As each state declares its result, the candidates accumulate Electoral College votes.

In order to win the Presidency, a successful candidate must gain one-half plus one, of the Electoral College votes available.

As there are 538 Electoral College votes available, then the winning number is:  
 $269 + 1 = 270$ .

This is what we meant when we said that the American President is elected **indirectly**, rather than directly by popular vote.

This becomes important when we realise that a Presidential candidate can win the popular vote, but lose the Presidency because they fail to win a majority of Electoral College votes.

In 1876, Rutherford B. Hayes, a Republican, received 4,034,311 popular votes and 185 Electoral College votes.

His Democratic opponent Samuel J. Tilden won 4,288,546 votes but only 184 Electoral College votes.

In 1888, Benjamin Harrison, a Republican, was elected President with 5,443,892 popular votes and 233 Electoral College votes.

His Democratic opponent Grover Cleveland's polled 168 Electoral College votes, but 5,534,488 popular votes.

This can happen if a large state (or several large states) with a large Electoral College vote has a poor turnout on Election Day. Regardless of how few people vote in any state, the total Electoral College vote will be allocated to the winner, whilst another state (or states) may have a very high turnout, but only deliver a small Electoral College vote.

Thus, a candidate can build up a larger electoral college vote than his/her opponent on a smaller total of actual votes received than his/her opponent. It all depends on which states they win or lose. So, a state with a large Electoral College vote (for example, Ohio with 20 electoral college votes) could have a poor turnout of voters (for example 1 million people cast a vote in Ohio) whilst a state (for example Vermont with 3 electoral college votes) could have a good turnout of voters (for example 1,250,000 people cast a vote).

Therefore a candidate in Ohio could win perhaps 750,000 votes and 20 Electoral College votes, whilst a candidate in Vermont could win perhaps 800,000 votes but only win 3 Electoral College votes.

The above Map A, and Table B, should explain why the candidates in a Presidential election concentrate their campaigns in certain key states, that is, the states with the largest electoral college votes.

If you return to Map A and Table B, you will be able to see for yourself that if any Presidential candidate can win the **7** states with the greatest number of electoral college votes they will accumulate **209** of the 270 electoral college votes necessary for victory.

- California            55 electoral college votes
- Texas                34    “        “        “
- New York State    31    “        “        “
- Florida              27    “        “        “
- Pennsylvania      21    “        “        “
- Illinois              21    “        “        “
- Ohio                 20    “        “        “

## Activity

- a) Return to Map A and Table B, and identify the **13** states whose total Electoral College votes number **44**.
- b) Assume you are the candidate who has won the seven states granting you 209 Electoral College votes, and identify the **least** number of states you should now win to secure the Presidency.

**Note** – Map A designates the 50 states in the Union.

As a result, it does not show the District of Columbia, as it is not a state.

## The Presidency



Article 2 Section 1 of the Constitution states that:

‘the executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years.’

Article 2 Section 2 of the Constitution states that:

‘the President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several states, when called into the actual service of the United States.’

The reference to the ‘militia of the several states’ refers to what we now call **the National Guard**.

Until 1973, Presidents used this authority to commit U.S. troops without a formal declaration of war. However, the Constitution reserves to Congress (Article I, Section 8) the power to raise and support the armed forces as well as the sole authority to declare war.

As a result, controversy has always existed within the American system on the question of who had the authority to declare war, and who exercised ultimate control over the armed forces, the President or Congress?

In 1973, in an attempt to resolve this dispute, Congress enacted the **War Powers Resolution**.

The War Powers Resolution limits the President’s authority to use the armed forces without specific congressional authorisation. It was an attempt to both clarify and to increase Congressional control over the use of the military.

The War Powers Resolution was passed on November 7, 1973. The then President, Nixon, attempted to veto this measure, but Congress overturned it.

The Resolution established procedures that require both Congress and the President to participate in decisions to send U.S. Armed Forces into hostilities.

