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A Bleak House Today:
How English Charity Regulators Missed the Mark in 2000 and Beyond

by

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Abstract

The purpose is to present a charge that in the period since 2000 English Attorneys General, together with the independent charity regulators, have perpetrated a 'fraud' in the common or garden sense of that term in the administration of charity law on controversial political issues. Criteria relating to Tom Bingham's understanding of 'the rule of law' are applied to three cases which the author, as prosecutor, presented: Case 1, 1993 – 2000; Case 2, 2008 – 2010; and Case 3, 2017 – 2018. The principle of 'an irenical perspective' underpins all of them and is eventually disowned by the same Court of Appeal in 2018 that upheld it in 2000. The outcomes of these cases, with the Paris Peace Conference 1919 in mind, are assessed against the chosen criteria to demonstrate the fraud: the rule of law replaced by rule of government lawyers. However, the judgments of the Court of history have overturned those of the secular courts and permitted the prosecutor to claim to be the de facto Law Officer for public benefit.

Purpose

This is a personal account by a layperson of his experience of the English civil courts in upholding the principle of peace (an 'irenical perspective'), based on material facts either verified by documentation or personal testimony. In the latter case, though, independent witnesses may not be available to confirm his purported facts. The reader will then have to decide whether it has the ring of truth or, even if doubted, makes a difference in relation to the whole charge against English Attorneys General, 10 March 2000 to 11 November 2018.

The charge against them, together with the previous and current independent Charity Commission for England and Wales, is that they have knowingly perpetrated a fraud in the administration of the law on charity affecting controversial political issues in a manner that directly threatens, and has already undermined, the public benefit of peace and security in this State and the wider world. This has been done, it is further alleged, with the complicity of senior judges of the English civil courts which demonstrates beyond all reasonable doubt that the rule of law has been subordinated to rule by government lawyers through judges' knowingly falsifying material facts or leaving out relevant legal principles which the courts themselves had previously accepted. Thus the rule of law is replaced by political expediency.

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The Meaning and Consequences of Fraud

In claiming that a 'fraud' has been perpetrated, this term is used in the common or garden sense expressed by The Concise Oxford Dictionary.[1] The meanings include:

> 'use of false representations to gain unjust advantage'
>
> 'dishonest artifice or trick'
>
> 'imposter, person or thing not fulfilling expectation or description'

Any or all these definitions are said to apply in relation to the charges made. However, a further meaning may or may not apply, viz.

> 'criminal deception'

It is not the purpose of this article to suggest a criminal charge (or even a claim for civil liability) against the Attorneys General, past or present. Moreover, judges of superior courts rightly have immunity from prosecution provided they are acting within their jurisdiction, as here.[2]

Nor is this an appeal to public opinion for the charity law concept of public benefit relies on the common law and judges should not, in theory, take popular views into account in judicial decision-making. However, whether judges take the political views or exigencies of Attorneys General into account is very much at issue in this article. This author's defence relies on fact and law alone and is enforced not by public opinion but by what he calls the 'Court of history'. This is the force of circumstances under a higher power, God or fate, which human beings alone, no matter how strong, and states, no matter how powerful, cannot ultimately control.

This higher power lays bear the machinations of those 'in power' over time and ruthlessly exposes all fraudulent actions, that require a public airing, to their consternation. Thus it is understanding, not power, that is ultimately decisive to the work of securing a state of peace.

1. The Rule of Law

In order to determine whether the rule of law, in any particular case, has been subordinated to rule by government lawyers it is obviously first necessary to explain what the term means and what criteria are to be applied to test whether the rule of law has been upheld.

In this respect a book by the late Tom Bingham, a former Senior Law Lord of the United Kingdom, will be authoritative and useful as it is not addressed to lawyers but to those who want to make up their own minds about The Rule of Law.[3] It is worth noting that Lord Bingham does not rely on his title when touching on political matters – a fine example which political scientists in England and Wales should follow whenever they make claims which are not backed up by the 'Peace Games' or other educational methods of analysis.[4]

Bingham identifies the core of the existing principle of 'the rule of law' as being that:

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> …all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly made, taking effect (generally) in the future and publicly administered in the courts.[5]

The crucial point is that the laws are administered by those who do not pass them, i.e. judges not politicians. While accepting that, as Bingham admits, his statement is not comprehensive and there will be exceptions or qualifications, there is no reason to suppose the need for any in cases determining the distinction between educational purposes that are charitable in law and political purposes which are not. The Attorney General, as Law Officer, is a politician.

One of the constituent parts of the rule of law, which Bingham identifies, is:

> (7) Adjudicative procedures provided by the state should be fair.[6]

The other parts, though relevant, do not require attention here because this is the key one without which the rule of law cannot apply and after which a Law Officer is bound to enforce whatever independent judges have decided. Both aspects are vital for a court judgment.

On 'a fair trial' Bingham is characteristically candid. Fairness is a constantly evolving concept, as his historical examples of unfairness in mostly criminal trials amply illustrate. Thus:

> A time is unlikely to come when anyone will ever be able to say that perfect fairness has been achieved once and for all, and in retrospect most legal systems operating today will be judged to be defective in respects not yet recognized.[7]

That is what is at issue in this article.

Underpinning the concept of fairness are two further requirements: fairness to both sides, not just to one; and a guarantee of judicial independence. On the latter, Bingham underlines that this means judges must be independent not only of ministers and the government but

> …they must be independent of anybody or anything which might lead them to decide issues coming before them on anything other than *the legal and factual merits of the case* as, in the exercise of their own judgment, they consider them to be.[8] [Emphasis added.]

This is exactly how the author of this article understood the system to work, as described below. However, it will later be seen that this is emphatically not how the system works in practice and no government lawyer involved in the cases described here acted on that basis.

Linked to this point, about how judgments are arrived at, is Bingham's claim that:

> Today the UK has a professional judiciary which is as non-political as any in the world, and appointments are made on the recommendation of independent selection boards, which consult widely but have no political representatives. This does not prevent close and friendly co-operation on an administrative level, which is essential to the smooth running of the courts, but it ensures that the judges' decisions are theirs alone.[9]

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His cautionary tales in that respect lead Bingham to accept that 'A rule of political neutrality in the judiciary has not been universally observed in the past, and is not now.'[10]

One of those tales involved the Scottish equivalent of the Attorney General in England and Wales but, as Scotland has its own legal system, it need not be elaborated here except to say that the individual concerned went on to become a judge. As Bingham points out, the tale illustrates the pitfalls of combining a political and a judicial role. Such transitions have been known in England and Wales, as two of the three cases below reveal.

An Academic Contribution

Professor Niall Ferguson, an economic historian, gave The Reith Lectures in 2012 on the theme 'The Rule of Law and Its Enemies'. Its interest here is in his question:

> …has the rule of law in the English-speaking world inadvertently gone back to Bleak House? Has the rule of law degenerated into the rule of lawyers?[11]

The reference is to Charles Dickens' famous novel, Bleak House, whose accurate depiction of the Court of Chancery in early nineteenth century England is affirmed by Bingham.[12] The more serious part of the question is asking whether judges are really in charge of decision-making, though Ferguson does not put it like that.

What he does ask, during the question time after his first of four lectures, is:

> I don't know if anybody in the audience has had the experience of actually dealing with the law in recent years. Was it fun? Did you love it? Would you like to do it again? I doubt it. And the reason is that… I think the rule of law has degenerated in some subtle ways, to the point that one reads Charles Dickens' account of Chancery in Bleak House and thinks, 'wow, that seems familiar, I think I just had that happen to me!'[13]

This writer was listening to the lecture on television but immediately responded 'Yes, 27 and 28 July 1998 in the Chancery Division of the High Court was just such an occasion for me'. 'Fun' might not be the right word but 'inspiring' and hugely significant it undoubtedly was, as will become obvious shortly. The Bleak House aspect came later, long after the trial judge had handed down his judgment and when the Appeal Court judges had their say on 28 June 2000.

