Functions of a constitution:

- Establish **how the political processes and relationships work** which make up the system
  - Constitutional Reform Act 2005 created a Supreme Court in the UK, to separate the judiciary from the legislature (HoL, in this case)
- Protect the rights of the citizens against the state
  - The UK has the Human Rights Act, 2000, but the Conservatives want to replace this with an entrenched Bill of Rights but have met great opposition from pressure groups such as Liberty
- Contain instructions for **how they are to be amended**
  - the UK is unusual in that this can happen in one of two ways: either through simple Parliamentary statute or through the evolution of conventions over time
- Determine **how political power is distributed within the state**
  - The UK is unitary (not federal) because Parliament is sovereign
- Limit government’s power, for after all “power corrupts, and absolute power corrupts absolutely” - John Acton
  - This is not the case in the UK as Parliament is sovereign, so can pass any law it like
- Establish **who can and cannot become a citizen** (therefore vote)

Principles of the British constitution:

- Pluralism
  - Pressure groups are allowed to be very vocal
- Freedom
- Tolerance (derived from the fact that Britain is a pluralist, liberal democracy)
  - Religious freedom, HRA (1998)
- The constitution supports the constitutional monarchy, as well as EU membership

- 2 pillars of the UK constitution:
- Parliamentary sovereignty states that Parliament is the source of all political power - even power which they devolve can be recalled at any time.
  - This allows Parliament to be efficient in governing, especially when the government has a large majority
    - Thatcher’s majority of 397 seats in 1983, using which she effectively opposed the miner’s strike of 1984 and privatised industries including British Telecom (1984) and British Gas (1986), despite protest from left wing TUs and PGs
    - Blair’s majority of 418 seats in 1997, allowed Blair to implement a huge reform system incl. Reform of HoL and bringing in HRA
  - Judiciary cannot actually strike down legislation
    - The Supreme Court have been very vocal but unsuccessful in protesting the Terrorism Act of 2006 and its 28 day detainment period
  - Legislation passed by the legislature is not entrenched
    - In 1997 Blair brought in the Social Chapter of the Maastricht Treaty (1992), which Major had previously disincluded
- Rule of law is an ideal which, when achieved, stops government from passing arbitrary legislation.
  The tenets of rule of law are justice, legal equality and judicial independance. It acts as a check and balance to prevent elective dictatorships (term coined 1976 by Lord Hailsham) by promoting restraint and responsibility in executive action. It also protects people’s rights in that it maintains the doctrine ‘innocent until proven guilty’ and demands fair trials
  - In 2004 the Labour government amended its anti-terror legislation after HoL decided it was incompatible with HRA in breach of the most fundamental principles of rule of law
2.1 The British Constitution

- Deviation from rule of law: the Poll Tax of 1989 which many saw as unjust and arbitrary
- NB arguably rule of law is not effective in the UK, for it relies on absolute neutrality on the part of the judiciary. Solicitors are also very expensive, and not everyone can afford one - Justice Darling famously said, “The law, like the Ritz hotel, is open to everyone”

- In order for Parliament to adhere to these pillars, it must be:
  - Representative (of the mandate)
  - Responsible (for their actions)
  - Accountable (a bad government can be voted out) - Burke’s theory of the MP

- The British constitution is based on social contract theory, and therefore holds government accountable because the government can be voted out, or commented on at any point in time

Sources of the UK constitution:
Conventions:
Not legally binding conventions have developed over time eg:
- Collective Cabinet Responsibility (CCR)/Collective Ministerial Responsibility (CMR) states that Cabinet members are allowed to disagree within cabinet meetings but cannot speak out publicly against the PM, because if the cabinet appears divided, it makes the government look weak (and potentially unelectable) - “United we stand, divided we fall”. The convention also states that all cabinet ministers are collectively responsible for all cabinet decisions.
  - If a cabinet member breaks the convention, the PM may demand their resignation. In this case the member usually returns to being a backbench MP - however over recent years this had eroded:
    - Cameron even suspended CCR over the issue of Brexit and cabinet members including Chris Grayling (Leader of the HoC) and Iain Duncan Smith (Health and Pensions Secretary until he resigned in March 2015) have campaigned for Brexit against Cameron
    - Clare Short remained in Blair’s cabinet for 2 months after she spoke out against the invasion of Iraq in 2003
- Individual Ministerial Responsibility (IMR) states that each cabinet minister is responsible for his or her department as well as their personal conduct, and can be fired if their department makes a mistake
  - Cecil Parkinson, who resigned in 1983 from his position as Thatcher’s Secretary of State for Trade and Industry, when it came to light that his former secretary Sara Keays was carrying his child - even though he was already married! Interestingly, due to his experience and his close relationship with Thatcher, he was brought back into the cabinet at a later date
  - Peter Carrington resigned as Secretary of State for Defence in 1982, for not foreseeing the Argentine invasion of the Falklands Islands
- Salisbury convention (1946)
  - HoL cannot interfere with manifesto legislation if the dominant government has a majority
- PM’s prerogative powers
  - PM has unrestrained power to appoint ministers, grant peerages and declare wars
    - But, when Cameron consulted Parliament in Dec 2015 before instigating air strikes in Syria, and listened when they said ‘no’, he may have set a precedent which will whittle away the power to declare war
  - PM used to have the right to dissolve Parliament (call a general election) but lost that right in the 2011 Fixed-Term Parliaments Act

