

---

## **Contrasting Models of Governance: Separation of Powers in Federal and Unitary Systems**

---

*Anadi Sharma*  
*School of legal studies,*  
*Babu Banarasi Das University, Lucknow*

### **Introduction**

Separation of power is significant to the democratic evolution within a state because it allows for the division of political responsibilities among the executive, legislature, and judiciary. It concentrates on distributing power so that once particular organs do not have excessive authority such that there can never be a single law-making organ of the national government. Such structural protection aims to support the rule of law, for the sustainable enhancement of checks and balances and or the enjoyment of individual rights through the independence of the institutions. In this case, the practice and working relations of the division of powers vary significantly due to the form of governance practice in either federalism or unitarism. The case of the Defenders will and in normal circumstances be brought in the US and UK presents typical examples of practice of the principle in the case of a federal and unitary state respectively.

In the case of the United States as an example of a federal government, there is very clear and well-defined separation of powers. The supreme law in the United States is the constitution, which provides for the division of Government into Three Arms; Forth, Legislative and Judicial. To further define each as a branch has it respective roles and responsibilities. As an example, national congress enacts laws, head of the nation executes the laws passed, and interpretation of these laws is done by the supreme court<sup>1</sup>. This separation of powers is also implemented with a system of checks and balances where no single branch can assume power without any of the other two branches acting as a check against it. In addition, this division is also aggravated by the fact that there is both federal and state government with powers divided not only from one another regarding branches but also regarding different levels of government. It involves power-sharing in more than one layer and leads to power struggles and power and legislate balance between the state and federal government at all levels.

In unitary systems such as that of the United Kingdom, on the other hand, there is less functional separation of powers such as between the executive and legislative branches. In the United Kingdom, every power of the government is focused at the Parliament and the parliamentary sovereignty guarantees that Parliament is the supreme law making body. The executive which is headed by the Prime Minister and Cabinet consists of the members of Parliament particularly the House of Commons. This merger of these powers implies that the executive comes to be answerable to Parliament, and this executive and legislative does not

---

<sup>1</sup> Strauss, Peter L. "Separation of Powers in Comparative Perspective: How Much Protection for the Rule of Law?." *Forthcoming, Oxford University Press book on Comparative Administrative Law, edited by Peter Cane, Herwig Hofmann, and Peter Lindseth, Columbia Public Law Research Paper 14-614* (2018).

stand that far apart. The same cannot be said of countries like the United States in which the President is not a member of legislature and is elected independently of it, in Britain a Prime Minister is a member of the Parliament and in order to remain in office the Prime Minister must have the support of the majority of the House of Common. While it is true that the U.K. court system has relatively been liberalized over the years, with the emergence of the Supreme Court in 2009, the separation of the courts from the/every other department is not as revered as it is in federal systems<sup>2</sup>. In addition to this, the court does not have the right to annul any law that is enacted by the legislature which is a right that is enjoyed by the American judiciary due to the process of judicial review. Notwithstanding these differences, both systems seek to prevent the accumulation of power, although there are variations in how they are practiced and to what extent. In the U.S. type of federal systems there is a tendency towards clear-cut institutional autonomy and mutual restraints between branches of government, while in the U.K. type of unitary systems it is the political responsibility and the dominance of the parliament that determines the relations of the branches. Additional comprehension of these contrasts is essential when it comes to evaluating the implementation of the separation of powers principle in practice in diverse political settings and its effects on the operational processes of democracy<sup>3</sup>.

### **Federal System of United States**

To start with, the structure of the federal government in the United States is built upon a sturdy constitutional framework that contains a distinct separation of powers among the executive, legislative and the judicial arms. The detailing clarifies that such a system, as enshrined in the supreme law of the land, the US Constitution, allows each organ of government to operate independently but with mechanisms for control. In simple terms, this is to prevent one branch from absorbing all powers available in the government and help protect democracy by inspiring responsibility and balance among the institutions<sup>4</sup>.

