

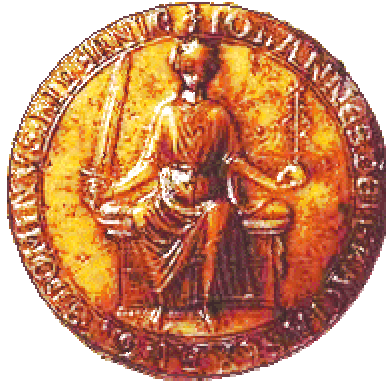


# The SUPREMACY of CONSTITUTION

Governments govern people  
Constitutions govern Governments

MICHAEL SARTORIUS  
[arton.co/sartor](http://arton.co/sartor)

# The Supremacy of CONSTITUTION



No people should give government power over them,  
without first setting conditions on the use of that power.  
Such is the purpose of Constitution.

## 1. Ideals of Constitutionalism

Constitution limits absolute power. This it achieves by placing conditions on the use of that power, by requiring the sharing of power with those subject to it through a process of debate, by laying down obligations, and by establishing boundaries beyond which the Law may not intrude.

## 2. The Great Charter of 1215

With the formal sealing of the Charter, albeit it under military pressure, the Monarch had confirmed the essential principles of constitutional discipline: the obligation to rule responsibly, to conduct himself within the bounds of established law and custom, and to rule in consultation with his peers through Parliament.

## 3. England after Magna Carta

Subsequent political development would attempt to ensure that the power of Parliament itself should not become absolute, and Parliament should be subject to the same rules of underlying constitutional precedent which had previously been formulated to discipline monarchs.

## 4. Constitution in the New World

Central to all the Framers of America's Bill of Rights was the idea that since Government is a powerful institution, its officials must be compelled to exercise their powers within strictly defined boundaries.

## 5. Constitutional Government

Governments govern people, constitutions govern governments, by establishing procedures, obligations, and perhaps most importantly, limitations on the powers of government.

## 6. The Supreme Law of the Land

If we are not to drift slowly and surely, ever deeper into debt and dictatorship, the issues of Constitution, its Provisions, its Supreme Status in the process of governance, and the provision for periodic and necessary Amendment must be given urgent and serious consideration.

## 1. Ideals of Constitutionalism

Though *Constitutionalism*, the spirit of Constitution, had already been alive and practised for many years, the Magna Carta, by general consent of history, is now widely accepted as the world's first major constitutional document. Indeed it is interesting to read the constitutions of the USA, both the Federal Constitution and those of individual States, as well as the constitutions of many Commonwealth countries, and to note how many passages from Magna Carta have simply been copied word for word.

Magna Carta provided Britain's reformers with a firm foundation, a cornerstone upon which subsequent constitutional documents could be added to form the assemblage which, combined with unwritten custom, is commonly referred to as Britain's "Constitution" today.

Constitution limits absolute power. This it achieves by placing conditions on the use of that power, by requiring the sharing of power with those subject to it through a process of debate, by laying down obligations, and by establishing boundaries beyond which the Law may not intrude.

In its early days the Constitution may be weak, it may contain little of practical value. But once the principle has been established that the Central Power, whatever form it may take, is itself subject to some superior framework of rules and procedures which define the use of that power to any extent whatsoever, the nation is on the right path, and it is only a matter of time before the rules defining the use of Centralized Power are strengthened.

No Government, President or Monarch, no institution of Law or Enforcement, should be created or be allowed to exist and to function without a Constitution, written or un-written, providing a framework of discipline and conduct. No one should have power over others, unless and until that power and the conditions of its use have been strictly defined. In the words of Thomas Paine: "Government without a Constitution is power without right".

Today we understand clearly and accept fully the idea that Constitution limits absolute power. Yet for early reformers of autocratic Monarchies it was a contradiction in terms to talk of limiting absolute power. If the power is absolute, then how can it be limited except through a greater power, and what is the nature of that greater power?

Relying for support on the strength of public opinion, from the most influential to the broad mass of the people, the spirit of Constitutionalism was originated and developed by theorists and idealists, and based on a universally recognized, instinctive awareness of what is right and wrong in law and social conduct.

