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# COMPARATIVE ANALYSIS OF PARLIAMENTARY PRIVILEGES IN US AND UK

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## Introduction

Parliamentary privilege serves as a cornerstone of legislative immunity in both the UK and USA, safeguarding the integral processes that allow democracy to thrive. This legal concept offers broad protections, including freedom from arrest, to Members of Parliament and Congress, enabling them to perform their duties free from external pressures or interference<sup>1</sup>. In essence, it ensures that debates and discussions within the Houses are conducted with honesty and without fear of legal repercussions, emphasizing the importance of unencumbered legislative dialogue.

Moreover, the scope of parliamentary privilege extends beyond individual members, enveloping the institution as a whole in a veil of legislative immunity that includes freedom of speech and the exclusive right to govern internal affairs autonomously. This privilege does not place members above the law but instead fosters an environment where legislative activities can proceed unfettered by concerns of external influence or litigation, particularly safeguarding members against prosecution for actions taken within the realms of their parliamentary duties<sup>2</sup>.

## Historical Origins of Parliamentary Privileges in the UK

Parliamentary privilege in the UK has evolved over centuries, becoming a fundamental aspect of its legislative framework. This evolution can be broken down into key historical milestones:

### 1. Early Petitions and the Bill of Rights (14th - 17th Century):

- The concept of parliamentary privilege began to take shape when the Speaker of the British House of Commons started petitioning the King for recognition of certain privileges for the House during the 14th and 15th centuries<sup>3</sup>.

<sup>1</sup>Introduction available at - <https://www.parliament.uk/site-information/glossary/parliamentary-privilege/> - <https://www.parliament.uk/business/publications/house-of-lords-publications/rules-and-guides-for-business/companion-to-the-standing-orders/companion-chapter-12/> last seen on 31 march 2024

<sup>2</sup> duties available at <https://www.degruyter.com/document/doi/10.12987/9780300134896-013/html> last seen on 31 march 2024

<sup>3</sup> Bill of rights available at - [https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch\\_03\\_2-e.html](https://www.ourcommons.ca/procedure/procedure-and-practice-3/ch_03_2-e.html) last seen on 31 march 2024

- This early quest for recognition laid the groundwork for the Bill of Rights in 1689, which formally confirmed the basic privilege of Parliament: freedom of speech. It also protected this freedom from interference by the Crown or the courts, marking a significant step in the separation of powers within the British political system.

## 2. **Statutory Limitations and the Parliamentary Papers Act (17th - 19th Century):**

- Despite the establishment of these privileges, the late 17th and early 18th centuries saw instances where the House of Commons occasionally extended its privileges too far, leading to statutory limitations being imposed.
- A landmark moment occurred after the case of *Stockdale v Hansard* in 1839, prompting Parliament to pass the Parliamentary Papers Act 1840. This Act provided absolute civil or criminal immunity to papers published by order of Parliament, thereby reinforcing the legal immunity of parliamentary proceedings<sup>4</sup>.

## 3. **Modern Interpretation and Narrowly Defined View (19th Century - Present):**

- The 19th century witnessed numerous cases of privilege that helped delineate the boundaries between the rights of Parliament and the responsibilities of the courts.
- In contemporary times, the British House of Commons has adopted a more narrowly defined view of privilege, focusing primarily on parliamentary proceedings. This modern interpretation ensures that Members of Parliament can speak freely without fear or favor, a principle that is rooted in the Bill of Rights 1689 and the Claim of Right Act 1689 in Scotland<sup>5</sup>.

These milestones illustrate the complex journey of parliamentary privilege in the UK, from its early petitions for recognition to the establishment of statutory limitations and its current narrowly defined scope. Each phase reflects the evolving relationship between Parliament, the Crown, and the courts, underlining the importance of legislative immunity in maintaining the integrity and independence of parliamentary proceedings.

### **The Scope of Parliamentary Privileges in the UK**

<sup>4</sup> Parliamentary proceeding available at

- [https://en.wikipedia.org/wiki/Parliamentary\\_privilege\\_in\\_the\\_United\\_Kingdom](https://en.wikipedia.org/wiki/Parliamentary_privilege_in_the_United_Kingdom) last seen 31 march 2024

<sup>5</sup> definition of UK parliamentary privileges at - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9645115/> last seen on 31 march 2024

Parliamentary privilege in the UK encompasses a wide range of immunities and rights, ensuring that Members of both Houses can perform their duties without undue external influence. The privileges can be broadly categorized into several key areas:

- **Freedom of Speech and Debate:**

- Members are allowed to express their views freely within the House, a privilege that is foundational to the democratic process<sup>6</sup>.
- This freedom is protected by preventing the courts from questioning what was said in Parliament, ensuring open and honest debate.
- Notably, this protection extends to non-members participating in proceedings, particularly witnesses in select committees, fostering a comprehensive environment of free expression<sup>7</sup>.

