

# Constitutions and constitutional law

## Essential vocabulary

1. **to prescribe** - предписывать, назначать (*наказание*), редусматривать, устанавливать;  
**prescribed procedure** - предписанная (*установленная законом*) процедура;  
**prescription** - 1) давность; 2) предписание, распоряжение; e.g.;  
**prescription of law** - правовое предписание;  
**prescriptive** - основанный на праве давности или обычае;
2. **by-law** - подзаконный правовой акт, постановление органа местной власти;
3. **presiding officer** - председатель, председательствующее лицо;  
syn.: chairperson;
4. **to entrust** - вверять; возлагать, поручать (to; with);
5. **provision** - а) условие, постановление, положение (*договора, закона*); e.g.: **provisions of federal law** - положения федерального закона; **special provision** - особое условие;  
б) обеспечение, предоставление; e.g.: **provision of human rights** - обеспечение прав человека; **provision of internet access** - предоставление доступа в интернет;
6. **to delimit** - производить делимитацию, определять границы;
7. **contender** - соперник (*на выборах*), кандидат, претендент (*на пост*);  
e.g.: **contender for power** - претендент на власть; **strong contender** - серьезный соперник, конкурент;
8. **to conform** - согласоваться; соответствовать; подчиняться (*правилам*); e.g.: **conform to a standard** - соответствовать стандарту;
9. **to assert** - утверждать, заявлять, отстаивать, защищать, доказывать; e.g.: **to assert dominance** - утверждать господство;
10. **suffrage** - право голоса, избирательное право, голосование; голос; e.g.: **direct suffrage** - прямое голосование; **equal suffrage** - равное избирательное право; **universal suffrage** - всеобщее избирательное право;
11. **framework** - структура, система; рамки, пределы; e.g.: **constitutional framework** - 1) структура конституции, 2) система (*государства, общества*), 3) конституционные рамки;
12. **to abrogate** - отменять, аннулировать; упразднять; e.g.: **to abrogate a privilege** - отменять привилегию;
13. **to endow with** - давать; предоставлять; даровать; облекать (*полномочиями*);

- 14. devolution** - переход или передача права, обязанности, правового титула или должности; деволюция, ограниченная автономия (*требуемая для Шотландии, Уэльса*)
- 15. Low countries** - Нидерланды, Бельгия и Люксембург;
- 16. convention** - съезд, конвент, конвенция (*международный договор*), обычай;  
**convention of the constitution** - 1) конституционный обычай (*составляющий часть неписаной конституции Великобритании*), 2) учредительное собрание, 3) конституционный конвент (*решающий вопрос об изменении конституции*);
- 17. unicameral** - однопалатный (*о парламенте*);
- 18. bicameral** - двухпалатный (*о парламенте*);
- 19. to apportion** - соразмерно распределять; разделять, делить; устанавливать норму представительства
- 20. suspensory veto** - приостанавливающее вето
- 21. to enforce** - принудительно применять (право, закон);  
принудительно осуществлять (*или взыскивать*) в судебном порядке  
**enforceable** - могущий быть принудительно осуществленным в судебном порядке; обеспеченный правовой санкцией;  
**enforcement** давление, принуждение; принудительное применение (*права, закона*); принудительное осуществление или взыскание (*по суду*); обеспечение правовой санкцией;
- 22. enactment** - издание, принятие (*закона*), установление в законном порядке;
- 23. to deprive** - лишать; отрешать от должности;  
**deprivation of citizenship** - лишение гражданства;  
**deprivation of civil rights** - лишение гражданских прав, поражение в правах;
- 24. to rectify** - исправлять, вносить исправление, устранять ошибку;  
**rectification** - исправление, поправка, внесение поправки, ректификация;
- 25. to pledge** - давать заверение, обязательство;
- 26. to adhere** - придерживаться, соблюдать; присоединяться;  
**adherence** - 1) присоединение, 2) соблюдение (норм, принципов и т.п.);
- 27. servitude** - 1) рабство, порабощение, 2) каторжные работы, 3) сервитут;  
**involuntary servitude** - принудительный труд;
- 28. laissez-faire** - невмешательство (*правительства в дела частных лиц, особенно в частный бизнес и торговлю*);
- 29. to invalidate** - лишать законной силы, делать, признавать недействительным, несостоятельным; сводить на нет;
- 30. delegated legislation** - делегированное законодательство;
- 31. segregation** - отделение, выделение, изоляция, сегрегация;

- 32. to countenance** - одобрять, разрешать; давать санкцию;
- 33. original constitution** - первоначальный текст конституции (без поправок);
- proposed constitution** - проект конституции (=**draft constitution**);
- constitutionalism** - 1) конституционная форма правления, 2) конституционализм;
- constitutionality** - конституционность;
- constitutionalization of law** - введение правовой нормы в ранг конституционного положения;

## Part I

**Exercise 1.** *Translate the following definitions (Black's Law Dictionary, Sixth edition) into Russian:*

1. *Constitution* is the organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign powers.
2. *Constitutional liberty or freedom* is such freedom as is enjoyed by the citizens of a country or state under the protection of its constitution. The aggregate of those personal, civil, and political rights of the individual which are guaranteed by the constitution and secured against invasion by the government or any of its agencies.

**Exercise 2.** *Read the text given below. As you read the text: a) look for the answers to these questions:*

1. What does the word «constitution» mean? What is the constitution of a political community composed of?
2. What theory was considered to be a potent factor in reshaping the constitutions of Western states in the 17th, 18th, and 19th centuries?
3. What is the concept of constitutionalism concerned with? What statements does this doctrine include?
4. What are the most common characteristics of modern constitutions?

**b) summarize the part of the text headlined “Characteristics of constitutions”.**

### Constitutions and constitutional law

Constitutional law is the branch of the public law of a nation or state which treats of the organization, powers and frame of government, the distribution

of political and governmental authorities and functions, the fundamental principles which are to regulate the relations of government and citizen, and which prescribes generally the plan and method according to which the public affairs of the nation or state are to be administered (*Black's Law Dictionary, Sixth edition*).

In modern times by far the most important political community has been the national state. Modern constitutional law is the offspring of nationalism as well as of the idea that the state must protect certain fundamental rights of the individual. As national states have multiplied in number, so have constitutions and with them the body of constitutional law. But constitutional law originates today sometimes from non-national sources too, while the protection of individual rights has become the concern also of supranational institutions.

### **The nature of constitutional law**

In the broadest sense a constitution is a body of rules governing the affairs of an organized group. A parliament, a church congregation, a social club, or a trade union may operate under the terms of a formal written document labeled constitution. This does not mean that all of the rules of the organization are in the constitution, for usually there are many other rules such as bylaws and customs. Invariably, by definition, the rules spelled out in the constitution are considered to be basic, in the sense that, until they are modified according to an appropriate procedure, all other rules must conform with them. Thus, the presiding officer of a club is obliged to rule that a proposal is out of order if it is contrary to a provision of its constitution. Implicit in the concept of a constitution is that of a higher law that takes precedence.

Every political community, and thus every national state, has a constitution, at least in the sense that it operates its important institutions according to some fundamental body of rules. In this sense of the term a constitution is a set of rules which define the relationship between the various organs of government and between the government and citizens of a country. The purpose of a constitution is to set the parameters of governmental power and the rights and duties of the citizens. Thus the only conceivable alternative to a constitution is a condition of anarchy. Constitutions may be written or unwritten; they may be complex or simple; they may provide for vastly different patterns of governance. Even if the only rule that matters is the whim of an absolute dictator, that may be said to be the constitution.

