

Volume 31, issue 4, April 2022

US and UK politics

How different are the US and UK constitutions?

This article draws on information from 'The American Constitution: a flexible friend when it comes to change?' (pp. 12–15)

When the Founding Fathers created the US Constitution in 1787, they were writing as Englishmen and had principles underpinned by John Locke's social contract theory (see also pp. 31–32). The principles of 'life, liberty and the pursuit of happiness' ring true throughout the world's oldest constitutional democracy and are revered by Democrats and Republicans alike. While there is a revolutionary tone to the American Constitution, the UK Constitution is best described as evolutionary, and the entrenchment of politics in Washington can be juxtaposed with the flexibility of politics in London. However, these structural differences can be inadmissible in practice and there may be more similarities than differences.

Similarities

The Supreme Court

The US and UK constitutions are most similar in the way the judiciary can check the legislature through judicial review. Both have a Supreme Court separate from the legislature and the executive. In the USA, the court was established by Article III of the Constitution and judicial review was established in 1803 by the case of *Marbury v Madison*. For example, *Obergefell v Hodges* (2015) affirmed the rights of LGBTQ marriage under the Fourteenth Amendment and in 2010 *Citizens United v FEC* ruled a congressional law unconstitutional as it violated the First Amendment.

In the UK, the Constitutional Reform Act of 2005 led to the opening of the Supreme Court in 2009. In 2017, in *R (Miller) v Secretary of State for Exiting the European Union*, the Supreme Court ruled that the government could not leave the European Union without the permission of Parliament. While there are many similarities between the two countries, there is also an important difference here: the US Supreme Court can strike a law down as unconstitutional, but the UK Supreme Court has no power to do this.

Impeachment and votes of no confidence

Both constitutions have provisions to remove the executive. In the US this process is outlined in Article II section 4, where 'the President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanours.' This procedure must start in the House of Representatives and the trial takes place in the Senate, with a supermajority of 67 needed for a guilty verdict. Articles of impeachment were brought against Donald Trump in 2019 and 2021, most recently for inciting a riot on 6 January 2021, when a violent mob tried to prevent the confirmation of Joe Biden as president.

In the UK, parliament can remove a prime minister through a vote of no confidence with a simple majority in the Commons. Theresa May survived such a vote in 2018, but she resigned in 2019 after the threat of another one. While it is easier for Parliament to remove the prime minister than in the American system (due to the PM being an MP and a member of the legislature — 'first among equals'), the check to remove the executive is a clear similarity permitted by both constitutions.

Differences

Entrenched vs unentrenched

The clearest difference between the US and UK constitutions is a structural one. The US Constitution is entrenched into one document and is revered as the oldest constitutional democracy in the world. While the US Constitution was forged in the context of revolution, there has never been a historical event which has altered the core principles of the British political system. The US Constitution is deliberately hard to alter, with only 27 amendments — ten of which happened straight away in the Bill of Rights. In 1971 the Equal Rights Amendment failed to pass, despite being passed by both the House and the Senate with a supermajority.

In contrast, the flexible nature of the UK Constitution comes from the fact that it is unentrenched. The UK Constitution has many sources, such as the Parliament Acts of 1911 and 1949. Therefore, a major constitutional change like leaving the European Union simply required an Act of Parliament passed by a majority in the Commons.

Passing legislation

It is far easier to pass legislation in the UK than in the USA, again due to structural differences in the respective constitutions. In the UK, the prime minister is part of the legislature, demonstrating a fusion of powers. For example, prime minister Boris Johnson is also MP for South Ruislip and Uxbridge. He sits in both in the executive and the legislature. In March 2020, at the start of the Covid-19 pandemic, an Act of Parliament was all that was required to close non-essential shops and order people to stay at home.

In contrast, Joe Biden had no such mandate to order Americans to wear face coverings. He resorted to encouragement on national television. The US Constitution outlines a separation of powers. For example, when Kamala Harris became vice president, she had to resign her post as a California senator. This is because the Founding Fathers feared tyrannical rulers and sought to prevent any branch of government from having too much power. Another useful example is Congresswoman Alexandria Ocasio-Cortez introducing the Green New Deal to the House of Representatives, despite it being a Biden campaign promise. As president, he was unable to do this himself.

Federalism vs devolution

States' rights are protected in Article IV and the Tenth Amendment of the Constitution, which means that New York, one of the original member states, has the same rights as Hawaii, the newest state. Each state can set its own laws on key issues such as abortion and legalising marijuana. So, while in California marijuana is fully legalised, in Kansas it is fully illegal.

Devolution in the UK has given Scotland, Wales and Northern Ireland substantial powers, but they are not considered equal to the central government in the same way US states are. The Scottish Parliament has power over health, education and housing, while the Welsh government and Northern

Ireland Assembly have less political autonomy. This asymmetric power is characteristic of the quasi-federalism which exists in the unitary state of the UK.

Student activities

1. Using the information in this article, create a table to show the strengths and weaknesses of the two constitutions.
2. Write a paragraph outlining which you think is the most effective constitution, and why this is.

Leon Evans is teaching and learning lead for humanities at Canons High School.

This resource is part of POLITICS REVIEW, a magazine written for A-level students by subject experts. To subscribe to the full magazine go to: <http://www.hoddereducation.co.uk/politicsreview>