

The Education of Nations... in Securing Peace and Avoiding War

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The Charity Commission for England and Wales: An Indictment

Introduction

1. On the first Good Friday when humanity put God to death, before discovering how this achieved His purpose of our redemption, it is fitting to expose a lesser travesty of justice. One which, nevertheless, is about our very survival and the ultimate purpose of the Prince of Peace: restoring peace and reconciliation between humanity and its Creator.
2. Providentially, this Bulletin was being drafted as the seriousness of the coronavirus pandemic was being brought home to the public here by severe government restrictions on movement. The sudden end of normalcy rendered necessary by the need to delay the spread of Covid-19 shatters complacency and ushers in a new perspective. Disease and war have often been linked but, unlike the Spanish flu in the final year of the Great War, this one has come before the other and our knowledge of how to defeat the virus is far greater than in 1918. Tragic as the consequences are, most people can expect to survive, and lessons may be learnt for the future.
3. Not so, the prospects for another Great Power war. For twenty years the Charity Commission, old and new, has covered up its mishandling of the registration of two educational bodies: the Project on Demilitarisation ('Prodem') and The Atlantic Council of the United Kingdom ('Atlantic Council'). Each had a profoundly different view of education in the subjects of peace or war and whichever prevails will decisively affect the Education of Nations and whether another Great Power war can be avoided; and the peace and prosperity of this and all other countries secured. The indictment of the Charity Commission is that it has, with cold and deliberate calculation, subverted the expert judicial framework of Mr Justice Carnwath, later a Supreme Court judge, as endorsed and supplemented by the Court of Appeal in 2000, without excuse or justification. Amounting to a system of state-sponsored doping, those currently responsible on the Board are:

Baroness Stowell of Beeston MBE (Chair)	Helen Stephenson CBE (Chief Executive)		
Mike Ashley	Tony Cohen	Kenneth Dibble	Nina Hingorani-Crain
Ian Karet	Paul Martin CBE	Joanne Prowse	Imran Gulamhuseinwala

My Purpose:

To forewarn the public one more time that the world is heading for another Great Power war.

As in 1920, the reason is the failure of political institutions to apply 'an irenic perspective' even-handedly. Post-Cold War, the term was first defined in English charity law on 9 October 1998, drawing on a United States case of 1917, and affirmed by the Court of Appeal on 28 June 2000.

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The Facts

4. On 28 August 2009, after the Court had at an oral hearing again refused permission for the Trustees of the International Peace Project²⁰⁰⁰ to apply for a judicial review of the Charity Commission's handling of their request for the Atlantic Council to be removed from the register of charities, Mr Kenneth Dibble of the Charity Commission came up and introduced himself to me. He mentioned that he had been in the public gallery (on 10 March 2000) when the Court of Appeal had heard the appeal of the Prodem Trustees (against the refusal of the Charity Commissioners to register that body as a charity). He had observed my 'advocacy'. I made no reply. However, I believe Mr Dibble had correctly identified the central difference between us and this statement of material facts is solely concerned with summarising the evidence.

5. In 1993, when the Charity Commission informally rejected Prodem's application for registration by letter dated 26 January, on the grounds that it was set up for '... the promotion of disarmament and the conversion of resources from military to civilian purposes', it also re-registered the Atlantic Council under a new governing document but with essentially the same objects as the original body registered in 1970. The Court of Appeal's observations of 28 June 2000 on (i) that letter about Prodem's objects, and on (ii) a body like the Atlantic Council, were:
 - (i) 'In my view Miss Taylor, when replying on behalf of the Charity Commission... was correct to state: "...what is intended... is clearly a political purpose. Indeed, the whole thrust of the intended activities is political,..."'

 - (ii) '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.'

6. In representing Prodem in person before the courts in 1998 and 2000, I demonstrated that the Charity Commission's legal expertise was even less than mine. (I had spent about seven weeks on research in the Bodleian Law Library in Oxford before making a submission to the Commissioners ('C') in July 1994.) Their 'Statement of Reasons' of 5 September 1995 may be contrasted with the observations of the trial judge in his judgment of 9 October 1998:

C: 'The style of the Briefings was propagandist, assuming that demilitarisation and disarmament were desirable and presenting arguments to support that view... no serious attempt to analyse and discuss the issues had been made.'

