

Constitution

Has many similar definitions:

- A constitution establishes or constitutes a system of government
- A constitution is a set of laws on how a country is governed.
- **“A body of laws, customs and conventions that define the composition and powers of the organs of the state and regulate the relations of various state organs to one another and to the private citizen.” (Hood, Phillips & Jackson 1987, p5)**

The British Constitution is unwritten, unlike the constitution in America or the European Constitution, and, as such, is referred to as an uncodified constitution, in the sense that there is no single document that can be classed as Britain's constitution. The British Constitution can be found in a variety of documents.

Supporters of our constitution believe that the current way allows for flexibility and change to occur without too many problems. Those who want a written constitution believe that it should be codified (written in one document) so that the public as a whole has access to it.

The British Constitution comes from a variety of sources. The main ones are:

Statutes: starting with such ancient one's such as the Magna Carta of 1215 whilst of little importance in the present day, as it has been repealed & replaced, it gave early limits of Monarchical power and the rights of individuals. For example: to trial by a jury of their peers.

Laws and Customs of Parliament; political conventions

Case law; constitutional matters decided in a court of law

Constitutional experts who have written on the subject: such as Walter Bagehot and A.V. Dicey.

A convention applies to the constitutional rules which are observed in many cases even though they do not have the force of law. To expand further, these constitutional rules are considered to be binding even though they are not enforced by the courts, nor the presiding officers in the Houses of Parliament.

Examples of Conventions:

- Acts of Parliament are technically enacted by the Queen in parliament
- The Queen will appoint as Prime Minister the leader of the political party with the majority of seats in the House of Commons
- THE PM must be a member of the House of Commons
- The government must maintain the confidence of the House of Commons if they lose a vote of no confidence the government must resign or advise the Queen to dissolve Parliament.

- Ministers must be members of the House of Commons or Lords

There are two basic principles to the British Constitution:

The Rule of Law and The Supremacy of Parliament

(http://www.historylearningsite.co.uk/rule_of_law.htm)

The Rule of Law is an aspect of the British Constitution that has been emphasised by A. V. Dicey and it, therefore, can be considered an important part of British Politics. It involves:

The rights of individuals are determined by legal rules and not the arbitrary behaviour of authorities.

There can be no punishment unless a court decides there has been a breach of law. Everyone, regardless of your position in society, is subject to the law.

it is imperative to establish a sound understanding of the concept of the rule of law.. Dicey summarised the rule of law under three heads.

Primarily...No man could be punished or lawfully interfered with by the authorities except for breaches of law. In other words, all government actions must be authorised by law.

Secondarily...No man is above the law and everyone, regardless of rank, is subject to the ordinary laws of the land.

Finally...There is no need for a bill of rights because the general principle of the constitution are the result of judicial decisions determining the rights of the private person.

On first glance, the comment that is rule of law is an unqualified good is clearly self-evident. The benefits are numerous. It proposes that government should have restraints, not possess discretionary powers, there should be legal controls over the government's activities and no one including government officials should be above the law. These principles if successfully attained within a society will result in national stability and security of citizens.

The Human Rights Act 1998 reflects the rule of law in most of the articles.

The critical feature to the Rule of Law is that individual liberties depend on it.

Its success depends on the role of trial by jury and the impartiality of judges. It also depends on Prerogative Orders.

There are three Prerogative Orders:

Certiorari calls a case up from an inferior court to a superior one to ensure justice is done.

Prohibition prevents an inferior court from hearing a case it does not have the power to listen to.

Mandamus orders an inferior court to carry out its duties.

Supporters of a written and clearly defined constitution believe that as society has had its liberties more and more encroached on by central government, the Rule of Law is more important now than ever. They claim that central government has sought and seeks to undermine the three basic tenets of Dicey's code with an increase in things such as:

the Official Secrets Act

the attempt to remove an individual's right to trial by jury

the activities of the Secret Service (especially after September 11th)

removing what were considered traditional rights (such as the removal of the workers right at GCHQ to belong to a trade union under the Thatcher government (though brought back since 1997)

The gagging clause that now has to be signed by those in the Civil Service after the Clive Ponting and Belgrano issue shortly after the end of the Falklands War

However, individuals still retain a great deal of personal freedom and many individuals will never be affected by the Official Secrets Act or the activities of Britain's secret services (though they may not know if they are being investigated or not!) It is agreed with some justification that a modern society needs bodies like MI5 and MI6 simply because there are a tiny number of individuals who wish to subvert society and have to be dealt with accordingly. A law-abiding individual, it is argued, need never worry about such organisations.

