

How important is constitution



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Constitution in the simplest sense of definition, is a documented fundamental rules, rigid or flexible, legally recognised or extralegal, that governs a particular sovereign entity and conducts its affairs[1]. The document set out some vital and basic rules which assign functions, powers and duties to the various organs of government and spelt out the relationship that exist between the citizens and the state. Through this exercises, it gives and limit the power of government by preventing them from going contrary to the provisions of the constitution (Andrew Heywood 1999)[2].

The provision is achieved in the forms in which the constitutions took, that is, written or unwritten (rigid or flexible) constitutions. The written constitution is most preferable by advance democracies such as United States of America (drawn up at the Philadelphia Convention of 1787), because it draws together important and vital constitutions in one single document and forms the supreme and highest law, which stands higher than any legislation or act of parliament. Constitutions in a deeper interpretation vested the power of judicial review on the judiciary making the courts guardians, custodians and interpreters of the constitution.

A supreme and legitimate constitution of a state is significant by ensuring that the organs of government are checked through the instrument of separation of power and rule of law (exercised in accordance with the wishes, interests and preferences of the general populace enshrined in the constitution), (Held, D. (1996))[3]. A constitutional administration exercises legal judicious mandate and bestow legitimacy up on a political system of a state by making the actions and exercise of the government a rule-bound

activities and ensures that state power is rightfully exercised in accordance with provisions in constitution (Beetham, D.(1991)[4], which the principle reflects the norms and values of the wider society; for example, in Soviet Union, in spite of the enactment of four successive (1918, 1924, 1936 and 1977) constitution in the Soviet Union, they still struggled with limited accomplishment to attain legitimacy, because the constitution failed (Communist Party's Monopoly of power) to identify with value and beliefs which are widely held by Soviet people.

A widely recognised constitution of a sovereign state provides a legitimate stamp on its supreme bodies and draws division of powers amongst the central, state and regional government in a federal state, for instance in United States, Nigeria and Germany; powers are shared amongst the three tiers of government in what is referred to as 'lists': exclusive list exercised only by the central government, concurrent list exercised simultaneously by the state and the regional government and finally the residual list exercised by the state government and local.(K. C. Wheare, 1966)[5]; the central government takes total control of the exclusive lists that contains vital functions such as foreign policy, foreign commerce and the national defence and security.

Legitimacy of a state has widened beyond its meaning as legal rights vested on regime to govern as provided by the constitution, but also extended to psychological right to govern sovereign state which refers to an attitude in citizen's minds that the government's regulations are lawful; and even though a government is not popular, people tends to obey it. For example most citizens never pay their income tax, but others pay, (Michael Roskin & <https://assignbuster.com/how-important-is-constitution/>

Robert L. Cord (1997)[6] because they believe the government has the legitimate right provided in the state constitution to tax them. However, legitimacy and sovereignty of a state does not necessarily depend on its constitution; but also on the consent of the people, government without the consent of its people must definitely rely on coercion in order to be recognised, for instance in the German economic and political catastrophes that brutally undermined its legitimacy resulted in the rise of Hitler to power after they followed the World War I.

In light of the previous paragraphs, using an efficient mechanism and accountable leadership within the framework of a constitutional governance structure, which complements the rule of law and supports a general desire by citizens to jointly work together by a legitimate constitution which resolves issues without destroying lives and property when it is generally identified by majority as national officially authorised instrument of justice and fairness (Joel Samoff). It is important to know that these arguable issues are not fixed; and, given individual multiple identities like ethnicity, class, religion, education, etc. (Kelechi A. Kalu, 2004)[7], significant change in one aspect of identity often results in solution and instrumental use of identity to secure important interests.

Up holding evidently to the above, there is a lack of a general belief to assess constitutional legitimacy in a broad approach that is applicable both to a sovereign state and to supranational structures, despite the fact that the importance can not be disputed. This paper uses (Tobias Herbst) well analysed ideas of this concept to point out the gap or lacuna in some constitution to carefully and comprehensively propose a new concept of

constitutional legitimacy, separate from nations and states: Herbst first approach on this concept examines the various established theories of the constituent authority and analyses their consequences for the legitimacy of national authority (Hoheitsgewalt). The second examination of Herbst looked at the consequences to assess the legitimacy of supranational powers. Herbst's opinion in a general mind aims to develop a universal theory of legitimization, suitable for national constitutional frameworks as well as for supranational structures. To achieve this goal, the conceptual solution of Herbst intends to elaborate further on the part about national constitutions have to fit also for the supranational implementation in the second part[8]of his argument, therefore, in regards to the two parts are structured interdependently.

Furthermore, on the important of constitution in making a sovereign state legitimate is its strength of explaining ethnicity with the government representation centred on the existence of a satisfactory rule of constitution and the legitimacy of the governing elites through democratic elections. However, when the constitutional framework is encouraging of a confirmable and just process, allocations for and interactions among ethnic groups will tend to promote the salient interests of group members. In such a situation[9], political power, economic opportunities, federal government positions, status and physical security of all ethnic coalitions will be promoted using available resources equitably.

In conclusion, the most significant aspect of constitutionality of a state is the extent to which it operates within the framework of law shaped by legislature. In developed democracies, the legality of fundamental rule in a

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sovereign state is held to be the supreme justification of an action for both individual and government (Aian Renwick & Ian Swinburn (1991)[10]. In that way any government or individual who goes contrary to this provision would held accountable for their actions against the fundamental rules. This implies that no government or individual are above the legitimate rules of a sovereign state (Crossman, R. H. S, 1970)[11]. Finally, the impression that constitution is attached to a state is false, because a constitution is not supplement (but, part of a particular theory of the state),[12]been an entity which by its nature desires more power and therefore needs a legitimate structure to conduct their affairs.

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