

# **The British Constitution**

A Paper by Malcolm Blair-Robinson

## **What is a Constitution?**

A Constitution is the framework within which a nation is governed. It embodies the fundamental principals forming the foundation of the State and is binding on all the institutions of Government as well as providing absolute guarantees of the rights and freedoms of the governed. It defines the relationship between the Executive, the legislature the judiciary and the Citizens. No law is valid unless it is within the terms of the Constitution.

In most modern democracies, the legislature cannot vary the Constitution without the consent of the people in a referendum. The Constitution is the contract between the State and the People legitimising the State. All free countries in the world have a written Constitution with three exceptions; Israel, New Zealand and the United Kingdom.

The Constitution is the guarantee for every citizen of their rights and freedoms by the State as well as an affirmation of their duties and obligations to the State.

## **Does the United Kingdom have a Constitution?**

In the sense of the specification set out above, no it does not. It has a collection of Statutes, Conventions, Customs and Precedents as well as ceremonies dating back to the Magna Carta and beyond. This vast accumulation is described as our **Unwritten Constitution**. Its key Statutes are;

**Magna Carta 1215**

**The Petition of Right 1628**

**Habeas Corpus 1679**

**Bill of Rights 1689**

**Triennial Act 1694**

**Act of Settlement 1701**

**Septennial Act 1716**

**Reform Acts 1832, 1867, 1884, 1918, 1928**

**Parliament Acts 1911 and 1949**

## Devolution Acts 1998 -2006

### Constitutional Reform Act 2005

There are many other pieces of legislation which have some bearing on constitutional practices and customs can be varied to become the norm until changed.

#### **Does this mean our Constitution is up to its job in a modern democracy?**

Put under objective analysis the answer is no. It is very much concerned with the division of powers between the Crown and Parliament, all the foundations of which were laid before this country was, in the modern sense, a democracy. We became a democracy in stages with a gradual widening of the franchise, but because a Monarchy is the antithesis of democracy, we evolved the concept of **Constitutional Monarchy**. The difficulty is that without a defined Constitution it is not possible to define its components with any kind of precision.

Moreover, we have followed a gradual path of democratising government without setting up structures built for the purpose. We still have Government by the Crown with absolute power, but exercised through the Crown's Ministers who all come from Parliament, the lower House of which is elected by the people but summoned by the Crown. All legislation must be approved by Parliament, which was designed originally as a check to the power of the Monarch. Because of the formation of Political Parties and the operation of the Whip system of keeping notional Private Members to the policy line of the Executive, the Government of the day uses the absolute power of the Crown to control Parliament to do its bidding.

Because the lower house of Parliament, the Commons, is elected by universal suffrage, we feel we have a democracy. In practice this is very limited and in fact it hardly exists. This is because although there are *Acts* limiting the duration of a Parliament first to seven then to five years, this can be varied by *Parliament if both houses vote for it to continue*.

#### **Are there now weaknesses with this?**

Yes there are. Over the years, through statute, custom and precedent, the Executive (Government) now controls all the levers of power through Parliament, of whose members it is made up. The check on all power of the Sovereign is total, *but there are no checks whatever on the power of Parliament*. The *checks and balances* between Executive, Legislature and People inherent in a democratic constitution are missing in ours. Only the Judiciary is independent to the highest modern standards.

Up till now this has worked in the comfortable British way of compromise and adjustment. Many would argue that the quality of governance has fallen leading interest in participation through the ballot box, to fall as well. Indeed **not since 1950** has this country had a

government elected **with a majority of all the votes cast**. That Parliaments with so weak a mandate have absolute constitutional power can no longer be regarded as acceptable.

### **Should we be worried?**

The difference between a Constitution and a collection of Statutes (laws) is that in the latter case the legislature and the executive can change the laws and therefore their use as a substitute for a proper constitution, at will. This is what we have now. In the wrong hands freedoms can be and are eroded and poor governance institutionalised.

A free standing constitution is above interference by any institution of government all of which have to operate within its limits. It can only be changed by the citizens themselves in a special vote, either at a general election in a separate question on the ballot or by a single issue referendum. This enshrines in the people the sovereignty to decide by what rules they will be governed. This is what all but two other democracies in the world have.

### **Is it time for reform?**

Yes. We need to start a debate to move the Constitution, or the lack of one, to the top of the political agenda.

In the short term we need some urgent reforms of existing Statutes to transfer reserve powers back to the Crown to act as a check on the use or misuse of power by Parliament.

Having ensured the protection of fundamental democratic rights in the short term we need to draft and prepare a proper written Constitution to bring our governance into the modern age.

A proper constitution allows there to be in every home a fundamental guarantee of the citizen's rights and freedoms within a framework of binding principles under which all institutions of government and their agencies must make and administer the laws governing all aspects of life in the nation.

### **Where to begin?**

We are approaching a **Constitutional Issue**. Parliament has acted against the principles of our unwritten constitution by organising a system of personal financial gain using taxpayers' money, without taxpayers' knowledge and then attempted to withhold the information from taxpayers who are their electors. This Parliament is therefore corrupt in terms of the fundamental principles upon which this Nation stands. It is therefore wrong for a new session of Parliament to be opened by the Sovereign in a speech from the Throne, because the Sovereign knows that her Parliament is guilty of financial impropriety.

It is wrong for the Prime Minister, in whom the power to ask for Dissolution is vested by custom *but not in law*, to allow this ceremony to proceed and for a new Session to open.

The public interest demands that he so ask. If he will not, the Queen **has the power** to dissolve this Rotten Parliament now. She has an overriding and reserve duty to do so.

### **What happens if the State Opening Proceeds?**

Nothing, because the Constitution is not a subject which receives much, if any, media attention and is not therefore much understood by the public at large. However it is most definitely against the intention of the Constitution if not against the letter (to the extent that letters exist) for the Monarch to allow to remain sitting, and to open a new Session, of a Parliament guilty of financial misdemeanour and which has clearly lost public confidence.

The widespread interest in the **Lisbon Treaty** and the passions it raises, together show that the people take their independence very seriously and if they to become aware of the shortcomings of the arrangements by which they are governed and the few, hardly any in fact, safeguards they enjoy, passions would be likely to rise on this issue too. This could trigger a **Constitutional Crisis**.

### **What are the Key Anxieties now?**

Over time **too much power** has transferred to **Parliament**, which has become an arm of the **Executive**, by which it is controlled through the **Party Whip System**, leaving **no proper checks and balances** normal in a modern democracy. Added to this, proposals are in hand to transfer the power of Dissolution from the Crown to Parliament. These may appear in the Constitutional Reform Bill, rumoured to be part of the Queen's Speech. Although apparently more democratic, the reverse is the case. Taken together with Parliament's power to prolong itself, this would make our **legislative structure the most unbalanced** and the **Executive the most powerful of any in the free world. The normal balance to this power is missing.**

Such important **Constitutional** changes, *by a Parliament guilty of collective deception for individual financial benefit of its Members* undermines our claim to democratic probity used so often to justify our view of world affairs. It denies to the People the **democratic safeguards** and **protection** available to other countries with modern properly defined Constitutions.

### **What to do?**

This issue must be opened up to **public debate**.

### **Should the State Opening go ahead?**

**No.** It cannot be within the **core principles underpinning the Constitution**. If it goes ahead this declares that our Constitution allows the abuses of power of which Parliament has been shown to be guilty. **This falls short of the threshold of a free democracy.**