Constitution of the United Kingdom

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United Kingdom



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The **Constitution of the United Kingdom** is uncodified, consisting of both written and unwritten sources. There is no technical difference between ordinary statutes and law considered "constitutional law." Therefore the Parliament of the United Kingdom can perform "constitutional reform" simply by passing Acts of Parliament and thus has the power to change or abolish any written or unwritten element of the constitution. The constitution is based on the concept of all sovereignty ultimately belonging to Parliament (Parliamentary sovereignty), so the concept of entrenchment cannot exist. The lack of a central written constitutional document explaining the fundamental principles of the state and relationship between its institutions and between the people leads some constitutionalists to regard the United Kingdom as having "no (formal) constitution." The phrase "unwritten constitution" is sometimes used, despite the fact that the UK constitution incorporates many written sources, statutory law being considered the most important source of the constitution. But the case remains that the constitution relies far more on unwritten constitutional conventions than virtually every other liberal democratic constitution.

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[edit] Government and Parliament

The informal nature of the constitution has been conducive to a lack of the concept of "constitution government" or "constitutionalism" in the United Kingdom. The "government" (i.e. the executive) is drawn from the legislature, Parliament, since the UK has a Parliamentary system of government. The doctrine of "limited government", central in all written constitutions, is not prominent in the UK constitution, nor is separation of powers or formal "checks and balances." Since the government is said to be "fused" with Parliament, and virtually every government has a majority, governments have no formal restraint on their legislative power. This is broken only if government Members of Parliament vote against a government bill, which due to a strong whip system had, until 2005, not occurred since 1986. The phrase elective dictatorship was introduced in 1976 to highlight the enormous potential power of government afforded by the constitution. In practice, some principles and elements of the constitution, such as the rule of law, are so ancient and ingrained in the UK's political culture that they would be extremely difficult to abolish. Parliamentary sovereignty and of the rule of law have been widely considered the most important principles of the constitution since the nineteenth

century, and attempts to substantially circumvent them would likely be met with backlash by the electorate or monarch.

[edit] Flexibility

Since there is neither entrenched constitutional law nor a formal separation of powers, Parliament has the ability to change any aspect of the constitution at will. The constitution is therefore often spoken of by political scientists as being "organic;" that is, it has "evolved" over time since its medieval origins.[citation needed] In theory, its flexibility makes it responsive to political and social change especially since many political principles are simply conventions; however, the absence of entrenchment means that in theory far-reaching changes could be made without significant popular support. Moreover, until recently, Acts of Parliament have not been subject to review by the courts.[citation needed]

For instance, until recently, there was no modern statute or document that attempted to codify the rights of citizens (e.g. freedom of speech) in the UK, common law precedents being the main source of "rights." Now, through the adoption of European Union law, and the European Convention on Human Rights, citizens are deemed to have certain negative rights that were previously unspecified in the legal system. These are enacted in the European Communities Act 1972 and Human Rights Act 1998, respectively. Constitutional reform has been particularly rapid in the past decade, and include the Human Rights Act; devolution of powers of government to Scotland, Wales and Northern Ireland; a significant reform of the House of Lords and a Freedom of Information Act.

[edit] Sources

The UK constitution draws from a variety of written document and unwritten constitutional convention. The sources are of varying importance, with the written Acts of Parliament (statutes) and EU law being of greatest importance, regulating many aspects of government,

and wider systems such as the running of elections. Foreign treaties, which are passed as Acts of Parliament, are also often of constitutional importance. As the United Kingdom uses the common law legal system, precedents established by judges also form a source of the constitution. Other important unwritten sources are Constitutional conventions, which, for example, attempt to establish lines of accountability for ministers. Many such conventions are ancient in origin, and form some of the principles of the constitution. Much about these conventions has been written, and guidelines for ministers and parliamentarians are today available in some detail in writing[1]. However, this does not mean that the unwritten conventions they are derived from are irrelevant, since they can only formally be replaced by Acts of Parliament. Rather, writings about conventions are meant to increase understanding of them, rather than supersede them. Works of authority is the formal name for works that are sometimes cited as interpretations of aspects of the UK constitution. Most are works written by nineteenth century constitutionalists, mainly A.V. Dicey, Walter Bagehot and Erskine May.

