

Submissions in response to the Public Administration and Constitutional Affairs Committee's 'Call for Evidence' on the Constitution, Democracy and Rights Commission

*15 November 2020*

Introduction

1. The Haldane Society of Socialist Lawyers, founded in 1930, provides a well-respected and knowledgeable forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. We are independent of any political party and our membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates. Our President is Michael Mansfield QC. Our Vice-Presidents are Geoffrey Bindman QC, Louise Christian, Liz Davies, Tess Gill, Tony Gifford QC, John Hendy QC, Helena Kennedy QC, Imran Khan QC, Catrin Lewis, Gareth Pearce, Estella Schmidt, Jeremy Smith, Frances Webber, Richard Harvey and David Watkinson. Our members and vice-presidents include noteworthy experts on areas including the rule of law, access to justice, administrative law, human rights, extradition law, disability rights, amongst other areas. The contributions in this submission therefore draw upon significant professional expertise and offer a public-interested perspective into the proposed Commission.
2. A commission to examine “the broader aspects of our constitution” and “come up with proposals to restore trust in our institutions and in how our democracy operates” is to be welcomed in principle. Our submissions in response to the questions posed by the Public Administration and Constitutional Affairs Committee (“the Committee”) with regards to the proposed Constitution, Democracy and Rights Commission (“the Commission”) should be read in combination with our submission to the Independent Review of Judicial Review and are informed by the following observations:

3. Successive governments have used neoliberal narratives of cost, streamlining and efficiency to effectively curtail and erode rights within the judicial system, particularly within the past decade. Meanwhile, the same governments have failed to reverse the trend of rising inequality beginning at the end of the 1970s.<sup>1</sup> It is such curtailments and reductions, resulting in an increase in the burden on those who are both lacking in power and in most need of judicial remedy, combined with economic inequality, that undermine trust in our institutions and in how our democracy operates.<sup>2</sup>
4. The world is experiencing a climate emergency, exacerbated by global capitalism which encourages overuse of natural resources and does not account for value beyond profit.<sup>3</sup> The scale of the climate emergency we are currently experiencing means that an examination of “the broader aspects of our constitution” must necessarily include a reexamination of the natural environment’s place within the Constitution.
5. The United Kingdom must recognise its significant contribution to and responsibility for the global climate and biodiversity crises through its colonial exportation of private property ownership and capitalism. This is no exaggeration when considered in the light of the fact that by 1913, the British Empire held sway over 412 million people, 23% of the world population at the time, and by 1920, covered 35,500,000 km<sup>2</sup> (13,700,000 sq mi), 24% of the Earth's total land mass. Given Britain’s unique history of global imperialism, any approach to a future constitution must take into account rights and duties with regards to reparations to former colonies. British imperialist ‘exceptionalism’ grounded in imperialist readings of the Constitution is not a thing of the past, as evidenced by recent disregard for international law in relation to the Good Friday Agreement, the disgraceful treatment of the Chagos Islanders and the

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<sup>1</sup> The Equality Barometer, “How Has Inequality Changed?”, available at: <https://www.equalitytrust.org.uk/how-has-inequality-changed>, accessed 11 November 2020.

<sup>2</sup> Edelman, “2020 Edelman Trust Barometer”, 19 January 2020, available at: <https://www.edelman.com/trustbarometer>, accessed 11 November 2020.

<sup>3</sup> Naomi Klein, *This Changes Everything: Capitalism vs. the Climate* (New York: Penguin, 2015).

