

Chapter One

Introduction to

Constitutional Law

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Constitution: Meaning

- The supreme law of the land.
- The basic law of a state which sets out how that state will be organized, the powers and authorities of government between different political units, and by stating and the basic principles of the society.
- In Black Law Dictionary, “The fundamental and organic law of a nation or state that establishes the institution and system of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.”
- Tomas Paine remark that, “Government without a Constitution is a power without a right.”

constitution

- Difference:-
- A constitution can be defined as the fundamental laws custom, conventions, rules and regulations, stipulating how a country is governed, while constitutionalism can be defined as a principle which is not just a constitution but put limitations to the activities of individuals and the government.
- The implication of constitutionalism is that in exercising its powers the government should be limited by law. Its authority over the people is dependent on its observance of the limitations under the law. Those limitations are usually enshrined in the constitution.
- A constitution is a charter of government deriving its whole authority from the governed. 'Constitutionalism' means limited government or limitation on government. It is antithesis of arbitrary powers.

constitution

- After the end of the conflict between monarch and the feudal lords. The results of the revolutions of different kinds in France, USA, USSR, and the over throw of the colonial rule in the 3rd world countries, the concept of “constitutionalism” has taken deep roots.
- **Conclusion**
- A constitution can be defined as the fundamental laws custom, conventions, rules and regulations, stipulating how a country is governed,
- While constitutionalism can be defined as a principle which is not just a constitution but put limitations to the activities of individuals and the government.

1. Constitutionalism: Definition

- Constitutionalism comprised of ideas and theories that essentially put limitations on political power in general, and of the government's sway over citizens in particular.
- Refer to a number of separate but related features of a democratic political system.
- Constitutionalism is concerned with both the framework as well as the spirit that breathes within the provisions in that framework.
- Constitutionalism therefore comprised two key elements: a) rights provision and b) structural provision

constitutionalism

- Rights provision – It consists of safeguards for political rights including the right to free speech, freedom of association, etc. – These rights operate as legal constraints upon the political process.
- **Structural provision**
- They include separation of powers, representative system, etc.
- All are there to ensure that the government will act in the interests of the public at large, rather than those of the self-interested representatives.
- Control of government power – Lord Acton – “All power tends to corrupt & absolute power corrupts absolutely”.
- – The government must be limited by law. – It is interrelated with the idea of ‘separation of powers’, ‘rule of law’ & ‘limited government’.

Aspects/ Characteristics

- **a. Respect for law**
- Implies loyalty to Constitution by citizens & officials of the State.
- Citizens must accept the limits on their freedom.
- Officials must observe the limits on their powers.
- Similar to the idea of rule of law in which authorities obtain their powers from the law & must act within the law –
‘Government by law & not by men’.

- **b. Internalisation of values**

- Implies loyalty to the letter as well as the spirit of the Constitution.
- Requires commitment to & an ‘internalisation’ of the values & ideals.
- Demands observance of enacted rules & respect for unwritten & informal practices, conventions, usages & understandings.
- Sir Ivor Jennings immortal words “provide the flesh to clothe the dry bones of the law”.

- **c. Respect for human rights**

- Respect for liberty & equality
- Guarantees for human freedom & dignity
- A fair balance between conflicting demands of:
 - Power & liberty,
 - freedom & responsibility &
 - the might of the state & the rights of the citizens.
- FDRE Constitution contains a chapter 3 on fundamental Rights and liberties (Articles 13 ff)

- **d. Controls over discretionary powers**
- Institutional safeguards against abuse & misuse of powers by authorities
- Checks & balances are put in place in order to ensure the government acts within their powers & not exceed.
- The government should not itself be destructive of the values it was intended to promote
- Effective judicial control of executive discretion is the litmus test of a rule of law society – judicial review

- **e. Responsible government**
- Accountability or answerability of the government
- An obligation to explain & justify decisions made or action taken
- If individual rights/interests is affected, appropriate compensation should be given
- Constitutional models & control mechanisms are introduced including constitutionalism, check & balance, federalism, judicial review, elections, statutory tribunals

- **f. Entrenchment of constitutional values**

- The constitution provides effective legal & political restraints upon the exercise of state power to amend or repeal laws dealing with constitutional safeguards.

- **g. Independent judiciary**

- According to de Smith, “constitutionalism is practiced in a country where the government is genuinely accountable to an entity or organ distinct from itself... and where there are effective legal guarantees of civil liberties enforced by an independent judiciary...”

- **h. Free and fair elections**

- Free & fair elections are regularly held in order to elect the government
- However, free & fair elections does not guarantee that constitutionalism is being practiced.
- Example: Adolf Hitler's regime came to power through an election. Successive government in Israel have succeeded at the polls but genocidal policies against Palestinians in occupied territories.

2.Democracy: Definition

- **What is Democracy?**
- The word democracy comes from the two Greek words "demos", meaning people, and "kratos" meaning power; so democracy can be thought of as "power of the people": a way of governing which depends on the will of the people.
- The term "democracy," refers very generally to a method of group decision making characterized by a kind of equality among the participants at an essential stage of the collective decision making.
- Democracy concerns collective decision making, by which It means decisions that are made for groups and that are binding on all the members of the group. There are so many different models of democratic government around the world that it is sometimes easier to understand the idea of democracy in terms of what it definitely is not.

Democracy

- In democracy supreme power is in the hands of people who exercise this power either directly or indirectly, through the elected representatives who are responsible to the people.
- Democracy, then, is not autocracy or dictatorship, where one person rules; and it is not oligarchy, where a small segment of society rules.
- Properly understood, democracy should not even be "rule of the majority", if that means that minorities' interests are ignored completely.
- A democracy, at least in theory, is government on behalf of all the people, according to their "will".

Characteristics of democracy

- Sovereignty with the people
- State and government are considered means
- Faith in the rationality of man
- Liberty
- Equality
- Fraternity
- Provision of fundamental rights
- Independent and impartial judiciary
- Rule of majority

Characteristics of Democracy

- Respect of public opinion
- Faith in peaceful and constitutional methods
- Freedom to form opposition parties
- Open competition for political power
- Periodic elections
- Independent means of propaganda
- Rule of law
- Decentralization of power
- Pluralistic character of the society

Democratic Theory

- **Why democracy?**
- The idea of democracy derives its moral strength – and popular appeal – from two key principles:
- **1. Individual autonomy:** The idea that no-one should be subject to rules which have been imposed by others. People should be able to control their own lives (within reason).
- **2. Equality:** The idea that everyone should have the same opportunity to influence the decisions that affect people in society.
- These principles are intuitively appealing, and they help to explain why democracy is so popular. Of course we feel it is fair that we should have as much chance as anyone else to decide on common rules!

Democratic Theory

- The problems arise when we consider how the principles can be put into practice, because we need a mechanism for deciding how to address conflicting views.
- Because it offers a simple mechanism, democracy tends to be "rule of the majority"; but rule of the majority can mean that some people's interests are never represented.
- A more genuine way of representing everyone's interests is to use decision making by consensus, where the aim is to find common points of interest.

Democratic Theory

- The social and economic conditions supporting a viable representative democracy are complex.
- The following institutional conditions need obtain:
 - a) popular election of representatives; by universal adult suffrage in districts of approximately equal population for limited terms, to institutions that allow those representatives to govern;
 - b) free entry of citizens to candidacy for electoral office; and
 - c) freedom of political communication and association.

