

To What Extent Does the Codified Constitution Hinder or Help Liberty

Boxi Lyu

Meriden School, 3 Margaret St, Strathfield Nsw, 2135, Australia

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Abstract: Codified constitutions refer to various laws expressed in a statutory code named citizens used in the country. The image of an unwritten constitution is not completely the opposite. There is no clear written law on the surface, and the unwritten law is based on the spirit of the law. This article mainly discusses whether the written constitution affects or helps freedom.

1. Introduction

From the last century, the whole world has been working on establishing free countries, yet people's liberties are increasingly violated. The government today limits our political speech, subjecting us to more wiretapping than ever before. The narrowing of our liberties takes place gradually and, most importantly, for noble-sounding reasons. The greatest threat to civil liberties is the increase in the size and scope of the power of the government with the help of the constitution which ironically was written by the founders to limit the powers of the government. There is some support for the argument that a written constitution would impede civil liberties. But the charge that written constitutions impede the protection of civil liberties is, in my opinion, wholly unfounded and does not stand up to close scrutiny. Although it is true that citizens of some countries have suffered rights infringement because of the establishment of the written constitution in history, this is not the reason to deny the existence value of written constitution completely.

2. Definition

2.1 Codified Constitution

An appropriate, stable and adaptable structure of written constitutional form usually includes a concise constitutional code, a large number of constitutional laws that make the content of the constitution concrete, and supplemented by constitutional interpretation, constitutional convention, constitutional precedent and international treaties. While the unwritten constitution is not quite the opposite, although there are no clear laws and regulations in written form, the unwritten constitution is still based on the spirit of the constitution.

2.2 Liberty

As used in the Constitution, liberty means freedom from arbitrary and unreasonable restraint upon an individual. Freedom from restraint refers to more than just physical restraint, but also the freedom act according to one's own will.

Augustine Christian doctrine mentioned that everyone is born sinful, which means that humans are born with impulses to do bad things and disobey God. To the Israelites to free them from the spiritual slavery of sin, God offer the ten Commandments in the Catholic theology. In the New Testaments, Jesus acknowledged their validity and instructed his followers to go further and he summarized the ten commandments into two "great Commandments", which is the ancient version of the codified constitution. Like the hopeful messages mentioned in John 8:32, "you will know the truth, and the truth will set you free."

3. Analysis of Importance of Written Constitution

3.1 The Hindering Effect of the Unwritten Constitution on Liberty

In order to clear up a misunderstanding, I think it is first necessary to reconceptualize the difference between the unwritten and the written constitution. The main difference between the unwritten constitution and the written constitution is the existence of a higher body of law in which the law has a higher validity than other general laws, and this body of law is expressed in a written, systematic form. Thus, the unwritten constitution is not the same as an incomplete constitution, let alone no constitution at all. Some may interpret the opposition between an unwritten and written constitution as an opposition between order and liberty, that is, a state with a written constitution imposes great restraints on its citizens, while an unwritten constitution encourages liberty. I think this is completely wrong. A so-called unwritten constitution does not mean that such a legal system can be modified at will according to the citizens' own wishes, but remains under the constraints of the spirit of the constitution. While the Constitution needs to be adjusted to take into account the changes and developments of the times, if it is allowed to be influenced by popular perceptions, it is likely that it will not only be detrimental to the protection of liberty, but may also be detrimental to it. Indeed, no country's history and tradition can be a simple picture. Even in a country with a long constitutional tradition such as the United States, there are different understandings and interpretations of its own historical traditions. When the justices of the U.S. Supreme Court have looked into American history and tradition to answer constitutional questions, they have often come to widely divergent conclusions. For example, in the 1986 case *Bowers v. Hardwick*, the Supreme Court denied the right to same-sex sexual conduct based on previous state traditions of punishing consensual adult sodomy. However, in *Lawrence v. Texas* in 2003, the Supreme Court overruled *Bowers* based on a different historical tradition and found that Texas criminal law punishing sex between homosexuals violated the freedoms protected by the Due Process Clause of the Fourteenth Amendment to the Constitution. This shows that giving the Constitution the freedom to be amended frequently may lead to contradictory decisions, which could seriously undermine the fundamental rights of citizens.