The Resolution requires the President to report to Congress any introduction of United States armed forces into 'hostilities or imminent hostilities.' When such a report is submitted, or is required to be submitted, section 5(b) requires that the use of forces must be terminated within 60 to 90 days unless Congress either authorises such use or extends the time period.

Section 3 requires that the:

'President in every possible instance shall consult with Congress before introducing'

U.S. Armed Forces into hostilities or imminent hostilities.

This is, of course, a considerable power for Congress. It could mean that a President could commit armed forces to war and then have the humiliation of having to bring them back home if Congress refuses to authorise their dispersal.

The 22<sup>nd</sup> amendment to the constitution in March 1951 limits all presidents to a maximum of two four-year terms in office.

## The President as Executive

As we have just seen, the Constitution invests the office of the President with the executive power of American government.

This means that the President and his/her office is the government.

The American Presidency has been compared to what we, in European terms, might describe as an elected monarchy.

However, it is difficult to imagine any monarch exercising the same degree of authority as the President of the United States. This is because a President of the United States performs functions that would be performed by both a monarch and a Prime Minister.

The President holds the title of **Chief of State**. This is the position which most closely parallels that of a king or queen in a monarchy. However, the President also performs many of the functions of a prime minister or premier in a parliamentary democracy.

In his/her capacity as **Chief Executive**, the President presides over his/her Cabinet and has responsibility for the management of the executive branch of the government.

The Constitution also empowers the President with the right to make treaties, appoint ambassadors, government officers, and judges of the Supreme and Federal courts, with the advice and consent of the Senate. As we have just discussed, the President also holds the position of Commander in Chief of the Armed Forces.

However, unlike a British Prime Minister, the President is not a member of the legislature. In addition, as we have also just discussed, his/her election to the office of President is not dependent on the approval of a majority of either electors or legislators. We now know through our previous discussions, that Presidents are elected indirectly by the citizens through the Electoral College.

In addition, the President serves a definite term of office, and can only be removed by the process of impeachment.

Under the 22nd Amendment to the Constitution, a President is limited to no more than two elected four-year terms and a maximum of 10 years under special circumstances, ie. if a twice-elected President serves an additional two years (or less) of the term of another elected President.

This could occur if a President died whilst in office, and was succeeded by the Vice-President, who then went on to win the Presidency in his/her own right at the next two Presidential elections.

## The Powers of the American President

These are expressed in Articles 1 and 2 of the Constitution and are:

- Commander in Chief of the Army and Navy and the National Guard if it is called into actual service.
- Ability to require in writing, the opinion of the principal officer in each of the executive departments, on any subject relating to the duties of their office.
- The power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.
- Power to make treaties.
- Appoint ambassadors, public ministers, judges of the Supreme Court, and all other officers of the United States established by law.
- The power to fill all vacancies that may occur during the Senate recess.
- The power to veto Acts of Congress.

These powers are those expressly granted to the President within the text of the Constitution.

The phrase 'all other officers of the United States established by law' covers the appointment of all federal judges and other federal officers whose appointments are established by law, such as the heads of the Federal Bureau of Investigation and the Central Intelligence Agency.

However, as we have already noted, in the spirit of the separation of powers, all such appointments must have the consent of Congress.

It should also be noted that the Presidential veto can be overridden by a two-thirds majority vote in both Houses of Congress. Only the pocket veto referred to earlier is an absolute veto.

The American President is:

- Head of State
- Chief Executive
- Chief Diplomat
- Commander in Chief
- Chief Policymaker
- Political Leader.

**Head of State** – Like European monarchs the president is the ceremonial head of the government. He/she receives representatives of other governments and performs ceremonial duties.

As head of state the president symbolises the power and sovereignty of the United States.

**Chief Executive** – As we have seen, as chief executive the president appoints the heads of the government departments and the heads of government agencies. He/she also supervises the work of the executive branch.

