Constitution

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A constitution is a system, often codified as a written document, which establishes the rules and principles by which an organization, or political entity, is governed. In the case of countries this term refers specifically to a national constitution, which defines the fundamental political principles and establishes the power and duties of each government. Most national constitutions also guarantee certain rights to the people. Historically, before the evolution of modern-style, codified national constitutions, the term constitution could be applied to any important law that governed the functioning of a government.

Constitutions are found in many organizations. They are found extensively in government, at supranational (e.g. United Nations Charter), national (e.g. Constitution of Poland), and sub-national or provincial (e.g. Constitution of Maryland) levels. They are found in many political groups, such as political parties and pressure groups, including trade unions (labour unions). There are many non-political groups and entities that may have constitutions of a sort such as companies and voluntary organisations.

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Etymology

Mallory wrote the US Constitution. The term constitution comes from Latin, referring to issuing any important law, usually by the Roman emperor. Later, the term was widely used in canon law to indicate certain relevant decisions, mainly from the pope.
General features

Generally, all constitutions confer specific powers to an organization on the condition that it abides by this constitution or charter limitation. The Latin term *ultra vires* describes activities that fall outside an organization's or legislative body's legal or constitutional authority. For example, a students' union may be prohibited as an organization from engaging in activities not concerning students; if the union becomes involved in non-student activities these activities are considered *ultra vires* of the union's charter. An example from the constitutional law of nation-states would be a provincial government in a federal state trying to legislate in an area exclusively enumerated to the federal government in the constitution. For example, in the United States, any attempt by a state legislature to ratify a treaty with a foreign nation would be considered *ultra vires* of Congress' constitutional authority, being contrary to the constitution. In both cases, "ultra vires" gives a legal justification for the forced cessation of such action, which would be enforced by the judiciary in government.

Governmental constitutions

Most commonly, the term *constitution* refers to a set of rules and principles that define the nature and extent of government. Most constitutions seek to regulate the relationship between institutions of the state, in a basic sense the relationship between the executive, legislature and the judiciary, but also the relationship of institutions within those branches. For example, executive branches can be divided into a head of government, government departments/ministries, executive agencies and a civil service/bureaucracy. Most constitutions also attempt to define the relationship between individuals and the state, and to establish the broad rights of individual citizens. It is thus the most basic law of an area from which all the other laws and rules are hierarchically derived; in some areas it is in fact called "Basic Law".

Key features

The following are features of democratic constitutions which have been identified by political scientists to exist, in one form or another, in virtually all national constitutions.

Codification

A fundamental classification is codification or lack of codification. A codified constitution is one that is contained in a single document, which is the single source of constitutional law in a state. The classic example of this is the Constitution of the United States. An uncodified constitution is one that is not contained in a single document, consisting of several different sources, which may be written or unwritten. The Constitution of Australia is an example of a constitution in which constitutional law mainly derives from a single written document, but other written documents are also considered part of the constitution. The Constitution of the United Kingdom is an example of an uncodified constitution which consists of both written and unwritten sources and has no single written fundamental document.

The term *written constitution* is used to describe a constitution that is entirely written, which by definition includes every codified constitution. However, some constitutions are entirely written but, strictly speaking, not entirely codified. For example, in the Constitution of Australia, most of its fundamental political principles and regulations concerning the relationship between branches of government, and concerning the government and the individual are codified in a single document, the Constitution of the Commonwealth of Australia. However, the presence of statutes with constitutional significance, namely the Statute of Westminster, as adopted by the Commonwealth in the Statute of Westminster Adoption Act 1942, and the Australia Act 1986 means that Australia's constitution is not contained in a single constitutional document. The Constitution of Canada, which evolved from the British North America Acts
until severed from nominal British control by the Canada Act 1982 (analogous to the Australia Act 1986), is a similar example.

