

“There are significant differences between both the key features and the importance of constitutions”.

Discuss with reference to two political systems that you have studied. (20 marks)

Greek Philosopher Aristotle described constitutions as being the “frame upon which the government and laws of a society are built”. This framework, in essence, is a set of rules in which the roles and powers of the government and its institutions are laid out. As such, a constitution may include details on the rights of the individual, the government’s responsibility to protect such rights or the role of institutions of government, among other things. The constitution of the United States is codified, meaning it is a written document (about 4 pages long) and this is used in the majority of countries. However, some countries, like the United Kingdom, have uncodified constitutions that are usually compiled from a number of sources- some written, and some unwritten. The US’s constitution dictates that the country is governed under a federal system, whereas the UK’s constitution sets out the country to be unitary. There are four aspects of comparison of the Constitutions: their origins and development, their key principles, their nature and their role of the Judiciary and Constitution in safeguarding individual rights. It is clear that while similarities can be seen in terms of the role of the judiciary, all other aspects illustrate significant differences between both constitutions. ✓

The first key aspect to analyse is the origins and development of the constitutions. The American Revolution saw the emergence of the US constitution, which by 1789, was almost fully formed. It was developed and shaped by unrest and political upheaval and sought to solidify some of the fundamental American values of liberty, individualism, equality and the rule of law, among other principles. Since its initial emergence, the US constitution has largely remained the same and amendments have been few and far between. To be precise, only 27 amendments have been made to the document since its creation in 1787. For instance, one of the most significant amendments made was the formal abolition of slavery in 1865, known as the 13th amendment. Arguably, the period of uncertainty that led to the emergence of the US constitution meant that those behind its creation, and also citizens at that time, would have stability at the forefront of their minds. As such, its creation to really cement these values at the time could now be seen as outdated and the little amendments that have been made over this time serve as an example of this case in point. Despite society having developed and evolved, it can be said that to a large extent, the constitution has not

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kept up with these developments, leaving it almost rudimentary in some regards. On the other hand, the UK constitution has evolved throughout history, to keep up with a constantly developing society and ever-changing needs and demands of citizens and its institutions. Like the US constitution, there are some historical documents that are of importance like the Magna Carta (1215), showing there are similarities in some regards. This document is important as it is one of the first documents that held royalty to the law, meaning that they were no longer free from the consequences of their actions, and subject to the same treatment under the law as everyone else. However, unlike the US constitution, there have been many reforms to the UK constitution over the years. Even though it has been gradual, rather than a reaction to desires for radical change, the UK constitution bolsters many more reforms than its American counterpart. For instance, the inclusion of the Human Rights Act (1998) was a reflection of society and its developments at that time, showing that the UK constitution is more able to keep up with these inevitable societal changes. On one hand, we have the US constitution that has remained very similar to the original document with only a few changes. On the other hand, there is the UK constitution; a constantly evolving source that is more able to keep up with the times. Therefore, it can be said that, in this regard, the constitutions can be seen as significantly different to one another.

The second key aspect that can be analysed is the principles that both constitutions are founded upon. Federalism, the key principle of the US constitution, effectively means that there is a power share between the national government and each state's individual government. For instance, each state has its own laws and run their own institutions e.g. police forces, but the national government is responsible for larger scale issues like regulating trade between the states. Even at national level, this federalist principle shines through as there is a 'separation of powers' meaning that each branch of the national government remains separate from each. This is to ensure that 'checks and balances' can take place so that tyranny does not ensue as a result of the abuse of power by one 'all powerful' institution, how many would describe the UK's system of government. This 'checks and balances' system can be exemplified by the President's ability to 'check' congress by vetoing a bill that has passed or the ability of Congress to impeach a President over unlawful behaviour, such as that of former President Trump. It can be said that this separation of powers allows the US to protect itself from itself in a way and ensure that the constitution cannot be abused or used wrongfully. Additionally, it also means that decisions deemed unconstitutional can be overturned or blocked before they become law. Conversely, the UK constitution does not

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stipulate such a separation of powers, instead there is a 'fusion of powers' with the majority of power landing at the door of the Executive (The Prime Minister and Cabinet). The key principle of the UK constitution is parliamentary sovereignty, meaning that Westminster is the supreme law-making body and has absolute authority. Parliament has the ability to make laws and no other authorities have the power to challenge or veto this, and provided the party in power has a majority, they are free to pass laws of their choosing with a lot less scrutiny than those in the US. It can be said that law-making power in the UK is very concentrated, meaning that the UK is much more likely to see abuse of power by parliament. The controversy surrounding the Internal Market Bill and Good Friday Agreement can serve as a good example of the potential for this, because even though Parliament did not go through with the breach of international law, the fact it was even allowed to be a possibility shows the dangers of this unitary system. Even though in contemporary times devolution has led to the UK feeling less of a unitary state, it still does not mean that the UK is leaning more towards federalism as ultimately Westminster remains sovereign. Overall, it again is the case that the key principles of the constitutions are very different as they choose to concentrate their power in different ways. In the US there is more scrutiny on decision making, and more opportunities to 'check' power. Whereas the UK trusts that their parliament will keep their own powers in check and has power channelled into one specific area, showcasing the significant difference between the two constitutions.

