

BRIEFING

A NEW EDITION OF THIS BRIEFING IS AVAILABLE: <https://www.ucl.ac.uk/social-historical-sciences/constitution-unit/constitution-unit-publications/constitution-unit-briefings>.

PROTECTING CONSTITUTIONAL PRINCIPLES: WHAT ARE THEY AND WHY DO THEY MATTER?

October 2022

Meg Russell, Alan Renwick and Lisa James

Summary

- Politics in the UK, as in other well-established democracies, is underpinned by certain core constitutional principles, which provide an essential framework. These principles ensure that governments have power to act, but do so within certain broadly agreed constraints.
 - Constitutional principles often need to be balanced against each other, and can be both expressed and implemented in various ways. There are nonetheless certain commonly agreed themes across modern constitutional democracies, including the UK.
 - Constitutional principles require careful nurturing and protection. They can be damaged through behaviour and rhetoric as well as through more concrete policy change. In the UK system, MPs have a particularly key role to play in ensuring that such principles are upheld.
-

Background

Recent years have seen much discussion of the health of UK democracy, and some concerns about the risk of '[democratic backsliding](#)'. But this raises the question 'backsliding from what'?

Widely shared assumptions exist about the principles which underlie constitutional (or 'liberal') democracies – the features that distinguish them from autocracies and so-called 'illiberal democracies'. Although the UK famously lacks a codified constitution, such values are deeply embedded in its constitutional traditions and arrangements.

This briefing identifies and explains five such core principles:

1. Institutional checks and balances
2. Representative government, and free and fair elections
3. Rule of law
4. Fundamental rights
5. Integrity and standards

Why do constitutional principles matter?

Modern constitutional democracies are founded, in their most basic form, on an agreement between citizens and their politicians. Citizens consent to be governed, while politicians (and particularly those forming the executive) agree that they will govern only within constraints. This reflects a concern that authority should be wielded well – with due respect for differing opinions and perspectives and for the long-term health of society and the state. It also reflects a belief that periodic elections alone are not sufficient to ensure a healthy democracy.

Constitutional principles therefore provide the framework within which politics takes place.

Such principles may at times be in tension with one another, and different states organise their constitutions in different ways. Debates about these principles therefore generally concern disagreements not about their validity, but about the correct balance among them, and how they should be put into effect.

Different politicians and political parties naturally disagree about what broader policy goals are desirable, or how they might best be achieved. But constitutional principles set the boundaries for these debates, and for wider political behaviour, establishing basic standards which all agree to maintain. If agreement on those principles themselves breaks down, democracy may find itself in trouble.

What are the key constitutional principles?

No single definitive list of constitutional principles exists. But there is wide agreement on their fundamental content, as articulated by various international democracy organisations (e.g. [International IDEA](#), [Freedom House](#) and the [Venice Commission](#)). Here we group the principles under five broad headings.

1. Institutional checks and balances

- One core principle is that power should be distributed between different constitutional institutions – including the executive, legislature and judiciary, and between national and subnational levels of government. This way no one body can act with unchecked power – a concern most often expressed with respect to the executive.
- The UK's central constitutional doctrine of parliamentary sovereignty makes parliament the most important check on the executive. MPs have a direct democratic mandate, while the executive draws its authority from parliament and depends on the confidence of the House of Commons. Parliament – which by its nature brings together a range of voices and political opinions – retains the right to scrutinise, interrogate, and even reject government proposals. In particular, it must give its assent for the passage of new laws.
- A different kind of check is provided by the courts, which enforce the law, and ensure that the executive does not exceed its powers, including those granted to it by parliament.
- Other institutions which do not themselves have a direct democratic mandate are also important to checks and balances. The UK's independent civil service has an established role in supporting policy development by ministers and sometimes offering constructive challenge. Regulators, media and civil society organisations provide accountability of a more public kind.
- Recent controversies about checks and balances include concerns that government behaviour has risked limiting parliamentary scrutiny – for example, through providing inadequate time for debate, or notice of major announcements, [including during the Covid period](#) as well as [more recently](#). Such inadequate scrutiny risks leading to poor policy-making.

2. Representative government, and free and fair elections

- The scale and complexity of the modern state make it impossible for citizens to be directly involved in all decision-making. Hence constitutional democracies normally work on the principle of elective representation: that citizens choose politicians, who act on their behalf.

- Such representation is crucially underpinned by free and fair elections. While specific electoral systems may vary country by country, basic requirements include universal and equal suffrage, universal rights to run for office, and independent oversight by impartial state institutions.
- UK elections are recognised as being free and fair. However, some recent concerns did arise during the passage of the Elections Bill (including from the Commons [Public Administration and Constitutional Affairs Committee](#)) that the new ministerial ‘strategy and policy statement’ for the Electoral Commission could threaten the regulator’s independence.

