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1 The meaning of a constitution

SUMMARY

The starting point of this chapter is to consider what is meant by the term 'constitution'. It distinguishes between written and unwritten constitutions and notes the special procedures that may need to be employed in order to amend written constitutions. Constitutions are frequently classified according to their characteristics. Several of the more common classifications are therefore explained in this chapter. The chapter also considers: whether constitutions have any value; the unwritten nature of the UK constitution; the position of the monarchy under the UK constitution; and whether the UK has a constitution. Finally, the chapter ends by recognizing that there is an argument that the UK should have a written constitution.

What is a constitution?

1.1 This straightforward question admits of more than one answer depending upon the context in which the word 'constitution' is used. In its broadest sense, a constitution can be defined as being a body of rules which regulates the system of government within a state. It establishes the bodies and institutions which form part of that system, it provides for the powers which they are to exercise, it determines how they are to interact and coexist with one another, and, perhaps most importantly of all, it is concerned with the relationship between government and the individual. In his *Five Constitutions*, Finer defined constitutions as:

> *codes of rules which aspire to regulate the allocation of functions, powers and duties among the various agencies and officers of government, and define the relationships between them and the public.*

And Professor King in his Hamlyn Lecture offered the following definition:

> *A constitution is the set of the most important rules that regulate the relations among the different parts of the government of a given country and also the relations between the different parts of the government and the people of the country.*

1.2 In a far narrower sense, a constitution amounts to the written statement of a state or country's constitutional rules in a documentary or codified form. Professor King refers

to these as 'Capital-C constitutions' as a means of distinguishing them from 'small-c constitutions', which, he observes, are never written down. Thus the United States has a written constitution, as does Australia, Canada, and virtually every other state with the exception of the UK, Israel, and New Zealand. Constitutional documents are usually the result of some major upheaval in a nation's history. The impetus for the drafting of a constitution may come from a war, whether inter-state or civil, from a revolution, from the grant of independence, or from the creation of a new state following unification or reunification.

1.3 The 'Capital-C/small-c constitution' distinction identified by Professor King is an interesting one. It provides a clear explanation of the different contexts in which the word 'constitution' may be used. It also enables Professor King to emphasize an important point: that states nearly always have both a small-c and a Capital-C constitution and that, although these constitutions overlap in some respects, they never overlap completely. In other words, small-c constitutions may cover matters not included in the written constitution and vice versa. To illustrate the point, Professor King refers to several examples, including a state's electoral system. As he points out, although an electoral system clearly forms part of a constitution in the small-c sense of the word, written constitutions rarely provide for the means by which a government is elected. Thus it is clear that in states with a written constitution, that constitution is likely to reflect only some of the constitutional arrangements of that state. To get the full picture, therefore, it will be necessary to also look at the state's small-c constitution.

A superior law

1.4 Where a constitutional document does exist, it represents a form of law superior to all other laws in the state. This may be implicit, but it is common for it to be stated in the text of the constitution itself. Thus s 2 of the South Africa Constitution (1996) states that:

> *This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.*

1.5 Any law (or conduct) which is in conflict with the constitution may therefore be declared to be unconstitutional by a court of law. Such a declaration will have the effect of rendering the law invalid. The task of determining the constitutionality of legislation is often assigned to a specially constituted Constitutional Court. Thus under the South Africa Constitution, the task of determining constitutional matters may be performed by the Supreme Court of Appeal, a High Court, or other courts of similar status, but it is the Constitutional Court which is the highest court in all constitutional matters. It alone has the competence to decide matters such as: disputes between organs of the state in the national or provincial sphere concerning the constitutional status, powers, or functions of any of those organs of state; the constitutionality of any parliamentary or provincial Bill; the claim that Parliament or the President has failed to fulfil a constitutional obligation; or the constitutionality of any amendment to the constitution (s 167(4)). The South African courts have the power to make an order concerning the constitutional validity of an Act of Parliament, a

provincial Act, or any conduct of the President. However, an order of constitutional invalidity has no force unless it has been confirmed by the Constitutional Court.

1.6 In the case of the United States, the Supreme Court acts as a guardian of the constitution. However, this role was not allotted to it by the constitution itself. Rather, the court assumed the role: see *Marbury v Madison* (1803). Thus, to use Professor King's terminology, here we see an example of the relationship between the small-c and the Capital-C constitutions and how an important development in the rules of the former has facilitated the better protection of the latter.