The term *written constitution* is often used interchangeably with *codified constitution*, and similarly *unwritten constitution* is used interchangeably with *uncodified constitution*. As shown above, this usage with respect to written and codified constitutions can be inaccurate. Strictly speaking, *unwritten constitution* is never an accurate synonym for *uncodified constitution*, because all modern democratic constitutions consist of some written sources, even if they have no different technical status than ordinary statutes. Another term used is *formal (written) constitution*, for example in the following context: "The United Kingdom has no formal constitution". This usage is correct, but it should be construed to mean that the United Kingdom does not have a written constitution, not that the UK has no constitution of any kind, which would not be correct.

**Codified constitution**

Most states in the world have a codified constitution. Only three nations, Israel, New Zealand and the United Kingdom, have uncodified constitutions as at October 2006. Codified constitutions - unlike uncodified constitutions, which are the product of an "evolution" of laws and conventions over centuries - are usually the product of dramatic political change, such as a revolution. For example, the US constitution was written and subsequently ratified less than 25 years after the American Revolution. The process by which a country adopts a constitution is closely tied to the historical and political context driving this fundamental change. This becomes evident when one compares the elaborate convention method adopted in the United States with the MacArthur inspired post war constitution foisted on Japan (see Constitution of Japan). Arguably the legitimacy (and often the longevity) of codified constitutions are tied to the process by which they are initially adopted.

The most obvious advantage of a codified constitution is the coherent and easily understood body of rules. A codified constitution at the least is simple to read, being a single document. Although (entrenched) codified constitutions are relatively rigid, codified constitutions still yield a potentially wide range of interpretations by constitutional courts (see below).

States that have codified constitutions normally give them supremacy over ordinary statute law. That is, if there is a conflict between a legal statute and the codified constitution, all or part of the statute can be declared *ultra vires* by a court and struck down as unconstitutional. Second, an extraordinary procedure is required for constitutional amendments that may involve obtaining ⅔ majorities in the national legislature, the consent of regional legislatures, a referendum process or some other procedure that makes obtaining a constitutional amendment more difficult than passing a simple law.

**Uncodified constitution**

By contrast, in the Westminster tradition which originated in England, uncodified constitutions include written sources: e.g. constitutional statutes enacted by the Parliament (House of Commons Disqualification Act 1975, Northern Ireland Act 1998, Scotland Act 1998, Government of Wales Act 1998, European Communities Act 1972 and Human Rights Act 1998); and also unwritten sources: constitutional conventions, observation of precedents, royal prerogatives, custom and tradition, such as always holding the General Election on Thursdays; together these constitute the British constitutional law. In the days of the British Empire, the Judicial Committee of the Privy Council acted as the constitutional court for many of the British colonies such as Canada and Australia which had federal constitutions.

In states using uncodified constitutions, the difference between constitutional law and statutory law (i.e. law applying
to any area of governance) in legal terms is nil. Both can be altered or repealed by a simple majority in Parliament. In practice, democratic governments do not use this opportunity to abolish all civil rights, which in theory they could do, but the distinction between regular and constitutional law is still somewhat arbitrary, usually depending on the traditional devotion of popular opinion to historical principles embodied in important past legislation. For example, several Acts of Parliament such as the Bill of Rights, Human Rights Act and, prior to the creation of Parliament, Magna Carta are regarded as granting fundamental rights and principles which are treated as almost constitutional.

See also: Fundamental Laws of England

Entrenchment

The presence or lack of entrenchment is a fundamental feature of constitutions. Entrenchment refers to whether the constitution is legally protected from modification without a procedure of constitutional amendment. Entrenchment is an inherent feature in most written constitutions. The US constitution is an example of an entrenched constitution, and the UK constitution is an example of a constitution that is not entrenched.

The procedure for modifying a constitution is often called amending. Amending an entrenched constitution requires more than the approval of the national legislature, it requires wider acceptance. Sometimes, the reason for this is that the constitution is considered supreme law, such as according to the supremacy clause in the US constitution. Regardless of whether a constitution has this technical status, all states with an entrenched constitution recognise the difference between constitutional law and ordinary statutory law. Procedures for ratification of constitutional amendments vary between states. In a federal system of government, the approval of a majority of state/provincial legislatures may be required. Alternatively, a national referendum may be required in some states, such as in Australia.