The constitution of a political community is therefore composed, in the first place, of the principles determining the agencies to which the task of governing the community is entrusted and their respective powers. The constitution of a political community may contain more, however, than the

definition of the authorities endowed with powers to command. It may also include principles that delimit those powers in order to secure against them fundamental rights of persons or groups. In Europe, for example, the authority of political rulers throughout the Middle Ages did not extend to religious matters, which were strictly reserved to the jurisdiction of the church. The powers of political rulers, moreover, were limited by the rights of at least some classes of subjects. Quarrels and fights over the extent of such rights were not infrequent; and they were sometimes settled through solemn, legal «pacts» among the contenders, the prominent example being Magna Carta (1215). In the modern age, even the powers of an absolute monarch such as the king of France were not truly absolute: acting alone, he could not alter the fundamental laws of the kingdom or disestablish the Roman Catholic Church.

The theory of the rights of the individual was a potent factor in reshaping the constitutions of Western states in the 17th, 18th, and 19th centuries. The first step was made by England at the time of the Glorious Revolution (1688). It was in the United States, however, that the theory scored its most complete success. US constitutionalism put in full evidence the character that belongs, in essence, to all constitutional law: the fact of its being «basic» with respect to all other laws of the legal system. This also made it possible to set up institutional controls over the conformity even of legislation with the group of rules considered, within the system, to be of supreme importance.

Because the rules of a constitution are laws of fundamental importance, it is not surprising that they are often embodied in a single written document.

The American idea of stating in an orderly, comprehensive document the essentials of the rules that must guide the operations of government became popular very quickly. Since the end of the 18th century scores of states, in Europe and elsewhere, have followed the United States' example. Today almost all states have constitutional documents describing the fundamental organs of the state, the ways they should operate, and, usually, the rights they must respect and even sometimes the goals they ought to pursue.

## Constitutionalism

Constitutionalism is the concept which is concerned with the legitimacy of government action. This doctrine includes at least the following:

1. That the exercise of power by those given it must be within the legal limits conferred by Parliament, and that those given such power are accountable to the law.
2. Power should be exercised with due respect to the individual and individual citizens' rights, regardless of legal authority.

3. That powers conferred on institutions within a state, whether legislative, executive or judicial, should be dispersed among them to avoid an abuse of power through any one of them having too much power. This falls under the concept of the Separation of Powers.

4. That the government in formulating policy, and the legislature in legitimating that policy, is accountable to the electorate who have entrusted that power to the government.

In summary, constitutionalism encompasses the limitation of power, the separation of powers, and the doctrine of responsible, accountable government. The Constitution of any State should be tested against these principles.

## **Characteristics of constitutions**

### ***Written / unwritten constitutions***

Every state has a constitution, since every state functions on the basis of certain rules and principles. It has often been asserted that the United States has a written constitution but that the constitution of Great Britain is unwritten. This is true, but only in the sense that in the United States there is a formal document called the Constitution, whereas there is no such document in Great Britain. In fact, however, many parts of the British constitution exist in written form, whereas important aspects of the American constitution are wholly unwritten. The British constitution includes the Bill of Rights (1689), the Act of Settlement (1700-01), the Parliament Act of 1911, the successive Representation of the People acts (which extended the suffrage), the statutes dealing with the structure of the courts, the various local government acts, and many others. These are not ordinary statutes, even though they were adopted in the ordinary legislative way, and they are not codified within the structure of a single orderly document. On the other hand, such institutions in the United States as the presidential cabinet and the system of political parties, though not even mentioned in the written constitution, are most certainly of constitutional significance.

Written constitutions, indeed, can never exhaust the whole constitutional law of a state. They are always supplemented, to varying degrees, by statutes, judicial doctrines interpreting the constitution, intergovernmental practices, and nongovernmental institutions (such as political parties) and their practices. Without these supplementary elements the overall constitutional framework of the political community would not be what it is.

### ***Rigid / flexible constitutions***

Constitutions, written or unwritten, must be distinguished according to whether they are «rigid» or «flexible». Rigid are those constitutions at least some part of which cannot be modified in the ordinary legislative way. Flexible are those whose rules can all be modified through the simple procedure by which statutes are enacted. The United States has a rigid constitution, because proposals to amend the constitutional document adopted in 1788 must have a two-thirds majority vote in each house of Congress or be made by a convention called by two-thirds of the states, with subsequent ratification, in either case, by the legislatures or specially elected conventions of three-fourths of the states. Great Britain has a flexible constitution because all of its constitutional institutions and rules can be abrogated or modified by an act of Parliament.

### ***Federal / unitary constitutions***

In many states there exists a division of powers between the central government and individual states or provinces which collectively make up a federation e. g. USA, Canada, Australia etc. The essence of federalism is the sharing of power between central government and the regions. The Constitutions of such federated states will reserve certain powers exclusively for central government such as defence and matters of State security, whereas the regions may exercise power over such things as planning, regional development and local taxation. Alternatively, there will be a partnership where powers are given to each level of government but with overriding powers reserved for central government.

In the UK we have a unitary state (at present) where Parliament creates nearly all the law except the Common Law, but still has power to override even that. It is therefore the ultimate law-making power in the country. It gives limited powers to local government, local authorities (except the city of London) are entirely creatures of Statute. Their powers, and indeed their individual existence, can be changed or removed by Statute.

### ***Republican / Monarchical Constitutions***

A republic is a state with a democratically elected President who should be answerable to the electorate and the constitution, and such a person is normally a figurehead or symbol of statehood, but is also a repository of certain powers.

In the UK we have a Constitutional Monarchy and have a queen as head of State who is largely a figurehead and a symbol of the nation but still has potentially important residual powers in exceptional circumstances. For example, the power to appoint a Prime Minister. Although such a Monarch is not democratically elected, such a person does bring an important advantage to the Constitution.

## *Separated / Fused Powers*

According to Aristotle, John Locke and Baron Montesquieu, powers vested in the principal institutions of State namely the legislature, the executive and the judiciary, should not be concentrated in the hands of any one organ of State. This prevents tyranny. The opposite to the above is a totalitarian State or an absolute Monarchy where a single figure or single body has the sole power to enact laws, to administer the State and apply and adjudicate upon the law.

***Exercise 3. Find in the text English equivalents of the word combinations in Russian given below:***

1. возможные варианты
2. противоречить положению конституции
3. структура власти
4. распределение политических и властных полномочий
5. общественные отношения
6. порождение национального самосознания
7. политическое сообщество
8. свод норм, регулирующих деятельность организованной структуры
9. церковное собрание
10. расформировать Римско-Католическую церковь
11. изменять основные законы
12. модели управления
13. неправительственные организации

***Exercise 4. Use the material of the text and the topical vocabulary in answering the following questions to Part 1:***

1. What is constitutional law according to Black's Law Dictionary? Why is it so important?
2. What are the most common ways to define the term "constitution"?
3. Which country first followed the idea of stating in an orderly, comprehensive document the essentials of the rules that must guide the operations of government?
4. Explain the following: «The United States has a written constitution but the constitution of Great Britain is unwritten. The United States has a rigid constitution, Great Britain has a flexible constitution».
5. Find the following words and word combinations in the text and translate them into Russian:

*by-law, presiding officer, to take precedence, to entrust, to endow with powers, to delimit powers, to disestablish the church, conformity, to extend*

*the suffrage, constitutional framework, a rigid constitution, a flexible constitution, to enact, to amend*

**Exercise 5. Decide whether statements given below are true (T) or false (F):**

1. The constitutional principles of the UK are based on common law.
2. Constitution plays the leading role in determining the system of government in any country.
3. An unwritten Constitution can be easily changed.
4. There are no legal remedies which the British courts can apply to protect the rights of the subject.
5. Parliament has no power to make laws to protect individual rights.
6. Parliament must follow a special procedure to alter any constitutional laws.
7. There are no documents containing constitutional documents in the United Kingdom.
8. An unwritten Constitution is more flexible than a written Constitution.
9. There is little difference between the US Constitution and the Constitution of the UK.