The President preside over the executive branch where its members are empowered to execute various roles but all are under some level of checking by the Congress and the Judiciary. Among the President's duties are making polices and laws, generally directing foreign relations and receiving the highest military title. Nevertheless, these powers do not exist in a vacuum. National appropriation is the prerogative of Congress, and thus it limits the President to certain initiatives, which cannot be undertaken without congressional approval<sup>5</sup>. Also, Congress does have scope of protecting country by impeaching the President upon grave deceits or misdemeanours thus controlling abuses from the executive office. The court system, in particular, is quite important in curtailing rule of executive through checks such as judicial review which allows courts to contest and overrule executive actions. Additionally, there is a federal system which decentralizes the executive across the national government

---

<sup>2</sup> Magill, M. Elizabeth. "The real separation in separation of powers law." *Virginia Law Review* (2000): 1127-1198.

<sup>3</sup> Manning, John F. "Separation of powers as ordinary interpretation." *Harv. L. Rev.* 124 (2010): 1939.

<sup>4</sup> Freund, Paul A. "Umpiring the Federal System." *Columbia Law Review* 54, no. 4 (1954): 561-578.

<sup>5</sup> Baxter, William F. "Choice of law and the federal system." *Stan. L. Rev.* 16 (1963): 1.

and state governments and state governments whose governors themselves have considerable executive power which further complicates the idea of separation of powers in the United States.

Power to make laws primarily resides with a two-part Congress of the United States comprising the House of Representative and Senate, otherwise referred to as the legislative branch. The authority of Congress extends to the formulation, discussion, and passage of laws that operate in the country. In spite of being a powerful arm of government, the Congress remains receptive to the control of the executive and judicial branches of government. According to the constitution, the President can disapprove any act passed by the Congress, however, under such conditions Congress may pass the disposition to the issue with a majority support in both Houses. In addition, legislation passed by the Congress may be subject to judicial review and be found inconsistent with the country's constitution, a limitation to the legislative powers exercised. Apart from its purely domestic role, the American legislative system comprises of other organs that take the form of state legislatures that run concurrent with congress thereby making the federal system quite complex because states are allowed to pass their own laws. This results in a multi-layered structure where state law and federal law co-exist and interact on a regular basis further emphasizing the dispersion of legislative power within the federal framework.

It is clear that the system of law enforcement in the United States holds considerable autonomy especially the Supreme Court, which is granted powers of judicial review. This right allows the court , in this instance, to declare acts done by the legislature or the president as illegal, thus strengthening it as an important power balancing institution. The independence of the judiciary is important in protecting constitutional liberties and ensuring that there are boundaries to government control. Additionally, the federal system has two branches of court which is consisting of the federal courts and the state courts, which also encourages a non-centralized government in the United States and more importantly, extends the dispersion of powers in many tiers<sup>6</sup>.

The ultimate feature of the U.S. federal government is its checks, and balances is the mechanism to prevent abuse of power by any one branch. It is Congress who can impeach, courts can review and rule whether laws and actions are legal or illegal, and the President can refuse to enact laws. These checks and balances allow any of the government branches to suppress the powers given to the other branches so that the separation of power system remains functional. This encourages the prevention of tyranny and the upholding of democracy in America since power is not only distributed but also supervised and controlled through an appropriate combination of constitutionalism.

---

<sup>6</sup>McGinnis, John O., and Ilya Somin. "Federalism vs. States' Rights: A Defense of Judicial Review in a Federal System." *Nw. UL Rev.* 99 (2004): 89.

### **Unitary System: United Kingdom**

The constitution of United Kingdom is classed as uncodified. In spite of this, every country has a basic law that defines the powers of different branches of government. The U.K. constitution is based on statutes, conventions and other legal principles. The concept of parliamentary sovereignty is critical in the U.K. system of government, meaning that Parliament has the supreme legal authority and it has the power to make or repeal any Act. The United Kingdom is not an exception as regards the separation of powers since the system is headed by three arms<sup>7</sup>. Orderly organization of central constitution is observed in federal states which entail distribution of arms so that there is no combination of powers as in the U.K. On the other hand the U.K. has a succession of unfettered and unbridled powers mainly the executive and legislative powers combining as one where the head of the government is directly responsible to the Parliament and the sources of power reside within the Parliament.

