Thoughts on the Present Constitutional Crisis in the United Kingdom

I have put together a number of thoughts in relation to the present constitutional crisis, which seems to be deepening with every passing day, and which will surely have consequences of a far-reaching and perhaps devastating character, although none of us can predict with any certainty what these consequences might be.

The immediate impulse which caused me to write down these thoughts was the recent appeal heard in the Supreme Court, in which eleven senior judges unanimously ruled that the Prime Minister's advice to Her Majesty to prorogue Parliament, between 9 September and 14 October, was unlawful. I do not write as any kind of constitutional or legal expert, although ever since the 2016 Referendum I, no doubt like many others, have had my interest in such matters keenly awakened. I make these observations as a lifelong and avid reader of British history and, above and beyond that, as a Christian who holds to the authority and trustworthiness of the Bible. It is out of a desire to understand the present crisis in the light of our history, and in the light of the Word of God, that I write as I do here.

1. The Physiology of the British Constitution

The British Constitution has developed organically over many centuries, and though no national constitution could ever be described as "perfect" – we all live in a fallen, flawed world and every human system of government or organisation partakes of this flawed character – the testimony of history is that our Constitution has been essentially healthy. This organic advancement resembles the development of an unborn child in the womb and the subsequent growth following birth: the essential blueprint and character of the Constitution can be traced back into the distant past, in some senses before Magna Carta (1215) or even the Norman Conquest (1066). But over the succeeding centuries that Constitution has become more mature and sophisticated as the nation has grown, as various challenges have been faced, and as the national character has been shaped – shaped in particular by the teachings of the Bible.

In speaking of "the nation" I am, of course, well aware that the United Kingdom presently consists of four countries – England, Scotland, Wales and Northern Ireland. I have no desire to inflame nationalist passions within any of these four countries. The United Kingdom remains a unitary state, not a federal state (like the United States or Germany), nor a confederacy (like Switzerland). It has, historically, been a profoundly settled and prosperous unitary state, and may that long continue.

In speaking of the British Constitution as an organism, we should first observe that the soundness of any organism is preserved by dynamic and functional communication between its component parts. In a human body, for example, the brain, heart and lungs all need to work according to plan, and in symbiotic unity, for the whole body to be alive and well. This of course is a considerable over-simplification, but it illustrates the point adequately.

In our Constitution there are various branches which need to co-function in an analogous way. These comprise (1) the executive (Her Majesty's Government which consists of the Prime Minister and his Cabinet), (2) the legislature (Parliament), (3) the judiciary (the law courts) – and (4) the people. Most constitutional experts would not include the people as a "branch" in the same sense as the other three, but in the present situation the importance of the people can scarcely be overlooked. More to the point, in relation to the first three branches in particular, or the three "organs of state", there is not the tight separation between them that there is in other constitutions, most notably the United States; rather there has been, and is, a set of complex but orderly relationships which have developed over time and which determine their mutual interaction.

The carefully balanced character of the British Constitution can be illustrated by the way in which the principle of *sovereignty* can rightly, though variously, be attributed to each of these branches. (1) The Monarch, in whose name the Government carries out executive powers, is designated the "Sovereign". But (2) the sovereignty of Parliament is a principle which all constitutional experts continue to emphasise, and

in the present circumstances this principle is being strenuously underlined. At the same time, (3) elected Members of Parliament are understood to be representatives of the people, who are themselves "sovereign" in the sense that they empower Parliament to act on their behalf. And (4) although the vocabulary of "sovereignty" is less often applied to the law courts, the "rule of law" is a phrase with a long and noble history in Britain. In addition, the vocabulary of monarchy permeates all matters juridical: senior lawyers are ennobled with the title "Queen's Counsel" and even prisoners still serve "at Her Majesty's pleasure".

This fourfold form of sovereignty, in and of itself, does not promote a mutual contradiction. On the contrary, it is an exhibition of the finely balanced nature of a mature, robust and (for the most part) well-functioning Constitution. There is no inherent competition between the four branches; the sovereignty of each of them is, instead, the sovereignty of the whole body politic as viewed from four different angles, or aspects. But the sound functioning of that whole body politic depends on their mutual relationships being rightly understood and observed. When tensions between any of them reach a certain critical level, the possibility of trauma or even fissure is increased.