As chief executive the president provides the leadership in legislative proposals. The presidency is the principal determinant of the agenda of Congress. If major problems arise, the public and Congress will look to the president for remedies and solutions.

The core of the legislative programme is set by the State of the Union address delivered to Congress each January. This is followed by the Economic Report which is accompanied by a detailed budget proposal for achieving the objectives of the legislative proposals.

**Chief Diplomat** – President Truman once said: ‘I make American foreign policy.’ And Thomas Jefferson observed that the conduct of foreign policy was ‘altogether executive’.

Success in waging two world wars won the presidency both prestige and power, but as we saw, the unpopularity of the Vietnam War led Congress to pass the 1973 War Powers Act. This was made worse for the presidency due to the fact that the Vietnam conflict was never considered to be a war. It was an undeclared war.

As a result, the diplomatic aspect of the presidency can be a two-edged sword, bringing both popularity and failure.

As chief diplomat the president deals directly with the heads of foreign governments. They attend summit meetings of heads of state and preside over the negotiation of major treaties. In addition, they are involved in arms control negotiations and negotiations to help prevent the spread of nuclear weapons.

**Commander in Chief** – This places the principal responsibility for America’s security on the president. He/she deploys troops abroad, orders them into combat, and even uses the armed forces within America to preserve peace. In addition, the president has the power to declare martial law, as Abraham Lincoln did during the Civil War. The president is responsible for the nation’s nuclear weapons and, under law, is the only person who can order their use. The ‘Black Box’ through which such orders are sent, accompanies the president at all times.

As a civilian, the president fulfils the constitutional principle of civilian control and supremacy over the military.

**Policymaker** – As we have already stated, the president is the most important policymaker in economic and social affairs.

Presidents are involved in making policy and legislative proposals on health, welfare, crime, energy, inflation, unemployment and the balance of payments. These are just a flavour of the policy responsibilities of the president.

The presidency establishes and administers national policies on social security, education, and a whole range of social issues.

**Political leader** – The president is regarded as the leader of his/her national party. A successful president can influence the election of members of congress and state and local government, thus boosting his/her party at all levels of political involvement.

Similar to a British Prime Minister, the president manages patronage for political office and appointments. As we saw above, the president appoints cabinet and lower government officers, federal judges, US attorneys, ambassadors and thousands of other positions of varying importance.

The president also administers what Americans refer to as ‘the pork barrel.’ This is the federal fund that will be spent on public works, military installations and social programmes, etc. A president is more likely to distribute such funds into those districts controlled by his/her supporters.

## The Executive Branch of Government

The executive branch of the federal government is of course headed by the President.

However, like the British government it is organised into departments and organisational and administrative bodies. There are currently 15 executive departments of American government, and as in Britain, the heads of these government departments are referred to as the **Cabinet**. The 15 departments are

1. Agriculture
2. Commerce
3. Defense
4. Education
5. Energy
6. Health and Human Services
7. Housing and Urban Development
8. The Interior
9. Justice
10. Labour
11. The State Department
12. Transportation
13. The Treasury
14. Veterans Affairs
15. Homeland Security.

Presidential affairs are directed by the **Executive Office of the President**, the President's personal civil service.

The Executive Office consists of those officers who assist the President in the exercise of his/her responsibilities.

The Cabinet has its origins in Article 2 Section 2 of the Constitution which states that the President:

**'may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any subject relating to the Duties of their respective Offices.'**

The first Congress of the United States created the State Department, the Treasury, the War Departments and the office of the Attorney General. Following this, the first President, George Washington, made appointments of officers to assist him. These were ratified by Congress and Washington began the custom of meeting with the heads (who are also known as Secretaries) of the new executive departments. As a result, the Cabinet became the President's main advisory group.

## The Judiciary and the Supreme Court



Article 3 of the Constitution establishes the Supreme Court as America's highest judicial body. It is the final court of appeal from the lower federal courts and the court systems of the fifty states in all cases involving the Constitution or federal laws. It is the ultimate authority in constitutional interpretation and its decisions can only be overturned by a constitutional amendment.

