

Discuss and analyse the arguments for and against adopting a codified constitution in the UK

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A constitution is 'a body of fundamental principles or established precedents according to which a state or organization is governed' (The Oxford English Dictionary, 2004). The purpose of a constitution is to explain how sovereign power is distributed amongst the government and people as well as to delegated bodies. There are numerous arguments for a codified constitution being introduced in the UK such as that it would offer a better protection of rights for the people and prevent an over mighty government. Calls for constitutional reform were particularly prominent in Blair's first term of government, as this was promised in the Labour Party manifesto of 1997. Arguments against adopting a codified constitution such as that it could lead to judicial tyranny are outweighed by arguments for it. However although a codified constitution may not be beneficial a bill of rights would be as it would offer the protection of citizens rights, but could be written so that it wouldn't become outdated.

Codified and un-codified constitutions

A country's constitution is often defined as being either codified or un-codified which can be said simply as written or unwritten (although no constitution is fully unwritten or written so this is not an all encompassing definition). Codified constitutions have three key features, chiefly that the document is authoritative, in that it is the highest law of the land and binds all political institutions (Heywood, 2008). Another key characteristic is that it is entrenched as it is difficult to amend or abolish; there have been 27 amendments to the US constitution in over 200 years (mainly because it is extremely difficult to get both houses and the majority of states to agree on a bill). This type of constitution could therefore be described as being rigid. Codified constitutions are a form of higher law because they set out the duties of all government establishments, making them judiciable so all bodies of authority are held accountable to the courts authority.

An un-codified constitution is essentially the complete opposite of a codified constitution in that it is not authoritative and the laws outlined in it have the same status as ordinary ones; it is not a form higher law. Therefore the constitution is not entrenched so can be changed easily, much like other laws. Under an un-codified constitution, judges cannot declare laws or actions as unconstitutional; because there is no 'higher law' so un-codified constitutions are non-judiciable. All but three of the world's countries have codified constitutions, showing that it is completely possible for a constitution to evolve over time & for a country to be politically stable even if its constitution was written a long time ago; for example France and the USA.

Arguments for a adopting a codified constitution

Limited Government-One problem with having an un-codified constitution is that there are few limitations put on how a government must act so it can effectively do as it wishes. There

are therefore, no rules to govern the government; however UK doctrines such as collective responsibility act as principles that governments should follow. With a codified constitution, limitations would be put on the government and prevent it from becoming over mighty. As a codified constitution creates higher law, if adopted it would override the doctrine of parliamentary sovereignty. This would take actual powers away from parliament who would not be able to overturn the constitution: which is the opposite of parliamentary sovereignty where parliament can make or unmake any laws it pleases. The doctrine of the mandate (where a government can put through any laws listed in its manifesto) would also be overturned as the party would have to check any bills against the constitution, stopping the creation of bad law. Although some would argue that a limited government would not allow the country's government to make law quickly and efficiently, it is unlikely to have a negative effect. Therefore a limited government would be a positive consequence of introducing a codified constitution in the UK as it would prevent the government from becoming too powerful.

Protecting rights-With the adoption of a codified constitution, individual liberties are better protected as the relationship between people & the state, as well as the powers that both hold is clearly defined in one document. The rights of the individual cannot be abused by the government, and if the public feel this has happened they could challenge the government by accusing them of being un-constitutional and taking them to court. This promotes better democracy as it gives citizens more opportunity to question the government if they feel their rights have been breached or that the government has become too powerful by taking them to court. Rights would also be easier to enforce and more clearly defined; unlike the current Human Rights Act which is difficult to decide who is covered by it. This issue was shown through the case of the Afghani terrorists in 2000 that used the HRA in their defence for staying in Britain. Some argued that this shouldn't have been allowed as they were not from England and this issue would be resolved if there was a clear declaration of rights in the UK. Therefore, the fact that the rights of British citizens would be better protected from an over powerful government is a strong reason for codified constitution should be introduced in the UK.

Education- With a clearer protection of rights and clearer rules about how the government works, the public would lead become more informed about politics, leading to greater education and citizenship. This could perhaps leading to increases in involvement with politics such as higher levels of voting and a rise in active citizenship creating a greater political identity (although this is not to say this would be a guarantee as in the USA the voting rate for presidential elections is often around 30%).

