

WHAT GOOD'S A CONSTITUTION? WINSTON CHURCHILL (1874–1965)

Written soon after Franklin Roosevelt's Democratic Convention Address of 1936, this article by British statesman Winston Churchill points to the wide gulf between Churchill's and Roosevelt's economic views, even if five years later they would forge a close wartime alliance. Beyond their differences on economics, Churchill sees the American Constitution as an enduring source of strength for the American republic, not an obstacle to be overcome.

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No one can think clearly or sensibly about this vast and burning topic without in the first instance making up his mind upon the fundamental issue. Does he value the State above the citizen, or the citizen above the State? Does a government exist for the individual, or do individuals exist for the government? One must recognize that the world today is deeply divided upon this. Some of the most powerful nations and races have definitely chosen to subordinate the citizen or subject to the life of the State. In Russia, Germany and Italy we have this sombre, tremendous decision, expressed in varying forms. All nations agree that in time of war, where the life and independence of the country are at stake, every man and woman must be ready to work and, if need be, die in defense of these supreme objects; and that the government must be empowered to call upon them to any extent.

But what we are now considering is the existence of this principle in times of peace and its erection into a permanent system to which the life of great communities must be made to conform. The argument is used that economic crises are only another form of war, and as they are always with us, or can always be alleged to be with us, it is claimed that we must live our lives in a perpetual state of war, only without actual shooting, bayoneting or cannonading.

This is, of course, the Socialist view. As long as Socialists present themselves in an international guise as creators of a new world order, like the beehive or the

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ant heap, with a new human heart to fit these novel conceptions, they could easily be beaten, and have been very effectively beaten both by argument and by nature. But when new forms of socialism arose which were grafted not upon world ideals but upon the strongest forms of nationalism, their success
5 was remarkable.

In Germany, for instance, the alliance between national patriotism, tradition and pride on the one hand, and discontent about the inequalities of wealth on the other, made the Weimar Constitution 'a scrap of paper'. Either of these two fierce, turbulent torrents separately might have been kept within bounds.
10 Joined together in a fierce confluence, they proved irresistible.

Once the rulers of a country can create a war atmosphere in time of peace, can allege that the State is in danger and appeal to all the noblest national instincts, as well as all the basest, it is only in very solidly established countries that the rights of the citizens can be preserved. In Germany these rights vanished almost
15 overnight. Today no one may criticize the dictatorship, either in speech or writing. Voters still go to the polls—in fact, are herded to the polls like sheep—but the method of election has become a fantastic travesty of popular government. A German can vote for the régime, but not against it. If he attempts to indicate disapproval, his ballot paper is reckoned as 'spoiled'.

The tyranny of the ruling junta extends into every department of life. Friends may not greet each other without invoking the name of Hitler. At least on certain days, the very meals that a family eats in the privacy of its home are regulated by decree. The shadow of an all-powerful State falls between parent and child, husband and wife. Love itself is fettered and confined. No marriage, no love
25 relation of any kind is permitted which offends against a narrow and arbitrary code based upon virulent race prejudice.

Nor is this all. Even in the sphere of religion the State must intervene. It comes between the priest and his penitent, between the worshipper and the God to whom he prays. And this last, by one of the curious ironies of history, in the
30 land of Luther.

To rivet this intolerable yoke upon the necks of the German people all the resources of propaganda have been utilized to magnify the sense of crisis and to exhibit sometimes France, sometimes Poland, sometimes Lithuania, always the Soviets and the Jews, as antagonists at whom the patriotic Teuton must
35 grind his teeth.

Much the same thing has happened in Russia. The powerful aid of national sentiment and imperialist aspirations has been invoked to buttress a decaying Communism.