- **Autonomy in Internal Affairs:**

- Both Houses possess the right to manage their own affairs independently, a principle known as the exclusive cognizance.
- This includes disciplinary and penal powers, such as instituting inquiries and requiring the attendance of witnesses and the production of documents.
- Willful failure to comply with these requirements could be judged as a contempt of Parliament<sup>8</sup>.

- **Immunity and Exemptions:**

- Members and Peers enjoy immunity from arrest in civil cases and are exempt from subpoenas to attend court as witnesses, ensuring their attendance in Parliament is unimpeded.
- This immunity extends from forty days before until forty days after a parliamentary session, covering any interference with a member while performing parliamentary duties<sup>9</sup>.

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<sup>6</sup> UK freedom of speech and debate available at <https://www.parliament.uk/site-information/glossary/parliamentary-privilege/> last seen on 31 march 2024

<sup>7</sup> UK freedom of speech and debate available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9645115/> last seen on 31 march 2024

<sup>8</sup> UK internal affair available at <https://www.parliament.uk/business/publications/house-of-lords-publications/rules-and-guides-for-business/companion-to-the-standing-orders/companion-chapter-12> last seen on 31 march 2024

<sup>9</sup> Immunity and exemption available at <https://www.parliament.uk/business/publications/house-of-lords-publications/rules-and-guides-for-business/companion-to-the-standing-orders/companion-chapter-12> last seen on 31 march 2024

- Additionally, parliamentary copyright protects literary and artistic works made by or under the direction of either House for 50 years, safeguarding the intellectual property of Parliament.

Furthermore, parliamentary privilege also addresses the conduct of internal affairs and the protection of the institution as a whole. It extends beyond members to include staff of the House in carrying out their duties and to external or lay members, witnesses, and others taking part in the work of the House or a committee. However, it does not protect the activities of individuals, whether members or non-members, simply because they occur within the precincts of Parliament. The principle of exclusive cognisance reinforces the 'exclusive right of each House to manage its own affairs without interference from the other or from outside Parliament,' emphasizing the sovereignty of Parliament as a legislative and deliberative assembly.

Recent developments have seen parliamentary proceedings used in court more regularly, albeit without encroaching upon the protections provided by parliamentary privilege. This highlights an evolving landscape where the boundaries and applications of privilege are continually reassessed to balance transparency with the need for legislative immunity<sup>10</sup>.

### **Historical Origins of Congressional Privileges in the USA**

The historical origins of Congressional privileges in the USA are deeply rooted in the country's formation and its foundational documents. The U.S. House of Representatives, established in 1789, was designed to closely reflect the people's will. This design was influenced by James Madison's vision of a legislative body with "an immediate dependence on, and intimate sympathy with, the people"<sup>11</sup>. This vision underscored the importance of legislative immunity in protecting the democratic process and ensuring that representatives could serve without undue interference.

- **Foundational Documents and Precedents:**

- The Articles of Confederation contained a provision directly preceding the Privileges and Immunities Clause in the US Constitution, highlighting early recognition of the need for certain protections for legislative members.

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<sup>10</sup> Immunity and exemption available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9645115/> last seen on 31 march 2024

<sup>11</sup>Privileges in USA available at - <http://www.house.gov/the-house-explained/history-of-the-house> last seen on 31 march 2024

- Charles Pinckney of South Carolina introduced the Privileges and Immunities Clause at the Constitutional Convention, cementing the importance of these protections in the nation's highest legal document

- **Evolution of Specific Privileges:**

- The franking privilege, allowing members to send mail without postage, originated in the seventeenth-century English House of Commons and was adopted by the American Continental Congress in 1775. This privilege was formally written into law by the First Congress in 1789.
- The privilege from arrest, barring arrest in all cases except for felony or breach of the peace, and the immunity from having to answer in court for congressional speech or debate, primarily serve as shields against civil actions by private parties. These privileges have been known in Anglo-American constitutional history since the advent of parliaments.