"The idea of Constitutionalism is older than the existence of written Constitutions. Constitutionalism places limits upon Government, proscribing the means by which official power may be exercised. Constitutionalism establishes boundaries between the State and the individual, forbidding the State to trespass into certain areas reserved for private action.

"Constitutionalism also has a deeper and older connotation, demanding adherence by Government to recognized customary procedures. The idea of a Constitution in this procedural sense can be traced all the way back to Aristotle, who in his *Politics* and the *Constitution of Athens* described all the known political arrangements of ancient Greece."

[*Constitutions that have made History* Blaustein and Sigler, Paragon House, New York, 1988.]

The fundamental desire for disciplined and responsible use of Centralized Power was the catalyst which set in motion, then relentlessly pursued the gradual erosion of absolute power, subjecting it to the ideals of good governance expressed in the essence of Constitutionalism, in successive specific constitutional documents, and in the writings of constitutional reformers.

## 2. The Great Charter of 1215

A thousand years ago, in late Anglo-Saxon times, England was united into one kingdom ruled by a King and his Council, and the institution of kingship was already established as having limited powers.

The King was bound by his Coronation Oath to defend the Church, to punish crime and violence, and to rule with clemency and mercy. He was also bound by customary rules of law, and to some extent his power was restricted by his Council. He was viewed as a religious and moral leader, a protector of the people in war and in peace.

The great body of Anglo-Saxon law was the unwritten folk law, or “Common Law”, handed down from one generation to the next, giving the common people rights and duties of what we would today call citizenship, and setting out procedures for determining fault or guilt and methods of punishing wrongdoers. Arbitrary alteration of the rules was considered improper, and indeed, bordered on impiety.

This tradition did not of course preclude the frequent occurrence of abuse by monarchs keen to enhance their own powers, or simply reluctant to recognize any form of constraint over their conduct. In such cases it would be the powerful barons and clergy who would bring the king to order in the name of constitutional custom, as they were to do in 1215 when they compelled King John under force of arms to set his Seal upon the Magna Carta – the Great Charter.

On June 10 the two parties met on neutral ground in a green meadow by the River Thames at Runnymede. The name Runnymede suggests that this was not the first time councils had been held there; the first part is an old English word *Runiege*, meaning Council Island; *mede* being a flat field or meadow.

After considerable negotiation a preliminary document was formulated, briefly listing forty-nine points upon which the King was willing to yield. To it King John attached his seal and upon the basis of that initial document a formal Charter was to be drawn up for signature by the King at a further meeting a few days later.

The title of this preliminary document is significant. It read: These are the Articles which the Barons require and which the King concedes. King John had been compelled by force of arms to comply with the demands of the Barons who had risen in armed and successful rebellion against him, and the preliminary heads of agreement recorded that the King conceded the demands which the barons required.

Yet the final, formal version of the Great Charter to which John acceded a few days later on June 15, the Charter we know today, begins with a greeting from the King to his loyal subjects, and records that he has acted with their advice. This change in wording clearly shows that the stability of the monarchy was considered as important as its reformation, and nothing was done to diminish the apparent authority of the king even in the hour of his humiliation and defeat.

With the formal sealing of the Charter, the monarch had confirmed the essential principles of Constitutional discipline: the obligation to rule responsibly, to rule in consultation with his peers, and to conduct himself within the bounds of established law and custom.

Clause 12 of Magna Carta had already made the raising of taxes (aid or scutage) dependent on the general consent of the kingdom, and clause 14 laid down the method whereby the general consent was to be obtained: “To obtain the general consent of the realm for the assessment of an aid or scutage we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter... to come together on a fixed day and at a fixed place.”

The periodic convening of his influential men by the king continued during the 14th, 15th and 16th centuries, developing gradually into an early form of Parliament which would later challenge and claim precedence over the power of the Monarch.

### 3. England after Magna Carta

One of the first major writers on the subject of English constitutional law and custom following Magna Carta was Henry Bracton.