Nine judges sit in the Supreme Court.

The federal courts are often called the guardians of the Constitution because their rulings are supposed to protect the rights and liberties of the American people as guaranteed by the Constitution.

It has to be noted that the courts don't make the laws. That is the responsibility of Congress. Nor do the courts have the power to enforce the laws. That is the role of the President and the many executive branch departments, agencies, and law enforcement agencies.

In order to protect the independence of the judiciary from political interference, the Constitution involves two measures.

First, federal judges are appointed for life, and they can be removed from office only through impeachment and conviction by Congress for:

**'Treason, Bribery, or other high Crimes and Misdemeanors.'**

Second, the Constitution provides that the compensation of federal judges:

**'shall not be diminished during their Continuance in Office,'**

which means that neither the President nor Congress can reduce the salary of a federal judge. Therefore they cannot be financially pressured to come to decisions they otherwise may not have, nor be financially punished if they displease the President or Congress.

So, although the President appoints the federal judiciary, he/she cannot remove them, nor financially blackmail them.

These two constitutional measures were designed to establish an independent judiciary that would be able to operate free from popular pressure and political influence. In the spirit of the principle of the separation of powers we discussed earlier, the Framers of the Constitution wanted to ensure that the judiciary and the Supreme Court would be truly independent of both the executive and legislative branches.

By establishing that federal judges be appointed for life, the constitution also ensured that the judiciary would be independent of the electorate. Therefore, their tenure of office depends neither on pleasing the people nor their political representatives.

## Judicial Review

We began the section on the American Constitution with a quote. It is worth repeating it here.

**‘We are under a Constitution, but the Constitution is what the judges say it is.’  
(Charles Evan Hughes – Former Chief Justice of the US Supreme Court.)**

As we have already noted, American politics is conducted within the framework of a written constitution which establishes the powers of the different branches of government, as well as many of the fundamental rights and liberties of American citizens.

However, as we have also noted, the Constitution is a brief document that sets out general principles and in most areas is not very specific in what it means. Therefore, its precise meaning in any particular situation is often unclear.

As a result, many of the decisions reached about what the Constitution actually means have been reached by judges whose role it is to establish and interpret constitutional law. That is the meaning of the above quote by Charles Evan Hughes.

What we are saying here is that constitutional law requires constitutional interpretation, and that has become the primary function of the federal judiciary, and particularly the Supreme Court.

At this point we should stress that such a role for the courts is not envisaged in the Constitution, but has been established by historical developments within the United States. We shall expand on this shortly.

What we wish the student to note here is the main difference between the federal judiciary in the United States, and the judiciary in the United Kingdom, which is that the American judiciary fulfil both a judicial and a political function.

It is important to appreciate the political role of the federal judiciary as decisions of the Supreme Court can have a profound political impact in the United States, as we shall see.

As we said, the judiciary in the United Kingdom have no similar function, nor similar impact.

The political role of the federal judiciary was determined by the process of **judicial review**.

As we said earlier, although the American federal judiciary performs a political role, the Constitution did not give them that role. Nothing in the Constitution gives the judiciary the power to declare congressional legislation, or executive branch policies, unconstitutional.

The principle of judicial review was established in 1803 by Chief Justice John Marshall with reference to a case that came before the Supreme Court known as **Marbury vs. Madison**.

In this case, Chief Justice Marshall established, on behalf of the Supreme Court, that the Court had the authority to review government actions and declare them invalid and unconstitutional.

Although this case only involved a minor provision relating to federal law, it was the first time that the Supreme Court declared an act of Congress to be unconstitutional. It was also the first time that the Court expressed the concept of judicial review at the federal level.

Marbury vs. Madison is considered to be a very important, landmark judicial decision. It set the precedent that the Supreme Court has, not only the **power**, but the **duty**, to invalidate acts of Congress that violate the Constitution.