Democratic Theory

- It is this process that makes governmental action morally binding - i.e. the people's freely choosing representatives, those representatives' debating and enacting policy and later standing for reelection, and administrators' enforcing that policy.
- Here, reliance on Aristotelian simple claim is clearly viable i.e. that the people's collective wisdom will exceed that of any simple person or small group.
- Few democratic theorists assume citizens possess equal capacity to understand the options or, as a whole, will always understand the issues.

Democratic Theory

- The chief democratic theorists posit against tyranny is that the people will not tyrannize themselves.
- As Jefferson asserted, it is the —mass of citizens” who are the safest depository of their own rights.
- Thus, democratic theory stems from popular participation not only for its positive effect of expressing individual autonomy, but also for its negative effect of deterring governmental incursions into individual rights.
- Because voters need to be informed to protect their interests, democrats advocate freedom of communication,

Democratic Theory

- Yet, communication and voting are not sufficient for forming and expressing “the will of the people.” Democratic theory also demands a right to act in concert with others.

3. The Rule of Law

- A preference for law & order
- Colin Munro wrote that rule of law has emerged out of constitutionalism.
- Whereas, Dicey defined rule of law as: a) the supremacy of regular laws over arbitrary power, b) formal legal equality before the law & c) the constitution that is defined and enforced by regular courts.
- **The Rule of Law Core Characteristics**
- **a. Legality**
- Requires that a society must be governed by a government of laws & not by a regime of arbitrary powers.
- Supremacy of laws.
- Government officials must show respect for the law & must observe their power.

- **b. Controls on discretion**

- All powers must be subject to limits.
- There must be controls on executive discretion so that discretionary authority does not degenerate into arbitrariness.

- **c. Impartial system of justice**

- Enforcement by independent judiciary enforcing power without fear or favour.
- Judiciary must be free from extraneous pressures.

Rule of Law

- **d. Just Legality**

- Compliance with substantive human rights values.
- Must honor & promote individual liberty, equality & dignity.
- Limit on the power of state to restrict citizen's rights.
- Ideals about citizen-state relationship.

- **e. Socio-economic Justice**

- State support for socio-economic policies to help the weak, the oppressed & the marginalized.
- State must be involved in social scheme to bring welfare to those who are unable to actualize their freedoms & rights.

- **f. Effective Government**

- Government must be capable of enforcing the law & order & ensuring socioeconomic & legal justice.
- Citizens must respect the law & accept the results of the legal & electoral processes.

Fuller's Conception of Rule of Law

- Lon Fuller's view of the *“inner morality”* of law.
- Rule of Law is not treated in its general sense of government under law, but in much more specific, comprehensive manner.
- Fuller distinguished between:
 - **Inner morality of law**: the substantive aims or values that particular legal rules (standards) seek to promote; &
 - **External morality of law**: the values that underlie the concept of law itself.
- Fuller's conception of the Rule of Law, not by appealing to moral values drawn from the external morality but from inner morality of the law.
- These values are characterized as the eight desiderata.
- These identified eight elements of law, recognized as necessary for a society aspiring to institute the Rule of law.

- **Fuller's 8 Desiderata of law**

1. Laws must exist and those laws should be able to win obedience.
2. Laws must be published.
3. Laws must be prospective (not retroactive) in nature so that the effect of the law may only take place after the law has been passed. Laws should be written with reasonable clarity to avoid unfair enforcement.
4. Law must avoid contradictions. (intelligibility)
5. Law must not command the impossible. (Non self-contradictoriness)
6. Law must be general.
7. Laws must stay constant through time to allow the formalization of rules; however; law also must allow for timely revision when the underlying and political circumstances have changed.
8. Official action should be consistent with the declared rule. (Congruency)

- Fuller's Criteria is helpful in understanding rule of law, because: it outlines the types of rules; of formal constraints that societies should develop in order to approach legal problems in a way that minimizes the abuse of the legal process and political power.
- Rule of law, however, extends beyond mere regulation and is also shaped by the so-called institutional constraints and Informal constraints,
- **Institutional Constraints** include the existence of an independent judiciary and developing ways of promoting transparent governance
- **Informal constraints** such as local culture or traditions that may encourage citizens to organize their behavior around the law

- The very term Rule of Law suggests that the law itself is the sovereign, or the ruler, in a society.
- As an idea, the rule of law stands for the proposition that no person or particular branch of government may rise above rules made by selected political officials.
- These laws reflect the morals of a society, and in a Western Democracy they are supposed to be pre-established, formalized, neutral, and objective.
- Everyone is subject to their dictates in the same way. The rule of law, therefore, is supposed to promote equality under the law.
- Thus, rule of law should be clearly differentiated from rule by law; i.e. the latter does not necessarily mean that the law is legitimate for it might not satisfy most of the desideratas.
- Rule of law may be most concretely defined as
- “a theory of governance relying upon a series of law, which may be most concretely designed to encourage order and to prevent arbitrary and unreasonable exercise of government power.”

1.3. The Functions of a Constitution

- **1. Constitutions can declare and define the boundaries of the political community**
- These boundaries can be territorial (the geographical borders of a state, as well as its claims to any other territory or extra-territorial rights) and personal (the definition of citizenship).
- Thus, a constitution often distinguishes between those inside and outside the polity.

- **2. Constitutions can declare and define the nature and authority of the political community.**
- They often declare the state's fundamental principles and assumptions, as well as where its sovereignty lies.
- For example, the French Constitution declares that 'France is an indivisible, secular, democratic and social Republic' and that 'National sovereignty belongs to the people, who exercise it through their representatives and by means of referendums'.
- The Constitution of Ghana (1992) states that 'The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised'.

- **3. Constitutions can express the identity and values of a national community.**
- As nation-building instruments, constitutions may define the national flag, anthem and other symbols, and may make proclamations about the values, history and identity of the nation.
- **4. Constitutions can declare and define the rights and duties of citizens.**
- Most constitutions include a declaration of fundamental rights applicable to citizens.
- At a minimum, these will include the basic civil liberties that are necessary for an open and democratic society.

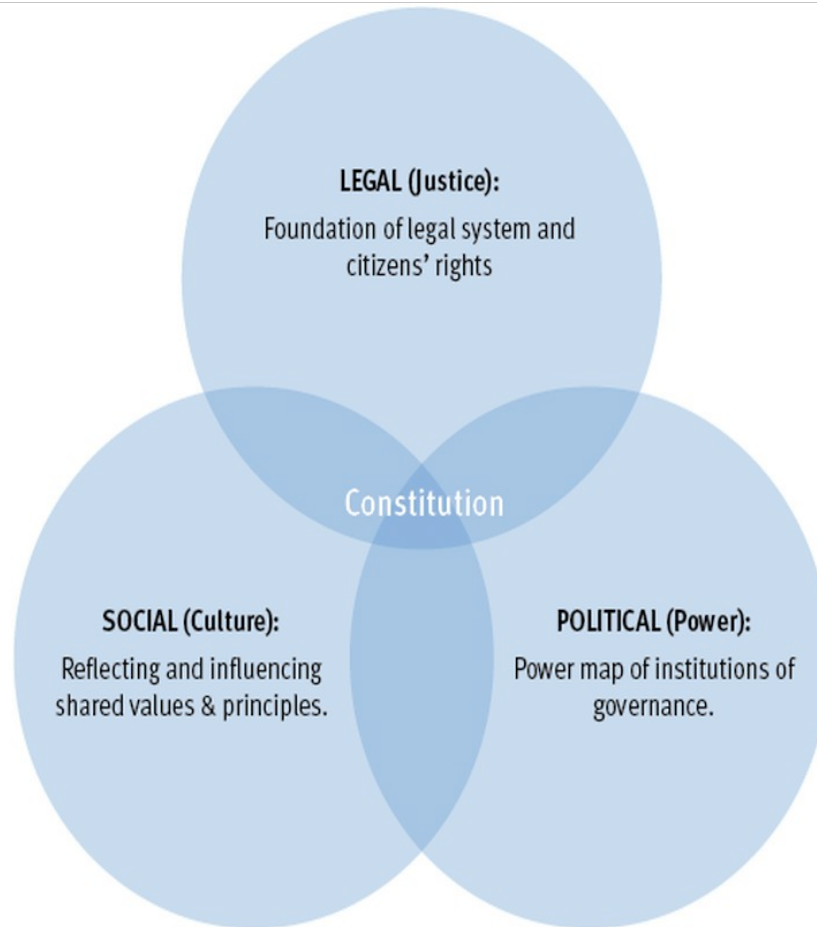
- (e.g. the freedoms of thought, speech, association and assembly; due process of law and freedom from arbitrary arrest or unlawful punishment).
- Many constitutions go beyond this minimum to include social, economic and cultural rights or the specific collective rights of minority communities.
- And some rights may apply to both citizens and non-citizens, such as the right to be free from torture or physical abuse.