The same principle holds true when we look at each of these branches individually. For example, when we consider Parliament, it becomes clear that there are sub-components which need to observe mutually-orderly and finely-tuned relationships. There are the House of Lords, the House of Commons, the Speakers of both Houses, the Parliamentary Committees and indeed the entire machinery of the Civil Service. Additionally, there are various kinds of overlap between the organs of state, and within them, which need not of themselves result in conflicts of interest. For example, the executive (the Prime Minister and the Government) themselves belong to the legislature (Parliament).

It quickly becomes clear, in summary, that when we consider the whole question of "government" in Britain, we are looking at a hugely complex and intricate system, but one which has – the odd rupture or two notwithstanding, especially in the years 1642-60 – continued with a remarkable lack of disturbance.

It becomes equally clear that we are witnessing a similar kind of rupture at the present time. The seizure of Parliamentary business by the opposition parties, the acquiescence (or active encouragement) of the Speaker of the House in allowing this seizure, the withdrawal of the whip from 21 MPs on the Government benches, the forcing of the Prime Minister's hand to request from Brussels a further extension to Article 50, and the recent judicial process in relation to prorogation, are all signally symptomatic of a kind of "toxic shock" which is convulsing the entire body politic.

2. The Present Crisis and its Causes

What is the cause of this crisis? It would be very easy simply to say "Brexit", or more precisely, "the 2016 Referendum and its aftermath". We can examine the fairness of this response briefly. It is quite reasonable to suggest that the present crisis has been prolonged and intensified by the inability and/or unwillingness of elected Members of Parliament to honour the result of the Referendum, despite the fact that the vast majority of them belonged to political parties which stated in their manifestos that the result *would* be honoured. It is also reasonable to suggest that the 2017 General Election, ostensibly called in order to strengthen Theresa May's hand in securing a strong Brexit deal, had the opposite effect of significantly weakening her position, not only in negotiations with Brussels but in gaining the support of the House of Commons. This was a weakness which Mrs May unavoidably bequeathed to her successor, and the recent turmoil in the Commons would never have taken place had the 2017 Election delivered a clear majority to any party.

But history teaches us that causation is a far more complicated and nuanced matter than one event or even a series of closely related events. It is not incorrect to say that the assassination of Archduke Franz Ferdinand in Sarajevo in 1914 was the "cause" of World War One. But in and of itself it is a desperately inadequate explanation. Somehow, we need to explain how it was that the murder, in Bosnia, of the Austrian heir to the throne, by a Serbian gunman, resulted just a few weeks later in British, French and German soldiers confronting each other a thousand miles to the north-west, across the Marne, and then

"digging in" for a further four terrible years. A satisfactory explanation of why World War One broke out must surely go back much further, to 1871, to 1848, to 1815. And even beyond.

So if we want to know why there is a present constitutional crisis in Britain, we need at the very least to ask what resulted in the Leave vote of 2016, and why the Referendum was called in the first place; indeed, why Britain found itself a member of the European Union to begin with. That necessitates an understanding of the history of the European Union itself – and very quickly we are into a vast and overwhelming array of subjects.

It was always likely to be the case that a phenomenon of the magnitude of Brexit would cause huge convulsions both nationally and internationally, and could never be solved on the proverbial back of an envelope. But like the two World Wars, the Brexit crisis – which may yet be a very long way indeed from anything that could be called resolution – has delivered an almighty jolt to the socio-political configuration of Britain. The fragility of the British Constitution, faced with such a severe jarring, was always likely to come loose at the seams.

Two other events of the last decade, largely unnoticed by the majority of British citizens, have further contributed to a situation in which a constitutional trauma might become more likely:

The first was the creation of the Supreme Court in 2009, which resulted in the growing separation and potential autonomy of the highest judicial authorities in the land: a move towards the American model. Prior to this, the ultimate right of appeal went to the Lords of Appeal in Ordinary, or Law Lords, who themselves sat in the House of Lords. This is another example of the overlap and delicate balance of power that previously existed between the organs of state, and which has now been ruptured.