History, though, does not simply repeat itself and a Bleak House today is such for different reasons than two hundred years ago. In his third lecture on 'The Landscape of the Law', Ferguson asserts, especially in the context of the legal system of the United States:

> Americans could once boast proudly that their system set the benchmark for the world; the United States was the rule of law. But now what we see is the rule of lawyers, which is something different.[14]

Precious little evidence is advanced to support or explain this thesis. It is easier to criticise the US legal system because it is more open and its judges more willing to criticise each other's judgments, sometimes harshly, so it is not surprising that Ferguson, who cites Bingham's components of the rule of law, and Bingham himself do so. The ensuing case studies throw light on the English system of civil law as it affects the interface between law and politics.

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2. Three Cases – One Principle

The three cases which the author of this article presented in or to the English civil courts, acting in person, are really one. For they all revolve around a single principle: the promotion of peace as a generally desirable object. Moreover, from the first case this principle came to be known as 'an irenical perspective', judicially defined by a Chancery judge in 1998.

The purpose here is take the criteria identified above, with respect to the rule of law, and apply them to the relevant law and material facts, as the courts determined them to be in each case, to test whether it is judges or government lawyers who dominate decision-making in or by the English civil courts. These criteria may be listed as follows:

(I) Was the process fair to both parties?
(II) Was the substantive judicial decision in each case arrived at exclusively by the application of the relevant legal principles, as the courts have determined them to be, to the material facts of the case without misrepresentation or falsification?
(III) Did the Law Officers and/or the independent charity regulator correct any flaws in their own understanding of the law, after a case was complete, to bring it into line with the judicial decision-makers or seek to change the law through Parliament?

It is essential to remember that the three cases concerned the interface between charitable and political purposes such that, for the former to be upheld and defended against subversion by the latter, a Law Officer must ensure that all the relevant legal principles are enforced. Supreme amongst them in English charity law is public benefit which, unlike public interest, must be capable of proof if not self-evident.[15]

In the analysis which follows, the author of this article refers to himself as 'the prosecutor'. The precise legal terms employed vary according to the court in question, and the role taken, and do not matter here.[16] A public prosecutor is defined as a 'law officer conducting criminal proceedings on behalf of State or in public interest'.[17] Rather this 'prosecutor' acts in civil proceedings for the public benefit on behalf of no-one, not even himself. The purpose is to advance the rational, moral and spiritual values that are the foundation of charitable activities. While the use of this term from the first case prefigures and anticipates the eventual result at the end of the third case, it provides the rationale for his eventual self-description in 2019 as Law Officer for public benefit in England and Wales, *de facto* but not yet *de jure*.

A. Case 1, 1993 – 2000

Background

Ostensibly the case concerning the Project on Demilitarisation (Prodem), which the prosecutor initiated In the Chancery Division of the High Court in London on 26 September 1995 in his capacity as one of its two trustees, tested the charitable status of that Trust. However, it was also a test of whether his method of analysing international conflicts was lawful and objective. The first Briefing, which he alone edited, had this Statement of Purpose:

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> **We are on the road to war**. After the Cold War and the Gulf War the next war is just waiting to happen … wherever it may be. The facts of recent history lead inexorably to this conclusion. Yet only three short years ago, when the Berlin Wall came down, the prospects for peace had never looked brighter. What went wrong? And why? And how can we be on the road to war when we could and should be on the road to peace?[18] [Emphasis in the original]

That Briefing no. 1 was published in March 1993. The last Briefing A/3 in October 1995. In between, the prosecutor edited and published two more Briefings in the Series A on 'Military Security or Common Security'. In all, his editorial ran to 245 pages written over three years.

His colleague, as Editor of Prodem Series B and C on 'Military Expenditure and the Arms Race' and 'Diversification and Arms Conversion' respectively, published two Briefings in 1993–1994 running to 98 pages. The prosecutor was not joined by his editorial colleague in subsequent legal proceedings from September 1995 and his place as trustee was taken by another.

Each Briefing clearly showed who was the Editor and, where more than one person was responsible for writing different sections, who had written what parts.

This work had continued In the School of Business and Economic Studies, University of Leeds from the autumn of 1993 because the Charity Commission's initial response of 26 January 1993 to Prodem's application for registration as a charity was that it did not qualify. In their view the Trust clearly set out to promote a particular line of political policy, viz. 'To propose alternative policies to achieve disarmament and a conversion of resources from military to civilian purposes'. The quote is Aim 2 in Prodem's Background Paper of October 1992.

The prosecutor-to-be viewed this three-paragraph Charity Commission dismissal of Prodem's case for registration as flawed and, therefore, an opportunity to clarify the legal status of peace studies as a genuinely educational subject and disarmament and conversion within it. (Both Editors had done their doctoral theses on aspects of arms conversion.) The matter was, therefore, taken up on principle[19] and not in the expectation that the case could be won.

Hence a Prodem Declaration of Trust was executed on 9 June 1994 and the prosecutor made a detailed submission to the Charity Commissioners sitting as a Board in July that year. The Commissioners' eventual rejection of that submission dated 5 September 1995, on the grounds that Prodem's purposes were not exclusively charitable in law, set the stage for the appeal to the High Court and then to the Court of Appeal. Their judgments were on 9 October 1998 and 28 June 2000, respectively.[20] Both declined to declare Prodem to be a charity in law.

The Rule of Law
Criterion (I) - Fairness

All three tribunals handled the Prodem case with scrupulous fairness, as far as the prosecutor was concerned. The Charity Commissioners took 14 months to reach their decision, which might be thought excessive, but it worked to Prodem's advantage. For Briefing A/3 was published soon afterwards containing Appendix E with an outline proposal for competing academic analyses of conflict areas (later called 'Peace Games'), which built on the prima facie case that the direction of conflicts towards peace or war could be predicted.[21]

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Criterion (II) – Substantive Judgments

The prosecutor's amended originating summons set out the basis for determining Prodem's charitable status in a way that was consistent with Bingham's approach, cited previously:

> … if all the relevant legal cases and material facts presented had been fully and correctly taken into account then PRODEM would have been found to be for the public benefit in a manner which the law would regard as charitable.[22]

The same summons pointed out that the Charity Commissioners had left out of consideration in their Statement of Reasons various relevant legal cases and material facts.

- *High Court judgment – 9 October 1998 (after trial on 27 and 28 July 1998)*

The trial judge in his High Court judgment, as the prosecutor readily acknowledged before the Court of Appeal, had 'fully and correctly' taken into account the relevant legal cases. The differences between his legal framework and that of the Charity Commissioners, and their legal department, is instructive:

- '… there is no reason to exclude, from the scope of charity, education as to the benefits of peace, and as to peaceful methods of resolving international disputes.'[23]
- 'The importance of Parkhurst -v- Burrill,[24] [a US case] for Dr Southwood's purposes, is that it accepts that a purpose may be educational, even though it is based on the premise that people should be educated as to the "evil effects" of war, and has therefore what the Commissioners referred to in the present case as an "irenical perspective"...'
- 'Although it is not direct authority for the purposes of English law, I do not see any reason to take a different view. I see nothing controversial in the proposition that a purpose may be educational, even though it starts from the premise that peace is preferable to war, and puts consequent emphasis on peaceful, rather than military, techniques for resolving international disputes;…'
- '… and even though one purpose of the education is to "create a public sentiment" in favour of peace…'
- 'The important distinction, from the "political" cases mentioned above, is that the merits or otherwise of the Labour Party's views on education, or (in the early 1940s) of a state health service, were matters of political controversy. The desirability of peace as a general objective is not.'[25] [Bullet points added to identify each difference.]

All these important points, without exception, had been rejected (or unconsidered) by the Charity Commission; the submissions of the prosecutor, albeit in a more precise form than his, accepted. Plainly the Commission's letter of 26 January 1993 and the Commissioners' Statement of Reasons had been seriously deficient. The trial judge described the latter as 'full' and the Counsel for the Attorney General's contentions as 'full and objective'.[26]

However, at this point the High Court judgment developed a serious flaw. To the judge's surprise (and the prosecutor's) Counsel found Prodem's Aim 2 unproblematic and directed his fire against Aim 1 instead: 'To fundamentally question the new forms of militarism arising

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in the West…'[27] The judge's initial reaction on 27 July 1998 had been 'I don't think that can be right'. However, his resulting judgment shows that he decided to go along with the Attorney General's view, for he concluded:

> The term 'militarism' is intended to define the current policies of the Western governments, and the purpose of Prodem is specifically to challenge those policies [Aim 1 cited as above]. That is the clear and dominant message, which in my view can only be described as political.[28]

Unbeknown to the judge, Aim 1 was the prosecutor's contribution to Prodem and Aim 2 was his editorial colleague's. Hence he was able to appeal to the Court of Appeal on the grounds of the trial judge's misapplication of the legal principles to the facts of the case, showing that 'militarism' was not intended to define current Western policies. This appeal was based on the prosecutor's definition of 'militarism' in his Briefings and an analysis of the other dictionary definitions of 'militarism' which Counsel for the Attorney General had provided.