- **5. Constitutions can establish and regulate the political institutions of the community.**
- Constitutions define the various institutions of government; prescribe their composition, powers and functions; and regulate relations between them.
- Almost all constitutions establish legislative, executive and judicial branches of government.
- In addition, there may be a symbolic head of state, institutions to ensure the integrity of the political process (e.g. an electoral commission), and institutions to ensure the accountability and transparency of those in power (e.g. an ombudsman).
- The institutional provisions typically provide mechanisms for the democratic allocation and peaceful transfer of power (e.g. elections) and for the restraint and removal of those who abuse power or who have lost the confidence of the people (e.g. impeachment procedures).

- **6. Constitutions can divide or share power between different layers of government or sub-state communities.**
- Many constitutions establish federal, quasi-federal or decentralized processes for the sharing of power between provinces, regions or other sub-state communities.
- These may be geographically defined (as in most federations, such as Argentina, Canada or India), or they may be defined by cultural or linguistic communities (e.g. the 1994 Constitution of Belgium, which establishes autonomous linguistic communities in addition to geographical regions).

- **7. Constitutions can declare the official religious identity of the state and demarcate relationships between sacred and secular authorities.**
- This is particularly important in societies where religious and national identities are interrelated, or where religious law has traditionally determined matters of personal status or the arbitration of disputes between citizens.
- **8. Constitutions can commit states to particular social, economic or developmental goals.**
- This may take the form of judicially enforceable socio-economic rights, directive principles that are politically binding on the government, or other expressions of commitment or intent.

The constitution at the intersection of legal, social and political life



- **Constitutions as legal instruments**

- A constitution ‘marries power with justice’ (Lutz 2006: 17) —it makes the operation of power procedurally predictable, upholds the rule of law, and places limits on the arbitrariness of power.
- It is the supreme law of the land, and it provides the standards that ordinary statutes have to comply with.

- **Constitutions as social declarations**

- Constitutions often attempt, to varying degrees, to reflect and shape society—for example, by expressing the (existing or intended) common identity and aspirations of the people, or by proclaiming shared values and ideals.
- These provisions are generally found in preambles and opening declarations, but can also be found in oaths and mottos or on flags and other symbols that are defined by the Constitution.

- Other substantive provisions of the constitution, particularly those defining socio-economic rights, cultural or linguistic policy, or education, might also belong to this category (Lutz 2006: 16–7).
- **Constitutions as political instruments**
- The constitution prescribes a country's decision-making institutions: constitutions 'identify the supreme power', 'distribute power in a way that leads to effective decision making' and 'provide a framework for continuing political struggle' (Lutz 2006: 17).
- The political provisions show how state institutions (parliament, executive, courts, head of state, local authorities, independent bodies, etc.) are constituted, what powers they have and how they relate to one another.

Classification of constitutions

- For purpose of understanding constitutions are classified in to various categories based on different criteria.
- **1. By looking at the Nature of the Constitution itself: Traditional approach.**
- ***A. Written /unwritten, codified/uncodified***
- It is generally agreed that the written /unwritten dichotomy **is false distinction.**
- There is no constitution which is entirely unwritten and nor is there a constitution which is entirely written.

- **Written Constitution**

- What is meant by a written constitution is, therefore, one that is **reduced into a form of a document** having special **sanctity**.
- It also designates according to **CF Strong**: a rather **complete document**/instrument in which the framers of the constitution have attempted to arrange for every foreseeable contingency in its operation.
- Eg. The USA Constitution

- **Unwritten Constitution**

- Unwritten constitution on is one which has grown up on the basis of custom rather than of written law.
- Notable in this regard is the United Kingdom.

- Even if it is called unwritten, but then, there is a great deal of statute law that could properly fit into the realm of constitutional law. E.g.
 - The 1689 Bill of Rights,
 - The various Franchise Acts of the 19th and 20th C. especially the 1911 and 1949 Acts.
- Much of these laws treats fundamental political institutions in the same way as written constitution does.
- In addition to statutes, Important aspects of constitutional practice in the United Kingdom are governed by:
 - Major judicial decisions of the past (precedents),
 - Generally accepted rules of conduct and procedure (convention) and
 - The guidance of such eminent authorities as Dicey, Jennings, and others.

Classification of constitutions

- ***B. Rigid/flexible, Conditional/unconditional Classification***

- The true ground of division by virtue of the nature of the constitution itself is whether it is flexible or rigid.
- The rigidity or otherwise flexibility of a constitution hinges on whether or not **its making** is identical to the making of other ordinary laws.
- If the **amendment** or alteration procedure of a constitution is **not made to depend on some conditions** or special procedures, then it may be called **flexible constitution**.
- Eg. UK constitution to be amended as ordinary law does
- If some conditions or a special procedure has to be met before the amendment of a constitution, then it is a **rigid constitution**.
- US. Ethiopia etc Constitutions require special Majority

2. By looking at the Nature of the State itself

- ***Federal/Unitary/Confederal classification***
- The classification of constitutions into federal, unitary and confederate is based upon the principle by which the **powers of government are distributed** in the constitution between tiers of governments.
- In a **federal constitution**,
- **Powers** of governments are **divided** between government for the whole and governments for parts of the country.
- Each government is **independent and none is subordinate** to the other,
- Legislature in both cases have **limited powers**.
- In a **unitary constitution**, the legislature of the whole country is the supreme law-making body,
- And it has the mandate to allow other legislatures to exist and exercise their powers while reserving the right to overrule them as they are subordinate to it.

- In a **confederate constitution**, the government of the whole country is rather subordinate to the governments of the parts.
- A form of association **between governments** whereby they set up a common organization to regulate limited matters of common concern but retain to themselves, to a greater or less degree, some control over this common organization.
- Established for dealing with **critical issues**, such as defense, foreign relations, internal trade or currency,
- Some countries are federal but may have traditional name of confederation eg. Switzerland, Canada
- Eg of confederations: US confederation before 1789 & European Union, Serbia and Montenegro (2003–06).

3. By looking at the nature of the Government itself

- **A. Presidential/Parliamentary Classification and**
- If the **executive** is immediately **answerable to the parliament**, then it can be called parliamentary executive.
- But if it is immediately responsible at definitely arranged intervals to some wider body (usually through Election)
- And is **not** amenable to **removal by** the action of the **legislature**, then it is called presidential executive.
- In presidential executive, there is a **rigid separation** of institutions from the legislature. Hence the president and his subordinates may not sit in the congress (legislature).
- In parliamentary executive, the heads of department and ministers may sit in the parliament and hence may be accountable to the parliament.

