

# [A compared and considered alongside it for the](https://assignbuster.com/a-compared-and-considered-alongside-it-for-the/)

Aconstitution is a set of rules or principles that seek to establish duties ofthe various bodies of the government, regulate the relationship between thedifferent bodies of the government, distribute their powers and define therelationship between the state and the individual. House of LordsSelect Committee on the Constitution defines a constitution as being “ the set of laws, rules and practices thatcreate the basic institutions of the state and its component and related parts, and stipulate the powers of those institutions and the relationship between thedifferent institutions and between those institutions and the individual”. Forexample, in the UK, there is the legislative branch that is authorised tocreate the law, the judicial branch which interprets the law, and the executivebranch that implements the law.

Constitutions can be codified or uncodified, unitary or federal or seenas rigid or flexible. The UK is an example of an uncodified constitution andcan also be considered unwritten. However, this has been deemed severelymisleading as, in actual fact, elements of the constitution are written e.

g. Legislation that concerns the role and functions of the local governments’relationship with the central government such as The Local Government Act 1972. It is more the case that the UK’sconstitution is not written or codified under one document, labelled “ TheConstitution”. Statutory constitutional law is located within ordinarylegislation as opposed to a separate constitutional document, so there is nosimple way of identifying such legislation. It could be argued that the UKshould have a codified constitution for reasons explored in this essay. A codified constitution is one where constitutional obligationsare to be found within one single text, also commonly known as a writtenconstitution.

There are 3 keyprinciples within a codified constitution. The first being it isauthoritative, which means the constitution occupies a place in ‘ higher law’ thanstandard legislation, giving it more weight and power. As the constitutiontakes a higher stance within the law, it allows other laws to be compared and consideredalongside it for the judges to then determine how constitutional the laws are. A codified constitution is therefore judiciable. It is also entrenched, meaningit is firmly established and extremely difficult to amend or abolish. Anexample being, in the Republic of Ireland, in order for the constitution to be altered, it is a requirement that the bill must be passed by both parliaments, receive amajority referendum and have the assent of the President An uncodified constitution is one that is formed using rulesthat are found from a variety of different sources, as there is no single legaldocument.

Differing from codified constitutions, an uncodified constitution isnot authoritative as constitutional laws hold the same legal status as ordinarylegislation. Due to this absence of a higher law, judges do not have a legalstandard against which they can declare things constitutional orunconstitutional. They are also not entrenched, they are actually very flexible.

In order for theconstitution to change all that it has to do is go through the usual process thatapplies to statute law. Finally, uncodified constitutions may be consideredunitary. Unlike codified constitutions, a unitary system is governed as onesingle unit, meaning that all the government power is centralised in the core. Pros and cons maybe I dunno love you :):) On one hand, there are many arguments that support the viewthat the UK should adopt a codified constitution. One argument being thatcodified constitutions offer clear-cut rules for political procedure. Thismakes it easier for judges to follow and apply them, because rather than beingunevenly spread through a number of different documents or statutes withinconstitutional law, they would be located in one single document that labelledthe constitution. This would in turn, lead to less confusion about the meaningof constitutional rules and greater certainty that they can be enforcedconfidently and correctly.

However, one argument is that codified constitutions are toorigid as they do not allow for change very easily due to the fact that theyhave a higher status within the law. For example, in the United States, in order to amend the constitutionthat amendment must be either proposed to congress and receive at least a twothird majority vote or by a convention called for by two-thirds of statelegislatures. It must also be ratified 38 out of 50 states.

ThePresident is powerless in terms of his/her point of view as it does not count. The US constitution has only had 27 amendments since 1787. This shows there is not much room left for flexibility or change, and in a timewhere everything is changing so rapidly, it is of great importance that theconstitution is relevant and representative of thesociety it governs. Uncodified constitutions however are seen as very flexible, becauseconstitutional laws are treated the same as ordinary laws, it allows changes tobe made easily and frequently in order to stay representative. Alternatively, it is argued that in the UK, because theconstitution is flexible, there is no clear formal protection of Human rights. For example, the Human Rights Act canbe amended or abolished just as easily as any other law because constitutionallaw has no higher status than any ordinary law.

Parliamentary sovereignty meansthat the parliament has the right to make or unmake any law, and no person hasthe right to override or set aside the legislation of parliament, making themthe supreme legal authority in the UK.\*This places a great deal of power in tothe hands of the executives which some people may be uncomfortable with. However, even so it is unlikely that Parliament would, for instance, abolishthe Human Rights Act as it is intheir interest to be re-elected by the public, so there is an element of politics which greatly influencesparliament and how power is used. This would not be an issue if theconstitution was codified, as the constitution maintains a higher status and asdiscussed earlier, is much more difficult to change, which deters governmentsfrom attempting to change the constitution unless absolutely necessary.

Individual liberty would be more securely protected as it would be more clearlydefined. As a result of this rights are then easier to enforce than they arewith the current uncodified constitution that exists in the UK. Parliamentary sovereignty would effectively be abolished ifthe UK were to have a codified constitution. Some may see this as a positivebecause it prevents the above scenario, and gives a greater amount of certainty to the generalpublic that their fundamental rights will remain regardless of which politicalparty comes in to power.

(permenance??)However, others may argue that this would undermine one of the keyprinciples in the UK’s representative democracy. The UK is seen to be a liberaldemocratic country. Liberty became a reoccurring part of the constitution, dating as far back as Magna Carta 1215to the current Human Rights Act 1998. InGhaidan v Godin-Mendoza, BaronessHale states that “ Democracy is founded on the principle that each individualhas equal value … democracy values everybody equally, even if the majority doesnot”.

A number of problems are also bound to arise from this, such as the question of how parliamentary sovereignty can even be abolished? Another majorly important point is that codifiedconstitutions can lead to judicial tyranny. A codified constitution would be’policed’ by senior judges who are unelected meaning they are not sociallyrepresentative of the general public. This is undemocratic and in turn meansthat particular groups within society for example ethnic minorities, or peoplewith certain religious beliefs are not necessarily going to have their opinionsor views listened to. This could be seen as a step backwards in the UK if thiswere to happen. On the other hand, this would ensure that the constitutionwas correctly upheld.

Judges are also act as both neutral and impartial, sothey are arguably the fairest people, or at least fairer than the executivebranch being trusted to police themselves in regard to the constitution. In conclusion, the constitution of the United Kingdom iscurrently best described as uncodified. This can be beneficial to the UK as thesystem is flexible and promotes democracy. However, in my opinion, a codifiedconstitution may be considered much more appropriate.

This is because basicrights would be enshrined in the constitution, which means they are m