- *Conclusion*

The High Court judgment set out comprehensively and authoritatively, for the first time in English law, the basis for the study and advancement of international peace.

Regrettably, there were material errors of fact, including on the definition of 'militarism', which meant that the judgment was not fully objective.

- *Court of Appeal judgment – 28 June 2000 (after appeal hearing on 10 March 2000)*

The prosecutor noted the moment that he walked into the courtroom on 10 March 2000 that the atmosphere was tense. The Solicitor General arrived in person having, many months before, filed the longest skeleton argument of either party to these proceedings. The two persons in the public gallery, the prosecutor's co-trustee correctly surmised, were from the Charity Commission. (There had been none at the earlier trial.) Despite it being clear, almost from the moment that the three judges walked into the courtroom, whose case they were bound to favour the judges were placed under heavy pressure. Passages from the Prodem Briefings were read out, some having little or no relevance to the Attorney General's legal case, with the implication that, if the case did not go the right way, then the judges might expect such passages to be read out in the House of Commons. To the reader this may seem surmise, but the prosecutor had the advantage of being in court that day and being able to compare the situation with the 'atmosphere' at the original trial. There it had been formal but good humoured and the prosecutor had regarded it as by far the most serious discussion of the subjects of peace and war which he had been involved in during the 1990s. However, the trial judge had observed to Counsel at one point that he (the judge) 'did not have a choice'. The significance of that statement only became clear by the judgment day of 28 June 2000.

In this connection, the appeal judgment made the following revealing statement:

> On the basis of his finding that the purpose of Prodem was to challenge the current policies of Western governments the judge was bound to hold, as he did, that the Charity Commissioners had been right to refuse to recognise the trusts declared by

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> the 1994 deed as charitable. That was not, as the judge made clear, because those policies were unchallengeable – or because to challenge them was in any way unlawful or improper – but because the court cannot determine (and should not attempt to determine) whether policies adopted by the government of the United Kingdom and other Western governments are or are not for the public benefit.[29]

It is revealing for the following reasons:

(i) The Court of Appeal did not accept the line of reasoning of the High Court (or the Attorney General), in respect of the definition of 'militarism' but returned to Aim 2 as the basis for rejecting Prodem's claim to charitable status.

(ii) The Court of Appeal did accept the reasoning of the High Court (and the prosecutor) with respect to 'an irenical perspective' which then provides objective criteria to 'challenge' (or rather, 'fundamentally question', as in a University) whether a specific international dispute is heading in a more, or less, peaceful direction.

(iii) The Court of Appeal, while laying emphasis on what the trial judge 'was bound to hold', did not lay equal emphasis that he was 'bound to arrive' at his decision '…exclusively by the application of the relevant legal principles, as the courts have determined them to be, to the material facts of the case without misrepresentation or falsification?'[30]

The Court then proceeded, in considering the prosecutor's case, to do just that. Already, in the factual section, it had insisted on there being two editors of Prodem Briefing no. 1, despite the error being pointed out by the prosecutor at the draft judgment stage. Then, noting that:

> …he [Dr Southwood] accepted that the judge had fully and correctly taken into account all the relevant authorities…[31]

…the Appeal Court leaves out one principle which the High Court had accepted, i.e.

> 'In a case where the real purpose for which an organisation was formed is in doubt, it may be legitimate to take into account the nature of the activities which the organisation has since its formation carried on.'[32]

This was important because the trial judge had noted:

> There remains the point that, since the Commissioners' decision, the Trust has produced a framework for a future briefing series, which on its face would be more objective and closer to the concept of education as explained in the cases.[33]

This refers to Briefing A/3, Appendix E which the Court of Appeal declined to consider explicitly as it was published after the Prodem Declaration of Trust was executed.

Instead the Appeal Court adopts an extraordinary but effective way of resolving the impasse and providing the prosecutor and his co-trustee with an exit strategy from the case to continue the main part of the work of Prodem under a new guise:

- Ignoring the prosecutor's skeleton argument, which the presiding judge had described as 'clear' on 10 March 2000, the Court states:

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> Dr Southwood will, I trust, forgive me if I do not deal expressly with each of the many points which he develops in a closely reasoned [skeleton] argument. The reason I do not do so is that I am unable to find in that argument any *real* appreciation of the reasoning which led the judge to reach the decision which he did.[34] [Emphasis added and explained in the Conclusion below.]

- The *ratio*[35] of the Appeal Court judge which follows accepts an 'irenical perspective' as the basis for genuine education but insists – consistent with the prosecutor's own originating summons and skeleton argument, which had never claimed the political promotion of disarmament to be a legally charitable object – that while:

> I would have no difficulty in accepting the proposition that it promotes public benefit for the public *to be educated in the differing means of securing a state of peace and avoiding a state of war*. The difficulty comes at the next stage… [examples omitted here]… So the court cannot recognise as charitable a trust to educate the public to an acceptance that peace is best secured by 'demilitarisation' in the sense in which that concept is used in the Prodem background paper and briefing documents.[36] [Emphasis added.]

- The Conclusion of the Court of Appeal is equally instructive in its misrepresentation of the High Court's position (as promoted by the Attorney General) and of Prodem but it does nevertheless offer its trustees a way out by repeating the italicised clause:

> The reason why Dr Southwood's contentions failed below – and the reason why, to my mind, they must fail in this Court – is not because he starts from an irenical perspective that peace is preferable to war. It is because it is clear from the background paper prepared in October 1992, and from the briefing papers to which I have referred, that Prodem's object is not *to educate the public in the differing means of securing a state of peace and avoiding a state of war*. Prodem's object is to educate the public to an acceptance that peace is best secured by 'demilitarisation'. I have no reason to doubt Dr Southwood's sincerity when he protests the contrary; but the evidence is firmly against him…[37] [Emphasis added]

  This was not the view of the High Court. It draws no distinction between the evaluation of policies and the promotion of policies in themselves thus deliberately misrepresenting the prosecutor's case. Moreover, the phrase 'the evidence is firmly against him' needs to be amended to read 'the evidence which the [English] Court of Appeal has deliberately falsified, in conflating the views of the two editors, is firmly against him…' Not so convincing.

Nevertheless, the repetition of the words in italics shows how the Court of Appeal has indicated the way in which the prosecutor can take forward the major part of Prodem's work.

- *Conclusion*

The Court of Appeal judgment endorsed the High Court's legal framework based on 'an irenical perspective' but not the Attorney General's case. It made no reference to that at all.

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The judge did cite with approval the Charity Commission's letter of 26 January 1993, which the Charity Commissioners could hardly have read with satisfaction.[38] The point that the Court was making was that if the Commissioners' had simply stuck with that line of reasoning the Prodem trustees would have had no point of law to appeal against. As explained in the Conclusions to this article, that was never likely, given the Commission's *modus operandi*.

The Appeal Court was certainly not endorsing that January 1993 letter as a satisfactory summary of all the relevant legal principles since the Court went on to endorse the trial judge's summary (as the prosecutor had). In the letter and article no. 5 scheduled for 30 May 2019 the prosecutor will aim to show, more positively, how Prodem's application would have been dealt with had the High Court's legal framework been known at that time and how it is to be applied in future by a new Charity Regulator for the public benefit.

