



The UK constitution

The nature and functions of a constitution

Virtually every country in the world operates its political system within the constraints of a **constitution**. In most cases, too, the constitution of the state is a written document that has been agreed on some particular occasion. Such constitutions are usually described as *codified*.

Constitution

A set of principles, which may be written or unwritten, that establishes the distribution of power within a political system, relationships between political institutions, the limits of government jurisdiction, the rights of citizens and the method of amending the constitution itself.

Key Word

There are, however, a few countries, including the UK, that operate without such a specifically written constitution. Even so, these countries have a general 'sense' that a set of constitutional rules exists. So, constitutions, whether codified or not, are a vital aspect of most stable political systems. All constitutions, no matter where they exist, perform the same set of functions. These are as follows:

1. They determine how political power should be distributed within the state. This includes federal settlements (in a so-called federal constitution) where power is divided between the

central government and regional institutions, as in the USA, or unitary states (a unitary constitution) where ultimate power lies firmly in one place, as with the UK's parliamentary system. Similarly, constitutions determine the balance of power between government and Parliament, between president and prime minister and between two chambers in systems that are bicameral (two Houses of Parliament).

2. Linked to this first function, constitutions also establish the political processes that make the system work. This includes the relationships between institutions and the rules that govern how they operate.

3. A constitution normally states what the limits of governmental power should be – in other words, what is the competence of government. The British constitution is unusual in this sense as it places no limits at all on the competence of Parliament. Being sovereign, Parliament is able to do what it likes. Of course, we would not expect it to act in a dictatorial way, but it has the legal power to do what it likes. By contrast, US government is circumscribed by that country's constitution.

4. Just as constitutions limit governmental power, so do they assert the rights of the citizens against the state. Most countries that at least claim to be democratic have some kind of 'bill of rights', a statement that prevents the government from trampling on the civil liberties of its citizens.

5. Constitutions establish the rules by which nationality is established – in other words, who is entitled to be a citizen and how outsiders may become citizens. This also implies that a constitution defines the territory that makes up the state.

6. Finally, we must remember that constitutions have to be amended from time to time. It is therefore essential that a constitution contains within itself the rules for its own amendment. The UK is, once again, unusual in this respect as its constitution changes in two ways. One is through a simple parliamentary statute; the other is the slow evolution of unwritten rules, known as conventions. Normally states have special arrangements for amending their constitution. In France and Ireland, for example, a referendum is needed to approve a change. In the USA it is necessary to secure a two-thirds majority of both houses of Congress and the approval of three-quarters of the 50 states that make up the Union. Britain has no such methods of amendment; its constitution has largely evolved naturally over the course of history.

So we have established six main functions of a constitution. Issues that concern any of these matters are therefore described as ‘constitutional’ in nature.

Constitutionalism

The concept that a political system is governed by a constitution and that political institutions are bound by constitutional rules which are binding.

Key Word

Codification

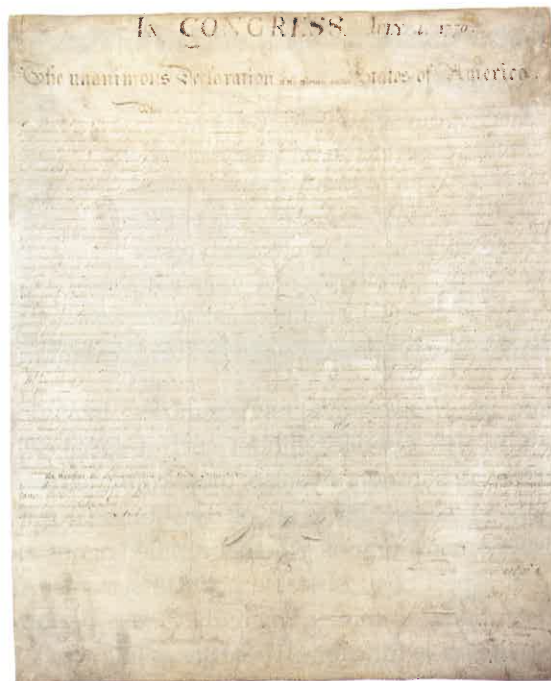
Two aspects of constitutionalism need further explanation. They are **codification** and **entrenchment**.

Codification

The process of setting out a constitution in an organised way in a single document. In other words, it has a single source.

Key Word

The advantage of this arrangement is that the constitution is clear and every citizen is able to access it. Similarly, when there is a dispute concerning constitutional arrangements, a codified document is a considerable advantage. Codification of a constitution normally occurs at some critical moment in a country’s history. This may be the aftermath of a revolution, civil war or coup d’état; it may come about following the creation of a new state or the re-formation of a troubled country. The following examples demonstrate how constitutions can come about.



► Figure 2.1.1 The Constitution of the USA, the first example of a codified constitution

Table 2.1.1

Country	Year of current constitution	Circumstances
USA	1787	The creation of a new political union after the independence of 13 former British colonies.
Norway	1814	On the country’s freedom from Danish rule.
Ireland	1937	Renounced the British Crown and became a republic.
China	1949	Upon the victory of communist forces after a civil war.
Malaysia	1957	On independence from Britain.
France	1958	After a coup d’état when a new President – Charles de Gaulle – took over.
Iraq	2005	Following the removal of the regime of Saddam Hussein.

A codified constitution has one additional benefit. As a single document it can provide the people of a state with something with which they can identify. The Americans, for example, virtually worship their historic constitution, treating it with great reverence and pledging allegiance to it regularly. When each new President takes office, indeed, it is part of his oath of allegiance that he agrees to ‘protect and defend’ the constitution.

Two-tier legal systems

When a country has a codified constitution it also has what is known as a *two-tier* or *dual* legal

system. This means that there are two levels of law. Higher laws are those that concern constitutional arrangements – who has power, the relationship between institutions, the rights of citizens, etc. – and these are safeguarded and entrenched (see below). In Germany, for example, these higher laws are known as *basic laws*. Such higher laws often have special arrangements for their enactment – referendum approval, two-thirds majority in the legislature, etc. – and so have a different status. Below these are ordinary laws, which concern relations between citizens, administration of the state, criminality, etc. These lower laws can normally be changed without special procedures and are not safeguarded by any special procedures.

Uncodified constitutions

The British constitution is unusual in that it is uncodified. Many even argue, therefore, that it does not actually exist at all. Parts of it are written, but there is certainly no single document and there are important parts of it that are not written at all. Israel, New Zealand and Canada also lack fully codified constitutions, but in all three cases there are ‘basic laws’ that describe constitutional principles and which are differentiated from other laws. By contrast, the UK makes no distinction between constitutional and other laws. In other words, the UK has a *single-tier* legal system. It is also true that Britain’s uncodified nature means that we say it has many sources, not just a single source. The sources of the UK constitution are described below.

We do need to be careful here in relation to Britain. The British constitution is not codified *as a whole*, but there are *parts* of the constitution that *are* codified. In particular, the European Convention on Human Rights is part of British law (though it was originally created by the Council of Europe in 1950) and it is a codified document. Similarly, the Treaties of the European Union are codified documents that describe the relationship between Britain and the EU. So we can say that, today, the British constitution is *partly codified, partly written, but fundamentally uncodified*.