

# Constitutions and “Limited” Government

The Rules of Politics

# The Constitution

- Constitutions are the founding document or documents that spell out the structure and rules of a political system
- Philosophers such as John Locke envisioned constitutions as a kind of “social contract” between “the people” who sought order in society and the government *they* empower to deliver it
- Revolution is the ultimate weapon if government violates the social contract

# Limited and Unlimited Government

- Modern democracies seek to limit the power of government
- One way government is limited by constitutions is through the Bill of Rights which sets out a raft of personal freedoms that are protected from government interference
- In authoritarian societies such as Hitler's Germany or Kim Jong-Un's North Korea today, government exercises virtually unlimited power over citizen's lives

# Written and Unwritten Constitutions

- Most modern democracies have written constitutions
- Two major democracies – Britain and New Zealand – have unwritten constitutions
- The absence of a written constitution in the latter two is explained in terms of the strong existing consensus on fundamental political norms, in those societies, rendering a written constitution superfluous

# Flexible and Rigid Constitutions

- Modern democracies use a wide array of devices to endow their constitutions with varying degrees of rigidity
- These devices can be reduced to 4 basic types:
  1. Ordinary majorities or “supermajorities”
  2. Approval by two-thirds majorities
  3. Approval by less than two-thirds majority but more than ordinary majority
  4. Approval by more than two-thirds majority

# Super vs. Ordinary Majorities

- Supermajorities greater than two-thirds are necessary in  
US/Japan/Germany/Canada/Switzerland
- Most countries fit in the two-third majority to the  
between two-thirds and ordinary majority  
category –  
Austria/Belgium/Spain/India/Netherlands and  
Norway in 1<sup>st</sup> + Venezuela/Denmark/Ireland/  
Sweden/France in 2<sup>nd</sup>
- UK/New Zealand/Iceland require ordinary  
majorities

# Judicial Review

- Argued that written, rigid constitution is still not sufficient restraint on parliamentary majorities unless there exists an independent body that determines whether laws are in conformity with the constitution
- If parliament is the ultimate judge it can easily be tempted to resolve doubts in its own favor
- The remedy is usually to endow courts or special constitutional tribunals with the power of judicial review = the power to test the constitutionality of laws passed by the national legislature

# Referendums

- Written constitutions often specify the use of referendum as requirement or option for constitutional revision
- If majority approval in a referendum is the only procedure required for constitutional amendment the referendum serves as a majoritarian device
- In most cases referendum is prescribed in addition to legislative approval which then offers minorities the opportunity to present their case