

A constitution is a set of rules and principles on how a country is governed. Competition for political power in most countries is fierce, so rules are needed to control the competition for power to ensure it takes place within satisfactory limits. The British Constitution is unwritten; there is no single codified document. Unlike the Constitution of the United States of America, which is written or codified.

Professor KC Wheare defines the constitution of a state as:

...the whole system of a government of a country, the collection of rules, which establish and regulate or govern the government. (Barnett, P7)

An older definition, that of Thomas Paine, reveals a more complex set of ideas:

A constitution is not the act of a government, but of a people constituting a government, and a government without a constitution is a power without right...A constitution is a thing antecedent to a government; and a government is the only creature of a constitution. (Barnett, P7)

To look at the Constitution of the United Kingdom requires an awareness of a variety of historical, legal, and political factors, which, have gradually evolved over centuries. It would be difficult to understand or appreciate the British Constitution, as it exists today, without attempting to gain knowledge of its history, evolution and development.

Although constitutions are thought of as a relatively recent development, and the British Constitution is largely uncodified, it is made up of major statutory sources. These sources are separated into two categories. One category of legal sources, the other Non-legal. The evolution of the British Constitution and its Legal sources can be traced back to the Bill of Rights of 1689 and the Act of Settlement of 1701, it can even go as far back as the Magna Carta (1215).

For the United Kingdom, the Magna Carta or “The Great Charter” (the translation from Latin) was in effect Statute Number One. It was the foundation for British **and** American common law. It was the Royal Charter of political rights given to insurgent English Baron’s by King John. In reality, he was forced to sign this peace treaty accepting the Baron’s reforms. The Magna Carta was the first formal document that told that the Sovereign was as much under the rule of law as his people. The most important clauses’ established the basis of habeas corpus.

The British Constitution, in contrast with other states, is the product of mostly peaceful evolution. It was the Plantagenet period that saw three major conflicts at home and abroad. It was from this period Parliament emerged and grew, while the judicial reforms that begun in the reign of King Henry II were continued and completed by Edward I.

When the Bill of Rights was passed in 1689, it specified that laws could only be made or repealed by Parliament and not by the Monarch alone. Parliament has gradually taken control over many of the powers previously exercised by the Monarch. The Monarch now has a constitutional role, which means that their actions are governed by convention. It is convention and tradition, along with Authoritative works from Walter Bagehot, Erskine May and AV Dicey that are the Non-legal sources of the

uncodified British Constitution. Bagehot says that the Monarch can advise, counsel and warn. To give an example of convention; more recent monarch's including the current Queen Elizabeth II and her immediate family; do not get involved with politics. They have the right to vote just like other citizens but choose not to by way of convention. The last time a Monarch became involved in political issues he was executed. King Charles I believed in the divine right of kings, he was a deeply religious man favouring the High Anglican form of worship. He also spent a lot of the crown's money on works of art and painting collections. He found himself having frequent disagreements with leading citizens over religion and expenditure. In March 1629, Charles dismissed his fourth parliament. His opponents later called this period 'the eleven years tyranny'. It was his measures to raise income without parliament that made him unpopular with royal followers. Parliament was recalled with requests for war funding although this was queried and only lasted a matter of weeks. In May 1646 Charles placed himself in the hands of the Scottish Army. This led to the second civil war in 1648, which resulted in Cromwell's victory. It was the army that decided to put Charles on trial and that he must be executed, which he was on 27 January 1649.

The Constitutional Monarchy as we know it today, has developed from the 18th and 19th century. Steadily day-to-day power came to be exercised by ministers in cabinet. 'Queen in Parliament' is the formal title of the British Legislature, which consists of The Sovereign, the House of Lords and the House of Commons. It is a Bicameral legislature, consisting of the two chambers the House of Lords and the House of Commons. Other countries with a Bicameral legislature include the USA, France, Ireland and South Africa. The opposite of this is a unicameral system, in which the legislature consists of one body only. You will find this system in New Zealand, Finland and Denmark.