Royal prerogative is the name for powers originally exercised by the monarch. They derived from the monarch's traditional authority, to use the Weberist term. In practice, by convention, most prerogatives are now directly exercised by ministers, such as the power to regulate the civil service, or the power to issue passports. Some absolute prerogatives (also known as the monarch's personal- or reserve prerogatives) still exist, but these are by convention exercised only on the advice of the Prime Minister and cabinet. These powers include summoning, proroguing and dissolving Parliament, granting royal assent to bills and formally appointing office holders. The most important reserve prerogative - also the most automatic under the current constitutional settlement - is considered to be the appointment and dismissal of Prime Ministers. The last time this reserve prerogative was exercised by the monarch without reference to the Cabinet was with the appointment of Harold Wilson in 1974, despite his party not having a majority in Parliament. Queen Elizabeth II exercised her prerogative after extensive consultation with the

Privy Council. Royal prerogatives are often controversial, since they give the government great theoretical power. However, the Royal Prerogative is not unlimited; this was established in the Case of Proclamations (1611), which confirmed that no new prerogative can be created and that Parliament can abolish individual prerogatives.

[edit] Summary list

- Acts of Parliament (written)
  - Treaties (written)
- EU law (written)
- Common Law (unwritten)
- Conventions (unwritten)
- Royal Prerogative (unwritten)
- Works of authority (written)

[edit] Key principles

The key principles of the constitution are its underlying features. The two most important principles of the British constitution were first established to exist as the "twin pillars" of the constitution by A.V. Dicey, in his work *An Introduction to the Study of the Law of the Constitution* (1885). They are that the constitution is built on the twin equal principles of Parliamentary sovereignty and Rule of law. The former means that Parliament is the supreme law making body, it alone can make legislation on a national level. This is an ancient principle, and can be traced clearly from the Restoration, and before. The latter is the principle of equal application of the law: 'everyone is equal before the law'. Although the theory is certainly ancient, from the Magna Carta, 1215 in practice equal application of the law to every subject/citizen in the state only seriously developed from the nineteenth century. Dicey's "twin pillars" interpretation is a legalistic interpretation, and has been criticised by commentators writing about the decline of Parliament's independence and the dominance of the executive in policy making. Though political interpretations of the UK

constitution have changed much since Dicey's era, there is no consensus on an alternative legal interpretation.

Another important principle is the concept of a unitary state, which is a corollary of Parliamentary sovereignty, and means that unlike in federal or confederal systems, sovereignty resides only at the centre of the state. The power of local and devolved bodies are totally dependent on Acts of Parliament, they could be abolished completely by Parliament if it wished so. Constitutional monarchy is a key principle, meaning that the monarch does not technically rule but has a ceremonial role only. This principle traces from Restoration, and by the time Walter Bagehot wrote that the monarchy was the 'dignified parts' of the constitution, the modern situation had been established. However, this is tempered by the fact that parliament technically derives its authority from the Crown by the implicit consent of the monarch. The collective term for the legislative and governmental power of parliament is therefore the King (or Queen) in Parliament principle. This means that the monarch is often described as the "supreme guardian of the constitution" in that he or she could overturn an unconstitutional act of parliament by decree. This is extremely unlikely to happen, however; although the Crown, in theory, can govern by decree, such an act would enable parliament to force an abdication under the power it established and proved during the Abdication Crisis of 1936, when Parliament forced King Edward VIII to abdicate. The monarch, therefore, has an established role to advise, warn, and encourage ministers, although the Crown's executive powers remain unused.

The most recent major principle of the constitution is European Union membership, the principle that EU law takes precedence over UK law. This principle was famously identified in the Factortame case in which the Merchant Shipping Act 1988 was overturned. This appears to undermine the principle of Parliamentary sovereignty, but Parliament could still withdraw from the EU by repealing the European Communities Act 1972 so in a way Parliamentary sovereignty is preserved. That, however, is unlikely to happen soon.

[edit] Summary list

- A.V. Dicey's "Twin pillars" of the constitution
  - Parliamentary sovereignty (ancient origins, modern evolution started from the Restoration)
  - Rule of law (ancient origins, modern evolution started in the nineteenth century)
- Other important principles
  - Unitary state (ancient origins, derived from monarchy)
  - Constitutional monarchy (originated from the Restoration)
  - EU membership (from 1972, primacy of EU law established in 1990)

[edit] Not everyone agrees that the UK has a Constitution

While some might assert that the UK does not have a constitution, the vast majority of theorists describe the 1688 compromise between crown and parliament as a constitution, which is the basis of the textbook view described in this article. In one article, Lord Scarman presents a spirited argument for a written constitution for the UK, but still refers to the 1688 compromise and resulting acts of parliament as a constitution.[1]

The UK Constitution has no fundamental written source, and is ever changing. It relies much on unwritten convention. Dicey himself identified that ultimately "the electorate are politically sovereign," and Parliament is legally sovereign. A Constitution would impose limits on what Parliament could do without a legal majority. To date, the Parliament of the UK has no limit on its power other than the possibility of extra-parliamentary action (by the people) and of other soverign states (pursuant to treaties made by Parliament and otherwise).

