

Factors Determining Liberty within a Society: Codified Constitution, Regime, Religion, or Size?

Yunji Li

St. Francis Preparatory School, Queens, New York.

ABSTRACT

To what extent does a codified constitution impact liberty within a society? What would happen to liberty in a society of one, a society of two, and a society of three? Would a codified constitution carry any meaning? By examining the regime, religion, and the size of the society in China, Russia, the United Kingdom, New Zealand, and Iran, this study exemplifies that a codified constitution cannot help or hinder liberty, but the political regime and the role of religion can. Through analyzing the size of society in Robinson Crusoe, 1984, and the island life of Marty Bluewater, the theory has been brought up that a constitution would be meaningless in a one-person society; a two-person society would be a real society; a constitution can impact a three-person society as a legal instrument.

KEYWORDS: *codified constitution, liberty, regime, religiosity, Putin, Khomeini, authoritarian, totalitarian*

A codified constitution is a series of written laws that have been consolidated into a single document and formally adopted by a government. Except for Israel, the UK, and New Zealand, most modern countries have a codified constitution as their supreme legal document to keep the order of the society and to limit and protect the power of both the government and the people. What exactly can such a legal document do, and how would it impact the extent of liberty¹ within a society? Some may argue that a codified constitution hinders liberty because it compulsorily imposes many liabilities and sets constraints on people; others believe that the codification of a constitution helps liberty as it may guarantee people's civil rights. However, if a country's ruler is a dictator, would he/she be willing to follow the previous constitution instead of making a new one? And, would a monotheistic country be able to practice and effectuate religious toleration? Would a codified constitution still be valid in a one-person society? The answer to all these three questions is "no." Then, can a codified constitution, a mere paper, directly impact liberty after all? A codified constitution can neither help nor hinder liberty because a codified constitution is not a required parameter of determining the extent of liberty within a country; the regime, religion and the size of the society are determining factors.

The extent of liberty within a country is primarily dependent

¹ Liberty is the freedom of making decisions and taking actions according to one's free will, outside the control or restriction from the government or other authorities.

upon its regime instead of the form of the Constitution. In some authoritarian or totalitarian regimes, the head of the government has the ability to amend the Constitution without citizens' consent; regardless of whether the new amendments/changes would or harm their interests, citizens have no say in the process. For example, in the Republic of China, President Xi has removed the two-term limit on the presidency, enabling him to remain in power for life. In the Russian Federation, by reforming the State Duma election, managing presidential elections, and reforming the Federation Council, President Putin has acquired absolute power and transformed the Russian Federation from an authoritarian into a totalitarian state. Putin spears oligarchs, uses Siloviki (e.g., KGB, FSB), and prevents the media from communicating messages from opposition candidates; he even attempts to amend the Constitution. The validity of the codified constitution and all laws under Putin's government is doubtful. On the other hand, the UK has a parliamentary democracy regime and does not have a codified constitution at all; its legal system is composed of hundreds of Parliamentary Acts and court case decisions, based on the essential principles of Parliamentary sovereignty, the rule of law, democracy and internationalism.² Without having a codified constitution, the UK is still recognized as a country with a strong constitutional spirit, democracy, and liberty. Similarly, New Zealand, another democratic parliamentary country, is

² Constitution of the United Kingdom - Wikipedia https://en.wikipedia.org/wiki/Constitution_of_the_U...

recognized as a country having 99% freedom, according to the “Freedom In The World 2020” ranking.³ However, the Constitution of New Zealand is not codified; it is made up of several legal documents, conventions, and the common laws derived from court decisions⁴, further proving the fact that a codified constitution is not a necessary instrument of either helping or hindering liberty; the regime is.

The extent of liberty within a country is also largely determined by religiosity. Sometimes a country’s religiosity can strongly hinder liberty. For example, the Islamic Republic of Iran, a country with a hybrid of religious and secular values and leaders, adopted a Constitution that emphasized divinely inspired clerical rule, which was largely based on the ideas of the first Supreme Leader Khomeini. This Constitution affects Iran’s culture, international relations, laws, and domestic policies. Most observably, the social status of women in Iran is deeply impacted by religious values. Women in Iran are not allowed to initiate a divorce except under very specific circumstances, have to wear hijab, and are restricted from contraception and abortion. Does Iran’s Constitution directly hinder liberty? It does not, because their codified Constitution does not explicitly express the restriction or oppression of women’s rights or liberties at all. Article 3 of Section 14 of the Iranian Constitution even states that “securing the multifarious rights of all citizens, both women and men, and providing legal protection for all, as well as the equality of all before the law.”⁵ Has this Article been truly implemented? It has not. According to Articles 12, 13, and 14, all religious practices are allowed and tolerated⁶ in theory. In actuality, nevertheless, religious minorities still suffer harassment, intimidation, discrimination, and persecution by the authorities (e.g., the Bahai Faith). In this case, the religious tolerance granted by a codified constitution has been wholly disregarded, showing that the codified Constitution has no impact on liberty in Iran. Instead, thousands of years of Islamic theocracy have shaped today’s Iranian society. Another example, the State of Israel, the same as the UK, is a parliamentary democracy that does not have a codified constitution. However, in Israel, due to fundamental religious reasons, not all citizens are able to enjoy equal rights or liberties (namely, the Palestinians). Israel declares itself as a “Jewish and democratic state” while Jews are monotheists who only believe in and worship one god; such special religious beliefs and the hundreds of years of Arab-Israeli conflict manifested the reality that the Palestinian citizens cannot bask in the light of democracy or gain full access of liberties in Israel. Comparing Iran and

Israel, Iran has a codified constitution while Israel does not, but evidently, the codification of the Constitution cannot be the direct cause of the absence of liberty and equality in either of them; it is because that they both let religion play crucial roles within each society and value religious beliefs more than liberty. Thus, the above examples of six very different countries demonstrate that a constitution does not directly affect liberty.

