

A SUBMISSION

A written Constitution?

A submission to the Political and Constitutional Reform Select Committee of the House of Commons from the Maranatha Community

1. Introduction.

- 1.1** The British Constitution derives from a mixture of Magna Carta, statute (in particular, Habeas Corpus and the Bill of Rights), case law and convention. Those who propose change assert that the present arrangements are unsatisfactory and unsuited to the modern age, the main criticisms being that the Constitution as it stands is uncertain and confusing, couched in archaic language, and unresponsive to modern developments. We believe those criticisms are unfounded and overlook the very real strengths of the nation's constitutional framework. We believe that change will endanger those strengths without corresponding benefit.
- 1.2** There is no great demand for change on the part of the country as a whole. Calls to move away from an unwritten constitution come almost exclusively from the elite. We believe that such calls confuse cause and effect: to the extent that recent difficulties can be traced to constitutional issues, they do not concern defects in the present arrangements but a failure to understand and apply these fully or properly. The remedy is for those in authority to take to heart what the Constitution says rather than to tinker with it in ways for which there is neither cause nor mandate nor demand.

2. The strengths of the Constitution.

- 2.1** The Constitution as it presently stands embodies virtues that are unique to the constitutional arrangements of these islands and those nations which look to them for inspiration:
- It has developed organically as a practical response to national experience, allowing a variety of voices and traditions to be heard and taken into account.
 - It has a proven track record of delivering good government, a check on abuses of power and essential freedoms.
 - It is supported by the accretion of experience, legal cases and historical development spanning over a thousand years, creating strong foundations.
 - It has a correspondingly widespread degree of popular support and approval.
 - Through the ability to take into account both tradition and changing circumstances, its flexibility is unmatched.

- 2.2** Not only has the Constitution stood the test of time; it has also held its own in the face of all alternatives. There are few better illustrations of the dangers inherent in the (written) constitutions rooted in an Enlightenment tradition than the Declaration of the Rights of Man and of the Citizen of 1789. Despite its high-sounding ideals, this delivered bloodshed and military dictatorship. That it did so was no accident, being foreseen by Edmund Burke and clinically exposed in his *Reflections on the Revolution in France*.¹
- 2.3** In recent years the nation has lost sight of elements of the Constitution which have been vital to its vigour and success. Magna Carta was largely the brainchild of Archbishop of Canterbury Stephen Langton, who based it on the precedent of the so-called Coronation Charter issued by Henry I. This earlier charter had promised to abide by the laws of Edward the Confessor (themselves based on earlier Saxon codes such as those of King Alfred).
- 2.4** The Saxon influence is of profound importance in two respects in particular:
- Saxon legal codes made it clear that the king was subject to the law. By placing the ruler under the same constraints as everyone else, they carried within them the promise of rights for the common man and thus the germ of democracy.
 - The laws of King Alfred began by reciting the Ten Commandments and various other Old Testament laws. They therefore recognised that law is not simply what we choose to make it, but is answerable to a higher moral standard.²
- 2.5** The fact that judges should look to law's moral content as well as merely to its formalities is a fundamental part of the Constitution. The renowned 18th century judge and legal theorist William Blackstone, for example, wrote that "Any law that is contrary to the scripture is no law at all and not to be obeyed."³
- 2.6** It follows from the above that any attempt to reduce the Constitution to writing would need to take account of its Saxon and biblical heritage if it were to be faithful to the presiding genius

¹ The weaknesses inherent in the constitutional arrangements of revolutionary France and the strengths of the Anglo-Saxon approach were also analysed by Alexis de Tocqueville.

² Magna Carta does not explicitly refer to freedom of conscience, but this was easy for later generations to read between the lines of the Great Charter because of that document's glance over its shoulder to the laws of Saxon England and to the Bible. The importance of biblical inspiration for the later development of full civil liberties is shown by the influence of Methodism on the campaign against the slave trade (John Wesley was a mentor to William Wilberforce and John Newton), the fight for worker rights (three of the Tolpuddle Martyrs were Methodist lay preachers) and the move towards universal suffrage (Methodists were influential in Chartism and the Labour Party has traditionally been said to be "more Methodism than Marx").

³ This is a principle increasingly ignored by those who seemingly do not wish to acknowledge where this moral standard derives from. In *R (Eunice Johns and Owen Johns) v Derby City Council and Equality and Human Rights Commission* [2011] EWCA 375 (Admin) Lord Justice Munby and Mr Justice Beatson (relying on the Court of Appeal decision in *McFarlane v Relate Avon Ltd* [2010] EWCA Civ 880) stated that there is no place in English law for Christianity. These decisions, which arguably are unconstitutional, fundamentally change the common law which has been the mainstay of our freedoms for a thousand years and ignore countless past affirmations of the role of Christianity in the common law. To take just one example, in Taylor's case (1675) Chief Justice Holt said, "Christianity is part and parcel of the laws of England and therefore to reproach the Christian religion is to speak in subversion of the law." In the eighteenth century one of our greatest judges, Lord Chief Justice Lord Mansfield, said simply that "English law is Christian law." To turn our backs on this heritage is to take away the law's moral and philosophical underpinnings, leaving it at the mercy of expediency and the utilitarian. We scarcely need the example of Nazi Germany to know where this might lead.

that has guided national life for centuries past. It is submitted that it would be difficult to do this properly and that important elements might readily slip between the cracks.

3. The case for change: why criticisms of the Constitution are wrong.

- 3.1** The case for change is often made to rest on a fallacy, namely that a written Constitution would allow all relevant provisions to be gathered together in one place so as to enable these to be seen at a glance. It is only necessary to consider the welter of legal decisions which must be waded through in order to divine the meaning of provisions in the Constitution of the United States to see instantly why this admirable aim is incapable of being achieved.
- 3.2** Creating a written Constitution would in practice be a recipe for uncertainty, confusion and legal challenge. Whilst those drafting a written Constitution might consider that they were doing no more than giving effect to provisions which already exist, the slightest differences of language and context would become the subject of litigation.
- 3.3** Critics of the Constitution as it stands cannot have it both ways. It is illogical to say that current arrangements are uncertain and confusing and at the same time claim that they are unresponsive to modern developments. The Constitution has consistently shown itself to be a living, breathing thing which has adapted to changing national circumstances. This means that there might be elements of uncertainty at points of transition⁴ but is a long way from saying that the Constitution as a whole is uncertain and confusing. It is the peculiar nature of the Constitution's varying sources which gives a special degree of flexibility and thus of responsiveness. This would be put at great risk by attempting to reduce the Constitution to a single piece of writing.
- 3.4** To complain about archaic language and speak of the need for modernisation smacks of change for the sake of change. Language has been no barrier to interpretation in the past and there is no reason why it should be in the future.
- 3.5** In sum, change is highly unlikely to bring improvement and almost certain to create uncertainty and legal disputes. Much of value is likely to be lost, either wittingly or unwittingly. In an area of such profound importance to national life, we should beware the law of unintended consequences.

⁴ For example, the previously clear convention that a government Minister should take responsibility for failures by his or her Department by resigning has recently been honoured more in the breach than the observance.

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The Maranatha Community is an international movement of thousands of Christians who are active in all the main denominations throughout the United Kingdom and abroad. It is committed to work for peace, justice and reconciliation and works for healing, unity and renewal for individuals, families, communities and nations.

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