[edit] Key statutes and conventions

[edit] Selected key statutes

- Magna Carta (1215)
- Habeas Corpus Act 1679
- Bill of Rights 1689 - for England and Wales
- Claim of Right 1689 - for Scotland
- Act of Settlement 1701
- Act of Union 1707 - union of the Kingdom of England & the Kingdom of Scotland to form the Kingdom of Great Britain
- Act of Union 1800 - union of Great Britain & Ireland to form the United Kingdom of Great Britain and Ireland
- Reform Act 1832
- Reform Act 1867
- Reform Act 1884
- Parliament Acts (of 1911 and 1949)
- Representation of the People Act 1918
- Irish Free State (Agreement) Act 1922, Irish Free State Constitution Act 1922, and Irish Free State (Consequential Provisions) Act 1922 recognised the Irish Free State as no longer part of the United Kingdom
- Representation of the People Act 1928
- Statute of Westminster 1931
- Representation of the People Act 1949
- Life Peerages Act 1958
- Representation of the People Act 1969
- European Communities Act 1972
- Human Rights Act 1998
- Scotland Act 1998
- Government of Wales Act 1998
- Northern Ireland Act 1998
- House of Lords Act 1999
- Freedom of Information Act 2000
- Constitutional Reform Act 2005

[edit] Some important conventions

- Relating to monarchy
  - The Sovereign shall grant the Royal Assent to all Bills passed by Parliament (the Royal Assent was last refused by Queen Anne in 1708, for the Scottish Militia Bill 1708).
  - The monarch will not dissolve Parliament without the advice of the Prime Minister.
  - The monarch will ask the leader of the dominant party in the House of Commons to form a government, and if there is no dominant party, the leader most likely to be able to form a government.
  - The monarch will ask a member of the House of Commons (rather than the House of Lords or someone outside parliament) to form a government. It remains possible, however, for a caretaker Prime Minister to be drawn from the House of Lords.
- All ministers are to be drawn from the House of Commons or the House of Lords.
- The House of Lords will accept any legislation that was in the Government's manifesto (the 'Salisbury Convention').
- Individual Ministerial Responsibility
- Collective Ministerial Responsibility

[edit] Recent constitutional reform

The current Labour government, elected in 1997, re-elected in 2001 and 2005 has made much constitutional reform, with some yet to come into effect. The incorporation of the European Convention on Human Rights into UK law has granted citizens specific negative rights and given the judiciary some power to enforce them. The courts can encourage Parliament to amend primary legislation that conflicts with the Act by a "declaration of incompatibility," and courts can refuse to enforce or "strike down" any incompatible secondary legislation. Any actions of government authorities that violate Convention rights are illegal except if forced to by an Act of Parliament.

Recent reforms have also decentralised the UK by setting up devolved assemblies in Scotland, Wales, and Northern Ireland. Devolution has challenged the tradition of the UK being a centralised, unitary state, which indeed it never was since Scotland and Ireland (until 1801) always had separate governments or legal systems. Some commentators have stated the UK is now a "quasi-federal" state.

These reforms have undermined the concept of Parliamentary sovereignty somewhat, even though Parliament could still abolish the devolved assemblies and repeal the Human Rights Act. In reality such action is unlikely so these restrictions on the legislative power of Parliament are likely to remain on the statute book for the time being.

The passing of an unprecedented Freedom of Information Act has challenged the traditional British notion that governments should not disclose too many details of its operations.

The government has shown a desire to abolish the position of Lord Chancellor, a position that unusually combines executive, legislative and judicial power in conflict with the notion of the separation of powers. This however has been defeated in the House of Lords. A further apparent breach of separation of powers, the presence of Law Lords (members of the judiciary) in the House of Lords, will be removed by moving the Lords to the new Supreme Court of the United Kingdom by 2008. Ironically separation of power was a concept described by the French philosopher Montesquieu after analysing the contemporary British constitution, which reflected the way in which the constitution actually operated. He did not necessarily anticipate a separation of offices, but was rather describing the separation of functions.

[edit] See also



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[edit] External links

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- From Unwritten to Written: Transformation in the British Common-Law Constitution, David Jenkins, 2003

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