

# What is a Constitution? The Rules and Principles by which we live are a Blueprint for Rule

By Alexander Craig

In examining any problem, definition is of great importance. In medicine, business or law, for example, nothing can be done to solve a problem until a correct diagnosis has been made. The same applies in social sciences.

Yet, definition is not always easy. In the social science, definitions abound for all the basic terms; and this applies to constitutions.

An official definition, as given by the federal government in a position paper of the early 1970s called "The Constitution and the people of Canada is the basic role of the Constitution is... to define the system of law and of government which shall prevail in Canada." A better definition may be given by the Dictionary of the Social Sciences: "A constitution is a set of devices to subject the freedom of the holders of political power to limitations and restraints."



## A foundation

In West Germany, the constitution is known as the Basic Law. The name is fitting, because a constitution is basic to the government of any body, no matter how small it might be. It is generally used

with reference to the framework of basic laws of a state, but every social grouping requires an accepted set of values and rules.

The ways in which these basic laws are accepted vary greatly. The 'rules of the game' differ according to the respective strength of the players, and how and if they allow any refereeing. The great English political philosopher Thomas Hobbes said, way back in the 17<sup>th</sup> century, that politics was like a game of cards and players had to agree on the rules; if they couldn't, clubs (meaning weapons) would be trumps.

There are various ways of looking at constitutions. How they evolve historically is important, as are the ways in which they are drawn up, controlled and amended.

Constitutions can be written or unwritten. Most fall into the first grouping but there are some major exceptions, those of Sweden, Israel and Britain being the best known.

It has been said that the "British constitution is what happens." In fact, it is made up of a very mixed bag of Acts of Parliament, statutes and laws, which together with established customs and traditions, makes up the constitution.

## Different Meanings

The term 'constitution' refers both to the actual document- the BNA Act in Canada's case- and that document together with a larger group of laws which make up the framework within which the country is governed. Thus, in Canada the

best definition of the constitution is the BNA Act together with formal documents such as the Statute of Westminster.

Written constitution can take very different forms. Napoleon thought they should be "short and obscure." However, in many countries, they run to the opposite extreme, being long and detailed. The latest constitution of Sri Lanka, for instance even specifies how judges dress in court.

What is of great importance is the degree of respect a constitution enjoys. It doesn't matter whether a constitution is detailed or simple if nobody obeys it. The constitution of Haiti, to take but one example, has long sections on individual rights and freedoms; but these have been ignored for decades by the governments of that unhappy republic. In many other countries constitutions suffer similar fates.

So why have them? In dictatorships they are best, ideals. They mainly stress the power of the government rather than the restraints on it.

In 1975, China made a major revision to its 20-year old constitution. Under it, Chairman Mao kept his position of supreme authority and was made commander of the Chinese Armed Forces. The new constitutions said that "the Communist Party of China is the core of leadership of the whole Chinese people." In this way it added legal force to the basic fact that the party dominates everything important in Chinese life. So under the Chinese constitution, only the Communist Party can rule. It is as if our

constitution said that only the Liberal Party could hold power.

## Above the Law

In theory, constitutions should be superior to the law and rulings of public authorities. In practice, of course, this is not the case. In most of the world's 150 or so states severe problems economic underdevelopment mean governments do not properly represent the interests or needs of the vast majority of their citizens. In the resulting dictatorships, constitutions as well as people, are ignored or savagely put down.

In much of the Third World, governments are dictatorships. They have not been constitutionally elected. They have become governments through force not law. As such they find it difficult to set up a constitutional, legal base. The great liberator of South America, Simon Bolivar deplored, in the early 19<sup>th</sup> century, the way in which Latin America "Treaties are pieces of paper, constitutions are books, elections are fights, liberty is anarchy and life a torment." In Latin America, as elsewhere in the Third World, such a judgement still holds true in many countries.



So constitutions, like justice and freedom are meaningless in theory. More important than the form they take is how they are implemented in society. In democracies, an elaborate and effective system of control must be set up. In the United States, for instance this control is the separation of powers, which clearly states the limits to the power of Congress, the President and the Supreme Court.

The United States has the oldest constitution in the world, and it has been a model for many other countries. The other great model was the French Revolution, during which the Article XVI of the Declaration of the Rights of Man of 1789 said the societies in which the guarantee of rights is not assured, nor the separation of powers determined, have no constitution.



## People Protection

In democracies constitutions are necessary to limit the powers of government- to ensure there is rule of law rather than of men. Constitutions protect the individual, and they strengthen this protection by dividing the powers of the governing authorities. In a federal system they do this in geographic terms as well as in areas of authority.

The rights of citizens vary from country to country and from one period of history to another. Think of some of the classic liberal right for which we take for granted, such as: Adequate income, education, health services, voting, standing for election, ownership of property, religious belief, political discussion, life and liberty. It is worth contrasting these rights with what ordinary citizens enjoy today in, say, Uganda, the Soviet Union or South Africa.

Most western countries are liberal democracies. The will of the majority has to prevail, but not in an unrestricted way. The right of minorities must be protected. This is another area where constitutional safeguards are important. For example, the different views of the importance of individuals versus the rights of collective groups are at the core of much of the dispute with Quebec City and Ottawa.

Constitutions, to be strong and respected, must be 'living' document. There must be some means of amending them when necessary. They must be flexible but not too flexible. If a constitution is too rigid it can be set aside and ignored. But if it is too flexible it can also lose its safeguard of citizens' rights.

Constitutions must be strong but not too strong. If they are too weak, they can be manipulated by the authorities. In 1975, India's Prime Minister, Indira Gandhi, manipulated her country's constitution to become a virtual dictator and suspend the rule of law. Finding the proper balance between strength and weakness in a constitution one of the most difficult jobs politicians have.

The main reason, in fact, why Canada is the only country in the world to have its constitution residing in another country is

that the federal government and the provinces have been unable to agree on an amending formula. The British government would love to let the BNA Act leave Westminster, but it can only do this when the different authorities in Canada agree on how it is to be done.

The way in which a constitution is revised throws a lot of light on the political organization of the country. The constitution of New Zealand, for example, is amended simply by legislation, through the same process as any other law. A small country which trusts its elected representatives faces a much easier process than huge diverse countries like Canada and the U.S.

A constitution is more than just an organization of a government, its offices and the reselection of its officers. It is a lasting device that both defines and restrains a set of rules.

Much change, including important basic change, can go on without changing the constitution. But there can be no real democracy without a strong respectable constitution. Democracy is sometimes defined as "a political which a laws regular constitutional opportunities for changing the governing officials."

In democracies, governments must at all times be accountable and responsible for society. For this to happen there must be agreed laws of procedure for governing society; both the governors and the governed must respect and obey the constitution.

## Questions:

1. Define the term "constitution".
2. What is the framework of Canada's constitution?
3. What is of great importance to the workings of a country's constitution?
4. "In theory, constitutions should be superior to the laws and rulings of public authorities. In practice...this is not the case." Explain.
5. Name two countries whose constitutions serve as role models for other nations.
6. State four reasons why constitutions are necessary in a country.
7. How are constitutions different in dictatorships?
8. In democracies, how do constitutions protect people?
9. "Constitutions to be strong and respected must be "living" documents." Explain
10. Describe the role of government in a democracy.