**Exercise 6. Make notes about the main features of each category of a Constitution and fill in the chart below:**

<b>Classification of Constitutions</b>	<b>Notes</b>
1. Written	
2. Rigid	
3. Flexible	
4. Federal	
5. Unitary	
6. Republican	
7. Monarchical	
8. Separated Powers	
9. Fused Powers	

**Part 2**

**Exercise 7. Read the text given below. As you read the text: a) look for the answers to these questions:**

1. What is the difference between monarchical and republican states?
2. What monarchical states are mentioned in the text? What other monarchies do you know?
3. Why is the contrast between presidential and parliamentary executives far more significant than the distinction between monarchy and republicanism?
4. Are there any hybrid forms of government that combine features of both presidential and parliamentary systems?

**b) complete the following tasks:**

1. Give examples of federal, regionalist, and unitary states. Comment on these systems.
2. Compare the systems of presidential and parliamentary governments.
3. Give examples of states with unicameral and bicameral legislatures.
4. Translate the following sentences into Russian paying special attention to grammar:
  - a) Had the plans been accepted, Great Britain would have become in part a regionalist state, though Parliament, under a flexible constitution might, in theory, have later repealed the grant of autonomy?
  - b) The president is not selected by Congress, nor is he a member of Congress.
  - c) If the prime minister wants someone who is not in Parliament to serve in the Cabinet, he must either appoint him to the peerage or find a vacancy in the House of Commons to which he can be elected.
  - d) The French system of government is neither presidential nor parliamentary in form; it combines elements of both in a unique fashion.

### **Unitary, federal, and regionalist systems**

#### **The distinction between unitary, federal, and regionalist states**

No modern state can govern a country only from a central point. The affairs of municipalities and rural areas must be left to the administration of local governments. Accordingly, in all modern states there are at least two levels of government: the central government and the local governments. But in a number of states between the two levels there exists still a third one consisting of governments that take care of the interests of, and rule over, more or less large regions.

States with two levels of government are called unitary, with three levels of the first category federal and with three levels of the second kind decentralized or «regionalist». The model federal state requires the exist-

ence, at the national level, of a written, rigid constitution guaranteeing not only the permanence and independence of the several intermediate governments but also the amplitude of their legislative, executive, and judicial powers. Regionalist states are based, as a rule, on written, rigid constitutions granting some limited legislative and administrative (seldom judicial) powers to the intermediate or regional governments. Their actual role and political weight within the system largely depend on the will of the central government to buttress or to restrict their autonomy. Where the powers attributed by the constitution to the regional governments are particularly exiguous, the regionalist state will look in many respects like a unitary state. Where the powers are relatively large and the central government favours their expansion, the state tends to assume federal connotations.

### **Classifying states as federal, regionalist, and unitary**

Classifying a particular state as federal, regionalist, or unitary may at times be difficult.

The United States and Switzerland are clearly federal states, although the role respectively of states and cantons has shrunk much since World War I: all of the above-mentioned characteristics of the federal state are present in their constitutional systems. Canada is also a federal state. The Federal Republic of Germany is federal in all respects. Yet the legislation of the Bund, the central government, extends over so many matters that it is questionable whether Germany is not in fact a regionalist state.

Italy and Spain are states with regional governments. These, by constitution, are endowed with legislative and administrative powers in certain areas (the courts are all national).

Great Britain and France are unitary states. Northern Ireland had special autonomy within the United Kingdom until restrictions were introduced to cope with the emergency situation in that region, and Scotland and Wales would have had special autonomy but in referendums their people rejected the devolution plans offered by the British Parliament. Had the plans been accepted, Great Britain would have become in part a regionalist state, though Parliament, under a flexible constitution, might, in theory, have later repealed the grant of autonomy.

### **Executives and legislatures**

#### **The constitution and the executive**

States may be classified as monarchical or republican. From another point of view they may be described as having presidential or parliamentary executives.

Though the institution of monarchy is as old as recorded history, the modern age has been moving steadily in the direction of republican

government. Today, there are fewer than 30 monarchies. Many monarchs, as in Great Britain, Japan, the Scandinavian countries, and the Low Countries, are best described as constitutional monarchs; they are mainly titular heads of state and do not in fact possess important powers of government. Most of the executive powers are in the hands of ministers, headed by a prime minister, who are politically responsible to the parliament and not to the monarch. The executive powers of government in Great Britain, for example, are exercised by ministers who hold their offices by virtue of the fact that they command the support of a majority in the popularly elected House of Commons. The monarch can act only on the advice of the ministers and cannot exercise an independent will. In a country with a stable two-party system, all the monarch can do is offer the prime ministership to the leader of the majority party. A constitutional monarch is the head of the state, not of the government. Standing above party and the active political controversies of the day, the sovereign is a focus of national loyalty and a useful symbol of the nation's unity and its historical past.

In a few monarchies, however — for example, those of Jordan and Saudi Arabia - the king exercises real powers of government. The ministers are chosen by and are responsible only to the king rather than to some elective parliamentary body. Hereditary rulers with this degree of personal power were quite common in the 18th century, but they are rare today.

Far more significant than the distinction between monarchy and republicanism is the contrast between presidential and parliamentary executives. Since the United States has for long been the world's leading exponent of presidential government and Great Britain the oldest and most successful practitioner of parliamentary government, their systems may be taken as models with which the systems of other countries can be compared.

The U.S. system is based upon a strict concept of separation of powers: the executive, legislative, and judicial powers of government are vested by the Constitution in three separate branches. The president is not selected by Congress, nor is he a member of Congress. He has a fixed term of office of four years, and he holds it no matter how his legislative program fares in Congress and whether or not his political party controls either or both houses of Congress. The members of the Cabinet are chosen by the president and are politically responsible to him. The Constitution does not permit them to be members of Congress; it provides that «no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.»

The parliamentary executive system proceeds upon different assumptions. In Great Britain, whose system many countries have chosen to emulate, the executive officers of the state are not entirely separated from the legislative branch. On the contrary, the British Cabinet may be

described as the leading committee of Parliament. Although the prime minister, the head of the government, could at one time hold a seat in either the House of Lords or the House of Commons, the contemporary convention is membership in the House of Commons. The other ministers who make up the Cabinet must be members of one or the other house of Parliament. If the prime minister wants someone who is not in Parliament to serve in the Cabinet, he must either appoint him to the peerage or find a vacancy in the House of Commons to which he can be elected.

There are some hybrid forms of government that combine features of both presidential and parliamentary systems. France's Fifth Republic (1958) is a good example. The French system of government is neither presidential nor parliamentary in form; it combines elements of both in a unique fashion.

### **Unicameral and bicameral legislatures**

A central feature of any constitution is the legislature. It may be a unicameral body with one chamber or a bicameral body with two chambers. Unicameral legislatures are to be found in small states with unitary systems of government, among them Denmark, Sweden, Finland, Israel, and New Zealand, or in very tiny states such as Andorra, Luxembourg, and Liechtenstein.

