

# Candidate 3 evidence

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## Politics Higher Resource Sheet

Candidate Name

Scottish Candidate Number

### American Politics for Dummies' by Dr Matthew Alan in 2014

"The applicability of certain elements of the constitution no longer holds. For example the second amendment refers to the right of the people to keep and bear arms in order to ensure 'the security of the state'. During the colonial period, citizens formed militia to protect themselves from foreign aggression; armies were thus necessary to carry out their duties. Now that standing armies exist to protect the nation, is the right to bear arms still applicable?"

### Politics Review November 2018

"However other prerogative powers, such as the power to declare war, still exist and arguably concentrate too much unchecked power in the hands of the prime minister".

### Politics Review November 2018

"The amount each constitution protects citizens' rights when it says, "The US constitution would empower the judiciary to strike down laws and actions it deemed to be unconstitutional. But is the idea of a handful of unelected, unaccountable judges becoming the supreme arbiters of the constitution really that desirable?"

### UK Government and Politics Annual Update 2018' by Neil McNaughton

"the proposal for a bill was included in the conservative party's 2015 election manifesto... the Lib Dem's support this policy as it would effectively contain a bill of rights which would guarantee rights."

### lawteacher.net

states: that, "the human rights Section 2 has weakened Parliamentary sovereignty as Parliament's law-making powers have been severely limited by the ECHR."

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Q To what extent is the UK constitution more effective than the US constitution when it comes to protecting citizens rights?

A constitution, whether it is codified or uncodified, has the purpose to outline the rules and principles by which a state should be governed. The constitution of each country will specify a number of checks and balances to restrict the government's power and will outline citizens rights and how they should be protected. Most democratic nations have some form of constitution as it is essential in ensuring a legitimate source of authority is in power and that citizens are guaranteed rights. The UK and the US are two very similar countries, politically, socially and economically, however they have two very contrasting constitutions with most differences between them stemming ~~from~~ from the fact that the UK constitution is uncodified whilst the US constitution is codified. There has been debate for many years on which constitution best protects citizens rights however this ~~question~~ debate has been enhanced due to recent political events. For example Donald Trump's controversial travel ban and the increase in mass shootings in the US has made many question whether citizen rights are protected in the US, whilst the Brexit result in 2017 has raised debate on the effectiveness of the UK constitution or whether or not it will have to be updated.

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depending on (if we leave the European Court of human rights. By examining political sources such as political review and other known sources I would aim to acknowledge which constitution in fact does protect citizens rights to a greater extent.

One area of contrast between the UK and US constitution is the way it was written. The UK constitution is uncodified meaning the rights outlined for the citizens of the country are not recorded in one single document as instead the UK uses 5 sources to outline these rights. These sources are Statute Law, Common Law, EU Law, Conventions and Administrative Law. Statute Law is considered the most common and important laws as it is the laws passed by the British parliament which is the main legislative body in the UK, and so in a sense the laws of the UK are reducible to what parliament enacts. The UK's uncodified constitution also makes it flexible as the amount of laws passed and restricted depends on how strong the government in power is, for example the devolved powers in Scotland in 1999 were given by a strong Labour government, these laws can be overturned by future governments who have the support of parliament. This shows the UK's uncodified nature allows the ~~constitution~~ laws to be flexible and passed frequently. On the other hand the US constitution is codified, meaning

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② It is not one single document, these laws are extremely unlikely to be changed as they are engraved into the fabric of American society. For example since the creation of the constitution only 27 amendments have been made. This shows that due to its codified nature the US constitution is rigid compared to the flexible UK constitution. Both types of constitutions - codified and uncodified have advantages and disadvantages. The UK's uncodified constitution gives it a flexible nature however this can be a disadvantage as it allows governments to pass and change laws which interferes with citizens rights as it gives them legal power to alter citizens rights without the public's consent, this is extremely undemocratic. For example the recent government faced backlash after it was criticised for limiting freedom of expression in an attempt to limit religious hatred. On the other hand the USA codified constitution means it is rigid so rights cannot be taken away as ~~the~~ laws are rarely changed. However the disadvantage of the US rigid, codified constitution is highlighted by "American Politics for Dummies" by Dr Matthew Alan in 2014 where it states "The application of certain elements of the constitution no longer holds. For example the second amendment refers to the right of the people to keep and bear arms in order to ~~secure~~ ensure the 'security of the state'. During the colonial period, citizens formed militia

