

# **‘Discuss and analyse the arguments for and against adopting a codified constitution in the UK.’**

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## Plan

### **Arguments against**

- Ruins the doctrine of sovereignty – parliaments sovereignty is effectively beaten.
- Judges have to police the constitution and effectively interpret it. -> threat of judicial tyranny. Codified constitutions cannot be interpreted by the public so the judges would have to interpret it which could bring out preferences and values of senior judges
- Un-necessary – doesn’t fully limit governments
- Hard to change
- Easily outdated
- Legal documents created at one point of time rather than a document which has been endorsed by history and created over time.

### **Arguments for**

- Clear rules
- One codified document
- Limited Government
- Neutral interpretation
- Protecting rights of individual liberty
- Education value – highlights certain values and strengthens citizenship

### **Introduction**

The argument of a codified constitution has been a debated subject for a long time within the UK Political spectrum. The argument stands at present moment that if they UK should or should not implement a codified constitution. Both sides of the argument withstand staggering evidence both in favour and factors denouncing the idea being drawn at the same time. The fact of a codified constitution would evoke a greater judicial intervention within the UK- maybe even put the state under risk of judicial tyranny. The uncoded constitution we have at the moment, however scattered it maybe, is universally understood through statutes in simple terminology. However, it is true that a codified constitution would be in favour massively for the people of Great Britain. Some beneficial arguments would be that a codified constitution is a strong education / citizenship simple which also cut the parliamentary sovereignty away from government equalling a proportional cut to size. In a sense, a codified constitution will narrow the chance of a tyranny via the minority –

similar to Germany's transition after the National Socialist regime. This essay will describe the factors for and against codified constitutions

### **Why hasn't the UK already got a codified constitution?**

The introduction of a codified constitution has never occurred within the British history simply because: there has been no need to do so within the life span of the country. Usually inductions of constitutions happen merely after revolutionary events which change the way that a country would be governed in the future. For instance, the tyrannical events of National Socialists in Germany caused a codified constitution to be drafted after the end of the regime to suppress government in favour for liberation of the people. The sense of protection for the rights of the people came into force here as a positive of a codified constitution. Pre-facist Germany there was not an ounce of protection of the people due to a loose un-codified constitution and the subject of sovereignty which lead a tyranny of the minority. Codified constitutions provide solutions for a safeguard against elective dictatorship.

### **Further pros of a Codified Constitution**

Codified constitutions not only erase the threat of elective dictatorships by cutting sovereignty but the interpretation factor as well is a big plus for neutrality. The reality of codifying the constitution effectively will bring in senior judges in to police it. Evidently, this point has been seen as a negative but in reality, the policing of judges further more upholds the provisions that the constitution s being run properly within public bodies. In this sense, they would be seen as above the law-- acting as typical arbitrators of the law to ensure policies of the constitution are being followed lawfully.

A fair amount of clear rules would be projected under a codified constitution. The effect of un-codified constitutions raise a very disorganised, statute-relied constitution which is made up from several different sources. Often, it can be argued that the current constitution (which even includes sources even from E.U. law) is unclear, uncollected and confusing. The beauties of a codified constitution will not only bind constitutional rules into a single document but they will also clearly define them in one single 'written' document. The educational factors not only are a high benefit towards the system but they also highlight the central values and overall goals of the political system. To have a codified constitution within the UK will not only strengthen political and national pride, like the US already has instated, but it also will bind citizenship within the UK. The political identity within the UK would be cleared in our modern day societies.

### **Cons of a codified Constitution**

Some say the induction of a codified constitution for the UK at the moment is simply 'unnecessary'. Many do mention this because in effect, it is not the best way of limiting

government. The strengths and checks of improving democracy with prevent an over powerful government more effectively than a codified constitution.

Codified constitutions as stated before would be policed by the judiciary. Effectively this would make them higher than the law if they were to be in charge of policing the constitution. However, it is not right that the judiciary should be placed in a higher stance just because the constitution includes hard legal terms. The judiciary would in fact be the new threat to the people once parliamentary sovereignty is killed. This would mean that a codified constitution will be subject to interpretation of judges – which is not even the accountability of the public as judges are unelected. There is not an ounce of legality within a judges mandate to be the best ‘police force’ to control a codified constitution – if they are unelected, they should hold no socially representative role within the constitution. The fact of the matter is however, it would be significant disadvantage if there were to be a codified constitution because the unelected bulk of judges would be given higher rights and responsibilities equalling in a higher risk for judicial tyranny.

There also is a leeway for a case of political bias within a codified constitution because usually, a codified constitution is inevitably written with specific values or principles. These values or principles for instance can evoke a preferred style of thinking in preference to others. For instance, maybe it is preferred to be written in a socialist mindset which obviously creates a bias towards other political thinking – this can create more upset than good.

The fact of a codified constitution also deems a permanent document. This means its really difficult to amend or update within the future. Obviously, within time, the political spectrums change – so does values. However, codified constitutions are very hard to amend or change. The reason an uncodified constitution reigns supreme is that the sources such as statute law and EU over-rule can effectively apply constitutional changes in a quicker, easier stance – and it will always be updated. The main disadvantage is that within a diverse, ever changing society, obviously values also change with that. There is a significant risk that if the UK were to adopt a form of codified constitution, the extrinsic sources would be scrapped for intrinsic sources from the document which can be regarded as permanent. This will most certainly fail to meet the standards of an ever-changing political spectrum.

## **Conclusion**

Conclusively, the argument which is presented shows balanced sides for both the positive and negative aspects of adopting a codified constitution. However, the final situation which can be gathered from this essay is that, there is not a need for one. The problems of a codified constitution would just complicated matters further with a police system by judges

starting to interfere and even the likelihood of it not limiting governments but only just leading to confused individuals trying to interpret a manner that is most appropriate.