

The JUDICIARY - Intro

The Judiciary are the 3rd branch of Government. The judiciary is the system of courts and judges responsible for interpreting, defending, and applying the law to resolve disputes, uphold the rule of law, and protect individual rights against unlawful acts.

Paper 2: The Judiciary UK SUPREME COURT



JUDICIAL REVIEW

The Supreme Court of the UK (UKSC) are the highest court in the country and provide the final judgement on principles and cases of law. They do not create laws (Parliament's legislative role) and in the UK Parliament is the final decider on what becomes law. UKSC are there to advise the government if they have acted unlawfully or outside the perimeters of the law.

Origin Story Before 2005 (FUSION of Powers)

The Law Lords in the House of Lords used to hold cases in the HoL to determine the legality of key cases. But this also meant that they could pass laws in the LEGISLATIVE PROCESS (Fusion). This was seen as a conflict of interest as they would be making and then judging their own laws.

SEPARATION of POWERS after 2005

The **Constitutional Reform Act, 2005** created the Supreme Court which became independent and moved into their own building (opposite Parliament Square) to physically separate the Judiciary from any political influence. Officially moved into new building in 2010. The SEPARATION created a system that further promoted JUDICIAL NEUTRALITY & JUDICIAL INDEPENDENCE.

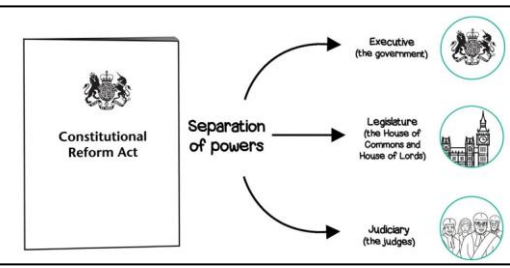
JUDICIAL COMMITTEE of the PRIVY COUNCIL (JCPC - extra role of UKSC)

Final Court of Appeal for Commonwealth and British Overseas territories.

Composition

The Supreme Court is made up of 12 members. There will only ever be an odd number of justices (judges) sitting in any one case. 3-5 on less important cases, 9-11 on important constitutional cases. Decisions are made on a majority ruling.

Influential Supreme Court Cases have had important implications for sovereignty within the UK, and are listed on the right:



Appointments & Representation

Justices are vetted, interviewed and appointed by the **Judicial Appointments Commission (JAC)**. The JAC are an **independent body** of legal professionals and public internally selected and then approved by the Lord Chancellor (Cabinet). JAC recommend new Justices after selection and interview process, then approved by PM and Monarchy. There is a mandatory retirement age of 75 on justices. Salary governed by JAC. 2026- 6/ 36 appointed justices have been female. Currently 2/12 females. Since 2005, 8/ 36 justices have come from Scotland, N.Ireland, Wales. 2 have been Jewish, but no other ethnic races represented.

UKSC influence on the Executive and Parliament

JUDICIAL REVIEW: Reviews the lawfulness of a decision, action, or failure to act by a public body. It focuses on whether the correct legal process was followed, not whether the decision itself was "right".

ULTRA VIRES: 'Beyond the powers'. The Supreme Court rules that an action taken by a public body exceeds that body's legal authority, and is invalid. It is also a criticism levied at the UKSC when politicians have not been happy with a decision.

Sovereignty

UKSC act as a check on Executive & Legislative powers. No PM or Parliament has ever refused to consent to a SCUK decision, but the extent of influence of SCUK is limited by the fact that **Parliament is sovereign** and only they have the power to make or unmake laws. UKSC decisions act as advice according to current law but **Parliament can create a new law to "legislate around" a SCUK decision.**



Judicial Review & Human Rights Act 1998 (European Convention of Human Rights ECHR)