In the United States, also, economic crisis has led to an extension of the activities of the Executive and to the pillorying, by irresponsible agitators, of certain groups and sections of the population as enemies of the rest. There have been efforts to exalt the power of the central government and to limit the rights of individuals. It has been sought to mobilize behind this reversal of the American tradition, at once the selfishness of the pensioners, or would-be pensioners, of Washington, and the patriotism of all who wish to see their country prosperous once more. 5

It is when passions and cupidities are thus unleashed and, at the same time, the sense of public duty rides high in the hearts of all men and women of good will that the handcuffs can be slipped upon the citizens and they can be brought into entire subjugation to the executive government. Then they are led to believe that, if they will only yield themselves, body, mind and soul, to the State, and obey unquestioningly its injunctions, some dazzling future of riches and power will open to them, either—as in Italy—by the conquest of the territories of others, or—as in America—by a further liberation and exploitation of the national resources. 10 15

I take the opposite view. I hold that governments are meant to be, and must remain, the servants of the citizens; that states and federations only come into existence and can only be justified by preserving the 'life, liberty and the pursuit of happiness' in the homes and families of individuals. The true right and power rest in the individual. He gives of his right and power to the State, expecting and requiring thereby in return to receive certain advantages and guarantees. I do not admit that an economic crisis can ever truly be compared with the kind of struggle for existence by races constantly under primordial conditions. I do not think that modern nations in time of peace ought to regard themselves as if they were the inhabitants of besieged cities, liable to be put to the sword or led into slavery if they cannot make good their defense. 20 25

One of the greatest reasons for avoiding war is that it is destructive to liberty. But we must not be led into adopting for ourselves the evils of war in time of peace upon any pretext whatever. The word 'civilization' means not only peace by the non-regimentation of the people such as is required in war. Civilization means that officials and authorities, whether uniformed or not, whether armed or not, are made to realize that they are servants and not masters. 30

Socialism or overweening State life, whether in peace or war, is only sharing miseries and not blessings. Every self-respecting citizen in every country must be on his guard lest the rulers demand of him in time of peace sacrifices only tolerable in a period of war for national self-preservation. 35

I judge the civilization of any community by simple tests. What is the degree of freedom possessed by the citizen or subject? Can he think, speak and act freely under well-established, well-known laws? Can he criticize the executive government? Can he sue the State if it has infringed his rights? Are there also
5 great processes for changing the law to meet new conditions?

Judging by these standards, Great Britain and the United States can claim to be in the forefront of civilized communities. But we owe this only in part to the good sense and watchfulness of our citizens. In both our countries the character of the judiciary is a vital factor in the maintenance of the rights and liberties
10 of the individual citizen.

Our judges extend impartially to all men protection, not only against wrongs committed by private persons, but also against the arbitrary acts of public authority. The independence of the courts is, to all of us, the guarantee of freedom and the equal rule of law.

15 It must, therefore, be the first concern of the citizens of a free country to preserve and maintain the independence of the courts of justice, however inconvenient that independence may be, on occasion, to the government of the day.

But all this implies peace conditions, an atmosphere of civilization rather than militarization or officialization. It implies a balance and equipoise of society
20 which can be altered only gradually. It is so hard to build the structure of a vast economic community, and so easy to upset it and throw it into confusion. The onus must lie always upon those who propose a change, and the process of change is hardly ever beneficial unless it considers what is due to the past as well as what is claimed for the future.

25 It is for these reasons among many others that the founders of the American Republic in their Declaration of Independence inculcate as a duty binding upon all worthy sons of America 'a frequent recurrence to first principles'. Do not let us too readily brush aside the grand, simple affirmations of the past. All wisdom is not new wisdom. Let us never forget that the glory of the nineteenth
30 century was founded upon what seemed to be the successful putting down of those twin curses, anarchy and tyranny.

The question we are discussing is whether a fixed constitution is a bulwark or a fetter. From what I have written it is plain that I incline to the side of those
35 who would regard it as a bulwark, and that I rank the citizen higher than the State, and regard the State as useful only in so far as it preserves his inherent rights. All forms of tyranny are odious. It makes very little difference to the citizen, father of a family, head of a household, whether tyranny comes from a

royal or imperial despot, or from a Pope or Inquisitor, or from a military caste, or from an aristocratic or plutocratic oligarchy, or from a ring of employers, or a trade union, or a party caucus—or worst of all, from a terrified and infuriated mob. ‘A man’s a man for a’ that.’ The whole point is, whether he can make head 5
against oppression in any of its Protean shapes, and defend the island of his home, his life and soul. And here is the point at which we may consider and contrast the constitutions of our respective countries.