The U.S. Senate enjoys special powers not shared by the House of Representatives: it must authorize by a two-thirds majority vote the ratification of international treaties concluded by the president and must confirm the appointments of the most important federal officers made by the president.

The federal character of the Swiss constitution is likewise reflected in the makeup of the nation's central legislature, which is bicameral. One house, the National Council, consists of 200 members apportioned among the cantons according to population; the other house, the Council of States, consists of 46 members elected by direct ballot — two from each canton.

Bicameralism is also characteristic of governmental systems that are best described as regionalist. Here, too, bicameralism is expressive of the territorial subdivisions that are joined together to form the national state,

A unitary governmental system does not imply unicameralism in the legislature. Most legislatures of unitary states are, in fact, bicameral, though one chamber is usually more powerful than the other. This is true for the world's oldest and most successful parliament, that of Great Britain, which consists of the House of Lords and the House of Commons. The House of Commons has become by far the more powerful of the two chambers, and the Cabinet is politically responsible only to it. The House of Lords has no control over finances and with respect to other legislation only a modest suspensory veto, which can be easily overcome in the House of Commons by a second vote at an early date.

**Exercise 8. Decide whether statements given below are true (T) or false (F):**

1. Regionalist states are based, as a rule, on written, rigid constitutions.
2. Classifying a particular state as federal, regionalist, or unitary may at times be difficult.
3. The U.S. Senate enjoys special powers not shared by the House of Representatives.
4. A unitary governmental system implies unicameralism in the legislature.
5. The House of Lords has no control over finances and with respect to other legislation only a modest suspensory veto, which can be easily overcome in the House of Commons by a second vote at an early date.
6. The U.S. system is based upon a strict concept of separation of powers: the executive, legislative, and judicial powers of government are vested by the Constitution in three separate branches.
7. There are no hybrid forms of government that combine features of both presidential and parliamentary systems.

**Exercise 9. Make a short summary of the following text. (Remember that a summary normally consists of about 1/10 of the original):**

### **International unions of states**

At times unions are formed among national states that, without unifying the member states into a new political community in the strict sense of the word, nonetheless set up governmental agencies whose laws immediately become part of the national systems. It is as if in the national constitutional frameworks a new level of government were added, from above, to the ones already existing. The most important example is the European Community (EC). Under the Treaty of Rome (1957) it has its own government consisting of a commission, a council of ministers, a parliament, and a court. It can issue regulations on economic matters indicated by the treaty. Up to now, EC regulations have been issued only if in fact consented to by each of the executives of the member states. Once in force, however, they must be applied by the national courts with precedence over national legislation. The binding interpretation of the treaty and of EC regulations belongs to the EC court, where it is possible for individuals to have recourse.

The EC may be the embryo of a future federal state, if the union develops into an organization whose central government is capable of making decisions independently of the will of member states (which for the moment it is not) and if it assumes functions in the field of foreign and military policy (which at present it does not possess). The community may also never become a federal state. But even as it exists now, it is much

more than a simple international alliance of national states that have in common economic interests and assume the obligation to respect the regulations of such interests made by some external agency. The structures of the EC penetrate deeply into the constitutional structures of the national member states, much in the same way as the structures of the central government do with respect to the member states in a federal system.

***Exercise 10. Give a précis of the following text. (Remember that a précis should be no longer than 1/3 of the original):***

### **Civil rights and discrimination**

A civil right is an enforceable right or privilege, which if interfered with by another gives rise to an action for injury. Examples of civil rights are freedom of speech, press, assembly, the right to vote, freedom from involuntary servitude, and the right to equality in public places. Discrimination occurs when the civil rights of individuals are denied or interfered with because of their membership in a particular group or class. Statutes have been enacted to prevent discrimination because of a person's race, sex, religion, age, previous condition of servitude, physical limitation, national origin and in some instances sexual preference.

The most important expansion of civil rights in the United States was the enactment of the Thirteenth and Fourteenth Amendments. The Thirteenth Amendment abolished slavery throughout the United States. In response to the 13th Amendment, various states enacted «black codes» which were intended to limit the civil rights of the newly free slaves. In 1868 the 14th Amendment was passed to counter the «black codes» and ensure the privileges or immunities of citizens of the United States. The Congress was also given the power by section five of the Fourteenth Amendment to pass any laws needed for its enforcement. During the «reconstruction era» that followed Congress enacted numerous civil rights statutes. Many of these statutes are still in force today and protect individuals from discrimination and from the deprivation of their civil rights.

The most prominent civil rights legislation since the reconstruction is the Civil Rights Act of 1964. Decisions of the Supreme Court, at the time, limited the Congressional power to enforce the 14th Amendment to the prohibition of state action. (Since 1964 the Supreme Court has expanded the reach of the 14th Amendment in some situations to individuals discriminating on their own). Therefore, in order to reach the actions of individuals who were violating the civil rights of other Americans, Congress enacted the Civil Rights Act of 1964 under its power to regulate interstate commerce. Discrimination based on «race, color, religion, or national origin» in public establishments that had a connection to interstate commerce or was supported by the state is prohibited. Public

establishments include places of public accommodation (*e.g.*, hotels, motels, trailer parks), restaurants, gas stations, bars, taverns, and places of entertainment in general. The Civil Rights Act of 1964 and subsequent legislation also declared a strong legislative policy against discrimination in public schools and colleges which aided in desegregation. Title VI of the civil rights act prohibits discrimination in federally funded programs. Title VII of the Civil Rights Act prohibits employment discrimination where the employer is engaged in interstate commerce. Congress has passed numerous other laws dealing with employment discrimination.

The judiciary, most notably the Supreme Court, plays a crucial role in interpreting the extent of the civil rights. A single Supreme Court ruling can change the very nature of a right throughout the entire country. Supreme Court decisions can also affect the manner in which Congress enacts civil rights legislation, as occurred with the Civil Rights Act of 1964. The federal courts are crucial in mandating and supervising school desegregation programs and other programs established to rectify state or local discrimination.

State constitutions, statutes and municipal ordinances provide further protection of civil rights.

The existence of civil rights and liberties are recognized internationally by numerous agreements and declarations. Often these rights are included in agreements in which nations pledge themselves to the general protection of Human Rights. The United States has recently adhered to the most notable international agreement on civil rights: The International Covenant on Civil and Political Rights.

***Exercise 11. Complete the following text with the words and phrases listed below:***

Until the New Deal the court used the ... of the Constitution concerning individual rights primarily to protect property and economic .... That use helped to preserve a system of ... economy against state and federal efforts to interfere with the market. In particular, the «due process» clauses of the Fifth and Fourteenth ... (no person shall be ... of «life, liberty, or property, without due process of law») were often employed by the court to ... social legislation. In the second half of the 20th century the posture of the court has changed entirely. The court today seldom concerns itself with economic liberties. It is engaged rather in protecting citizens' noneconomic ... as well as their equality before the law, focusing on issues such as civil and political rights. ... rights in the criminal and administrative processes, or the right to .... In the course of developing this new ... the court has declared unconstitutional ... in the schools and malapportionment in ...; it has defended the rights of the ... and of the ...; it has liberalized ....