Marshall stated that:

‘certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.’

He added that it was:

‘emphatically the province and duty of the judicial department to say what the law is.’

The decision also ruled that if two laws conflict, then the courts must decide how those laws interact. When a law and the Constitution both apply to a case and they conflict, the courts must determine which of the conflicting rules governs the case.

Marshall stated that the Constitution is:

‘superior to any ordinary act of the legislature.’

As a result, if a law is in conflict with the Constitution, then the Constitution must prevail. In other words, Marshall argued that the Court was obligated to reject any law that violated the Constitution.

Since 1803 the Court has cited Marbury vs. Madison over 250 times.

**The following are a random selection of cases highlighting the concept of judicial review in various areas of American constitutional conflicts.**

### **United States vs. Nixon (1974)**

On 17<sup>th</sup> June 1972, burglars broke into the Democratic Party's National Committee offices in Watergate Hotel in Washington, DC. The burglars were caught trying to 'bug' the offices. One of the burglars admitted to being a former member of the CIA and another was employed by the Republican Party.

A \$25,000 cheque that appeared to come from President Nixon's re-election campaign funds had been paid into the bank account of one of the burglars. The Washington Post reported that Nixon's attorney general, John Mitchell controlled a secret fund that was used to gather intelligence about the Democratic party. Then in October 1972, the Federal Bureau of Investigation revealed that the Watergate burglary had been part of a widespread campaign of political spying and sabotage, organised by the people who were in charge of President Nixon's re-election campaign.

Nixon was re-elected in November 1972 but in early 1973 the Senate established a Watergate Committee to investigate the claims of Presidential wrongdoing.

The Supreme Court's involvement centred around the President's refusal to submit documents and tape recordings of meetings he had with his staff. He eventually released documents but refused to release the tape recordings, claiming 'executive privilege'.

The Supreme Court, in an unanimous decision, rejected the President's claim to executive privilege and ruled that he must release tape recordings of 64 conversations he had conducted with his staff in the White House. The Court stated that:

'Neither the doctrine of separation of powers nor the generalised need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.'

The Court also ruled that the claim for executive privilege did not allow the President to refuse to disclose evidence that may be used in a criminal trial.

### **Island Trees School District vs. Pico (1982)**

This case arose from a decision of the Board of Education of the Island Trees School District in New York to order the removal of nine books from the libraries of the Island Trees senior and junior high schools.

The Board of Education argued that, between them, the nine books were

**'anti-American, anti-Christian, anti-Semitic, and just plain filthy'.**

Four students from the high school sector and one from the junior high school sector sued the Island Trees School District, on the grounds that, by removing the books from their libraries, the School District was violating their constitutional rights under the First Amendment's guarantee of freedom of speech.

The Supreme Court, ruling in favour of the students, argued that:

‘Local school boards may not remove books from school library shelves simply because they dislike the ideas contained in these books and seek by their removal to prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion.’

The Court ruled that high school students have First Amendment rights in relation to their learning, and, that whilst schools have a right to decide the material they stock in their libraries, they do not have the right to determine everything that the student will learn, nor interfere with their right to learn. As a result, they concluded that schools may not control the content of their libraries in such a manner that it results in a particular, narrow or biased learning process for the student. Student must have access to a wide range of points of view and opinion. As we saw above, the Court argued against the prescription, suppression or exclusion of ideas and opinions in schools.

### **Texas vs. Johnson (1989)**

The plaintiff in this case, a Texan called Johnson, appealed to the Supreme Court of Texas against his conviction for burning a United States flag during a protest demonstration against President Ronald Reagan. This had occurred in Dallas, Texas, outside the auditorium where the Republican Party was holding its National Convention.

Johnson had been arrested and convicted because the law in Texas at that time, made it a crime to desecrate the flags of either the United States or Texas. He had been sentenced to one year in jail and a two thousand dollar fine.

