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## **Keeping the common law up to date**

Being in the final stage of editing a new edition of a textbook of mine dealing with general law, I have had to frame a quick response to the decision that concerns Dr A T H Smith (letter, 26 October 1991). I am saying that, while the House of Lords in its judicial capacity has no general power to alter the common law, it does have a power to modify it in cases such as marital rape. This is an aspect of its constitutional function of maintaining the common law in efficient working order.

The reason I am giving is this. Where a common law rule applies to a social institution such as marriage, and that institution fundamentally changes its nature over the years, then the common law must adapt accordingly. Otherwise it is operating in relation to an institution that has ceased to exist. This principle does not permit the Lords to alter the law of blasphemy, as Dr Smith fears, because the fundamental nature of the Christian religion, which it upholds, has not altered.<sup>1</sup>

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<sup>1</sup> *The Times*, 31 October 1991.