

What are the differences between the Judiciary in the UK and the US?

One of differences between the judiciaries is the branch of government responsible for interpreting and enforcing the law. In the United States the judiciary is known as the Supreme Court and in the UK it is known as the Judiciary. This essay attempts to highlight the differences in both of the judiciaries.

One of the key differences in the judiciaries of the US and the UK is that the Supreme court is seen as more of a political body, with courts being described as either conservative or liberal.

In the UK there is an argument that judges are meant to be non-political and are neutral which means there is an absence of bias amongst judges, either in favour of or against a political party, providing for independent decision making by the judiciary. Judicial neutrality important in order for justice to be fair and impartial. Having said this, most judges selected are from public schools and Oxbridge backgrounds, leading many to believe that they're conservative in their outlook.

Another difference between the courts is that judges are appointed to the Supreme Court through presidential nominees and the senate confirms this decision. The nomination process tends to be rather political as many presidents tend to appoint their political allies to gain a political advantage, such as Nixon whom tried to change the direction of the SC to make them appear more conservative. In addition, many judges tend to be politicians prior to becoming judges. The senate also reject judges based on political grounds, such as Robert Bork who was seen as extremely conservative. By contrast, Judges are chosen based on merit by the Judicial Appointment Commission, based on merit.

Many perceive the Supreme court as the more powerful as the two judiciaries through its checks and balances of the other two branches. The power of 'judicial review' that is granted to the courts (established after Marbury vs Madison) means many believe that the SC often make law. An example of the Supreme Court using judicial review is when they declared segregation of schools unconstitutional in the Brown vs. Education board of Topeka. When the Supreme Court declares a government law or action unconstitutional, the action/law must be set aside and has no force. However, it relies on the other two branches supporting and enforcing its decisions. For example, it took 20 years to enforce Brown vs. Board.

By contrast, judicial review in the UK cannot undermine parliamentary sovereignty. If the judiciary decides the government has acted beyond its powers, a government can change the law accordingly allowing it to do the same thing in the future. In other words, although the judiciary in the UK makes the government more accountable for its actions, it doesn't infringe parliamentary supremacy. However, since the Human Rights Act (1998) came into force judges have been unafraid to declare government policy incompatible with the European Convention on Human Rights, particularly in relation to terrorism. In 2004 the Law Lords ruled that indefinite detention without trial for terrorist suspects breached the Human Rights Act.