- ***B. Republican/Monarchical Classification***

- Where the head of state is a president, then that state is a republic, and where the head of state is a king, that state is a monarchy or a kingdom.
- Such classification has a lesser significance nowadays
- Historically it had considerable meaning and importance as it stood for the difference between what may be called popular/**democratic** government and **absolutism**, autocracy, or dictatorship
- A monarch, as the name implies, was the sole ruler responsible to himself alone. But it is difficult today to find examples of such absolute monarchies
- The transformation of absolute monarchies into constitutional or limited monarchies all the more diminishes the significance of the distinction.

4.By looking at the Legislature

- **A. Unicameral Legislature**

- Uni (One) , Cameral (Chamber)
- Unicameralism is the practice of having only one legislative or parliamentary chamber.
- Many countries with unicameral legislatures are often **small and homogeneous unitary states** and consider an upper house or second chamber unnecessary;
- The argument is that if an upper house is democratic, it simply mirrors the equally democratic lower house, and is therefore duplicative.
- The traditional **functions of a second chamber**, such as reviewing or revising legislation, can be performed by parliamentary **committees**, while further constitutional safeguards can be provided by a written constitution .
- In many cases, the governments that now have unicameral legislatures were once bicameral and subsequently eliminated the upper chamber.
- **Reasons** : Redundancy, unnecessary obstruction of legislation & inefficiency

- Some have technically bicameral systems that function much as unicameral systems, because one house is largely ceremonial and retains few powers.
- Eg. In the United Kingdom control of the House of Commons determines control of the government
- The unelected House of Lords has the power only to **delay legislation** and to recommend amendments.
- **Supporters** of unicameralism note the need to control government spending and the elimination of redundant work done by both chambers.
- **Critics** of unicameralism point out **the double checks** and balances that a bicameral system affords, forcing a greater level of consensus on legislative issues.
- Unicameral legislatures were and are also common in Communist and former Communist states

- ***B. Bicameral Legislature*** : Bi (two) Cameral (chambered)
- Historically Ancient Sumer and later ancient Greece, ancient India, and Rome,
- In medieval Europe bicameralism first arose to provide separate representation of different **classes**.
- For example, one house would represent the aristocracy, and the other would represent the commoners.
- Modern Times the USA Great Compromise
- The Founding Fathers of the United States also favored a bicameral legislature, though not based on class distinction.
- As part of the Great Compromise, they invented a new rationale for bicameralism in which the upper house would have **states represented** equally, and the lower house would have them represented by **population**.

- In subsequent constitution making, **federal states have often adopted bicameralism.**
- This solution remains popular when regional differences or sensitivities require more explicit representation, with the second chamber representing the constituent states.
- Nevertheless, the older justification for second chambers — providing opportunities for second thoughts about legislation — has survived.
- A trend towards unicameralism in the 20th century appears now to have been halted.
- Growing awareness of the **complexity** of the notion of representation and the multifunctional nature of modern legislatures may be affording incipient new rationales for second chambers.
- Some political scientists believe that bicameralism makes meaningful political reforms more difficult to achieve and increases the **risk of deadlock** (particularly in cases where both chambers have similar powers).
- Others argue strongly for the **merits of the 'checks and balances'** provided by the bicameral model.

- Some countries, such as Argentina, Australia, Belgium, Brazil, Canada, Germany, India, Malaysia, Mexico, Pakistan, Russia, South Africa, Switzerland, and the United States link their bicameral systems to their federal political structure.
- In a few countries, bicameralism involves the juxtaposition of democratic and aristocratic elements. The best known example is the British House of Lords, which includes a number of hereditary peers.
- Many bicameral systems are not connected with either federalism or an aristocracy, however. Japan, France, Italy, the Netherlands, the Philippines, the Czech Republic, the Republic of Ireland and Romania are examples of bicameral systems existing in unitary states.
- In countries such as these, the upper house generally exists solely for the purpose of scrutinizing and possibly vetoing the decisions of the lower house.

- **C.Tricameral (three Chambered) Legislature**

- Tricameralism is the practice of having three legislative or parliamentary chambers.
- It is contrasted to unicameralism and bicameralism, both of which are far more common.
- The term was used in South Africa to describe the Parliament established under the **apartheid regime's** new Constitution in 1983.
- The South African tricameral parliament consisted of three race-based chambers:
 - House of Assembly — 178 members, reserved for whites
 - House of Representatives — 85 members, reserved for Coloured, or mixed-race, people
 - House of Delegates — 45 members, reserved for Asians

- **D. Tetracameral**

- Tetracameralism (Greek tetra, four + Latin camera, chamber) is the practice of having four legislative or parliamentary chambers. It is contrasted to unicameralism and bicameralism, which are far more common, and tricameralism, which is **rarely used** in government.
- Medieval Scandinavian deliberative assemblies were traditionally tetracameral, with four estates; the nobility, the clergy, the burghers and the peasants.
- The Swedish and Finnish Riksdag of the Estates maintained this tradition the longest, having four separate legislative bodies.
- Finland, as a part of Imperial Russia had tetracameral system until 1906, when it was followed by the then most modern legislature, the unicameral Parliament with universal suffrage.

5.By looking at the nature of the Executive

- The quantum, quality and configuration of power assigned to the executive is the basis of this classification.
- The classifications are (a) mono cephalous, (b) bicepalous and (c) acepalous or dispersed leadership.
- The word “cephalous” finds its origin in Greek to refer to **multiple headed Gods**. Now, it has been found a useful way of characterizing various types of executive.
- Monosepalous Executive
- Bicepalous Executive
- Acepalous Executive (Dispersed Leadership)
- **6. By looking at the Nature of the Judiciary:**
- Prerogative/rule of law system

Chapter Two

Concept of the State

& Constitution

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The Concept of State

- **State as a political concept**
- Society is the product of man's instinctive desire for association.
- Society can be expressed in terms of an aggregation or assemblage of people having common interests and who unite together by the consciousness of those common purposes, be they religious, economic or political.
- When such aggregates of people start living a settled life in a more or less definite territory and begin to realize their common, social purposes of life, man in such processes of activities ends-up in the creation of a state.

- Gabriel Almond's definition of the concept of state seems to be fitting here. He qualifies it as:-
- “..... *that system of interaction to be found in all society which perform the function of integration and adoption (both internally and externally) by the means of the employment, or threat of employment of legitimate physical compulsion.*”
- The central notion in such human grouping or state is the existence of **power relationship** between and among individuals and institutions.
- It is this very relationship that is the *raison d'être* of all political institutions.

- A **state** is a compulsory Political organization with a centralized government that maintains a monopoly on the legitimate use of force within a certain geographical territory.
- The word state is derived from the Latin word 'status' meaning "condition, circumstances"
- The term state was historically used in different contexts but the modern usage to imply a polity has been popularized by Machiavelli in the 16th C in his book the prince.
- Thus it is often employed as a synonym of nation, society, country, government etc.

- There is no academic consensus on the most appropriate definition of the state. The most commonly used definition is **Max Weber's** definition as:
- "A State is a human community that successfully claims the monopoly of the legitimate use of physical force within a given territory"
- R.M. MacIver and C.H. Page have pointed out: 'The state is distinguished from all other associations by its exclusive investment with the final power of coercion'
- State, in Political Science, is a quality attached to a community of people(s) inhabiting a definite territory, under a political authority; i.e. a body politic.
- As used in political science, the word state means a community or society politically organized under one independent government within a definite territory and subject to no outside control.

