



Planning for the Future: Taking the Notion of a Constitution into the Classroom

Professor Clive Stafford Smith

Thursday 22 May 2025

The U.S. Constitution had to be formed through debate before it could be ratified. Mirroring this, a British constitution must emerge through debates among the next generation. If this is going to happen - with all due respect to my British friends - those who shape a proper constitution must have a better understanding of what a Constitution is than many of their elders in the U.K. Indeed, while I have been teaching students about U.S. constitutional law for a few years now, and I know my learned colleagues teach what they call British constitutional law, I have yet to come across anyone who can give me a description of the British “constitution” that sounds anything like what I would call a constitution.

The first issue, then, is what it means to have a Constitution, as opposed to merely an agglomeration of law. I consulted my friendly A.I. to see what definition I would get, and it came out as follows:

A constitution is a document that outlines the fundamental principles by which a country or state is governed. It defines the structure of government, the powers of different institutions, and the rights and duties of citizens. Think of it as the “rule book” for a state.

Key aspects of a constitution:

- **Fundamental Principles:** *It establishes the core beliefs and values of a nation.*
- **Structure of Government:** *It outlines how power is divided between different branches (legislative, executive, and judicial) and at different levels (national, state/provincial).*
- **Citizen Rights:** *It guarantees fundamental rights and freedoms to citizens.*
- **Limits on Power:** *It places constraints on the exercise of governmental power to prevent abuse.*
- **Amendments:** *It generally includes procedures for amending the document, making it more difficult to change than ordinary laws.*

I was mildly impressed by A.I. - it’s not a bad effort given that it only took a second from question to answer.

Under the “AI Definition” the U.K. simply does not have a Constitution. Most students I meet as they come out of their constitutional law class tell me that we have an unwritten constitution – but that is just not a “constitution” at all. Indeed, there is no “document” that lays it out. There is no clear definition of the structure of British government (as we discussed in an earlier lecture, it has morphed incrementally beyond all recognition since the U.S. adopted its own constitution). I doubt many people could meaningfully identify the powers of each arm of government. Nowhere are the rights of citizens coherently stated.

Probably the key failing of the British system though is the lack of “*procedures for amending the document, making it more difficult to change than ordinary laws.*” Time and again we see the U.K. changing fundamental

aspects of the nation through the same legislative mechanism as the country would regulate rubbish disposal. Because the structural constitution is so ill-defined, even though Britain has adopted much of the – definitionally weak – European Convention on Human Rights through the Human Rights Act, a populist government can skirt such rights with something close to impunity.

People will disagree with me of course, and I always welcome that. But where we can surely all agree is that we need to school the youth of Britain on the rights and wrongs of it all.

* * *

Since I returned to the U.K. in 2004, I have increasingly spent time with the next generation of human rights defenders, from primary school to university and beyond. My son was in our local primary school, and we did some entertaining trials where we “killed” the head teacher and put three teachers on trial for the crime. They were fabulous fun. The local police were good sports and came with their lights flashing to teach the kids about search for the evidence that I had carefully laid out in the school yard – they inevitably found crucial clues that were just litter I had not noticed. Eleven-year-olds would debate the reliability of ballistics and fingerprint evidence. The “jury” would then deliberate in a way that would put the jurors in my adult capital trials to shame. The only time they actually convicted anyone was when they figured out a chief defence witness was lying about her age, since “she” had a stained-glass window in the church across the road which had a different date of birth (if she would lie before God she would surely lie in our court!).

From this we moved onto learning about constitutions. I have done this several times in secondary schools and universities. I hope it has been an educational process for the students; it certainly has been for me.

Part of my interest came from the status of my hometown, Bridport, as a ‘Rights Respecting Town’ - indeed, we claim to have been the first in the U.K. I know the folk who helped take this step, and it was an admirable beginning. However, the range of rights that we are meant to respect is [very limited](#). There is absolutely no enforcement mechanism, and a right without a remedy is ultimately no right at all.

I wanted the students, first in Bridport and its surrounds, to learn much more. To be sure, for students, there are many contentious issues that tap into discussions at the heart of writing a constitution. Students being punished for swearing raises questions of limits to free speech. Students wishing to intervene when an unpopular peer is bullied would be empowered by constitutional duty obliging them to do so. At the same time, schools and universities tend to be dictatorial institutions, benevolent or otherwise, and therefore can provoke students to develop ideas on power structures and recognise the need for their own rights and duties.

We have generally followed the same kind pattern in our work.

