

Do constitutions really matter?

▲ a constitution sets out the formal structure of government specifying the powers and institutions of central government. It also defines the balance between Central and other levels of government. ▲ a constitution will specify the rights of citizens, therefore creating limits of duties for the government. Nations need and use constitutions in order to help them put the workings of government into practise, whether it is a codified or uncodified constitution. Many factors, social and economic as well as the countries political culture affect whether a constitution will work and therefore matter to that country.

'The age of constitutions was initiated by the enactment of the first written constitutions, the US constitution in 1787 and the French Declaration of Rights of Man and citizens in 1789'. There are several different types of classifications.

▲ Although every constitution is a blend of written and unwritten rules, the balance between them varies. This is why the classifications of codified and uncodified came about. Within these classifications, different definitions have come about as well.

▲ a codified constitution is itself authoritative in that it constitutes the higher law. It binds all political institutions and establishes a hierarchy of laws. The US constitution was the first written constitution, consisting of just 7000 words, outlining the broad principles and so lays down **a loose framework of government**. Originally the US constitution was silent on many points, which subsequently have had to be clarified by judicial interpretation.

In many Western European Countries, for example France and Germany, constitutions act as **state code** in which the powers of and relationships between political institutions are specified in detail.

Other constitutions have come into existence as **Revolutionary manifestos**. This sort of constitution could be classified as nominal, as they may accurately describe the governmental behaviour accurately, but fail to limit it. These set out to make a programme of social transformation, e.g.-the Communist states. In the USSR, they had a constitution that actually acknowledged the monopoly of power of the communist party.

They can also just be a set of **political ideals**. This is what many third world countries have an image of the world, as the regime would like it to be, not as it actually is.

Other constitutions embody an **ancient source of authority**. For example, Britain's constitution is sometimes traced back to the Bill of Rights 1689 and the Act of Settlement 1701. ▲ Although Britain, along with Israel have an uncodified or unwritten constitution. ▲ Although Britain's constitution is uncodified, part of it is written, and draws upon a variety of sources, including statute, common law, conventions and various works of authority. The absence of a codified document means that the 'legislature enjoys sovereign or unchallengeable authority.' Therefore the constitution

means what they say it means, as they e.g.- the British Parliament or Israel's' Knesset are the ultimate arbiters of the constitution.

▲An alternate classification distinguishes between constitutions being rigid and flexible. Usually a codified constitution is classified as rigid. This is because their terms are usually entrenched by the higher law. The US constitution is one of the most rigid constitutions to amend. In addition to two-thirds majorities in both houses of Congress, it must also be ratified by three-quarters of the states. This has meant that only 26 amendments have been made since 1787, ten of which are a part of the Bill of Rights. In ▲ustralia, Denmark, and Spain, referendums are held to see whether an amendment should be accepted, therefore the public choose to accept or decline it.

However, it isn't simple to state whether a constitution is or isn't flexible, as all have a degree of flexibility. The US constitution may also be said to be flexible, as although their constitution is codified, and the documents rarely change, the meaning of the words do. Therefore are subject to constant revision and interpretation in order to allow the constitution to survive over two hundred years later and still apply to modern times.

The UK conventions are able to be adapted in order for the government of the day to conveniently use them to their advantage, for example Ministerial Responsibility, however there are conventions that that are deeply engrained in the political culture and in popular expectations their abandonment or modification is unthinkable. This would apply to the conventions that restrict the monarchy from challenging the authority of Parliament, showing that an uncodified constitution can be rigid.

The final classification takes into account the relationship between the constitutional rules and principles and the practice of government. ▲An effective constitution is not only the existence of constitutional rules, but it the capacity of those rules to limit the powers of government. This was particularly noticed with the communist states, e.g.- the constitution of the USSR described accurately governmental behaviour, but actually failed to limit it. Traditionally constitutions were categorised as monarchical or republican. However, nowadays, the distinction is between unitary and federal. This is the difference between the constitutions that concentrate sovereignty on in a single national body and one that divides the two levels of government. ▲Another approach is a differentiation between parliamentary and presidential constitutions. The relationship between the executive and the assembly is the key. In parliamentary systems, the executive, is derived from and is accountable to the assembly, whereas in a Presidential system, the two branches of government are independent, based on the separation of powers. Finally, pluralist constitutions can be compared to monopolistic ones, with pluralist ones; ensuring political power is evenly dispersed, through guarantees of participatory rights and party competition.

Whereas monopolistic constitutions are more commonly found within communist states where the authority of the ruling party or leader is unquestionable.

As almost all countries have constitutions, some organised groups and most institutions do have some sort of rules that have a constitutional effect. However, constitutions must serve a purpose in order to survive and be respected within a nation. They serve a number of purposes or functions and are used in a variety of ways.