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to protect themselves from foreign aggression; arms were thus necessary to carry out their duties. Now that standing armies exist to protect the nation, is it right to bear arms, still applicable?" This shows that the US codified and rigid nature has made it difficult to implement new modern laws that deal with current political issues and so citizens rights are not met as issues such as mass shootings and healthcare cannot be addressed by out of date elements in the constitution. Overall this shows that the UK constitution further protects citizens rights as the flexibility due to the uncodified nature allows for contemporary issues to be dealt with. In addition due to the use of many sources the UK has further safeguards citizens rights as EU Law monitors the UK to ensure they give fair rights for example the EU law to allow a maximum of 48 working hours a week was implemented in UK in 1998. This shows the UK further protects citizens rights as they have external pressure and guidelines to follow to ensure they are a democratic nation and citizens rights aren't violated.

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③ Another contrasting area of the UK and US Constitution is the ~~exist~~ existence and degree of separation of powers. In the UK each branch of government <sup>\*</sup> exercises their own rights accordingly. There is limited

\*the separation of powers as the executive branch and the legislative branch are both part of parliament as the ~~the~~ prime minister is also a member of parliament, they are just the first among equals, for example Prime Minister Theresa May is an MP for Maidenhead.

The extent of the separation of powers can also be highlighted by the fact that the UK Supreme Court has no constitutional powers to legislative scrutiny or veto and so this branch cannot overturn any legislation passed by parliament. However the disadvantages of this is outlined by Politics Review in November 2018, this is a reputable source as it states "However other ~~prerogative~~ prerogative powers, such as the power to declare war, still exist and arguably concentrate too much unchecked power in the hands of the prime minister." This shows that limited separation of powers gives the executive extreme unchecked power as they can declare war without parliament or citizens consent, this violates citizens rights as they did not vote on behalf of these issues or give authority to the executive to make these decisions and this results in the executive acting independently from citizens. On the other hand the US has

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most separation of powers. In the US a member of politics cannot be a part of 2 branches as the president has to resign to become president, for example Barack Obama had to resign as senator (legislative branch) to join the executive branch. In addition the judiciary branch in the US has constitutional power to overturn any legislation it deems to be unconstitutional. This is beneficial as it means no one person or branch can become too powerful however it is a disadvantage as judges can overturn elected officials when undermines the basic principle of democracy. Overall the amount each constitution protects citizens rights is highlighted ~~where~~ ~~it~~ is again in Politics Review November 2018, when it says "The US constitution would empower the judiciary to strike down laws and actions it deems unconstitutional. But is the idea of a handful of unelected, unaccountable judges becoming the supreme arbiters of the constitution really that desirable? This highlights that although the US judges protect citizens rights by minimising unconstitutional legislation, the UK system of limited separation of powers further protects citizens rights as the people passing the legislation are elected representatives who have the will of the people to govern and pass laws whilst in the US unelected bodies can over rule people elected to represent the citizens wants and so they can go against citizens wants, thus violates their right

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④ Another area of contrast between the UK and US constitution is the article that outlines citizens rights. Under the UK's constitution the rule of law requires that all law makers are considered equal under the law and so all government institutions are subjected to the law, for example in 2005 several MPs were sent to prison following an expenses scandal. Also under the rule of law citizens are given 'natural rights' such as the right to freedom of speech and these rights ~~are~~ cannot be taken away as we should all have access to them. However rule of law is limited in the UK as there has been cases where rule of law has been contradicted, for example GCHQ's monitoring of data being ruled illegal in 2005 for invasion of privacy. On the other hand the US bill of rights was implemented to the constitution in 1791 by James Madison and the bill of rights safeguards citizens freedoms such as the 4th amendment which requires police have a warrant to limit unlawful searches. Congress protects these rights as through the use of separation of powers they ensure no president can become too powerful to remove these rights. Overall it can be argued that the US bill of rights further protects citizens rights as the constitution outlines certain rights which cannot under any circumstance be restricted. The UK has faced criticism as there has been calls for the UK to have its own



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bill of rights and the extent of this debate is highlighted in the reputable Journal the "Uk Government and Politics annual update 2018" by Neil McNaughton where it states "the proposal for a bill was included in the conservative party's 2015 election manifesto" This shows that political parties believe the American bill of rights would be beneficial to introduce in the UK as it protects citizens rights to a greater extent, although this proposal was shelved until after Brexit. Moreover the US bill of rights further protects citizens rights as it has to be taught in every school to American citizens so they know their rights whereas in the UK the rule of law is virtually unknown as Marcus Meechan in 2016 was arrested for teaching his dog how to do the Nazi salute however he claimed he did not know this was illegal. This shows that the American constitution further protects citizens rights as it ensures rights are guaranteed and known by the citizens so they don't have freedoms violated.