The Supreme Court of Texas overturned the conviction on the grounds that the burning of the flag had been a legitimate form of self-expression that was protected under the First Amendment to the Constitution.

The US Supreme Court upheld this ruling, arguing that the burning of the flag was:

‘expressive conduct’ attempting to ‘convey a particularized message’.

### **New York Times vs. United States (1971)**

In July and August 1964, it was alleged that North Vietnamese forces attacked two American destroyers in the Gulf of Tonkin off Vietnam. It transpired that the National Security Agency ‘deliberately skewed’ the information in order to justify the escalation of military action in Vietnam.

In a case that became known as ‘the Pentagon Papers’ case, the *New York Times* published secret information about what they said ‘really’ happened in the Tonkin Gulf and other information relating to the escalation of the Vietnam conflict.

Prior to the publication of the information, the government sought an injunction barring the *Times* from publication. In response, the *Times* sued the government claiming that they were infringing their first amendment rights of freedom of speech. The government countered by claiming that publication would pose a threat to the security of the United States.

The Supreme Court upheld the position taken by the *New York Times*, rejecting the notion that the information presented a threat to national security and ruling that the government’s attempts to suppress the publication of the information was an act of censorship and did indeed violate first amendment rights of freedom of the press.

### **Miranda vs. Arizona (1966)**

In 1963, Ernesto Miranda was arrested in Phoenix, Arizona and charged with armed robbery. In custody he confessed to the robbery and also to a rape he had committed 11 days before the robbery. During his interrogation by the police, he had not been represented by a lawyer and after his conviction, his trial lawyers appealed against his conviction on the grounds that he had not been informed of his constitutional rights protecting him from self-incrimination.

The Supreme Court overturned the conviction on the grounds that he was not informed of his right to remain silent, and that the prosecution did not have the right to use evidence from statements made by defendants unless they have been advised of their rights, stating that:

‘The prosecution may not use statements, whether exculpatory or inculpatory, stemming from questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way, unless it demonstrates the use of procedural safeguards effective to secure the Fifth Amendment’s privilege against self-incrimination.’

This established the American legal process of defendants requiring to have their **Miranda Rights** applied at the time of arrest. They are:

‘You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to be speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense.’

### **Plessey vs. Ferguson (1896)**

From the 1880s through the 1960s, a series of laws enforcing racial segregation were passed in various American states and cities. Such laws were known as ‘Jim Crow’ laws after a popular black character in minstrel shows. These laws covered many topics such as forbidding interracial marriage and the separation of facilities for blacks and whites. For example, in the state of Alabama it was illegal for a white female nurse to work in a hospital ward that had black male patients, and in Georgia blacks were not allowed to be buried in cemeteries reserved for whites.

A statute in Louisiana forbade blacks from riding in the same railway cars as whites. Homer Plessey was a member of a Louisiana citizens group who were protesting the Jim Crow laws and he was arrested for violating the Louisiana statute. Plessey appealed to the Supreme Court on the grounds that such laws violated the 14<sup>th</sup> amendment to the Constitution which states that all citizens were to receive:

**‘equal protection under the law.’**

The state of Louisiana argued that Plessey and other black people did receive equal treatment, but it was separate treatment.

Plessey’s conviction was upheld by the Supreme Court who argued that:

**‘The object of the [Fourteenth] amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based on color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either.’**

### **Brown vs. Board of Education Topeka Kansas (1954)**

In deciding this case, the Supreme Court overturned the ruling of the Court in Plessey v Ferguson in 1896.

Linda Brown, was a student in the segregated Topeka Kansas school district and she had to walk five miles to school each day. Her father, Oliver Brown, attempted to have her enrolled in a white elementary school that was only down the street where she lived. He enlisted the help of the National Association for the Advancement of Coloured People to ensure that his daughter was able to go to the best school possible. Thurgood Marshall, then head of the NAACP, challenged the segregation of the school claiming that the laws violated the 14<sup>th</sup> amendment to the Constitution that said that all citizens were to receive ‘equal protection under the law’.