- **State as a Juristic Person**

- From the point of Political Science, the concept of state comprises three fundamental elements
- (1) a community of people,
(2) with a definite territory, and
- (3) a political power.
- There are, four conditions which must be fulfilled for the existence of a state.
- There must first, be **a people** – an aggregate of individual who live together as a community, though they may belong to different ethnic, creed, cultures or be of different colors.
- There must, second, be **a territory** on which the people are settled; although there is no strict rule that the frontiers of a state must be fully demarcated and defined; they may still be disputed.
- But it matters not whether the country is small or large, or may consist, as in the case of city-states, only the expanse of and by such cry.

- Thirdly, there must be **a government**, which acts on behalf of the people and governs according to the law. A state calls for a community to be organized as a political unit – a distinguished polity from, say, a tribe.
- But, once a state is established as an entity, interruption of the effectiveness of its government temporarily, as in the cases such as a civil war or occupation, would not necessarily amount to the non-existence of the state.
- Lastly, there must be **a sovereign government**.
- Sovereignty is supreme authority, which at the international plane means legal authority which is not dependent on any other sovereignty;
- In the strict and narrowest sense of the term, it implies, therefore, independence all around, within and with out the borders of the country.

- **Sovereignty**

- The capacity to monopolies on the use of force (state power) over a given political community of within a given territory is known as sovereignty.
- Sovereign state is, therefore, defined by Blacks Law Dictionary, as a state whose citizens are in the habit of obedience to it and which is not itself subject to any other (or paramount) state in any aspect.
- These powers, seen from two perspectives – i.e. external and in internal constitute sovereignty.
- Sovereignty should, therefore, be appreciated as a cluster of power consisting of external and internal aspects; each aspect having multiple qualities and facets.

- The word state has both an empirical and a juridical sense, i.e., entities can be states either defacto or dejure or both.
- Empirically (de facto), an entity is a state if, as in Max Weber's influential definition, it is that organization that has a 'monopoly on legitimate violence' over a specific territory.
- Such an entity imposes its own legal order over a territory, even if it is not legally recognized as a state by other states (e.g., the Somali region of Somaliland).
- Juridically (de jure), an entity is a state in international law if it is recognized as such by other states, even if it does not actually have a monopoly on the legitimate use of force over a territory.

- In respect of the external aspect of sovereignty, the basic principle was elaborated by the Charter of the UN in the following terms.
- All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community notwithstanding differences of an economic, social, political or other nature.
- In particular, sovereign equality includes the following elements:-
 - States are judicially equal;
 - Each state enjoys the rights inherent in sovereignty in full;

- Each state has the duty to respect the personality of other states;
- The territorial integrity and political independence of the state are inviolable;
- Each state has the right to freely to choose and develop its political,
- social, economic and cultural systems;
- Each state has the duty to comply fully and in good faith with its
- international obligation and to live in peace with other states.

- The principle laid by International Law is that wherever a person or a thing is on or enters into that territory, the person or the thing is, *ipso facto*, subject to the jurisdictional authority of the state.
- Conversely, other state(s) may not exercise its (their) power within the boundaries of the home territory.
- International treaties may, however, restrict the jurisdictional sovereignty of a state in the exercise of its sovereignty.
- There should exist on one and the same territory only one, full sovereign state; i.e. the rule of the exclusiveness of a single sovereignty over the same territory.

Sovereignty in the Changing World

- **Development of the Concept of Sovereignty**
- The meaning and attributes of Sovereignty Varied from time to time
- Based on :
 - the functions attributed to state sovereignty in a specific period of time and
 - by principles imposed by International Law.
- The concept of sovereignty is widely recognized under Treaty of Augsburg (1555) and the peace of Westphalia (1648).
- These treaties made after religious war, gave birth to the system of sovereign states.

- ***The Westphalia State System*** and which no longer recognized the supreme authority of the Pope (Emperor) of Rome over the states.
- Initially, in Europe, state sovereignty was often associated with the absoluteness of a state's political power, which, at the time was vested in a king, emperor or Tsar.
- The French philosopher **Jean Bodin (1530-1596)** was the first to present a comprehensive concept of sovereignty .
- In his book *Republica* he rejected claims of superiority by the Pope and Emperor and advocated a general theory of the responsibility of exercising public power.
- The sovereign ruler was still the highest absolute authority (*summa potesta*) within a given territory; one, who could decide and legislate, unrestrained by law and without appeal, on behalf of the state, community.

- Grotius was one of the first international lawyers who linked the notion of sovereignty to certain principles of Natural Law.
- He acknowledged the absolute powers of the king as a sovereign ruler, but argued that the king should be guided by principles of Natural Law in exercising them.
- Emerich de Vattel based sovereignty on positive law, as exemplified in treaties and state practices, rather than on natural law.
- He emphasized the principles of sovereign equality
- He introduced a new concept of International Law in which the sovereign state is the sole and only subject of the law of nations i.e. the individual being only its object

- **Locke**, in his ***Two Treaties on Government*** (1689), was the first writer to introduce the doctrine that state itself is the original sovereign, and that all supreme powers of the government are derived from the sovereignty of the state.
- In contrast, **Rousseau** stated in his *Du Contrat Social* (1762) that the only legitimate sovereign are the people, while the state is the result of a revocable contract concluded between the people and those who exert power in the state.
- The basis of this ideology has had an important influence on modern state formation.
- It is now commonly understood that the sovereignty of the state does not arise from any divine power, status strength, but from delegation of power by the people to the state.
- In modern political systems, state power is balanced by separation of powers, increasingly in the form of a constitutional state along the line of Montesquieu's doctrine.

Forms of Sovereignty in International Law

- Sovereignty is a multifaceted concept. There are Six main forms of sovereignty .
- **Internal or Territorial Sovereignty**
- Internal sovereignty implies that within its own territory, each of these states is exclusively sovereign.
- I.e. it has “exclusive competence” or “domestic jurisdiction” and the monopoly of power over its territory and nationals.
- Our planet is legally divided into approximately 200 sovereign states.

- **External Sovereignty**

- That means a state is not subjected (against its will) to another state or to any higher authority.
- International Law, however, imposes certain limits to both the internal and external aspects of sovereignty of states.

- **Sovereign Equality**

- All states are juridically equal, in the sense that, formally they have identical rights at the international level.

- **Extraterritorial Sovereignty**

- In the 19th Century, some Asian and African states were forced to sign capitulation treaties with European states, whereby European nationals and their property were made immune from local authority and jurisdiction.

- **Permanent Sovereignty over Natural Resources**

- It is a well-established principle of International Law that every state can freely dispose of the natural wealth and resources within its territory a principle which is commonly known as permanent sovereignty over natural resources.
- This includes the right to regulate entry and operations of foreign investors and the right of the state to pursue its own social-economic and environmental policies.
- International law imposes some corollary duties like
- due care for the environment, and equitable use and management of trans-boundary resources.

Sovereignty as a Dynamic Concept

- The changes in the theory and practice of sovereignty, as they evolved in the past, are a reflection of the changing functions attributed to sovereignty and the state in a given period.
- Historically, for example, attempts to impose order on Western Europe led to assertive interpretations of sovereignty.
- The United Nations was established in 1945 as an organization based on sovereign equality of all states.
- However, soon gradual evolved from an organization based on sovereignty of states towards an organization representing the common interests of all states and peoples as exemplified in among other things the human rights codification movement.
- For the socialist countries sovereignty served in their relations with the non-socialist world as the underlying principle of sovereign equality and non-interference.