Another area of contrast between the UK and US constitution is parliamentary sovereignty and checks and balances. One principle of the UK constitution is parliamentary sovereignty, this is when the government is allowed to pass and restrict any bill they wish as long as they have the support of parliament and that these laws can be overturned by following

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- ⑤ governments. For example the 2010 coalition government introduced fixed 5 year election terms however this was overturned by the 2017 snap election, which took place only 2 years after previous general election.
- Also under parliamentary sovereignty the Prime minister can be forced to resign if the parliament loses trust in their ability, this is done through a vote of no confidence for ex in January 2019 Theresa May won her vote of no confidence with ~~225~~ 225 to 206 votes. However there are many disadvantages of parliamentary sovereignty as people can be for its abolishment claiming it gives strong majority governments the ability to pass and restrict as many laws as they wish fairly easily, this of course endangers citizens rights as it allows strong governments to pass whatever they support even if it breaches disagee, for example a strong government wants parliamentary sovereignty can completely dissolve the Scottish Parliament. On the other hand in the US a system of checks and balances is used. The constitution was deliberately ~~desig~~ designed so that all branches of government could monitor each other to ensure they each uphold the constitution and were protecting citizens rights. The system was designed so that no one branch became too effective that it rendered the other's ineffective, for example congress can remove the president, the president can veto congress bills and the judiciary can overturn any legislation passed.

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This is effective in protecting citizens rights as it ~~excess~~ prevents a dictatorship or one branch being too powerful that it can control undemocratically. However the system of checks and balances limits citizens rights as it creates political deadlock as each branch has to have a 2/3 majority agreement when bills are being passed, this is extremely difficult due to the partisan and party split in the US. This means that in times of emergency bills are not passed quickly enough to deal with the issues and concerns of citizens. Overall it can be argued that the UK constitution and parliamentary sovereignty best protects citizens rights as the unbiased source lawteacher.net states that "the human rights section 2 has weakened parliamentary sovereignty as parliament's law making powers have been severely limited by the ECHR". This shows that parliamentary sovereignty covers citizens rights on all bases as it means new modern laws can be passed to deal with contemporary issues whilst old outdated ones can be removed whilst in conjunction with the UK constitution's uncodified nature it also means that the EU can ensure that these laws passed or limited do not restrict or violate citizens rights.

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⑥ In conclusion it is clear to see that both the US and UK constitution set out to protect citizens rights, however I believe the UK constitution further protects citizens rights to a greater extent. On the one hand ~~the~~ although the rigid, codified nature of the US constitution ensures citizens rights are not taken away this is an issue as the lack of flexibility you get with a uncodified constitution means modern issues are not addressed and so citizens rights in the UK are further protected as the uncodified nature means old laws, which could be deemed unconstitutional are removed, whilst new laws are created to address current issues citizens have i.e. the equality act 2010 addresses issues such as the wage gap. On the other hand although the vast separation of powers in the US constitution is beneficial as it prevents one person having too much illegitimate power, I rejected this as this also creates political paralysis again further resulting in out of date laws existing whilst the UK's ~~parliamentary~~ limited separation means modern issues can be addressed quickly in times of emergency to further protect citizens from harm. Overall ~~the~~ it can be argued that the UK constitution further protects citizens rights as ~~the~~ parliamentary sovereignty and the uncodified nature of the constitution can be said to be the perfect way to protect citizens rights as it allows all issues to be addressed to ensure citizens have the best protection whilst it ensures all changes made do not violate their rights,

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as UK is monitored by EU law. This system could be applied to the US as Trump's current go ahead to build the wall has technically violated the constitution and went against citizens and Congress wishes and so if he had external pressure placed on him, like the UK do with the EU courts, this issue in the US could be controlled and the citizens rights would not be violated like they are being currently.