The U.S. District Court for the District of Kansas heard Brown’s case in June 25 1951.

The state argued that Plessey vs. Ferguson had set the precedent and that the law was clear on this point. They also argued that because segregation was a fact of life in Topeka and elsewhere in the United States, then the segregated schools simply prepared black children for the segregation they would face during adulthood.

The Supreme Court found in favour of the Brown family and overturned the precedent set by the Plessey decision. Justice Earl Warren claimed that:

**‘in the eyes of the law, justice was colour-blind’.**

In ruling in favour of the Brown family, the court ordered the integration of America:

**‘with all deliberate speed’.**

Chief Justice Warren delivered the Court ruling that:

**‘We come then to the question presented: Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other “tangible” factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe that it does ... We conclude that in the field of public education the doctrine of ‘separate but equal’ has no place. Separate educational facilities are inherently unequal.’**

### **Engle vs. Vitale (1962)**

It was normal in American schools to begin each day with the teachers in the school leading their students through what Americans call the Pledge of Allegiance. This was then followed by a short prayer, the singing of *America* or *The Star-Spangled Banner*, and possibly some readings from the Bible. The way a school did this differed from state to state and school to school, but the basic ritual was observed throughout the United States.

In New York, the state Board of Regents developed what they called a ‘non-denominational’ prayer for use in public schools. They were seeking to avoid offending any particular religious group and providing a prayer that would be non-controversial. However, a group of parents challenged the prayer as ‘contrary to the beliefs, religions, or religious practices of both themselves and their children’.

The state’s highest court upheld the use of the prayer, on the grounds that state law did not force any student to join in the prayer over a parent’s objections.

The Supreme Court ruled against New York State on the grounds that the requirement of a prayer violated the First Amendment’s ban against the establishment of religion. The Court ruled that a prayer by any definition constituted a religious activity, and by promoting prayer, the state violated the Establishment Clause.

### **Abington vs. Schempp (1963)**

In a similar case to *Engle vs. Vitale* a Pennsylvania law required that at least ten Bible verses be read in public schools at the beginning of each day. The Schempp family sued the school district for violating the first amendment of the constitution.

Just as in *Engle vs. Vitale*, religious instruction in school was deemed to violate the 1st amendment of the constitution.

### **Epperson vs. Arkansas (1968) Teaching of Evolution/Establishment Clause vs. State Rights**

An Arkansas statute forbade teachers in public schools from teaching the:

**‘theory or doctrine that mankind ascended or descended from a lower order of animals’.**

A teacher (Epperson) considered that the law was invalid and lost her job for violating it.

The Supreme Court was called in to review this statute which made it unlawful for teachers in state schools to teach human evolution. The Court ruled that:

**‘The Arkansas law is impermissible because it violates the Establishment Clause and prohibits the free exercise of religion. “The overriding fact is that Arkansas’ law selects from the body of knowledge a particular segment which it proscribes for the sole reason that it is deemed to conflict with a particular religious doctrine; that is, with a particular interpretation of the Book of Genesis by a particular religious group.” The State may not tailor the education of students to the principles of any religious group. This is an absolute prohibition that may not be violated. The law was not neutral because it did not prevent all discussions of the origin of man.’**

The Court ruled that a state may not eliminate ideas from a school’s curriculum solely because the ideas come in conflict with the beliefs of certain religious groups. The law that forbade the teaching of evolution had been passed to agree with the religious views of Christian fundamentalists. As a result, the Court had ruled that by aiding a religious point of view the Arkansas law was in violation of the First Amendment. The Court said that the law must require religious neutrality.

### **Roe vs. Wade (1973)**

This case resulted in one of the most controversial decisions ever delivered by the Supreme Court.

