5.11 Comparative US/UK Constitutions: Federal and Unitary Government: 30-minute Pack

EDEXCEL 9PL0 · about 30 minutes

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Write full sentences for extended answers and for any question worth 6 marks or more. Time guidance: 30 minutes for the whole pack. The final question is a levels-marked essay; plan and write a structured response with a clear judgement.

1 Analyse the extent to which the US and UK constitutional arrangements produce similar limits on government power, using comparative evidence on separation of powers, judicial review and legislative supremacy.

(Total for Question 1 is 12 marks)

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2 Using the two short extracts below on judicial power in the United States and the United Kingdom, analyse the similarities and/or differences in the constitutional role of courts in the two systems.

Extract A, United States context: "The US Supreme Court, under the written Constitution, can declare federal or state laws unconstitutional and thereby invalidate legislation that conflicts with constitutional provisions. This power, rooted in early 19th century case law, gives the judiciary a direct legal check on both Congress and the President."

Extract B, United Kingdom context: "UK courts, operating under parliamentary sovereignty, cannot normally strike down Acts of Parliament. The Human Rights Act 1998 allows courts to declare statutes incompatible with the European Convention on Human Rights, but only Parliament can decide whether to amend the law. Courts can review executive decisions and protect individual rights through common law, yet they do not override primary legislation."

(Total for Question 2 is 12 marks)

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Mark scheme · 5.11 Comparative US/UK Constitutions: Federal and Unitary Government: 30-minute Pack

Question 1

Level 0 No relevant content. **0**

Level 1 Basic, limited knowledge of the constitutions of both countries with little comparative analysis. **1-4**

Level 2 Clear comparative analysis of at least two mechanisms limiting government power with some supporting examples, though analysis may be uneven. **5-8**

Level 3 Detailed, well-balanced comparative analysis across separation of powers, judicial review and legislative supremacy, using precise examples and reaching a supported judgement on the extent of similarity. **9-12**

Indicative content:

- Separation of powers: US constitutionally divides powers among executive, legislature and judiciary with clearer checks and balances; UK relies on parliamentary government where executive is drawn from the legislature, so formal separation is less marked though practical constraints exist such as backbench scrutiny and select committees.
- Judicial review: US Supreme Court can strike down legislation as unconstitutional, giving a strong legal limit on government power; UK courts have limited power over primary legislation but can review the executive and issue declarations of incompatibility, offering a weaker legal check.
- Legislative supremacy: UK Parliament is legally supreme and can legislate on any matter, which can allow rapid government-led change if the executive controls the Commons; US constitutional entrenchment limits congressional power and protects federal and individual rights, but political checks such as federalism and elections also constrain US government.
- Similarities in practice: both systems have political checks such as elections, federal-state tensions in the US and devolved-national tensions in the UK, media scrutiny and public opinion which limit government misuse of power.
- Contextual qualification: the effectiveness of limits depends on political context, for example a large Commons majority can reduce constraint in the UK, while in the US polarized appointment processes or populist pressures can influence the Court and reduce perceived independence.
- Conclusion possibilities: argue there are important similarities in that both systems provide multiple checks, but also key structural differences that make the legal strength of limits stronger in the US while the UK relies more on parliamentary politics and conventions.

Question 2

Level 0 No relevant content. **0**

Level 1 Basic identification of one or two surface differences or similarities between US and UK courts with limited development. **1-3**

Level 2 Clear explanation of differences and/or similarities with some use of the extracts and some supporting knowledge, but analysis may be partial or descriptive. **4-6**

Level 3 Detailed analysis drawing on both extracts and wider constitutional knowledge to compare judicial powers, considering legal and institutional consequences in both systems. **7-9**

Level 4 Sophisticated, source-driven analysis that compares and evaluates similarities and differences, integrates precise examples or cases and reaches a supported conclusion about the constitutional role of courts in each system. **10-12**

Indicative content:

- Similarity: both systems allow courts to review executive action and protect individual rights through legal processes, so both serve as a check on government conduct.
- Difference: the US Supreme Court can invalidate primary legislation that conflicts with the Constitution, whereas UK courts cannot normally strike down Acts of Parliament due to parliamentary sovereignty.
- Difference: the legal basis differs, the US power is grounded in a written, entrenched constitution and in Marbury v Madison, making judicial review central; in the UK the legal position is subordinate to Parliament, with mechanisms such as declaration of incompatibility under the Human Rights Act 1998 offering a softer check.
- Consequence: in the US judicial review can produce immediate legal nullification of laws, shifting policy outcomes; in the UK declarations of incompatibility rely on Parliament to act, which may or may not happen, affecting the practical strength of the judicial check.
- Institutional implication: US judges have the power to make constitutional law with direct effect across the federation, while UK judges develop constitutional norms through common law and interpret statute, influencing but not overriding Parliament.
- Contextual points: political and historical contexts shape these powers, for example the entrenchment and amendment difficulty in the US strengthens judicial authority, while the UK tradition of parliamentary supremacy and flexible statutes means constitutional change often comes through legislation rather than judicial fiat.
- Evaluation: a balanced conclusion could argue that the US model gives courts stronger direct legal power to check legislatures while the UK model preserves parliamentary primacy but still allows courts to constrain the executive and influence rights protection, so the systems provide different kinds of judicial check.

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