His (Latin language) document *On the Laws and Customs of England* is one of the oldest systematic treatises on English Common Law. It also deals in depth with the obligations of, and disciplines upon royal power, concentrating on three major themes: that the king should himself be subject to and act within the law, that he should rule wisely and justly, and that he should rule in consultation with his peers, the “eminent men” of the land.

The king must first of all be subject to, and act within the law.

In stressing the king’s relationship with the law, Bracton identifies two aspects of law and the apparent contradiction between them. One aspect of law consists of orders and regulations, and in this sense the king is the source of law. The other aspect of law is the body of custom we would now call the constitutional framework; here the king must himself be subject to law, for the king and the very institution of monarchy owe their existence to law in this constitutional sense.

So Bracton insists that “the king must be under God and under the law, because the king’s position owes its very existence to the wider framework of law. Let him therefore in his laws, observe the due process of law through which he himself exists. For the king is not fulfilling his legal obligations when he rules by personal will, rather than by due process of law under the ultimate will of God.”

Bracton also expects the king to obey his own laws, for the king, though the source of law, is not outside the law:

“What the king is bound by virtue of his office to forbid to others, he ought not to do himself. Let him, therefore, temper his power by the due process of law, which is the discipline upon power, that he may live according to the laws, for the law of mankind has decreed that the lawgiver should be bound by his own laws.

“Nothing is more fitting for a sovereign than to live by and within the laws, nor is there any greater sovereignty than to govern according to the due process of law, and the sovereign ought properly to yield to the tradition and process of law that makes him king.”

Bracton strengthens his argument with this forceful reference to Christian example:

“That the king must bow to the process and formality of law is paralleled in the example of Jesus Christ. Though many ways were open to Him to fulfill His destiny in the redemption of the human race, He chose to destroy the devil’s work, not through the arbitrary use of His great powers, but by subjecting Himself to the existing laws of justice. In this way He willed Himself to be under the law that He might redeem all those who must live under it. He chose to use not force, but judgement.”

Monarchs of England and Europe have often claimed to rule by Divine Right. The kings themselves interpreted the concept of Divine Right as placing them above and beyond the reach – or reproach – of the law, and of those whom they ruled.

Bracton however voices an earlier understanding of Rule by Divine Right, namely that the King is God’s minister, and as such is under obligation to rule wisely and responsibly:

“The King is vicar and minister of God on earth, and from God comes the power of justice. Therefore the King’s power is that of justice, not injustice. The power of injustice is from the devil, not from God.

“The king will be the minister of him whose work he performs. Therefore as long as he does justice he is the vicar of the Eternal King, but he is the devil’s minister when he deviates into injustice or injury. The king is called King, not from reigning, but from ruling well, since he is a king as long as he rules well but a tyrant when he oppresses by violent domination the people entrusted to his care.”

Bracton also stresses the requirement of participation in the formulation of laws:

“The king should not propose or enact laws rashly by his own will or whim; the law should be properly decided with the counsel of his peers, the king giving it formal authority only after full joint deliberation and consultation.”

Bracton thus set out the three major ideals of constitutional monarchy: that the king should himself be subject to and act within the law, that he should rule wisely and justly, and that he should rule in consultation with his peers.

The spirit of Magna Carta lived on and indeed thrived during the Middle Ages. In 1297 King Edward confirmed Magna Carta, declaring that the king’s courts shall incorporate its provisions into the common law. Four years later in 1301, again under Edward I, the Charter was elevated to the position of a fundamental statute.

In 1594 Sir Edward Coke was appointed Attorney General to Queen Elizabeth I. Tracing the medieval origins of common law, he collected ancient precedents that later filled the volumes appearing under the title ‘The Institutes of the Laws of England and the Reports of Sir Edward Coke Kt. in English in Thirteen Parts Compleat’.

A subsequent document, his Reports and Institutes were to become the basis of legal education in England and America throughout the 1700s. He was influential upon early judicial developments in America, having contributed to the Virginia Charter drawn up in 1606.