We can also analyse the nature of both constitutions. The codified nature of the US makes rules governing America very set in stone and therefore difficult to amend because they are entrenched. The aforementioned mere 27 amendments to the constitution have been through a rigorous process; there has to be a two-thirds vote in the Houses of Congress, then it must be ratified by three-quarters of all states. As the population of America has grown, this has become an even more arduous task and as such, there has only been this tiny amount of amendments. The nature of the UK constitution is quite different to that of the US. It is not entrenched and can be amended with just a simple Act of Parliament. This is very different to the rigorous scrutiny that potential amendments to the US constitution must be put under. Unlike the US, there is not a single authoritative document, there are many sources that serve this purpose, both written and unwritten. Works of authority have also influenced the nature of the UK constitution. For example, A.V Dicey's *An Introduction to the Study of the Law of the Constitution* (1885) focussed upon the fundamental 'pillars' of the UK constitution- the rule of law and parliamentary sovereignty. The nature of the UK constitution therefore allows

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for an element of flexibility, something that cannot be said for the US constitution. The UK constitution can adapt much more easily to societal developments and does not require the scrutiny nor time and effort that is needed in the US. Overall, the US and UK constitutions can be viewed as very different in terms of nature, the US constitution is very clear, and unambiguous with regards to what is classed as constitutional but requires a huge effort to then make changes to keep up with an ever-changing society. On the other hand, the UK's constitution can evolve with society. What is in no doubt, however, is the significant difference in nature between both constitutions.

Finally, the last theme of comparison is the role of the judiciary and constitution in safeguarding individual rights. The rights that every American citizen are entitled to are contained as part of the constitution, known as the Bill of Rights (1791). The Bill of Rights seeks to ensure that citizen's rights e.g. freedom of speech are upheld. The act of judicial review in America allows for greater scope to challenge legal decisions made by the state. For example, in 2020, the Supreme Court ruled that employers could no longer discriminate against LGBT+ workers because of their sexuality or gender, as they argued that the Civil Rights Act 1964 extended to protect LGBTQ people. This was seen as a huge step forward for the LGBTQ community. Because of this, these rights are now protected, and written into the constitution. The US also has the Supreme Court, where these rights are not only also protected, but they also have the power to strike down acts as unconstitutional which is something the UK system does not allow for. In terms of the UK, we follow the Human Rights Act (1998). All citizens are protected by these rights in a court of law. The UK does have a supreme court; however, it does not allow for acts to be struck down as unconstitutional because statute law is still seen as the principle source of constitutional law.

Despite this, the UK supreme court can clarify legal meaning in specific cases, and this is known as judicial review. It is arguably a less significant review than that of the US, however it does still have an important role to play. This ability to protect individual rights is seen in the case of R. (Tigere) v Secretary of State for Business, Innovation and Skills (2015). The appellant was not eligible for a student loan for her degree because she did not have indefinite leave to remain in the UK and could not apply to this until 2018. Her appeal was accepted by the supreme court on the basis that the negative impact on her human rights was not able to be justified. It can be argued that the possibility for discussion and appeals for decisions enhances our human rights within this system as it is not always the case where a decision is final, discussion can be had surrounding it and scrutiny is in place so that the system can

always keep improving and evolving with society. Overall, both the Bill of Rights and Human Rights Act have similarities. They both seek to protect the rights of their citizens and they both set out similar rights e.g. freedom of speech.

By way of conclusion, the US and UK constitutions are indeed very different. Their origins and development showcase the more static, constant nature of the US constitution where its original document has had little changes made to it compared to the UK where constitution allows for more simple and frequent change because it wants to be kept up-to-date and not become anachronistic, something that the US constitution may be in danger of.

We can also see difference in terms of key principles. The US has a federalist system which separates power and control to different branches at different levels across the country. This allows for more scrutiny of legalisation to ensure abuse of power does not happen. By contrast, the UK's unitary state means that power is by and large focussed in Westminster with the ruling party. The nature of both constitutions is another aspect in which significant

differences are found as the US constitution is very 'set in stone' as it is codified and therefore written down. This can be contrasted by the UK's uncoded nature where there are lots of sources and works that all make up the constitution, meaning for more debate as to what is constitutional and what is not. This makes the UK constitution open for interpretation,

whereas in America it is very unambiguous. We can see similarities however in the roles of the judiciary and constitution in safeguarding individual rights. The main aim of both is to protect the rights of citizens and the role of the judiciary in both countries is to uphold these.

Despite this, it can be accurately concluded that the constitutions of both the UK and the US are significantly different to a large extent.

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Grace, This is an outstanding essay - so many excellent, relevant examples & very clear & concisely expressed analytical commentary.

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