Amendment

1.7 Documentary constitutions often provide for their own amendment. Amendment will sometimes be necessary to reflect the changes that have occurred within society. It therefore prevents the constitution from becoming an historical anachronism. Since the constitution is the supreme law within the nation or state, it is unlikely that it will be capable of being amended in the same way as other laws. Usually, a special procedure will have to be followed in order to effect a change to a documentary constitution. In the case of the Canadian Constitution (1982), the whole of Part V of that document (arts 38–49) is given over to the procedure for amending the constitution. By contrast, the Australian Constitution (1900) and the Indian Constitution (1949) have only one section or article (s 128 and art 368 respectively) that lays down the procedure for constitutional amendment. Amending the Indian Constitution would appear to be a more straightforward process than amending either the Canadian or Australian constitutions. Article 368(2) provides that:

> *An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, [it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill.*

1.8 Where the intention is to effect particular amendments relating to certain specified articles of the Indian Constitution, or to amend the representation of Indian states in Parliament, a further procedure must be followed. This requires that the amendment is ratified by the legislatures of not less than one-half of the states by resolutions to that effect passed by those legislatures before the amending Bill is presented to the President for assent. An attempt to amend art 368 itself must also comply with this additional procedure. This takes us into the realms of entrenchment and double entrenchment.

Entrenchment

1.9 Entrenchment will also be considered in Chapter 5 on the legislative supremacy of Parliament. For present purposes, it is sufficient to note that the special procedures

for amending documentary constitutions amount to entrenching provisions. In other words, the fundamental importance of the constitution as the supreme law within a state dictates that it should not be susceptible to amendment in the same way as other laws. By creating special procedures for amending the constitution, its drafters are thereby protecting it against amendment for which there is no concerted support. Thus in *Mauritius v Khoyratty* (2006), the PC commented that s 1 of the Constitution of Mauritius which provides that 'Mauritius shall be a sovereign democratic state which shall be known as the Republic of Mauritius' had been 'deeply entrenched' by the requirement in s 47(3) of the Constitution that it could not be amended by a Bill unless that Bill had been approved by at least three-quarters of the electorate in a referendum held prior to its introduction, and that once introduced, it had been supported at the final vote by all the members of the Mauritian Assembly. Of course, if the provision which lays down the special procedure to be followed is not itself protected, it could be repealed in the usual manner. The net effect would be that the constitution itself would become subject to amendment in the usual manner. Accordingly, it is not uncommon, as the example of the Indian Constitution demonstrates, for the provision which lays down the special procedure to itself be subject to that procedure. This amounts to entrenching the entrenching provision or double entrenchment.

Classifying constitutions

Written or unwritten

1.10 Constitutions may be classified in a variety of different ways. As we have already seen, constitutions may be written or unwritten, in the sense that they either exist or do not exist in a documentary or codified form. This is, however, a rather crude classification. It says nothing about the actual content of the constitution or the system of government within the state. Moreover, it does not help us to distinguish between one constitution and another since, as we have already noted, virtually all constitutions are written. Therefore, we must look to other ways in which constitutions have been classified.

Flexible or inflexible

1.11 One classification commonly used is to refer to constitutions as being either flexible or inflexible. Flexible constitutions are generally considered to be those which can be amended or altered with comparative ease. Inflexible constitutions are those where amendment is rather more difficult. Usually this will be because the constitution requires that a special procedure is followed (see para **1.9**). The UK constitution tends to be regarded as a flexible constitution in that it can be amended simply by passing an Act of Parliament: there is no special procedure to be followed. However, even though the process of amending may be straightforward, reform is also dependent upon support for the proposed change. This may not always be forthcoming.

Monarchical or republican

1.12 A further classification which is adopted refers to a constitution as being either monarchical or republican. The UK constitution falls into the former category, although as we shall see in the chapters that follow, the personal powers of the Queen are now somewhat limited. A republican constitution provides for the post of a President. In some states, the President is effectively head of state and head of the government. This is the position in, for example, the United States and South Africa. In other states, however, the President may be the head of state but may not have any real political power. In Ireland, for example, the President is the head of state, but the head of government is the Taoiseach (Prime Minister).

Parliamentary or presidential

1.13 Allied to this classification is that which is made between constitutions that are parliamentary and those that are presidential. In a parliamentary system, the head of the executive branch of government is the Prime Minister. He or she will be a member of the legislature and will be accountable to that body for the actions of the government. The UK is therefore a good example of this system. Under a presidential system, the President will be both head of state and head of the executive branch of government. However, the President will not be a member of the legislature and is therefore not directly accountable to that body. The US system is a frequently cited example of a presidential system in that the elected President is a member of neither the House of Representatives nor the Senate.

