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“An emphasis upon the differences between the UK and US constitutions neglects their more fundamental similarities.” Discuss.

The constitution of a state, at its most basic, can be described as the fundamental principles from which it is governed, usually defining how power is split up within it and thereby constructing a framework within which it operates (www.oed.com). In this essay, I will first provide a brief summary of the UK and US constitutions and then attempt to outline the key differences and similarities between the two and discuss whether the differences really do pale in comparison with the fundamental similarities.

Queen Elizabeth the 2nd once said, “The British constitution has always puzzled me” (Hennessy, 1996) and this certainly becomes understandable when studying it. The traditional UK constitution is un-codified. This means that it lacks the primary source of a clear written document and is derived solely from four sources- statute law (laws made and passed by the government), common law (legal principles which have been developed and applied by the courts), conventions (rules of behaviour which are considered binding by those who operate the constitution) and works of authority (these are written works used for guidance on aspects of the constitution) (Jones et al., 2004). Statute law has precedence over the other three sources. The traditional constitution is therefore based upon four essential components; 1. parliamentary sovereignty, which makes parliament the supreme law making body and gives it the absolute legal right to make the laws it chooses, 2. the rule of law, which says that laws must be interpreted and applied by an impartial and independent jury with fair trails and imprisonment only through the process of law, 3. the unitary state, which says that power resides in national authority and is centralised and 4. parliamentary government under a constitutional monarchy, meaning that parliament has a supremacy over the monarchy but the Queen still has certain powers (Jones et al., 2004). Since the 1970’s the traditional constitution has been challenged and had two major changes, which I will talk about later.

The US constitution, unlike the UK constitution, is codified. It has a clear written primary source and one could say that its secondary source is the interpretation by the Supreme Court, which can change the meaning of specific phrases written in the primary source (Singh, 2003). A central principle to the constitution is that government should be limited and the powers split up. To insure this, the institutional arrangements are set up in a federal way, with matters of direct relevance to the people in the hands of each state and local politicians (Singh, 2003). The government is separated into the legislature (Congress), the executive (President) and the judiciary (Supreme Court) to provide checks and balances for the prevention of tyranny and the misuse of power. Finally, there is a Bill of Rights, which restrains governmental excesses through written documents and gives clear rules which are supreme over ordinary legislation (Singh, 2003).

The first noticeable difference between the two constitutions is that the US constitution is codified and the UK constitution is not. Although this may not seem to be a fundamental difference, there is a very symbolic nature attached to the relatively brief (around 4000 words) US constitution which the UK constitution lacks and it could be said that this is partly down to this difference. In America, the constitution has become part of what some call a 'civil religion', as many see it as playing a major role in defining Americanism and helping to bring a society with so many different ethnic groups together (Singh, 2003). In the US, there is certainly a strong sense of attachment by the people to their institutions and constitution which arguably is not as obvious in the UK. The fact that the UK constitution is not a clear document and is derived from different sources may well attribute to this.

Other differences are to be found in the flexibility of both constitutions. In the UK, the constitution can be changed by parliament passing a law. In the US amending the constitution is a lot harder, as substantial majorities are needed in Congress and in the individual states to amend the constitution. This is why there have only been 27 amendments in total, with only 17 of them in the last 200 years, an astonishing figure at first sight (Singh, 2003). Although this may seem inflexible, the constitution has been able to adapt to the major changes and developments in the USA over the last 217 years

by the 'informal changes' mentioned before. An example of this was seen in the cases dealing with segregation, which the Supreme Court first ruled as being compatible with the constitution (1896) and then ruled as incompatible (1954). Here we see that both the UK and US constitutions are flexible but acquire their flexibility from different sources.

Powers are separated differently in both constitutions. The UK constitution gives more power for the executive to legislate than the US equivalent. This means that where as it is possible for the judiciary in the US, i.e. the Supreme Court, to invalidate laws passed by Congress and the President as being 'unconstitutional', this is not possible in the UK, where every law has an equal status and the constitution can be changed by ordinary legislation. The UK constitution is also far more centralised than the US constitution. Local authorities in the UK only have as much power as the government chooses to give them, where as states in the US have a certain degree of sovereignty, made very obvious when one views the different laws in one state compared to another, capital punishment being a prime example.

Unlike the US constitution, there have been major changes to the UK constitution since the 1970's. The first major change came when the UK joined the European Union in 1973. This resulted in statute law, formerly unchallengeable in the traditional constitution, being made inferior to European law, a supranational form of law. This supranational power has developed significantly, with the UK government becoming more constrained with the Maastricht, Amsterdam and Nice treaties, the incorporation of the European Convention of Human Rights into British law in 1997 and the possibility of a European constitution coming in the next few years (Jones et al., 2004). Of course, it would be possible for the UK to repeal the European Communities act and leave the EU but this would be highly controversial and seems very unlikely (Jones et al., 2004). There is no supranational body which governs above the US. More major changes to the UK constitution have been made since the labour government came to power in 1997. UK politics has become less centralised since the devolution of powers to Scotland, Wales and Northern Ireland and the election of a mayor of London. In this way, one could argue that the UK and US constitutions have become more similar.

As one can see from the above, there are clearly many differences between the two constitutions. One has to say, though, that most of these differences are not in the ideology upon which the constitutions are based but often more on a technical level. For example, it does seem logical that the USA would be a more federal country than the UK due to the sheer size of the place. California, for example, has more than half the population of the UK (www.statistics.gov.uk, www.usgovinfo.about.com). Fundamentally, though, it has to be said that the constitutions are based upon similar ideas. Both, ultimately, are based upon the ideology of democracy, avoiding tyranny and protecting the individual's rights. Most parts of the US Bill of Rights, for example, can be found in various acts passed by the UK parliament, like the 1679 Habeas Corpus act which forbids imprisonment without a trial (www.history.uk.com). The ideological similarities become very clear when one compares either constitution to one of a totally different form of government. An Islamic Republic like Iran, for example, has a constitution which states that "The Islamic Republic is a system based on belief in... the One God ... His exclusive sovereignty and the right to legislate, and the necessity of submission to His commands" (www.iranonline.com/iran/iran-info/Government/constitution-1.htm). This is a huge difference to anything in the UK or US constitution and, coming back to the title of this essay, the fact that there is not such a major difference like this between the two shows that yes, both the US and the UK constitution certainly do have fundamental similarities.

Bibliography

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