

To what extent do the constitutions of the USA and UK differ?

According to Hague and Harrop (2001, pp 187), a Constitution sets out the formal structure of the state, it specifies the powers and institutions of central government, and its balance with central authority. It lists the rights of citizens and, as such, creates limits on and duties for the government. So a constitution is a set of rules and principles. It defines the power between government and the governed. It's the centre and foundation of any democratic society.

The constitution of the United States of America is the supreme law of the USA and, together with the Bill of Rights, which guarantees a citizen's political and civil liberties, is the world's oldest written constitution still in force today. It contains approximately 4000 words and was ratified in 1788 and inaugurated in 1789 (Almond et al, 2006, pp 744). The US constitution is firmly entrenched and most Americans know their constitution outlining their rights as citizens and the limits of their government. Because of this, any amendments to the US constitution needs a two third majority in both houses and the approval of three quarters of the states that make up America. It symbolises the highest law in the land and is binding and limiting.

In contrast, the UK constitution is uncodified, in that it is comprised of several written and unwritten sources. It exists in statute law, which is created simply by a majority in both houses of parliament (www.direct.gov.uk). Such statutes include The Parliament Act of 1911 which established the limits placed on the House of Lords, the Criminal Justice Acts, Local Government Acts and the Human Rights Act of 1999. The UK constitution also exists in common law which has developed through tradition and custom over time; royal prerogative, which were powers originally exercised by the monarch; various conventions; authoritative works and political literature written by constitutionalists A V Dicey and Walter Bagehot, and more recently EU law. This allows for a much more dynamic constitution to evolve and adapt to the changing circumstances of the United Kingdom for example, the development of the party system, the decline in monarch power and the increased power of the cabinet. The sheer flexibility of the UK constitution has also allowed for the development of the European Union and for EU legislation to be incorporated into the UK constitution, which has dramatically altered the UK political system moving ever closer to being a federal state in the European realm.

Britain is said to be a unitary state rather than a federal one like the US. The British Westminster government is highly centralised meaning local authorities have very little influence on local policy; simply following direction from Westminster. The

devolved assemblies in Scotland, Wales and to a lesser extent, Greater London have varying degrees of power devolved from Westminster and perhaps resemble a more federalised system, but just as easily as this power can be given it can be suspended as is the case of the Northern Ireland Assembly. The UK constitution is primarily concerned, as in the US, with the separation of powers within the three branches of government. The separation of powers is somewhat different in the UK to that in the US. The executive branch of government in the UK is drawn from the legislature or Cabinet from the majority party in the House of Commons. In the UK, parliament is accountable to the people. The executive is accountable to parliament despite it being the dominant branch of government. This has led to many criticisms of the unconstrained power of the government in the UK, often describing it as an elective dictatorship. Any party with a majority in the House of Commons could pass any bill because of this concentration of power within the executive branch. This criticism has led to a number of changes in UK constitutional practice, seeing an increase in power of departmental Select Committees, devolved assemblies and regional and local referendums, all of which are designed to reduce executive power and decentralise decision-making. Legal sovereignty is also said to reside with parliament but there is some debate over how much sovereignty has been transferred to the EU as some EU laws are superior to UK laws.

Unlike the US, Britain has no enforceable Bill of Rights in its constitution. However the European Human Rights Act does go some way to offer the British citizen with a degree of protection if they feel their rights are violated in some way. This is at the highest level however and initially Brits must appeal to Westminster in the first instance.

Perhaps the most obvious difference between the US and UK is how the constitution in the US produces the federal system of government as opposed to the UK unitary system. America's horizontal distribution of power provides for a decentralised political system. Power is shared from national government to state government with each state having its own legislative authority, tax raising and military power. The US constitution provides that the federal state and local government all have constitutionally guaranteed powers. The constitution is concerned about the separation of powers within the government and there are checks and balances in place to ensure no one serving politician has power over another thus preventing a confluence of power in one institution. All institutions are accountable to someone else. Executive power is given to the President, legislative power to Congress and judicial power to the federal courts headed by the Supreme Court. (Almond et al, op cit, pp 746) The President has the power of appointment but the Senate must approve these appointments. The President's budget and appropriations for the

executive departments have to be approved by Congress. The President has the power to draw up a foreign treaty but, again, this must be approved and ratified by the Senate. The President can make proposals on legislation but only a member of Congress can turn it into law. Further, the President can veto a piece of legislation from Congress but if it were to gain a two thirds majority in both houses, it would be passed regardless.

The UK constitution is parliamentary where the executive is derived from parliament. Therefore the government is accountable to parliament and all ministers are members of either the House of Lords or House of Commons. The USA constitution is presidential, whereby the President is head of the executive but **not** a member of the legislature, and is separately elected. There is an emphasis on the separation of powers within the US constitution. The UK constitution does not create this separation of powers. Although in the UK the judiciary is largely independent, members of the executive are members of parliament making them indirectly part of the legislative branch.

Whilst the UK constitution is gleaned from a variety of sources both modern and historical and is very much open to interpretation, the US constitution's function is very clear and straightforward. It is set out in seven articles. Article 1 outlines the

composition, method of election and powers of Congress; Article 2 sets out the method of election and powers of the President; Article 3 provides for the establishment of the Supreme Court and, to a certain extent, the scope of its jurisdiction; Article 4 defines citizenship and the status of the union; Article 5 outlines the various procedures for amendment; Article 6 outlines the supreme authority of the constitution and Article 7 provides for the original ratification of the constitution for the states.

The constitutions of the USA and UK are, superficially at least, quite different. Britain is said to be a unitary state where the Westminster government has ultimate power, but with nationally devolved power given to the various assemblies within the UK it starts to resemble a federal system in part. The power is still centralised, however and can be removed from the assemblies at any time. It is not divided like the USA which is a federal republic that closely adheres to the separations of powers outlined in its constitution in order to prevent the domination of one branch of government over another. The US constitution is indeed written and codified into one formal document containing the Bill of Rights and other various amendments. Whilst the US constitution would seem quite inflexible, it has through a variety of mechanisms, adapted to the changing needs of American society. These mechanisms are formed through various legislation, executive agreements and judicial reviews which,

although not as solid as the constitution, are nevertheless treated with the highest regard. The UK constitution is formed from a variety of sources including statute and common law and various conventions but is unwritten and not codified in a single document. It appears more flexible than its US counterpart and has adapted to the changing needs of society quite easily. The US constitution clearly states a separation of powers in government, the UK's does not. The political system that each constitution produces, again superficially appears to be vastly different. With the inclusion of EU law into the UK's constitution and devolved assemblies in Scotland and Wales, the UK unitary political system starts to resemble a much more federal system like the US.

Word Count 1,527 excluding title and references

References

Hague, R and Harrop, R, 2001, Comparative Government and Politics: An Introduction, 5th Edition, London, Palgrave.

Almond, G, Dalton, RJ, Bingham Powell Jr, G, Strom, K, 2006, Comparative Politics Today, 8th Edition, USA, Pearson Longman.

www.direct.gov.uk – Accessed various times throughout February 2006.