It is very difficult for us in England to realize the kind of deadlock which has been reached in the United States. Imagine, for instance, the gigantic India Bill, passed through Parliament and for two or three years in active operation throughout 10
the whole of India, suddenly being declared illegal by the law lords sitting as a tribunal. Imagine—to take an instance nearer home—some gigantic measure of insurance as big as our widows’ pensions, health and employment insurance rolled together, which had deeply interwoven itself in the whole life of the people, upon which every kind of contract and business arrangement had been based, 15
being declared to have no validity by a court of law. We simply cannot conceive it. Yet something very like that has occurred on your side of the Atlantic.

In our country an act of Parliament which, upon the advice of the ministers responsible for it, has received the royal assent is the law of the land. Its authority cannot be questioned by any court. There is no limit to the powers of Crown 20
and Parliament. Even the gravest changes in our Constitution can in theory be carried out by simple majority votes in both Houses and the consequential assent of the Crown.

But we now watch the workings of a written Constitution enforced by a Supreme Court according to the letter of the law, under which anyone may bring a test 25
case challenging not merely the interpretation of a law, but the law itself, and if the Court decides for the appellant, be he only an owner of a few chickens, the whole action of the Legislature and the Executive becomes to that extent null and void. We know that to modify the Constitution even in the smallest particular requires a two-thirds majority of the sovereign states forming the 30
American Union. And this has been achieved, after prodigious struggles, on only a score of occasions during the whole history of the United States.

American citizens or jurists in their turn, gaze with wonder at our great British democracy expressing itself with plenary powers through a Government and Parliament controlled only by the fluctuating currents of public opinion. Brit- 35
ish Governments live from day to day only upon the approval of the House of Commons. There is no divorce between the Executive and the Legislature. The ministers, new or old, must be chosen from men and parties which in the

aggregate will command a majority in the House of Commons. Parliament can, if it chooses, even prolong its own life beyond the statutory limit. Ministers may at any time advise the King to a sudden dissolution. Yet all classes and all parties have a deep, underlying conviction that these vast, flexible powers will not be abused, that the spirit of our unwritten Constitution will be respected at every stage.

To understand how this faith is justified, how the British people are able to enjoy a real stability of government without a written Constitution, it is necessary to consider the beginning of party politics in Britain. Whigs and Tories were almost equally concerned to assert the authority of Parliament as a check upon the Executive. With the Whigs this was a matter of fundamental principle; with the Tories it was a question of expediency. James II was a Catholic and his efforts to further the cause of his co-religionists alienated the great bulk of the Tory party, who were loyal to the Church of England. Then from the advent of William of Orange to the accession of George III, with a brief interval in the reign of Queen Anne, the Crown could do nothing without the Whigs and the government of the country was predominantly or exclusively in the hands of that party.

The Tories were thus vitally interested in preserving and extending the rights of the parliamentary opposition. In this way a jealous care for constitutional rights came to mark both the great parties of the State. And as to all men the Constitution represented security and freedom, none would consent willingly to any breach of it, even to gain a temporary advantage.

Modern times offer respect for law and constitutional usage. Nothing contributed so much to the collapse of the general strike ten years ago as the declaration by great lawyers that it was illegal. And the right of freedom of speech and publication is extended, under the Constitution, to those who in theory seek to overthrow established institutions by force of arms so long as they do not commit any illegal act.

Another factor making for stability is our permanent civil service. Governments come and go; parliamentary majorities fluctuate; but the civil servants remain. To new and inexperienced ministers they are 'guides, philosophers and friends'. Themselves untouched by the vicissitudes of party fortunes, they impart to the business of administration a real continuity.

On the whole, too, popular opinion acts as a guardian of the unwritten Constitution. Public chastisement would speedily overtake any minister, however powerful, who fell below the accepted standards of fair play or who descended to trickwork or dodgery.

