The EU Constitution is incompatible with ours.

Frequently it is claimed that England has no written constitution. We often hear quoted the doctrine `No parliament may bind its successor'. It is used to imply that there are no constitutional obligations limiting Parliament's power. If this was true there would be no effective constitution. The sovereignty of Parliament would be unlimited.

King John was bound by the most famous constitutional instrument the world has seen the **Magna Carta**. The Stuart Kings were displaced in favour of the constitutional settlement of the Glorious Revolution and the resultant Bill of Rights of 1689, still in force.

To suggest we have no written constitution is a fallacy. We have an ancient and splendid Constitution much of which is written and it defines the limits of Parliament's powers. Key documents include Magna Carta 1215, the Petition of Rights 1628, the Declaration and Bill of Rights 1688/9, the Coronation Oath Act 1689, the Act of Settlement 1701 and the Treaties and Acts of Union of 1706/7. All of these place legal duty upon those who govern.

Parliament has never been vested with absolute power. Henry VIII made an Act of Proclamations in 1539 which declared his word to be the law. This was always an unconstitutional assertion of power. Sir William Blackstone in his famous commentaries of 1765 declared Henry VIII's Act of Proclamations to be `wild and newfangled treasons'.

Such abuse of power featured in the divine right of kings but was abolished by the settlement of 1689. This contracted the Monarchy and government to the constitutional constraint of limited and defined power. This remains in force today and may not be lawfully ignored or overturned. Those that think that this may be `old hat' might care to reflect for instance that our Bill of Rights forbids the use of `**Judicial Torture'** or `**Taxation without Representation'**.

Sir William Blackstone affirmed the constitutional settlement of the Glorious Revolution to be the undeniable duty of the King, the Government and Parliament alike. This constitutional obligation is contracted by all Crown servants who are bound to comply with their oaths of allegiance and office in obedience to our constitutional law. The public trust placed in our politicians is a matter of contract and law requiring them to perform this duty. It preserves our `spiritual and civil rights and properties' (per Coronation Oath Act 1 Wm & M Ch6). **It creates a legal duty to maintain the Constitution at all times.** What could be more necessary or more fundamental? It is upon these principles that powers of governance are founded.

The settlement of the Glorious Revolution 1689 reasserted `supremacy' of legitimate power in the `rule of law'. It did not give supremacy to the Monarch or to Parliament, the Prime Minister, the Executive or the Crown in Parliament. It sought to maintain the power in `the rule of law' and uphold the liberty of the people. It laid down some of the people's fundamental rights. These rights were entrenched so that Parliament's remit is invariably and impartially to maintain them and not to diminish them. Truly the people's sovereignty is contracted to the supremacy of the rule of law.

This entrenchment binds the Crown in all use of prerogative power and all legitimate power emanates from some use of the prerogative. All statute power gains its initial authority from the prerogative of Royal Assent.

The divine right of kings claimed by the Stuart monarchs was halted by the settlement of 1689 which affirmed a constitutionally limited monarchy under the law. The constitutional limitations which constrain the Monarch also constrain Parliament. This essential limitation of our constitutional law has become sidelined by usurped power.

No Parliament can ever legitimately circumvent the constitution. The contract of our Constitution utterly forbids any encroachments upon its provisions. Thus our Constitution lays down the fundamental duty for all in authority to follow. This duty has always been prerequisite to holding any office of the Crown and is designed to protect the people from unconstitutional assertions of power (e.g. the re-introduction of cruel or unusual punishments such as torture is placed beyond the authority of Parliament).

Our constitution ensures no taxation without representation; the freedom of speech in Parliament; guaranteed right to trial by jury in traditional courts, to habeas corpus, the presumption of innocence, the right to one's property, the right of self-defence and much more. Its purpose is to ensure the people are never again to be oppressed. "An Englishman is born a free man save under the due restraint of the necessary law" is a phrase that resonates the world over. The rule of law enshrines accountability in the administration with ultimate enforcement in the hands of the people, not those who govern.

