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SHOULD BRITAIN ADOPT A WRITTEN CONSTITUTION?

Currently Britain's constitution is an unwritten one. This doesn't mean that it is literally unwritten but that it is set down in many different documents. Additionally there is no set bill of rights as there is in The United States of America. The constitution of the U.S.A. is written and codified. In America a bill of citizen's rights was set down in the mid 1770's and is entrenched in the constitution. In order to change the bill of rights a two thirds majority is required in both the Senate and the House of Representatives. A consequence of this is that it is very hard to change the U.S. constitution. It is, in fact, so difficult that since its creation, it has been changed only twenty six times. Ten of these changes were in the first five years of its existence.

A constitution can be described as "a set of rights, powers and procedures that regulate relations between public authorities and individual citizens." Put simply, a constitution governs political behaviour. Andrew Heywood describes the constitution as "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." Heywood also suggested four ways of classifying a constitution; by form, is it written or unwritten, codified or uncodified. By ease of amendment, by which constitutions are described as being flexible or rigid. By the degree to which it is observed and finally, by its institutional structure. By institutional structure, Heywood means three things. One, is it a monarchical or republican system? Two, is it a Presidential or Parlimentary system and thirdly, is it a Federal or Unitary arrangement. In a Federal government, power is vested in the National government but powers which are equally as important are invested in State governments. Under a Unitary arrangement, power is centralized.

The British constitution is drawn from five main sources. Firstly, statute law. Statutes are Acts of Parliament which override all other British Constitutional sources and account for a growing proportion of our constitution. These are particularly important for elections and relations between the Houses of Parliament and local government. Some examples of Statute law would be the Peerage Act (1963) which created life peers and the European Communities Act (1972) in which Britain joined the European Community.

A second source of the British Constitution is The Royal Perogative. This encompasses all functions performed by ministers acting on behalf of the Monarch; their authority derives from the Crown, not Parliament. The Royal Perogative is executed by orders in counsel or through proclamations and writs under the Great Seal. It is a gradually diminishing part of the constitution but is still important for the conduct of foreign affairs and security matters. The powers to dissolve Parliament, declare war, make treaties, dispense honours and appoint ministers are all executed using the Royal Perogative.

Another crucial part of the constitution is common law, meaning "customary rules." They're also seen as "precedents", established by judicial decisions in particular cases. This area of the constitution is especially important in the sphere of civil liberties.

Authoritative commentaries are also a key area of the constitution. These are books and writings which are widely as sources of guidance on the interpretation of constitutional rules. An

example of such an authoritative commentary would be T. Erskine May's "Treatise on the laws, priveliges, proceedings and usage of Parliament," the classic guide to Parlimentary procedures and rights, used by the Speaker of The House of Commons.

Finally, conventions are established customs and practice which are considered binding but lack the force of law. These apply particularly to the practices of the Crown and the Cabinet. It is convention that; the Speaker of The House must be impartial, the Cabinet is collectively responsible and that the Prime Minster be a member of the Commons.

These five sources are overridden, however, by E.U. law which has precedence over U.K. law, when the two conflict. Under E.U. law, the U.K. courts are required to strike down laws which contravene E.U. law. E.U. law took this precedence in1972 when Britain signed The Treaty of Rome. One significant and well known example of E.U. law taking precedence over U.K. law is the factortame case in which the 1988 Merchant Shipping Act was judged to be unlawful.

The advantages of this system are many. With the decentralized, semi-devolved parliamentary system, power cannot be held easily by an elite. In addition to this, "rules of the game" and laws can be quickly and easily changed/amended should there be cause to do so. Britain's flexible constitution seems to be far superior to rigid constitutions. However there is no bill of rights in the U.K. constitution and so it would be theoretically very easy to erode civil liberties and human rights. The media and public opinion would, however make it very difficult for this to happen. In addition to this, since 1972 we have, technically, had a bill of human rights, that which is enshrined in the E.U. Charter.

Could we change our constitution to become a written one? It would, in theory, be very easy to introduce a written constitution, requiring merely for one to be drafted and passed by Parliament. In practice, however it would be very difficult to do so.

The Conservative party believe that the constitution has evolved organically and that to change it is "neither desirable or necessary" and as such are opposed to any major reform, whether it be electoral or constitutional. The Tories believe that "the system generally works" and that there is no need to tamper with it at all.

The New Right have similar beliefs but do, however, favour some change. The free market philosophy of the new right favours privatization and as such, right wingers endorse the contraction of public services and the reform of institutions to facilitate the free market.

Marxists also believe that reformation of the constitution is unnecessary. They believe that restructuring the political system is irrelevant as all this does is delay the collapse of capitalism, that all governments must act in the interests of capitalism and that changes serve only to protect those interests.

Socialists, though favour reform (at least pre-Blair they did) and a strong government based on strong party activism. They believe the party should mandate the government in a "bottom up" approach, at odds with the Tories' "top-down" approach. Socialists believe that a bill of rights and electoral reform would grant too much power to judges and the E.U. and that it would constrain Socialism.

Liberals follow a similar train of thought to Socialists but are, however, more open to reform. They would favour a new written constitution and place an emphasis on the centrality of the individual. As such, the Liberals would like to see devolution on a greater scale along with electoral reform, proportional representation greatly increasing the number of Liberal seats in parliament. Liberals ultimately believe that the current "rules of the game" are too partisan and there is too little, if any consensual decision making.

Ultimately, I believe that in order for there to be a significant change to the British constitution, in terms of changing its format, a referendum would be necessary. Our current constitution and system does, however seem adequate and serves its purpose. Here the old adage "if it ain't broke, don't fix it" seems to apply neatly. America's Constitution seems outdated when one considers that it has been changed only sixteen times in the last two hundred and fourteen years. Overall, flexibility appears to be an attractive quality.