- For colonial peoples and newly independent states it served as the legitimization of their struggle against metropolitan states and as a legal shield behind which they could develop their societies as they wished.
- Western States also cherish their sovereignty and prove to be anxious to maintain essential parts of it in integration processes such as the European Union (E.U.)
- At normative and practical levels states have accepted many restrictions.
- Rights of citizens and restrictions imposed on states by Human rights conventions.
- Restriction on exploitation of Natural resources not cause extra territorial environmental harms, In the field of international environmental regulation

- Conclusions and final observations made since the mid-1970s demonstrate the factual erosion of the traditional concepts of state sovereignty.
- Currently equated with non- interference
- interdependent on many different levels has effectively eroded – in practice and perhaps even legally – the sovereignty of states.

2.3. Development of State in the Paradigm of Western Civilizations

- The development of state has a long history in ancient and medieval periods in Europe.
- An embryonic stage of the development of a state exists since as far back as ancient Greek.
- The same sort of state continues to evolve up until Renaissance period without much change in typology.
- The conception of state made a significant shift during the Industrial Revolution after which the modern nation-state was developed.

The Greek City State

- Greek city states developed after 1000 BC in Greece.
- The Greek city states were the first communities to have given conscious thought to 'polities'.
- The Ancient Greeks knew only the city – state.
- The whole political outlook of the Greek was determined by this fact.
- With the Greek City States two ideas were integral:
- One; Each city was a politically organized state independent of others and proud of its independence.
- The Greeks never thought, and perhaps it was foreign to their nature, to merge their identity in any other city and to make a large unit of political administration.

- Secondly, the Greek City State was **deliberately limited in size and population.**
- According to Greek political Philosophy, the concentration of political, social and intellectual life at one central city was possible only when the state was small.
- Aristotle put definite limitations on the population and size of the state.
- He laid down the general principle that the number should be neither too large nor too small.
> 10,000 but <100,000.
- It should be large enough to be self-sufficing and small enough to be well governed.

- Since the object of the state was to secure a good life for all citizens, all forms of state control calculated to secure that end were considered proper and justified.
- No line was drawn between matters political, moral, religious and economic.
- The city states of Greece were typical examples of direct democracy in the modern sense of the term.
- All citizens were directly associated with the governance of the state and it really meant the power of the people.

- To Greek philosophers like Plato and Aristotle, there was opposition between the individual and the state.
- They did not support rule by the people (democracy) which they call tyranny of the mob.
- Both Plato and Aristotle emphasized the importance of political education for only through an informed citizenship could the state be preserved from anarchy.
- Plato outlined the solution in his book the ***Republic*** saying that leadership should be in the hand of **aristocracy of political intellect**, a body of “***Guardians***”, qualified to rule through a rigid system of training which should lead up to the creation of the ideal state.
- His attempt was to escape from the tyranny of the mob, rule by the people (democracy).
- He wanted to stake a mean between the unrealizable best and the intolerable worst.

- But neither of these solutions was capable of saving the Greek city-state from extinction.
- The only possible way of perpetuating the liberty of Greek as a whole was to bring about a wide political union.
- Which was attempted by city state of Aetna but faced fierce opposition by other states under leadership of city state of Sparta.
- What Greek political constitutionalism lacked was a form of government which has the **ability to move with the changing times** and to meet new needs as they manifest themselves.

The Roman City-State and Empire-State

- After the downfall of the Greek city-states, the main line of political development passed westward to Rome.
- Rome was originally just one of the numerous little city states which had been born in Italy.
- But after 500 B.C. the Italian City States were united, with Rome at the head.
- In constitutional History of the ancient world, the role of Rome is compared to Constitution of Britain in the Modern world.
- The constitution of Rome was like that of Britain, it was made up of **mass of precedents**, dicta of law or statement, of customs, usages, understanding and beliefs **with a few number of statutes**.

- In the beginning Roman constitution too, was a city-state.
- At first **Rome was a city -state under a monarchy**, but later the kings were driven out and the Republic began clearly to emerge.
- In this republican constitution, there were three elements of government, which were supposed to balance and check one another.
- First, the **monarchical element** (the office of the **Consuls** transformed from the original kings)
- There were **two Consuls**, elected annually, each with the right to veto the other.
- Secondly, **the aristocratic element** was embodied in the **senate**, an assembly with, at one time, great legislative powers.

- Thirdly, **the democratic element** existed in the meetings of the people.
- The theory of this triple division of power lasted till the fall of the empire.
- As Rome grew from a city state to a world state, the republican form of government became inconsistent with the reality on the ground.
- Finally Roman Empire disintegrated.
- Here again, we observe the absence of the two indispensable conditions or presupposition of modern constitutionalism: namely, **representative democracy and nationalism.**

- The democracy of Rome, like that of the Greek City-states, was direct primary democracy, and the idea of representation was foreign to the one as to the other.
- National feeling was **entirely absent in the Roman Empire.**
- The subject, i.e. the various peoples knew nothing of the rights and duties attributed to nationals and to citizens other than mere belongingness to the Roman Republic under a constitution.

Medieval State

- After the fall of the Roman Empire in the 5th C began what we call the Medieval Period in Europe which lasted until the Renaissance in the 15th C.
- During this period, the phenomenon of Feudalism has rapidly developed all over Europe.
- This was a kind of medieval constitutionalism, since it was to some extent systematized into generally accepted form of social and political organization.
- Its essential feature was a **division of land into small units**, the general principle of which was that **—every man must have a lord.**
- Society developed its own hierarchy, as a pyramid, at the apex of which stood the Emperor, who was in turn, regarded as God's vassal.

- The evil of feudalism lay in the **inordinate power** it gave to the **great barons**, in proportion to their strength.
- The strong kings of the Middle Ages were those who endeavored to **concentrate power** in their own hands only to systematically put in place a centrally controlled unit.
- Feudalism seemed to have been an inevitable growth to bridge the gulf between the chaos of early medieval times and the order of the modern state.
- In England and France particularly, and to a less extent in Spain, the policy of the kings was to **concentrate power in their hands**, and to control and finally destroy the great feudal fiefs.

- And it is precisely in these countries that we may look for the first faint emergence of the two principles which we have described as the necessary condition of the growth of modern constitutionalism, namely, **nationalism and representative democracy**.
- The modern period was born during the reign of **Henry VIII** of England (reigned 1509–47), when that king more or less simultaneously declared himself head of the national church and his realm an empire—sovereign and **unanswerable to any foreign potentate**, particularly the pope.

The Renaissance State and the Effect of Industrial Revolution on Nation-State Formation

- Absolutism lasted into the 18th century. Well before that time, though, three great occurrences the renaissance, the Reformation, and the European Exploration and colonization of the Americas—had transformed Europe.
- Those events contributed to the eventual failure of absolute monarchy and profoundly influenced the development of future governments.
- The process of the breaking-up of medieval institutions, which we have been tracing, was given a tremendous impetus by the renaissance.
- The general effect was at once one of atomization and one of integration: it atomized the medieval world but integrated individual states.

- In England, France and Spain it affected a more closely integrated state on nation lines.
- In Germany and Italy the process of integration went on, but over much more confined areas, so that in the end many little states arose.
- The invention of the printing press had significant impact.
- For one thing, this invention enormously increased the **resources of government**. Laws, for instance, could be circulated far more widely and more accurately than ever before.
- More important still was the fact that the printing press increased the size of the educated and **literate classes**.
- From a ruler's point of view this development also brought **public opinion** into being for the first time.