It was however, the concept of consultation which would occupy England during the 1600s. As the century opened the country was ruled by a monarch who still considered himself “absolute”.

The execution in 1649 of Charles I who held similarly absolutist views, was a dramatically symbolic turning point. His trial and sentencing were performed not by a rabble crowd but by a “special proceeding” of Parliament created and staged with suitable solemnity similar in present-day terms to the Impeachment Proceedings of a US President, thus representing a final denial of the Divine Right of autocratic monarchs and the assertion of parliamentary supremacy.

In 1689, following the turbulent years of the Republic, William and Mary ascended the throne, the monarchy now restored at the invitation of Parliament on Parliament’s own terms, and the battle for consultation was finally sealed with the Royal Assent to the Bill of Rights. As the new century dawned, Britain had become the Constitutional Monarchy it remains today.

But now a new constitutional challenge would appear: the challenge of subjecting not the king, but Parliament to constitutional discipline.

Subsequent political development would attempt to ensure that, while Parliament would remain and grow as the institution of legislation and of popular representation, the power of Parliament itself should not become absolute, and Parliament should be subject to the same rules of underlying constitutional precedent which had previously been formulated to discipline monarchs.

This was the background from which America’s Founding Fathers drew both fear and inspiration: fear of re-creating a new autocratic monarchy or presidency, and inspiration for the creation of a new kind of government, a government representing its people not dominating or oppressing them.

## 4. Constitution in the New World

When the thirteen British colonies in North America declared their independence in 1776, they laid down that governments are instituted among Men, deriving their just powers from the consent of the governed. In so doing they were consciously echoing the words of the Great Charter which King John had sealed 561 years before, wherein he had undertaken that no tax may be levied in our kingdom without its general consent.

However, while England had for centuries been intent on limiting the power of the absolute monarchy, American constitution-writers in 1787 now focused on limiting the power and potential danger of the new “absolute ruler” – Congress, and the power of federal government institutions generally.

This they sought to achieve not only through constitutional provisions and the Bill of Rights, but also through the celebrated “checks and balances” whereby two Houses, and the President as Executive, exercise discipline and restraint over one another. The judiciary was also placed to act as a restrictive force; indeed the US Supreme Court has traditionally seen itself as the ultimate discipline upon government power, and champion of the citizen against government excesses.

The supremacy of the Constitution over any and all branches of government was seen by America’s Founders as the essential assurance of orderly and disciplined government, a view clearly described by Mr Hugo LaFayette Black, Associate Justice of the US Supreme Court, 1937-1971.

“The form of government which was ordained and established in 1789 contains certain unique features which reflected the Framers’ fear of arbitrary government and which clearly indicate an intention absolutely to limit what Congress could do.

“The first of these features is that our Constitution is written in a single document. Such constitutions are familiar today and it is not always remembered that our country was the first to have one. Certainly one purpose of a written constitution is to define and therefore more specifically limit government powers. An all-powerful government that can act as it pleases wants no such constitution – unless to fool the people. England had no written constitution and this once proved a source of tyranny, as our ancestors well knew. Jefferson said about this departure from the English type of Government: Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction.

“A second unique feature of our Government is a Constitution supreme over the Legislature. In England, statutes, Magna Carta, and later declarations of rights had for centuries limited the power of the King, but they did not limit the power of parliament. Although commonly referred to as a constitution, they were never the supreme law of the land in the way in which our Constitution is, much to the regret of statesmen like Pitt the elder. Parliament could change this English Constitution; Congress cannot change ours. Ours can only be changed by amendments ratified by three-fourths of the States.

“A third feature of our Government, expressly designed to limit its powers, was the division of authority into three co-ordinate branches, none of which was to have supremacy over the others. This separation of powers with the checks and balances which each branch was given over the others was designed to prevent any branch, including the Legislative, from infringing individual liberties safeguarded by the Constitution.

“All of the unique features of our Constitution show an underlying purpose to create a new kind of limited government.”