Under the Prime Minister and the Cabinet, the executive branch of the U.K. is functionally part of the legislature. The Prime Minister is part of people's house, and Cabinet is made up of different higher circle parliamentary members. Authority which emerges from this confluence of authorities, is in marked contrast with the regime of strict separation that is found in other jurisdictions like the United States of America, where the president and legislative are two separate and distinct organizations. In the UK, the government is answerable to the Parliament, and the legislature performs continuous monitoring of executive activities through Prime Minister questions, general debates, parliamentary committees, etc. Even though the government's policies and administrative schemes do not enjoy direct control, that is, being more divorced from the legislative organ yet with extensive benefits, the executive function lies heavily intertwined with the legislative process as well making the executive an elected head who has to maintain the confidence of the majority in the House of Commons<sup>8</sup>. Confidence in the government can evaporate, which then suggests that a vote of no confidence may require the government, including the Prime Minister and their Cabinet, to change politicians in that elected office. Hence the accountability of the executive is brought closer to the legislative.

The parliamentary system has two cordial houses: an elected House of Commons and an appointed House of Lords which represents the legislative branch, also known as Parliament. Parliament is the highest body of law in the UK, with its statutes having no bounds as would be the case in a control of constitutionality as it is exercised within the federal systems like in the US. The idea of parliamentary sovereignty helps the polity in that the court will not annul or set aside any law that has been parliamentary, regardless of its perceived atrocities against people or even previous decisions made by the courts. Local government in Great Britain can exist; however, such local governments still belong to the national government and could

---

<sup>7</sup> Gamble, Andrew. "The constitutional revolution in the United Kingdom." *Publius: The Journal of Federalism* 36, no. 1 (2006): 19-35.

<sup>8</sup> Wincott, Daniel, C. R. G. Murray, and Gregory Davies. "The Anglo-British imaginary and the rebuilding of the UK's territorial constitution after Brexit: Unitary state or union state?." *Territory, Politics, Governance* 10, no. 5 (2022): 696-713.

only have powers granted by the parliament<sup>9</sup>. The non-existence of Federalism means that all powers of making laws rest finally on the centre and there is no division of powers like the structuring of politicians on the national and unit levels as practiced in a federal system. It helps in making the administration uncomplicated and straightforward as regards the organization as every single country has a number of governments destined cross cleft which generates a fair deal of complication.

In the case of the UK judiciary, it used to be subordinate to the legislature more than in countries with higher separation of powers, as there was no demarcation between the legislative and the court. However, the 2005 reform in the constitutional structure enhanced separation of the judiciary from the legislative branch with the establishment of the Supreme Court of the United Kingdom. More than being lorded over Legislative or Judicial Supremacy, the court however still does not have the power to nullify any acts of Parliament owing to the doctrine of parliamentary sovereignty. This is in sharp contrast to such countries as the U.S where the court possesses the power of judicial review and may declare invalid any Statute of Congress which it considers contrary to the Constitution<sup>10</sup>.

There is no ratified and predominate arranged into governmental branches entitled the separation of powers in the British system. Instead of these, measures such as legislative scrutiny, votes of no confidence and the general will of the people are the chief constraints on the power held by the executive. The executive is subordinate to the parliament and the degree which it may govern depends on it maintaining the confidence of the parliament. The U. K. does not have a codified constitution and therefore this explains such a more reliance on convention and incentives in the governance system which leads to looser legal restrictions in comparison to federal countries. Whereas this enables U.K. does not have a rigid system of governance and withstands several changes in administration<sup>11</sup>. But it creates apprehensions about the system wherein one arm of the government holds the majority legislative powers and decides to extend the powers of executive authority.

### **Key Differences Between the Separation of Powers**

The 'separation of powers' principle, while a critical idea in the management of a democracy, presents itself rather differently in a federal and unitary governance system. It is these differences that are mainly created by the legal structure, the relations between institutions of state power, the constitutional and actual independence of courts. It emerges that that there exist a lot of differences when one examines the federal system in the United States versus the unitary system in the United Kingdom with regard to how the powers of a nation are shared in spite of having some similarities.

---

<sup>9</sup> Zariski, Raphael. "The establishment of the Kingdom of Italy as a unitary state: A case study in regime formation." *Publius* (1983): 1-19.

