



Comparative constitutionalism: A systematic analysis of the United States Constitution and the United Kingdom's uncodified constitutional framework

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Abstract

This paper provides a comprehensive comparative examination of the constitutional frameworks of the United States and the United Kingdom, grounded in an analysis of primary constitutional documents including the U.S. *Constitution*. It traces their historical foundations, structural configurations, institutional roles, and underlying political philosophies. The study highlights key differences between the United States' codified and supreme constitutional order and the United Kingdom's uncodified, flexible, and parliamentary-sovereign system. Particular attention is paid to the distribution of powers among branches of government, the nature of executive authority, judicial independence, the presence or absence of entrenched rights, and the mechanisms of constitutional amendment. Additionally, the paper explores contemporary debates surrounding constitutional reform, including the increasing pressures for codification in the UK and the ongoing interpretive disputes surrounding judicial power and federalism in the U.S. By analyzing similarities, divergences, and interdependencies between the two constitutional models, this paper contributes to a deeper understanding of modern democratic governance and its socio-political foundations. The comparative insights generated herein offer a foundation for future research on constitutional resilience, democratic legitimacy, and institutional reform.

Keywords: Comparative constitutional analysis, United States Constitution, United Kingdom constitutional framework, codified vs. uncodified constitutions, parliamentary sovereignty, separation of powers

Introduction

Constitutions serve as the foundational blueprints for political organization, democratic legitimacy, and state authority. The United States Constitution, adopted in 1787 and ratified in 1788, stands as one of the world's oldest written constitutional instruments still in force. As presented in the Senate publication, its opening declaration—"We the People"—establishes popular sovereignty as the basis of legitimate governance. In contrast, the United Kingdom operates under one of the most enduring uncodified constitutional systems, rooted in statute, convention, common law, and political practice. The UK Constitutional Reform Committee's summary (2015) emphasizes that the constitution is not contained in a single authoritative document and that parliamentary sovereignty remains its defining characteristic.

This paper undertakes a systematic comparative analysis of these two constitutional systems. While both nations share historical ties and democratic traditions, their constitutional architectures embody profoundly different approaches to governance. The U.S. Constitution enshrines separation of powers, federalism, judicial review, and an entrenched Bill of Rights. The UK model relies on constitutional flexibility, the supremacy of Parliament, and the gradual evolution of norms rather than rigid legal text. The comparison holds contemporary relevance as both systems face increasing political polarization, debates over executive authority, and calls for structural reform. This study investigates these frameworks' philosophical foundations and practical implications for democratic functioning.

Historical and Philosophical Foundations

1. United States: Enlightenment Rationalism and Popular Sovereignty

The Constitution of the United States emerged in the aftermath of independence, shaped by Enlightenment

thought emphasizing natural rights, limited government, and checks on arbitrary power. The Preamble reflects the framers' intent to "form a more perfect Union," ensure justice, and secure liberty for future generations. Articles I–VII outline institutional structures that reflect Montesquieu's theory of separated powers. Federalism was incorporated to strike a balance between state and national interests, while the Bill of Rights (1791) entrenched individual freedoms and curtailed governmental overreach. This codified structure positions the Constitution as supreme law, amendable only through a demanding process ensuring broad consensus.

2. United Kingdom: Evolutionary Constitutionalism

Unlike the U.S., the UK's constitution arose incrementally through historical struggles—ranging from Magna Carta (1215) to the Bill of Rights (1689), the Parliament Acts, and modern reforms. The 2015 constitutional summary emphasises that the UK constitution is composed of statutes, conventions, judicial decisions, and authoritative works, lacking any special legal status distinct from ordinary law. The philosophical foundation is parliamentary sovereignty, wherein Parliament may enact or repeal any law. This evolutionary approach reflects pragmatism and adaptability, enabling gradual reform without revolutionary breaks.

Constitutional Structure and Separation of Powers

1. Legislative Branch (U.S.)

Article I of the U.S. Constitution vests legislative powers in a bicameral Congress comprising the House of Representatives and the Senate. Sectional details include qualifications for members, procedures for lawmaking, and powers such as taxation, war declaration, and regulation of commerce (pages 1–15). The fixed and enumerated nature of congressional powers introduces predictability and constraint.

2. Legislative Branch (UK)

The UK Parliament consists of the House of Commons and the House of Lords. Its powers are legally unlimited, as Parliament may legislate on any matter. The UK summary notes that laws passed by Parliament are not subject to constitutional invalidation, reflecting absolute parliamentary sovereignty. The House of Commons holds primary democratic legitimacy, while the House of Lords functions as a revising chamber. Reform proposals include creating an elected second chamber or defining Parliament's powers in a codified constitution.

