

Explain the Success and Failure of Constitutions

Constitutions can be defined in a variety of different ways. Duchacek , in 1970 described constitutions as “power maps”, in which the formal powers of the state are described and distributed. A more explicit definition can be gauged from Robertson , who describes the constitution as, “a set of rights, powers and procedures regulating the structure of, and relationships among the public authorities and between the public authorities and the citizens.” This long definition is condensed by Watson , who describes constitutions as the “rules of the political game” and “the laws that govern the governors.” Constitutions usually have come into existence to facilitate a “fresh start” following the demise of the past regime via revolution, independence, or a change in society. Constitutions are not infallible and can fail if the conditions are right; those conditions will be discussed in this essay.

According to Hague, Harrop and Breslin , a successful constitution is “one that does not attempt too much”. They point to the American constitution as an example. The US Constitution created a limited central government because that is what was deemed necessary. If the constitution created a stronger central government, it may have gone against the interests of the more independent minded states and individuals who would have opposed such a move.

A constitution, which delegates and separates powers amongst the governing institutions apparently, coins success. The most well known example of this would be again the American constitution. The legislature (Congress), executive (the President) and the judiciary (the Supreme Court) is separated by the Constitution, providing constitutional independence and delegating various powers. The Constitution insures that no one institution has more power than the other, preventing a power struggle within government that could lead to its destruction.

However, to explain the success of constitutions in terms of the balance of powers would ignore the success of the “unwritten” British Constitution. The British Constitution, where power lies supremely with the government, the legislature, cannot be regarded as a failure. The success of this constitution could perhaps be explained by its flexible and articulate nature, which allows gradual change. A good example of this in practise is the enfranchisement of Britain, which took almost a century to attain. The Government introduced this necessary legislation following the changes in society. Without this change, Britain’s Constitution would have failed to meet the needs of the people, and fall in the face of popular revolt.

Even supposedly rigid, written constitutions can respond to changes in society, an important property if that constitution is to succeed. In the United States, judicial constitutional interpretation plays an important part in placing a constitution written over two hundred years ago into the context of the modern day. Chief Justice Hughes’ statement; “We live under a constitution. But the constitution is what the judges say it is.” This may not be wholly accurate, but judicial interpretation has been an important factor in the continual evolution of the American Constitution, which encouraging its success.

Finally, the success of constitutions can be attributed to the economic factors within the state. Germany and Japan have for the past fifty years possessed successful constitutions, which can, to a degree be attributed to their very strong economies. Following the Second World War, the allies, by buoying up the economies of these two nations, prevented them from falling to the short-term problems, such as nationalism and communism. This move subsequently ensured their long-term constitutional success.

A constitution that has failed its purpose is one that fails to provide adequate rules of government, which can lead to either an inefficient government, or a government that abuses the governed. There are a number of reasons that governments fail. If Hauge, Harrop and Breslin's reasoning concludes that a successful constitution is one that attempts little, it follows that a constitution doomed to failure is one that attempts too much, allowing no room for interpretation or change. A poor constitution would not allow the judicial interpretation that allows the American constitution to develop, or allow a flexible constitution like the British to change with the introduction of new legislation. The Constitution of Italy, the Guarantismo prevents the reoccurrence of a dictatorship. However, the various checks and balances created by the constitution, such as a strong bicameral legislature, and regional autonomy have led to ineffective government, and the loss of popular support among the people. This is one example of the separation of powers going to far, hindering the constitutional process.

A constitution that fails to take into account the social, economic and political factors within a society will very rarely succeed. Evidence of this can be found in the failure of the post-colonial constitutions imposed on former colonies during the 1950's and 1960's. Countries such as Britain and France attempted to impose constitutions that were based on theirs. Unfortunately, the peoples of Africa and Asia were not used to democracy, their cultures were based upon autocratic rule, not liberal, democratic government. Many of the fledgling governments fell, as single rulers, often helped by the military filled the vacuum. Countries whose democratic governments survived, for example India and Pakistan experienced the move toward strong centrally controlled government, undermining the democracy the constitution represented.

It is often not the constitution that fails, but the regime that facilitates the change because it is weak, and cannot remain in office for too long a period. The constitution may succeed in providing the checks and balances of power, but if the regime lost the support of the military, there would then be scope for change

Constitutions are not always liable to succeed; the above examples indicate that. A successful one allows change, can be interpreted by the judiciary and is assisted by a healthy economic climate. A failure is doomed to be ineffective because it is too restrained, and not allowed to change as society develops. Explanations for the success and failure of constitutions can be diverse, particularly in today's global society; the reasons above are only a selection of what can constitute a constitutional success or failure.