Statute law: This most important source outranks common and conventions
2.1 The British Constitution

Law written by Parliament eg:

Common law:
Law decided upon by judges, on a case-by-case basis and influenced by precedents in history, eg:
- right to a fair trial
- religious tolerance
- Freedom of association

EU treaties:
Only been a source since Britain joined the EEC in 1973. EU law has higher status than domestic UK law. Key EU treaties which our law must comply with incl:
- Maastricht Treaty 1993 which introduced the EU and has a large ‘social chapter’ protecting workers rights (only brought in in 1997 under Blair)
- Lisbon Treaty 2009

Political theories/principles:
- Parliamentary sovereignty
- Rule of law (AV Dicey, 1885)
- Executive-legislative fusion: The executive must be drawn from the legislature and is accountable to Parliament

Works of authority:
- Bagehot’s The English Constitution
- Blackstone’s commentaries

Features of the British constitution:
The British constitution is the oldest modern constitution. It is largely based on tradition and conventions. Key features are:

Uncodified: The British constitution is not set out in any single, written, document. It was described by ex-
Prime Minister James Callaghan as ‘written on the back of an envelope’. As such, often the ‘spirit of the
constitution’ is discussed more than the constitution itself.
- Effects:
  - All law is equal in the UK; it is a one-tiered system
  - All law/legislation can be changed/amended quickly - even overnight when necessary - whereas in America constitutional laws are almost impossible to change, as can be seen in Obama’s struggles to changed the gun laws, which relate to the Second Amendment of the Constitution and the right to bare arms
  - It is worth noting that some of the constitutions’ sources, such as HRA and EU treaties, are codified within themselves
- Advantages:
  - The constitution (and the conventions which are a major source of it) can evolve over time, and keep up-to-date with the ‘zeitgeist’, remain organic and develop with the people’s mood
    - in March 2014 Cameron legalised gay marriage in the UK
  - The executive branch has concentrated power (accentuated by FPTP’s inclination towards majorities in HoC) which allows quick decisive action to be taken
2.1 The British Constitution

- 9/11 bombings in America led to the Anti-terrorism, Crime and Security Act (2001) which received the royal assent and came into force, after having already been through the HoC, in December that year only 3 months after the attack, whereas the Homeland Security Act in America was rushed through Congress and even so only came into power in November 2002, a whole year later.
  - “If it ain’t broke, don’t fix it” - England has not faced internal uprisings since 1651, so clearly it works the way it is

Disadvantages:
- There is no protection against elective dictatorships (term coined by Lord Hailsham, 1976) or overmighty governments, which is especially risky considering the concentrated power that HoC has (especially during majorities) - they can essentially do whatever they want
  - Thatcher’s privatisation, Blair’s social reforms - a strong PM has free reign
- There is no entrenched domestic Bill of Rights, so there is no entrenched protection of human rights from the government - so one of the key functions of any constitution fails. This is especially risky as the government is so powerful (eg below)
- ‘Knee-jerk’ legislation which has not been sufficiently deliberated and scrutinised over - one of the legislature’s key functions - can easily be passed, so the leg. fails
  - Terrorism Act 2006 came about swiftly after the 7 July 2005 London bombings, and increased the period of detention for suspected terrorists up to 28 days before their sentence is delivered. This has been subject to much scrutiny since then, for many liberals, including pressure group Liberty, claim that this is an infringement on human rights
- Constitution is hard to access for the general public, which contributes to people’s feeling ill-educated and unaware politically (democratic deficit, political apathy)

Unentrenched: Constitutional laws are not superior to any others, and can be repealed just as easily. Thus, because Parliament is sovereign, it cannot be bound by its predecessors in passing legislation (and in turn cannot stop future Parliaments from amending/changing their laws)
  - In 1997 Blair brought in the Social Chapter of the Maastricht Treaty (1992), which Major had previously disincluded
To prove popular support, however, it is becoming practice for the government to hold a referendum before introducing major constitutional reform - as happened in 2014 for Scottish independence, and upcoming on June 23rd 2016 for EU membership.