* * *

First, there is a team of students who will be the ‘Founding Fathers and Mothers’ of the constitution. We talk it through and agree that it would be fundamentally undemocratic to write a constitution without consulting those who will be impacted by it. Therefore, they come up with an anonymous survey that they circulate around the school for both staff and students, looking for the kind of structure, rights and duties each person would like to see.

This, too, has been enlightening in a number of ways, some predictable, and some less so. For me, the big surprise has been the two institutions that simply refused to allow this preliminary step.

On school said no, and then set about developing a constitution their way – by having a few students just write it, heavily overseen by staff. I have never seen anything so meaningless, and so divorced from what the target audience would care about. The students end up with no power and no rights at all.

Then there was one of the universities where we tried it. A group of students – thirty of them – laboured long and hard, yet we fell at the first fence. The university said the students could not do their survey without running it through an ethics committee. Since then, the students have been trying to get it vetted for 18 months, and still have not got any further than submitting the students' draft. All this is an educational process, of course: are they really enforcing a law that exists, or misinterpreting their own rules? It surely cannot be that there must be an ethics assessment of an anonymous survey. Surely a student newspaper would not have to get an ethical opinion before asking students for their opinions. In my view the university is taking a perfectly acceptable idea of ethical review (originally probably derived from thorough unethical surveys about deeply personal issues) and applying it in a bureaucratic and illogical way. Yet such is life, and this is a good lesson for the students to learn, since they will confront it too often in life.

The motives for refusing students the right to do an anonymous survey appear, in one case, to be a concern that the students (and staff) might say things in this process that would make the school look bad; in the other, it was more the over-complication of something that should have been simple, which is one of the banes of life.

The other schools and universities have all allowed students to fashion their own questionnaires and the results have taught us a great deal in a more constructive sense.

* * *

I had expected students at Secondary school to raise rather pedestrian issues like sartorial objections to uniforms and disdain for the institutional food. In truth their issues have been much more substantial and reflect a curious authoritarianism in educational institutions.

I was once a teenager and I have one now, so I have more sympathy with Secondary Schools. I love being a parent, but I have just one child, and maintaining some sense of decorum with 1,000 people aged 12-18 is an obvious challenge. In contrast, in many ways we expect University students to behave as adults; logic would suggest that we should treat them as such ("It goes a long way towards making people trustworthy to trust them," as Seneca is said to have advised us). Thus, I have much less sympathy with the authoritarian tendencies of universities. Regardless, if we are to teach young people responsibility, we must be very careful about imposing draconian rules.

Here are some of the students' thoughts:

* * *

Bathroom bans. A common one among Secondary students in my area has been the ban on going to the toilet during class. While the strictness of enforcement varies, virtually every school in my area of Dorset imposes such a ban. I was horrified by this. Obviously, it is based on kids skiving off, perhaps to smoke, perhaps to do other things. But as someone of a certain age with an aging prostate, my sympathies are immediately with the students. The impact on some – perhaps young girls embarrassed at their first periods, perhaps any number of people who might have UTIs – is difficult to imagine.

One reason this struck me so strongly is my own experience. In 1980, I drove my first car to Georgia. It was a VW Karman Ghia I had bought from a friend for \$300, to make my summer possible. I had patched the vast expanses of rust, repainted it with a light (Carolina and Cambridge) blue, and put racing stripes along the sides. I was very proud of it. I was going to spend the summer with Team Defence, and they wanted me to rent a cheap room in Reidsville (*“Welcome to Reidsville: Home of the Georgia State Prison”*, as the town bragged upon arrival), and visit the death row prisoners every day.

I arrived in Atlanta only to be told that the next day, rather than head to death row, we were all going on a road trip to Mississippi. In a small town just over the border from Alabama there was to be a rally in support of women who were on strike against the owner of a Chicken Plant (which he referred to as his “Plantation”, no doubt in honour of his slave owning forebears). The women were striking over their work conditions and – unsurprisingly given the regressive “Yellow Dog” laws in the South that allowed the employer to forbid employees from joining a union – the owner was bussing scabs in from neighbouring counties.

We parked our Hertz rental car some distance from the centre of town and walked along a pretty street to join the march. It was a lovely early summer day, and I was initially entranced by my first visit to Small Town Mississippi. The low white picket fences were draped with dogwood blossom, with cottage homes set back shielded by well-kept gardens. I noticed that lace curtains trembled slightly as the denizens checked out who the strangers were. Eventually an old lady who looked like my Granny Smith pushed open her window:

*“What you doin’ in our town! Go home you N****r lovers!”* she shouted, spitting her venom.