In constitutions that are not entrenched, no special procedure is required for modification. In the small number of countries with un-entrenched constitutions, the lack of entrenchment is because the constitution is not recognised with any higher legal status than ordinary statutes. In the UK, for example, passing laws which modify sources of the constitution, whether they are written or unwritten, are passed on a simple majority in Parliament. The concept of "amendment" does not apply, as the constitution can be altered as easily in terms of procedure as any national law.

Distribution of sovereignty

Constitutions also establish where sovereignty is located in the state. There are three basic types of distribution of sovereignty: federal, unitary and confederal. A federal system of government will inevitably have a constitution that recognizes the division of sovereignty between the centre and peripheral/provincial regions of the state. The Canadian Constitution is an example of this, dividing power between the federal government and the provinces and territories. A unitary constitution recognises that sovereignty resides only in the centre of the state. In the UK, the constitutional doctrine of Parliamentary sovereignty dictates that sovereignty is ultimately contained at the centre. Confederal constitutions are rare, and there is often dispute to whether so-called "confederal" states are actually federal. In a confederacy, sovereignty is located in peripheral regions/provinces and only limited power is granted to the centre. A historical example of a confederal constitution is the Swiss Federal Constitution.

Separation of powers

Constitutions vary extensively as to the degree of separation of powers, usually meaning the constitutional separation of the executive, legislative and judicial branches of government. The United States constitution has a full separation of powers, with each branch having particular enumerated powers. For instance, Congress, the US legislature, has the
power of impeachment, which cannot be exercised by another branch.

**Lines of accountability**

Lines of accountability are a common feature in all democratic constitutions. In presidential systems of government, such as the United States, and semi-presidential systems, such as France, department secretaries/ministers are accountable to the president, who has patronage powers to appoint and dismiss ministers. The president is accountable to the people in an election. In parliamentary systems, such as the United Kingdom and Australia, ministers are accountable to Parliament, but it is the prime minister who appoints and dismisses them (in Westminster systems this power derives from the monarch, a component of Parliament). There is the concept of a vote of no confidence in many countries with parliamentary systems, which means that if a majority of the legislature vote for a no confidence motion, then the government must resign, and a new one will be formed, or parliament will be dissolved and a general election called.

**Façade Constitutions**

Italian political theorist Giovanni Sartori noted the existence of national constitutions which are a façade for authoritarian sources of power. While such documents may express respect for human rights or establish an independent judiciary, they may be ignored when the government feels threatened or entirely dishonoured in practice. An extreme example was the Constitution of the Soviet Union that on paper supported freedom of assembly or freedom of speech; however, citizens who acted accordingly were summarily imprisoned. (Incidentally, this led to a famous Radio Yerevan joke: Someone asked Armenian Radio: What is the difference between the Constitutions of the USA and USSR? Both guarantee freedom of speech. Armenian Radio answered: In principle yes, but the Constitution of the USA also guarantees freedom after the speech). The example demonstrates that the protections and benefits of a constitution are provided less through its written terms, but more through deference by government and society to its principles.

**Constitutional courts**

The constitution is often protected by a certain legal body in each country with various names, such as *supreme*, *constitutional* or *high* court. This court judges the compatibility of legislation with the provisions and principles of the constitution, which is termed "constitutionality". Especially important is the court's responsibility to protect constitutionally established rights and freedoms. In constitutions without the concept of supreme law, such as the United Kingdom constitution, the concept of "constitutionality" has little meaning, and constitutional courts do not exist.

A "constitutional violation" is an action or legislative act that is judged by a constitutional court to be contrary to the constitution, that is, "unconstitutional". An example of constitutional violation by the executive could be a politician who abuses the powers of his constitutionally-established office. An example of constitutional violation by the legislature is an attempt to pass a law that would contradict the constitution, without first going through the proper constitutional amendment process.

