

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

Introduction

A constitution is a set of rules that: seek to establish the duties, powers and functions of the various institutions of government; regulate the relationship between and among the institutions; and define the relationship between the state and the individual. There are many different types of constitution. Constitutions can be codified or uncodified, unitary or federal and seen as rigid or flexible. The most common way of comparing classifying constitutions is codified or uncodified. The UK is an example of an uncodified constitution whereas the U.S.A is an example of a codified constitution. This essay will show that the UK should not adopt a codified constitution.

Codified and Uncodified constitutions

A codified constitution is a constitution in which key constitutional provisions are collected within a single document, it is commonly known as a written constitution. Codified constitutions have three key features. In a codified constitution the document itself is authoritative in the sense that it constitutes 'higher' law. The constitution binds all political institutions, including those that make ordinary law. The provisions of the constitution are also said to be entrenched. This means that they are difficult to amend or abolish. As a codified constitution sets out the duties, powers and functions of government institutions in terms of 'higher law' it is justiciable. The other type of constitution is an uncodified constitution. An uncodified constitution is a constitution that is made up of rules that are found in a variety of sources, in the absence of a single legal document or written constitution. Unlike codified constitutions, the constitution is not authoritative. Constitutional laws enjoy the same status as ordinary laws. Uncodified constitutions are also not entrenched. The constitution can be changed through the normal processes for enacting statute law. Finally, uncodified constitutions are not justiciable. In the absence of higher law, judges do not have a legal standard against which they can declare that the actions of other bodies are considered constitutional or unconstitutional.

For adopting a codified constitution

On the one hand there are many arguments supporting the view that the UK should adopt a codified constitution. If a codified constitution was introduced it would significantly affect: the power of government; the relationship between the executive and Parliament; multi-level governance; relationship between judges and politicians and individual rights and freedoms. One argument is that a codified constitution would make rules clearer. Key constitutional rules are collected together in a single document, they are more clearly defined than in an 'unwritten' constitution where rules are spread across many different documents. A codified constitution would create less confusion about the meaning of constitutional rules and greater certainty that they can be enforced.

A second argument supporting a codified constitution is limited government. A codified constitution would cut government down to size. A codified constitution would effectively end the principle of parliamentary sovereignty and subsequently elective dictatorship. Elective dictatorship is a constitutional imbalance in which executive power is checked only by the need of governments to win elections. In the UK, it is reflected in the ability of a government to act in any way it pleases as long as it maintains control of the House of Commons. It

would also not be possible for government to interfere with the constitution due to the existence of higher law safeguarding the constitution. A codified constitution would also allow for neutral interpretation. A codified constitution would be 'policed' by senior judges. This would ensure that the provisions of the constitution are properly upheld by other public bodies. Judges are also 'above' politics and they would act as neutral and impartial constitutional arbiters.

A codified constitution also has educational value. A codified constitution highlights the central values and overall goals of the political system. This would strengthen citizenship as it creates a clearer sense of political identity which may be particularly important in an increasingly multicultural society.

The strongest argument in favour of a codified constitution is that a codified constitution would protect rights. Individual liberty would be more securely protected by a codified constitution because it would define the relationship between the state and the citizens. As a result of this rights would be more clearly defined and they would be easier to enforce than with the current uncodified constitution that exists in the UK. A codified constitution can also lead to elective dictatorship which further restricts rights. One way these rights could be defined could be through a bill of rights in the codified constitution. A bill of rights is a document that specifies the rights and freedoms of the individual, and so defines the legal extent of civil liberty.

Against adopting a codified constitution

On the other hand there are many arguments against the idea of a codified constitution. One argument is that codified constitutions are considered rigid. Higher law is more difficult to change than statute law. It is easier to and quicker to introduce an Act of Parliament than to amend a constitution. Uncodified constitutions are flexible as they are not entrenched like codified constitutions. Due to the rigid, inflexible nature of codified constitutions it is difficult for the constitution to remain relevant and up-to-date. Codified constitutions can't be changed easily and therefore find it difficult to respond to changing political and social circumstances. Flexibility is a very important, useful ability for a constitution to have in the modern 'ever-changing' environment, codified constitutions are rigid and therefore this is a major downside to codified constitutions.

