5.11 Comparative US/UK Constitutions: Federal and Unitary Government

EDEXCEL 9PL0 · about 65 minutes · Write-in edition

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Write full sentences for extended answers and for any question worth 6 marks or more. Time guidance: 65 minutes for the whole pack. The final question is a levels-marked essay; plan and write a structured response with a clear judgement.

1 In the context of US and UK constitutions, identify two formal sources of the UK constitution.

(Total for Question 1 is 2 marks)

2 Explain one reason why the US Constitution is described as entrenched, with a brief reference to Article V.

(Total for Question 2 is 3 marks)

3 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 3 is 12 marks)

4 Evaluate the extent to which the US constitution offers stronger protection against an over mighty government than the UK constitution.

(Total for Question 4 is 30 marks)

5 Explain with examples how the US Supreme Court has limited the power of other branches through judicial review, referencing at least one landmark case such as Marbury v Madison. Briefly assess one constraint on the Court's ability to exercise this check.

(Total for Question 5 is 6 marks)

6 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 6 is 12 marks)

Mark scheme · 5.11 Comparative US/UK Constitutions: Federal and Unitary Government

Question 1

one valid formal source, e.g. Acts of Parliament such as the Human Rights Act 1998 **B1**

a second valid formal source, e.g. common law or statute example such as the Constitutional Reform Act 2005 **B1**

Answer: Any two of: Acts of Parliament (statute) such as the Human Rights Act 1998, Constitutional Reform Act 2005; common law; treaties; Royal Prerogative exercised through statute or convention.

Question 2

identifies that entrenched means the constitution is difficult to change **B1**

refers to Article V and a requirement for supermajorities or state ratification to amend **B1**

explains consequence, e.g. entrenchment makes fundamental change slower and protects core rights and structures **B1**

Answer: Entrenched means the US Constitution is difficult to change because Article V requires an amendment to be proposed by two thirds of both Houses or a convention called by two thirds of state legislatures, and then ratified by three quarters of the states, which makes fundamental change slow and protects core institutions and rights.

Question 3

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 4

Level 0 No relevant content. **0**

Level 1 Basic, limited knowledge of one or both constitutions and weak or no evaluative argument. Claims are asserted with little supporting evidence. **1-7**

Level 2 Clear knowledge of the constitutions with some developed analysis and evaluation. Arguments are supported by examples but may be one sided or lack depth in places. **8-15**

Level 3 Detailed, accurate knowledge of both systems used to construct a sustained analysis with balanced evaluation. Uses relevant examples and engages with counterarguments to reach a supported judgement. **16-23**

Level 4 Sophisticated, wide ranging knowledge combined with precise analysis and evaluation across legal and political dimensions. Directly compares entrenchment, judicial review, parliamentary sovereignty and federalism, addresses limitations and reaches a well substantiated and balanced judgement. **24-30**

Indicative content:

- Arguments that the US constitution offers stronger protection: entrenchment and a difficult amendment process under Article V make core rights and structures harder to change; judicial review since Marbury v Madison allows the Supreme Court to invalidate legislation and acts of the executive; federalism divides power and prevents central concentration by reserving many powers to states.
- Supporting examples for the US: Marbury v Madison 1803 establishing judicial review; cases such as United States v Lopez 1995 or NFIB v Sebelius 2012 showing the Court limiting congressional or executive reach; the Tenth Amendment and state sovereignty examples limiting federal power.
- Arguments that the UK constitution can offer robust protection despite being uncodified: parliamentary sovereignty allows elected representatives to change laws democratically and responsively which can protect rights through statute; judicial review and the Human Rights Act 1998 enable courts to hold the executive to account and signal incompatibilities to Parliament; political and institutional checks such as free media, an independent civil service and devolved institutions provide constraints.
- Supporting examples for the UK: the Supreme Court decisions in Miller I 2017 and Miller II 2019 that constrained executive prerogative, the Human Rights Act 1998 enabling declarations of incompatibility, and devolved assemblies exerting local checks on Westminster policy.
- Limitations of the US model: judicial supremacy can lead to unelected judges overturning majoritarian decisions, appointment politicisation can affect independence, and entrenchment can make positive reform difficult even where majorities want change.
- Limitations of the UK model: parliamentary sovereignty means an elected majority can enact sweeping changes including to rights protections, and declarations of incompatibility rely on political will to act; a dominant governing party may reduce effective scrutiny, particularly with a strong Commons majority.
- Comparative theory: consider whether legal entrenchment or democratic responsiveness better protects against an over mighty government, weighing judicial legal checks against political accountability and representative legitimacy.
- A robust conclusion weighs evidence and might argue the US offers stronger legal and structural protections against over centralised government in ordinary circumstances, but the UK model depending on parliamentary politics, conventions and judicial dialogue can also constrain government effectively in many contexts, so the answer is qualified and sensitive to political conditions.

Question 5

identifies Marbury v Madison 1803 as establishing judicial review **B1**

explains Marbury significance, e.g. court asserted power to declare acts of Congress unconstitutional **B1**

identifies a modern example, e.g. decisions limiting executive action or striking down state laws **B1**

gives development of the modern example, e.g. examples such as United States v Lopez 1995 limiting Congress power under the Commerce Clause, or NFIB v Sebelius 2012 on the Affordable Care Act **B1**

explains consequence, e.g. demonstrates the Court can check legislature and executive by interpreting constitutional limits **B1**

provides a brief assessment of one constraint, e.g. standing requirements restrict which disputes the Court can hear, so it cannot review every disputed government action **B1**

Answer: Marbury v Madison 1803 established the principle of judicial review, allowing the US Supreme Court to declare acts of Congress unconstitutional. In modern times the Court has constrained other branches, for example United States v Lopez 1995 limited Congress's Commerce Clause reach, and NFIB v Sebelius 2012 placed limits and conditions on parts of the Affordable Care Act. These cases show the Court interprets constitutional boundaries and can nullify legislation or executive acts, though its power is constrained by issues of standing, judicial appointment politics and institutional caution. For example, standing requirements restrict which disputes the Court can hear, so it cannot review every disputed government action.

Question 6

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.