The House Office of the Historian and the Office of Art and Archives play crucial roles in preserving the institutional memory of the House, offering resources on its history through the History, Art & Archives website. This ensures that the evolution and application of Congressional privileges are well-documented and accessible. These elements together paint a picture of a legislative body designed from its inception to operate with a degree of autonomy and protection, ensuring that its members can fulfill their duties to the public without fear of undue legal entanglements or personal risk.

### The Scope of Congressional Privileges in the USA

In the USA, Congressional privileges are enshrined in the Constitution and various laws, providing members with specific immunities and rights that facilitate their legislative duties. These privileges are designed to protect the integrity of the legislative process and ensure the independence of individual legislators. Here's a closer look at the scope of these privileges:

- **Basic Immunities:**

- **Freedom from Arrest:** Members of Congress are privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same, except for treason, felony, and breach of the peace<sup>12</sup>.
- **Speech or Debate Protection:** This clause provides immunity from libel or defamation claims based on statements made in their respective

<sup>12</sup> Basic immunity available at - [https://constitution.congress.gov/browse/essay/artI-S6-C1-2/ALDE\\_00013354/](https://constitution.congress.gov/browse/essay/artI-S6-C1-2/ALDE_00013354/) last seen on 31 march 2024

chambers, ensuring that members can speak freely without fear of legal repercussions.

- **Financial and Operational Privileges:**

- **Compensation and Benefits:** Members of Congress earn a salary of \$174,000, are entitled to a retirement package, and have the privilege of sending official mail without postage .
- **Access and Facilities:** They enjoy bypassing Federal security checks, access to the Capitol and other federal buildings at any time, and use of a private office in a historic building with exclusive amenities<sup>13</sup>.

- **Legislative Process and Legal Protections:**

- **Contempt Authority:** The US Congress has the power to hold individuals in contempt for failing to comply with a subpoena, a power that the courts can enforce.
- **Jurisdiction and Statutory Protections:** Unlike the UK Parliament, the US Congress can seek declaratory or injunctive relief in federal courts, showcasing a unique statutory protection that underscores the separation of powers within the US government.

These privileges underscore the importance of maintaining a balance between transparency and the need for legislative immunity. While members of Congress enjoy significant protections while performing their official duties, these privileges are not absolute and do not extend to immunity from arrest or prosecution for criminal conduct unrelated to their legislative functions. This framework ensures that while Congress members are shielded to an extent necessary for them to perform their duties effectively, they remain accountable to the law and the electorate.

### Comparative Analysis: UK vs. USA

When comparing the parliamentary privileges and structures of the UK Parliament and the US Congress, several key differences and similarities emerge, influencing how each body operates within its respective political system.

#### Structural and Operational Differences:

- **System of Governance:**

<sup>13</sup> Financial privileges available at <https://www.quora.com/What-are-the-perks-and-privileges-of-being-a-member-of-Congress>

- The UK operates under a system of parliamentary sovereignty where Parliament is the supreme legal authority, capable of creating or ending any law. The US, however, practices a system of separated institutions sharing powers, with Congress being an equal partner in governance .

- **Formation of Government:**

- In the UK, the government is formed by the leadership of the largest party in the House of Commons, and members often serve as government ministers. Conversely, in the US, the President and the executive branch are separately elected, and the Constitution prohibits Congress members from simultaneously holding executive office.

- **Legislative Power and Process:**

- The UK Commons holds significant legislative power, with the Lords playing a revising and reviewing role. In the US, both the Senate and the House have equal legislative power, but congressional committees have substantial influence over legislation.

### Cultural and Political Dynamics:

- **Political Culture:**

- US politics is characterized by the local representation mantra, with Congress members viewing themselves as their constituents' representatives in Washington. The UK's political culture is more nationally oriented, with MPs' loyalty and re-election prospects tied closely to their party.

- **Partisanship and Professionalism:**

- Recent years have seen Congress become more partisan, while the Lords has become more professional and diverse following the Blair reforms. This reflects differing trends in the political landscape of each country.

### Privileges and Immunities:

- **Scope of Immunities:**

- Both the UK Parliament and US Congress enjoy privileges like freedom from arrest and speech protection within their chambers. However, the

UK courts do not have the power to rule on the constitutionality of acts of Parliament, a stark contrast to the US, where Congressional actions can be challenged in court <sup>14</sup>.

