



**Independent (UK)
Constitutionalists**

**A Codified & Living Constitution
– Why we need one**



Where we are now

The much-lauded flexibility of our constitutional arrangement – a piecemeal collection of common law, statute, unwritten convention and royal prerogative – has become an open invitation to political fudge, to misuse and abuse. Having to rely on lawyers to rune-read the dispersed provisions of our constitution will no longer do. It is unfair and profoundly undemocratic.

The Brexit crisis has tested these arrangements to near destruction. Our country has been left deeply divided with millions feeling unrepresented at Westminster. And any initiative to remedy this situation is unlikely to come from the traditional party structures that are more concerned about winning elections than deciding who should have power and how it should be exercised. We are facing, in other words, a full-blown constitutional crisis. Constitutionalists, and with them a growing army of activists across the UK, believe that our country and people deserve better.

What we need to do

Basically, two things:

1. Produce a codified and living constitution for our country that sets out in plain English the values we share and the rules by which we would wish to govern ourselves;
2. Involve the people (not just the expert lawyers and full-time politicians) in producing it. It must *belong* to us the peoples of the British Isles*; it must be *our* constitution.

* Were the UK to divide up into its constituent parts – Scotland, Wales, Northern Ireland and the individual English Regions – then our country's constitution would need to become the constitution of the *Confederation of the British Peoples* establishing at once both the allocation of powers and confederation (rather than federation) as being the functional and voluntary coming-together of sovereign equals.

Why Codified?

Although our current constitution is in part written, our system of government relies on a number of constitutional tools that are *unwritten*: basically parliamentary conven-



tions and royal prerogatives. Recent events have demonstrated how significant and disruptive a part in the business of government these unwritten procedures can play. *Codification* describes the process whereby the fundamental principles, laws, rules and procedures, as set out in written documents in any particular area, are organised and collected into an identifiable and coherent system or code. This is not the case with our current constitutional arrangement: there exists no single text, no single set of rules determining the procedures by which we govern ourselves that can be pointed to and to which the public have access.

Why Living?

Constitutions, however set or *entrenched* (see below) their provisions are, must be capable of being altered from time to time in line with major changes in the circumstances of the communities whose governance they are designed to regulate. Such, for example, has not been the case with the US Constitution, long held by many to be the standard for all subsequent constitutional settlements. It was originally promoted as being by “We the People”, yet was written by, and primarily served the best interests of, a slave-owning land-holding minority whose main concern was to be independent of the British Monarchy.

Brexit has finally demonstrated that a similar situation obtains with our own constitutional arrangements. Not only are they out of date, but their lack of codification, populist simplifications apart, leave us with a major question unanswered: who is in fact in charge and who is sovereign, Parliament or the People? Were we “to take back control” by leaving Europe, as some insist we should, who would control be returned to: Parliament or the People? In the absence of a clearly defined and codified ruling, the notion of the “People in Parliament” is meaningless. It’s time for constitutional change.

We need to get our own political house in order before we’re in a position to join other nations in taking steps to stem environmental destruction, and address the urgent challenges that face our species and planet, particularly the behaviour of under-regulated Multinationals and global Big Data currently almost entirely free from democratic scrutiny.



However, a codified constitution won't be a panacea. It will need to be a *living* document with the flexibility to be interpreted and altered as the world changes. Recent debates on gun control in the US and the right to self-determination in Catalonia demonstrate that constitutions can also be barriers to change if they do not allow for contemporary amendments.

Entrenchment and Constitutional Supremacy

The idea of entrenchment goes hand in hand with that of Constitutional Supremacy whereby the Constitution becomes the supreme law of the land and cannot, at least in its fundamental features, be altered save by wide popular consent. Constitutional Supremacy embodies the notions of:

1. A constitution, codified and accessible, that in principle *invalidates* any laws that are inconsistent with it, and
2. *Entrenchment* whereby the latter's provisions cannot be altered or repealed by Parliament under pressure from a government intent on making rules for itself. Neither should the provisions of a constitution be altered by plebiscitary consent through majority vote without controls in the form of constitutional checks and balances. Such checks and balances, in turn, should be so designed that minority interests are protected and the enduring moral and ethical dimension of the settlement that the constitution sets forth be secure.

A Citizen-built Constitution

Essential to meaningful constitutional change will be the second part of what we need to do: get the people involved. This could be achieved by adding to the three existing branches of government – Legislature, Executive and Judiciary – a fourth: a **Civil Society Branch**. Its principal expression could be the establishment of **Standing Citizen Advisory Councils** (one for each of the constituent peoples and over time for each of the English regions). Membership could be selected by sortition and stratified sampling at regular (say, two-year) intervals. Such Councils could be given a constitutionally en-



trenched double function as guardians of the constitution and as policy advisory and assessment bodies. They could have their own secretariats (to include constitutional and policy experts), their own media arms and independent budgets. Councils could be responsible for:

- a. Identifying at an early stage weaknesses in the Constitution and making recommendations with a view to future amendment by the Legislature;
- b. Commissioning **Ad Hoc Citizen Assemblies** to examine specific policy issues, for example, the implications of AI or of an ageing society, genetic engineering, policy responses to inequality, etc. The Executive and Legislature of the day should have statutory obligations regarding the recommendations of the Councils and of their Ad Hoc assemblies;
- c. Recruiting and training cohorts of citizens to sit on all the main policy implementation and assessment boards of the Executive, for example, the board of the Bank of England and the General Medical Council;
- d. Recruiting and training facilitators for Citizen Assemblies;
- e. Jointly with the Legislature, calling and duly preparing all referendums, the results of which would be binding on the Legislature

Now, let's be clear: a written, living and readily accessible codified constitution will be no democratic panacea, no silver-bullet guarantee of our democratic future. But it would be a start to deciding how we create a shared future for ourselves, one that *belongs* to us all, and not just to some. It's the least we can offer ourselves. Besides, its framing by the people in country-wide **Citizen Constitutional Conventions and Assemblies** could prove the nation's first experience of a new kind of democracy that is participative as well as representative.

Finally, were we to decide to replace our undemocratic Parliamentary Sovereignty by People Sovereignty under the protection of a codified constitution, we would be conferring upon our system of government and decision-making processes a political legitimacy that can only be achieved through the widespread understanding and consent of those involved and affected, that is to say, the people.