

Constitutionalism

'Constitutionalism' is a term that is central to understanding the enterprise of adopting, interpreting and amending constitutions, including the Canadian Constitution, and yet, it is a term that is extremely difficult to define. This difficulty arises in part because of the existence of multiple constitutional traditions tied to a variety of political philosophies (liberal, libertarian, socialist); each of which views constitutions as devices that both reflect and further a particular set of political beliefs.

At its core, however, 'constitutionalism' embodies two basic commitments. First, constitutionalism means that a political community should be governed by some basic or fundamental rules which delineate an institutional framework within which other sorts of decisions - be they general decisions about policy, or particular decisions regarding specific individuals or entities - are made. In the liberal constitutional tradition, for example, as Stephen Holmes has argued, these rules serve both an enabling and disabling function. They serve an enabling function by creating institutions to make decisions, conferring powers upon them, and laying down rules for these institutions which allow the decisions to be made. They serve a disabling function by limiting the scope of the powers of institutions, through devices such as the separation of powers, federalism, and bills of rights. The enabling aspect of 'constitutionalism' cuts across many political philosophies; the disabling function of 'constitutionalism', for some (e.g. communitarians) is quite controversial. Second, 'constitutionalism' means that the framework must be stable, so as to provide an enduring set of expectations regarding the behaviour of political institutions. In the liberal constitutional tradition, the commitment to stability has been synonymous with legal constitutionalism, that is, with a constitution that is written, supreme (i.e. which prevails over conflicting law), entrenched (i.e. difficult to amend) and justiciable (i.e. enforceable in the ordinary courts). But here again, there are many political communities (e.g. the United Kingdom) which adhere to the principles of liberal constitutionalism, but whose constitutions lack some of these features.

Sources:

- S. Holmes, "Constitutionalism" in S.M. Lipset, ed., *The Encyclopedia of Democracy*, vol.1 (London: Routledge, 1995).
- J. Raz, "On the Authority and Interpretation of Constitutions: Some Preliminaries" in L. A. Alexander, ed., *Constitutionalism: Philosophical Foundations* (New York: Cambridge University Press, 1998) 152.