The second was the passing of the Fixed-Term Parliaments Act (FTPA) in 2011, following the formation of the Coalition between the Conservatives and the Liberal Democrats. The political motivation behind the Act was to prevent the splintering of the Coalition and, it could reasonably be argued, it was a success insofar as the Coalition remained intact for five years. But the Act removed the previous prerogative power of the Prime Minister to ask Her Majesty to dissolve Parliament in order to call a "snap" General Election. An Election could only be called mid-term on two conditions: (1) if the Government lost a vote of confidence; (2) if two-thirds of MPs supported an Election. Under the present circumstances, which are so different to the circumstances which existed eight years ago, the FTPA exerts a stifling effect on the political process in Parliament.

3. The Ruling of the Supreme Court

The most substantial constitutional question at present relates to the recent case examined in the Supreme Court, concluded on 24 September. The fact that such a hearing took place – not merely the verdict which was passed – threatens to deliver a deathblow to age-old constitutional conventions.

The question under view was whether the Prime Minister asked Her Majesty to prorogue Parliament for a five-week period in the autumn of 2019 in order to stymie the House of Commons, to prevent them from passing scrutiny on the Government's policies in the period leading up to 31 October, the date on which the United Kingdom is (still, at the time of writing), by law, due to exit the European Union. Did the Prime Minister misappropriate the power of prorogation, in order to silence reasonable debate in the Commons?

The important question that needs to be answered here is whether the decision to prorogue is "justiciable" – that is, is it a question which the judiciary is qualified to evaluate and resolve? Can a court of law determine that the advice given to the Queen by her Prime Minister – because constitutionally it falls to the Sovereign to prorogue Parliament – was misleading? The fact that such a case is examined allows the possibility that the Prime Minister could be declared to be misleading the Sovereign and thus acting… dishonourably? Or perhaps "lying"? This kind of language can be shouted out on television and in the papers, even though it cannot be stated in Parliament. I will come back to this question later.

Now that the Supreme Court has indeed concluded that the Prime Minister acted unlawfully in advising Her Majesty to prorogue Parliament, a hugely significant challenge to constitutional convention has been upheld. The advice that passes between the Prime Minister and the Crown – and presumably it flows in both directions – will now be subject to the jurisdiction of the law courts. It becomes susceptible to the scrutiny of lawyers rather than being understood as a political judgment.

At this point it should be stated that lawyers, of course, are required to exercise their judgment no more and no less than ministers of the crown. Indeed, the higher anyone climbs in any profession, the more necessary it becomes that they are competent to exercise sound judgment. After all, the Head of the Judiciary in England and Wales is designated "Lord Chief Justice"! It is a truism that the entire concept of judgment is wholly embedded within the very vocabulary of "justice", "jurisdiction" and "judiciary". What is more, the essential character of British law – the distinction between historical Common Law in this country and the more codified Roman/Napoleonic forms of law which are practised on the continent is a very important consideration here – implies if anything the even *greater* requirement incumbent on British lawyers to exercise prudent judgment.

But the Sovereign and the Prime Minister are also required to exercise judgment – neither more nor less than lawyers. And this is the really important point: Britain is a constitutional monarchy, not a republic in which the Supreme Court is the highest authority in the land. Whilst it is true that the Queen's "sovereignty" is largely titular and ceremonial, she remains the Head of State and she retains the right to exercise her sovereignty. There is a difference between having titular sovereignty and having no sovereignty whatsoever. Conversations between the Sovereign and the Prime Minister (she has now been served by fourteen prime ministers, beginning with Winston Churchill) have for generations been regarded as matters of the greatest secrecy and, in a sense, sacredness. They share matters of a political character which are, by convention, understood to be outside the remit of lawyers. It is implicitly assumed that a bond of trust exists between the Sovereign and the Prime Minister, her chief adviser in matters of government. It is a bond of trust into which prying eyes, even those of the highest courts in the land, have not previously been permitted to peep.

But now a new, menacing, cynical and hyper-litigious public culture is threatening to take over. Anyone with the motives, and the means, to overturn an unpopular decision of a Government will be increasingly encouraged to do so through the courts. That is why the ruling of the Supreme Court should be regarded as ground-breaking, a seismic jolt which has rocked the British Constitution.

4. "Truth has stumbled in the public squares, and uprightness cannot enter."

The above quote is from Isaiah 59:14. All the considerations I have detailed above lead us to what is surely the most important question of all: why is the British Constitution so fragile? And why *now*, if it has endured so tenaciously since medieval times, is it in such a palsied, sclerotic condition?