A second argument against adopting a codified constitution is judicial tyranny and democratic rule in the UK. The UK's long-period of unbroken democratic rule is often seen as a strength of the uncodified constitutional system. In the UK's uncodified constitution, supreme constitutional authority is vested in the elected House of Commons. Changes to the constitution therefore come about due to democratic pressure. For example, the powers of the House of Lords were reduced through both Parliament Acts of 1911 and 1949 because of a growing belief that an unelected second chamber should no longer have the right to block policies of the elected government. Under a codified constitution judges would be the people policing the constitution. Judges are unelected and social unrepresentative which would lead to a democratic deficit due to a lack of democratic legitimacy. A codified constitution would be interpreted in a way that is not subject to public accountability. It may also be interpreted due to the preferences and values of senior judges.

Another argument against adopting a codified constitution is that Parliamentary sovereignty would be effectively abolished. The principle of parliamentary sovereignty states that parliament can make, unmake or amend any law it wishes. With a codified constitution parliament would not be able to make, unmake or amend any law it wishes due to the existence of the constitution, and potentially a bill of rights. This is because a codified constitution would act as a form of higher law. Therefore, a codified constitution would undermine one of the key principles in the UK's representative democracy.

A less important but still valid argument against a codified constitution is that it is unnecessary. Many people believe that the uncoded constitutional nature of UK politics has ensured we have a long-history of democracy. Codified constitutions may also not be the most effective way of limiting government power. Improving the checks and balances in our political system may be a better way of preventing over-might government rather than having a codified, written constitution.

Should the UK adopt a codified constitution?

Looking at both arguments there are strong cases for both views on whether the UK should have a codified constitution or not. This essay argues that the UK should not adopt a codified constitution. This is for many reasons including: inflexible; judicial tyranny; parliamentary sovereignty and that it is unnecessary. The most important reason is inflexible. Codified constitutions are by nature entrenched and higher law rules over statute law. In the UK if our laws need to be changed then statute law can be changed through the passing of an Act of Parliament. With a codified constitution it is much harder to change laws and therefore constitutions can become outdated with a rapidly changing modern society. However, supporters of codified constitutions would say that it is not too difficult to change laws as it is down to interpretation of the laws, there have been cases in the U.S.A where the codified constitution has been interpreted to fit in with modern society. Despite this it still remains that uncoded constitutions are more flexible and easier to change than codified constitutions.

Another major point is that codified constitutions can lead to judicial tyranny. Judges should not be able to police the constitution because they are unelected and are not socially representative. This means that there is a lack of democratic legitimacy and certain groups in society e.g. ethnic minorities may not have their views or opinions realised. The lack of democratic legitimacy amongst judges means that a democratic deficit would be created. It is also unlikely that a codified constitution would be created. This is because it acts as a limiting factor on government power. This is because codified constitutions stop elective dictatorships and parliamentary sovereignty. It is unlikely that government would want to end parliamentary sovereignty so openly when it has already faced scrutiny due to factors such as the EU.

Overall, there are two strong arguments for and against a codified constitution. The main argument for a codified constitution is that it provides clear rules and acts as a limiting factor on government. On the other hand the arguments against a codified constitution are that it is rigid and could lead to a democratic deficit due to judicial tyranny. This essay has argued that the UK should not adopt a codified constitution because in modern times and scenarios e.g. terrorism, it is better to have a flexible way of changing laws rather than a rigid system. Therefore, the UK should not have a codified constitution.

Conclusion

In conclusion, there are many arguments for and against a codified constitution. This essay has argued that the UK should not adopt a codified constitution because they are rigid and hard to change which is a major disadvantage in a rapidly changing modern society.

Bibliography

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