

# WRITTEN CONSTITUTION

## Zoom Session 6

May 26, 2021

## REPORT

### Explanatory Note

The discussion was based on three pre-determined questions posed. However, inevitably as the conversation progressed there was some overlapping. It was therefore thought that, rather than simply following the course of the debate, it would be more apposite to report it under three themes, thus: Realisation, Mechanism and Adaptation. With this format, the initial(s) ascribed as below of the person making the observation is given along with the number of the original question.

### Original Questions

1) *Having progressed for so long, why now might the UK need a written constitution and codified Bill of Rights specific to the UK?*

2) *Can it be expected that a written, modern UK constitution would contain clauses which take into account supranational assumptions and developments? Does this imply forfeiting aspects of sovereignty?*

3) *What could be the means employed for changing and adjusting the constitution, bearing in mind the need for contemplation and possibly speed?*

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*Is the world moving so fast that sustainable universal truths become increasingly a thing of the past?*

### Attendees

Clemence = C // Christina = CH // Christopher = CI // Dan = D // Ferguson = F //  
Hugh = H // Kay = K // Nicholas = N // Patricia = P // Sara = SA // Simon = SI

### Our Constitution

It is important to keep in mind that we do have a constitution. It is “unwritten”. However, this in itself does not render it unworkable, as some of the comments in the following make quite clear. The advantages it has are succinctly summed up by the late Roger Scruton, academic and one of the country’s most accomplished conservative advocates of modern times. He states:

.... you will see why the English constitution was so durable – durable because it was never written down, because it never tried to anticipate conflict but only to remedy it, because it never set up an absolute standard of an all-comprehending power but only a network of courts and chambers and councils, in which individual interests could be represented and reconciled ..... And in place of abstract principles and clear chains of command, it established mysterious offices with yet more mysterious names, wrapping all its doings in a veil of ceremony that made them alternately sublime and ridiculous ....

So, why is a written constitution necessary and why now?

## **Discussion**

### ***Realisation***

#### The Need

The first reason for wanting a written constitution for the UK now is misbehaviour with impunity for reasons which could include the excessive concentration of wealth and growing income disparities, declining national status and relevance in the world, and the swan song of traditional privilege still supported by the remnants of an anachronistic school system. At any event, Johnson and his “chumocracy” are lining their pockets and there seems to be no recourse – or much less of one – to penalize such flagrant abuse (P/1). There is a need to redress this and devising a code of conduct enshrined in a written constitution should be the way forward (N/1). This would, among other things, make politicians accountable (CI/2). The fact that the UK does not have a written constitution is now unthinkable to many. And the reason it has to be written is that a constitution in modern times cannot simply dwell in the hearts and minds of the people. It has to spell out basic procedures and rules just like any golf club’s constitution does (H/1). In this line of argument, written formulae are *de rigueur* these days.

The French, like virtually every other country now, have a written constitution which can, in cases or emergency, be changed by its Senate in 24 hours. This compares with the UK where such action would have to go through the courts. This is cumbersome and expensive, fast becoming beyond the reach of the average person (SA/1). Moreover, refinement codified in a written constitution is required to achieve speedier resolutions (P/2). Changes in government structure also demand this, notably with regard to devolution, already activated by the Blair administration over twenty years ago for Scotland and Wales while now being mooted for the English regions. Rules delineating how business is conducted between the respective parliaments or assemblies should be written down so that they are easily understood by everybody (C/1).

#### The Definition

Aristotle described a constitution as an arrangement for the distribution of power for the purpose of realizing the professed aims of society (F/1). A written constitution is a clear set of rules which people cannot hide behind or think they can through sleight of hand (SA/1). More

specifically, it is a set of rules, criteria and standards in printed, visible form. It is what is to be expected of a democratic form of government (N/1). It is the means of putting the country back into the hands of the people (SA/1). To embellish on Aristotle, the constitution lays down the political institutions allowed to exist, the functions of these institutions, and the distribution of powers among them.

### The Scope

It could be argued that a constitution should be as short and simple as possible. In order for citizens to understand what kind of country they are living in, it should be accessible to the population at large (F/1). However, there are limitations to such an exercise for two reasons. Firstly, true a constitution needs to be succinct and written in plain English. But it cannot be too short because there are too many issues to cover. Added to which, it cannot be too simple because the broad brush calls forth multiple interpretations. The way around this could be bullet-pointing making it easier to refer to (P/1).

The second reason concerns execution. Modern society and its government are highly complex, so in writing a constitution one has to be aware of where the weight of the complexities should lie. To take the process of legislation for comparison. A bill passing through the house is often simply worded because of prior negotiations to ensure it gets through. Then additional legislation is attached to the original law. Likewise with a written constitution. It is best to be clear as to where the detail is to be posited, in the constitution or as subsequent attachments. This in turn may depend on the calculated ease or difficulty of passage through parliament or other institutional process (SA/1).

