

CONSTITUTIONAL LAW SUMMARY



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THE UK CONSTITUTION AND ITS PRINCIPLES

What is a Constitution?

There are a great number of answers to this question. A constitution is a body of principles which outlines the rights of citizens, the relationship between the State (or country) and citizens, the relationship between parts of the State and the relationship between citizens. They are usually superior to ordinary law because they outline the nature and powers of the State and how laws are made. In order to clarify the generally accepted view, it is expedient to discuss the different types of constitution that exist in the world:

1. Codified – The best-known example of a codified (or written) constitution is that of the USA. It is over two hundred years old and still exists in a similar shape today. Codified constitutions are in force in every country in the world except the UK, Israel and New Zealand. They are characterised by the fact that they are available in a single written document and have been enacted by a single group of people in order to start a new political and legal system. Codified constitutions are often the result of internal discord within a country. The US Constitution arose from their triumph over the British, and France's first Constitution emanated from their bitter and sanguinary revolution. A typical feature of such a Constitution is entrenchment. The framers of the US Constitution first embodied this. It is a condition that any proposed *constitutional* amendment must be more difficult to pass than an ordinary law. This is because constitutional law is of more significance than ordinary law. It has a more fundamental nature and it is more important to the operation of a country. In the USA, they require at least a simple majority of both Houses of Congress (half of the members of each House) to pass ordinary law. However, an amendment to the Constitution requires two-thirds majorities in each House, as well as three-quarters of the States, a far more difficult obstacle for a government to overcome, which explains why the US Constitution has only been amended twenty six times.

2. Uncodified – The UK Constitution is the oldest in the world, and cannot be found in a single document anywhere. This is because it is made up of rules and fundamental

principles that are based on tradition and custom. Of course, there are written laws – society would not be able to function without them – but in the UK there is no distinction between ordinary law and constitutional law. There is no entrenchment in the UK. A Bill (proposed law) to abolish the House of Lords, which would be of very significant importance to the nature of the UK system, would need no more votes than, say, a Bill to introduce a minimum wage or control dangerous dogs. The UK Constitution is made up of a number of different sources, both codified and uncoded. It can be said, as Thomas Payne famously asserted, that the UK does not have a Constitution, but this is widely regarded as untrue, since the UK does have institutions of government, and it does have constitutional procedures. The most important feature of the UK Constitution is that it is based on tradition and has been allowed to evolve gradually with time, rather than amended in vast ways at one time. The Constitution has been allowed to grow since 1066, and there have been no major upheavals since then. The English civil war came at a time when the concept of a codified constitution was in its infancy and the glorious revolution of 1688–89 ended in a settlement of concessions on both sides.

Introduction to the UK Constitution

The chief features of the UK Constitution can be summarised:

1. Conservative – Unlike the US Constitution which has its roots in the 18th century liberal movement, the UK Constitution is conservative in nature. This means that the UK is less motivated to amend the Constitution on a whim or whenever something bad happens. They prefer to gradually change the institutions and systems that appear not to work. This is why the process of reforming the House of Lords has taken nearly a century, and is still ongoing. The Parliament Act (1911) stated in its preamble that its aim was to limit the powers of the House, with a view to constituting it “on a popular instead of hereditary basis”, and in 2007, there are still ninety-two hereditary peers. This can be contrasted with the USA, which simply reformed the elections to the Senate with a constitutional amendment in 1913. The defenders of the UK Constitution say it has survived for so long because it has been allowed to evolve gradually and change slowly. The UK also puts less of an emphasis on rights and liberties. While the UK does respect

human rights, until the Human Rights Act (1998), they had never had a law stating what people's rights actually were (the Bill of Rights 1789 does give rights, but they were mostly granted to Parliament as against the Monarch). Many still oppose it in principle, because the Constitution has survived so long without the need for explicit rights protection.



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