Firstly, they **empower states**. This means that they mark out the existence of the state and make claims concerning their sphere of independent authority. When creating new states, it can be said that they don't really come into existence until they have a constitution, since without one, they lack formal jurisdiction.

The American Declaration of Independence in 1776 initiated the process through which the USA achieved statehood, but wasn't complete until the US constitution was ratified in 1789. This can be said of the 'constitution' of the EU, which comprises treaties and agreements such as the Treaty of Rome and the Maastricht Treaty, which authorises the EU to intervene in various ways in the affairs of the EU's members.

They also **establish values and goals**, by which in addition to laying out a framework for government, a constitution must also embody a broader set of political values. This is why constitutions can't be neutral, however this means that they do reflect the political culture of that country / nation. Of course, the ideals vary from state to state, whether it is commitment to democracy or to belief in socialism or federalism.

It is argued that provisions in the US constitution was essentially based by economic interests, in particular its desire to defend itself properly. In 1977, the Soviet constitution proclaimed the USSR to be a 'developed socialist society'.

A constitution must also protect freedom. In liberal democracies, the purpose of a constitution is taken for granted that is that it is there to constrain government. Therefore, a constitution is there to protect individual liberty whilst maintaining limited government. Fundamental rights, such as freedom of speech, freedoms of religion etc are guaranteed. These are Negative Rights, because the state is prevented from encroaching upon the individual, as they mark out the sphere of government inactivity. A growing number of states have in addition entrenched a range of economic social and cultural rights such as the right to healthcare or education. These are called positive rights, are linked to the expansion, not contraction of government. This is shown with the US federal government's expansion, introducing Medicare /Medicaid.

The final function of a constitution is to help build legitimacy. Firstly, a constitution is a requirement for a states membership of the international community and therefore for its recognition by other states. If a constitution is able to promote respect and compliance among the domestic population, then it can be said to be successful.

RACHEL SAFIR

▲ constitution should provide political stability, limited government and guarantee the rights and liberties of its domestic population. These values are usually taken for granted. Nowhere else in the world, has faith been seen in a constitution, other than in ▲merica. The people's faith in their constitution is remarkable. It is the higher law of the land, ensuring that the people do have their rights protected.

Constitutions can only serve their purpose when a range of other cultural, political, economic and social conditions supports them. ▲ constitution must correspond to political culture, as it is in fact political culture that produced the constitution. However, it must be remembered that constitutions guaranteeing freedom and liberty may not be relevant in societies that have collectivist values and traditions. Various Soviet constitutions not only enshrined socialist values that were not known by the mass of the people but failed to develop support in the seventy four years of the USSR's existence. Therefore it is important to consider whether or not the political culture actually needs or wants certain rights for the people. This was also seen in the US▲ where as a result of institutionalised racism, the constitutional guarantees of civil and voting rights of ▲merican Black people enacted after the civil war, weren't upheld, especially in the Southern States until the 1960's. Therefore, although it was constitutional, it needs to be stated that the people must accept the constitution if it is to be upheld.

The constitution also needs to be respected by the rulers of the country and agrees with the values and interests of the dominant groups. Germany's Weimar Constitution, despite being enshrined in an array of rights and liberties, was easily put aside by Hitler as he constructed his Nazi Dictatorship. The people didn't seem to mind, because at the time, the Weimar Republics competitive democracy was unpopular with the population, because of economic crisis caused by the Wall Street Crash. The UK's uncodified constitution also provides unusual scope for abuse. It relies heavily on the Government of the day's self-restraint. However in the 1980's and 90's, the Conservative government was seen to have exploited the flexibility of Parliamentary Sovereignty, in order to alter the constitutional roles of the Civil Service and Local Government.

Finally, the adaptability of a constitution to remain relevant in changing circumstances is important if a constitution is to matter to a nation. Most constitutions don't reflect political realities. Therefore, constitutions have to be sufficiently flexible to accommodate change within a broad and relevant framework. The US government was able to evolve because of its broad set of principles. Because they are broad principles, it gives them scope to be interpreted by the judiciary in order to keep them relevant, and because of this, it has provided the US constitution the scope to rectify its own deficiencies. Therefore allowing a document created over 200 years ago to still remain relevant and reflect the political culture of ▲merica and have the respect of the population.

In a world where it is seen that executives are becoming increasingly more powerful over legislatures, the power of uncodified constitutions to ensure limited government is uncertain. It was already seen that the Executive in Britain was making constitutional changes, affecting peoples civil liberties in the 1990's so the future doesn't look promising for them. However, there is definite certainty that the codified constitution will still have a role to play, ensuring political, social and cultural values are upheld, as well as protecting the rights of the people and ensuring limited government.