Carnwath J: '... Dr Southwood... has clearly become a considerable expert on the relevant principles of law, and was able to assist me with careful and persuasive submissions...'

C: '... from an irenic perspective, it seemed that [Prodem] was attempting to create a certain climate of opinion through its works... it was even arguable that Prodem was actually attempting to promote pacifism. In either case this would amount to a political purpose...'

Carnwath J: '... whether or not the promotion of peace in itself is charitable, 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.' [His emphasis.]

Carnwath J: 'The importance of... [a US legal case cited]... 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 "irenic perspective"... 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.'

7. As my amended originating summons of 9 December 1997 proves, the legal principle at stake was the promotion of peace not the promotion of disarmament and conversion, which I denied was the purpose of Prodem but always accepted is itself a political purpose. The Court of Appeal judgment of 28 June 2000 also reveals these facts about the Charity Commission's advocacy:

Chadwick LJ: 'Dr Southwood does not quarrel with the judge's identification of the relevant principles of law. In his skeleton argument and at the hearing of the appeal, he accepted that the judge had fully and correctly taken into account all the relevant authorities.'

Chadwick LJ: 'There is no objection – on public benefit grounds – to an educational programme which begins from the premise that peace is generally preferable to war. For my part, I would find it difficult to believe that any court...

[the Charity Commissioners sitting as a Board were not a court?]

... would refuse to accept, as general proposition, that it promotes public benefit for the public to be educated to an acceptance of that premise. That does not lead to the conclusion that the promotion of pacifism is necessarily charitable. The premise that peace is generally preferable to war is not to be equated with the premise that peace at any price is always preferable to any war. The latter plainly is controversial. But that is not this case...'

8. I understood Lord Justice Chadwick's emphatic endorsement of Miss Taylor's letter of 26 January 1993 against this background. The judge (and his two colleagues) could not possibly be endorsing that letter as a full or sufficient analysis of the relevant factual and legal issues since I plainly demonstrated through the courts that it was not. The Court of Appeal was saying that if the Commissioners had simply stuck with Miss Taylor's line of reasoning then the Prodem Trustees would have had no legal principle on which to base their appeal. It was a way of embarrassing the Commissioners without overtly criticising their handling of the case. Moreover, if the judges really thought that Prodem's purpose was primarily to promote 'demilitarisation', as their conclusion stated, then the following facts from their judgment are inexplicable. Having repeated, with approval, the trial judge's reasoning on the merits of an 'irenical perspective'...

Chadwick LJ: '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 argument. The reason why 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 [on Prodem's charitable status]...'

Chadwick LJ: '... 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...' [My emphasis.]

Chadwick LJ: [in the Conclusion] '... 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 to the contrary, but the evidence is firmly against him... [My emphasis.]

9. The next Indictment – against the English Attorneys General since 10 March 2000 – will reveal again what lies behind that latter assertion. Here I note that notwithstanding the appeal judge's emphatic assertion of the correctness of Miss Taylor's letter on behalf of the Charity Commission the Court had, in fact, offered an exit strategy from the case. We took it and on 6 February 2004 the International Peace Project²⁰⁰⁰ (IPP) was registered as a charity with objects taken from the Appeal Court judgment on the basis of a background paper which, a line-by-line comparison would show, did not differ significantly from the Prodem one: its aim, to implement the 'Peace Games' concept from the final Prodem Briefing that the trial judge had endorsed in principle.

