

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

Introduction

The UK's uncodified constitution and reform in favour of a codified one has been the subject of countless political debates. The argument lies in whether or not the UK would be better off with or without a codified constitution.

Arguments for it include strengthening citizenship and a bill of rights. Meanwhile, arguments against stand as a rigid set of rules introduced and the fact that it would be unnecessary. This may put forward the notion if a codified constitution could be introduced at all.

The constitution of the UK

A constitution is a set of rules that establishes the duties, powers and functions of government institutions, regulating relationships within them and defining the relationship between the state and its people.

The UK's is uncodified and can therefore be described as unwritten meaning there is no formal document laying down its rules, but it is also important to note that no constitution is fully written (codified with law) or unwritten (uncodified and based on custom and tradition).

One argument here is that most of the UK's constitutional provisions are written. Furthermore, because there is no singular written document, components of the constitution can be found in many places including statute law, common law and European laws and treaties.

Strengths and criticisms of the UK constitution

The strengths that the UK constitution promotes may question why there is a need for a codified constitution at all.

Firstly, the constitution is flexible and so it is not entrenched. This means that policy-made law can be introduced, scrapped or amended—something that is important in a forever changing political society. Politics can be modernised and decisions regarding social circumstances can up-date policy. Furthermore, it is quicker to propose an Act of Parliament than to amend a constitution of a country that has a codified one.

Secondly, the UK has a long record of democratic rule and this is evidence of its constitutional system. The importance of parliamentary sovereignty expresses democracy within the constitution and that the people get to influence the law in which they live by. Any constitutional change comes from democratic pressure exerted on the House of Commons (HOC) e.g. changes in the 19th century led to franchise extensions through reform acts. Also, the influence of unelected judges is

kept to minimum and in some countries like the USA, the constitution is affectively interpreted by judges of the supreme court-somewhat undemocratic.

Thirdly, the constitution helps to make government more effective. Because of the absence of a written constitution, government decisions made by parliament cannot be overturned by the judiciary and because of the Westminster system, they get their way. Power being held in the executive branches allows UK governments to take strong and decisive action. The Atlee government setting up the NHS is an example of this in effect.

Also, the UK constitution is a source of history and tradition, linking generations together. Common law and conventions have given it an 'organic' character that contrasts with codified constitutions that have been 'created'. The organics of the UK constitution shows that its basis is on history and tradition, possessing a historical authority. Constitutional principles have been 'tested by time' and shown to work. The UK constitution is therefore dignified containing the monarchy and the House of Lords.

Criticisms of the constitution have grown especially since the 1970's in the onset of recession. Despite the fact many of these lay within the traditional constitution, critics still point out that they remain in the reformation of it conducted by the Blair government of 1997. The UK constitution has a number of criticisms;

To start, the UK constitution is sometimes confusing. As 'unwritten', it is difficult to tell what it actually says. The constitution is not exactly a list of 'hard and fast rules'-in the context of a codified constitution the rules are crystal clear as they are written down. In the UK, the convention of ministerial responsibility requires that ministers are responsible for the blunders made by their departments. But, does that mean they should resign when civil servants make mistakes or when the minister makes them?

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n addition, elective dictatorship can be part of a problem with Parliament. Under the Westminster voting system, the party that gains victory in a general election takes control for 5 years until the next general election. The absence of a codified constitution means that Parliament has sovereignty that can lead to tyranny of the party in control. Majority over the Commons means that the party can use sovereignty to its own ends.

Also, centralisation of the UK government has seen a weak regime of checks and balances. Even though there is a system of liberal democracy that aims to limiting government power through relieving tensions between and amongst government bodies. But, the UK government is characterised more by a concentration rather than a fragmentation of power- the HOC is stronger than the Lords, the Prime Minister usually dominates the cabinet and the executive usually controlling government. This is partly where the argument that Blair's constitutional reforms need to go ahead further.

Another criticism is that the constitution does not have a bill of rights whereas codified ones do. This lays down civil rights and liberties for citizens of the state. In the UK, individual rights and liberties are weakly protected-a consequence of elective dictatorship. There is nothing that forces the government of the day to respect basic rights and individual freedom.

Ironically, the real problem could lie in strength of the constitution-tradition. A concern arises from a traditional unwillingness to write down these rights to give them legal substance. However, the Human Rights Act (HRA) of 1998 changed this, defining the rights and enabling reference of these in court. But, unlike an entrenched bill of rights it can be set aside. An example of this would be terrorism legislation.

The way to a codified constitution

The arguments for and against a codified constitution in the UK remain more or less balanced.

Before it was just an academic debate, but the Liberal Democrats are much in favour of a written constitution. The Labour Party under Blair and Brown has contributed greatly to its reform whilst the Conservatives want to introduce a bill of rights in exchange for the Human Rights Act.

However, there are some obstacles that stand in the way of codification; there is not a process in which a written constitution can be introduced. A reason for this being that there is no legal system to establish higher law- Parliament cannot bind itself. The only solution would be to invent a cross-party constitutional convention to draw up the provisions of the codified document, followed by a referendum to ensure popular authority. In addition, the parties would disagree about the provisions, some having distinct ideologies and values.

The new constitution would influence so many aspects of politics, law and citizenship, that the outcomes may be too unpredictable to determine in the long run.