Chapter 7

Lesson 3

Constitutionalism and Other Countries

Key Terms

civil and political rights
European Convention of Human Rights
federalism
Four Freedoms
human rights
independent judiciary
negative rights
positive rights
prime minister
rights of solidarity
social and economic rights
Universal Declaration of Human Rights

What You Will Learn to Do

- Illustrate similarities and differences between the American view of human rights and the views held by other constitutional governments

Linked Core Objectives

- Communicate using verbal, non-verbal, visual, and written techniques
- Do your share as a good citizen in your school, community, country, and the world

Skills and Knowledge You Will Gain Along the Way

- Describe the influence of American ideas about government and individual rights have had on other nations of the world
- Describe how constitutional democracy in other nations differs from constitutional democracy in the United States
- Describe the differences between the Bill of Rights and the Universal Declaration of Human Rights and between negative and positive rights
- Defend positions on what rights, if any, in the Universal Declaration of Human Rights should be established in the United States
- Define key words contained in this lesson

Introduction

We often examine constitutionalism primarily within the context of the American experience. By itself this perspective is too narrow, especially in today's world. In this lesson you look at other traditions of constitutional government and at the many experiments in constitutionalism now taking place in the world. You examine the historical impact of American constitutionalism on other countries and compare the American view of human rights with the views held by the international community.

How America Influences the World

America's constitutional ideals are perhaps this country's greatest contribution to the world. Few historic documents have had the impact of the Declaration of Independence and the U.S. Constitution, whose words have been copied and paraphrased in numerous other charters of freedom.

The American republic, product of the world's first democratic revolution, influenced many other countries during the first decades of its existence. The French Revolution of 1789 was inspired by the American Revolution and the French Constitution of 1791 copied many elements from America's first state constitutions. The world's second-oldest written constitution, the Polish Constitution of 1791, also was influenced by the American example. When Latin American countries won their independence from Spain in the early nineteenth century, they looked to the U.S. Constitution as a model for republican government. In 1825 the first demands for constitutional government in Russia, though unsuccessful, were inspired by American ideals.

The influence of American constitutionalism has expanded in this century because of the position of the United States as a world power. During the American occupation of Japan and Germany after World War II, a committee of Americans drafted the Japanese Constitution of 1947, and similarly, the new German Constitution of 1949 incorporated elements from the American model.

As the United States celebrated the bicentennial of its Constitution in 1987–1991, other nations were writing new chapters in the history of constitutional government. The 1980s and early 1990s saw the collapse of Soviet Communism and the emergence of democratic governments in Eastern Europe (see Figure 7.3.1). In 1989 students in China staged a challenge to totalitarian government. These dramatic developments could signal the beginning of a new era of constitutionalism with important implications for American citizens.

There has been renewed interest in the heritage of American ideals in the aftermath of the Cold War, as many former Communist states have begun to experiment with their own forms of constitutionalism. Some of the most eloquent tributes to our Constitution's bicentennial were expressed by the leaders of these newly independent countries. The president of Czechoslovakia, Vaclav Havel (see Figure 7.3.2), remarked in a speech before the U.S. Congress in 1990, "Wasn't it the best minds of your country . . . who wrote your famous Declaration of Independence, your Bill of Human Rights, and your Constitution? . . . Those great documents . . . inspire us all; they inspire us despite the fact that they are over 200 years old. They inspire us to be citizens."

Figure 7.3.1: Fall of the Berlin Wall, 1989.

Courtesy of Alain Nogues/Corbis Sygma.

Figure 7.3.2: Vaclav Havel addressing the United States Congress.

Courtesy of Bettmann/Corbis Images.

American Constitutionalism in Other Countries

As the world's first written framework of national government, the U.S. Constitution established an important precedent. Nearly all countries today either have or are in the process of drafting written constitutions. Totalitarian systems also felt it necessary to produce written constitutions, although in no way did they restrict the real exercise of power. The process by which the U.S. Constitution was drafted and adopted also established a precedent—the use of constitutional conventions and popular ratifications.