10. Against this background it was unsurprising to me that the Charity Commission then embarked on a 'cover-up' of what had really happened. The Government's review of charities and wider not-for-profit sector in 2001-2002 provides the main evidence for this claim. Despite, or because of, the Chief Charity Commissioner, John Stoker, being a member of the Advisory Group and another Charity Commission official involved in the Strategy Unit Team, no mention was made of the Prodem case. I recall that one background paper on the subject of peace made no reference at all to Mr Justice Carnwath's expertly drafted legal framework for education in this subject. The resulting review report, published on 25 September 2002 – the day after the much-criticised Iraq dossier – claimed, in a Foreword by the Prime Minister, that 'The current law is unclear...' including on the purpose of conflict resolution and reconciliation – again without reference to the Prodem case. Finally, an open letter I wrote to the Director of BBC News, on behalf of the IPP Trustees and with their authority, dated 15 May 2004, entitled 'A Tale of Two Dossiers' announced the death of the Charity Commission as a serious legal body on the basis that it was the review report that had been 'sexed-up', as Lord Hutton defined that term in his report into the circumstances surrounding Dr Kelly's death, rather than the Iraq Inquiry dossier. Two weeks later the Government published the draft Charities Bill including the abolition of the post of Charity Commissioner and the establishment of a new corporate Charity Commission.
11. The IPP trial Peace Games focused on the Israeli-Palestinian conflict were launched in the period 2004-2007 while a general loosening of the boundaries between charity and politics seemed to me to be taking place. For example, Oxfam along with many other charitable and non-charitable organisations launched a 'Control Arms' campaign aimed at securing a binding arms trade treaty. I wrote a letter of complaint to the Charity Commission dated 11 October 2003, which mirrored the letter they had written to Prodem's lawyers on 26 January 1993 but showing how it breached the legal framework from that case including the requirement for public benefit. The Charity Commission, though, regarded this campaign as consistent with English charity law.
12. With the educational work of IPP being undermined by the Charity Commission's failure to apply the law determined by the English courts in the Prodem case, the IPP Trustees agreed in 2008 to seek a decision review of the Charity Commission's continued registration of the Atlantic Council as a charity despite the clear statement of the Court of Appeal cited in paragraph 5 above. The initial decision of the Charity Commission by letter dated 19 December 2008 from Alice Holt, Head of Legal Services (Status and Advice), contained this statement:
- I should explain 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... The judgement in the Prodem case effectively confirmed the Commission's understanding of the law and the Charities Act 2006 has not amended the applicable law in any relevant material particular.
13. From this point on the scale of misconduct by the Charity Commission (including Mr K. Dibble) and their legal representatives escalated from the civil standard to the potentially criminal level, further exacerbated by the alleged misconduct of the second judge, Lord Carlile of Berriew Q.C., a Liberal Democrat peer. The evidence of misconduct is contained in the following documents:
- IPP Complaint to the Office for Judicial Complaints dated 31 March 2010 – dismissed.
 - My complaint to the Metropolitan Police of 7 March 2012 – not investigated or dismissed.
 - My open letter to the Attorney General dated 28 June 2012 alleging misconduct in public office by Charity Commission officials (inc. Mr K. Dibble), their legal representatives and Lord Carlile of Berriew – no challenge to the material facts/no alleged defamatory libel by me.
 - My open letter to all members of both Houses of Parliament of 9 May 2014 calling for the removal of Lord Carlile as a judge. He retired at the year-end and sits as a Crossbencher.

The Law

14. The impossibility of the Charity Commission's position on the charitable status of the Atlantic Council, and the lengths to which their advocacy has had to go to defend that line, may be illustrated by setting the following side-by-side:

- The objects clause of the governing document (with nomenclature introduced to distinguish each element):

'To advance the education of the inhabitants of the United Kingdom

[A] in the aims of the Atlantic Treaty entered into by the Government of the United Kingdom and its supporting Organisation the North Atlantic Treaty Organisation ("NATO")

[B] the duties and responsibilities of the said Governments and inhabitants thereunder and

[C] the problems associated with the promotion of close links between the members of the Atlantic Alliance'

- This body's self-description of 'Who We Are' on its own website as at 31 March 2020 states:

'The Atlantic Council of the United Kingdom is an independent non-governmental charity organisation whose purpose is to and [sic] educate and promote the values of peace and international order, as underpinned in the North Atlantic Treaty from 1949.'

- As already noted, the Court of Appeal stated in its Prodem judgment of 28 June 2000:

'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.' (para. 29)

The Court also made clear:

'... 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.' (para. 24)

15. There is no issue here at all about promoting the aims of the Atlantic Treaty and NATO as a political body, which is plainly what the Atlantic Council is. The fact that, as its website states, it has official recognition by NATO and government departments – in the past, all three leaders of the UK's main political parties used to give published statements of support, too – is neither here nor there. Even their doubtless sincere intention to focus on '... engaging an uniquely broad cross-section of society,...' to facilitate their '... ultimate aim... to work to help prevent war...' avails them nothing. All their activities are conditioned by the principle of upholding [A] and [B]. Education for a propagandist purpose, however laudable politically, is not charitable in law. Only [C] is potentially educational in the legally charitable sense had it stood alone... but it does not.