Also there are bodies that theoretically oversee the activities of government agencies and their work – such as the Council of Tribunals and the Parliamentary Commissioner. It is argued that these bodies help to protect the rights of the individual at the expense of any incursions into their personal freedom by government agencies.

So a constitution consists of laws, rules, conventions and other practices within which the framework is identified and explained:

- The institutions of government
- The nature, extent and distribution of powers within those institutions
- The forms and procedures through which such powers should be exercised
- The relationship between the institutions of government and the individual citizen, often referred to as a “bill of rights.”

If a constitution is meant to be paramount, then it is superior to the institutions it creates.

It follows that legislation which is repugnant to the constitution must be void.

The Constitution of the United States of America circa 1789

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3.

The Senate of the United States shall be composed of two Senators from each State, [chosen by the Legislature](#) thereof for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.](#)

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall [be on the first Monday in December](#), unless they shall by Law appoint a different Day.

Section. 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7.

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by

two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof....

Characteristics of a constitution

Some constitutions are extremely rigid but they lay down procedures whereby amendments can be made.

The UK, in not having a written constitution, has a greater degree of flexibility as there are areas that can be altered.

Monarchy v Republic

There are very few absolute monarchies most, like the UK have symbolic, rather than real power. Their role is ceremonial for the most part.

Layers of Government

A federal constitution allows the sharing of power between the state and the regions e.g. USA and Germany.

Most countries have some form of division of government. Here in the UK we have devolved power to the Scottish, Welsh and Northern Ireland assemblies. We also have a system of local government, of which more will be covered later.

The UK constitution is said to be more flexible as there are differing ways in which it can be changed:

1. By enacting legislation according to parliamentary procedure
2. By judicial decisions
3. By a change to conventional practices

To compare this to a written constitution in the USA it requires a two thirds majority by both houses of Congress: the Senate and House of Representatives, and by three quarters of the legislature of the States.

The reasons for this are to protect the fundamental freedoms such as civil liberties.

The Constitution of the UK is Unitary and has no defining written constitution controlling the powers of government, or of the legislature.

Instead of a written constitution, there exists a sovereign legislative body, which represents the ultimate law making power of the state.

Power is given to Northern Ireland, Scottish and Welsh legislatures and to local government under Acts of Parliament and any power can be withdrawn. For example; abolition of the Greater London Council and other Metropolitan councils under the Local Government Act in 1985.

Constitutional Statutes are ones which make up a significant part of the UK Constitution (Bill of Rights, Human Rights Act), whilst ordinary statutes are not of an overtly constitutional nature (Theft Act, Proceeds of Crime Act)

In the United Kingdom there are various Acts of Parliament which can be said to be *constitutional statutes*. *Thoburn v Sunderland City Council* [2002] 3 WLR 247 was a case involving the successful prosecution of traders who refused to use metric measures instead of imperial measures thereby placing them in breach of requirements imposed by European Community law. The Court of Appeal acknowledged that there is a category of statutes known as constitutional statutes.

Lord Justice Laws said: ... *a constitutional statute is one which (a) conditions the legal relationship between citizen and State in some general, overarching manner, or (b) enlarges or diminishes the scope of what we would now regard as fundamental constitutional rights.*

He included in this category the European Communities Act 1972 which gave effect to the United Kingdom's membership of the European Common Market and by making European law supreme, the Act fundamentally altered the constitutional principle (for the time being, at least) that, in the United Kingdom, Acts of Parliament are supreme. His definition of a constitutional statute is limited – it does not refer expressly to laws governing the relationship between the institutions of State. More importantly, there is no suggestion that they are specially entrenched: that is, that they require special majorities for their amendment, as opposed to the simple majorities required for the amendment of 'normal statutes', which is the case in those countries which have a supreme constitution. However, it is significant that the idea of constitutional statutes, as a category of statute, was recognised by the *courts* and not by Parliament itself. This emphasises the important role of the courts in determining constitutional rules, particularly in a country with no single constitutional document, either through the interpretation of statutes or development of the common law by applying or adapting earlier judicial decisions to new situations. Even in countries with a single constitutional document, the importance of the courts is recognised by some writers who cynically observe that 'the Constitution is what the judges say it is'. Therefore, the judgments of the courts are a vital source of constitutional rules, and judgments form a very large part of constitutional law.