

## Discuss the arguments for and against a codified constitution

A constitution is a set of rules that seek to establish the duties, powers and functions of the various institutions of government, regulate the relationships between them, and define the relationship between the state and the individual. The most common way of classifying constitutions is to distinguish between codified and uncodified. The UK has an uncodified constitution.

A written constitution is precisely a charter that has been codified, in that the rules and regulations that citizens / individuals must abide by are stated in a single document format. Although elements of the UK constitution are written e.g. the statute law, sections of it are not. It must be noted that America follow a written constitution called the 'Bill of Rights', and by contrast the UK at present do not adhere to a formal written constitution. Therefore, one must consider the arguments for and against a codified constitution to establish a judgement on whether the introduction of a codified constitution in the UK is a beneficial concept to acquire.

There are many arguments for adopting a codified constitution in the UK, and there are many pressure groups, political figures and ordinary people who believe that the UK should have one. Our uncodified constitution is old fashioned, and there is not even an agreement about what it actually contains as it is made up of various conventions and statute laws etc. Constitutions are supposed to be the fundamental social compacts by which authority and order are maintained, and so the UK having a written codified constitution would not only provide a rigid means of protecting the people from the power of the executive, but prevent the power of the government from being too centralised, which is a criticism of the government. A codified constitution would describe and entrench the structure of government, the relationship between different parts of government and the relationship between government and citizens. So it would therefore prevent arbitrary government.

An introduction of a codified constitution would protect the rights of the citizens. It is argued that citizen's rights can only be protected if they are entrenched in a codified constitution. Without this, a government could remove rights too easily with an overall majority by simply introducing a Bill and relying on its parliamentary majority to pass it. For example, since the attack on the twin towers in the USA on 11 September 2001, the government has been able to persuade parliament to pass an anti-terrorist legislation which goes against certain rights despite the UK having a Human Rights Act (1998). As a result, for example, a number of asylum seekers have been detained without trial. Under a codified constitution they would be unable to introduce this legislation to restrict people's rights and the only way to do this is to amend the constitution which would be difficult and a lengthy process.

Parliamentary sovereignty is slowly diminishing in the UK and a codified constitution would not only decrease government sovereignty, but also increase sovereignty of the electorate and the judicial system. Presently, if the government wanted to modify or add to the uncodified constitution, they can do it simply by passing an Act. An inflexible, rigid written constitution would evolve more power into the people and the courts and disperse the sovereign powers of the decision-making of the Executive. This would be especially beneficial with Europe in mind, in that the UK is the only member of the EU without a codified constitution, and a written constitution may increase the UK's sovereignty within Europe.

A written constitution would allow the British people to appeal to the courts with a written document to back up their claims with a codified document as a point of reference. An entrenched codified constitution would also be an advantage to the British Judicial system, as laws would be clearly defined so judges would be able to recognise when laws are broken, and make fairer decisions. A written document would not only modernise British law, but would also

follow the majority of the countries in the world, who have working proof that written constitutions are beneficial and successful.

Despite the large number of arguments for a codified constitution to be incorporated into the UK, there are also many arguments against an entrenched document. Our present constitution may contain many sources, but there is no denying that our constitution does work and the UK has a successful judicial system and a democratic Parliament, even though it may run in a different way than a country with a written constitution such as the USA.

The introduction of a written codified constitution would be extremely time consuming to produce and costly. The written document would be constructed from our present unwritten constitution, therefore it basically would contain the statute laws, conventions and common law that we already have, but written down and restrained from modification.

Probably the main argument, which would prevent a codified constitution from being introduced into the UK, is the fact that it is simply unachievable; it would not only be difficult to gain a consensus about who should decide and what the constitution should exactly contain, but also under our existing uncodified constitution there is no body that can authorise and legitimise the introduction of a written constitution. Parliament would first have to pass many Bills to declare that statute laws and Acts are no longer valid, which would be immensely time consuming, and that is after a referendum has taken place to make sure the citizens all want a codified constitution.

An uncodified constitution does not require a supreme court. If a state has a codified constitution, it must have a supreme court, a court that interprets the constitution. The problem with that is that it brings judges into disputes with the legislature (parliament) and executive (government).

A codified constitution would be undesirable in the UK, as the power of the courts would increase dramatically. Any disputes that occurred over relationships between the structure and powers of the government, citizens and government, and different parts of the government, would all have to be settled by the judiciary. Power and sovereignty would then travel from the elected executive to the un-elected judiciary and judges would be able to make political decisions such as make laws and declare unconstitutional actions, which is undemocratic and unjust.

The final disadvantage of introducing a codified constitution into Britain is that the supposed inflexible and rigid nature of written constitutions of other countries is often open to amendments when laws are out dated. Unless our constitution declared that the constitution could not be amended, there is danger that laws may need to be changed and it would not be possible. If we adopted a written constitution and amended it whenever necessary, there would hardly be any difference to the present constitutional system. An uncodified constitution on the other hand is flexible and the UK does not need a complicated procedure to change it unlike the USA which has a codified constitution. Parliament can change our constitution when the electorate votes for change.

Overall, there are valid reasons for and against written constitutions, in that a written constitution would bring many economical, social and political benefits, and be a worthwhile move for the future of the UK, and will protect against arbitrary government. However by contrast there are also a great number of arguments against a codified constitution, which would pose the country a lot of problems if Parliament decided to introduce one. A valid point is that there may not be many negative consequences of introducing a codified constitution, but as the present one works efficiently, I think there is simply no necessity for one.