Now, though, it is time to turn to the realism implicit in the prosecutor's case. For, as referred to above, the Appeal Court found he had no 'real appreciation' of the trial judge's reasoning. That was because, the prosecutor saw at the time, the Court had to submit to the immediate and short-term realism of State Law Officers. Meanwhile he could see, as they could not, the terrible storm gathering outside as the Court of history prepared a very different verdict that would leave in tatters the State Law Officers' case and the verdict of the secular Court.[39]

Criterion (III) – Enforcement

As the parties left the Courtroom on 28 June 2000, the duty of the Law Officers and independent charity regulator was clear. First to educate themselves, and then the charity sector including higher education institutions ('exempt charities'), on the comprehensive legal framework for the study and promotion of peace. However, this proved too difficult for them.

Taking the legal theory before practice, what were the implications of the Prodem decisions?

(a) The promotion of peace is, in general, a charitable object rather than a political one as expressed by the judge in the US case of Parkhurst v Burrill [1917], cited with approval by the English trial judge: 'The final establishment of universal peace among all the nations of the earth manifestly is an object of public charity.'[40]

(b) It must, therefore, follow that the means to its attainment are principally educational in the legally charitable sense. Since, as the Court of Appeal pointed out in the Prodem case, the court has no means of determining whether one controversial political policy rather than another is for the public benefit it must follow that the primary role of education from 'an irenical perspective' is the evaluation of such policies by researchers and analysts in competition with each other in the manner described in Briefing A/3, Appendix E. That does not rule out educational bodies promoting the benefits of peaceful techniques of conflict resolution – though not the policies in themselves (saying 'you should do that').[41]

(c) Such evaluations test whether a 'climate' for peace, rather than for war, is being created by the governmental and other non-state parties' policies. For a climate for war is bound eventually to lead to war while a climate for peace is the *sine qua non* for a state of peace.

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These three, (a) to (c), reflect the (a) to (c) of the prosecutor's amended originating summons. Thus the State Defendants in the Prodem case knew for sure that they had won in name only. When the two former Prodem trustees applied to the Charity Commission to register the International Peace Project^{2000} as an educational charity on an 'irenical perspective' – using the very words of the Court of Appeal (italicised above) in its objects clause – there could be no refusal on those grounds, nor was there.[42] In that sense only, the rule of law did apply.

Yet, there was another crucial aspect of the case which the Law Officers should have been aware of, viz. the objectivity of the prosecutor's analysis of the post-Cold War peace settlement. Three legal tribunals had tried and failed to find an exclusively lawful and objective basis for rejecting Prodem's claim to charitable status. This, in turn, meant there was no reason for the Law Officers to doubt that the prosecutor's four out of six Prodem Briefings, which had claimed '**We are on the road to war**…', would be vindicated by the subsequent course of events. What was the basis of his method of analysis which made the defence of 'an irenical perspective' so crucial but also allowed him to sincerely and truthfully argue that the purpose of Prodem was not to promote demilitarisation but to warn of war?

(i) If 'an irenical perspective' is the basis for genuine education then it is possible as a technical, rather than a political exercise, to evaluate whether state or other parties in dispute are using peaceful techniques for conflict resolution equitably or not.[43]

(ii) The prosecutor had done this by distinguishing between the power of coercion and the power of cooperation. He applied this binary system of analysis (which one day may be largely reducible to mathematical formulae) to each relevant dimension of security in a given area of conflict. In his Prodem Briefings this was principally:

1. The military dimension;
2. The economic dimension;
3. The (political) institutional dimension.

(iii) The results of that analysis determine whether a (cooperative) climate for peace or a (coercive) climate for war predominates across each dimension of security by each party in dispute. The point being that promoting peaceful means of conflict resolution does not necessarily lead to a state of peace nor military means to a state of war.[44] Yet cooperative power that is unreciprocated across each security dimension, or coercive means that are unchallenged, must tend towards a climate for war.[45]

The devastating results of this analysis were evident even after the original trial in 1998:

- The following year the Albanian revolt in Kosovo led to NATO's war with Serbia (the rump Yugoslavia) in line with the specific analysis offered in the last Prodem Briefing A/3.[46]

Then, after the Court of Appeal verdict, two calamitous events occurred:

- The 9/11 attacks on the USA in 2001, as they came to be known, ushered in the global war on terrorism in line with the warnings and analysis in the Prodem Briefings Series A.
- The invasion of Iraq in March 2003 in line with Prodem Briefing A/2.[47]

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- *Conclusion*

Had the legal framework created by the English courts in the Prodem case been widely publicised, with 'an irenical perspective' at its heart, the climate for peace created could have led to a different approach and more peaceful outcomes over the long term than occurred.[48] Alternatively, the Law Officers could have sought to change the law through Parliament to override the judge-made legal framework. Instead, they did neither.

B. Case 2, 2008 - 2010

Background

The second legal case arose directly out of the first, resulting from the failure of the Charity Commissioners to remove The Atlantic Council of the United Kingdom from the register of charities in line with the *ratio* provided by the Court of Appeal in the Prodem case.

In the interim, between the end of the Prodem case and the start of the IPP case against the new corporate Charity Commission created by the Charities Act 2006, the prosecutor and his co-trustee set up the International Peace Project[2000] (IPP). Their worldwide advertisements for Trustees went out in August/September 2001, as it transpired, at the time of the 9/11 tragedy. Through many difficulties IPP was eventually entered on the register of charities on 6 February 2004 with seven trustees based in England, Nigeria, Russia and the USA.

One of its first acts was to disseminate widely a letter dated 15 May 2004 announcing the death of the Charity Commission as a serious legal body, castigating it for its failure to uphold the legal framework created by the High Court in the Prodem case.[49] Two weeks later the government published its draft Charities Bill announcing the abolition of the post of Charity Commissioner. The prosecutor considered that he may have played some role in that outcome and, though he regretted the death, he welcomed the burial. In an article produced in February 2005, and placed on the IPP website on its creation in January 2006, he paid tribute to the law on charity in his Conclusions but acknowledged the limits on how far the rule of law pertains in England and Wales, as illustrated by the Prodem decision:

> … the courts operate in the real world and cannot oblige governments to accept decisions they do not wish to accept whatever the consequences…[50]

At that time, though, it was not yet evident that Attorneys General would continue to disregard or oppose education based on 'an irenical perspective' without excuse or justification nor that English courts would be powerless to do anything about it.

During this interim period 'between the cases' IPP conducted the trial 'Peace Games' focused on the Israeli-Palestinian conflict at the time of the unilateral Israeli withdrawal from Gaza. It was only with the successful completion of that work in the form of IPP Briefing no. 1 on the 'Prospects for Peace' and the holding of its first seminar in Jerusalem on 30 September 2007 that Case 2 seemed necessary. For IPP's work was being undermined by 'political charities'.

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The Court of Appeal *ratio* in the Prodem case had included, by way of direct comparison, the following statement:

> Nor, conversely, could the court recognise as charitable a trust to educate the public to an acceptance that war is best avoided by collective security through the membership of a military alliance – say, NATO.[51]

The prosecutor had drawn the Court's attention to The Atlantic Council being on the register of charities despite promoting education in the Atlantic Treaty and its supporting body, NATO.

When formal application was made to the new Charity Commission in 2008 to remove The Atlantic Council from the register of charities on the grounds supplied by the Appeal Court, the initial decision dated 19 December 2008 was that the IPP Trustees did not have standing to make that request. The precise wording of this refusal appeared to preclude or prevent an appeal to the newly created Charity Tribunal so, without waiting for a final decision, the IPP Trustees issued a letter before claim, in keeping with the Pre-Action Protocol, requiring certain actions to be taken by the Board of the Charity Commission or a claim for permission to apply for judicial review would be made to the Administrative Court. This would be on the grounds of *Wednesbury* unreasonableness and/or involving procedural bias.[52]

The Rule of Law
Criterion (I) - Fairness

The procedural unfairness at every level to which this case was taken is revealed by the following brief summary of the evidence.

- *Initial Decision of the Charity Commission (letter dated 19 December 2008)*

- The senior lawyer admits that '… the Commission has not reviewed its decision of 8th October 1993 to register the [Atlantic] Council, and in particular did not do so after the Court of Appeal decision in the Prodem case in June 2000.'[53]

- She went on to claim: 'The judgement in the Prodem case effectively confirmed the Commission's understanding of the law…' When compared with the legal framework provided by the trial judge, as cited previously with respect to 'an irenical perspective', this statement was untrue and known to the Charity Commission to be untrue.