The Constitution was never intended nor does it in any way permit the divine right of kings to metamorphize into the divine right of our politicians. The freedom of self-determination under our own law is our guaranteed birthright. It is not something for mere transitory politicians or for that matter any one generation to give away even by referendum. The rule of law itself is guaranteed to us by contract in perpetuity. It is bound by the law to be the only means by which we may be governed. Sir Robert Meggary VC said in Manuel v the Attorney General 1983 (C. A.) "As a matter of law the courts of England recognise Parliament as being omnipotent in all save the power to destroy its own omnipotence." That omnipotence is constrained by the Constitution but at least Sir Robert recognised one constitutional principle of the limitation of power. This principle has been progressively broken by successive governments.

The misconception that Parliament rightfully enjoys unfettered power now threatens entirely to undermine our Constitution and the rule of law itself. The EU treaties and constitutional proposals are eroding to the point of destruction our constitutional principles. History shows unequivocally that we tolerate this erosion at our peril. By what authority may our politicians or their parties consider that they are empowered to destroy all this? No such authority can or may legitimately exist under the British Constitution, which has provided security and stability to the people of the UK since 1689.

Our Constitution provides redress and remedy where it is abused or breached. This is the pre-eminent duty required to be upheld by Crown, Parliament and the Judiciary. Ultimately it provides for the right of resistance to unconstitutional assertions of power. The Constitution declares invalid any unconstitutional law. It instructs the iudiciary to uphold the constitution for the liberty and security of the nation. This is so that every new generation may be assured of their birthright of self-determination and liberty. Our Constitution has been the envy of the free world and our system of justice has been emulated world wide. It is the ancestor of the American Constitution. It is our greatest contribution to the free world.

Our Constitution is self-protecting. Before officials may take office they are sworn to bear allegiance to it. Perjury, misfeasance in public office, treason and contempt of statute are all offences under our law that may be used to protect and uphold the Constitution. Parliamentary privilege does not provide immunity against treason, felony (criminal law) or breach of the peace (4th Coke Inst l25). The pre-eminent public policy ought always to be the maintenance of the Constitution before party loyalty and any other political policy. However tyranny and despotism like all dictatorial powers may flourish where the ability to legislate and the power to enforce, fall into solitary hands or that of an unaccountable executive or body. To overcome this trap into which so many nations have fallen, our Constitution has evolved with separation of powers designed to provide vital security against oppression.

Three fundamental divisions of our Constitution are,

1. Independence of the judiciary,
2. Presumption of innocence and habeas corpus with the right to trial by jury,
3. Constitutional limitation of power imposed on the Crown and Parliament. (eg. Coronation Oath / Bill of Rights)

All constitutions include control and limitations of power. A basic principle of a constitution is to provide a fixed standard by which the constitutionality of power asserted may be checked and redressed if found wanting. To ensure the supremacy of the rule of law it is imperative to have independent judges who are not part of the legislature. Where a judiciary and legislature are united, oppression may readily take hold with those who govern tempted to pass judgement in their own cause.

The right to trial by jury places the enforcement of the law in the hands of the people. A jury invariably has the undoubted right to declare a `not guilty' verdict. This power of enforcement by the people for the people ensures that where an oppressive law is found to be excessive, a jury may choose not to convict in spite of guilt, in preference to furthering the oppression. An example of this was the death penalty for sheep stealing during the 18`h century. It became difficult to obtain convictions owing to the disproportionate nature of the offence and punishment.

This separation of enforcement from those who legislate is perhaps the strongest bulwark against tyranny for it subjects the enforcement of the statute law to a test of acceptance by the common law in the hands of the people.

Administration is necessary in an orderly society; but it should never be allowed to degenerate into dictatorial rule. Administrative rules ought never to be so severe as to impinge upon our fundamental freedoms nor to separate the people from their courts. The people's liberty should be protected by the certainty of being able to apply to the courts to test the constitutionality of governance. This is fundamental to the rule of law under the Constitution.

Challenge to the powers of treaty-making such as that to the Nice Treaty brought by Norris McWhirter and John Gouriet, was refused because the Court presumed that the treaty making power of the Crown is not subject to the restraint of our constitutional law. The judges believe that they do not have power to overturn a statute once enacted, albeit unconstitutionally.