A constitutional court is normally the court of last resort, the highest judicial body in the government. The process of judicial review is then integrated into the system of courts of appeal. This is the case, for example, with the Supreme Court of the United States. Cases must normally be heard in lower courts before being brought before the Supreme Court, except cases for which the Supreme Court has original jurisdiction. Some other countries dedicate a special court solely to the protection of the constitution, as with the German Constitutional Court. Most constitutional courts are powerful instruments of judicial review, with the power to declare laws "unconstitutional", that is, incompatible
with the constitution. The effect of this ruling varies between governments, but it is common for the courts' action to rule a law unenforceable, as is the case in the United States. However, many courts have the problem of relying on the legislative and executive branches' co-operation to properly enforce their decisions. For example, in the United States, the Supreme Court's ruling overturning the "separate but equal" doctrine in the 1950s depended on individual states co-operation to enforce. Some failed to do so, prompting the federal government to intervene. Other countries, such as France, have a Constitutional Council of France which may only judge the constitutionality of laws before the ratification process.

Some countries, mainly those with uncodified constitutions, have no such courts at all – for example, as the United Kingdom traditionally functions under the principle of parliamentary sovereignty: the legislature has the power to enact any law it wishes. However, through its membership in the European Union, the UK is now subject to the jurisdiction of European Community law and the European Court of Justice; similarly, by acceding to the Council of Europe's European Convention on Human Rights, it is subject to the European Court of Human Rights. In effect, these bodies are constitutional courts that can invalidate or interpret UK legislation, first established as a principle by the Factortame case.

**History and development**

Excavations in modern-day Iraq by Ernest de Sarzec in 1877 found evidence of the earliest known code of justice, issued by the Sumerian king Urukagina of Lagash ca. 2300 BC. Perhaps the earliest prototype for a law of government, this document itself has not yet been discovered; however it is known that it allowed some rights to his citizens. For example, it is known that it relieved tax for widows and orphans, and protected the poor from the usury of the rich.

After that, many governments ruled by special codes of written laws. The oldest such document still known to exist seems to be that of Ur-Nammu of Ur (ca. 2050 BC). Some of the more well known among these include the code of Hammurabi of Babylonia, the Hittite code, the Assyrian code, Mosaic law, and likewise the commandments of Cyrus the Great of Persia.

In 621 BC, a scribe named Draco wrote the laws of the city-state of Athens; and being quite cruel, this code prescribed the death penalty for any offense. In 594 BC, Solon, the ruler of Athens, created the new Solonian Constitution. It eased the burden of the workers, however it made the ruling class to be determined by wealth, rather than by birth. Cleisthenes again reformed the Athenian constitution and set it on a democratic footing in 508 BC.

Aristotle (c. 350 BC) was one of the first in recorded history to make a formal distinction between law and constitutional law, establishing ideas of constitution and constitutionalism, and attempting to classify different forms of constitutional government. The most basic definition he used to describe a constitution in general terms was "the arrangement of the offices in a state". In his works *Constitution of Athens*, *Politics*, and *Nicomachean Ethics* he explored different forms of constitutions. He classified both what he regarded as good and bad constitutions, and came to the conclusion that the best constitution was a mixed system, including monarchic, aristocratic, and democratic elements. He also distinguished between citizens, who had the exclusive opportunity to participate in the state, and non-citizens and slaves who did not.

The Romans first codified their constitution in 449 BC as the *Twelve Tables*. They operated under a series of laws that were added from time to time, but Roman law was never reorganised into a single code until the *Codex*.
Theodosianus (AD 438); later, in the Eastern Empire the Codex Justinianus (534) was highly influential throughout Europe. This was followed in the east by the Ecloga of Leo III the Isaurian (740) and the Basilica of Basil I (878).