*jurisprudence, electoral districts, provisions, laissez-faire, invalidate, amendments, freedoms, voluntary abortion, procedural, privacy, suspect, segregation, accused, liberties, deprived*

**Exercise 12. Fill in the gaps with the appropriate forms from the table:**

In the area of separation of federal powers the court ...<sup>(1)</sup> in the course of time a transfer of powers to the executive and to administrative agencies that probably was not envisaged by the Founding Fathers. Because all legislative powers ...<sup>(2)</sup> by Article I, 1, of the Constitution upon Congress, the court at first ruled that such powers ...<sup>(3)</sup> be delegated by Congress to the executive. This doctrine ...<sup>(4)</sup> much diluted in the 20th century when it became clear that delegated legislation was necessary to govern a system of mixed economy. The court's attitude favourable ...<sup>(5)</sup> a reinforcement of the executive ...<sup>(6)</sup> the constitutional system has manifested itself also in other respects, notably in the field of foreign affairs. But the court ...<sup>(7)</sup> also to draw boundaries to an excessive expansion of ...<sup>(8)</sup> presidency. It has ruled that the president ...<sup>(9)</sup>, ...<sup>(10)</sup> the pretext of an emergency, disregard rules of conduct prescribed by Congress precisely for the circumstances of the case. It has established that the prerogative of the president to keep confidential statements secret ...<sup>(11)</sup> yield to the need of the judiciary to enforce criminal justice if the secret ...<sup>(12)</sup> strictly to military or diplomatic matters.

A	B	C
had countenanced	countenanced	has countenanced
are conferred	were conferred	have been conferred
may not	should not	cannot
had been	was	has been
to	for	in
with	in	within
was able	has been able	is able
a	the	-
may not	must not	cannot
under	in	on
has to	must	ought to

did not relate	won't relate	does not relate
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***Exercise 13. Fill in the blanks with the derivatives of the words in brackets:***

1. It may also include principles that ... those powers in order to secure against them fundamental rights of persons or groups, (limit)
2. Quarrels and fights over the extent of such rights were not ...; and they were sometimes settled through solemn, legal «pacts» among the contenders, the prominent example being Magna Carta (1215). (frequent)
3. The theory of the rights of the individual was a potent factor in ... the constitutions of Western states in the 17th, 18th, and 19th centuries, (shape)
4. They are always supplemented, to varying degrees, by statutes, judicial doctrines interpreting the constitution, ... practices, and ... institutions (such as political parties) and their practices, (government)
5. Yet the legislation of the Bund, the central government, extends over so many matters that it is ... whether Germany is not in fact a ... state, (question, region)

***Exercise 14. Correct mistakes in the sentences given below. You can find the right versions in the text (Part 2):***

1. Though the institution of monarchy is so old as recorded history, the modern age has been moving steadily in the direction of republican government. Today, there are few than 30 monarchies.
2. Far much significant than the distinction between monarchy and republicanism is the contrast between presidential and parliamentary executives. Since the United States have for long been the world's leading exponent of presidential government and Great Britain the eldest and more successful practitioner of parliamentary government, their systems may be taken as models with which the systems of other countries can be compared.

***Exercise 15. Make up sentences out of these words and expressions. The original versions can be found in the text (Part 1):***

1. were limited, the rights, at, classes, the powers, by, of, political, rulers, some, of, least, of, moreover, subjects
2. document, became popular, the rules, the essentials, idea, of, in, government, an orderly, the American, of, that, guide, the operations, of, very, must, quickly, comprehensive, stating

***Exercise 16. Fill in the gaps using the words and word combinations given below in the frame (Part I):***

## **Britain's unwritten constitution**

For most people, especially abroad, the United Kingdom does not have a constitution at all in the sense most commonly used around the world — a document of (1) \_\_\_\_\_ setting out the (2) \_\_\_\_\_ and its (3) \_\_\_\_\_ with its citizens. All modern states, saving only the UK, New Zealand and Israel, have adopted a (4) \_\_\_\_\_ of this kind, the first and most complete model being that of the United States of America in 1788. However, in Britain they certainly say that they have a constitution, but it is one that exists in an abstract sense, comprising (5) \_\_\_\_\_, judicial practices and constitutional conventions that have evolved over a long period of time. The key landmark is the (6) \_\_\_\_\_ (1689), which established the (7) \_\_\_\_\_ over the Crown. The British constitution is known as an ‘unwritten constitution’, although some prefer to describe it as ‘uncodified’ on the basis that many of the UK laws of a (8) \_\_\_\_\_ are in fact written down in (9) \_\_\_\_\_ or law reports of (10) \_\_\_\_\_. This aspect of the British constitution, its unwritten nature, is its most (11)\_\_\_\_\_.

### **Features of Britain’s unwritten constitution**

There are a number of associated characteristics of Britain’s unwritten constitution, a cardinal one being that in law Parliament is (12) \_\_\_\_\_ in the sense of being the supreme legislative body. Since there is no documentary constitution containing laws that are (13) \_\_\_\_\_ and superior to ordinary Acts of Parliament, the courts may only (14) \_\_\_\_\_ parliamentary statutes. They may not (15) \_\_\_\_\_ or declare them invalid for being (16) \_\_\_\_\_ and ‘unconstitutional’. So, too, there are no entrenched procedures (such as a (17) \_\_\_\_\_ of the House of Lords, or the requirement of a referendum) by which the unwritten constitution may (18)\_\_\_\_\_. The (19) \_\_\_\_\_ by which a constitutional law is repealed, amended or (20)\_\_\_\_\_, even one dealing with a matter of fundamental (21)\_\_\_\_\_, is similar in kind to any other (22)\_\_\_\_\_, however trivial its subject matter.

Another characteristic of the (23) \_\_\_\_\_ is the special significance of (24) \_\_\_\_\_ known as ‘conventions’, which oil the wheels of the relationship between the ancient (25)\_\_\_\_\_. These are unwritten rules of constitutional practice, vital to our politics, the workings of government, but not committed into law or any (26) \_\_\_\_\_ at all. The very existence of the office of Prime Minister, our (27)\_\_\_\_\_, is purely (28)\_\_\_\_\_. So is the rule upon which he or she (29)\_\_\_\_\_, being whoever commands (30)\_\_\_\_\_.

\_\_\_\_\_ (the majority party leader, or head of a coalition of parties).

The Monarchy is one of the three components of (31) \_\_\_\_\_ (shorthand for the Queen-in-Parliament) along with Commons and Lords. In legal theory, the Queen has absolute and judicially unchallengeable (32) \_\_\_\_\_ to refuse her (33) \_\_\_\_\_ passed by the two Houses of Parliament. However, convention dictates the precise opposite and in practice she automatically gives her (34) \_\_\_\_\_ to any government Bill that has been duly passed and (35) \_\_\_\_\_. Another (36) \_\_\_\_\_ is that (37) \_\_\_\_\_ must have a seat in Parliament (and, in the case of the Prime Minister and Chancellor of the Exchequer, specifically in the House of Commons) in order to (38) \_\_\_\_\_. This is a vital aspect of what is known as the 'Westminster system of parliamentary government', providing a direct form of (39) \_\_\_\_\_ and accountability to the legislature.