These two key historical statements make clear the inability or unwillingness of the Charity Commission to summarise the position fairly to both sides and respect judicial independence.

- *Charity Commission Response to the IPP Letter Before Claim of 19 January 2009*

As the initial response of the Charity Commission to the letter before claim was deemed insufficient and unsatisfactory by the IPP Trustees, acting on the prosecutor's advice, an application for permission was duly made and Court papers served. However, correspondence between the Commission and IPP continued and culminated in a letter from a senior executive of the Commission dated 13 March 2009, following a Decision Review panel meeting on 11th, offering a way forward rather than the judicial review application. The prosecutor's reply of 23 March, on behalf of the IPP Trustees, concluded that, on the question

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of standing, it was one the IPP Trustees could not reasonably be expected to cooperate with. He wrote that the Commission has:

- one week before the time limit for a claim for judicial review, agreed to IPP's request to undertake a final review of its initial decision of 19 December 2008 and explained how it would be dealt with, even though the Commission's own rules (OG94 B2) would not normally permit this course of action on the issue of standing taken alone;
- proposed a basis of appeal to the Charity Tribunal, if required, that looks like a dead end;
- chosen to take the question of whether IPP is a 'person… affected' as a preliminary issue to be finally decided before considering the merits of the challenge to the charitable status of the Atlantic Council, contrary to analogous judicial review cases; and
- continued to demonstrate reluctance to alter a material error of fact in its public benefit analysis concerning the finding of purpose in the Prodem case, thereby casting doubt on the Commission's ability to apply the law in an unbiased manner.[54]

- *Decision of first Administrative Court Judge – 17 June 2009*

This judge, mis-reading the misleading Acknowledgement of Service (A of S) of the Commission's Treasury Solicitor representative – the Attorney General having declined to be represented as first Interested Party and The Atlantic Council making no legal representations as second Interested Party – decided on the papers alone:

> In the circumstances of this case I am not impressed by the other alternative remedy of Decision Review relied upon in paras 11-19 of the A of S. Direct resort to the Charity Tribunal now seems preferable.[55]

Desirable as this option would have been from IPP's perspective, unfortunately it was not legally possible at this stage as the statutory material in the prosecutor's bundle made clear. So, with the IPP Trustees' agreement, the prosecutor requested a renewal of the application for permission at an oral hearing.

- *Decision of the second Administrative Court Judge – 28 August 2009 (hearing on 26 and 28 August 2009)*

The prosecutor only discovered the name of this judge on the afternoon before the hearing. He was concerned that he was linked to a political party but there was too little time to consult with the IPP Trustees on whether to object to this judge hearing the case. Instead the prosecutor adopted the principle of benignancy, assuming the judge would act in an impartial and objective manner appropriate to a deputy judge of the High Court.

At the first hearing the judge did indeed appear sympathetic to the prosecutor's case but this changed dramatically on the second day for reasons that were not disclosed. His decision to refuse permission was on the grounds that '... there remains an avenue for the matter to be determined through a quasi judicial process of an entirely reasonable kind without recourse at this stage to judicial review.'[56] Yet he also acknowledged, contrary to the Commission, that the Tribunal might not have jurisdiction to hear an appeal on the issue of standing. After airing

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his views on the latter and endorsing the Commission's initial decision, he falsely claimed to refuse permission 'In all the circumstances and for almost exactly the same reason, as those given by [the first judge, cited above] in his decision on the papers, dated 17th June 2009.'[57]

- *Decision of the Office for Judicial Complaints – 16 June 2010 (on IPP complaint dated 31 March 2010)*

So outrageous had been the conduct of the second judge that the IPP Trustees agreed to make a complaint against him to the Office for Judicial Complaints, presided over by the Lord Chief Justice of England and Wales and the Lord Chancellor, in relation to the Judicial Discipline regulations. In summary the IPP complaint reads as follows:

> That the judge used his judicial position in this charity case to protect his personal political interests, in particular:
>
> (1.) On the first day of the hearing, he used illustrations which proved that his perspective was political but he did not declare his extra-judicial interests;
> (2.) On the second day of the hearing, he knowingly took proven falsehoods of the Charity Commission and presented, or relied on, them as truth in his ex tempore judgment, viz that:
> a. The Defendant had written to the Claimant indicating that, in its view, '… the Tribunal would have jurisdiction to consider the Claimant's appeal'.
> b. The Commission when deciding who is eligible to request a decision review 'will follow the existing law's approach'.
> c. 'The claimant asserts that its obviously intimate connection with that case gives it a special standing vis-a-vis the Atlantic Council.'
>
> (3.) In his draft judgment (available only in its final form):
> a. He sought, on no factual evidence, to discredit the charitable purposes of IPP and misrepresent them as political;
> b. He then used his 'obiter' to eliminate the prospects for any legal challenge by a charity to the charitable status of any organisation on the Commission's register (unless undertaken by trustees as a political group via process of judicial review) by claiming that standing '… is a question of fact rather than a question of law'. He missed the point that a fact, if it is a fact, is not contestable so his ratio, that the alternative remedy was 'of an entirely reasonable kind', was thus made redundant.
> c. Finally, he impugned, again on no evidence, the motives and conduct of the IPP Trustees, particularly the then Chairman, while ignoring his own political connections relevant to this case.
>
> The evidence points firmly in the direction of political self-interest on the part of the judge, pursued by fabrication and deceit. Even if he denies the intention to benefit personally from his judgment, this is the effect. The IPP Trustees submit his personal behaviour, unless the facts can be refuted, must constitute misconduct.[58]

The OJC dismissed the complaint by letter dated 16 June 2010 (and most of the complaint previously by letter dated 26 April 2010) on the grounds that it related to the Judge's decision

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and management of the case. The OJC stated that the only recourse open to address any allegation of improper conduct would be to a higher court.[59]

It must be concluded, therefore, that such behaviour as that of the second judge is within acceptable judicial bounds, including any incompatibility with the Guide to Judicial Conduct which expressly excludes party political links and any kind of political activity.[60]

The Judicial Ombudsman endorsed the handling of the complaint by the OJC by letter dated 5 August 2010, following a complaint from the IPP Trustees dated 13 July. It was obviously 'cut and paste' from a standard reply because it referred to an investigation by a judge that IPP had never heard of. Clearly the Ombudsman's handling of the complaint was careless.

Criterion (II) – Substantive Judgment

In the face of such overwhelming evidence of unfairness by the Commission and the Administrative Court nothing is to be gained by considering the second judge's substantive judgment, beyond what has been said already.

In the light of his misconduct and that of the Commission itself the IPP Trustees had no alternative but to abandon their legal case, as they did.

Criterion (III) – Enforcement

Consequently, the *ratio* of the Court of Appeal in relation to a body like that of The Atlantic Council being on the register of charities could not be enforced. It remained on the register of charities though it was plainly a political organisation with strong governmental support.

The Attorney General as public protector of charity did not intervene.

However, the prosecutor did continue to bring to public attention the case against the Law Officers, the independent charity regulator and the second judge. This extensive correspondence is not summarised here but it is relevant to mention two highlights:

- The prosecutor, acting on his own initiative, made a written complaint on 7 March 2012 to the Specialist Crime Directorate of the Metropolitan Police Service against senior officials of the Charity Commission, alleging misconduct in public office, and conspiracy to commit the same on the part of their legal representatives. In response the Met accepted that a criminal offence may have been committed by Commission officials, if not their legal representatives, but considered the task of prosecuting the case faced too great a set of obstacles to be worth attempting.

- The prosecutor, again on his own initiative, wrote on 9 May 2014 to the second judge in the IPP case at his judicial address, copied to every active member of both Houses of Parliament, putting the case for his removal under the Senior Courts Act 1981, s. 11(3).[61] It was not copied to the media. The judge subsequently announced as part of his biographical entry on the Parliamentary website:

  Former Deputy High Court Judge and Recorder (retired 31 December 2014)

  He now sits as a Crossbencher.

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Conclusion

Any doubts about the question of the rule of law or rule by government lawyers were resolved in this case. It is the Attorney General and the independent charity regulator who decided the issue with the willing connivance of a party-political judge operating with the acceptance of the judiciary in general and especially the Lord Chief Justice of England and Wales.

