

## **“The Main Difference Between the UK And US Constitution Is That One Is Flexible And The Other Is Not” Discuss**

A Constitution is a set of rules and principles by which a state is governed and how power is distributed. It defines the power between government and the governed, between different section of government and between central and local government. The constitution is the centre and foundation of any democratic society. Hence, it is vitally important.

The US has a written codified constitution that means, is all contained in one document, to which, amendments have been and can be made. The US constitution was written to last and thus, it is very difficult to alter. It requires a two-thirds majority in the Senate and House of Representatives, Presidential approval and three quarters approval of the state legislatures. When the constitution was set up it had the idea of Federalism at its heart. This was to determine the power of the state with power of the national government. The idea was to leave the states with as much power as possible but remove enough to create a national government. This is why three quarters of the state legislatures must agree with any amendments. There have been only 27 amendments, 10 of which were the Bill of Rights, which, guarantee an individuals political and civil liberties.

The US constitution is very concerned with the separation of powers within government and there are many checks and balances in place to help ensure no one section of government obtains too much power. 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 it has to be ratified by the Senate. The President can propose legislation but a member of Congress can only insert it. The President can Veto a piece of legislation passed by Congress and thus block it. But if it gains a two-thirds majority in both houses it can be passed anyway. But in over a 1000 times a President has vetoed legislation Congress has only managed to pass it on 10 occasions. The judiciary can review any decision made by any section of government and deem it unconstitutional. It can also interpret the constitution. But Congress can pass legislation or constitutional amendments to shape and mould the way in which the Supreme Court should interpret. The President also appoints Supreme Court judges and can extend his political feelings in his nominations. But they must be as said approved by the Senate. Within Congress, the House of Representative has the power to lead the way in legislation on tax and finance. The House of Representatives draws up the articles for impeachment and the Senate acts as the court in an impeachment.

But the US constitution is continually evolving even though amendments are not being made. In 1803 Marbury v. Madison, three principles were established. 1. The Supreme Court has the right to undertake judicial review of cases brought before it in which constitutional principles are at stake. 2. If the Supreme Court declares a law to be unconstitutional, it has no force and must be set aside. 3. If there is a conflict between any ordinary law and a constitutional law, the latter must prevail.

At this point the Supreme Court was empowered with judicial review. This meant it could review any decision made by any part of government (apart from constitutional amendments) and deem them unconstitutional. They now are in effect shaping the constitution by deeming certain things unconstitutional. They also have the power of constitutional interpretation which allows them to apply the constitution to present days situations. These interpretations can have huge effect across the whole of the US. Brown v. Topeka Board of Education 1954 saw the Supreme Court take huge steps by

desegregating schools and in areas where this was not respected troops were sent in to ensure it was carried out. Roe v. Wade 1973 the Supreme Court made it legal for women to seek abortion in the first three months of pregnancy.

To meet the day to needs of the US in ever changing circumstances legislation can be passed to deal with issues that arise. They only need Congressional majority in each house and Presidential approval. If it does not get Presidential approval it can still be passed with a two-thirds majority in both houses. Legislation is not as firm as constitutional amendments but is respected as such unless Congress or the Supreme Court changes it.

The constitution does not mention the direction or approach of how the US should take foreign policy. But two foreign policy declarations (doctrines) have been made which are highly regarded, and, are widely accepted and as such are accepted almost like the constitution. The Monroe Doctrine 1823 declared that western hemisphere affairs were the rightful concern of the USA and that it would, henceforth, claim the right to intervene to maintain order in that part of the world. Evidence of its use is best seen in the blockade of Cuba in 1963 by John Kennedy in order to force the removal of Soviet missiles.

Informal amendments are another example of constitutional flexibility. Typical example is executive agreements. Pacts or treaties made by the President with foreign powers. Not classed as treaties, they require no approval of Congress. It provides the President with some flexibility in foreign relations. These are regarded as conventions, which are like a gentlemen's agreement (also like the House of Representatives leading the way in taxation and finance legislation). Even though these conventions and legislation are not in the US constitution they are never the less very powerful and unless changed are literally regarded as binding as the constitution.

The UK constitution is uncodified in that there is no single document that with it in. But the UK does have a constitution but it is made from several sources. These are statute law, which is created easily by a simple majority in both houses of parliament. Common law is law that is not written down and quite often has slowly developed over many years, but it is accepted and upheld by the courts. Statute law has quite often replaced common law making it more precise and provides it with greater force as it is passed by parliament. Like the US the UK also has conventions, for instance, collective Cabinet responsibility and the government would resign if they lose a vote of no confidence. Lastly, the UK constitution is partly made up of books and political literature and they are widely accepted.

Britain is a unitary state rather than a Federal one like in the US. In a unitary state, power lies with central government. But this is less so since devolution, which has distributed some power to Wales and Scotland, thus, removing power from Westminster. A constitution is largely concerned with the power between the three branches of government. But this separation of powers is somewhat different in the UK than it is in the US. The executive in the UK is drawn from the legislature (Cabinet from majority party in the Commons). In the US this is not allowed. In a parliamentary system, parliament is accountable to the people. The executive is accountable to parliament so ultimately the executive is accountable to the legislature even though the executive holds dominance over the legislature (majority party form government and executive drawn from legislature).

In theory legal sovereignty resides in parliament, but there is some debate on how much legal sovereignty has been transferred to the European Union (EU) because EU laws are superior to UK law.

The arguments for an unwritten constitution in the UK are that the government would lose its power to act. Because at the moment the government can pass statute law very easily (as they have a majority) and allows the government to be adaptable to ever changing political circumstances. This would in effect make the UK constitution less flexible than it is at present. Parliamentary sovereignty would be lost and the judges who are un-elected, unrepresentative, unaccountable would be given more power, making judges political figures as well as legal figures just like in the US. As a result power would be removed from elected, accountable politicians. This would not be seen as a step forward democratically for the UK.

The arguments for a written constitution are that the government is too powerful. For example the Blair government has such a huge majority the executive is in effect ruling the country and not parliament. Because the Prime Minister is such a leading figure in the executive it is suggested that Tony Blair can tell the executive what to do and in effect is ruling the country in a dictatorial fashion. But this situation can only occur due to the huge majority involved. This is an extreme and when the majority is much smaller the executive is regarded as ruling the country. Because it is so easy to create statute law it is argued that this gives rise to adversarial politics, with one party creating statute law and then when another party comes into power it then goes about undoing the previous governments work (it is too flexible). The UK government is considered as being too centralised, this is best shown by how there is no such separation of powers like in the US. A constitution can protect the rights and privileges of the individual. Because the UK does not have a Bill of Rights like in the US it is said that the government can often abuse its power at the cost of individuals rights. But this is somewhat recently contradicted by the inclusion of the EU Human Rights Act into the UK law. But even so, because the UK does not have a written codified constitution the government is not controlled adequately.

On face value because the US has a written codified constitution, which is, deeply entrenched it would appear that the US constitution is very inflexible. This is largely true. The constitution is very difficult to change, but far easier mechanisms, which are supported and upheld, can be put into effect e.g. legislation, executive agreements, judicial review etc. These are not as solid as the constitution but are nevertheless are treated in the highest regard. On the other hand the UK constitution is not entrenched and is uncodified and is therefore is far more flexible than the US as it can be easily changed. But this is now somewhat limited due to the inclusion of EU law and devolution of Scotland and Wales. At a first glance the title could be easily accepted but it is apparent the US constitution is far more flexible than generally thought and the UK constitution is flexible but less than it appears.