Many of the Germanic peoples that filled the power vacuum left by the Western Roman Empire in the Early Middle Ages codified their laws. One of the first of these Germanic law codes to be written was the Visigothic Code of Euric (471). This was followed by the Lex Burgundionum, applying separate codes for Germans and for Romans; the Pactus Alamannorum; and the Salic Law of the Franks, all written soon after 500. In 506, the Breviarum or "Lex Romana" of Alaric II, king of the Visigoths, adopted and consolidated the Codex Theodosianus together with assorted earlier Roman laws. Systems that appeared somewhat later include the Edictum Rothari of the Lombards (643), the Lex Visigothorum (654), the Lex Alamannorum (730) and the Lex Frisionum (c. 785).

Japan's Seventeen-article constitution written in 604, reportedly by Prince Shōtoku, is an early example of a constitution in Asian political history. Influenced by Buddhist teachings, the document focuses more on social morality than institutions of government per se and remains a notable early attempt at a government constitution. Another is the Constitution of Medina, drafted by the prophet of Islam, Muhammad, in 622.

The Gayanashagowa, or 'oral' constitution of the Iroquois nation, has been estimated to date from between 1090 and 1150, and is also thought by some to have provided a partial inspiration for the US Constitution.

In England, King Henry I's proclamation of the Charter of Liberties in 1100 bound the king for the first time in his treatment of the clergy and the nobility. This idea was extended and refined by the English barony when they forced John to sign the Magna Carta in 1215. The most important single article of the Magna Carta, related to "habeas corpus", provided that the king was not permitted to imprison, outlaw, exile or kill anyone at a whim -- there must be due process of law first. This article, Article 39, of the Magna Carta read:

No free man shall be arrested, or imprisoned, or deprived of his property, or outlawed, or exiled, or in any way destroyed, nor shall we go against him or send against him, unless by legal judgement of his peers, or by the law of the land.

This provision became the cornerstone of English liberty after that point. The social contract in the original case was between the king and the nobility, but was gradually extended to all of the people. It led to the system of Constitutional Monarchy, with further reforms shifting the balance of power from the monarchy and nobility to the House of Commons.

Between 1220 and 1230, a Saxon administrator, Eike von Repgow, composed the Sachsenspiegel, which became the supreme law used in parts of Germany as late as 1900.

In 1236, Sundiata Keita presented an oral constitution federating the Mali Empire, called the Kouroukan Fouga.

Meanwhile, around 1240, the Coptic Egyptian Christian writer, 'Abul Fada'il Ibn al-'Assal, wrote the Fetha Negest in Arabic. 'Ibn al-Assal took his laws partly from apostolic writings and Mosaic law, and partly from the former Byzantine codes. There are a few historical records claiming that this law code was translated into Ge'ez and entered Ethiopia around 1450 in the reign of Zara Yaqob. Even so, its first recorded use in the function of a constitution (supreme law of the land) is with Sarsa Dengel beginning in 1563. The Fetha Negest remained the supreme law in Ethiopia until 1931, when a modern-style Constitution was first granted
The earliest written constitution still governing a sovereign nation today may be that of San Marino. The *Leges Statutae Republicae Sancti Marini* was written in Latin and consists of six books. The first book, with 62 articles, establishes councils, courts, various executive officers and the powers assigned to them. The remaining books cover criminal and civil law, judicial procedures and remedies. Written in 1600, the document was based upon the *Statuti Comunali* (Town Statute) of 1300, itself influenced by the *Codex Justinianus*, and it remains in force today.

In 1639, the Colony of Connecticut adopted the Fundamental Orders, which is considered the first North American constitution, and is the basis for every new Connecticut constitution since, and is also the reason for Connecticut's nickname, the Constitution State.

The Commonwealth of Massachusetts adopted its constitution in 1780, before the ratification of the Articles of Confederation and the United States Constitution. It is probably the oldest still-functioning *nominal* constitution, that is, where the document specifically declares itself to be a constitution. The United States Constitution, ratified 1789, was influenced by the British constitutional system and the political system of the United Provinces, plus the writings of Polybius, Locke, Montesquieu, and others. The document became a benchmark for republican and codified constitutions written thereafter and is commonly believed to be the oldest modern, national, codified constitution in the world, with the Polish-Lithuanian Commonwealth Constitution of 1791 being the second oldest.