Federal or unitary

1.14 Constitutions may also be classified on the basis that they are either federal or unitary. A federal system entails government at both the national (or central) and state levels, with national and state Parliaments, each of which has designated areas of legislative competence under the constitution. The US constitution is therefore a two-tier federal system, as are a number of other constitutions, including those in Australia, Canada, and South Africa. A unitary system, by contrast, provides for government solely at the national level. Although the UK constitution has traditionally been described as unitary, might it be argued that devolution (see Chapter **8**) has meant that it should be reclassified as federal or quasi-federal?

Quantitative and qualitative classifications

1.15 The classifications (paras **1.10–1.14**) are those which are most commonly applied to constitutions. In effect, they amount to structural and quantitative classifications. It has been noted by Wolf-Phillips that several writers have sought to apply qualitative classifications to constitutions. These include classifying a constitution as normative or nominal, stable or fragile, public or private. With regard to the latter, the classification is used

to distinguish between the specified part of the constitution, the 'public' constitution, and areas of unspecified activity which are termed the 'private' constitution. However, these qualitative classifications need not detain us further. For present purposes, it is enough to be aware of the fact that constitutions can be classified according to their own particular characteristics. Indeed, a single constitution may be capable of being classified in a number of different ways. Thus the UK constitution is unwritten, flexible, monarchical, parliamentary, and quasi-federal(?).

The uniqueness of constitutions

1.16 No one constitution will be exactly the same as another constitution. This is because, in the words of Finer:

> *all constitutions contain elements that are autobiographical and correspondingly idiosyncratic . . . Different historical contexts have generated different preoccupations: different preoccupations have generated different emphases.*

However, despite acknowledging that constitutions have their own particular features, it is worth noting that Finer et al have taken the view that at a 'general level' the constitutions of the United States, France, Germany, and Russia 'have much in common'. Common features which they share include: a democratic basis; providing for protection against the abuse of power; according a special role to political parties; and having a version of the separation of powers (see Chapter **2**) and some system of checks and balances. Finally, however, the authors note that:

> *in none of these does the constitution itself give a full or accurate depiction of the polity: each text operates within a matrix of custom, convention, case law, and cautious compromise.*

In other words, to adopt Professor King's terminology once again, the Capital-C constitution for each of these states represents but part of the overall picture. That picture can only be viewed in its entirety by also having regard to each state's small-c constitution.

Do written constitutions have any value?

1.17 The short answer to this question is 'yes'. Written constitutions are valuable in the sense that they provide some indication of what actually happens in practice. A constitutional actor may look to the constitution to see what is required of them in a given situation. However, regardless of the length and complexity of a constitution, it is highly unlikely that it will contain all the answers to all the questions. Where a written constitution is silent on a particular matter, the lacuna will be filled by custom, convention, etc.

1.18 Although written constitutions are of value and therefore the comparative study of them is a worthwhile exercise, the actual text of a constitution may be somewhat misleading. There may be a wide discrepancy between what it says ought to happen and what actually happens in practice. Constitutions are therefore vulnerable to the whims of those who exercise power within a state. Indeed, it is sometimes argued that this means that the value of a constitution is either negligible or non-existent. If those who exercise power do so with self-restraint, the constitution becomes unnecessary. If they do not, it is argued that the constitution has become worthless. Is there any truth in this argument?

The unwritten nature of the UK constitution

1.19 If the layman knows anything about the UK constitution, it is that it is unwritten. As we have already seen, however, this is only correct if we further qualify what we mean by 'unwritten'. If we mean that the UK constitution does not exist in documentary form, then the statement is correct. If, however, we mean that the rules of the UK constitution are unwritten, then the statement is erroneous. Several of the principal sources of the UK constitution are clearly written. Acts of Parliament are written law as are the principles of the common law which have been established by the courts and subsequently reported.

The Commonwealth constitution

1.20 Although it is true to say at present that the UK does not have a documentary constitution, there is a view that the Commonwealth as it was called (England, Scotland, and Ireland) did have a written constitution following the Civil War (1645–9). In 1653, the Instrument of Government was drafted. This provided that the supreme legislative authority of the Commonwealth resided in the Lord Protector (Oliver Cromwell for life) and Parliament. The executive branch of government consisted of the Lord Protector assisted by a council of between 13 and 21 persons. Following the death of Cromwell, his successors as Lord Protector were to be elected by the council.