### *Mechanism*

#### Creation

Assuming that a written constitution is desirable, there is no time to lose, not least because there is no knowing how long it will take (N/1). There are references which suggest advantages to be emulated and shortcomings to be avoided. The most familiar is probably the American Constitution, born as a refutation of monarchical, colonial rule, but also as the beneficiary of the mounting sophistication of liberal thinking which had been gathering momentum particularly in England. It established two important precedents: first, a system of checks and balances, and second, the separation of powers. The executive, legislature and judiciary were separated from each other while each was vested with authority to keep the others in check. The constitution was subsequently elaborated with amendments, the first ten of which comprised the Bill of Rights specifically directed at the freedom and protection of the individual. Not restrained by 800 years of grinding institutional gestation the Americans in all likelihood had an easier task than we have now (SI/3). These nevertheless are and remain good references. They reflect an attempt to reconcile popular government with private and local rights. Shortcomings, on the other hand, include lack of close definitions; “we the people” actually meant propertied white men, women and blacks being simply ignored. There is also the danger of deterioration of standards as when the president makes politically-motivated appointments to the Supreme Court (H/3).

How do we go about this issue for ourselves? We are trying to retrofit something (H/3), which presumably means that we are taking something apart to refit it with new and/or refurbished components in order to be more capable and effective in the world as we know it than we have been over recent times. As for action, one thing is certain: it cannot be left to politicians. Parliament cannot be allowed to write its own rules. A possible sequence is as follows: (1) creating citizens' groups nationwide to gather and discuss opinions as to how to go about it; (2) electing a constitutional assembly as many countries have already done to hammer out the details of the constitution *per se*; (3) submitting the final format for public approval through referendum; (4) parliament rubber-stamping the approval and committing itself to abide by the rules laid down in the written constitution (CI/2, H/2).

### Education

As was evident in the Brexit campaign, the voting population at large was not very clued up on the issues involved. Proportional representation suffers the same fate. People do not understand how government functions (H/2). This suggests that some sort of educational project should be worked on, including the teaching of civics both as part of the school curriculum and for adults, in order to engender more comprehension in society as a whole concerning the constitution and therefore citizenship. One idea put forward was that this could be a task assumed by the above-mentioned citizens' groups, hence having the two essential elements of constitution-building - creation and education - combined and running parallel (N/2). But doubt was also expressed about an educational assault ever taking off. More practical for encouraging public involvement, although with the accent on fairness rather than education, would be to lobby harder for proportional representation (SI/3).

### Institutionalisation

This includes both the initiation of a written constitution and its application thereafter. Selling the idea to the public by, for example, stressing the assurance of checks and balances is one aspect (SA/3). However, assuming that the current governmental system is to remain largely intact, the idea of a written constitution has to be sold to that system. The government and parliament have to be shown that it is in their interest as well as the country's (K/2). Government and parliament are very keen on votes. This demands that we LibDems and supporters from the other parties raise the profile of the issue among the population through, say, citizens' groups so that when the next general election comes around candidates for office will feel the pressure and act accordingly. If the people don't see the point the politicians won't see the point (CH/2).

With regard to the application, the people's view - the referendum that is - is seen as central. For the initiation the constitutional assembly works on the details and people give their stamp of approval (H/2). The question arises, though, as to the degree to which the referendum would be employed. If it were resorted to for each addition or deletion in the constitution, the whole process could take at least as long as submitting it to a supreme court. It would be

rendered less malleable and perhaps turn into an uncomfortable reminder of what we have now (D/2).

## *Adaptation*

### Change

A written constitution will never be perfect and at any time people will have different interpretations as to how it is to be read (H/3). This constitution, therefore, exists in a fluctuating world of change. It is fashionable to say that we are currently living in an age of rapid change, although throughout history it has always moved on, leaving in its wake on the bed of written constitutions antiquated and hard-to-interpret stipulations (D/3). The United States has attempted to tackle change by tacking amendments onto an aging parent. However, disputes over interpretation still crowd the courtrooms because, as with any agreement, complexity invites them. But the constant reference back to a code put down over two hundred years ago threatens to make the body rigid. This begs the question as to whether the UK's unwritten constitution, never having been codified in one place at one time, is not more flexible and adaptable, as well as less restrictive in coping with change in the age in which we now live (SI/1). Conversely, the constitution itself could simply become the plaything of the powerful to be changed at whim, as Louis Napoleon did on his way to becoming Napoleon III and Vladimir Putin and Xi Jinping did just yesterday (D/1). Change must be placed within a legal framework for a written constitution to function meaningfully.

### Integration

Climate change, Covid-19, the predominance of Asia and the rise of China within that have all brought home to us the simple fact that the world is getting smaller even as it stretches its reach to Mars. Institutions and activities are likewise crossing borders, increasingly impinging upon the integrity of the nation-state: the United Nations, NATO, and the IAEA along with professional organizations like, just to take one example, the International Organization of Securities Commissioners all convey attitudes and standards of conduct which have to be taken into account by responsible governments every day (F/2). Such integration on a global and regional scale, therefore, will influence directly or indirectly the phrasing of a modern written constitution. However, the nation-state at this point in time remains the most important reference for the bulk of humankind. It follows, then, that that constitution should reflect the particular history and culture of the country in question (H/2). Our written constitution must signify the unique singularity of the United Kingdom of Great Britain and Northern Island.