C. Case 3, 2017-2018

Background

The third and final case arose out of the UK's invasion of Iraq on 19/20 March 2003 and the resulting Iraq Inquiry, set up in 2009, whose report was published on 6 July 2016. As it was the focus of this author's letter and article of 18 January 2019 only relevant evidence is referred to here.[62] The prosecutor's claim for permission to apply for judicial review against the Attorney General at the time of the invasion, with the current Attorney General as Interested Party, was filed in the Administrative Court on 16 March 2018. It was based on the former Attorney General's

> Failure to act as Law Officer [and public protector of charity], in his advice to the UK government on the legality of the invasion of Iraq, by omitting from his deliberations an 'irenical perspective' as previously defined in law and revealed in The Report of the Iraq Inquiry.[63]

The prosecutor emphasised that he was not offering any view as to whether UK military action in Iraq was legal, rather his focus was on the potentially conflicting roles of the Attorney General as chief legal adviser to the government, Law Officer and public protector of charity.[64]

The Rule of Law
Criterion (I) – Fairness

- The Interested Party's Acknowledgement of Service (A of S) was signed as 'defendant' which was plainly untrue and, indeed, an apparent perjury subsequently aided and abetted by the real Defendant writing to support that position of the Interested Party.[65]

- The A of S's 'Summary Grounds of Resistance' was described by the prosecutor as 'inaccurate, misleading and tendentious' and numerous examples were subsequently provided to demonstrate the point.[66]

- The first judge's decision, written in apparent haste without waiting for the prosecutor's promised response to the A of S, awarded costs to the Defendant who, by the deadline for serving the A of S had made no legal submissions, and awarded no costs to the Interested Party who had. The procedure he laid down for further submissions on costs did not permit the Interested Party to make any representations (though he did).[67]

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- The second judge, on the issue of costs, rejected the Interested Party's claim to be the correct defendant but overrode the procedure established by the first judge by accepting the Interested Party's written submission on costs and awarding costs to him.[68]

- The prosecutor appealed to the Court of Appeal on the grounds of the first judge having denied him a fair hearing and his decision being unjust, involving serious procedural or other irregularities. Likewise, the decision on costs by the second judge.[69]

Criterion (II) – Substantive Judgment

- *Administrative Court Decision – 30 April 2018*

- The first judge's decision, largely based on the assertions of the Interested Party but maintaining the Defendant as being such, was that permission was to be refused on the grounds that:

> …**the application is considered to be totally without merit.**[70] [Emphasis in the original]

- *Court of Appeal Decisions (on claim and costs) – 1 November 2018*

- The judge confirmed the decision of the lower court:[71]
    - without reference to the Prodem case;
    - by overriding the procedure of the first judge for making representations on costs;
    - making light of one count of apparent perjury committed by the Interested Party and supported by the Defendant.

Criterion (III) – Enforcement

As the prosecutor subsequently observed in an open letter to the Appeal Court judge dated 11 November 2018, on the centenary of the ending of the Great War:

> Finally, your reasoning has the effect, if not the intention, of continuing a cover up of '…the truth, the whole truth and nothing but the truth', which started with the Court of Appeal judgment in the Prodem case on 28 June 2000. By this I mean that Court decisions were not taken solely on the basis proposed in my originating summons, as amended by order dated 16 September 1997, viz.
>
> > … if all the relevant legal cases and material facts presented had been fully and correctly taken into account then PRODEM would have been found to be for the public benefit in a manner which the law would regard as charitable.
>
> No judge and, indeed, no government lawyer have ever disputed the correctness of this layman's understanding of how a legal decision is to be arrived at. I respectfully contend that your decisions do not meet that test either.[72]

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Conclusion

The prosecutor's open letter to the Appeal judge concluded:

> Consequently, the public benefit from the principal conclusion of the Iraq Inquiry Report has been ignored, set aside or denied. The Inquiry Chairman's statement on 6 July 2016 reads: 'We have concluded that the UK chose to join the invasion of Iraq before the peaceful options for disarmament had been exhausted. Military action at that time was not a last resort.' In refusing either to uphold the judicially defined 'irenical perspective', or the role of education in applying it objectively, the public benefit of this Inquiry finding is lost for posterity.
>
> On the anniversary of the end of the Great War it constitutes, by the State in England and Wales, a betrayal of our war dead and a heightening of the prospects for another Great Power War, as my four Prodem Briefings had forewarned (Mar 1993 – October 1995).
>
> May Almighty God have mercy upon our immortal souls.[73]

The appeal judge, Chairman of the Sentencing Council, acknowledged the letter through his clerk on 14 November 2018.

3. Outcomes

Up to now the Paris Peace Conference of 1919 has not featured in this article, although it has never been far from this author's mind. For those who would put their trust in democratic political institutions need to recall the ultimate failure of that Conference, and the League of Nations it engendered, in the yet greater cataclysm of the Second World War. The difference this time is that the peace settlement at the end of the Cold War in 1990 produced an opportunity for education, in the legally charitable sense, to assume its rightful place as a counterbalance to the drive for dominance inherent in the system of nation states.

Returning to the theme of this article, it is now possible to determine, from the application of the chosen 'rule of law' criteria to the three civil cases the prosecutor has summarised here, whether a 'fraud' has been perpetrated by successive Attorneys General.

Before doing so it is necessary to underline three reasonable expectations that this layperson had in prosecuting the three cases which he had seen through to their conclusions:

(i) There was a *reasonable expectation* that, at the end of the Prodem legal proceedings, whatever the outcome, the independent charity regulator supported by the Law Officers would then apply the authoritative legal framework, which the judges had provided in place of their own, for regulating educational bodies in the field of peace studies and related subjects throughout the English and Welsh charity sector.

    This did not happen. Instead the old Charity Commission either ignored the case or misrepresented it by claiming that it upheld their understanding of the law, especially that the promotion of disarmament is a political object. That was never in dispute.

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(ii) There was a *reasonable expectation* that the new and independent charity regulator would apply the Court of Appeal's *ratio* in the Prodem case with respect to a trust to educate the public that war is best avoided by membership of a military alliance. This did not happen. Instead The Atlantic Council was maintained on the register.

(iii) There was a *reasonable expectation* (admittedly, tempered by that stage with a realistic appreciation of their true nature) that self-styled Law Officers, after the tragedy of the Iraq War, would finally recognise the importance to public benefit of applying an 'irenical perspective' to international disputes, especially as this had been judicially defined by the trial judge in the Prodem case in anticipation of such a result.

This did not happen. Instead the case and, therefore, the judicially defined concept was said to be '**totally without merit**' and the Court of Appeal did not refer to Prodem. This, despite H.M. Government previously claiming to accept the Iraq Inquiry's central conclusion, implicitly based on an irenical perspective, 'at the most strategic level'.[74]

Against this background each of the chosen criteria for upholding the rule of law can be applied to the three cases as follows:

Criterion (I) - Fairness

The scrupulous fairness of the three tribunals in considering the Prodem case only magnifies the scale of unfairness by the Charity Commission and the second judge of the Administrative Court in the case brought by the IPP Trustees. By the time of the last case, relating to the Iraq War and the Inquiry Report, the previous and current Attorney General could be confident that misrepresentation, including one count of perjury, would be taken lightly by the courts.

Even in the Prodem case, though, the role of the Attorney General was not balanced. Whereas in significant previous cases he or she might take a neutral stance, and leave other parties to take on the role of protagonist, that did not happen here.[75] No doubt it saved money not to have the Charity Commission involved as well. Unlike the trial judge and the Court of Appeal, the Attorney General – or rather, the Solicitor General acting as such – purported to see nothing educational at all in the Prodem initiative. It must have come as a shock for the Charity Commission as for the Law Officers to find, not only that the Chancery judge did not share this view despite his adverse judgment on Prodem's charitable status, but that the prosecutor's Notice of Appeal could point to significant factual errors undermining the Attorney General's case. No wonder they came in force to the appeal hearing and having 'won', at least on Prodem not being registered as a charity, opposed the prosecutor's request for time to pay his costs. Counsel openly speculated before the Court on 28 June 2000 whether his client should 'bankrupt' the prosecutor before 'going for' his co-trustee. The Appeal judges stepped in, granting the prosecutor liberty to apply to Court before that step could be taken. It was not. A partial success for the rule of law.