I was aghast. I had never heard anything like it. Millard, Kimellen and Lisa told me to ignore it and we pressed on to the central square. It was, I would learn, identical to all such squares in the South, with a rather mastodontic courthouse guarded by the statue of a Confederate soldier (“Johnny Reb” as my right-wing private school in Berkshire had taught me to call him when we fought the Civil War – because the cool kids wanted to be Rebels, the soldiers in grey always won).

Millard pointed out the statue’s bandolier. *“Y’all see thet thay-er?”* he asked me in his fabulous accent, which I already knew sounded like he was in the midst of swallowing a dozen marbles. *“It was a com-pro-mise after the War.”* I was only starting to notice how, when he disdained something, he would divide the syllables and spit them out. He certainly never bothered to explain that “the War” was the War between the States.

“Durin’ Reconstruction, the Confederates wanted to honour those who had died tryin’ to save their right to own Hooo-man Beeeens. The feds finally allowed it, but only if there wuz no bullets in their bandoliers.” True enough I could see this Johnny Reb had no ammunition to shoot the marchers down as he no doubt otherwise would have wished.

The speakers were already in full blow in the square. I learned a few things, but most of all I noticed the counterdemonstration. It was the first time I came face to face (or at least my face to their white hoods) with the Ku Klux Klan. Their faces were twisted in the same way as the sad old woman back along the street from us. But almost equally intimidating were the Mississippi Highway Patrol officers between us. They were all white, almost all wearing reflecting sunglasses, and it seemed rather obvious where their sympathies lay.

The sun rose hot above us. I was glad when the speechifying, and counter-speechifying, came to an end, and we walked back to the car. I then ticked off another ‘first’ in my nascent career in the Deep South: There were bullet holes in the radiator. As we drove away, I thought that would take some explaining to Hertz.

Many things stayed with me from that day. One of them was the mindless rules applied by racist owner of the Chicken Plant: the only one I still remember after 45 years is that he would punish women who went to the toilet *more than three times a week*.

I really did not expect to find the same kind of rule in schools my son might go to.

* * *

Big Brother: when it comes to University, the students have come up with a broad range of ideas, but the one that surprised me the most is that at one law school where I teach the students are tracked by some GPS system to make sure they attend class.

Don't get me wrong: I love my students to attend my classes. It would not be a lot of fun without them, and I refuse to record the sessions since I want them to be free to express their views without fear of recriminations. But I don't want them to have to come against their will. There is something about the Thirteenth Amendment in this:

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

US CONST. Amend. XIII. But the real issue is the Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

US CONST. Amend. IV.

The tracking policy is aimed at foreign students, as the University views it as the most efficient way to enforce what they see as the mandate from the Home Office those attending University not use their student visas as a pretext to come and work. The students have various objections to this.

- First, the rule is applied to all of them, not just the foreigners. Why?
- Second, the students are constantly told they are adult “consumers” – saddled with a massive debt for “purchasing” this education. Going to university is not merely a matter of going to class. Indeed, I do wonder whether many of the politicians who govern us were careful to attend all their classes. If students (as rising adults) take the position that they want to avoid particularly boring lectures, why should they not? Why is this different from paying for a British Sunday dinner, and then deciding British cooking is too vile to eat? Or buying a shirt and then thinking it too garish to wear?
- Third, of course, this is all the more true of students from abroad, who are required to pay two or three times as much as their British peers. The idea that any but a tiny proportion of these folk

would be spending tens of thousands of pounds a year in order to avoid an education funds support only in public statements of the *Reform* party.

- It all surprises me in the UK too, as we are a nation that values privacy far more than the US. Presumably the tracking devices would follow students into the toilet too.

I encouraged the students to research whether they should claim a right against this practice.

I told them to call their friends around the country and see if this was the rule in other places. It certainly is not in the other universities where I teach, and it turns out there are many other places too where this is not the norm.

I next suggested they research what the actual law is (the duties imposed on the institutions). They did so and could find nothing that required that this mechanism should be used.

Then there was the issue of due process and notice: the foreign students were worried that they would get deported if they missed a number of classes (perhaps they were unwell or facing personal stressors). Surely, they had a right not to be warned ahead of time if the University was going to report them, so as to have an opportunity to contest it?

My students are required to produce a piece of work at the end of each term, and there was a scramble among them to be the one to challenge this practice.

