Writing the constitution: An open letter to Sir Gus O'Donnell

Stuart Wilks-Heeg [1] 4 February 2010

In his speech on Tuesday, the Prime Minister announced that he had asked the Cabinet Secretary, Sir Gus O'Donnell, to “consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single written document”, clearly ignorant of the fact such a document already exists. Here, Stuart Wilks-Heeg, of Democratic Audit, points Sir Gus in the right direction.

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Open Letter to Sir Gus O’Donnell

3 February 2010

Dear Sir Gus,

A Written Constitution

When Tony Blair appointed you as Cabinet Secretary shortly after the 2005 General Election, the possibility that you might be asked to produce a written constitution was unlikely to have crossed your mind. At that time, no Prime Minister, from Mr Walpole to Mr Blair, had even hinted at the possibility of codifying our constitutional arrangements. Past Prime Ministers didn’t even feel the need to comment on the matter.

The one instance which springs to mind is Mrs Thatcher’s riposte to Charter 88 that we already had a perfectly acceptable written document, in the shape of the Magna Carta of 1215. To everyone else, the proponents of a written constitution could easily be derided as a tiny circle of Charter 88ers within Hampstead’s chattering classes. As the Leader of her Majesty’s opposition, Neil Kinnock offered a more straightforward Anglo-Saxon interpretation, describing them as 'whingers, whiners and w**kers' [2].

So Prime Minister Brown’s announcement yesterday, that he would like to see a written constitution in place for the 800th anniversary of the signing of the Magna Carta, came as a surprise to constitutional reformers from Hampstead to Hamilton.

You would have been more aware than most of Gordon Brown’s longstanding interest in constitutional reform, of which he reminded us yesterday. Mr Brown had already alerted us to his desire to see a written constitution while still Chancellor back in January 2006 [3] and he reminded us again in 2007 shortly after becoming Prime Minister [4]. Even the Justice Secretary, Mr Straw, pitched in to support codification, though he concluded in 2008 that it would take 10-20 years to achieve [5].

There may be good reason for the sudden urgency. In the wake of the MPs’ expenses scandal, the case for a written constitution has been made more widely than ever before, with previous sceptics
being rapidly converted to the idea. As I write, the proposal to have a written constitution ranks third in Power2010’s on-line vote for reforms the public would like candidates at the General Election to undertake. With over 2300 votes so far, it ranks above ideas such as ‘votes at 16’, ‘the right to recall MPs’ or ‘including “none of the above” on ballot papers’. Mr Brown, a keen advocate of the Internet as a means of empowering citizens - as he also reminded us yesterday - has surely noted the evidence of public support for the idea.

I am sure Mr Brown will have taken the time to explain his ideas to you in more detail. But what he has in mind is not entirely clear from his speech. He has asked that you lead a consultation on whether it is possible ‘to consolidate the existing unwritten, piecemeal conventions that govern much of the way central government operates under our existing constitution into a single document’. The emphasis on the ‘unwritten, piecemeal conventions’ is intriguing.

Some, including Mr Straw, have made the case for bringing together all the existing written constitutional documents, including the Magna Carta (1215), The Act of Union (1707), The Parliament Acts (1911 and 1949), The European Communities Act (1972), The Human Rights Act (1998) and many others. Another view, which I share, is that we need a written constitution which draws on both existing written sources and unwritten conventions. I don’t think I have ever heard the case for a written constitution which restricts itself to codifying only those elements which are not already written down in treaty or statute.

Then there is the compression of the time-frame for completing the task, from Mr Straw’s 10-20 years to Mr Brown’s five. As you begin work, you will learn that there is not much to go on. Others have attempted to produce a written constitution for the UK before, but they have tended to produce documents which would radically alter our existing arrangements. Tony Benn’s Commonwealth of Britain Bill (1991) would abolish the Monarchy and see us become a republic. The IPPR’s ’Constitution of the United Kingdom’ (1991) proposed the Alternative Member System for general elections – similar to the Lord Jenkins’ Alternative Vote Plus scheme, rejected by Labour a decade ago.

There has been one attempt to capture our existing constitutional arrangements in a clear, concise and unambiguous text. It was published by Democratic Audit, in association with Unlock Democracy and OurKingdom, last October. We tried to stick as closely as possible to cataloguing how the political system works at the moment, whether those rules and practices are enshrined in law or based on historic conventions. Beginning with the phrase ‘We, the elite’, the constitution describes itself as, ‘a collection of laws, fictions, powers left over from the old monarchy and powers that we make up as we go along. It allows us to decide what governments can do; and best of all, only we have the power to change it’.

We called it ‘The Unspoken Constitution’, though some thought it might better have been called ‘The Unspeakable Constitution’. You can download it from the Democratic Audit website. You may be interested to know that we also opened our text up to consultation. There is a wiki version of the text, which offers anyone the chance to comment on, improve or amend the original. You can find that here.

I hope you’ll find this to be of some help. I very much look forward to seeing a draft of the new constitution when it is ready.

Yours sincerely

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Topics: Democracy and government

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