Clear rules to govern by- The rules that govern the country are written down in one document making them better defined than an un-codified constitution. This creates less confusion about meaning of constitutional rules; although there are so few un-codified UK constitutional rules that it can hardly be called confusing. However this is not to say that the

constitution cannot be interpreted to mean different things to different people. One example of this occurring is the American constitutional law giving the 'right to bare arms' (but I like my sleeves!) which in some states is interpreted that people can carry hand guns with them and obtain weapons relatively easily yet in other states gun control is far greater. With clear set out rules that the government must follow, there will be greater certainty amongst the population that said rules will be enacted. Therefore the introduction of a codified constitution would be beneficial to the UK as it would get rid of confusion surrounding constitutional issues and provide reference for the public about what the government can do.

Arguments against adopting a codified constitution

Rigidity- A codified constitution is far more rigid than an uncodified one as higher law is far more difficult to change. An example of such rigidity can be seen in the USA where there have only been 27 amendments to US constitution in over 200 years showing it is much harder to change than acts of parliament are to make. In 2009 there were 27 acts of parliament passed in the UK showing how flexible the UK's uncodified constitution is (Acts of the UK parliament and Explanatory Notes, 2009). This does not mean however that codified constitutions are always rigid as in fact they can have been shown to be enormously flexible in some cases. Another problem with having a rigid constitution is that it can easily become outdated if it is not changed to keep up with the times par example the US constitution's 13th amendment was the removal of the clause that said slaves were 3/5 of a person, showing that evolutionary constitutions can be better than ones that were written as part of a revolution. On the other hand rigidity could also be a good thing as changing the law a lot of times is not a positive thing for a government to do as it suggests instability and lack of a real ideology that is stuck to. Although this may be the case, it is still preferable for the government to be able to change laws in order to keep up with public opinions, making a codified constitution unsuitable.

Political Bias- A codified constitution is written a one time when one set of values or ideology's preferences another so would be biased. An example of such bias was prohibition in the US where the yes lobby overpowered the no lobby at the time the amendment was made. Although public opinion changed against it quickly, the no lobby was unable to succeed for over 10 years. If a constitution was created in the UK now, it would show strong labour principles but would be completely different to one created with a conservative government in power. Uncodified constitution can be changed to make them more up to date but codified constitutions are harder to change and show political bias, therefore the introduction of a UK constitution would have a negative effect on the country.

Judicial Tyranny – A codified constitution would have to be policed by judges which is not preferable as they would be unelected so would be exerting illegitimate power. Their interpretation would not be publically accountable which may pose questions as to why judges are permitted to essentially control the country's laws, even though no-one has elected them to do this. Judges are also predominantly highly educated, white middle class,

middle aged men, making them socially unrepresentative of the population. The views of said people would be over represented, perhaps creating laws that would benefit them- although when scrutinizing constitutional law judges must be a-political and not allow their own opinions to interfere. The HOC is also made up of the same type of people and laws made do not just benefit them as MP's must represent the population. The fact that a codified constitution could lead to too much power for judges who are socially unrepresentative is a strong reason for not introducing one.

Unnecessary- The UK has been a politically stable country for a number of decades, with the closest the UK ever coming to an anti-government revolution being the battle between the miners and Thatcher's government. It seems then, that as the UK is stable that there is no real need for a codified constitution because it is just simple unnecessary and may serve as more harm than good. A codified constitution may not be the most effective way of limiting government power as introducing more checks and balances as well as better democracy (e.g. referendums) may actually be more beneficial. The introduction of the European Convention of Human rights into UK law as the HRA in 1998 has helped a lot with confusion created by the lack of a UK bill of rights and has been used in a number of recent appeals, showing a codified constitution to be unnecessary. The HRA however has caused much controversy recently in a case involving two sex offenders appealing against being on the register for life, as it is a breach of their human rights. A proper bill of rights may in fact be more beneficial than a codified constitution and instead of the HRA which appears can be used against just about any accusation, by any person: I refer back to the case of the Afghani high-jackers. A codified constitution may be unnecessary but a bill of rights would not.

Should the UK adopt a codified constitution?

Although there appears to be a convincing case for a written constitution in the UK major obstacles stand in the way of it being introduced which means that it is unlikely to be ever introduced. According to the doctrine of parliamentary sovereignty, no law is higher than acts of parliament, so it would be impossible to create a codified constitution as no parliament can bind itself. Parties would disagree about what went in and even if it were to be introduced the next government could simply eradicate it because no parliament can bind the next. Therefore, although there are arguments for a codified constitution, I believe that those against it being introduced override them. However the lack of properly defined rights for citizens, points towards the introduction of a bill of rights to solve this problem.

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