<sup>10</sup> McGarry, John. "Asymmetry in federations, federacies and unitary states." *Ethnopolitics* 6, no. 1 (2007): 105-116.

<sup>11</sup>Toonen, Theo AJ. "The unitary state as a system of co-governance: The case of the Netherlands." *Public Administration* 68, no. 3 (1990): 281-296.

## **1. Nature of Government**

The most crucial factor that distinguishes the United States from the United Kingdom is the manner in which political power and authority is institutionalized. In the short run, the states of the United States have adopted a federal political system of government whereby there is a division of power between the federal or national government and state governments. This bicameral approach creates a hierarchy of governance with two levels, both of which have distinct and defined constitutional functions. For example, state governments have limited powers such as education and police while the federal government has wide powers in issues of national importance such as military and trade between states. This federalism is complicated with a system of checks and balances in the government which consists of three branches of government such as the executive, legislature and judiciary. These three powers do not form a hierarchy but are connected through a system of controls aimed at preventing an excess of power in any one of them<sup>12</sup>.

By contrast, the United Kingdom has a unitary system that is, all powers are centralised in their national government. There is no such power separation as national and subnational authorities something which was shown in the case of U.S. The case notwithstanding, there are local government units whose authorities are derived from the national government and thus ultimate power is exercised by parliament. On the other hand, it seems that the distinction of powers is not so pronounced further, especially between the executive and the legislative branches. The person of the prime minister along with the cabinet comes directly from the legislature with the house of commons in fact enforcing then “the fusion of powers”<sup>13</sup>. This engendering means that the executive plays a crucial role to the fabric of the legislature since he/she is made responsible to parliament and not as in the US where the President is treated as a person to none. This integration enables the system to work better vertically however it makes the distinction between these sectors to reduce in such instance.

## **2. Executive Power**

Executive authorities also yield significant differences between the two systems. The presidency in the USA is accompanied by considerable executive authority independent of the legislature and the courts. Thus, the president as head of the executive government is responsible for enforcement of laws, management of international affairs, and military operations. Nonetheless, such power is limited by appointment of Congress and the judiciary. For example, Congress may impeach the President, control the nation’s finances or override his decisions in the form of vetoes. Also the judicial branch can declare executive actions

---

<sup>12</sup> Strauss, Peter L. "Separation of Powers in Comparative Perspective: How Much Protection for the Rule of Law?." *Forthcoming, Oxford University Press book on Comparative Administrative Law, edited by Peter Cane, Herwig Hofmann, and Peter Lindseth, Columbia Public Law Research Paper 14-614* (2018).

<sup>13</sup> Carolan, Eoin. *The new separation of powers: a theory for the modern state*. OUP Oxford, 2009.

unconstitutional under the power of judicial review. This structure ensures that the executive operates in law and within established architecture thereby reducing any form of excesses.<sup>14</sup>

The executive in the UK is under operational and political stresses that are unlike any faced by any other purportedly democratic government. The Prime Minister who is in charge of this organization is also a part of the legislative branch, the parliament. This dual function means the Prime Minister is not only a facilitator of laws but also a key factor in the development of laws by bringing and sponsoring significant initiatives and bills on the floor of the Parliament.<sup>15</sup> The Prime Minister and Cabinet perform such functions in a government on a daily basis because they are politicians within the political corridors of Parliament, thus they can be removed from their posts through a Westminster system of votes of no confidence. This intermingling of executing and parliamentary functions reduces the system of checks and balances as is practiced in the U.S. and illustrates the nature of the political system and government in the U.K.

### **3. Legislative Authority**

Distinctions between the two systems emerge in terms of the characteristics of legislative power. In the United States, the institution of Congress, which is comprised of a House of Representatives and a Senate, acts as an autonomous and co-equal branch of government. The primary features of legislative bodies, namely their authority to establish, consider and pass legislation, which is then challenged by the executive branch (the President's veto) and the judicial one, allowing for legislative structures to be created in legal bounds where the federal law does not apply, undertake adaptations of the laws. Further checking on legislative power can be attributed to the courts' power to strike down laws that by exercising a judicial perspective are found to be against the constitution. In addition, state governments share the law-making initiative with the federal government's law-making body, so that laws would be made in regard to matters that are not overridden or eviscerated by federal laws, which served to further complicate the American regime.