Executive Authority in Comparative Perspective

1. U.S. Executive Branch

Article II establishes the President as the single, directly elected head of the executive, commander-in-chief, and chief diplomat. The President's powers are constitutionally enumerated, subject to congressional checks and judicial review. The impeachment process is detailed in Article I and II (pages 3–5).

2. UK Executive Branch

The UK executive consists of the Prime Minister and Cabinet, who derive authority from Parliament. The head of state—the monarch—performs ceremonial roles. The UK summary notes that executive powers derive from statute, common law, and convention, such as war-making or treaty-making powers exercised under the royal prerogative. Possible reforms include codifying Prime Ministerial powers in law.

The contrast reveals the U.S. model as legal-text driven and the UK model as convention-driven.

Judiciary and Judicial Review

1. U.S. Judiciary

Article III establishes an independent judiciary culminating in the Supreme Court. Although judicial review is not explicitly mentioned, it has been firmly established since *Marbury v. Madison* (1803). Courts may invalidate legislation or executive action that violates the Constitution. This authority makes the judiciary an essential guardian of constitutional supremacy.

2. UK Judiciary

The UK summary affirms that courts must interpret legislation but cannot strike down Acts of Parliament. Judicial independence is safeguarded, and courts may issue declarations of incompatibility under the Human Rights Act 1998, but the legislation remains valid. Reform options propose granting courts the power to strike down unconstitutional laws, a major shift from parliamentary supremacy.

Rights Frameworks: Codified vs. Evolving Guarantees

1. U.S. Bill of Rights

The First through Tenth Amendments enshrine fundamental freedoms, including speech, religion, due process, and fair trial rights (pages 27–35). The 14th Amendment extends equal protection and substantive rights, becoming central to civil rights jurisprudence. These rights are judicially enforceable and difficult to amend, ensuring stability and predictability.

2. UK Human Rights Framework

The UK summary derives protected rights from the European Convention on Human Rights, incorporated domestically through the Human Rights Act (pages 17–19). These rights may be limited by law and do not invalidate primary legislation. Reform options include creating a domestic Bill of Rights with constitutional status.

Federalism vs. Unitary Governance

1. U.S. Federalism

Articles IV and VI delineate federal-state relations, including the supremacy clause, obligations of states, and representation of states in governance. Federalism is essential to balancing local autonomy with national authority.

2. UK Devolution

Devolution distributes power to Scotland, Wales, and Northern Ireland, but Parliament retains ultimate authority. The UK summary acknowledges possible reforms that could entrench devolved powers within a “federal-style” constitution (page 14).

Amendment Processes and Constitutional Flexibility

1. U.S. Amendment Procedures

Article V establishes a stringent amendment process requiring supermajorities in Congress and among states, producing only 27 amendments since 1789.

2. UK Constitutional Change

The UK constitution can be altered by simple legislation. Reform options propose requiring supermajorities and referenda for constitutional amendments (page 6). This contrast highlights rigidity in the U.S. model and flexibility in the UK model.

Contemporary Challenges and Debates

1. United States

Recent challenges include:

1. Polarization and disputes over judicial appointments
2. Expanding executive authority
3. Debates over electoral reform and voting rights
4. Interpretation of constitutional text in modern contexts

2. United Kingdom

Key challenges include:

1. Debates on codifying the constitution
2. Reforming the House of Lords
3. Re-evaluating the monarchy's role
4. Strengthening devolution and addressing post-Brexit constitutional shifts

The UK summary explicitly raises questions on codification, devolution, and second-chamber reform, signalling urgency in constitutional modernization (page 20).

Conclusion

This comparative study highlights foundational differences between the U.S. and UK constitutions. The U.S. embraces a codified, supreme, and judicially enforceable constitutional system rooted in popular sovereignty and separation of powers. The UK relies on constitutional flexibility, parliamentary sovereignty, and evolutionary

development. Yet both systems strive to safeguard liberty, ensure accountable governance, and maintain institutional balance. Contemporary pressures—globalization, social change, political fragmentation—have forced both nations to re-evaluate their constitutional assumptions. While the U.S. grapples with interpretive rigidity and political polarization, the UK confronts ambiguities inherent in its uncodified system. Comparative insights demonstrate a need for reform that retains democratic legitimacy while strengthening institutional resilience.

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