*sovereign; Parliament; contrary to the constitution; fundamental importance; distinguishing characteristic; special power; the confidence of the House of Commons; government ministers; structure of government; be amended; legislative process; assent; relationship; court judgments; unwritten constitution; supremacy of Parliament; institutions of state; power; important convention; overrule; documentary constitution; constitutional nature; hold office; Act of Parliament; assent to a Bill; Acts of Parliament; political importance; executive responsibility; Bill of Rights; enacted; fundamental in status; head of government; interpret; is appointed; written form; conventional; agreed by Parliament; statutes; political customs;*

**Exercise 17. Fill in the gaps using the words and word combinations given below in the frame (Part II):**

### **The written documents of Britain's unwritten constitution**

There is irony in the fact that the United Kingdom today does not have a (40) \_\_\_\_\_, yet historically it has had a rich heritage of pioneering (41) \_\_\_\_\_ and documentation. First and foremost is (42) \_\_\_\_\_ (1215), the 'Great Charter of the Liberties of England'. This established the principle that the monarchs, at that time the king, could not do whatever they liked, but were (43) \_\_\_\_\_ as agreed with the barons they governed. This simple concept (44) \_\_\_\_\_ for constitutional government and freedom under the law. Insofar as Magna Carta was 'the first great public act of the nation', it also established the

direction of travel for the British political system towards (45) \_\_\_\_\_ and, much later, democracy itself.

In 1258, the Provisions of Oxford, sometimes referred to as the first ever written constitution, provided for a Council of twenty-four members through whom the King should govern, (46) \_\_\_\_\_. During the constitutional conflicts of the 17th century, the Petition of Right (1628) relied on Magna Charta for its legal basis, setting out (47) \_\_\_\_\_ of the subject including freedom from (48) \_\_\_\_\_. The Bill of Rights (1689) then settled (49) \_\_\_\_\_ over the monarch's prerogatives, providing for the regular meeting of Parliament, (50) \_\_\_\_\_ to the Commons, free speech in (51) \_\_\_\_\_, and some (52) \_\_\_\_\_, most famously freedom from 'cruel or unusual punishment'. This was shortly followed by the Act of Settlement (1701) which controlled (53) \_\_\_\_\_, and established the vital principle of (54) \_\_\_\_\_.

Over the past century there have been a number of (55) \_\_\_\_\_ on major constitutional subjects that, taken together, could be viewed as creating a tier of constitutional legislation, albeit patchy in their range and with no special status or priority in law. They include:

1. The Parliament Acts (1911–49) that regulate the respective powers of the two (56) \_\_\_\_\_.

2. The Representation of the People Acts (1918) (as amended) providing for (57) \_\_\_\_\_ and other matters of political representation.

3. The European Communities Act (1972) making the UK a legal partner in the European Union.

4. The Scottish, Welsh and Northern Ireland devolution Acts of 1998 (as amended) creating an executive and legislature for each of those three nations in the UK.

5. (58) \_\_\_\_\_ (1998) establishing a bill of rights and freedoms actionable by individuals through the courts.

6. Recently, too, some conventions have been subject to an ad hoc codification, such as the principles of ministerial responsibilities in the Ministerial Code.

### **Should the UK have a written constitution?**

The question then arises in this 800-th anniversary year — should the UK now take steps (59) \_\_\_\_\_ all its laws, rules and conventions

governing the government of the country into one comprehensive document, ‘a new Magna Charta’? The case for a written UK constitution has been debated at the UK universities and by (60) \_\_\_\_\_ for several decades and has been the subject of a House of Commons (61) \_\_\_\_\_ during the 2010–15 Parliament. If a (62) \_\_\_\_\_ for the future is to be prepared, it must be one that engages and involves everyone, especially young people, and not simply legal experts and (63)\_\_\_\_\_. Some of the mystique and charm of the UK ancient constitution might be lost in the process, but a written constitution could bring government and the governed closer together, above all by making the (64) \_\_\_\_\_ by which (65) \_\_\_\_\_ operates more accessible and intelligible to all.

*representative institutions; rights and liberties; free elections; judicial independence; The Human Rights Act; written constitution; arbitrary arrest and punishment; Magna Charta; parliamentary debates; succession to the Crown; the primacy of Parliament; constitutional charters; Acts of Parliament; laid the foundations; to be supervised by a Parliament; Houses of Parliament; basic human rights; parliamentarians; universal voting; committee inquiry; politicians of all parties; political democracy; rules; written constitution; subject to the law; to codify;*

**Exercise 18. a) Fill in the gaps using the words and word combinations given below in the frame:**

### Overview of National Government in the United States

The American (1)\_\_\_\_\_, begun as an experiment in liberty and democracy in 1776. While often categorized as a democracy, the United States is more accurately defined as a constitutional (2)\_\_\_\_\_. What does this mean? “Constitutional” refers to the fact that government in the United States is based on a Constitution which is (3)\_\_\_\_\_ of the United States. The Constitution not only provides the framework for how the federal and state governments are structured, but also places (4)\_\_\_\_\_ on their powers. “Federal” means that there is both a national government and governments of the 50 states. A “republic” is (5)\_\_\_\_\_ in which the people hold power, but elect (6)\_\_\_\_\_ to exercise that power.

To a visiting observer, the U.S. government may seem straightforward: the Congress (7) \_\_\_\_\_ and the President implements them. A closer inspection reveals a much more complex system of interactions and influences. As a republic, the ultimate power within the American system (8) \_\_\_\_\_. This power is exercised through regular, scheduled elections in which voters select the President, members of Congress, and various state and local officials. These officials and their staffs formulate policy, make laws, and direct the day-to-day (9) \_\_\_\_\_. The Constitution defines (10) \_\_\_\_\_ (legislative, executive, and judicial), their powers, and how positions in each are to be filled. One defining characteristic of the Constitution is (11) \_\_\_\_\_ created to distribute power among the three branches. Each branch exercises some form of power over the others. For example, justices of (12) \_\_\_\_\_ (judiciary) are appointed by the President (executive), but subject to the consent of the U.S. Senate (legislative). Likewise, (13) \_\_\_\_\_ can strike down as unconstitutional (14) \_\_\_\_\_ and signed by the President. These and other checks and balances ensure that no (15) \_\_\_\_\_ exercises too much power. Because the government may exercise only those powers specifically granted to it in the Constitution, the Constitution is (16) \_\_\_\_\_ of the rights and powers of the people. The first ten amendments to the Constitution are collectively known as (17) \_\_\_\_\_. The Bill of Rights guarantees important freedoms to every American, including (18) \_\_\_\_\_, press, and religion, and the right to be free from unreasonable searches, and (19) \_\_\_\_\_. The Constitution, as the supreme law of the land, limits the legislative and executive powers of all levels of government.

The Constitution not only defines (20) \_\_\_\_\_ of the federal government, but also contains general provisions regarding (21) \_\_\_\_\_. Each state, in turn, has its own constitution which contains provisions for local governments within the state. The federal government is limited to (22) \_\_\_\_\_ specifically granted to it by the U.S. Constitution. Over time the Constitution has been interpreted and amended to adapt to (23) \_\_\_\_\_, and the powers exercised by the federal government have changed with it.

Established by Article I of the Constitution, the (24) \_\_\_\_\_ consists of the House of Representatives and the Senate, which together form the United States Congress. The Constitution grants Congress the sole authority (25) \_\_\_\_\_ and declare war, the right to confirm or reject many Presidential appointments, and substantial (26) \_\_\_\_\_.

The power of the (27) \_\_\_\_\_ is vested in the President of the United States, who also acts as (28) \_\_\_\_\_ and

Commander-in-Chief of the armed forces. The President (29) \_\_\_\_\_ implementing and enforcing the laws passed by Congress and, to that end, appoints the heads of the federal agencies, including the Cabinet. The Vice President is also part of the Executive Branch, ready to assume the Presidency should the need arise.

