

Politics, governance and the new philippine constitution concept of constitution ...

[Law](#), [Constitution](#)



A constitution is “ that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised. ” Broadly speaking, every state has some kind of a constitution—a leading principle that prevails in the “ administration of its government until it has become an understood part of its system, to which obedience is expected and habitually yielded. (Cooley, 1868)

In a restricted sense, the Constitution of the Philippines is “ a written instrument by which the fundamental powers of the government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise and for the benefit of the body politic. ” (Malcolm and Laurel, 1936 as cited by Suarez, 2008) Strong (1963) summarizes the definition of constitution by saying that: A constitution may be said to be a collection of principles according to which the powers of the government, the rights of the governed, and the relations between the two are adjusted.

The constitution may be a deliberate creation on paper; it may be found in one document which itself is altered or amended as time and growth demand; or it may be a bundle of separate laws given special authority as the laws of the constitution. Or, again, it may be that the bases of the constitution are fixed in one or two fundamental laws while the rest of it depends for its authority upon the force of custom. Purpose/function of the Constitution Serves as the supreme or fundamental law. Being a supreme law, it applies to all citizens.

All other laws of the land conform to it. Establishes basic framework and underlying principles of government. It defines the “ framework of the system of government” and assigns to the different departments their duties and powers

Kinds of Constitution As to their origin and history:

a. Conventional or enacted—“ enacted by a constituent assembly or granted by a monarch to his subjects like the Constitution of Japan in 1889” (De Leon and De Leon).

By being enacted, this means that a constitution is the result of a legal action of a body of persons whose task is to make laws. As for the Japanese Constitution of 1889, this law is “ largely the handiwork of the genro (elder statesman) Ito Hirobumi, who called for a bicameral parliament (the Diet) with an elected lower house and a prime minister and cabinet appointed by the emperor. ”

b. Cumulative or evolved—“ is a product of growth or a long period of development originating in customs, traditions, judicial decisions, etc. rather from a deliberate and formal enactment. An example of this is the English Constitution. (De Leon and De Leon)

As to their form: a. Written—one which has been given definite written form at a particular time, usually a constituted authority called a “ constitutional convention” (De Leon and De Leon). A written constitution is a codified single document. It is an enacted constitution. b. Unwritten—“ a product of political evolution, consisting largely of a mass of customs, usages and judicial decisions together with a smaller body of statutory enactments of a fundamental character, usually bearing different dates”. To this effect, the

British Constitution is said to be unwritten because it is an “ un-codified constitution in the sense that there is no single document that can be classed as Britain's constitution. The British Constitution can be found in a variety of documents. ” (Trueman, 2012) Note: Strong (1963) argues that classifying constitutions as written and unwritten is a false distinction. This is so because “ there is no constitution which is entirely unwritten and no constitution entirely written.

As to manner of amending them: a. Rigid or inelastic—“ one of special sanctity which cannot be amended except by some special machinery more cumbersome than the ordinary legislative process” (Strong, n. d. as cited by De Leon and De Leon). In short, Strong (1963) says, “ the constitution which cannot be bent without being broken is a rigid constitution. ” b. Flexible or elastic—“ one which possesses no higher legal authority than ordinary laws and which may be altered in the same way as other laws” .

In other words, as Strong (1963) puts it: “ The constitution that can be altered or amended without special machinery is a flexible constitution. ”

Requisites of a good written constitution As to form:

a. Brief—a constitution that is too detailed would lose its very nature of being a basic or fundamental law. Aptly said: “ It is short and concise but covers the most important parts”.

b. Broad—a constitution is required to be comprehensive in scope as much as possible. This must be so to make it flexible and easily adaptable to changing social, social, economic, and political conditions,” without

necessarily amending it every now and then, “ for a constitution is designed to be a permanent document to serve a country for many generations. ”

c. Definite—a constitution should be clear, free from vagueness, so that it would not “ lead to opposing interpretations of its essential features,” which if not carefully crafted, may lead to “ incalculable harm. ” (De Leon and De Leon) As to contents:

Constitution of government—its provisions should set the “ framework of government and its powers,” and define the electorate. (De Leon and De Leon) Constitution of liberty—its provisions should set forth the “ fundamental rights of the people” and impose “ certain limitations o the powers of the government as a means of securing the enjoyment of these rights. ” (De Leon and De Leon) Constitution of sovereignty—its provisions should point out “ the mode or procedure for amending or revising the constitution.