



The Supreme Court

Read & précis Chapter 7 of 'US Government & Politics' by Anthony J Bennett.

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Rules to follow ...

- Hand in your read & précis notes before the start of the lecture.
- Raise your hand if you have a question.
- Do NOT chat while a teacher is speaking in class.

In the UK

- **Parliament is supreme.**
- **The most recent legislation is supreme**
 - Thus, David Cameron proposes to repeal the Human Rights Act 1998 - if Parliament agrees such a Bill (by a majority of one in H of C and H of L) it is repealed.

In the UK

- The Courts do NOT have the power to strike down an Act of Parliament.
- The Human Rights Act 1998 simply gives Courts to declare that an Act of Parliament is incompatible with the ECHR (it is then up to Parliament to change the law if it so wishes).

In the UK

- The Courts do have the power (given to them by Parliament) to strike down legislation of The Scottish Parliament, Welsh Assembly, Local Government, if their acts are incompatible with human rights legislation.

In the UK

- Decisions of the European Court of Human Rights are NOT binding on UK Courts, UK Ministers, or the UK Parliament. *Such decisions are merely persuasive precedent.*

In the UK

- The case of Factortame (Spanish Fishermen) shows that decisions of the European Court of Justice (part of the EU) are binding on the Courts of the UK.
- Also (as per Factortame), decisions of the ECJ are - to an extent - binding on Ministers and the UK Parliament. However, since Parliament is supreme it could decide by a majority of one to change this or withdraw from the EU.

In the UK

- **We do not have a written constitution** - which the Courts can read and determine.
- Often the PM announces what is the convention and - if s/he gets their will in Parliament - convention is re-determined.
- House of Lords was reformed (92 peers turned into living dinosaurs) by a simple majority in Parliament.

US Supreme Court

- Draw up a chart which gives the structure of Courts in the US.

US Supreme Court

Break into pressure groups to determine/discuss and present to class the following:

1. Membership of the Supreme Court
2. The Philosophy of the Justices

The Appointment Process

- Create a detailed time line that explains the different stages of the appointment process.
- Highlight (using different colours) the areas where politicisation becomes involved, using stronger colours for greater politicisation.



The Justices

L-R: Back Row: Breyer, Thomas, Bader Ginsburg, Alito
Front Row: Kennedy, Stevens Roberts, Scalia, (Souter)

Supreme Court nominees

- In pairs divided yourselves into As and Bs.
- As – John G Roberts
- Bs – Samuel Alito
- Explain to your partner the salient points of their nomination.
- What happened to Harriet Miers?

What's wrong with the nomination process?

- Using pages 302-305 produce a class mind map explaining the problems with the appointment of Supreme Court Justices.

US Supreme Court

- **Judicial Review** is the power of the Supreme Court to declare acts of Congress, the executive (including the President), or actions of state governments, as being unconstitutional.
- This power is not mentioned in the Constitution - but existed since 1803 and Marbury v Madison when an act of Congress was declared unconstitutional

US Supreme Court

- From your reading of page 309 of A J Bennett - establish a list of cases that illustrate the power of Judicial Review.

Checks on the Supreme Court

Subject to four checks by Congress

1. The Senate has the power to approve or reject appointments to the Court.
2. Linked with this is the power of Congress to decide how many justices sit in the Court.
3. Congress can impeach a Judge (e.g. 1968 Abe Fortas)
4. Congress can seek to amend the Constitution.

Checks on the Supreme Court

The president has two checks ...

1. The powers to nominate (which can change the political nature of the court).
2. President can use of power of political influence to support or otherwise a Court decision - **Can you give any examples?**

Checks on the Supreme Court

Other more general checks ...

1. Supreme Court cannot initiate a case - it must wait for an issue to appear before it.
2. Court has no enforcement powers.
3. Mindful of public opinion (should it be?)
4. Checked by its own past decisions
5. Checked by the US Constitution.

Discussion time

Break up into three small groups.

- One of the Groups (which shall consist of at least two Law students) shall discuss the role of the UK Courts in relation to human rights and constitutional matters - presenting their conclusions to the whole of the class.

Continued - see next slide

Break into Pressure Groups

- Each student member draws out of a hat a number (out of a selection of 8-17) which relates to one of the exercises on page 332 of *'US Govt & Politics'*. The student then leads a discussion within their group on that topic.

A member of each group finally summarises each of the discussions for the whole class.