Parliament, a bicameral assembly composed of the elected Commons and the – appointed – House of Lords, wields legislative authority in the United Kingdom. The parliamentary supremacy which is a central issue in this paper is however not the case in the USA. This means that courts have no authority to change the acts formulated by the parliament. While American laws allow for judicial activism even after the parliament passes a law, such practices do not exist in Britain. The Prime Minister and the Cabinet one step through the legislative process are bound to initiate laws so blur the boundaries of administration and legislature. Since there are no hierarchies there are also no restrictions for the policies to be

---

<sup>14</sup> Abdullah, Ahmad. "Declassifying Theory of Separation of Powers and its Inherent System of Checks and Balances: A Comparative Study." *Zakariya Journal of Social Science* 2, no. 1 (2023): 31-41.

<sup>15</sup> Rose-Ackerman, Susan. *Democracy and executive power: Policymaking accountability in the US, the UK, Germany, and France*. Yale University Press, 2021.

integrated but on the scope of policy so many liberalism is exercised on the legislative policy development process in the U.S.<sup>16</sup>

#### **4. Judiciary**

Role and Powers of the Court is another major difference between the two systems. In the USA, the Supreme Court is the highest of the independent branches of government and there is a total separation of all limbs of government from one another. With this power of judicial review, it is possible for the Judiciary to apply and explain the Constitution and annul the statutes or actions of the Executive which are unconstitutional, in any way. This power makes sure that no executive unit or legislative unit oversteps their allotted domains and encroaches into individual liberties. The federated structure of the US has not only one level of courts, federal and state courts, but also supports further the principle of separation of powers.

The legal system of the United Kingdom, over time has exhibited lack of independence especially due to power blurring. Traditionally, the judicial power was resting in the House of Lords, which was part of the legislature. But with the enactment of the reforms such as the Constitutional Reform Act 2005, the legal system has enjoyed relative autonomy because of the formation of the Supreme Court of the United Kingdom, which took over the legal powers of the house of lords. Although few changes have been made to that satisfaction in the courts in the U.K, the practice of judicial review is not the same as it is in the U.S. The courts in the U.K primarily due to the principle of parliamentary sovereignty do not have the authority to nullify acts of Parliament, no matter if they run contrary to other legal or constitutional provisions. Its role is still largely limited to that of an interpreter of laws and not an implementer of laws. This implies that it is impossible for the court to limit the powers of political institutions such as the legislature as the American courts do.

#### **5. Checks and Balances**

The existence of such systems of checks and balances is evident in both nations save for their objectives of curbing the excesses of authority. In general the system in the United States entails use of rule of law concerning checks and balances. There are three arms of government and any of them can limit the powers of other arms. The Congress has the powers to impeach the president, override the presidential veto and has control over the expenditure estimates. The president can prorogue the parliament and appoint and disallow judges while the limitations of powers of the parliament, judiciary and executive can also examine laws and executive actions. This is a formal constitutional arrangement that is designed to uphold the rule of law by ensuring that there are no excesses by any one branch of the government.<sup>17</sup>

---

<sup>16</sup> Dhar, Rachana. "Constitutionality of Delegated Legislation: A Comparative Study of USA, UK, and India." *Issue 1 Int'l JL Mgmt. & Human.* 5 (2022): 845.

<sup>17</sup> Benvenisti, Eyal, and George W. Downs. "Toward global checks and balances." *Constitutional Political Economy* 20 (2009): 366-387.

In Great Britain there are limits on the exercise of power, but those limits rely largely on political practices rather than the law itself. Government accountability is maintained through scrutiny of legislative bodies, votes of no confidence, and political intimidation. Although these mechanisms provide some measure of control, they are not as stringent or as systematic as the system of checks and balances in the United States of America. The lack of a codified constitution implies that many of the checks that exist in the U.K. operate on a constitutional level without the requirement of being a law making them less robust than the U.S. checks.<sup>18</sup>

### **Conclusion**

The distribution of powers exhibits different patterns in the United States and the United Kingdom, revealing their differing constitutional structures. In America, there exists a distinct separation of executive, legislative, and judicial branches. This is coupled with checks and balances whereby one branch may control the activities of the other branches. The President acts independently of the Congress and the Presidential power and responsibilities can be restrained through removal, constitutional provisions and legal action. This system of governance ensures that no single institution is sustained to perpetuate its power over the others.