1.21 The Instrument of Government made quite detailed provision with regard to the election of persons to sit in Parliament. It can therefore be excluded from the ambit of Professor King's general observation (noted at para **1.3**), that Capital-C constitutions are 'typically silent' on the electoral system. Shire and borough constituencies were identified for England and Wales and the representation for Scotland and Ireland was to be determined by the Lord Protector and his council. A ceiling of 400 was placed on the membership for England and Wales. Scotland and Ireland were to have no more than 30 representatives each. Those who had fought against the parliamentarian cause, ie the Royalists, were disqualified from standing as candidates or from exercising a vote in the following four elections. The franchise was to be exercised by those with any estate, real or personal, to the value of £200. An annual revenue was to be raised for maintaining an

army and navy for the defence and security of the nation, and for paying the charges of the administration of justice and other government expenses.

1.22 This brief description of several of the main provisions of the Instrument of Government reveals that it was concerned with the regulation of the system of government during the Interregnum. In this sense, therefore, it would seem to merit being described as a constitution. What Lord Bingham has called a 'characteristically imaginative and forward-looking constitution' ceased to have effect, however, with the restoration of the monarchy in 1660.

The position of the monarchy under the UK constitution

1.23 The UK is often referred to as a constitutional monarchy. In short, this means that the Queen is head of state and that she reigns in accordance with the constitution. The word 'reigns' has been used in preference to 'rules' since, as Professor Bogdanor has noted, in modern times a 'constitutional monarchy is also a limited monarchy'. By 'limited monarchy' it is meant that the Queen reigns in accordance with the constitution. 'Limited' also signifies the fact that, in practice, there is very little that the Queen can do of her own volition; it is Her Majesty's government rather than Her Majesty personally which makes the important decisions and exercises real executive power. Thus as Lord Bingham has observed:

> *The political power of the monarch has diminished to vanishing point, since the personal directions which remain are very limited, must be exercised according to clearly-understood principles and cannot be regarded as an exercise of independent power in any ordinary sense.*

1.24 Walter Bagehot wrote in *The English Constitution* (1867) that the sovereign had the right to be consulted, the right to advise, and the right to warn. Such rights are, however, clearly limited. They relate to the influence that the sovereign may exert over her government, rather than to the exercise of monarchical power. In practice, it is difficult to assess how great an influence the Queen has had over her Prime Ministers during the course of her reign. This is because communications between sovereign and PM are confidential and beyond the scope of the Freedom of Information Act 2000. Also, Prime Ministerial memoirs have been guarded on the subject. Whilst acknowledging the speculative nature of the exercise, Professor Bogdanor has offered several thoughts on the influence of the Queen. He considers that her influence is likely to increase with the length of her reign. Many years on the throne brings with it accumulated political experience. Secondly, he suggests that the Queen's influence will be greater 'on matters that are not fundamental to party ideology'. Finally, Professor Bogdanor considers that the Queen's influence 'will be felt most strongly where Commonwealth affairs are at stake because of her position as Head of the Commonwealth'.

1.25 In truth, however, despite the foregoing, it may be unwise to overstate the role of the monarchy in the UK constitution. Professor King has gone so far as to suggest that it

is the most obvious example of a 'peripheral matter'. The monarchy has, in his opinion, long since ceased to feature in a significant way in British political life and the importance of the role which it performs under the constitution is in inverse proportion to the substantial volume of scholarly writings on the subject.

Does the UK have a constitution?

1.26 It is implicit in what has been said thus far that the answer to this question is 'yes'. Although it has been acknowledged that the UK does not have a written constitution, ie a documentary or codified constitution, the UK constitution has been referred to as a recognizable entity. However, whilst this reflects the orthodox view, it is worth noting that there is an alternative view, namely that there is no UK constitution. It has been argued by F F Ridley that the UK does not have a constitution because it fails to exhibit any of the four essential characteristics of a constitution. These are as follows:

- it establishes or constitutes the system of government and is thus not part of it;
- it involves an authority outside and above the order it establishes, ie the constituent power;
- it is a form of law superior to all other laws;
- it is entrenched.

1.27 The first and second characteristics are evident in the following passage taken from Thomas Paine's *The Rights of Man*:

> *A constitution is a thing antecedent to a government, and a government is only the creature of a constitution. A constitution is not the act of a government but of a people constituting a government; and government without a constitution is power without a right.*

1.28 When we look at the nature of Ridley's four characteristics, it is evident that they are likely to be satisfied by a documentary or codified constitution. Conversely, they are unlikely to be satisfied by an unwritten constitution. Thus, the claim that the UK has no constitution rests on the fact that the UK has no written documentary constitution which, in Ridley's analysis, is the only appropriate form in which constitutions exist.