[Completion of the Constitution was followed shortly after by James Madison’s proposed ten additions or Amendments, these first ten Amendments becoming collectively known as the Bill of Rights. Mr Justice Black continues:]

“Central to all of the Framers of the Bill of Rights was the idea that since Government, particularly the National Government newly created, is a powerful institution, its officials – all of them – must be compelled to exercise their powers within strictly defined boundaries. As Madison told Congress, the Bill of Rights’ limitations point sometimes against the abuse of the Executive power, sometimes against the Legislative, and in some cases against the community itself; or, in other words, against the majority in favor of the minority.

“Madison also explained that his proposed amendments were intended to limit and qualify the powers of Government, by excepting out of the grant of power those cases in which the Government ought not to act, or to act only in a particular mode.

“Mr. Madison made a clear explanation to Congress that it was the purpose of the First Amendment to grant greater protection than England afforded its citizens. He said: ‘Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, came in question in that body, invasion of them is resisted by able advocates, yet their Magna Carta does not contain any one provision for the security of those rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution’.

“It was the desire to give the people of America greater protection against the powerful Federal Government than the English had had against their government that caused the Framers to put these freedoms of expression, again in the words of Madison, beyond the reach of this Government.”

[“One Man’s Stand For Freedom” - Hugo LaFayette Black - 1963 Alfred A. Knopf, Inc.]

The American Constitution of 1787 was a practical document aimed at creating a machinery of government. Inherent in that machinery was protection against arbitrary authority in the division of power among the executive, legislative and judicial branches. The Constitution represented an experiment in government, and was necessarily written with little basis in practical experience. Still, in the minds of many of the delegates were principles of the British constitution, which Pinckney declared to be “the best constitution in existence.” Those principles would be evidenced more clearly in the subsequently enacted Bill of Rights, as well as Constitutions of individual States.

Most of the original founder-States of the USA had produced their own Constitutions, and when territories were granted statehood, they too felt the need to set forth the essential procedures, obligations and limitations controlling the function and laws of their governments. Right from her very birth, America would espouse the principles of constitutional supremacy and popular participation for which England had fought so hard and so long.

Constitutional tradition as it developed in Britain and spread later to America and much of the Commonwealth was indeed a slow and occasionally violent process. It is a thousand-year-old story, which may be said to begin in the year 1215 when the Great Charter sought to limit the powers of an absolute monarch. Yet despite the persistence of reformers and the progress made at the birth of the United States, the development of true constitutional security from autocratic rule is by no means complete today.

Indeed, when one compares the modern government, with its unlimited rights of taxation, its near-total lack of financial discipline, and the tenuous relationship between elected Members and their voters, one may reasonably wonder how far real and effective constitutional discipline over those wielding political power has progressed since the Great Charter of 1215.

The need for constitutional discipline over government today is every bit as great as was the need for constitutional discipline over the monarchy in 1215. Yet the issue remains unaddressed. It is therefore worth exploring the theory of constitutional government in more detail.



## 5. Constitutional Government

When in 1689 Britain's Autocratic Monarchy was finally replaced by Autocratic Parliament, Britons heaved a sigh of relief and have tried ever since to make the best of it. Americans busy founding a new nation a hundred years later looked with some suspicion on the potential power of Government in all its branches, then tried through a system of Constitutional checks and balances, reinforced by the Bill of Rights, to impose disciplines on the possible excesses of Government – insofar as they could anticipate them at the time.

In neither country today are citizens satisfied either with their Governments, or with the degree of Constitutional discipline to which their Governments are subject.

One of the most basic rules of Constitutional principle is that government should not be permitted to conduct its affairs in any way which would be unacceptable, or even illegal in the private citizen or business. That the law-makers, either monarch or government, should be subject to their own laws is one of the fundamental principles of Constitutionalism.

And yet if we apply this principle in the area of finance we can at once see the glaring disparity between the legally permissible conduct of private sector business and that of government. Government can go into debt on its current account, then simply continue to go ever deeper into debt without any hindrance whatsoever. Conduct which the law would never tolerate in private citizens or business is, apparently, quite acceptable in government. This is a sure sign of a lack of constitutional discipline.