In October 2018, the Intergovernmental Panel on Climate Change (IPCC) warned of the catastrophic and irreversible ecological crisis that will result from a failure to reduce greenhouse gas emissions by 2030. The Intergovernmental Panel on Climate Change, “Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty” (2018) Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.) p.vi

willingness to sweep aside the Sewel Convention in passing the EU (Withdrawal Agreement) Act.<sup>4</sup>

6. Today, the fluidity of international capital and its ability to transcend nation state regulation (e.g. Amazon and Apple’s scrutiny from the EU over its tax affairs) calls for increased organisation of workers and the working class. We stand with our comrades in the International Association of Democratic Lawyers<sup>5</sup> and the European Lawyers for Democracy and World Human Rights<sup>6</sup> in this respect, as we seek to ensure that the process of decolonisation is completed, including within the UK’s offshore tax havens and other outstanding colonial territories.<sup>7</sup> In doing so, we respect the potential of international law as it currently operates but have a strong critique of its underlying premises, such as the disproportionate power that manifests in the vetoes of the permanent members of the UN Security Council. We note in this respect the injustice of the Chagos Islands and the role of the UK and the US therein: we recognise the terrible injustice of cleansing them of their native peoples for the sake of a US airbase and support calls to properly compensate the victims.
7. The Haldane Society of Socialist Lawyers is conscious of its history and the struggles of comrades in the past. It is in this sense, that we are acutely aware that the constitutional tectonic plates are shifting in the UK. The devolution ‘settlement’ of 1998 is under scrutiny with developments relating to Brexit. The British Government has chosen to disregard international law in its implementation of Brexit and undermine the constitutional basis of the Belfast Agreement, which is an international obligation that it is willing to breach in a “specific and limited” way.<sup>8</sup>
8. Given the above observations, it is not only desirable, but urgently necessary that a different system be adopted. The hope of the Haldane Society of Socialist Lawyers is that such a system would be a socialist republic, supported in law by a constitutional convention and citizens assemblies, with further devolution and an amended electoral system, although we recognise that it is the role of the Commission to present such

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<sup>4</sup> <https://constitution-unit.com/2020/04/07/the-sewel-convention-and-brexit/>.

<sup>5</sup> <https://iadllaw.org/>

<sup>6</sup> <https://eldh.eu/>

<sup>7</sup> <https://iadllaw.org/our-aims/> (including “To promote the preservation of ecology and healthy environments ... To defend peoples’ rights to development and for conditions of economic equality and the enjoyment of the fruits of scientific progress and natural resources”).

<sup>8</sup> <https://www.bbc.co.uk/news/uk-politics-54073836>

solutions, and not our role in presenting these submissions.<sup>9</sup> Our more detailed proposals for the Commission's consideration are set out in paragraphs 9-16 below.

### What form should the Commission take?

#### *How should it be composed?*

9. There must be a core administrative centre of the Commission, but decisions should be taken by way of local citizens' assemblies. These should be composed of representatives of the grassroots community in the UK, including representatives of labour (trade unions and tenants unions) in the form of an Economic and Social Council with advisory status. All representatives sitting on the citizens assemblies should be paid for their time, in order to ensure that they are representative and non-exclusionary.

#### *Should the Commission engage the public, and if so how?*

10. It is crucial that the Commission engage the public at every stage, given that it will be influencing decisions affecting the nature of the relationship of the individual to the state, and the very shape of the state. As stated above, we propose that the decision-making part of the Commission be formed of citizens' assemblies. However, in order for these citizens assemblies to be truly democratic, the questions they are seeking to answer must be fully accessible to the public at large. As such, there should be a lengthy and comprehensive public information campaign prior to the final formulation of the citizens assemblies and certainly prior to their making any decisions. The questions engaged by the Commission must be made accessible, and not left to a panel of non-representative experts. The role of experts must be in leading debate, campaigns and information, as, for example, in the vote to repeal the 8th amendment of the Constitution of Ireland (which restricted women's right to choose / bodily integrity).

#### *How should the Commission proceed in its work? Over what timescale?*

11. The Commission must take several years to reach its conclusions, reaching at least into the next parliament, in order that it not be swayed by immediate political crises. This is particularly crucial given the current political context in which we are experiencing a profound constitutional change as we exit the European Union. Decisions from the commission must only come after having time to assess these changes.

