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A constitution - rights and liberties ...

Read & précis Chapter 1 of 'US Government & Politics' by A J Bennett.

What is a constitution?

- It is a structured framework within which a country's system of government is constructed
- Its origin usually comes from revolution or evolution. US came from the gun smoke of the 18th century war of independence. By comparison, the UK constitution has evolved over time and is built on convention.

A nice quote...

- Malcolm Walles (1988):

'Whereas the US Constitution appeared out of the smoke of gunpowder, the UK constitution appeared out of the mists of time.'

Codified and uncodified

- The vast majority of democracies have a codified constitution - a document which lays down agreed rules that need to be followed.
- By comparison, the UK has an uncodified constitution - with no clearly written rules and boundaries. Re-produce - into table- the differences between the US and UK constitutions.

A single document

- The US has a single constitutional document - of less than 7000 words (less than 20 pages).
- What does the UK have?
- The Magna Carta, The Bill of Rights from the Glorious Revolution of the 1680's and the Parliament Acts 1911 & 1948.

Codified or not?

- While the US constitution is codified there also exists alongside it equally important uncodified elements ...
- For example, George Washington declined to seek a third term in 1796 and thereby put in place an uncodified convention of a two-term presidency.
- Or the US Cabinet....

Advantages of codified

- The provisions are entrenched
- More significant and effective checks and balances.
- Because it is written it enhances both the protection and awareness of civil rights.
- Flexible wording can allow non-constitutional and constitutional development, e.g. War powers act & 22nd amendment

Disadvantages of codified

- Can elevate the importance of unelected judges
- Can be inflexible and prevent change along with society
- Specifying rights alone is not enough - positive political action is also needed (it is like going to church and praying for change - action is also needed)

Democracy and sovereignty

- The US citizens elect their President directly - elections every two years for the House of Representatives
- In the UK we elect every five years and then indirectly. For example, we could elect Labour to Office and find within days the Leader has changed (Blair/ Brown).

US Elections ...

- The growth of the direct primary elections allows ordinary voters to participate in candidate selection at all levels of government.
- The referendum and recall procedures allow a level of participation unheard of in the UK.

In the UK ...

- The emphasis is on representative democracy and parliamentary sovereignty.
- British citizens (subjects of the crown) have fewer opportunities for democratic participation.

Presidential system

- A presidential system provides a strict separation of powers - i.e. because the personnel can be seen to be different.
- Based on the principle of co-equality between the three branches of govt: President - Congress - Supreme Court.

Two more quotes...

James Madison:

'Ambition countering ambition'

Neustadt:

'Separate institutions, sharing powers'

Parliamentary system

- Fusion of powers in which Govt Ministers head up executive departments and sit as members of the legislature in the House of Commons.
- The Lord Chancellor (until recent reform) typified this because he was in the H of L (legislature), Head of Law Lords (judiciary), also in the Cabinet (executive).

One final quote...

- 'The end result in Britain is a concentration of authority... The result in America is diffusion of authority and enhance[ment] of minority rights'
- Malcolm Shaw

Federal v unitary

- US system is federal - while the UK system is essentially a unitary system of government.
- Students have done an essay on this - can you explain what the following means?

Advantages of federalism

- Safeguards against over-strong central government
- Mitigates remoteness in geographically large countries
- Helps maintain national unity
- States become policy incubators and training grounds for national politicians

Disadvantages of federalism

- Over fragmentation can result in gridlock and frustration
- Federalism cannot guarantee against over centralisation
- Federalism can encourage national/ state divisions and lead to calls for independence

Constitutional reform

- In the USA this means amending or modernising the constitution. Some recent calls to ban flag desecration, permit prayers in state schools and preserve marriage.
- Constitutional reforms affecting elections - budget making and war making powers - judicial appointments to the US Supreme Court. Problem: Constitutional change is very difficult.

Constitutional reform

- In the UK we have been talking about major reform for centuries. The House of Commons decided in 1909 to abolish the H of L. Still undecided about how.
- We have ongoing debates about the role of the monarchy. But, because we don't need to change anything - nothing gets done.

Constitutional reform

- The problem in the UK is that any reform derives from an Act of Parliament - these can be overturned by a future government. So reform is only piecemeal and not guaranteed to stand the test of time. This - in a sense - can make debate about reform futile.

Establish pressure groups

Establish three pressure groups to discuss the below points - looking at UK/USA and reporting back to class.

1. What are rights and liberties in the UK/ USA?
2. How can they be classified?
3. Who protects rights and liberties?

Class discussion

- Which is better the Bill of Rights or the HRA?

Why?

Discussion time ...

- Break up into three small groups. Each student member of the group then draws out of a hat a number (out of a selection of 1-5) which relates to one of the exercises on page 35 of '*US Govt & Politics*'. The student then leads a discussion within their group on that topic.
- A member of each group finally summarises each of the discussions for the whole class.