Suppose the EU decided that terrorists could be subjected to torture or perhaps upon a measure of direct taxation or any measure in conflict with our Constitution, **it would not be lawful for Parliament to accept such a directive.** Certainly no minister or Parliament may place the Monarch in breach of the Coronation Oath. Primary law of our Constitution forbids `cruel and unusual punishments' and forbids `taxation without representation'. The Crown is constitutionally limited and so the constitutional law controls the use of all the prerogatives of the Crown. Royal Assent may not be used to impose unconstitutional legislation. There can be no implied repeal of constitutional law. Therefore it is only logical that constitutional restraints have to be dismantled before such unconstitutional action could or should be contemplated. If this were not so, the imposed constitutional duty could simply be disregarded and breached and thus held to be of no force or effect. Such abuse makes a mockery of any concept of constitutional constraint. The doctrine that `no parliament may bind its successor' or that `the sovereignty of parliament knows no bounds,' may not be used to undermine the Constitution. These doctrines do not provide relief from the duty imposed by the obligations of our Constitution.

The people have always had a right to apply to the Court or to petition the Crown where there is a constitutional conflict and no amount of administrative or judicial rules or regulation may prevent them. This is fundamental to the Constitution.

This critical realisation was publicised by Lord Hewart of Bury in his book the *New Despotism* in 1929. He was then Lord Chief Justice. Chapter 4. of the book was titled `Administrative Lawlessness'. He realised Acts delegating wide powers to ministers were a grave danger, particularly those which created tribunals in which ministers held the final right of appeal. He wrote that these often had the characteristics `of hole in the corner justice'. He predicted that administrative law would be used to separate the people from their courts, creating `licensed despotism' and so undermine the Constitution and rule of law. This is precisely what is happening today. It was Lord Hewart who famously said `justice must be seen to be done'. Typically an administrative Act would be passed enabling the minister to make such regulations as he deemed necessary to accomplish the purpose of the Act. Such regulations when made have the force of law with a minister having the final say in appealed cases giving judgement in his or her own cause. This can and clearly has led to abuse of authority resulting in mal-administration or injustice. The wide use of Statutory Instruments to short-circuit parliamentary passage of legislation has led to an abundance of bad law, over regulation and higher taxation. This dictatorial mechanism is the central theme of the European system of law called Corpus Juris.

The entire EU system of rule by directive has been designed by bureaucrats for bureaucrats. It places sweeping powers in the hands of those who are **unaccountable, unelected and irremovable and who are not bound to the people of United Kingdom by a duty of allegiance to the Crown. This infringes the people's sovereignty and birthright. It is therefore unconstitutional.**

To Summarise; the separation of power is constitutionally established and entrenched by the Coronation Oath. The structure of Parliament contains separation of power. Our Constitution places the sovereign power of the nation in the hands of the constitutionally limited Monarch. The two Houses of Parliament determine the context and content of Bills that are enacted by the granting of Royal Assent. Royal Assent is a prerogative power of the Monarch who is sworn contractually to abide by the Coronation Oath, the Bill of Rights and more. The Monarch is sworn to govern us according to our laws and customs. This historical and constitutional position has been recently reconfirmed in parliamentary replies. It is also **confirmed in Erskine May's book of Parliamentary Practice.** The Monarch has a reign-long duty to abide by the Constitution and law. Likewise all in authority are bound to owe true allegiance and abide by the rules of our constitutional law. No minister may advise a breach of the Coronation Oath which contracts the Monarch to govern and to govern us only by lawful means.

The Monarch is therefore duty-bound by lawful obligation and oath to refuse Royal Assent to that which is clearly unconstitutional. The Monarch has the choice to enact or to refuse assent to Bills but cannot determine their content. The constitutionally limited Monarch may only accept the advice of her Ministers if that advice complies with our Constitution. The Monarch has the power to dissolve Parliament. The Monarch's negative power to refuse assent ought to ensure that our governance remains at all times within the Constitution. The Crown is bound by constitutional obligation and duty to grant a lawful petition of right.

The EU Constitution states that it must be ratified in accordance with the constitutions of member states. <u>This is not possible under our existing constitution</u>. It is time our politicians and government were held to their duty. As Sir Winston Churchill said about the Magna Carta " *when in subsequent ages the state swollen with its own authority, has attempted to ride roughshod over the rights or liberties of the subject it is to this doctrine that appeal has again and again been made, and never as yet without success. "* We must appeal to that doctrine; our constitution must be used to assert our liberty and birthright of self determination.