

What is a Constitution?

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 EU, and is referred to as an uncoded constitution, in the sense that there is no single document that can be classed as Britain's constitution.



The British Constitution comes from a variety of sources

- Statutes
- Laws and Customs of Parliament
- Case law
- Constitutional experts who have written on the subject

Statutes

Known as Acts of Parliament, however

Started with the Magna Carta of 1215, whilst of little importance in the present day, as it has been repealed & replaced, it gave early limits of Monarchical power and the rights of individuals.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

e.g. 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.

Case Law

a judicial decision that serves as an authority for deciding a later case

e.g. Donaghue v
Stevenson
[1932] All ER Rep 1



There are two basic principles to the British Constitution:

The Rule of Law and The Supremacy of Parliament

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.

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

A constitution consists of laws, rules, conventions and other practices

- 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.

If you look at the notes you will see that the American Constitution is very specific and all freedoms, liberties and the constitutional framework is laid out in extreme detail.

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."

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. 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 unitary and is said to be more flexible as there are differing ways in which it can be changed:

By enacting legislation

By judicial decisions

By a change to conventional practices

compare this to the constitution in the USA it requires a 2/3 majority by both houses of Congress: the Senate and House of Representatives, and by 3/4 of the legislature of the States.

Devolution

The UK Parliament at Westminster retains power to legislate on any matter, but the convention of devolution is that the UK Parliament will not normally legislate on devolved matters without the consent of the Scottish Parliament/Welsh Assembly/ NI Assembly

Reserved powers

- Decisions (mostly about matters with a UK or international impact) are reserved and dealt with at Westminster.
- Consumer protection is a reserved matter

Devolution

- The Scottish Parliament consists of 129 members (MSPs) with elections every 4 years.
- There is a Scottish Executive or government and headed by a First Minister, who at the moment is Alex Salmond.



They have policy & law making decisions over

- Health
- Education
- Housing
- Sport and Arts
- Agriculture, Forestry & Fishing
- Emergency Services
- Planning
- Social Work
- Heritage
- some Transport
- Tourism

The Welsh National Assembly

- Consists of 60 elected members. The executive arm of the Assembly Welsh Assembly Government, is led by First Minister, Carwyn Jones



- The National Assembly for Wales is made up of 60 Assembly Members.
- Forty of them are constituency Assembly Members, representing the same local constituencies as Westminster MPs;
- the other 20 are regional Assembly Members, who represent one of the five regions of Wales (four for each region).

Secondary powers were conferred on the executive by primary legislation to give the executive (i.e., Ministers) more powers

- *NHS prescriptions in Wales* — were abolished
- *Charges for University Tuition* — are different for Welsh resident students studying at Welsh Universities
- *Charging for Residential Care* — In Wales there is a flat rate of contribution towards the cost of nursing care

Changes to power of the Assembly

- In a referendum held on 03 March 2011, Wales voted in favour of further powers for making laws for National Assembly
- Nat Assembly for Wales can now pass laws in 20 devolved areas
- Hence new Acts do not require negotiation between UK and Welsh Governments

Devolved areas of law

- agriculture, fisheries and rural development
- economic development
- education and training
- the environment
- food
- health and health services
- highways and transport
- housing
- local government
- public administration
- social welfare

Devolved areas cont,

- Ancient monuments & historic buildings
- Culture
- National Assembly for Wales
- Public Administration
- Tourism
- Water & flood defence
- Sports & recreation
- Welsh language
- Fire & rescue services & promotion of fire safety

Northern Ireland

- The executive consists of a First Minister, Peter Robinson, and deputy First Minister, Martin McGuinness and various ministers with individual portfolios
- The Northern Ireland assembly consists of 108 elected Members



It has power to legislate in a wide range of areas

- These are finance and personnel, agriculture, education, health and social services, economic development and environment.
- Example: Assembly agreed to drop prescription charges to £3.00 in Jan 2009 and scrap them completely in April 2010.

Issues on which the Northern Ireland Assembly has full legislative powers:

- health and social services
- education
- employment and skills
- agriculture
- social security
- pensions and child support
- housing

Devolved powers continued

- economic development
- local government
- environmental issues, including planning
- transport
- culture and sport
- the Northern Ireland Civil Service
- equal opportunities
- justice and policing

A reserved power

- a political power that a constitution reserves exclusively to the jurisdiction of a particular political authority.
- those subjects still dealt with by the United Kingdom Parliament, and not devolved to the Scottish Parliament, National Assembly for Wales or the Northern Ireland Assembly

Fin!
Any questions?