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<sup>9</sup> Patrick O'Connor QC, *The Constitutional Role of the Privy Council and the Prerogative*, Justice, 2009

12. The Commission should begin by seeking to understand the problem. This will involve wide scale intersectional research, across class, gender, race, age and regional differences (Phase 1). Following such research, the Commission should commence the public information phase of the project, making it available to all by post (for those who request it in that manner) and encouraging debates between experts, trades unions, campaign organisations, and local community engagement (Phase 2). Finally, the Commission should seek submissions from members of the public via citizens' assemblies in order to reach its findings (Phase 3).

What should be the main purpose and output of the commission?

13. The main purpose of the Commission should be to assess the constitution at all levels, and to consider how it should change in order to be a constitution fit for the challenges of the 21st century and beyond (we are, after all, only custodians of the natural environment).<sup>10</sup> At the heart of this purpose must be an understanding of the relationship between the constitution and equality, ecology, and imperialism in the context of respect for international law.

*How should the Commission report its findings?*

14. The results of the Commission, including findings from research and recommendations made, must be made publicly available at no cost (online and provided to every member of the public by post, as we cannot assume that there is internet access for all members of the working class in the United Kingdom). There should be an announcement in Parliament by the Prime Minister followed by a lengthy debate.

Given the remit of the Commission to look at “the broader aspects of our constitution” and “come up with proposals to restore trust in our institutions and in how our democracy operates” are there issues not on the Government’s list that need to be examined?

15. In addition to the issues on the list, the Commission should consider:
  - a. Whether a change from political constitutionalism and a bicameral parliament (involving a great number of undemocratic elements) to a constitutional convention and constituent assembly might allow better public representation, wider understanding of the constitution, and a restoration of trust in democracy;

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<sup>10</sup> <https://www.ictinc.ca/blog/seventh-generation-principle>

- b. Devolution of powers to Wales, Scottish independence, and resolution of the constitutional issues raised by Brexit as it pertains to the goals of Irish republicans who happen to be subject to British jurisdiction;
- c. The incorporation of socio-economic rights including rights to health, to housing, to work and/or social security, and to food into any constitutional convention or other constitutional document;
- d. How to incorporate a recognition of the rights of nature into any constitutional convention or other constitutional document;<sup>11</sup>
- e. Provisions to command respect of international law and mechanisms to enforce that;
- f. How to make this a just transition that protects workers and local communities.

What areas should be a priority for the Commission and why?

16. The consideration of the value of a socialist republic as a legitimate political constitutional goal (including why this may be considered to be unrealistic by some and/or what it would take to achieve this). We consider that this legitimate political goal would require significant legal and constitutional change, including but not limited to the following: abolition of the constitutional monarch; abolition of the established Church of England insofar as it has constitutional importance; abolition of the House of Lords; the re-constitution of a bicameral legislature; and membership of the UK/Britain (or whatever constitutional entity would then exist) in a Socialist International to re-constitute international law without the underlying imperialist premises upon which it is presently built and perpetuated.

Conclusion

17. We are concerned that references to “restoring trust in our institutions and how our democracy operates”, read in the context of government suspension of parliament (through the 2019 prorogation), breaking of international law (see above), and intimidation of the judiciary and the legal profession (for example, via references to “activist lawyers” in remarks made by the home secretary), imply a government desire to reshape the constitution to enable further executive control, at the expense of the

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<sup>11</sup> This has already been achieved in multiple jurisdictions, including: Ecuador, which became the first country to formally enshrine the legal rights of nature in its Constitution in 2008; Bolivia, where in 2009, the views of indigenous communities on protecting the natural environment were included in its Constitution and legislative texts; and under the stewardship of indigenous Māori in New Zealand, who have begun to restore traditional guardianship of nature suppressed under British colonial rule with recognition of the legal personhood of certain natural entities.

sovereignty of parliament and the rule of law. While we welcome the Commission as an opportunity to reconsider the shape of the constitution in order to allow a more progressive constitution fit for the challenges of the twenty first century, we urge those forming the Commission to implement safeguards to prevent a slide into executive control, in particular by ensuring that the Commission is not dominated by voices sympathetic to increasing executive control, particularly those linked to right wing think tanks Policy Exchange and The Judicial Power Project. It must be recognised that any such Commission could only further damage trust in our institutions and in how our democracy operates.