3. Rule of law

- Respect for the rule of law has long been cited as a core principle of the UK constitution, including by 19th-century constitutional theorist A.V. Dicey. This principle exists to prevent the state from exercising arbitrary power over its citizens, and provides citizens with confidence that their rights are guaranteed. The rule of law underpins social and economic structures, and political stability – and supports other principles articulated here, such as free and fair elections.
- Like the other principles described in this briefing, precise definitions of the rule of law can vary. Its simplest form requires that rules take the form of universally applicable laws, made via due process and conforming to certain standards of fairness. Other requirements stemming from this include judicial independence, legal certainty, and equal treatment before the law – meaning that even the state and its agents (e.g. ministers, or the police) are not above the law.
- There is clear public support for this kind of approach: in a [recent Constitution Unit survey](#), only 6% of respondents said politicians should prioritise getting things done over acting within the rules.
- The rule of law is often invoked in connection with constitutional or legal reform. During the pandemic, for example, the [Joint Committee on Statutory Instruments](#) and [Joint Committee on Human Rights](#) both expressed concerns that imprecise drafting of regulations, or blurring of the lines between regulations and guidance, threatened to undermine legal certainty for citizens.

4. Fundamental rights

- Representative government typically leads to some form of majority rule. But it is widely accepted that majority rule should not mean majority tyranny. The principle of fundamental rights exists in order to maintain this distinction. Again, it is closely related to the rule of law.
- Fundamental rights include freedom of speech, assembly and organisation, plus various individual liberties. Upholding them requires that the state should practice self-restraint and maintain a rights culture, and that citizens should if necessary be able to enforce their rights through the courts.
- The UK has a long tradition of recognising fundamental rights. Some were established as early as the 13th century by [Magna Carta](#), while the 1689 [Bill of Rights](#) guaranteed ‘certain ancient rights and liberties’ to all subjects. Later, the UK was closely involved in the development of the European Convention on Human Rights (ECHR), following [Winston Churchill’s call](#) for a ‘charter of human rights guarded by freedom and sustained by law’.
- The ECHR was later incorporated into UK law by the Human Rights Act 1998.
- Questions about balancing fundamental rights with freedom of state action have for example underpinned recent debates about appropriate limitations on protest, including in the [Police, Crime, Sentencing and Courts Act](#), and the [Public Order Bill](#).

5. Integrity and standards

- The long-term health of constitutional democracy depends on politicians viewing themselves as ‘stewards’ of the political system, respecting the spirit as well as the letter of the principles above.
- One important aspect of this is maintaining integrity. That is essential for healthy democracy; confidence in the democratic system is undermined if members of the public perceive those in public life as dishonest or untrustworthy.
- Another key aspect is preserving mutual respect between the different parts of the system, including through adherence to long-established conventions. Core constitutional principles can potentially be undermined by explicit policy reform. But they can also be threatened by behaviour and rhetoric.
- Failure, for example, to [enforce the Ministerial Code](#), or to [support the operation](#) of independent standards regulators, risks substantially weakening their effectiveness. Likewise, threats against the institutions which provide checks and balances – even if not carried out – can have a harmful ‘chilling effect’. Such concerns have been expressed about immoderate language regarding parliament, the courts and the media, which can also drive down public confidence in institutions and hence support for constitutional democracy itself.

How can constitutional principles be safeguarded?

This briefing has outlined five core principles that underpin the substance and processes of constitutional democracy. Future briefings will explore individual principles in more detail.

To be effective, these principles must be upheld by people working in all parts of the system. The courts have a formal role to play, as do independent regulators that provide oversight and ensure transparency. But ministers must also balance policy goals against the UK’s established traditions of respect for conventions, the rule of law, fundamental rights, and checks and balances. The UK’s political constitution – which places parliament at the heart of the system, above both executive and courts – means that MPs often have final responsibility for safeguarding the principles upon which UK democracy depends.

About the authors

Meg Russell FBA is Professor of British and Comparative Politics at UCL and Director of the Constitution Unit.
Alan Renwick is Professor of Democratic Politics at UCL and Deputy Director of the Constitution Unit.
Lisa James is a Research Fellow in the Constitution Unit.

Constitution Unit Briefings

This series of briefings is produced by the Constitution Unit, a research centre based in the UCL Department of Political Science. We conduct timely, rigorous, independent research into constitutional change and the reform of political institutions, and work closely with other expert research organisations such as those named above. The briefings in this series form part of an ongoing project titled ‘[Constitutional Principles and the Health of Democracy](#)’, and can be found on the project page.

Contact us: +44(0)20 7679 4977 | constitution@ucl.ac.uk

Subscribe: <https://www.ucl.ac.uk/constitution-unit/get-involved/subscribe>