- The **Reformation** was another consequence of the the press. It, had resulted in the destruction of the Roman Catholic Church's effective claim to universality.
- In the long run this led to the secularization of politics and administration and the introduction of some measure of religious toleration.
- Gradually the way became clear for rational, utilitarian considerations to shape government.

- The Renaissance state was **not a truly constitutional, much less democratic.**
- Its essential quality was **external sovereignty**, which implied a strong general authority maintaining itself at any cost, chiefly with a view to strengthening the state against all its neighbors.
- The political effect of the religious reformation of the 16th century was to give to the Renaissance state **a divine sanction.**
- In many states **state churches were established** which were exclusive and intolerant to other denominations.
- Thus the political consequence of **Luther's** doctrinal onslaught upon the papacy was to **atomize the world** still further, and to add to the prerogative of the renaissance sovereign.

- In France, Prussian and Austria despotism became complete.
- The two great characteristics of this type of despotism were **a professional army and profession bureaucracy** drawn generally from the middle class of bourgeoisie.
- Thus the only unifying force was the crown, which sought no aid from any representative body; and so the organs of a properly constituted body politics failed to thrive by activity.
- That was the reason why, **on the continent**, the full development of **constitutionalism was delayed** until the 19th Century, and when it did come, it took a series of revolutions to achieve it.
- In England alone, Renaissance monarchy was not allowed an unchecked despotism.

- Industrial capitalism in Europe had an everlasting impact on the whole societal structure and played a significant role in the emergence of the nation-state.
- The **industrialization** started much before the 18th and 19th century but it had impacted merely in these centuries with the emergence of the agricultural revolution, transport revolution, intellectual revolution, print revolution etc., which **brought the people much closure ideologically and physically.**
- Political and social changes emerged during this period; mainly the feeling of nationalism came in the 19th century.
- As the 19th century moved along, the feeling of nationalism was developing rapidly.
- People with the same interest, language and culture wanted to have their own country.

Nation-State Formation

- The concept of a nation-state is notoriously difficult to define.
- A working and imprecise definition is:
- “a type of state that conjoins the political entity of a state to the cultural entity of a nation, from which it aims to derive its political legitimacy to rule and potentially its status as a sovereign state.”
- The origins and early history of nation-states are disputed. Two major theoretical questions have been debated.
- First, “Which came first, the nation or the nation-state?”
- Second, “Is nation-state a modern or an ancient idea?”
- Scholars continue to debate a number of possible hypotheses.

- Most commonly, the idea of a nation-state was and is associated with the rise of the modern system of states, often called the " Westphalian system " in reference to the Treaty of Westphalia (1648).
- Nation-states have their own characteristics that today may be taken-for-granted factors shaping a modern state, but that all developed in contrast to pre-national states.
- The most obvious impact of the nation-state is the creation of a uniform national culture through state policy.
- Its most demonstrative examples are national systems of compulsory primary education that usually popularize a common language and historical narratives.

- The concept of a nation-state is notoriously difficult to define.
- Anthony Smith, one of the most influential scholars of nation-states and nationalism, argued that a state is a nation-state only if and when a single ethnic and cultural population inhabits the boundaries of a state, and the boundaries of that state are coextensive with the boundaries of that ethnic and cultural population.
- This is a very narrow definition that presumes the existence of the “one nation, one state” model. Consequently, less than 10% of states in the world meet its criteria.

- The most obvious deviation from this largely ideal model is the presence of minorities, especially ethnic minorities, which ethnic and cultural nationalists exclude from the majority nation.
- The most illustrative historical examples of groups that have been specifically singled out as outsiders are the Roma and Jews in Europe.
- In legal terms, many nation-states today accept specific minorities as being part of the nation, which generally implies that members of minorities are citizens of a given nation-state and enjoy the same rights and liberties as members of the majority nation.
- However, nationalists and, consequently, symbolic narratives of the origins and history of nation-states often continue to exclude minorities from the nation-state and the nation

- According to a wider working definition, a nation-state is a type of state that conjoins the political entity of a state to the cultural entity of a nation, from which it aims to derive its political legitimacy to rule and potentially its status as a sovereign state. if one accepts the declarative theory of statehood as opposed to the constitutive theory.
- A state is specifically a political and geopolitical entity, while a nation is a cultural and ethnic one.
- The term “nation-state” implies that the two coincide, in that a state has chosen to adopt and endorse a specific cultural group as associated with it.
- The concept of a nation-state can be compared and contrasted with that of the multinational state, city-state, empire, confederation, and other state formations with which it may overlap.
- The key distinction is the identification of a people with a polity in the nation-state.

- **Origins**

- The origins and early history of nation-states are disputed. Two major theoretical questions have been debated.
- First, “Which came first, the nation or the nation-state?” Second, “Is nation-state a modern or an ancient idea?”
- Some scholars have advanced the hypothesis that the nation-state was an inadvertent byproduct of 15th century intellectual discoveries in political economy, capitalism, mercantilism, political geography, and geography combined together with cartography and advances in map-making technologies.
- For others, the nation existed first, then nationalist movements arose for sovereignty, and the nation-state was created to meet that demand.

- Some “modernization theories” of nationalism see it as a product of government policies to unify and modernize an already existing state.
- Most theories see the nation-state as a modern European phenomenon, facilitated by developments such as state-mandated education, mass literacy, and mass media (including print). However, others look for the roots of nation-states in ancient times.
- Most commonly, the idea of a nation-state was and is associated with the rise of the modern system of states, often called the “Westphalian system” in reference to the Treaty of Westphalia (1648).
- The balance of power that characterized that system depended on its effectiveness upon clearly defined, centrally controlled, independent entities, whether empires or nation-states, that recognized each other’s sovereignty and territory.
- The Westphalian system did not create the nation-state, but the nation-state meets the criteria for its component states.

- **Characteristics**

- Nation-states have their own characteristics that today may be taken-for-granted factors shaping a modern state, but that all developed in contrast to pre-national states. Their territory is considered semi-sacred and nontransferable.
- Nation-states use the state as an instrument of national unity, in economic, social, and cultural life.
- Nation-states typically have a more centralized and uniform public administration than their imperial predecessors because they are smaller and less diverse.
- After the 19th-century triumph of the nation-state in Europe, regional identity was usually subordinate to national identity. In many cases, the regional administration was also subordinate to central (national) government.
- This process has been partially reversed from the 1970s onward, with the introduction of various forms of regional autonomy in formerly centralized states (e.g., France).

- The most obvious impact of the nation-state, as compared to its non-national predecessors, is the creation of a uniform national culture through state policy.
- The model of the nation-state implies that its population constitutes a nation, united by a common descent, a common language, and many forms of shared culture.
- When the implied unity was absent, the nation-state often tried to create it.
- The creation of national systems of compulsory primary education is usually linked with the popularization of nationalist narratives.
- Even today, primary and secondary schools around the world often teach a mythologized version of national history.

Constitutional Developments in England , USA and France

- **Development in England**

- England, had its period of despotism in the Renaissance time, but peculiar circumstances prevented it from becoming strengthened and fixed as it did on the continent.
- The isolation of the state also strengthened its sense of nationalism, and this was enhanced by a series of events in the Tudors period.
- The first was the reformation, which transferred the headship of the church from the Pope to the English monarch and thus preserved it completely from papal interference.
- The second was the defeat of the Spanish Armada.