Key principles of the U.S. Constitution were spread throughout the world by The Federalist, America's greatest contribution to political thought. Many of these principles have been adopted in other constitutions.

Perhaps the most widely admired and imitated feature of the U.S. Constitution, after the Bill of Rights, has been the establishment of an **independent judiciary.** An inviolate—secure from outside influence—judicial branch acts as the watchdog of the Constitution and prevents the executive and legislative branches of government from disregarding it. The judicial branch helps to ensure that the words of the Constitution will be obeyed by the government.

Another aspect of American constitutionalism that is of great interest in the world today is **federalism.** By combining a central government with a large measure of autonomy for the states, the Framers were able to solve the problem of how to establish effective national and local governments in a large country. America's federal system has interested the former Communist states of Eastern Europe, where decades of centralized control all but destroyed local government. Federalism also has influenced the democracies of Western Europe in their creation of a European union.

Key Note Term

independent judiciary—an inviolate judicial branch that serves to protect the U.S. Constitution and prevents the executive and legislative branches from disregarding

federalism—the distribution of power in an organization (as a government) between a central authority and the constituent units

What Do You Think?

1. What responsibilities, if any, do Americans have to promote representative democracy and constitutional government in other nations? Explain your reasoning.
2. What responsibilities, if any, do Americans have to promote respect for human rights in other nations? Explain your position.

Other Constitutional Democracies Differ from the American Model

The U.S. Constitution, however, is not the world's only source of ideas about constitutional democracy. Nations have looked to other traditions and to their own particular circumstances and historical legacies to find a form of constitutionalism that will be effective for them. However much we value our own political ideals and institutions, we must realize that they cannot always be transplanted.

Some elements in the U.S. Constitution have been adopted by other nations only with substantial modification; other elements have been rejected altogether in favor of different constitutional models. For example, the office of the presidency was another of the great innovations of the Framers. It was their solution to the need for a strong executive to replace a monarchy. Elected independently of the legislature, the president possesses those powers described in the Constitution itself.

The title of "President" to describe the constitutional chief executive has been widely adopted since that time, though usually not with the same powers and responsibilities U.S. presidents have. Because of their own historical experiences, many countries have been fearful of a strong executive. Freed from Communist dictatorships, the countries in the former Soviet bloc have provided for weak executives in their new constitutional arrangements, much like some of the first state constitutions in this country.

Perhaps the most distinguishing characteristic of the American system of government has been its separation and sharing of powers among three co-equal branches. Few other constitutional democracies, however, use that system today. Its critics consider our arrangement of divided powers inefficient and undemocratic. Most of the world's democracies have adopted instead some form of parliamentary government.

How Parliamentary Government Differs from Our Constitutional System

The Framers were very much influenced by the British constitution, even though it differed in important respects from the model they eventually adopted. The British constitution featured a system of checks and balances, but its executive, legislative, and judicial branches were not separated. Parliament, for example, was considered an instrument of the Crown, rather than an independent branch of government.

During the last two centuries a system of government modeled on the British constitution has been widely imitated, not only in Britain's former colonies but in many other countries as well. In a parliamentary system, government ministers are also members of the legislature. The head of the executive branch, usually called a **prime minister** (see Figure 7.3.3), is determined by whatever party or combination of parties has a majority in the parliament or legislature.

Unlike the American system, in a parliamentary arrangement the majority in the legislative branch decides who will head the executive branch. Many nations prefer the parliamentary system because they see the closer linkage of the executive and legislative branches as a more efficient form of government and one that is more reflective of the popular will.

Key Note Term

prime minister—the highest ranking member of the executive branch of a parliamentary government as in great Britain and Japan

Figure 7.3.3: British Prime Minister Tony Blair speaking in Parliament.

Courtesy of Reuters/Corbis Images.