The Solicitor General in that case left his post the next year and Parliament by the mid-2000s before being admitted as a judge of the Administrative Court. In line with Bingham's earlier comment, it must be wondered whether combining a judicial role after a political role, exemplified by his behaviour in the Prodem case, was fully consistent with the rule of law.

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Criterion (II) – Substantive Judgment

Not one of the judgments in the three cases met the criteria, noted by Bingham, and independently expressed by the prosecutor in the Prodem case and consistently followed by him thereafter. Nor were these factual and legal errors minor but, in each judgment or decision, they went to the heart of the case. To the Courts' contention that they were 'bound' to arrive at the conclusion they did arrive at the prosecutor is equally insistent that they were 'bound' to do so by exclusively lawful and objective means. Only the Chancery judge did this 'fully and correctly', in terms of identifying the relevant legal principles from the cases but went adrift on the material facts. From the Court of Appeal on, in the Prodem case and both cases thereafter, the courts faced overwhelming pressure from Attorneys General or the independent charity regulator, or both, to arrive at the decision they contended for. In Cases 2 and 3, this involved borderline criminality, the prosecutor contended, in which the Court was either a passive onlooker or, in the IPP case, the second judge was actively involved.

The rule of law was upheld by the Prodem Appeal judgment only in respect of the objects clause of IPP, which the Charity Commission could not resist, and the Court's protection of the prosecutor from the threat of bankruptcy, and injustice against his co-trustee, by the Attorney General. That the Court of Appeal could not defend a judicially defined 'irenical perspective' in Case 3, despite it being the basis of the claim, shows how Attorneys General can make a court complicit in undermining its sole right to interpret the common law.

Criterion (III) – Enforcement

It is beyond argument that neither the Law Officers nor the independent charity regulator, past or present, corrected the flaws in their own understanding of the law, after the Prodem case was complete, to bring it into line with the judicial decision-makers. Nor did they seek to change the judge-made law through Parliament.

Herein lies the weakest link in the rule of law as it affects the administration of charity and public law by the English civil courts. For the judges are powerless, if the Law Officers are unwilling to comply, when the prosecutor (or other litigants) are unable or unwilling to draw public attention to misconduct or abuse of power by government lawyers. In this respect civil litigants appear to have less protection than those accused of the most serious crimes.

Yet there is one decisive caveat even here. For as the prosecutor has illustrated, following the Prodem case, the Court of history delivered shattering judgments on successive British governments which demonstrated whose understanding of specific international conflicts was deeper. Like reckless gamblers, rather than learn from past mistakes, they throw the dice again and trust for better results in future.

Instead, what is needed is to apply an irenical perspective as IPP did to the Israeli-Palestinian conflict with devastating accuracy. Forecasting in January 2006 periodic war between Israel and the Palestinians, as part of their trial 'peace games', they had but to await the verdict of the Court of history. It was not long in coming: the first war affecting Gaza began in June 2006 and morphed into a wider war between Israel and Hezbollah in Lebanon; three more wars have occurred between Israel and Hamas in Gaza since then.[76]

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Conclusions

It only remains to decide whether the nature of English charity regulation on political controversies, revealed by the prosecutor's three cases, meets the common or garden meaning of 'fraud'. Any of the three definitions provided previously, near the start of this article, might suffice but the preferred one is:

> 'imposter, person or thing not fulfilling expectation or description'

Presented with an apparently controversial Prodem background paper of October 1992 and later, five Prodem Briefings, neither the Charity Commission nor the Attorney General, when court proceedings began and a final Prodem Briefing was available, were able to analyse the material properly, i.e. applying the relevant legal principles to the material facts to explain what was potentially charitable and what might not be. This was pardonable in January 1993 and even before 10 March 2000, when the prosecutor's appeal to the Court of Appeal was heard, but has been inexcusable since then. For the charity regulators, both Law Officers and the independent Charity Commission, carried on as before, despite judicial correction.

What was the Commission's *modus operandi*? To take a superficial decision on the charitable status of Prodem based on the evidence before it without being able, or seriously trying, to dissect the material into its legal components to distinguish the legally charitable from the political. The High Court showed them how to do this in 1998. Whereas previously, from January 1993, they threw the charitable baby out with the political bathwater, so to speak. Thereafter, in 1995, the now defunct Charity Commissioners threw in whatever legal cases and material facts would support the conclusion they were 'bound' to reach with little or no regard for relevant cases and facts that pointed in a different direction. This highly one-sided approach, which mirrors political discourse on international conflicts, is masked by the language of law but could not hide its shortcomings in the Courts. When the Attorney General took over, he continued a similar *modus operandi* though correctly appreciating that Prodem's Aim 1 was more dangerous to his political interests because it offered a way of dissecting international conflicts, based on 'an irenical perspective', which would fundamentally question the soundness of political analyses in any area of conflict against the Court of history by using objective criteria of assessment. Thus, the Attorney General, in opposing an irenical perspective, ended up revealing that Aim 1 was soundly based (to be continued through IPP). It was only the Aim 2 Prodem Briefings that may have gone beyond charitable limits. The stridency of the Aim 1 Briefings in places was no longer needed once the principle of peace was won, as it was. IPP's Briefing No. 1 has shown that.

Yet the two subsequent cases demonstrated conclusively that the rule of law does not extend much beyond the judicial decision on Prodem itself and its successor body (IPP). Both the self-styled Law Officers and the independent charity regulators ignored or rejected the *ratio* of the Court of Appeal in Case 2, with the active assistance of the second judge of the Administrative Court; and a past and present Law Officer rejected the application of a judicially defined 'irenical perspective' in Case 3 as being totally without merit, with the willing complicity of the same Court of Appeal which approved the principle in the first place.

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Who, then, can doubt that the rule of law has been replaced by rule of government lawyers? Nor is it plausible to imagine that the latter took a different approach in Cases 1 to 3 than they do in other such cases. In charity and public law in England and Wales, the rule of law has been replaced by a doctrine of political expediency to which the judges are subordinate because, as Tom Bingham pointed out, it is essential for them to maintain close and friendly relations with political representatives, like Attorneys General, on an administrative level.

The 'fraud' that has been perpetrated upon an unsuspecting public is to claim that English and Welsh charity is governed by the rule of law, whereas in reality judicial interpretations are overridden whenever they conflict with the political interests of Attorneys General and the governments they serve. In particular, the Law Officers' inability to face the factual and legal truth of their sacrifice of public benefit, as affirmed in the Prodem case on 28 June 2000, and thus of the primary role of education in securing a state of peace and avoiding a state of war, has contributed to and, if sustained, will further entrench a climate favouring another Great Power war, analogous to the legacy of the Paris Peace Conference 1919.

In order, therefore, to avoid a repetition of that legacy – made by democracies – which contributed to a climate of opinion that led to the Second World War or, specifically, to seek to avoid the same arising out of the post-Cold War peace settlement in 1990, this prosecutor took over the function Attorneys General abandoned, viz. Law Officer for public benefit. If it seems paradoxical that he become the *de facto* but not yet *de jure* Law Officer for public benefit in England and Wales it is no more so than that they, as past or present Law Officers, failed in this legal duty at the most strategic level yet continue to insist on being Law Officers and public protectors of charity, while refusing to recognise their conflicts of interest.

They are currently beyond the reach of the criminal or civil law in this matter but not beyond the reach of the Court of history which, again and again, has overturned the judgments of the secular courts and revealed charity regulation as a social evil in England and Wales.

In their current or former corporate roles, along with past and present Board members of the Charity Commission as the independent charity regulator, they have missed the mark in the first duty of government. Rather than sacrifice their legal reputations they sacrifice the public they were meant to serve. Their choice made, we must bear the bloody consequences.