The answer which I advocate here is that there has been *an essential and widespread breakdown of trust within the fabric of society*, with the most serious and alarming reverberations within the body politic. In speaking of "trust", we need to see the relationship between "trust" and "truth" which is far more than a matter of semantics. When trust breaks down, people more readily accuse one another of not telling the truth. Another way to look at the situation is to notice the breakdown of "good faith" – the Latin root of a word like "confidence" implies that faith is exercised towards someone or something. No functional relationship between any human beings, or group of human beings, from the nuclear family to Parliament and the Supreme Court, can thrive when "good faith" has been undermined, where mutual confidence is not present.

"Good faith" is a central part of this whole discussion. It is constitutionally correct to state that the Government was not bound by the result of the 2016 Referendum; that a referendum should be viewed as "advisory" rather than binding. But here is an instance where the exercise or the betrayal of "good faith" comes into sharp focus. David Cameron, the Prime Minister at the time of the Referendum, promised the people that the Government would implement the decision of the Referendum. Constitutionally, he had no

right to make such a promise. But he *did* say this and in so doing created a sense of obligation and expectation on the part of the British people. Moreover, no previous referendum in British history had ever been dishonoured. An action may be constitutionally legal while also being political "dynamite". Such would be the case if any government were to say to the British people at some point in the future, "By the way, the 2016 Referendum was only advisory and therefore we have decided to ignore its result and overturn Article 50."

But we should see just how much *bad* faith, even bad blood, is circulating at the moment. When certain politicians appear on the BBC programme *Question Time*, they are not slow in accusing the Prime Minister, or other politicians, of "lying". They will employ the language of lying far more readily than would have been the case only a few years ago. And there is a palpable sense that some of them are doing so with unbridled relish. Why might this be? Because MPs do not, and cannot, use such language in the House of Commons. When Ian Blackford, the SNP leader in Westminster, shouted out that the Prime Minister, Theresa May, was a "liar", he was strongly reprimanded by the Speaker, to whom he replied, "Out of courtesy to yourself, I withdraw" (12 Feb 2019).

This is the point: courtesy is observed in the House of Commons as part of the wider picture of *constitutional convention*. Members of Parliament refer to one another as "the Honourable Member" or "the Right Honourable Member" as a result of long-standing parliamentary, constitutional convention. There is an established code of honour, courtesy and respect – even in some cases deference – which has characterised the British Constitution for centuries.

This code is now being stretched to breaking point. When the House of Commons reconvened on 25 September, bitter and vitriolic scenes were broadcast for millions of viewers to see. Whilst the *letter* of the law might have been observed insofar as no MP breached a specific code, it was quite clear that the *spirit* of parliamentary discourse was being violated. The Speaker was quite justified in admonishing the Commons to this effect the following day, and for a time at least, relative decorum ensued.

But this is only the tip of a poisonous iceberg. Whilst Honourable Members may well consent to parliamentary convention while they are sitting on the green benches of the Commons, once they reach for their smartphones then any pretence to parliamentary convention flies out of the window. Social media allows them – and everyone else – the opportunity to vent their hashtagged spleens, on Twitter, on YouTube, on Instagram, on an ever-increasing number of channels. This is a factor which should not be underestimated. On social media, restraint is cast off, and free rein is given to the overflow of black bile. Politicians attack and defame other politicians, and their army of followers voraciously tuck in. Language descends to the level of the playground, both in terms of its bullying nature and its puerile imbecility.

The breakdown of trust is accompanied by the rise of anger and hatred. It is the same phenomenon, viewed from a different angle. It is not a phenomenon which is restricted to politicians. But at the moment they appear to be showing the way.

5. May God Show Mercy

The British Constitution, in its essential character, may not survive the present crisis. It may eventually be transformed to become more like the American model, in which the various branches of the body politic, being constitutionally separated, exercise considerably more independent power. Consequently, disputes between these branches are common, so that the whole machinery of US Government can be shut down for days or even weeks on end. Perhaps, in time, a radical change to our Constitution may be unavoidable. This may be the largest single consequence of the recent history of British political engagement with her European neighbours.