The Cabinet and independent federal agencies are responsible for the day-to-day (30) \_\_\_\_\_. These departments and agencies have missions and responsibilities as widely divergent as those of the Department of Defense and the Environmental Protection Agency, the Social Security Administration and the Securities and Exchange Commission.

Under Article II of the Constitution, the President is responsible for (31) \_\_\_\_\_ and enforcement of the laws created by Congress.

Article III of the Constitution of the United States guarantees that every person (32) \_\_\_\_\_ has the right to (33) \_\_\_\_\_ before a competent judge and (34) \_\_\_\_\_.

Where the Executive and Legislative branches are elected by the people, members of the Judicial Branch are appointed by the President and confirmed by the Senate.

The Supreme Court of the United States is the highest court in the land and the only part of (35) \_\_\_\_\_ specifically required by the Constitution.

The Chief Justice and 8 (36) \_\_\_\_\_ of the Supreme Court of the nation (37) \_\_\_\_\_ by the President, confirmed by the Senate, and hold their offices under life tenure. Justices may remain in office until they resign, pass away, or (38) \_\_\_\_\_ by Congress.

The fundamental function of the US supreme Court is (39) \_\_\_\_\_ whether laws passed by Congress (40) \_\_\_\_\_.

*rests with the people; a jury; operations of government; system of government; to enact legislation; the supreme law; laws passed by Congress; enforcement and administration of federal laws; significant limits; Executive Branch; federal republic; changing circumstances; the judiciary; the Bill of Rights; an important protection; makes the laws; freedom of speech; single branch of government; a form of government; the Supreme Court; the federal judiciary; head of state; three separate branches of government; associate justices; representatives; the system of checks and balances ; the execution; the structure and powers; are impeached and convicted; Legislative Branch; are nominated; accused of wrongdoing; state government; is responsible for; to have a trial by jury; a fair trial; investigative powers; agree with the Constitution; the powers and responsibilities; to supervise*

**b) Match the words and word combinations with their definitions:**

1. Democracy; 2. Direct Democracy; 3. Government; 4. Federal System; 5. Unitary System; 6. Confederate System; 7. Individual Rights; 8. Preamble; 9. Bill of Rights; 10. Great Compromise; 11. English Common Law; 12. Constitutionalism; 13. Constitution; 14. Rule of Law; 15. Republic; 16. Founding Fathers; 17. Popular Sovereignty; 18. Federalism; 19. Limited Government; 20. Judicial Review; 21. Separation of Powers; 22. Checks & Balances

(a) The concept that political power rests with the people who can create, alter, and abolish government. People express themselves through voting and free participation in government.

(b) Government that gives all key powers to the national or central government.

(c) The people rules the government.

(d) A compromise adopted at the Constitutional Convention, providing the states with equal representations in the Senate and proportional representation in the House of Representatives.

(e) The power of the Supreme Court to declare laws and actions of local, state, or national governments unconstitutional.

(f) The body of law developed in England from judicial decision based on custom and precedent, unwritten in statute or code, and constituting the basis of the English Legal System and of the system in all of the U.S except Louisiana.

(g) Government that nations and states agree to join together under a central government, to which they grant certain powers.

(h) A statement in a constitution that sets forth the goals and purposes of the government.

(i) Government in which voters hold sovereign power; elected representatives, responsible to the people, exercising that power.

(j) Institution through which the state maintains social order, provides public services, and enforces binding decisions on citizens.

(k) The men who had an important part in creating the government of the U.S. The members of the American Constitutional Convention of 1787.

(l) A system that allows each branch of government to limit the powers of the other branches in order to prevent abuse of power.

(m) Type of democracy where the people govern themselves.

(n) Government that divides its powers by the national, the state or the provincial governments.

(o) The principle that all people and institutions are subject to and accountable to law that is fairly applied and enforced; the principle of government by law.

(p) Constitutional division of powers among the legislative, executive, and judicial branches, with the legislative branch making law, the executive applying and enforcing the law, and the judiciary interpreting the law.

(q) Formal statement of the fundamental rights of the people of the U.S., incorporating the constitution as Amendments 1 - 10, and all state constitutions .

(r) Everyone, including all authority figures, must obey laws. Constitutions, statements of rights, or other laws define the limits of those in power so they cannot take advantage of the elected, appointed, or inherited positions.

(s) Government in which power is distributed and limited by a system of laws and the rulers must obey.

(t) The liberty to exercise freely those rights accepted as being outside of the government's control.

(u) A plan that provides the rules for government.

(v) A system of government in which a written constitution divides power between a central, or national, government and several regional governments.

***Exercise 19. Study the following text. Extract the necessary information about the peculiarities of the USA Constitution. Summarize the text in English. Some helpful expressions are given below (take into account that a summary normally consists of about 1/10 of the original):***

### **Конституция США**

Ныне действующая конституция США была принята 17 сентября 1787 года. Конституция США является выдающимся политико-правовым актом. Выражая дух американской революции, "отцы-основатели" конституции выработали для своего времени прогрессивный документ, оказавший историческое влияние на конституционное развитие многих государств мира.

Конституция США — первая в истории писаная конституция крупного государства. Это событие способствовало распространению во всем мире доктрины конституционализма. Она закрешила победу американского народа над английскими колонизаторами и образование независимого суверенного государства.

Конституция гарантирует защиту человека от произвола властей, поставив преграду деспотическому правлению. Она способствовала становлению и развитию демократический

институтов: народный суверенитет, народное представительство, парламентаризм и др.

Конституция США учредила республиканскую форму правления в виде президентской республики: президент республики — глава государства и правительства; правительство не несет ответственность перед Конгрессом; президент не обладает правом роспуска палат Конгресса.

Конституция наибольшее внимание уделяет порядку формирования и деятельности центральных органов власти (Конгресс, президент, Верховный суд). Их конституционные взаимоотношения основаны на принципе разделения властей, который в американской действительности трансформировался в систему "сдержек и противовесов".

Конституция США определила новые отношения между штатами, установив федеративную форму государственно-территориального устройства.

Опираясь на конституцию, Верховный суд приобрел функцию конституционного надзора, что позволяет ему признавать отдельные акты президента, Конгресса неконституционными. Судебный прецедент, как источник конституционного права, дополняет содержание конституции.

Конституция провозглашена верховным правом США. В статье VI записано: "Настоящая Конституция и законы Соединенных Штатов, изданные в ее исполнение, равно как и все договоры, которые заключены или будут заключены Соединенными Штатами, являются высшими законами страны..." .

Конституция США относится к числу наиболее стабильных и устойчивых. За весь период существования Конституции в нее было внесено лишь 27 поправок. Она предусматривает весьма "жесткую" процедуру принятия поправок. Поправки принимаются 2/3 членов обеих палат Конгресса (либо специально созванным по инициативе 2/3 штатов Конституционным конвентом). В обоих случаях принятые поправки должны быть ратифицированы законодательными собраниями 3/4 штатов (либо 3/4 конвентами штатов, созываемых по решению Конгресса). Ратификация поправок штатами является главным тормозом обновления конституции США. Поправки могут десятилетиями и даже веками рассматриваться законодательными собраниями штатов.