On the other hand, the parliamentary system in the United Kingdom is characterized by a practice known as parliamentary supremacy, where power is vested within the Parliament, resulting in a convergence of the legislative and executive branches. The Prime Minister and Cabinet are drawn from Parliament enabling the executive to be wholly accountable to the legislative branch. While reforms have enhanced the autonomy of the courts, UK courts do not have the power to strike down laws passed by parliament as is the case in the US courts.

### **References**

1. Strauss, Peter L. "Separation of Powers in Comparative Perspective: How Much Protection for the Rule of Law?" Forthcoming, Oxford University Press book on Comparative Administrative Law, edited by Peter Cane, Herwig Hofmann, and Peter Lindseth, Columbia Public Law Research Paper 14-614 (2018).
2. Magill, M. Elizabeth. "The real separation in separation of powers law." *Virginia Law Review* (2000): 1127-1198.
3. Manning, John F. "Separation of powers as ordinary interpretation." *Harv. L. Rev.* 124 (2010): 1939.
4. Freund, Paul A. "Umpiring the Federal System." *Columbia Law Review* 54, no. 4 (1954): 561-578.
5. Baxter, William F. "Choice of law and the federal system." *Stan. L. Rev.* 16 (1963): 1.
6. McGinnis, John O., and Ilya Somin. "Federalism vs. States' Rights: A Defense of Judicial Review in a Federal System." *Nw. UL Rev.* 99 (2004): 89.
7. Gamble, Andrew. "The constitutional revolution in the United Kingdom." *Publius: The Journal of Federalism* 36, no. 1 (2006): 19-35.

---

<sup>18</sup> Alam, Afreen Afshar. "The Theory of Checks and Balances." *Available at SSRN 4712245* (2020).

8. Wincott, Daniel, C. R. G. Murray, and Gregory Davies. "The Anglo-British imaginary and the rebuilding of the UK's territorial constitution after Brexit: Unitary state or union state?" *Territory, Politics, Governance* 10, no. 5 (2022): 696-713.
9. Zariski, Raphael. "The establishment of the Kingdom of Italy as a unitary state: A case study in regime formation." *Publius* (1983): 1-19.
10. McGarry, John. "Asymmetry in federations, federacies and unitary states." *Ethnopolitics* 6, no. 1 (2007): 105-116.
11. Toonen, Theo AJ. "The unitary state as a system of co-governance: The case of the Netherlands." *Public Administration* 68, no. 3 (1990): 281-296.
12. Strauss, Peter L. "Separation of Powers in Comparative Perspective: How Much Protection for the Rule of Law?" Forthcoming, Oxford University Press book on Comparative Administrative Law, edited by Peter Cane, Herwig Hofmann, and Peter Lindseth, Columbia Public Law Research Paper 14-614 (2018).
13. Carolan, Eoin. *The new separation of powers: a theory for the modern state*. OUP Oxford, 2009.
14. Abdullah, Ahmad. "Declassifying Theory of Separation of Powers and its Inherent System of Checks and Balances: A Comparative Study." *Zakariya Journal of Social Science* 2, no. 1 (2023): 31-41.
15. Rose-Ackerman, Susan. *Democracy and executive power: Policymaking accountability in the US, the UK, Germany, and France*. Yale University Press, 2021.
16. Dhar, Rachana. "Constitutionality of Delegated Legislation: A Comparative Study of USA, UK, and India." *Issue 1 Int'l JL Mgmt. & Human.* 5 (2022): 845.
17. Benvenisti, Eyal, and George W. Downs. "Toward global checks and balances." *Constitutional Political Economy* 20 (2009): 366-387.
18. Alam, Afreen Afshar. "The Theory of Checks and Balances." Available at SSRN 4712245 (2020).