- Begum v Home Secretary 2021 (Supported Government)**
Shamima Begum, UK born woman, at age 15 travelled to Syria to join Islamic State in Iraq (ISIS). Her intention to return to England in 2019 resulted in a public debate about the handling of returning jihadists. The Government wanted to revoke/ cancel her passport and citizenship. The Supreme Court unanimously supported the Home Secretary's appeals in each of the proceedings, and dismisses all Begum's cross-appeals at the Special Immigration Appeals Commission. Begum argued that the ECHR (Article 4) protected her as she was tricked into going to ISIS similar to child trafficking. **SCUK ruled that the Home Secretary's concern of national security overruled the suspicion of child trafficking.** ECHR. Begum's new born baby died in a Syrian refugee camp.
- Universal Credit & "Two Child Limit" Case 2021 (Supported Parliament's independence on Legislation / Public Policy & Principle of Separation of Powers)**
PM Johnson's Government wanted to limit child benefits to 2 maximum. Claimants against this claimed this was discrimination vs larger families (Article 8 ECHR - right to family life). **SCUK ruled that public tax funds and social economic policy was for politicians to rule, not judges = SEPARATION of POWERS.**
- Rwanda Case 2023 (Ruled against Executive Action)**
SCUK overruled Executive action using the ECHR (Article 3- prohibition of torture, inhuman treatment). Direct statement that ruled Executive action to **deport migrants to Rwanda were "unlawful"** as it had a recent history of genocide and inhuman practices. PM Sunak would **bypass the decision by passing new Rwanda legislation** through Parliament in 2024.
- Al Rawi and others v The Security Services and others (2011) (Ruled against Government department)**
The case was brought by former inmates at Guantanamo Bay prison, who claimed that the UK security services had contributed to their detention and mistreatment. The Government wanted to use "secret evidence" that the other side would not see at trial. Al Rawi claimed this would be an unfair trial (Article 6 ECHR). The SC rejected the argument of the Government & security services stating that it breached fundamental UK principle of a fair trial. **The UKSC had outlawed the use of secret evidence obtained by the intelligence services to conceal allegations that detainees were tortured.** SCUK advised that Parliament would need **new legislation if they wanted to change this aspect of law.** They did.

Issues of Sovereignty, Constitution & Powers

- Scottish Referendum Case 2022 (UKSC ruled with UK Parliament v Scottish Government)**
Scottish Government had wanted to pass a law for a second Scottish Independence Referendum without UK Parliament's consent. SCUK unanimously voted against it as this power and issue is a RESERVED POWER of CONSTITUTIONAL SOVEREIGNTY for UK Parliament only.
- Gender Recognition Bill 2023 & Definition of Sex Case 2025 (UKSC ruled with UK Parliament v Scottish Government)**
Scottish Parliament had tried to create a gender recognition status for trans people that would contradict gender status in UK law, Equality Act 2010. UKSC ruled that the Scottish Parliament had acted "ULTRA VIRES" by trying to change definition of gender without consulting UK law. UK Parliament had earlier VETOED the Scottish law (first and only time) and the Scots Government lost the appeal in a Scottish court of session. **UKSC also ruled that sex was determined by biological sex, not certified genders.** The Definition of Sex Case 2025, ended the legal arguments of any future gender recognition issue and the position of Scots. Could be argued this was a case of JUDICIAL ACTIVISM as SCUK had set out policy within Judicial Review.
- Overriding Devolved Parliaments on Brexit 2018 (The Scottish Continuity Bills) (UKSC protected the Constitutional Sovereignty of UK Government v Scottish Parliament)**
Scotland tried to maintain EU laws and systems by passing a Continuity Bill in 2018. UK Government objected as Foreign Policy and International Treaties were the RESERVED POWER of UK Parliament. SCUK agreed.
- Miller Case 2 (2019) (UKSC ruled against PM Prerogative Powers)**
Does the PM have the right to prorogue (disband) Parliament when an important matter of debate & CONSTITUTION is about to take place during the "forced break"? (Brexit & EU withdrawal)
SC ruled that the PM (Boris J) had acted "**unlawfully**" and had **misled the Queen** in asking for a prorogation as there was "**no good reason**" for proroguing Parliament for such a long time during key point of **Brexit / EU Withdrawal** Negotiations. It protected the right of PARLIAMENTARY SOVEREIGNTY to debate issues of major constitutional change. **PM Johnson called a PARLIAMENTARY ELECTION in response to block more debate.**
- HM Treasury v Ahmed 2010 (UKSC ruled against Government but Govt passed legislation to bypass ruling)**
The aim of this case was to prevent financing for terrorism. Three brothers had been accused of helping fund terrorism and the police needed to seize their assets before the trial. This was like punishing someone before they were proven guilty. The Government had broken the "**Principle of Legality**"
UKSC had to consider the balance between individual rights and national security - The government unlawfully seized the assets anyway from the individuals, the SCUK responded to this by ruling the government had acted ULTRA VIRES but the **government showed their sovereignty by pushing new primary legislation to authorise their actions.** (Terrorist Asset Freezing Act 2010 - PM Brown)