When one considers the immense size of the United States and the extraordinary contrasts of climate and character which differentiate the forty-eight sovereign states of the American Union, as well as the inevitable conflict of interests between North and South and between East and West, it would seem that the participants of so vast a federation have the right to effectual guarantees upon the fundamental laws, and that these should not be easily changed to suit a particular emergency or fraction of the country. 5

The founders of the Union, although its corpus was then so much smaller, realized this with profound conviction. They did not think it possible to entrust legislation for so diverse a community and enormous an area to a simple majority. They were as well acquainted with the follies and intolerance of parliaments as with the oppression of princes. 'To control the powers and conduct of the legislature,' said a leading member of the Convention of 1787, 'by an overruling constitution was an improvement in the science and practice of government reserved to the American States.' 10 15

All the great names of American history can be invoked behind this principle. Why should it be considered obsolete? If today we are framing that constitution for a 'United States of Europe' for which so many thinkers on this side of the ocean aspire, fixed and almost unalterable guarantees would be required by the acceding nations. 20

It may well be that this very quality of rigidity, which is today thought to be so galling, has been a prime factor in founding the greatness of the United States. In the shelter of the Constitution nature has been conquered, a mighty continent has been brought under the sway of man, and an economic entity established, unrivalled in the whole history of the globe. 25

In this small island of Britain we make laws for ourselves. But if we had again attempted to apply this flexibility and freedom to the British Empire, and to frame an Imperial Constitution to make laws for the whole body, it would have been broken to pieces. Although we have a free, flexible Constitution at the centre and for the centre of the Empire, nothing is more rigid than the established practice—namely, that we claim no powers to interfere with the affairs of its self-governing component parts. No supreme court is needed to enforce this rule. We have learned the lessons of the past too well. 30

And here we must note a dangerous misuse of terminology. 'Taking the rigidity out of the American Constitution' means, and is intended to mean, new gigantic accessions of power to the dominating centre of government and giving it the means to make new fundamental laws enforceable upon all American citizens. 35

Such a departure in the British Empire by a chance parliamentary majority or even by aggregate Dominion parliamentary majorities, would shatter it to bits. The so-called ‘rigidity’ of the American Constitution is in fact the guarantee of freedom to its widespread component parts. That a set of persons, however
5 eminent, carried into office upon some populist heave should have the power to make the will of a bare majority effective over the whole of the United States might cause disasters upon the greatest scale from which recovery would not be swift or easy.

I was reading the other day a recent American novel by Sinclair Lewis—*It Can’t*
10 *Happen Here*. Such books render a public service to the English-speaking world. When we see what has happened in Germany, Italy and Russia we cannot neglect their warning. This is an age in which the citizen requires more, and not less, legal protection in the exercise of his rights and liberties.

That is doubtless why, after all the complaints against the rigidity of the United
15 States Constitution and the threats of a presidential election on this issue, none of the suggested constitutional amendments has so far been adopted by the Administration. This may explain why the ‘Nine Old Men’ of the Supreme Court have not been more seriously challenged. But the challenge may come at a later date, though it would perhaps be wiser to dissociate it from any ques-
20 tion of the age of the judges, lest it be the liberal element in the court which is weakened.

Now, at the end of these reflections, I must strike a minor and different note. The rigidity of the Constitution of the United States is the shield of the common
25 man. But that rigidity ought not to be interpreted by pedants. In England we continually give new interpretation to the archaic language of our fundamental institutions, and this is no new thing in the United States. The judiciary have obligations which go beyond expounding the mere letter of the law. The Con-
stitution must be made to work.

A true interpretation, however, of the British or the American Constitution is
30 certainly not a chop-logic or pedantic interpretation. So august a body as the Supreme Court in dealing with law must also deal with the life of the United States, and words, however solemn, are only true when they preserve their vital relationship to facts. It would certainly be a great disaster, not only to the American Republic but to the whole world, if a violent collision should take place
35 between the large majority of the American people and the great instrument of government which has so long presided over their expanding fortunes.