* * *

Discrimination against Foreigners: once the sluice gates were open, I learned of many other obstacles faced by the foreign students who are helping to underwrite the British education system. I had no idea of many of the issues, and neither did their British colleagues.

For example, in order to get housing most students have to have someone in the UK who will co-sign their application. This is all very well for people with parents and family in the UK but can be very difficult for others.

Some of the discrimination would be alien to an American university. For example, I had to pay a “student health fee” at my US university, but so did those who were local (they did not have an NHS, so everyone needed medical care). Foreign students in the UK have to pay a substantial sum to benefit from the NHS, even though as young people they have a far lower expectation of needing it than an elderly Briton.

And so it went on. By now the British students in the class were seriously offended by the rights gap faced by their foreign peers. This was useful discussion, as I well remember when I first went to the US and was called an “alien” – it was offensive. Even the notion of a Green Card conjured up notions of little green people. In the UK most recent editions of the *Guardian* carry an article where politicians are clamping down on those we used to welcome to our country: as Clive Lewis, a Labour MP for Norwich, wrote recently, “*Labour thus*

far hasn't challenged Reform's worldview – it has legitimized it.”¹

Because this was clearly a passion for one of my international students, I assigned her to draft up the “*Foreign Student Constitutional Right to Equality*”. It turned out to be a lengthy document...

* * *

Bullying: One characteristic of the Student Bill of Rights is that it is also a Bill of Duties. I asked one secondary student, one of a tiny minority of “minority” students, to give me the best example of racism in the school from each year from Seven to Twelve or Thirteen. It was illuminating. One story that stuck with me concerned an unpopular student who fell down the stairs in front of thirty of his peers. Nobody moved to help him. He lay there in pain. The intentional failure to act by the more hateful of the students intimidated others, and nobody wanted to be the first one to break the solidarity of nastiness.

It has been my experience as a governor of schools that – surprisingly – the teachers seem to know very little about some of the goings on in their institution. Either that or, equally troubling, they are worried about validating its existence. From my conversations with various kids in various schools, this escalates as far as turning a blind eye even where there are incidents of sexual assault which might bring their workplace into disrepute.

Bullying comes up routinely in school surveys. The right not to be bullied must carry with it the duty both not to bully, and to intervene when another person is being abused.

I grew up in two boarding schools where bullying and abuse – by students and teachers alike – was rampant. I was beaten routinely by staff at Old Buckenham Hall School, generally for such heinous offences as “talking after lights out.” There was another facet to this – OBH was a bit like *Lord of the Flies*, and as the biggest boy of my year I constantly faced challenges to fight in the changing rooms. To begin with, it was just part of life, the kind of natural thuggery of boys; but I gradually came to hate it with a passion. I could never give in to anyone, and it was just an unpleasant experience – I can still sense the splinters of that floor. I was glad to go on to another school where I was no longer the biggest.

However, at Radley College it was also a “spare the rod, spoil the child” culture, though a lot of the rod came from the older students. I was proud of my older brother when, as Senior Prefect, he banned the practice of “fagging” by young boys (“Stigs”) for prefects. That did not come in time to save me from my experiences as a Stig. Among other things, I was waterboarded by my seniors. It came back to me when I was talking to a Guantánamo client: the senior boys forced me in a bath, put a wooden-slatted board over it, and filled it up with water. If you tried to avoid drowning by putting your nose between the slats, they would use a pin to on your nose to avoid it.

Based on my own experience, I am unconvinced that contemporary bullying is – as argued by some – worse in the age of the internet, though it is doubtless true that psychological bullying can be as bad or worse than the physical (as my dear father demonstrated to the women in his life on a daily basis). However, arguing the toss on which is worse is fairly pointless: it needs to be stopped.

¹ Clive Lewis, *Fixing England's water isn't just the right thing to do – it can be the start of Labour's fightback*, Guardian (May 11, 2025), available at <https://www.theguardian.com/commentisfree/2025/may/10/fixing-water-england-labour-fightback-clive-lewis> (accessed 2025.05.11).

One disincentive to this is a culture where students will not ‘tell’ on each other. Radley had an overwhelming no-snitch rule: “*Snitches are a Dying Breed*” and “*Snitches get Stitches*” as my Outlaw Biker clients would later say. I was a strong adherent of this rule and would never rat out my abusers. But today I hope there is a very different practice – that is not to say that everyone should run to teacher on harmless violations of the authoritarian school rules, but if you can’t stop bullies picking on others yourself (the preferable first line of protection for the weak), it is clearly your duty to call on the higher powers, the teachers.