The Bill of Rights' Influence on Other Constitutional Governments

Probably the single greatest contribution of American constitutionalism to the world has been its example of incorporating fundamental guarantees of individual rights into a written constitution. Nearly all national constitutions adopted since have included similar guarantees. The inspiring model of the U.S. Bill of Rights has become especially important during the latter half of this century, when interest in basic rights has increased around the world. As President Jimmy Carter observed in 1977, "The basic thrust of human affairs points toward a more universal demand for fundamental human rights."

Before this century, individual rights were generally regarded as an internal matter, to be left to each nation to decide. The world-wide economic depression of the 1930s, and the unprecedented crimes against humanity committed by totalitarian governments before and during World War II, gave the issue of human rights a new importance.

It was an American president, Franklin D. Roosevelt, who anticipated a new era in the history of basic rights. In a speech to Congress in 1941, the president defined the **Four Freedoms** worth fighting for: freedom of speech and expression, freedom of worship, freedom from want, and freedom from fear (see Figure 7.3.4). The charter that founded the United Nations in 1945, and subsequently led to the United Nations Universal Declaration of Human Rights of 1948, followed President Roosevelt's example.

The Declaration and the charter proclaimed universal standards of basic rights, called **human rights,** because they were considered essential to the dignity of each human being. In the decades since, the concern for human rights has become an issue of importance in the relations among nations. Regional agreements have expanded the United Nations Declaration. For example, in 1950 the countries of Western Europe agreed to a **European Convention on Human Rights.** They established a European Court to which the citizens of these countries could appeal when they believed their rights had been violated.

Increasingly, the protection of rights is also an important diplomatic issue among nations. The United States, for example, has sometimes restricted trade with countries considered to be violating human rights. In recent years our relations with the Republic of South Africa were influenced to a large extent by the issue of rights violations in that country.

Other National Bill of Rights

As fundamental and lasting as its guarantees have been, the U.S. Bill of Rights is a document of the eighteenth century, reflecting the issues and concerns of the age in which it was written. The rights guaranteed to Americans are **civil and political rights.** They express a fear of government power. They protect the individual from wrongful acts by government and provide each citizen with ways to participate in public affairs.

Key Note Term

Four Freedoms—the four basic rights that Franklin Roosevelt declared worthy of fighting a war to preserve: freedom of speech and expression, freedom of worship, freedom of fear, and freedom of want

human rights—basic rights and freedoms assumed to belong to all people everywhere

European Convention on Human Rights—established a European Court to which the citizens of these countries could appeal when they believed their rights had been violated

civil and political rights—rights that protect the individual from wrongful acts by government and provide each citizen with ways to participate in public affairs

Figure 7.3.4: Four Freedoms by Norman Rockwell.

Freedom of Speech *(February 20, 1943)*, Freedom from Fear *(March 13, 1943)*, Freedom of Worship *(February 27, 1943)*, Freedom from Want *(March 6, 1943)*, *from* Saturday Evening Post. *Courtesy of The Norman Rockwell Art Collection Trust, The Norman Rockwell Museum at Stockbridge, Massachusetts. Reproduced by permission of the Norman Rockwell Family Agency. Copyright © 1943 the Norman Rockwell Family Entities.*

Other national guarantees of rights also reflect the cultures that created them. Many of these cultures have values and priorities different from our own. In many Asian countries, for example, the rights of the individual are secondary to the interests of the whole community. Islamic countries take their code of laws from the teachings of the Koran, the book of sacred writings accepted by Muslims as revelations made to the prophet Muhammad by God.

In some countries freedom of conscience is considered less important than it is in the United States and other Western democracies. What constitutes cruel and unusual punishment, which is forbidden by our Eighth Amendment, differs greatly from country to country, depending on its particular history and culture.

Contemporary charters of basic rights also reflect the changes that have taken place in government and society during the last 200 years. Many guarantees of rights adopted since World War II have been modeled on the United Nations' Universal Declaration of Human Rights. They include many of the civil and political rights represented in our Bill of Rights. Most go further to include **social and economic rights.**

Examples of social and economic rights would be the right to choose a career, secure employment, health care, and education. Others might include certain societal rights, such as the right to responsible management of nonrenewable resources or a clean environment. The inclusion of such provisions in guaranteed rights reflects a change in the role government plays in society and the expectations its citizens place on it.