- The civil war (1642-49) really destroyed whatever chance there was of establishing in England the type of enlightened despotism.
- The Revolution of 1688-89 has fundamentally taken away the chances of the Stuart autocracy to revive royal power attempted under Charles II and James II.
- This revolution had two fundamental Implications:
- The first is that the control of affairs was effectively transferred from the king to the “king in parliament”.
- The second is that this change was placed in on a statutory basis.
- Before this there was only customs and convention, for Magna Charta itself cannot be considered a statute.

- The various statutes passed at the time of the Revolution of 1688-89 placed the sovereignty of the British state irrevocably in the hands of parliament.
- The Bill of Rights and the Mutiny Act gave parliament the control of the army.
- By the simple device of annual supplies of money for its up-keep produced an effective prevention of tyranny.
- Yet this was only general legislative supervision which existed in the hands of the king and his ministers.
- Yet in the course of the 18th Century, by a purely conventional and finally by the end of the century, there was one added power to parliament, i.e. the control of the executive.

- Statutes like Habeas Corpus and the Act of Settlement had secured, on the one hand, the immunity of the citizen from false imprisonment, and, on the other, the immunity of the judge from royal interference.
- Thus, by the second half of the 18th Century, Britain was a constitutional, though not a democratic, state.
- By conventional growth and by a series of statutes her three organs of government: legislative, executive and judicial were properly constituted and related in such a manner as to ensure the absence of tyranny.
- The principle of representation was deeply rooted in this system. But no ideas of franchise extension had yet come to be accepted as practical politics.
- For this, the country had to wait for the combined effects of the French and industrial Revolutions.

- The Britain Constitution was the result of a slow, conventional growth, not, like the others, the product of deliberate invention, resulting from a theory.
- In the 17th & 18th C, Britain was the only constitutional state in the world.
- Because of this it become a model for the later constitutional development of other states.

- **Developments in America and France**

- The political tyranny and the persistence of religious intolerance in the 18th C gave rise to the development of the Social contract theory as the bases for state by thinkers like John Lock and Rousseau.
- The Social contract theory, argues that the state is born out of compact made among a number of men who come to gather to end an intolerable state of nature.
- By the compact men abandon certain of their natural rights, but only those necessary for the establishment of a civil condition of society.
- The object of political society is, therefore, to secure that the rights not so abandoned continue to be guaranteed to the citizens.
- If the establishment of government is contractual, it follows that when government becomes tyrannical it breaks the contract.
- Citizens of such a state would, therefore, have the right to remove such a government.

- This theory was literally the forerunner of two great revolutions which occurred at the end of the 18th century, one in America, and the other in France.
- The revolution in America was not confined to the war of Independence.
- It took also the form of a series of democratic changes in each of the thirteen colonies and the drafting of state constitutions which were collected and published in 1781.
- The collection was translated into French and had a considerable bearing on the constitution – making, which marked the revolutionary period in France.
- But the influence of the war of American. Independence itself and its consequences on the history of modern constitutionalism was even more striking.

- The war resulted from an economic regime which the American colonists regarded as tyrannical. Their slogan was "no taxation without representation."
- The representation of the American colonies in the parliament at Westminster at that time was a manifest impossibility.
- So, the American war of independence broke out and ended in the establishment of a new political entity known as the United States of America founded upon a constitution promulgated in 1787.
- This constitution embodied the principles enunciated in the Declaration of Independence.
- This is the beginning of modern documentary constitutionalism.

- The Ideals of Rousseau were directly behind those who led the early movements of the French Revolution.
- When the bankrupt government of France called the Estates General (the National Assembly) in 1789 the members were very much influenced by the idealistic dogmas of Rousseau and his followers has resulted in the dawning up of a political constitution.
- The national assembly of 1789 thus drew up the *"Declaration of the Rights of Man and of Citizen"* before coming to its proper business of making a constitution.
- This document was saturated with the dogmas of the contractual origin of the state, sovereignty and of individual rights.

- This is the second great stage in the development of modern documentary constitutionalism after the American Revolution which is the first.
- The French ideals became what had never been in its British or even in its American form a challenge to every constituted government which did not recognize and embody the sovereignty of the people.
- The American and the French Revolutions gave the modern world the first examples of documentary constitutions, thus finding an immediate way of reconciling liberty and authority, the rights of man and organized movement.

- **Developments in the 19th C**

- The 19th century saw the ideals of liberal reform and nationalism struggling for recognition, and their partial retaliation in political forms.
- The industrial Revolution intensified both nationalism and constitutional reform.
- By fostering the policy of economic protection which strengthened nationalism and
- By extension of the franchise and the organization of national parties which resulted in the extension of political rights to the working class.
- The second half of the 19th Century was the heyday of documentary constitutions.

- With the exception of those of Great Britain and the United States, no existing constitution was older than the 19th century ones.
- During this period, Germany, France, Italy, Denmark and Austria have established constitutional States.
- Each of these constitutions adopted parliamentary institutions, which were copies, more or less revised forms of the British model.
- Each of them contained democratic elements but the powers of parliament were not yet such as to satisfy all the demands of liberal reform.

- **Developments During the WWI**

- The first World War gave a tremendous incentive to constitutionalism:
- By destroying the illiberal governments,
- By creating new states out of hitherto oppressed nationalities,
- By establishing constitutions on the basis of nationalism and democracy and
- By creating the will to international peace of constitutional lines through the establishment of the League of Nations.

- The victors of WWI asserted that a lasting peace could be founded only on the basis of the self – determination of peoples.
- This meant that the suppressed nationalities should so far as this was practicable establish themselves as independent bodies on a national basis.
- The application of this principle involved the partial or complete break-up of four great Empires; Germany, Austria, Russia, and Turkey which the war itself had already achieved.
- The peace treaties created new sovereign states like Finland, Estonia, Latvia, Lithuania, Poland, and Czechoslovakia; dismembered others like Germany and Austria; and Enlarged yet others like Serbia and Romania.
- A new documentary constitution in each case cropped up from these changes. Personal liberty, popular sovereignty and nationality were the characteristics of the constitutions of all these constitutions.
- They all had without exception adopted the British plan of parliamentary control of the executive with certain variations, though many of them even went further in matters of universal suffrage.

- By the eve of the first world war, in 1914, then, the national constitutional experiment was, in some form or another, being tried in every state in Europe .
- It had spread also to many outlying parts of the earth, south America, Japan, and even to China.
- This constitutionalism was always molded either on the British model or on the variant form of which adopted by the United States.

- **The Backlash of Communism, Nazism and Fascism**

- In the succeeding years of the WWI, there was a violent reaction against political constitutionalism.
- The Russian Revolution of 1917 was followed by the fascist out break in Italy, the Nazi upheaval in Germany, and the victory of Franco over the Republicans in Spain.
- Under Nazi and Fascist influences, the nations of Eastern Europe generally lost the constitutional safeguards they had.

- **Developments During WWII**

- The Second World War left a complex and menacing situation for the national democratic constitutionalism of the west. which has to meet not only the challenge of communism but the danger of a resurgence of fascism and the incalculable effects of emergent Afro Asian nationalism.
- National democratic constitutionalism, ancient though its origins may be, is still in an experimental stage and that if it is to survive in competition with more revolutionary types of government, we must be prepared constantly to adopt it to the ever-changing conditions of modern society.
- The basic purpose of a political constitution is, after all, the same whatever form it takes to secure social peace and progress, safeguard individual rights and promote national well-being.