Students should be that first line of protection. Indeed, teachers would be wise to empower the kids with both the right not to be bullied and the duty to stop it from happening to others.

* * *

Any constitution is not just an enumeration of rights; it must also provide a structure, as the US constitution does.

I have a pretty cast-iron rule against volunteering to do talks at private schools, just as I would never send my son to one. This is not because I think they are intrinsically evil, or that they provide a bad education (though clearly they fail society in some ways – why do so many Radleians go to the City to make money rather than helping those less fortunate than themselves?). Rather, it is because they are socially divisive, and maintain the British class system in ways unlike any other institution. It is also true that the migration of privileged middle and upper classes to private schools deprives the state schools of a powerful sect of advocates for improving education overall.

That said, I am very aware that my own education was immensely privileged – at least on an academic and intellectual level, though less so on an ethical one. When I was reviewing the letters that I wrote every week from the age of 8-18 to my mother, which she kept as if they were religious documents, I was reminded of the incredible range of opportunities I had. Indeed, the students at Radley today have roughly *thirteen times* the money spent on them as my son does at his state school.

At least in some ways the schools also have the leeway and the resources to offer other opportunities. On just one occasion I made an exception to my rigid rule to talk at a prep school at the invitation of a friend who taught there and who I did not want to refuse. I thought I would explore some of their good fortune, and it was interesting. One thing they did each year was elect a president and cabinet of sorts who, drawing on the ideas from other students, took the entire school over for a week in the summer. What an excellent idea that is: they got to set and arrange the lectures, discussions and activities throughout the week. I am sure there were limitations – I doubt they could demand an hour on how to synthesise crystal meth – but overall, they were very free to choose what they would do, and then put in the work to make it happen.

In both secondary schools and universities, we tend to pay lip service to allowing power to the students. This is a shame, and a very bad lesson for the students.

In my experiments with both types of institution, I have worked with students to frame a structure where they have true power. They must recognise some limitations, so the Head Teacher generally assumed the role of President, along with a veto power. There is a Student House of Representatives and a Faculty Senate, and since to override a veto requires a two-thirds majority in both houses (as in the US), the institution is protected from student-led chaos.

Most interesting to me is the judiciary. For the most part, teachers in schools and universities have the power

of Saddam Hussein, and sometimes (from the perspective of students) they use it in a similarly arbitrary manner. Rather pointless detentions are dealt out like a deck of cards: for failing to turn his homework in on time, my son was made to scrape chewing gum off desks. It was probably my fault for not making him do his work, but anyway what did that punishment teach him? (Probably to put his gum there for the next victim.) Why not make him do more schoolwork, that might benefit him, if you are not going to send him out into the community to do some good for elderly people?

On another occasion, aged about 13, he was banned from the only sport he enjoyed (ping-pong) for being “boisterous” – I thought it was the job of someone that age to be boisterous and was rather pleased with him as he is sometimes a thoughtful and quiet lad, but there was no appeal!

Providing people with “rights” and “due process” takes work and time. I understand why teachers resist it, though I cannot agree that we should take the easy, authoritarian way out if we are trying to instil the next generation with respect for rights.

We used to have a full system in my university in the US, with prosecutors, defence lawyers, and judges (albeit no right to a jury trial). Indeed, I was prosecuted (and acquitted) in it, in an event that did nothing for my respect for sanctimonious judges but did help inspire me to defend people against them.

A student judiciary would have the normal civil and criminal dichotomy with ‘civil’ cases often involving actions by the University that are being challenged by the students, and ‘criminal’ ones concerning assertions of wrongdoing. The cases that would implicate issues where students must take the interests of others into account - for example, questions of the private information – would have to be exceptions to the general rule of open, student-led trials.

It takes work but – like the real world – it is all perfectly possible. Indeed, I despair when [respectable journalists](#) in Britain whinge about the time taken to deliver jury trials, and advocate their abolition. I suspect such writers have never been on the receiving end of an unfair process.

* * *

I was very moved by a play I saw at the Globe one time about the debates that took place in Philadelphia’s Freedom Hall between the Founding Fathers. The development of my beloved Constitution was a true miracle, notwithstanding the grotesque failure of the all-white-male ‘Fathers’ to abolish, for example, slavery until 75 years and a civil war had passed. I love helping to guide students through the creation of their own document, and one day perhaps we will even be allowed to hold a Constitutional Convention that allows them to promulgate it in their school or university.

© Professor Clive Stafford Smith, 2025