Constitution or no Constitution, Government in Britain, Europe and in the United States, and indeed everywhere else in the world, remains as dictatorial as ever. In particular, governments still assume that strongest and most powerful of all rights over their citizens: the power to tax and to spend at will, with no qualification as to the quantity of tax taken, the uses to which it is applied, or the efficiency with which government operations are executed.

Whatever the overall direction and the detail of individual Government policies, there are certain basic disciplines which should apply to the conduct of any government and it is just such disciplines which are laid down in Constitutions. Secrecy, the purveyance of mis-information, lack of productivity and the almost total absence of financial discipline are features of present Governments which should be remedied, and can only be remedied through the strengthening of the Constitution both in its provisions and its status within the total apparatus of Government and Enforcement.

Before embarking on any task it is advisable to define its purpose. Only then will the work proceed in an orderly and purposeful manner, and only then can its completion be judged in terms of its pre-defined objective. What is the purpose of a constitution, and what is its role in the overall process of government?

Governments make laws which apply to the conduct of citizens. This comes, at least theoretically, with the explicit consent of the citizens, who have relinquished the right to settle differences between themselves by argument and force if necessary, in favour of handing the power both of decision and enforcement to government. The advantage is relative peace, as governments gradually assemble a body of generally acceptable law which citizens observe, having confidence that others too will observe the same laws.

And yet handing over the individual powers of many citizens into the hands of a relatively few members of government creates dangers of abuse which need to be foreseen and as far as possible precluded. Governments need to be told what is expected of them, what are the limitations upon the scope of their laws, and in what specific manner they should proceed, ensuring for example opportunity for debate, as well as checks and balances between various government branches or departments. Herein lies the purpose of Constitution. While governments make laws applicable to citizens, constitutions set the frame and regulations applicable to government.

## 6. The Supreme Law of the Land

Since it sets the rules for government, the Constitution must by its nature and definition stand above the total governmental process as the Supreme Authority in the land. However this ideal is rarely reflected in practice.

Britain's assemblage of historical documents and unwritten custom loosely known as its "constitution" exercises little practical control over the process and content of law and is quoted more often in academic debate than in the practical operation of government.

In the United States, Congress makes the laws which the President as Executive signs into formal legislation. The President may send a law back on procedural or personal ideological grounds, but there is no requirement for the President to check laws in order to ensure that they comply with the Constitution before they are formally promulgated.

Nor does the US Supreme Court verify laws prior to execution. Consequently 'bad' or unconstitutional laws can be and are freely let loose on the community, for as its name implies, the Supreme Court is a Court of Appeal at the head of the judicial system, and will only review the constitutionality of a particular law as a last resort after it has been challenged by enterprising and persistent citizens through the lower courts.

If the Constitution is to take its place as the Supreme Law of the Land, then it must stand, not at the apex of the judicial system, but at the apex of the legislative process, given voice and substance as a Constitutional Executive similar in composition and stature to the US Supreme Court but charged with the verification of proposed legislation *prior* to its formal enactment.

This position of supremacy can be assured in a constitutional system by placing the Constitution at a critical point in the governmental process. There are two basic elements inherent in the process of governing. The first is decision, the second is force. Government decides what laws are necessary for the proper conduct of society, then sees that they are enforced. Decision, and Force. The process of governing depends on fulfilling these two functions individually, then uniting them so that they are mutually supportive.

This process of union is vital. There is no point in government's making laws if it cannot enforce them. Likewise there is no point in having police, judiciary, and correctional institutions if they are given no orders, no laws to enforce.

The process of government thus involves two elements: making laws, and enforcing them. And since neither of these two elements works without the other, they must have continuing contact.

Constitution can exert its Supreme Power in a constitutional system by placing itself above and between the two processes of law-making and law-enforcement, thus controlling that vital link without which each process is in itself ineffective.

A truly Constitutional system of government can only be achieved through the separation of decision – Law – and Enforcement, the two being connected so that each can empower the other only through the Constitution, and only on condition that both comply with Constitutional requirements.

We can thus visualize a theoretical Constitutional System of government as three points of a triangle.

