

Example of compare European law to UK law critical thinking

[Countries](#), [England](#)



Compare European law to UK law

In view of the difference in legal systems and the way in which different countries operate their property market, examine how Great Britain may not sit well in the European Community.

Most legal systems of the world are based on two dominant legal traditions which are Civil Law and common law. This makes the basis of how countries operate differently in many areas. Because of these inherent differences the influence can be phenomenal.

The basis of property law in Great Britain is based on common law principles which are supported by statutes, the Law of Property Act of 1925, Land Registration Acts and Freehold Reform Acts unlike other countries which are based on the civil code.

In common Law legal systems great weight is placed on the common law including judicial interpretations of the constitution, statutes, legislation and regulations which differ from those of civil law legal systems.

The problem with the UK mainly lies in that it does not have a single codified constitution document. It has in place a constitution made up of several unwritten elements. In addition to that there is the idea of, or form of entrenchment of, either the constitution itself or of, any of its special or other parts of the constitution which are regarded as particularly important including Acts of Parliament, all of which can be removed by simple repeal by the same or future Parliament.

This has the consequence that even if a particular political action or legal action is so important and contemplated as very long term if not permanent, it may be very difficult if not impossible under UK constitution with certainty.

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This makes transfer of power to the Communities under traditional constitutional thinking which could not be regarded as permanent and could always be reversed by later Act of Parliament.

UK international treaties are the prerogative of the Crown as represented by the Government in Parliament. The courts have no jurisdiction in the validity of such treaties unlike other EU countries. In order to apply expressly in the UK legal order, a provision of an international Treaty must first have been enacted by the UK Parliament as an act of national legislation.

It also has to be converted into domestic law before it can have any binding effect within the UK. This approach to International law provoked the question of how to convert the original EC Treaties into national law without transforming every provision into an act of parliament, which would have been contrary to the Treaty.

In a dualist constitution such as Britain constitution broadly falls is one under which only limited status is given to rules of international law. As far as Britain is concerned Community law was not automatically applicable when it ratified the EC treaties. It is for this reason Britain's attitude towards the European Community has been characterised as antipathy and disdain throughout many years until the 1960s when finally the Treaty of Accession was signed on January 22 1972. In Britain the House of Lords remains the final court of appeal in both internal and domestic cases. Under common law jurisdictions, legal treaties are not law lawyers and judges tend to use the as finding aids nothing more.

However by virtue of the United Kingdom European Communities Act 1972, Great Britain has adopted the provisions of the community treaties, but has

not adopted either a strict monist approach or a highly specific dualist one. Great Britain has chosen a middle line opting for flexibility; this attitude does not go down very well with the European Community.

An international law treaty usually comes into force when it has been ratified by signatories. These treaties are governed by international law, their implementation into domestic law of member state depends upon whether that state has a dual or monist constitution. A monist constitution accepts that international law obligations are the same or superior to national law meaning a rule established by international treaty to which the State is a party is automatically part of its law.

As much as the UK is part of the European Community, it is not bound by all of the laws; hence the UK has chosen a flexible position allowing it to opt out. The purpose of the EU was for European countries to forge closer integration in all aspects of the group such as Economy, trade, Finance, Health, Markets. Though Britain is a member of this group it does not want to be fully a member. This attitude does not promote good relations with the community.

There are many legal systems in the world. As much as securing conformity is important the fact that all 27 members of the group have a vastly differing legal system each with their own characteristics. A certain regulation may be extremely simple to enforce in one state and may bring about an outcome of massive legal difficulties in another. Although the idea seems perfect, the fact that there are different legal systems in force means that problems are bound to arise. The values of different legal systems are not the same and combining them into one legal system is more problematic as evidenced by

Great Britain's increasing agitation and dissatisfaction of its relationship with the European Community. Great Britain feels the playing field is not even and they are giving out more than they are getting in and likewise EC is getting frustrated by Great Britain's behaviour.

At the birth of comparative law all participants were from continental Europe. The conference zeitgeist was an optimistic step in progress a strong desire for mastery of one's fate, and forging common destiny. Lambert and Saleilles, the two founders of the congress discussed about a common law of mankind, a world law created by comparative law. Lambert has expressed his vision "comparative law must resolve the accidental and decisive differences in the laws of peoples at similar stages of cultural and economic development and reduce the number of divergence in law attributed not to political, moral or social quality of the different nations but to historical accident or temporary contingent circumstances"

Under the European Community Act 1972 parliament is not expressly forbidden from amending or repealing the act itself or under constitutional doctrine of constitutional supremacy. The property markets operation is no exception to the application of the effects of different legal systems. How Great Britain operates is due to inherent different legal system. Trying to forge unity from different legal systems is virtually impossible as traditions run deep. This cannot be blamed on Great Britain.

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