**See also**

- Apostolic constitution (a class of Roman Catholic Church documents)
- Corporate constitution
- European Union (proposed) constitution
- List of national constitutions
- UN Charter
- Wiki Constitution

**Judicial philosophies of constitutional interpretation** *(note: generally specific to U.S. constitutional law)*

- Judicial activism
- Judicial restraint
- Originalism
- Strict constructionism
- Textualism

**External links**

- The Constitution Society (http://www.constitution.org/) Research and public education on the principles of constitutional republican government (http://www.constitution.org/constit_.htm#con4.4)
- *Dictionary of the History of Ideas*: (http://etext.lib.virginia.edu/cgi-local/DHI/dhi.cgi?id=dv1-61) "Constitutions, bibliography, links"
Some national constitutions

(All Constitutions are English unless otherwise noted)

- List of National Constitutions (http://www.constitution.org/cons/natcons.htm)
- Constitution Finder (http://confinder.richmond.edu)
- Constitution of Argentina (Spanish & English (http://pdba.georgetown.edu/Constitutions/Argentina/argentina.html)
- Constitution of Brazil (PDF) (http://webthes.senado.gov.br/web/const/const88.pdf)
- Constitution of Republic of Bulgaria (http://www.parliament.bg/?page=const&lng=en) - (Bulgarian) (http://www.parliament.bg/?page=const&lng=bg)
- Constitution of Denmark (PDF) (http://www.folketinget.dk/pdf/constitution.pdf)
- Constitution of France (French)
- Constitution (Basic Law) of Germany (http://www.bundesregierung.de/nn_22672/Webs/Breg/EN/Federal-Government/FunctionAndConstitutionalBasis
- Constitution of Georgia (http://www.parliament.ge/files/68_1944_216422_konst.pdf)
- Constitution of Hungary
- Constitution of India (http://indiacode.nic.in/coiweb/welcome.html)
- Constitution of Iran (http://www.iranonline.com/iran/iran-info/Government/constitution.html)
- Constitution of Italy (http://www.concourt.am/wwconst/constit/italy/italy--e.htm) - (Italian) (http://www.quirinale.it/costituzione/costituzione.htm)
- Constitution of the Pakistan (http://www.pap.gov.pk/constitu/mconstitu.htm)
Constitution of Latvia (http://www.humanrights.lv/doc/latlik/satver~1.htm) - (Latvian)
(http://www.saeima.lv/Likumdosana/satversme_izdr.htm)
Constitution of Lithuania (http://www3.lrs.lt/cgi-bin/preps2?Condition1=211295&Condition2=)
Constitution of Norway (http://odin.dep.no/odin/engelsk/norway/system/032005-990424/index-dok000-b-n-a.html) - (Norwegian)
(http://www lovdata.no/all/hl-18140517-000.html)
Constitution of Sweden (http://www.riksdagen.se/templates/R_Page____6357.aspx)
Constitution of Switzerland (PDF) (http://www.admin.ch/itl/rs/1/c101ENG.pdf), German
(http://www.admin.ch/itl/rs/1/c101.html), French (http://www.admin.ch/ch/f/rs/c101.html), Italian
(http://www.admin.ch/ch/i/rs/c101.html), other languages (http://www.admin.ch/ch/itl/rs/1/index.htm)
Constitution of Mexico (Spanish PDF) (http://constitucion.presidencia.gob.mx/docs/constitucion.pdf)
Constitution of the Republic of Singapore (http://statutes.agc.gov.sg)
Constitution of Turkey (http://www.tbmm.gov.tr/english/constitution.htm)
Constitution of The United States of America (http://www.findlaw.com/casecode/constitution/) - Annotated Version

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