3.2 The Promoting Effect of the Written Constitution on Liberty

The most important feature of a written constitution compared to an unwritten constitution is that there is a higher body of law in addition to the general force of law, and this body of law is presented in written form. Precisely because it is presented in written form and has the highest legal force, it often requires a complex and lengthy process if it is to be amended, and is not easily adjusted in a timely manner in response to changes in society. However, I do not believe that the impossibility of constitutional adjustment is a sufficient reason for its impediment to civil liberties, or even that it is fundamentally wrong to argue that written constitutions impede freedom of expression (WINETROBE, 2011).

First, constitutional adjustment is possible. Critics assert that the codification of the constitution reveals sovereignty. Sovereignty provides that no one can question the validity of the constitution. Consequently, the current government can make laws that in the future the succeeding government cannot undo and must follow. However, American government is actually working on protecting citizen's liberty, passing twenty-seven amendments. The most significant limitations to the government's power over the individual were added in 1791 in the Bill of Rights. The Constitution's First Amendment guarantees the rights of conscience, such as freedom of religion, speech, and the press, and the right of peaceful assembly and petition.

After the American Civil War, three new constitutional amendments were adopted: the Thirteenth (1865), which abolished slavery; the Fourteenth (1868), which granted citizenship to those who had been enslaved; and the Fifteenth (1870), which guaranteed formerly enslaved men the right to vote. The Fourteenth Amendment placed an important federal limitation on the states by forbidding them to deny to any person "life, liberty, or property, without due process of law" and guaranteeing every person within a state's jurisdiction "the equal protection of its laws."

In fact, written constitutions have strict rules and regulations for citizens' freedom rights, and such a strict system does not undermine citizens' freedom, but rather allows for the stable protection of their basic rights in any social context.

3.3 Review the Meaning of Written Constitution from the Development of American Written Constitution

The United States was the first country in the world to have a written constitution. It was adopted in 1787 and took effect in 1789. It had a short preamble and seven articles. Ten amendments were adopted at about the same time as the Constitution. They set out the basic rights of citizens. They are called the Bill of Rights. Since Congress cannot amend the U.S. Constitution itself, amendments to it are reflected in the form of adding amendments, which are of self-evident importance. So far, only 27 amendments to the Constitution have been approved because of the complexity of conditions and procedures. The First Amendment provides for liberty of religion, speech, the press, assembly and petition. The first Constitution expressly says that Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; abridging the liberty of speech, or of the press; or abridging the right of the people peaceably to assemble, and to petition the government for a redress of grievances. After the federal constitution replaced the confederate constitution, many people expressed dissatisfaction that the constitution did not include the bill of rights to guarantee the individual rights of citizens (King, 2018). They believed that citizens would inevitably be infringed upon by the government if there were no multiple barriers including the bill of rights between the government power and civil rights. Thus, America's written constitution is criticized not because it restricts liberty, but rather because it is not strict enough about it. The mechanism of guaranteeing civil liberties through the political system of the United States has a wide range of reference significance for the design and construction of the perfect political system. Many countries have stipulated various rights of citizens in the form of written constitutions. If the mechanism to protect these rights from being infringed is not perfect, these rights may remain on paper forever and cannot enter the lives of ordinary people. The enactment of the written constitution not only means the promulgation of laws, but also means a set of more perfect legislative, judicial and law enforcement procedures which are different from the general judicial procedures

3.4 The Hindering Effect of the Written Constitution on Liberty

Historically, public power has often infringed on civil liberties more often than individuals. As an authoritative and powerful public power, the government represents the country to some extent, and it is easy to infringe citizens' liberty on issues related to national security and government authority. Although sometimes the violation is not necessarily intentional, it does result in the violation of civil liberties.