- **Punishment for Contempt:**

- While both have the power to punish for contempt, it is clearer in the US that the courts can enforce this. The UK's process for enforcing contempt is less transparent<sup>15</sup>.

### Representation and Terms:

- **Constituency Size and Representation:**

- The average MP in the UK represents about 91,000 people, whereas the average US House district encompasses approximately 670,000 individuals. This significant difference in constituency size impacts the nature of representation and engagement with constituents.

- **Term Length:**

- US House of Representatives members face their voters every two years, promoting a more immediate accountability to the electorate. UK MPs, however, have longer terms of five years, offering a different dynamic in political accountability and stability.

Understanding these differences and similarities is crucial for appreciating how parliamentary privilege and legislative immunity function within the broader context of each country's political system and culture.

### Implications of the Difference in Privileges

Parliamentary privilege, a critical component of legislative immunity, plays a dual role in the democratic processes of both the UK and the USA. Its implications, while profound, vary depending on its application and interpretation within each country's unique political and legal framework.

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<sup>14</sup> privileges and immunity available at - <https://www.parliament.uk/globalassets/documents/joint-committees/Parliamentary-Privilege/Virtual%20Volume%20II%20-%20All%20evidence.pdf> last seen on 31 march 2024

<sup>15</sup> Punishment of contempt available at - <https://www.parliament.uk/globalassets/documents/joint-committees/Parliamentary-Privilege/Virtual%20Volume%20II%20-%20All%20evidence.pdf> last seen on 31 march 2024

- **Dual Nature of Parliamentary Privilege:**

- **Advancement of Democracy:** When used appropriately, parliamentary privilege acts as a bulwark for democracy, providing the necessary protections for members to engage in open, uninhibited debate and legislative activities. This freedom is essential for the functioning of a vibrant democratic system, allowing elected representatives to fulfill their duties without fear of reprisal or litigation.
- **Potential for Abuse:** Conversely, the broad protections offered by parliamentary privilege can sometimes be exploited, leading to instances where it acts as an oppressor of rights. This negative aspect highlights the need for a careful balance, ensuring that the privileges are not used to shield misconduct or hinder justice<sup>16</sup>.

- **Interplay Between Article 9 and Exclusive Cognisance:**

- The relationship between Article 9 of the Bill of Rights, which affirms the freedom of speech within Parliament, and the principle of exclusive cognisance - the right of each House to manage its internal affairs - is complex and not precisely defined. This ambiguity can lead to challenges in delineating the exact scope and limits of parliamentary privilege. Some argue that these concepts are deeply intertwined, affecting how privileges are interpreted and applied in real-world scenarios.

The implications of these differences in privileges between the UK and the USA are significant, impacting not only the legislative process but also the broader interaction between the government, judiciary, and the public. In both countries, the proper functioning of parliamentary privilege is crucial for safeguarding democratic principles and ensuring that legislators can perform their roles effectively. However, the potential for abuse underscores the importance of maintaining oversight and clear guidelines to prevent misuse. The nuanced relationship between Article 9 and exclusive cognisance further complicates this landscape, necessitating ongoing dialogue and legal scrutiny to ensure that the balance between privilege and accountability is appropriately maintained.

## Conclusion

Through a comparative analysis of the parliamentary privileges in the UK and USA, it's clear that despite the diversity in their historical development, structure, and legal frameworks, both

<sup>16</sup> Dual nature of parliamentary privileges available at  
- <https://www.degruyter.com/document/doi/10.12987/9780300134896-013/html> last seen on 31 march 2024

nations uphold the principle of legislative immunity as a vital element of democratic governance. This study delineates the evolution of these privileges, emphasizing their role in facilitating free speech, debate, and the effective performance of legislative duties without fear of interference or legal repercussions. The exploration into these jurisdictions highlights the necessary balance between empowerment and accountability, ensuring that such privileges foster transparency, democracy, and justice.

The implications of these comparative privileges resonate beyond their immediate legal contexts, suggesting broader reflections on the relationship between legislative bodies and the principles of democracy and rule of law. As this analysis concludes, while the mechanisms and extents of parliamentary privileges may vary, their core purpose remains integral to the functioning of any democratic society. It beckons further research and dialogue on refining these privileges, ensuring they continue to serve the public interest and support the delicate balance between legislative immunity and the accountability of elected officials to the populace they serve.