Evolutionary/gradualist/organic: It has developed/grown over time when necessary and progressed with the ‘zeitgeist’
  - ‘Organic’ is in accordance with the conservative ideal that change should not be artificial
  - In 2014 when gay marriage was made legal, it reflected society’s thoughts and feelings

Piecemeal: made up of many sources and documents and philosophies. It has been added to in layers over time
  - Rule of law 1885, Human Rights Act 1998 (2000), Recall of MPs Act 2015 ...

Convention-based:
  - the royal assent
  - CCR/CMR
  - IMR
2.1 The British Constitution

**Unitary**: Sovereignty is held in one place: Parliament (the opposite of this is a federal constitution like America)
- All devolved power can be recalled
  - N Ireland 2002-07: Northern Irish Executive’s power was dissolved when unionists withdrew

**Traditional**: Because it has been added to over time, traditional aspects were never eradicated
- IMR still holds up traditional family and normative judeo-christian values, like family and the Church
- The monarchy still exists, though it has no power
Overall, the UK’s is a mixed constitution: partly democratic yet partly based on traditional/hereditary rules

How does the constitution as it is today prevent elective dictatorships?
House of Commons vs. House of Lords/bicameralism: even when HoC has a majority, HoL can hold government to account, as they did during the coalition

Elections: regular elections due to Fixed-Term Parliament Act 2011

Referendums: it is becoming conventional for PMs to hold referendums before making dramatic constitutional changes, eg. upcoming EU ref, 2014 Scottish independence ref. ...

Separation of powers: judiciary remains independant of executive or legislature so they can oppose each other

Rule of law: promotes the executive to have restraint and be reasonable in passing legislation, not arbitrary, and maintains that all are equal under the eyes of the law

**Should the constitution be codified?**

<table>
<thead>
<tr>
<th>It should not</th>
<th>It should</th>
</tr>
</thead>
<tbody>
<tr>
<td>It’s good as is</td>
<td>Codified constitution would be better:</td>
</tr>
<tr>
<td>1. Has proven its adaptability and kept up with society’s ever-changing demands</td>
<td>1. Clarity:</td>
</tr>
<tr>
<td>a. Can be changed by simple Parliamentary statute</td>
<td>a. Would be accessible to all citizens and law-makers, to be addressed whenever disagreements arise</td>
</tr>
<tr>
<td>b. In 1998 the Scotland Act created a Scottish Parliament following popular pressure</td>
<td>b. Currently there is no formal definition of the constitution and hence no delineation of the contours of the British constitution</td>
</tr>
<tr>
<td>c. In 2014 gay marriage was legalised</td>
<td>2. Limit government:</td>
</tr>
<tr>
<td>2. Allows for strong government</td>
<td>a. prevent elective dictatorships (Lord Hailsham 1976) by:</td>
</tr>
<tr>
<td>a. Gives the dominant party, which has after all been democratically elected, space to instigate change</td>
<td>use of negative constitutionalism (designed to limit public bodies)</td>
</tr>
<tr>
<td>i. Eg, Thatcher, Blair</td>
<td>end of parliamentary sovereignty</td>
</tr>
<tr>
<td>3. Forces government to be accountable</td>
<td>b. This would be especially helpful for the image of politics, in an era of low public trust in politicians</td>
</tr>
<tr>
<td>a. Government is directly accountable to Parliament</td>
<td>3. Higher law:</td>
</tr>
<tr>
<td>b. Fixed term elections</td>
<td>a. Would create a 2-tier legal system</td>
</tr>
<tr>
<td>4. In accordance with positive constitutionalism, constitutions should reflect the will of the people, which the British one does very well as it is</td>
<td>b. Changes to higher law would only be possible with clear or even</td>
</tr>
</tbody>
</table>

...
2.1 The British Constitution

Codified constitution would be worse

1. Inflexible:
   a. They entrench ideas, which in time become out-of-date. Creates political paralysis

2. Gives unelected judges too much power:
   a. Judges are both elected and accountable, and would only be more powerful if judicial review was legally binding