Sources of the UK constitution

1.29 Since it is not possible to take the UK constitution down from the shelf and read its provisions in the way that one could read, for example, the US or Australian constitutions, we have to look to a variety of sources for the content of the UK constitution.

1.30 Several such sources have already been mentioned. Acts of Parliament may clearly be constitutional in character. Indeed, it might be argued that a great many of the Acts currently on the statute book are constitutional laws: see *Thoburn v City of Sunderland* (2002), where Laws LJ made a distinction between what he termed 'ordinary statutes' and 'constitutional statutes' (paras **5.54–5.58**).

1.31 Decisions of the courts are also a source of the constitution, as are the legislative supremacy of Parliament, the rule of law, the royal prerogative, and constitutional conventions. Each of these will be considered in greater depth later in this book. A final source of the UK constitution is to be found in EU law. Some of the laws that are made by the EU can rightly be described as forming part of the UK constitution. The institutions of the EU will therefore be considered in the second part of this book, as will the legislative procedures and the different types of legal instrument that are provided for under the Treaty on the Functioning of the European Union.

The changing nature of the UK constitution

1.32 Constitutional change may be gradual and barely perceptible. It may affect some actors or institutions within the constitutional framework to a significant degree while leaving others relatively untouched. Thus, for example, Professor Brazier has noted that despite the existence of a public debate about royal matters, 'Parliament has maintained a legislative silence over the monarchy throughout the Queen's long reign'. That silence was broken by the enactment of the Succession to the Crown Act 2013, when Parliament dispensed with the common law rule of male preference primogeniture in relation to the succession to the throne, and ensured with retrospective effect that royal heirs who marry Catholics do not lose their place in the line of succession as a result.

1.33 Traditionally, the development of the UK constitution has been regarded as an incremental evolutionary process. However, this no longer seems to be the case. In the words of Professor King:

> *Although few people seem to have noticed the fact, the truth is that the United Kingdom's constitution changed more between 1970 and 2000, and especially between 1997 and 2000, than during any comparable period since at least the middle of the 18th century.*

In support of this observation Professor King enumerates 12 'important individual changes' that have taken place in the UK constitution since 1970. These are as follows: joining the EEC (as it then was); the use of popular referendums; the changing position of local government; the increasing use of judicial review; the fragmentation of the political party system; the handing over of control over interest rates to the Bank of England; devolution to Scotland and Wales; devolution to Northern Ireland; the creation of a new

local authority for London; new electoral systems for electing members of the European and Scottish Parliaments and the Welsh Assembly; the Human Rights Act 1998; and the reform of the House of Lords.

1.34 Writing several years after Professor King, Professor Bogdanor has argued that 'the years since 1997 have seen an unprecedented and perhaps uncompleted series of constitutional reforms'. His list of reforms, which number 15, is broadly similar to that identified by Professor King, with the obvious exception of the significant modifications made to the office of Lord Chancellor and the establishment of a Supreme Court (both discussed in Chapter **2**). In Professor Bogdanor's opinion:

> *Any of these reforms would constitute, by itself a radical change. Taken together, they allow us to characterize the years since 1997 as a veritable era of constitutional reform.*

Most, if not all, of these reforms will be considered in this book. Their collective effect is that today's UK constitution is profoundly different from that which prevailed for the greater part of the previous century.

Should the UK have a written constitution?

1.35 If we were to answer this question bearing in mind Ridley's analysis (paras **1.26–1.28**), presumably the answer would be 'yes' since only then would the UK have a constitution deserving of the name. Indeed, it might be argued, as Lord Bingham did extra-judicially, that it is 'ironic that we should have thought it necessary to bequeath a codified constitution to most of our overseas territories before granting them their independence, while continuing to regard such provision as unnecessary for ourselves'.

1.36 It is worth noting that the UK's constitutional arrangements have caused a number of individuals and organizations to make the case for a written constitution. Although neither of the two main political parties has adopted a written constitution as official policy, the Liberal Democrats have. Charter 88, and its successor, Unlock Democracy, have argued for some time that a written constitution should lie at the heart of a programme of constitutional reform for the UK.