At the apex of the triangle we have the Constitution.

At lower left, we have the Legislative Process – proposal, debate, and formulation of laws;

at lower right the Enforcement Agencies – police, judiciary, correction.

Legislation, at “bottom left”, is formulated according to the constitutionally appointed processes, but as yet has no “force of law”. In the form of a *proposal*, each newly formulated law is then passed up the left side of the triangle to the Constitution, where it is verified to ensure that its content and the procedures of its formulation are fully in accordance with the provisions of the Constitution.

If it passes this test, the legislative proposal is then given “force of law” and is passed down the right side of the triangle to the Enforcement Agencies. But once again there is Constitutional Verification. For the Enforcement Agencies must also be subject to constitutional provisions and thus continuously monitored to ensure that they so comply. If they do not, they will not be empowered to enforce laws until such time as they do comply.

The two points at the base of the triangle, representing the Legislature on the left, and the Enforcement Agencies on the right, are *not directly joined*. This is the very essence of Constitutional Government. Decision and Force are allowed no direct contact; legislative proposals cannot be passed directly to Enforcement. Only by moving upwards and passing successfully through the process of Constitutional Verification can legislative proposals gain the formal force of law. And similarly, only through continuous compliance with the constitutional provisions can the Enforcement Agencies qualify to receive legislative instructions.

Decision and Force. Each powerless without the other. Each empowered, and the two joined, *only by and through* the constitution, only on condition that each and both fulfill the provisions of the Constitution.

A further issue of Constitution relates to the process of constitutional amendment. The United States Supreme Court rules on points of constitutional interpretation. But America’s Founding Fathers left no suitable provision for amendment of the Constitution. Since the purpose of constitution is to discipline the Legislature, it is clearly not appropriate to ask the Legislature, albeit the Upper House, to amend it. Only a body of similar stature to the Supreme Court should be entrusted to fulfill this function.

With the passage of time new perceptions or conditions will make it necessary for existing Constitutional Articles to be reconsidered, or new ones to be added. Without adequate provision for amendment, inconsistencies are bound to develop as the customs and expectations of civilization change.

The right of every American to bear arms was conceived in a context of 18th century Peoples’ Militias which today we barely comprehend; the current exercise of this constitutional “right” has put over 200 million guns in private ownership, one for every adult American, and the youngsters are catching up fast.

The results, in terms of crime and violence, could not have been foreseen by the Founding Fathers, and would hardly be approved by them. This constitutional right is now a serious threat to public safety, yet it cannot be withdrawn or even seriously limited owing to the “democratic” gridlock of conflicting pressure groups.

An example of a current need for new constitutional discipline over government conduct can be seen in the present absence of fiscal constraints, without which government can and does plunge itself and the nation into apparently limitless debt.

All that is needed is that government be required to conduct its finances according to the same rules of fiscal propriety which the law presently and rightly demands of private citizens and corporations. But, as with all disciplines applicable to government, this can only be applied through provision in the Constitution.

If the Constitutional Executive Council is to be responsible for the verification of all Legislation in terms of content and procedure of formulation, as well as for the honesty and legality in all aspects of Enforcement conduct, it may reasonably be suggested that the Constitutional Executive Council is the most important body in the process of Government.

The membership of the Constitutional Executive Council is defined by its purpose: it must consist of persons having intellectual stability, legal training and a thorough understanding of the status and provisions of the Constitution which it is their duty to uphold.

Though the Constitutional Executive would naturally be drawn mainly from the country in which it serves, a case can be made for inviting some suitable candidates from other countries having broadly the same constitutional, legal and linguistic traditions. In this way the Constitutional Executive Council would reflect a broader, more objective view, and international cooperation would be encouraged.

Finally, inevitably, we come to the question of how a Constitutional Executive, with its Supreme Powers over government, is to be created and supported. Self-discipline is not a natural human characteristic.

In the legendary British 50s comedy series following the exploits of St Trinian's School for Ladies, sex, smoking, drinking and especially gambling aren't on the official curriculum, but they're not exactly frowned upon either. In fact understanding the odds on horses teaches the girls plenty about economics.