3. Britain has no need for one
   a. Britain has not faced a violent internal uprising since 1651, so there is no ‘push’ factor to form a constitution
   b. “If it ain’t broke, don’t fix it”

4. There is no agreement as to what the ideal UK constitution ought to do (+ve or -ve constitutionalism) therefore no matter how it was codified, people would still be unhappy

4. Entrenchment:
   a. Relationship between branches of government, and government and citizens, would be safeguarded

5. Give more power to senior judges:
   a. Judicial reviews would be binding on government. This would be a way to keep the constitution up to date/with the zeitgeist

6. Protect human rights
   a. Define relationship btw citizen and state
   b. Prevent legislation being passed before it is approved on the human rights front; like the Prevention of Terrorism Act 2005

7. Major changes to the constitution are not currently regarded with the weight or deliberation they deserve
   a. In recent years there has been a multitude of changes including joining the EEC, the HRA, 1999 reform of HoL, supreme court...

Key constitutional reforms since 1997:

Successful reforms:

- **1998 Devolution**
  ○ Began with the establishment of the Scottish, Welsh and N Irish Assemblies
  ○ Regularly enhanced, most recently in 2011 when the Welsh Assembly gained power to legislate on a wider range of issues then 2012 in the Scotland Act

- **1998 Human Rights Act** made European Convention on Human Rights binding on all public bodies, except Parliament

- **1999 HoL reform** removed all but 92 hereditary peers, but phase 2 is yet to come

  ○ European Convention on Human Rights was written in 1953 but only incorporated to the British constitution in 1998

- **1999 Local Government Act** allowed local communities to elect a mayor, if approved by a local referendum
  ○ Since then, cities like Bristol and Leicester down to boroughs like Newham and Tower Hamlets have all installed mayors

- **2000 Introduction of a London Mayor** in following GLA Act of 1999 (Ken Livingstone, Boris Johnson, Sadiq Khan)

- **2000 Freedom of Information Act** gave all citizens rights to see official documents which do not compromise national security
2.1 The British Constitution

- 2005 **Constitutional Reform Act** created a Supreme Court, which opened in 2009, and removed the politically appointed position of Lord Chancellor from the HoL. Before this, there was little/no separation of powers between those who created law and those who interpreted it - but now the “Law Lords” sit out of HoC
- 2009 The **Wright Committee** was set up under Brown with the intention to reform HoC. Their reforms included giving more independence to select committees and the creation of the House Liaison Committee, which subjects the PM to a rigorous interview biannually
- 2011 **Fixed term Parliaments Act** took away from the prerogative power to declare a ge and fixed them to every 5 years
- 2011 **Welsh Assembly referendum** extended the range of topics over which the W Assembly can legislate
- 2012 **Scotland Act** gave Scottish government greater taxation powers and the ability to borrow up to £2 billion annually
- 2013 **Justice and Security Act** allowed for ‘closed material proceedings’ in the judiciary
- 2015 **Recall of MPs Act** determined that if an MP receives a prison sentence or is suspended from the House for at least 21 days, a petition will be opened and if the constituents want, a by-election will be called

**Failed reforms:**
- Reform the voting system to AV (2011 referendum voted no by 68%)
- Reform HoL: Clegg proposed a new House of 450 peers, 80% directly elected and 20% appointed but this was voted down by Commons in 2012
- The Boundary Commission was meant to redraw constituency lines during the 2010 coalition, but failed as the Lib Dems did not support the bill. Now the Tories plan to redraw during before 2020
- Only 2 of England’s 12-largest cities voted to elect mayors
- Tories want to replace the current HRA with an entrenched Bill of Rights, which would transfer the protection of human rights from the judiciary (where it is now) to the legislature

Overall, constitutional reform is certainly unfinished business: Liberals desire completed reform of HoL, Conservatives reform of the EU (thus the upcoming referendum) and the HRA, SNP want devolution...

