

Higher Law and Statutes

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When a constitution is prepared, the provisions contained are thought of as higher law. Higher Law is the basis of the government that it founds, not the main laws a government enacts. For example, the U.S. Constitution is the umbrella that covers this country, the government is the person holding it; everyone under the Constitution is subject to it. This can take form of a constitution, social compact, or the law handed down from a monarch. Most constitutional governments recognize their higher law to be the law set forth by their constitution, whereas a government with a constitution may see it simply as a guideline or disregard it entirely.

Higher law was first set forth by the Code of Hammurabi, around 1700 BCE. The Babylonian King Hammurabi had laws carved into a large stone that were at the pinnacle of the Babylonian justice system. These laws were never changed or added to and they spelled out the crimes one could commit and the punishments for the same. In 1215, the Magna Carta was the first written constitution that influenced our founding fathers, as it stipulated the powers and limitations that King John had and the rights the English people had. By the time that the Founders sat to right our Constitution, the English Constitution had been altered and added to so much that it is rather hard to keep track of; they knew that the basic rights of citizens and the role of the government should be written in one place and that in some places and instances, it needs to be expanded. The expansion would take the form of statutes enacted by legislatures. These statutes would only further define laws such as, although quite contrary to the higher law, the Alien and Sedition Acts of 1798. These acts put limitations on the First Amendment in regards to what one could say about government officials. Other examples would be of the medical marijuana laws passed in several state legislatures that somewhat contradict the federal drug laws. Some opponents of such laws would cite the Supremacy clause which states that the laws

set down by the Constitution and Congress are supreme throughout the nation. All in all, higher law gives broad laws that limit the government and outlines the citizens' rights; statutes define and change details.

Sometimes there can be a difference between a government with a constitution and a constitutional government, but the two are not always mutually exclusive. A government with a constitution is exactly what it sounds like, a government that has a document or documents that give the provisions for higher law. However, these governments do not necessarily follow the laws and act somewhat arbitrarily. The Soviet Union is a prime example; the USSR had a written constitution that laid out the rights of their citizens and gave the duties of the branches of government. The problem was that the government did not see these as laws, more like suggestions. Chapter I, Article 3 of the 1936 Constitution of the USSR stated that all land in a town was the property of the working people in said town. This did not stop Josef Stalin from seizing peasant land for commercial purposes. Also, government organizations like the KGB had many extra-judiciary powers that were either not stated in the Constitution or were given to the courts. Thus, the Soviet Union was a government with a constitution. Likewise, during our Civil War, one could say that our government acted as a government with a constitution when it suspended basic rights like Habeas Corpus.

The United Kingdom is an example of a constitutional government, more specifically a constitutional monarchy, because it follows the guidelines contained in the various documents that make up its constitution. Starting with the Magna Carta to the Fixed-Term Parliaments Act of 2011, many pieces of legislature form the higher law of the British Commonwealth. As stated before, the Magna Carta gives the rights of citizens, which were further defined in the English

Bill of Rights in 1689, and the limits on the Monarchs power. Such rights are the citizens' right to Due Process and the protection against unlawful seizures of property, things we now see in our Bill of Rights.

Having a written constitution has many advantages; however, it is very hard to not have it become an unwritten one. The advantages are that it is very easily accessible and tough to act arbitrarily as it is there for all to see. With unwritten constitutions, such as the English Constitution, a person might not know if they are or are not at fault in a lawsuit or they may not know their rights. A legislature, for some nefarious reason, might not publish or announce a new addition or change they have made, thus the people would not be exactly sure of what the constitution is and what isn't. When Adolf Hitler came to power in Germany, he amended the Weimar Constitution to allow him to abolish the Presidency and establish his dictatorship; the public at large was not kept in the loop with what was happening in Berlin. Likewise, some may argue that only an unchanged, written constitution is truly written; things like Supreme Court precedent can be considered as part of our higher law. So, one could make the case that our Constitution is in fact unwritten, since modern precedent was not a part of the original document. Other advantages are that a written constitution clearly defines the relationship of the government to the people and it sets the limitations on government and its agencies. It also prevents Congress from shifting accountability and playing dumb, so to speak. The disadvantages of a written constitution are that it is much harder to change or add something. With an unwritten constitution, the legislature must only pass a major act or statute and it can become higher law. With most written constitutions, there is normally a section that lays the groundwork for amendments and such. Article V of the United States Constitution states that for

an amendment, both Houses of Congress must pass it with two-thirds majority and then two thirds of the States must ratify it as well. This is the reason that our Constitution has only been amended twenty-seven times, opposed to the countless times the English Constitution has.

The Framers knew that they needed our higher law written in one place; they made provisions to amend the higher law and to narrow the laws through statutes. They knew that a written constitution was the best for our new country. The fact that it is harder to change than the English Constitution was probably their intention; they made sure that not just any old amendment would pass so that they could protect the principles that our nation was founded on.

Bibliography

- Bullock, Alan. *Hitler: A Study in Tyranny*. New York: Harper & Row, 1962. Print.
- "English Bill of Rights." *English Bill of Rights*. Constitution Society, n.d. Web. 08 Oct. 2012. <http://www.constitution.org/bor/eng_bor.htm>.
- Johns, C. H. W. *Babylonian and Assyrian Laws, Contracts and Letters*. New York: C. Scribner's Sons, 1904. Print.
- Locke, John. *Two Treatises on Government*. N.p.: Awnsham Churchill, 1686. Print.
- "The Magna Carta (The Great Charter)." *The Magna Carta 1215*. Constitution Society, 25 Sept. 1995. Web. 07 Oct. 2012. <<http://www.constitution.org/eng/magnacar.htm>>.
- Various. "1936 CONSTITUTION OF THE USSR." *1936 Constitution of the USSR, TOC*. Bucknell University, 1996. Web. 07 Oct. 2012. <<http://www.departments.bucknell.edu/russian/const/1936toc.html>>.