The Founders considered the role of government in people's lives to be very limited, as indeed it was in the eighteenth century. Governments play a much larger role today and that role has expanded the meaning of basic rights in most societies. The people in the former Communist states of Europe, for example, may appreciate their newfound civic and political rights, but many are reluctant to give up the economic security and social rights their former Communist governments provided.

Key Note Term

social and economic rights—examples of social and economic rights would be the right to choose a career, secure employment, health care, and education

Negative and Positive Rights

In the natural rights tradition, which provides the foundation of the United States Constitution, rights are seen as restraints on the power of government. They are sometimes called **negative rights** because they prevent government from acting in a certain way. The Bill of Rights generally requires the government not to act. For example, the First Amendment says, "Government shall make no law . . ."

The social, economic, and solidarity rights (**rights of solidarity**) included in the United Nations' Universal Declaration of Rights, and in many national guarantees of rights adopted since, are what are sometimes called **positive rights.** Instead of preventing the government from acting, they require it to act, to ensure such things as economic security, health care, and a clean environment for its citizens.

There are other important differences between negative and positive rights. Negative rights prevent the government from taking away something its citizens already possess, for example, freedom of expression. Many positive rights, on the other hand, describe certain benefits that citizens should have. These rights express the objectives worthy of any just society.

Key Note Term

negative rights—these rights are seen as restraints on the power of government

rights of solidarity—Solidarity rights included in the United Nations' Universal Declaration Of Rights, and in many national guarantees of rights adopted since, are what are sometimes called positive rights.

positive rights—instead of preventing the government from acting, they require it to act, to ensure such things as economic security, health care, and a clean environment for its citizens

Key Note Term

Universal Declaration of Human Rights—declaration and charter proclaiming universal standards of basic rights, called human rights, because they were considered essential to the dignity of each human being

Examining the Universal Declaration of Human Rights

Review the **Universal Declaration of Human Rights** found in the Reference Section and answer the following questions:

1. What rights does the Universal Declaration of Human Rights proclaim that are in the U.S. Constitution and Bill of Rights?
2. What rights in our Constitution and Bill of Rights are not included in the Universal Declaration of Human Rights? Why do you suppose they are not included?
3. What appears to be the purposes of the rights in the Universal Declaration of Human Rights that are not protected by our Constitution or Bill of Rights?
4. Examine each of the rights in the Universal Declaration of Human Rights that is not protected specifically in our Constitution. Is the right you have identified protected in the United States by other means, such as civil rights legislation; civil or criminal law contracts between private parties; labor and management agreements on employment benefits, vacation pay, and sick leave; custom or tradition; other means not listed above?
5. What rights, if any, in the Universal Declaration of Human Rights should be established in the United States? How should they be established? Explain your position.
6. How do the rights listed in the Universal Declaration of Human Rights appear to reflect the history and experiences of the time in which it was written?

Conclusion

We often examine constitutionalism primarily within the context of the American experience. By itself this perspective is too narrow, especially in today's world. In this lesson you looked at other traditions of constitutional government and at the many experiments in constitutionalism now taking place in the world. You examined the historical impact of American constitutionalism on other countries. The lesson focused on the subject of human rights and its increasing importance in current international affairs.

You learned why some aspects of the U.S. Constitution have been adopted by emerging democracies while others have not. You also learned about the differences between the United States' form of constitutional government and other forms of constitutional government, such as parliamentary systems. Finally, you learned the differences between the American understanding of constitutional rights and rights guarantees as they have been developed in other parts of the world.

Lesson Review

1. **Which aspects of American constitutional democracy have been particularly influential in other countries?**
2. **How would you describe the important features of a parliamentary form of government?**
3. **What is the difference between civil and political rights, on one hand, and social and economic rights, on the other? How is this difference related to the difference between "negative rights" and "positive rights"?**
4. **What are some important differences between the Bill of Rights and the Universal Declaration of Human Rights?**