COMPARISONS of UK v US Supreme Court



Examine the differences between the UK and US Supreme Courts in terms of membership and tenure

CULTURAL THEORY DIFFERENCES in APPOINTMENTS - difference between political independence (UK) v political appointment (US)

UK - Supreme Court judges are selected by the Judicial Appointments Commission, approved by the Lord Chancellor, and recommended to the Monarch by the Prime Minister before being appointed to the Court. There is a mandatory retirement age of 75.

USA - Prospective Supreme Court Judges can be anyone nominated by the President, and are appointed and sworn in if they receive a majority of votes in their favour in the US Senate. They are appointed for life, or until they retire.

Examine the role played by judicial review in the UK and US Supreme Courts

STRUCTURAL DIFFERENCE in SOVEREIGNTY (Parliamentary Sovereignty in UK vs Constitutional Sovereignty in US)

UK - Judicial review is beholden to Parliamentary sovereignty, and the UKSC decides whether the law is being followed. In *HM Treasury v Ahmed* (2010), the Supreme Court found the Government acted 'Ultra Vires', however the Government then enacted legislation to remedy this

USA - Judicial Review, established in *Marbury v Madison* (1803) gives the Supreme Court the power to declare acts of Congress unconstitutional and invalidate executive actions, giving it a powerful check against the power of the legislature and executive branches. For example, *Brown v Board of Education* (1954) overrode Congress and desegregated public schools across the USA.

Analyse the differences in origins of the UK and US Supreme Courts

CULTURAL THEORY IN DIFFERENCES OF ORIGINS - Fusion v Separation of Powers

UK - The UK Supreme Court grew out of the House of Lords, gaining independence in the Constitutional Reform Act 2005. This was done to ensure judicial independence and neutrality, and remove it from the legislative branch (Parliament). This was the evolution of a system of fusion powers to a separation of powers.

USA - The US Supreme Court was established under Article 3 of the US Constitution (1787), and ensured a separation of powers from the Executive and Legislative branches of Government. It gained the power of judicial Review through the case of *Marbury v Madison* (1803).

Analyse the effectiveness of the UK and US Supreme Courts at protecting civil rights

STRUCTURAL DIFFERENCE in SOVEREIGNTY (Parliamentary Sovereignty in UK vs Constitutional Sovereignty in US)
CULTURAL DIFFERENCE in political nature and power of judicial review in SCOTUS v the procedural and advisory nature of UKSC)

UK - The UK Supreme Court can find if the executive or legislative has taken an action that is beyond the powers of the public body (*ultra vires*) such as in *Miller*, and interprets according to the Human Rights Act, however has no power to protect civil rights by itself as it cannot override primary legislation.

USA - The US Supreme Court can use its power of Judicial Review established in *Marbury v Madison* (1803) to protect civil rights enshrined in the US Constitution. Historically, the court has expanded civil rights, such as in the case of *Brown v Board of Education* (1954) and *Obergefell v Hodges* (2015), however more recently has removed rights, as in the case of *Dobbs v Jackson Women's health* (2024) which removed national abortion rights.