Некоторые правоведы считают конституцию США исключительно pragmatичной. Она включает 7 статей и 27 поправок. Краткость и лаконичность конституции США привели к тому, что многие элементы государственной системы не были конституционно закреплены. Совет национальной безопасности, порядок образования и деятельности постоянных комитетов палат Конгресса, процедура

контроля постоянными комитетами деятельности членов правительства, компетенция Верховного суда при осуществлении конституционного контроля — все эти и некоторые другие вопросы не регламентируются конституцией США. Конституционные пробелы дополняются законами Конгресса, актами президента, судебными прецедентами, конституционными обычаями. Все это дает основание некоторым юристам говорить о "живой конституции" США, соответствующей жизненным реалиям современного мира.

*doctrine of constitutionalism; worldwide distribution; to consolidate the victory over the colonialists; to guarantee the protection of the person from the arbitrariness of the authorities; to contribute to the establishment and development of democratic institutions; popular sovereignty; limited government; the system of checks and balances; judicial review; separation of powers; central government; federalism; the job of executing, enforcing, and administering the laws; Supreme Court; amendments; separate branches of government; to violate the principles of the Constitution; natural rights and liberties; independent agencies; Bill of Rights; legislative branch; judiciary; executive branch;*

**Exercise 20. Study the following text. Extract the necessary information about the peculiarities of the British Constitution. Summarize the text in English using helpful expressions given below (take into account that a summary normally consists of about 1/10 of the original):**

### Конституция Великобритании

Британский конституционализм представляет собой весьма своеобразное явление правовой действительности. Древние и крепкие корни парламентаризма, англо-саксонская правовая система, монархическая форма правления — все это делает фактическую и юридическую конституцию Великобритании уникальной. Эта страна по сей день не имеет в качестве основного закона единого писаного нормативного правового акта.

Более внимательное ознакомление с британским опытом конституционного развития позволяет заключить, что ничего парадоксального в этом нет. Возведимое в течение многих столетий здание британского конституционализма имеет в качестве прочного и надежного фундамента общее право и высокую правовую культуру. Поэтому в данной стране в отличие от большинства других несколько столетий не возникало необходимости в принятии единого статута.

Особенности конституции Великобритании характеризуются прежде всего спецификой ее формы. Британская доктрина конституционализма относит к писанным только акты, исходящие от

парламента, т.е. статуты. Судебные же прецеденты, как и конституционные обычаи, английские ученые относят к неписаной части права.

Конституция Великобритании включает практически необозримое число конкретных источников. Их можно классифицировать, разделив на 4 группы: статуты, судебные прецеденты, конституционные обычаи и доктринальные источники.

Статутное право образуют акты парламентов, принятые с 1215 г. по вопросам конституционного права. Отсчет ведется с даты принятия Великой хартии вольностей. В настоящее время, однако, имеет значение не буквальное содержание этого документа феодальной эпохи, а его расширительное толкование юристами, позволяющее, в частности, вывести правила о недопустимости наказания граждан без судебного разбирательства и т.п. В английской литературе и практике нет единых критерииев, по которым тот или иной статут можно было бы отнести к числу конституционных. Эти критерии не выработаны, так как все законы в Великобритании имеют равную юридическую силу, порядок принятия, изменения и отмены. Такое положение существует в соответствии с принципом парламентского верховенства, согласно которому закон может быть принят только парламентом, и все они имеют равный статус. Тем не менее не все статуты признаются частью конституции. К числу наиболее важных актов, рассматриваемых как чисто конституционные, принято относить статуты, регулирующие: структуру, полномочия и взаимоотношения палат парламента (законы о парламенте 1711 и 1949 гг., Акт о пэрах 1963 г., Акт о палате общин 1978 г.), правовое положение личности (например, упомянутая Великая партия вольностей 1215 г., Хабеас корпус акт 1679 г., Билль о правах 1689 г., положения которых, правда, по большей части носят исторический характер будучи полностью замененными позднейшими актами уголовного и уголовно-процессуального законодательства); избирательное право (акты о народном представительстве 1949, 1969, 1974, 1983 гг. и т.д.); статус монарха (Акт о престолонаследии 1701 г.); организацию территории и местное самоуправление (акты о местном правлении 1972, 1985 гг. и т.д. Акт о соединении с Шотландией 1706 г.).

Таких актов в настоящее время насчитывается более 40. Кроме того, конституционные нормы содержатся и в статутах, регламентирующих конституционные отношения наряду с другими, относящимися к предмету регулирования иных отраслей права. Так, в актах о министрах короны 1937, 1964 и 1975 гг. помимо конституционно-правовых норм имеются положения, относящиеся к административному праву. Следует иметь в виду, что

конституционные нормы могут содержаться и в актах делегированного законодательства.

В целом статутное конституционное право носит фрагментарный характер, хотя число его источников постоянно увеличивается.

**Прецедентное право**, как источник конституции Великобритании — это совокупность судебных решений по конституционным вопросам, являющихся обязательными при рассмотрении в будущем аналогичных дел. Его можно условно подразделить на общее право и право справедливости.

**Общее право** в Англии создано королевскими Вестминстерскими судами. Право справедливости — совокупность норм, созданных судом канцлера, чтобы дополнять, а иногда и пересматривать систему общего права. Прецедентное право предполагает, что суды в Великобритании не только применяют, но и создают нормы права, т.е. правилам, содержащимся в судебных решениях, должно следовать и в дальнейшем, а также обязательность решений вышестоящих судов для нижестоящих. Обязательные прецеденты в Англии могут создаваться не всякими судами, а только так называемыми высокими судами (Верховным судом и палатой лордов). До 1966 г. считалось, что палата лордов строго связана своими прецедентами. После этого было решено, что в интересах правосудия палата лордов может отходить от ранее созданных прецедентов. Практика свидетельствует о достаточно умеренном использовании этого нововведения.

Сфера действия прецедентов в конституционном праве Великобритании является достаточно ограниченной. В настоящее время они, в основном, регулируют вопросы, касающиеся привилегий Короны. Исторически прецедентному праву принадлежит весьма значительная роль в формировании английской конституции. Однако, судебные решения со временем получают статутное оформление.

**Обычное право** играет значительно большую роль по сравнению с прецедентами. Конституционные обычаи, именуемые также соглашениями, регулируют важные вопросы государственной жизни. Например, согласно обычая, монарх не может не подписать акт, принятый обеими палатами парламента. Соглашения регулируют и такие важные вопросы, как формирование правительства лидером партии, победившей на парламентских выборах, коллективная и индивидуальная ответственность министров, процедуры созыва законодательного органа и роспуска палаты общин, осуществление государственного управления Короной только при согласии кабинета, равно как и само существование последнего.

Конституционные соглашения являются весьма своеобразным источником британской конституции. С одной стороны, они реально

действуют как важное звено правовой системы, без которого последняя не сможет существовать. С другой — обычай не признаются судами, т.е. нарушение соглашений не влечет юридической ответственности. Однако их несоблюдение в стране с высоким уровнем правосознания может привести к серьезным политическим последствиям.

**Доктринальные источники** — специфический элемент неписаной части британской конституции. Под ними понимаются мнения именитых ученых в области конституционного права. К ним обращаются тогда, когда обнаружен пробел из-за отсутствия статута, прецедента или обычая, регулирующих определенные отношения.

*customary law; common law; law of equity; case law; constitutional convention; statutes; legal responsibility; statutory law; sources of law; Acts of Parliament; uncodified constitution; Royal Assent; the Act of Settlement of 1701; the Magna Carta of 1215; customs and traditions; political conventions; constitutional matters decided in a court of law; the doctrine of parliamentary sovereignty; to resign; to seek fresh elections; the head of Her Majesty's Government in the United Kingdom; parliamentary system of government; to be accountable to Parliament; constitutional significance;*