The House of Lords has traditionally consisted of the nobility of Britain, including Bishops, who are appointed. The House of Lords is currently in a period of reform where peerage will play a much smaller role in the system. A commission that represents the major political parties and the House of Lords will now appoint 'Life peers'. The Prime Minister is Britain's closest form to the American President. Although our monarch and the American President are both heads of state. The House of Commons has the Majority of the current political party in power. In the words of Walter Bagehot:

'You can split the dignified parts and the effective parts'.

The Monarch is required by the government to assent all bills. This is called The Royal Assent. This is a process that allows a bill to become a statute. The role of the Monarch in this process is in fact by convention only. It would be an aide that 'rubber stamps' an item, which will then become legislation. There has not been a refusal to sign since Queen Anne in 1704.

There is no true separation of powers in the British parliamentary system between the legislative, executive and judicial parts of the government. The legislature creates law through parliament; the executive applies law through the government and the judiciary who interpret the law. As they are not completely separate we call them 'fused'. For example the role of The Lord Chancellor, who is the head of the

judiciary, a cabinet member and a member of the process as he is the Speaker in the House of Lords. Although they all perform separate functions, there is no strict separation, such as in the United States.

In contrast to the evolution of The British Constitution, The Constitution of the United States of America comes from revolutionary times. The 4th of July is celebrated in the United States of America every year. It is an immense celebration in honour of the date of formal acceptance of The Declaration of Independence in 1776. Life in 18th century America was harsh, the colonists, most of whom were from England, were fiercely loyal to their colonies, land and each other. The colonists were loyal subjects of the English King, George III, although this was short lived. In a mere thirteen years these so called loyal subjects had turned into rebels, intent on expelling Britain from the world it had dominated. The colonies were intent on their freedom, tired of having to share any wealth and the rule of an oppressive Monarch. It was the Proclamation Act of 1763, the Sugar Act and then the final pivotal law, the Stamp Act that started the first smouldering fires of revolution. With continuous pressure in the form of new taxes from the British parliament and demand of payment after the events of the Boston Tea Party, the fires started to rage. The first continental congress met in Philadelphia in 1774. Canada was invited to join in with congress and the Continental Association was established. It was a pamphlet by Thomas Paine called 'common sense' that was to convince the people that independence was for them. A writer called Thomas Jefferson was asked to write a declaration, which was accepted by a vote in congress and was formally accepted on 4th July.

All legislative powers herein granted shall be vested in a congress of the United States. (US Constitution)

The US constitution is a single codified document. US congress like the British Parliament is also a Bi-cameral system with two chambers. A positive vote from both is required to approve legislation. The Senate is composed of 100 members, two from each state, who are elected to serve a term for 6 years. The election of Senators is now a function of the people. The House of Representatives comprises of 435 representatives. The number representing each state is dependent on population, although every state is entitled to at least one. The people elect members for two-year terms. The Vice President of the United States is the presiding officer of the Senate. In his absence duties are taken over by a President pro tempore. The Senate and the House of Representatives both have equal powers however, the Senate is the senior body and has specific powers to investigate and to approve or disapprove presidential appointments to the government, federal civil service or courts, and to approve or disapprove treaties. In contrast the House of Lords perform important functions, complementary to, not different from, the House of Commons. It can provide a different subject viewpoint, and act as a brake on the House of Commons.

The separation of powers in the USA is a fundamental constitutional principle. Articles I through to III place each of the basic powers of government into separate branches. The legislative power is vested in Congress, the executive power in the president and the Judicial in the Supreme Court and other federal courts. Where as the powers in the UK are fused, there is a strict separation of powers in the US. This is to ensure protection against tyranny. Although conflict between them can occur, as in Marbury – v - Madison (1803). Baron Montesquieu's view was that if you keep the

powers separate, the democracy will survive and there will be no dictatorship. Most western constitutions have taken this on to some extent.