The prerequisite of evaluating the impact of a codified constitution within a society is whether or not the constitution is meaningful in that society, raising another essential factor in determining the extent of liberty within the society ---- the size of the society. What would happen to liberty in a society of one? Would a codified constitution carry any meaning? In a society of one, there is no state to create or enforce laws--unless one comes up with a system of self-punishment for his own transgression of his own rules, combining the functions of all three branches of government. For instance, Robinson Crusoe on his island was guided by a fluid set of rules of his own creation. He kept a calendar; he observed a day off--but he didn’t have to. One can say that his liberty to act upon his impulses and wishes was absolute, limited only by natural factors such as weather, ill health, etc. His “constitution” or any social contract were with his own self. *Robinson Crusoe* is, of course, an eighteenth-century work of fiction. Another striking example of a contemporary real-life one-man society is Marty Bluewater, a 72-year-old man who has lived on Protection Island (a 379-acre bird refuge in Washington state) alone for the past fifty years.⁷ He had acquired the island to fulfill his dream of isolated living and built his cabin---the only human dwelling on the island--with his own hands. Since there is no electricity on the island, he uses propane to cook food and collects driftwood to feed his furnace. Imagine the strange existence of a single individual surrounded by myriads of birds. Does he practice any taboos? Are taboos even necessary in his case? Who would define the limits of what he can and cannot do? As the only human on the entire island, Bluewater enjoys absolute freedom of action without the danger of hurting himself or others, if one doesn’t count the birds. Similar to Robinson Crusoe, any restrictions he might choose to observe would be entirely of his own invention. He lives literally outside the law, ergo a constitution would be meaningless in such a one-person society, no matter if it is codified or not.

What would happen to liberty in a society of two? Would a codified constitution become impactful in it? When there are two people in total, they could either antithetically restrain each other to keep themselves within the bounds of contracts or harmoniously collaborate based on their common interests. Let us suppose that the two people have

3 <https://freedomhouse.org/country/new-zealand/freedom-world/2021>

4 New Zealand’s Constitution <https://gg.govt.nz> > ... > Constitutional role

5 Iran (Islamic Republic of)’s Constitution of 1979 with Amendments through 1989 https://www.constituteproject.org/constitution/Iran_1989.pdf?lang=en

6 Ibid

7 [https://en.wikipedia.org/wiki/Protection_Island_\(Washington\)](https://en.wikipedia.org/wiki/Protection_Island_(Washington))
<https://www.nytimes.com/2021/06/08/us/protection-island-washington.html>

an agreement permitting them to perform or not perform certain actions. If one violates the agreement without the other knowing, the agreement becomes meaningless. On discovering the violation, the second person may initiate a conflict that may result in the victory of one and the death of the other, transforming the two-person society back into one-person. On the other hand, when the two people both follow their side of the bargain by constantly renegotiating it like partners, they would be able to have unlimited liberty in the absence of effective legal restrictions, transforming the two-person society back to a one-person as they gain the same extent of liberty in an outlaw world. Either way, the law in a two-person society is as meaningless as the law in a one-person society. They may have large amounts of liberty, but it is enabled by the small size of the society and the validity or invalidity of laws, instead of a codified constitution.

As soon as there are more than two people, it becomes a real society that involves more conflicts and thus needs to be regulated in order to survive; otherwise, people will just cut each other's throats. In a three-person society, if the three individuals establish a set of laws regulating behaviors, all three are supposed to follow the law; one of them could enact the law; one could record the law; one could enforce the law; one of them could interpret the law when the other violates the law, ergo the law would be able to play an effective role in the three-person society as a legal instrument. For example, in George Orwell's famous dystopian work *1984*, if Julia and

Winston had an affair without anyone knowing, they would not be breaking any laws and would have absolute liberty as the only two individuals playing roles in this event without anyone else being impacted. Hence the law, in this case, is not the law when there are only two or fewer people involved. However, when Mr. Charrington, the second-hand shop owner, the third person involved, spies and arrests Julia and Winston, laws become impactful, and the people who implement rules begin to emerge, forming a whole society. In such a society made up of more than three people, there would be a greater probability for the laws to become effective as it is less likely for three people to have a cohesive relationship. When the laws become effective, an effective constitution could be formed and enacted as the population grows and the pacts and contracts increase. In other words, the size of a society, not its codified constitution or lack thereof, is a determining factor that impacts liberty.

All in all, a codified constitution cannot impact liberty in a society that does not effectuate liberty. A religious country makes and changes its constitution largely based on religiosity, without considering liberty. A whimsical ruler, unrestrained by a constitution or any other law, interferes with liberty at will, any time they want. In these ways, liberty is compromised, even in the presence of a codified constitution. Therefore, a codified constitution cannot help or hinder liberty; the political regime, the role of religion, and the size of the society can.

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