1.37 It has to be acknowledged, however, that the desire for a written constitution is not universal. Those opposed to such a course of action often remark on the fact that the UK's constitutional arrangements have served it well for several hundred years and that, accordingly, change is unnecessary. This may be characterized as the 'if it isn't broken don't fix it' line of reasoning. Thus, for example, Professor Barber has contended:

> *Britain's constitution has, by and large, been a success. It has produced stable government and—in terms of democracy, transparency, human rights and the provision of social*

> *welfare—it compares reasonably favourably with many other constitutions . . . Unless advocates of a written constitution can show a need for systematic change, for a new constitutional settlement, it is hard to see what we will gain by undertaking the exercise.*

There may be some substance in this argument. However, it does not necessarily follow that those who argue for a written constitution consider that the present arrangements are fundamentally flawed. Some may do, but others may take the view that a written constitution would be a way of further improving and clarifying the current position.

Drafting a constitution

1.38 If we accept that there is a need for a written constitution, problems of a practical nature will arise. These relate to the drafting and content of the constitution. The precise content of a constitution would be a difficult question to decide. If it were necessary to do so, it is likely that the task would be performed by a specially constituted constitutional convention of experts and politicians. To some extent, this has already happened. In 1991, the Institute for Public Policy Research (IPPR), an independent charitable organization established in 1988, published *The Constitution of the United Kingdom*. The IPPR had brought together a number of leading academics in the field and, as a result of their discussions and advice, a UK constitution consisting of 129 articles and six Schedules was drafted 'in the conviction that an example would advance the public argument more effectively than further general discussion of the problems which it raises and attempts to resolve'. It should be noted that what the drafters produced was not a codification of the UK's constitutional arrangements which existed at the time. Rather, it was a prescription for what those arrangements ought to be in the future.

1.39 More recently, Professors Bogdanor and Vogenauer have considered the problems associated with drafting a constitution for the UK. In addition to the obvious problem of what the constitution should include, the authors draw attention to the difficulties associated with enacting a constitution which has long been uncodified and which is currently based on the doctrine of the legislative supremacy of Parliament (see Chapter 5). Although they regard these problems as 'formidable', they consider that the enactment of a UK constitution is both 'feasible' and desirable because 'we cannot be said to know what our constitution actually is, much less to understand it, until we have attempted to enact it'.

1.40 Lord Bingham also made a significant contribution to the debate on whether the UK should have a codified constitution. Although originally opposed to codification, by 2004 he had 'moved towards agnosticism' on the matter. In his opinion, if a codified constitution were adopted, it should comply with seven 'very important rules'. Thus:

- its adoption should be subject to popular endorsement;
- it should avoid undue detail;
- it should set out the fundamental principles which underpin the state;

- its provisions should be justiciable—ie it should lay down enforceable rights and duties rather than contain expressions of hope and aspiration;
- it should, subject to the constraints of parliamentary supremacy, provide for some degree of entrenchment;
- it should, so far as is achievable, be neutral in terms of politics, and systems of social and economic organization;
- it should not make provision for a constitutional court.

1.41 With regard to the last rule, it has previously been noted (paras **1.5–1.6**) that states with codified constitutions often have specialist courts to determine important constitutional cases. Lord Bingham believed, however, that 'such a court is alien to our tradition'. He was of the view that the qualities required of a judge in determining a constitutional case do not differ from those 'in other kinds of decision-making', and that 'the line of demarcation between constitutional and other questions would not necessarily be very clear'. Furthermore, he contended that 'it would diminish the standing of the courts if they lacked jurisdiction to determine constitutional issues'.

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Wicks, E *The Evolution of a Constitution: Eight Key Moments in British Constitutional History* (2006) Hart.

SELF-TEST QUESTIONS

1 What is a constitution?

2 What does entrenchment mean?

3 Do you think that the UK has a constitution?

4 How would you describe the UK's constitution?

5 Professor King has argued that the UK 'has never had a defining constitutional moment'. Do you agree?

6 To what extent, if any, do you agree with Professor Bogdanor's (2004) view that 'the constitutional reforms since 1997 offer a spectacle unique in the democratic world, of a country transforming its uncodified constitution into a codified one, there being neither the political will nor the consensus to do more'?

7 Professor Ward has argued: 'England needs a new constitution, a new politics, a new public philosophy. Our present system of government is rotten, our apology for democracy feeble, our received visions of unitary constitutionalism no longer credible in the "new world order" in which we live'. Do you agree?

8 What are the arguments both for and against the drafting of a written constitution for the UK?

9 Do you think that Lord Bingham was right when he observed that: 'The existence of a constitutional document would ... inculcate a constitutional sense and awareness which are now lacking'?