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UK politics

Is it time to codify the UK constitution?

This article should be read alongside ‘Comparing the UK and US constitutions’ (pp. 30–33).

The uncodified nature of the UK’s constitution is seen by many A-level politics students as a strength. Its organic, flexible nature is unique and linked to our national identity. However, with human rights a topic of political controversy and politicians such as Nigel Farage promising to withdraw from the European Convention on Human Rights (ECHR) and abolish the Equalities Act, it can be argued that now is the time to codify. If, like in many parts of the world, the UK is moving towards a more authoritarian form of government, codification may be necessary to protect our hard-fought liberties.

The role of judges

A common argument against codification is that it passes power into the hands of unelected judges. Often from elite backgrounds, judges have the role of interpreting the constitution’s meaning and the ability to strike out laws ruled to be unconstitutional. In the USA, the Supreme Court has arguably become the most powerful part of government, a so-called ‘imperial judiciary’, regularly overruling elected and accountable politicians. As Simon Lemieux argues, the US Supreme Court plays a much larger role in the policy process than the UK court. For example, *Dobbs v Jackson* (2023) ended the constitutional right to abortion, despite opposition to this decision from President Biden, most Americans and many members of Congress. Codification could lead to an increase in judicial activism – where judges get increasingly involved in political decisions, potentially damaging democracy by moving power from the elected to the unelected.

In contrast, it can be argued that judges’ unelected nature is a strength. They are not subject to political pressure, which allows them to uphold the rule of law with neutrality, protecting citizens from arbitrary government. The two Gina Miller cases (2017 and 2019) are good examples of the UK Supreme Court upholding the principle of parliamentary sovereignty against an executive – led by Boris Johnson – attempting to overreach its powers. However, as Lemieux goes on to argue, the courts act as a powerful check on the executive in both the UK and USA, which suggests that codification will not necessarily have any impact on this.

Clarity or complexity?

Codification would have the advantage of making the UK’s constitutional rules clearer for the public. This would serve an educational function. Some people argue that the current lack of clarity in the UK constitution has led to confusion about both the status of referendums (such as Brexit) and the devolution settlement. Where exactly does power lie in the UK political system? Creating a codified constitution would help to settle these questions and could also potentially involve a chance to reform the UK’s political system more widely, such as with the introduction of a new voting system. It could be

an opportunity to get rid of outdated aspects of UK politics, such as the House of Lords, or some of the more antiquated procedures that take place in Parliament.

However, the process of creating a codified constitution would be long and complex, involving debates over who would be involved, how to agree on what to include and how to avoid it becoming outdated or party-political. Constitutions are written in legal language that is not necessarily understandable or accessible to most people, who may well have little interest in it anyway. A codified constitution may not solve debates over devolution or rights. It might be better to focus instead on constitutional reforms that would have an immediate and potentially positive impact, such as changing the electoral system.

Flexibility

A strong argument is that rights are poorly protected in the UK. Due to parliamentary sovereignty, any law can be removed and no parliament can bind its successors. In recent years both the Conservative and Reform parties have called for the UK to withdraw from the ECHR and have suggested abolishing the Human Rights Act 1998 which, they argue, protects the rights of illegal immigrants. A codified constitution would entrench these rights, creating a higher form of law.

The UK does not have a codified constitution as it has had centuries of relative political stability and was not subject to a colonial power. It is mostly found in statute law, but can also be found in common law, conventions, international agreements and works of authority. This adaptability has allowed it to change with the times, in response to society's changing values, for example in passing the law to allow same-sex marriage in 2014. This is in stark contrast to the complex and almost impossible process of constitutional amendment in the USA, which prevents necessary changes – such as reforming the Electoral College – from taking place.

Conclusion

It is worth remembering that nearly all countries in the world have codified constitutions. However, many of these are regularly ignored, and there is no evidence that they necessarily uphold democracy, rights or freedoms. There are many ways to protect rights, and a codified constitution is only one of them.

Student task

1 Create a plan for one of the essays below, making sure you refer to the 'now' aspect of the question. How would your essay be different without this word in the title?

Exam-style questions

1 Evaluate the view that it is now time to codify the UK's constitution. (30 marks, Edexcel-style)

2 'The UK now needs a codified constitution.' Analyse and evaluate this statement. (25 marks, AQA-style)

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