One great difference between the British and American Constitutions is that the former is unwritten, whilst the latter is written (as are its many Amendments). The unwritten British Constitution, like the British distaste for identity cards, is for many a cause for quirky self-satisfaction. That the Constitution is "unwritten" is of course only a partial truth. Statute Law, by its very nature, is legislation passed by Acts of

Parliament which finds its way onto the "Statute Books". Works of authority on the Constitution, such as those by Bagehot and Dicey, and Erskine May, the "Bible of Parliamentary Procedure", are of course (lengthy) written documents. Acts of Parliament of momentous significance, such as the Bill of Rights of 1689, almost partake of the character of a written constitution. But there is no single document in existence bearing the title "The Constitution of the United Kingdom", not yet at any rate.

Whether there ever will be may not seem like a terribly important argument. Indeed, we might think, if a written constitution delivers a happier set of results than an unwritten one, then why not begin writing it immediately! But the point here is simply that the British system has *worked* satisfactorily for several centuries with an unwritten constitution, not only because of the knowledge and expertise of constitutional scholars, but more importantly because of the exercise of decency, honour and essential "good faith" across the whole body politic.

Ultimately, this "good faith" among human beings cannot exist without a strongly-held value system, a world view which is conscientiously shared by individuals and communities. The greatest influence on British society, for most of the time since the Constitution began to take shape, has been biblical Christianity. The truly *biblical* character of that Christianity reached its apogee in the time of the Reformation and the Puritans, in the sixteenth and seventeenth century. The very soul of the nation was formed during those centuries, and the constitutional developments which took place from the late 1600s to the early 1900s were the fruit of rich spiritual blessings. The great revival of the eighteenth century, when George Whitefield, John Wesley and so many others preached to the multitudes, created an environment in which this nation was spared from the kind of bloody revolutions which shook so much of continental Europe.

In writing these things I am not indulging in some kind of jingoistic nationalism, neither would I overlook the shameful episodes of British history. And nationalism is a very different thing to patriotism. A true patriot, bound to his nation as to his own family, may well believe in his heart that his country is the best country in the world, but he understands why citizens of another country would feel the same about *their* own country. When I hear the French, American, German or even old Soviet national anthems being played; when I hear a rendition of *Hen Wlad Fy Nhadau*, or *Flower of Scotland*, I can feel as moved as I am by *God save the Queen* – or even more so. A nationalist is incapable of experiencing such sympathies.

But the honour, decency and good faith of which I have written cannot be disassociated from the Christian consensus which prevailed in Britain – in England, Scotland, Wales and Northern Ireland, during these most formative years. The Bible worked its way into the national consciousness of these countries and became part of their DNA. This happened with and without Acts of Parliament – witness the different narratives of reformation and revival across these countries. The distinctive flavour of Christian witness in England, Scotland, Wales and Northern Ireland is beautiful testimony to the way in which God has worked variously among different peoples in different places.

Now that prevailing consensus is being changed beyond recognition, hideously disfigured. A woman gives birth to a child and is then declared to be a man, and wants to insist that the child never had a mother. This is where we are. We now seem to be accelerating towards an era like that described at the end of the Book of Judges, where there was no king in Israel and each man did what is right in his own sight (Jdg. 21:25).

The Prophet Isaiah spoke to the people of Judah, seven hundred years before the birth of Christ:

> Ah, sinful nation, a people laden with iniquity, offspring of evildoers, children who deal corruptly! They have forsaken the LORD, they have despised the Holy One of Israel, they are utterly estranged. Why will you still be struck down? Why will you continue to rebel? The whole head is sick, and the whole heart faint. From the sole of the foot even to the head, there is no soundness in it, but bruises and sores and raw wounds; they are not pressed out or bound up or softened with oil. (Isa. 1:4-6)

This seems an accurate description of where we are today. As human beings, made in the image of God, reject God and the revelation he gives, they slide further and further towards destruction. The proud nations and empires of the ancient world exist no longer. It is time to read Gibbon's *Decline and Fall*, and to read Augustine's *City of God*.

May the LORD God himself turn and have mercy. The God of the Covenant, and he alone, always keeps good faith with his people, through his Servant and Son, the Lord Jesus Christ.

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(This article was originally published in the Affinity Social Issues Bulletin for November 2019. The whole edition can be found at www.affinity.org.uk)