Took effect in 1798, the first amendment in less than ten years, under the background of UK and French war, the federalists control of congress to fight against the forces of the federalists and the press legislation through the act of foreigners and "the sedition act", to different political opinions are opposed to the federal government policy as seditious libel given criminal punishment. The first case involving liberty of expression was Schenck in 1919. This is the first opportunity in American history to decide whether a law passed by Congress is unconstitutional through litigation in the judicial system. The law in question is the Espionage Act, passed by Congress in 1917 in the context of World War I. The Act prohibits any disrespect for the government of the United States, the federal Constitution, the United States Army or Navy, the United States flag, or the uniform of the United States Army or Navy, and punishes individuals who violate the Act with a fine up to \$10,000 or up to 20 years in prison. Schenck, the general secretary of the Socialist Party of America, directed the printing and distribution of 15,000 anti-war, anti-draft leaflets to Army conscripts in Philadelphia. He and another member of the Socialist Party were arrested and sentenced to 20 years in prison by a Federal District Court. After an appeal to the Supreme Court, the Supreme Court held that the Espionage Act did not violate the First Amendment and upheld the District Court's decision.

Speaking to the public against government policies can result in jail time, and there is no doubt that liberty of speech will not be guaranteed.

4. Why Uk Needs a Written Constitution

For the time being, the United Kingdom is the most representative unwritten constitutional state in the world. Obviously, the unwritten constitutional system has largely met the needs of stable social and political development in the UK over the past few hundred years. Therefore, in the UK view, the unwritten constitution is superior to the written constitution (BOGDANOR et al, 2007). It is widely believed that the advantage of the unwritten constitution lies in its flexibility because the UK constitution can be amended through the amendment process that modifies general laws. And the customary parts of the constitution can also be changed without any formal process. This flexibility makes it easy to adapt constitutional norms to new changes in social conditions and ideologies (Blick & Dickson, 2018).

However, the flexibility of the UK constitution has been increasingly questioned with the rise of the human rights movement in the contemporary world. Especially in recent years, there is a growing view that the UK's unwritten constitution is not conducive to the flexible protection of fundamental human rights. Whereas in the past, the UK Constitution considered flexibility to be an advantage, this flexibility is now seen as a risk because it is dangerous to the rule of law and the principle of protecting human rights. The relevant provisions of the UK constitution make the government accountable to Parliament and the electorate, the government must obey the law, and parts such as the interests of individuals and minorities are inevitably modified, superseded, or abolished (Backer, 2014). The UK unwritten constitution ostensibly tries to avoid rules and principles, believing that those human rights and procedures that should be protected have stability and continuity. Although the UK constitution could rely on traditional culture and maintain relative stability in the modern era, in modern times, this stability became more and more but lacking in security. The stability of the UK constitution is based entirely on convention and custom, and when citizens become accustomed to change, the constitution is bound to change as well. As noted above, the risk that the unwritten constitution of the United States has led to contradictory results because of changing perceptions is also present in the unwritten constitution of the United Kingdom. Moreover, the configuration of power in society is not fixed and can be changed by deciphering constitutional conventions, greatly enhancing the function of modern government but also jeopardizing the protection of individual rights and weakening the function of constitutional conventions (Ackerman, 2018). Thus, changes in political values and attitudes have altered the understanding of the constitution, requiring us to revisit the meaning of the unwritten and written constitutions for the liberal power of UK citizens.

It follows that a written constitution does not in fact appear to seriously undermine civil liberties because of its strict definition of rights. In fact, rather than impeding liberty, this strict, codified definition of civil rights promotes liberty by protecting the stability of the judicial system. Allowing the changing perceptions of citizens to affect the understanding of the constitution actually increases the risk to the judiciary.

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