"[t]he executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, . . . together with the Vice President, chosen for the same Term..." In addition to the powers set forth in the Constitution, federal law has conferred upon the President specific authority and responsibility covering a wide range of matters. (US Constitution)

In the United States of America constitution is sovereign. The Presidential Executive System is there by constitution. When the President is elected he will swear on oath to uphold the constitution. The President is not a member of congress. He serves as Commander in Chief of all United States Military Forces. In comparison, the British Prime Minister has a position by convention. He is an MP, with no specific job description, equal to his honourable colleagues. The Prime Minister is known as 'Primus Inter Pares', the first among equals. Once appointed by the Queen, he will he appoint his cabinet, which is the core of British Government. As there is no written British Constitution, many powers of the monarch have passed to the Prime Minister. We now have a Prime Ministerial Style of government. It could be said that some believe this role is changing into a Presidential role. Like the US President, the British Prime Minister is a World Leader. Currently standing 'shoulder to shoulder' with America sending his troops to war. The Executive has an immense power. The British Prime Minister makes important decisions in cabinet meetings. His ministers may well disagree on issues; they are given full opportunity to give their own opinions, although they agree to Cabinet Collective Responsibility. Details of a cabinet meeting are kept secret for 30 years. In the United States, the President will make many important decisions although it is likely he delegates many more tasks.

The basic function of any written constitution will define how the constitution itself can be amended. It will establish the rights of the citizens whilst defining the nature of citizenship. It will define the boundaries and territories governed by it and also on relationships with external bodies. It will also contain rules with regard to the three main elements of a political system, the relationship between central and local government, the institutions of central government and between the government and the governed.

Differences between the Unitary (excluding recent devolution) Constitution of the UK and the Federal Constitution of the US are clear. Laws in the US have to be written from the main constitution. All States in the US have different laws and beliefs. Each of the 50 states has its own legislature; it is the Governor who decides the laws. For instance the Death Penalty is legal in some states and not in others. It can be hard to change law in the US because of 'entrenchment'. A written constitution is a rigid document. Any changes in law need a two-thirds majority in each house, making urgent changes harder to put into place. If a change to the constitution itself is required, three-quarters of the states support is necessary.

The British Constitution is constantly being added to by the signing of international treaties and agreements, such as with the UN and NATO. The most significant new source of the Constitution more recently has been the EU. The Treaty of Rome was signed in 1972, effectively gaining superiority over parliamentary sovereignty. The UK could leave the EU at any time it wishes, although this is unlikely. An example of this loss of power would be the Factortame Case (1990) where the European Court made a ruling, which overrode the House of Lords, the highest court in the UK. If EU legislation requires it, the British Courts have the right to review/suspend statute law. Any judgements from the European Court of Justice become part of UK legislation. By being uncodified there is no entrenchment, it can be flexible, broad and general as circumstances and society changes.

The government also showed commitment to human rights by the passing of the Human Rights Act 1998. Unlike those who's governments have a written constitution or a Bill of Rights (the USA added ten rights), the Human Rights Act helps people to be aware of their freedom, adding key rights into UK law.

A constitution for the EU was agreed in Brussels on 18th June 2004. It was signed recently at the end of October 2004. The constitution brings together for the first time all of the treaties and agreements on which the EU is based. It will define the power of the EU, stating where the member states retain their right of veto. For instance, direct taxation, foreign and defence policies and the budget. It will also define the role of the EU constitutions. The signing of the EU constitution has caused outrage amongst the opposition Conservative Party, particularly outspoken was its current leader Mr Micheal Howard. Concerned that we would become part of a 'United States of Europe' and the effect it could have on British businesses. It will however allow those states that wish for closer relations to do so, for instance the states that have joined the single European currency, The Euro.

The EU Constitution will only become law if it is ratified in all 25-member states. This must be within two years of it being signed. If this progressed it could be possible to have a common foreign policy. Particularly useful as we live under constant threat from terrorism, would be a common defence policy. With many in disagreement over the war in Iraq for example, and the best defence and protection from terror, one common defence policy is unlikely.

Watch this space.