**An overall assessment of the UK constitution:**

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
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<tbody>
<tr>
<td>1. It is flexible and can adapt to both gradual and abrupt changes in circumstance</td>
<td>1. That it places so much power in the hands of the executive can be seen as a democratic weakness preventing fully accountable government</td>
</tr>
<tr>
<td>a. Gay marriage legalised in March 2014 in keeping with demands from society as exemplified by international PG Stonewall</td>
<td>a. Blair’s infamous style of ‘sofa politics’ led to important decisions being made purely by him and selected ministers, while HoC did not even have all the information, therefore were unaccountable</td>
</tr>
<tr>
<td>b. Devolution in 1998 came about after an increased desire for nationalism in Scotland Wales + NI</td>
<td>b. Runs the risk of overmighty PMs</td>
</tr>
<tr>
<td>c. HoL reform 1997 was easy to enact, merely meant changing common law, when Blair thought that hereditary peerages were promoting a democratic deficit</td>
<td>2. The lack of codification leaves the constitution abstract and open to interpretation - which can sometimes cause conflict. It also gives great power of</td>
</tr>
</tbody>
</table>
2.1 The British Constitution

PM and executive, promoting strong decisive government. This is furthered by the fact that government tends to dominate Parliament

a. Parliamentary legislation cannot be overturned by the judiciary

3. Includes key constitutional principles such as rule of law and independance of the judiciary

a. The judiciary are able to remain independant from politics, eg. through the

4. Principles of parliamentary sovereignty and parliamentary government (Westminster model: bicameral Parliament, separation of the 3 arms of government and necessity of an opposition to government) ensure representative and responsible government

a. MPs and ministers must be representative and responsible in accordance with Burke’s theory
b. Parliamentary government must represent the population and the national interest
c. The constant presence of an opposition holds government of the day to account
   i. There are worries that, as the Labour party is currently so internally divided over philosophies, they are not an effective opposition

5. It has stood the test of time

a. traditional aspects, such as the monarchy, are widely supported
b. England has not faced violent internal uprising since 1651
c. “If it ain’t broke, don’t fix it”

interpretation to unelected judges

a. The constitution does not explain what action to adopt when an election does not give a majority, so in 2010 it fell to to politicians to interpret the result and form a coalition, which was arguably very undemocratic as they have no manifesto or mandate

3. Rights of individuals and minorities are not adequately protected because of Parliament’s sovereignty

a. Terrorism Act 2006 extended the detainment period for suspected terrorists to 28 days, which contradicts the rule of law tenet ‘innocent until proven guilty’
b. Plaid Cymru represent the Welsh minority (in the context of the whole UK) but in HoC only have 3 seats

4. It contains undemocratic elements, such as HoL and the monarchy

a. HoL has been quite active in recent years, esp during the coalition and in Oct 2015 when trying to block the tax credit slash
b. ‘Traditional’ elements are not so popular after all; Blair reformed HoL, monarchy is powerless and Lib Dems proposed to remove FPTP in 2011

5. Bias towards a two-party system (flaws of FPTP) is undemocratic and does not take account of a more pluralist society

a. UKIP won 3.8 million votes in the 2015 general election but only one seat in HoC

Positive constitutionalists see the UK constitution as strong, for it is defined by the public will and changes only when change is necessary

Negative constitutionalists, conversely, prefer codified constitutions which define what the public can/cannot do
be given, terms defined, and a conclusion reached.

Past questions:
June 2015
With reference to the source, describe 3 of the sources which make up the UK constitution (5)
With reference to the source and your own knowledge, explain the features of parliamentary sovereignty (10)
To what extent does Parliament remain sovereign? (25)

June 2014
With reference to the source, outline why the UK constitution is easy to change (5)
With reference to the source and your own knowledge, explain how an uncodified constitution differs from a codified constitution (10)
Assess the significance of the constitutional reforms introduced since 1997 (25)

Jan 2013
To what extent have constitutional reforms introduced since 1997 made the UK more democratic?

June 2013
With reference to the source, outline 2 features of the UK constitution (5)
With reference to the source and your own knowledge, explain the sources of the UK constitution
Assess the strengths of the UK constitution (25)

Jan 2012
To what extent have constitutional reforms since 1997 reduced the powers of UK governments?

June 2012
With reference to the source, outline 2 constitutional reforms proposed by David Miliband (5)
With reference to the source and your own knowledge, explain the arguments in favour of introducing a codified constitution (10)
To what extent have the coalition government’s proposals to reform the UK constitution been controversial? (25)

June 2011
To what extent has the location of sovereignty changed in the UK in recent years? (40)

June 2010
With reference to the source, describe three sources of the UK constitution (5)
With reference to the source, and your own knowledge, explain the arguments in favour of a codified constitution for the UK (10)
Make out a case against the adoption of a codified constitution for the UK (25)

‘The advantages of a codified constitution now outweigh its disadvantages.’ Discuss.
‘The UK constitution is no longer fit for purpose.’ Discuss.
To what extent has constitutional reforms introduced since 1997 made the UK more democratic?
Assess the arguments for codifying the UK constitution.
To what extent has the UK constitution been criticised?