Clearly, St Trinian's is in need of discipline. But would this ever be achieved by asking the Sixth Form girls to write and enforce a new School Rule Book? Probably not. And in the same way, we can hardly expect government to discipline itself. Even Constitutions have been, and are, widely ignored by governments.

The moral may be that only popular pressure can assure the elusive Citizens' Liberties.

It is interesting to note that the Magna Carta, the Great Charter of 1215, was not only the world's first major constitution, it was also a rare example of a *consumer-driven* constitution. The Magna Carta was drawn up by the clergy and barons as the king's subjects and in their capacity as "consumers" of the law. The Clauses of Magna Carta told the king exactly what he might and might not do, and certain procedures he was to follow, its major purpose being to protect the people's liberties.

By contrast, the United States constitution was not drawn up by "the people" but was the product of a power-sharing contest between the States and the proponents of a strong central, federal government. Though the powers of the different branches of government were specifically limited through the celebrated 'checks and balances' between different and equal branches, it was Madison's Amendments, the Bill of Rights, which asserted some basic rights of citizens relative to government – an essential, if not *the most* essential element of a constitution.

In the European Union, a New Constitution for Europe was formulated, only to be rejected by voters already distrustful of institutions and bureaucracies which threatened their national identity through territorial expansion. The present version, a document of 70,000 words and impenetrable language which the vast majority of the European public has not read, was subsequently passed by stealth. So much for democracy. Take a metro trip round the periphery of Strasbourg, the EU Capital, to witness the huge, new sparkling glass buildings of the EU Administration. Kings and Palaces? Nothing much changes.

The fact is: governments around the world are becoming ever more expensive, indebted, secretive and dictatorial. If we are not to drift slowly and surely, ever deeper into debt and dictatorship, the issues of Constitution, its Provisions, its Supreme Status in the process of governance, and the provision for periodic and necessary Amendment must be given urgent and serious consideration.

*The importance of Constitution, both in its content and its status, is little appreciated by the general public. "We the people" must never forget the basic fact that we have, as a price of social development and stability, either delegated, or devolved by default, a substantial area of control over our lives to our governments. And we should bear constantly in mind that there is no form of government yet devised, or yet devisable, which can be trusted to function successfully and honestly without the discipline of clear constitutional rules laying down the essential principles to which government can be held accountable.*

## *Whereas*

The People may from time to time fall prey to the Sins of Greed, Envy and Aggression thus with the employment of Force and Nefarious Devices causing Injury, Distress and Want among their Fellow-men,

## *Therefore*

The People, being prompted by Conscience, a Modicum of Wisdom and the Voice of the Good Lord agree to accept and submit to such Laws as shall curb their Manifold Transgressions one against another, thus promoting Justice, Peace and Prosperity throughout the Land.

## *Establishing*

to this End a Government charged with the Duty and Responsibility of Formulating, Promulgating and Enforcing such Laws as shall ensure, inter alia:

- That persons do no physical, mental or psychological harm or injury one to another;
- That use of Natural Resources should respect the Earth's potentialities, should balance the needs and legitimate expectations of Individuals with those of the Collectivity, and should observe the laws of Good Husbandry and Planetary Stewardship;
- That trade between Worker and Master, Buyer and Seller should be based on Equality of Value, labour for labour, skill for skill, that goods and services offered in trade should reflect the highest standards of materials and labour, being accurately and honestly represented.

## *And lest*

Government Neglect, or Abuse the Powers thus granted to it, Government shall at all times be subject to an over-riding Code of Conduct:

- *Obligating* Government to provide such Laws as shall be necessary to protect the People from Injury, Theft, Injustice, Diverse Deceits and Skulduggery;
- *Prohibiting* Government from enacting any Law which does not explicitly prevent a clearly identifiable injury of one person or party by another, lest Government may of itself cause Oppression among the People;
- *Regulating* the Process of Governance so as to ensure Openness, Participation, Honesty, Competence, and the General Satisfaction, conducted within a strict Economy of Means.