Norma McCorvey, a citizen of Texas, became pregnant and wished to have an abortion. State law in Texas made abortion illegal, as it was in most states in the USA at that time.

Ms McCorvey sued under the alias Jane Roe, in order to protect her identity, claiming that the state of Texas was violating her rights to privacy. She argued that by refusing to allow her to have an abortion, Texas was both violating her right to privacy and telling her what she could and could not do with her own body. The state argued that abortion was murder and that they had a duty to protect the life of the unborn child.

In what was described as a landmark decision, the Supreme Court ruled that laws prohibiting abortion represented a violation of a women's right to privacy. While there is no specific right to privacy in the Constitution it has long been interpreted to exist by the provisions of the first five amendments in the Bill of Rights. By creating this precedent abortion became legal in all 50 states.

The above are a selection of cases involving the intervention of the Supreme Court and other federal courts.

They cover a range of political and social issues, all of them having an important, and sometimes quite profound political and social impact on American society such as the power of the Presidency, civil rights, equality and discrimination, abortion, religion, American national symbols, freedom of speech and conscience.

And to repeat something we said before, the Supreme Court, in the case of *Brown vs. the Board of Education*, is not afraid to argue that previous Supreme Court decisions were flawed, and then proceed to reverse them.

That is the American concept of judicial review.

## Resource Information

### UK Political System

#### Books

Government and Politics in Britain – John Kingdon Polity Press 3<sup>rd</sup> Ed 2003

Governing the UK – Gillian Peele Blackwell Publishing 4<sup>th</sup> Ed 2004

Contemporary British Politics an Introduction – Coxall and Robins Macmillan Publishing

#### Websites

The British Constitution – [www.historylearningsite.co.uk/british\\_constitution.htm](http://www.historylearningsite.co.uk/british_constitution.htm)

The British Prime Minister – [www.number10.gov.uk](http://www.number10.gov.uk)

The British Cabinet – [www.cabinetoffice.gov.uk](http://www.cabinetoffice.gov.uk)

British Parliament – [www.parliament.uk](http://www.parliament.uk)

The Judiciary – [http://en.wikibooks.org/wiki/UK\\_Constitution\\_and\\_Government:Judiciary](http://en.wikibooks.org/wiki/UK_Constitution_and_Government:Judiciary)

<http://www.direct.gov.uk/Gtgl1/GuideToGovernment/Judiciary/fs/en>

<http://www.judiciary.gov.uk/>

The Legal System – [www.llrx.com/features/uk.htm](http://www.llrx.com/features/uk.htm)  
(this website explains the Scottish system as well)

### Scottish Political system

#### Books

Scottish Government and Politics – Peter Lynch Edinburgh University Press 2001

The Political Guide to Modern Scotland – Hassan and Fraser Politico's Publishing 2004

#### Websites

The Scottish Parliament – [www.scottish.parliament.uk/home.htm](http://www.scottish.parliament.uk/home.htm)

Scottish Executive – [www.scotland.gov.uk](http://www.scotland.gov.uk)

## **American Political System**

### **Books**

Politics USA – McKeever et al. Pearson Education 1999

Government and Politics of the United States – Nigel Bowles 2<sup>nd</sup> Ed Palgrave publishing 1998

### **Websites**

The American Constitution – [www.usconstitution.net](http://www.usconstitution.net)

The House of Representatives – [www.house.gov/house/Educate.shtml](http://www.house.gov/house/Educate.shtml)

The Senate – [www.senate.gov/reference/reference\\_item/American\\_Senate.htm](http://www.senate.gov/reference/reference_item/American_Senate.htm)

The Presidency -[www.americanpresident.org](http://www.americanpresident.org) and <http://ap.grolier.com>

For an excellent and understandable explanation of Congress, the Presidency and the American electoral system we highly recommend:

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106\\_cong\\_documents&docid=f:hd216.106](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_documents&docid=f:hd216.106)

The Supreme Court – <http://www.uscourts.gov>