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[14] . Niall Ferguson: The Rule of Law and Its Enemies: 2012, The Reith Lectures, Lecture 3 – 'The Landscape of the Law', Transcript (BBC Radio 4, 3 July 2012).
[15] . See Slade J. in McGovern v Attorney General [1982] Ch 321 at 333G-334B.
[16] . The terms 'plaintiff', 'claimant' and 'appellant' are thus amalgamated into one – 'prosecutor' – for simplicity. The Attorney General, when involved in a case, was always either 'defendant', 'interested party' or (on appeal) 'respondent'. These terms are only used here when deemed necessary for clarity on his role.
[17] . The Concise Oxford Dictionary, 827.
[18] . Peter Southwood (ed), The Triumph of Unilateralism: The Failure of Western Militarism, Briefing No. 1 (Project on Demilitarisation, Leeds, March 1993) p. iii.
[19] . Both Court judgments on Prodem acknowledged this point: Southwood & Parsons v H M Attorney General, High Court Case No: CH 1995 S No. 5856 concerning the Project on Demilitarisation [9 October 1998], para. 4; Southwood & Parsons v H M Attorney General, Court of Appeal No: CHANF 98/1405/CMS3 [28 June 2000], para. 2. For copies of the judgements, see: http://www.ipp2000.org/ipplaw.html
[20] . See note 19 for case details and where to access them.
[21] . Peter Southwood (ed.), Military Adventurism: Learning from the Past - Looking to the Future, Briefing No. A/3 (Project on Demilitarisation, University of Leeds, October 1995), especially Appendix E.
[22] . Amended Originating Summons in the Chancery Division of the High Court of Justice dated 16 September 1997. See note 19 for case details.
[23] . Southwood & Parsons v HMAG [9 October 1998], para 22.
[24] . Parkhurst v Burrill [1917] 117 NE 39 in Supreme Court of Massachusetts.
[25] . Southwood & Parsons v HMAG [9 October 1998], para 26.
[26] . Ibid., para. 11.
[27] . The quote from Prodem Aim 1 continues '…in relation to: its recent record; current official policies; the likely consequences for the future.' Background Paper (October 1992), p. 1.

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[28] . Southwood & Parsons v HMAG [9 October 1998], para 30.
[29] . Southwood & Parsons v HMAG [28 June 2000], para 24.
[30] . See criteria (II) under 2. 'Three Cases – One Principle' above.
[31] . Southwood & Parsons v HMAG [28 June 2000], para 25.
[32] . Southwood & Parsons v HMAG [9 October 1998], para 28 citing Attorney-General v Ross [1986] 1 WLR 252, 263.
[33] . Southwood & Parsons v HMAG [9 October 1998], para 31.
[34] . Southwood & Parsons v HMAG [28 June 2000], para 28.
[35] . The *ratio decidendi* is the part of the judicial decision which is binding or persuasive in subsequent cases. It is 'the reason for the decision, or the principle of law on which the decision was based.' Hood Phillips, pp. 202-3.
[36] . Southwood & Parsons v HMAG [28 June 2000], para 29.
[37] . Ibid., para 30. For no apparent reason, the first mention of 'Southwood's' is also in italics.
[38] . Ibid., para. 16.
[39] . Compare and contrast Hitler's closing speech at the end of his trial for high treason quoted in William Shirer, The Rise and Fall of the Third Reich: A History of Nazi Germany (Pan Books, 1976), p. 106.
[40] . Cited in Southwood & Parsons v HMAG [9 October 1998], para 23.
[41] . This is how the lead judge described the difference between promoting the benefits of a policy, and promoting the policy in itself, at the appeal hearing on 10 March 2000.
[42] . The IPP Background Paper was written word-for-word in a similar way to the Prodem Background Paper of October 1992 but with the difference that the legal framework was now clear.
[43] . The position is analogous to that of fields of study and practice like economics or law.
[44] . Peaceful means of resolving international disputes can be used coercively and military means cooperatively.
[45] . See The Triumph of Unilateralism, Prodem Briefing No. 1, Appendix C 'Security: Old Paths and New', pp. 65-69 and Southwood (ed.) The Israeli-Palestinian Conflict, Briefing No. 1 (International Peace Project, January 2006), Chapter 3.3 'Method of Analysing the Conflict', p.30. IPP Briefing available at: http://www.ipp2000.org/ (bottom of home page).
[46] . Military Adventurism, p. 33.
[47] . Peter Southwood (ed), Western Generals: The Dangers from British and American Military Success, Briefing A/2 (Prodem, April 1994), pp. 7-10, 12-13.
[48] . For example, after the McGovern case concerning an Amnesty International trust, cited at note 15 above, the Charity Commission produced a booklet outlining the main principles and points arising.
[49] . Letter from Peter Southwood dated 15 May 2004, on behalf of the IPP Trustees and with their authority, to Richard Sambrook, Director of News at the BBC Television Centre.
[50] .Peter Southwood, 'The Law on Charity: A Layman's Tribute' (February 2005), p. 16 available at: http://www.ipp2000.org/ipphistory.html
[51] . Southwood & Parsons v HMAG [28 June 2000], para 29.
[52] . Documents contained in the Court bundle for Queen v Charity Commission for England and Wales ex parte International Peace Project[2000] [2009] EWHC (Admin) 3446, Case no. CO/1950/2009.
[53] . Letter from Charity Commission to Dr P Southwood dated 19 December 2008, p.1.
[54] . Letter from Peter Southwood to the Charity Commission dated 23 March 2009.
[55] . Notification of the Judge's decision in the Q v Charity Commission ex p. IPP [17 June 2009].
[56] . Q v Charity Commission ex p. IPP [28 August 2009], para 30.
[57] . Ibid., para. 34.
[58] . Letter from Peter Southwood, on behalf of the IPP Trustees and with their authority, to the Office for Judicial Complaints dated 31 March 2010, enclosing a formal complaint against the second judge in Q v Charity Commission ex p. IPP [28 August 2009]. A binder was included with relevant details about his personal misconduct.
[59] . Letter from the OJC to Peter Southwood, IPP dated 26 April 2010; reply from Peter Southwood, IPP to OJC dated 22 May 2010; and letter from OJC to Peter Southwood, IPP dated 16 June 2010.
[60] . Guide to Judicial Conduct, Second Supplement (Judges' Council, March 2008), s. 3.3.
[61] . Section (3A) of the Senior Courts Act 1981 adds that 'It is for the Lord Chancellor to recommend to Her Majesty the exercise of the power of removal under subsection (3).'
[62] . See https://www.directionofconflict.org/what-we-do
[63] . Documents contained in Court bundle for Q (Southwood) v The Rt Hon Lord Goldsmith QC (Defendant) & H.M. Attorney General (Interested Party) Claim no. CO/1252/2018 of Administrative Court (30 April 2018); and decision on costs in this case (18 July 2018).

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[64] . See Letter before claim dated 1 January 2018 in relation to Q (Southwood) v Lord Goldsmith (30 April 2018), p. 2.

[65] . Interested Party's Acknowledgement of Service dated 24 April 2018; and Defendant's letter to the Administrative Court dated 27 April 2018.

[66] . Claimant's letter to the Interested Party dated 27 April 2018 (copied to the Defendant and the Administrative Court); and Claimant's response to the Order as to Costs dated 7 May 2018.

[67] . Q (Southwood) v Lord Goldsmith (30 April 2018), para. 14.

[68] . Q (Southwood) v Lord Goldsmith (18 July 2018).

[69] . Documents contained in the Court bundle for Q (Southwood) v The Rt Hon Lord Goldsmith QC (Respondent) & H.M. Attorney General (Interested Party), Court of Appeal ref. C1/2018/1827 & 1828 (1 November 2018).

[70] . Q (Southwood) v Lord Goldsmith (30 April 2018). A senior court official had accepted the claim being against the Defendant when the case was filed. See Claimant's Statement of Truth dated 7 May 2018.

[71] . Q (Southwood) v Lord Goldsmith (1 November 2018) at: https://www.directionofconflict.org/what-we-do

[72] . Letter from Peter Southwood dated 11 November 2018 to the Court of Appeal judge in Q (Southwood) v Lord Goldsmith (1 November 2018).

[73] . Ibid.

[74] . See the author's open letter of 18 January 2019 at: https://www.directionofconflict.org/what-we-do

[75] . For example, in McGovern v Attorney General [1982] Ch 321 at 330H.

[76] . See Peter Southwood, Death of a Peace Settlement – Birth of a Principle, Article no. 1 (18 January 2019), p. 11, footnote 19 at https://www.directionofconflict.org/what-we-do

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