16. Prodem/IPP developed an objective principle, defined in law by Mr Justice Carnwath, which made possible the 'Peace Games', i.e. competing evaluations by academics and laity of international conflicts rather than competing policies whose public benefit cannot be proven. All the Charity Commission, old and new had to do, was apply it. This they manifestly failed to do.

The Indictment

17. The indictment of the Charity Commission for England and Wales, old and new, consists in their failure in the period 2000-2020 to face up to their misconduct and the evil effects arising therefrom. The English courts in 1998 and 2000 offered them a basis for reform. It was refused. Specifically:

- (i) The claim that ‘... The judgement in the Prodem case effectively confirmed the Commission’s understanding of the law’ is plainly untrue and known to them to be so.
Evidence: IPP would not exist today as an educational charity, if it were true.
- (ii) The admission 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...’:
 - a. Is indefensible in law and inconsistent with the rule of law.
Principle: The rule of law requires the lower tribunal to submit to the higher one.
 - b. Led to their own, potentially criminal, misconduct in defence of that position.
Evidence: The IPP Court papers in the case against the Charity Commission (2009); and my complaint to the Metropolitan Police of 7 March 2012.
 - c. Was ratified by Lord Carlile of Berriew QC as second judge in the IPP case (2009)
Evidence: The IPP complaint to the Office for Judicial Complaints of 31 March 2010; and my complaint to the Met of 7 March 2012 (though he cannot be prosecuted).
- (iii) The failure to educate itself and the charity sector, including the Universities, in the legal framework provided by Mr Justice Carnwath in the Prodem case (1998), as affirmed and supplemented by the Court of Appeal (2000), was a result of cold and deliberate calculation by, first, the Commissioners themselves and then, after their abolition, the Board of the Charity Commission. That usurpation is without excuse or justification. It has had life-or-death consequences in relation to securing a state of peace and avoiding a state of war because:
 - a. Once an ‘irenical perspective’ is accepted as a basis for genuine education, as it was by the English courts but not the Charity Commission or the Commissioners, it becomes possible to predict whether a climate for peace or war is being created by state or other parties in an international dispute. Prodem and IPP did this by comparing the balance of peaceful and military means of conflict resolution.
Evidence: My Prodem Briefings no. 1 and A/1 to A/3 (1993-95); IPP Briefing no. 1 (January 2006).
 - b. This competition of analytical methods relies on political neutrality and commonly accepted ground rules, based on the Prodem case, which is completely undermined if political bodies like the Atlantic Council (and charities behaving like political bodies) are permitted to claim an equal status to which they are not legally entitled.
Principle: as outlined in ‘The Law’ section above.
 - c. If persisted in, another Great Power war would be a more likely consequence, for want of legal protection due to the dereliction of duty of the charity regulator, so education can fulfil its role in helping achieve the legally charitable object of peace.
Evidence: My Prodem Briefings, especially A/3, and forthcoming Peace Games 2020.

Recommendation

18. This Bulletin has established a compelling need to replace the liberal system of charity regulation in England and Wales, as it has sometimes been described, with the conservative system practised by the Courts, specifically the Chancery Division of the High Court. (The terms 'liberal' and 'conservative' are used here in a technical not political sense.) The rationale for adopting this recommendation, which is dependent on the 'Court of history' to enact – i.e. the course of events in an area of conflict – rather than on mobilising public opinion, is three-fold:

- i. *By analogy with sport.* When sportsmen or women want to win so much that they take performance-enhancing drugs to do so they flout the rules of their sport. When the state itself encourages this practice then it is legitimate to speak of 'state-sponsored doping'. How much worse when the referees themselves take an illicit drug called 'power'!
- ii. *By analogy with medicine.* The current (at the time of writing) coronavirus pandemic has seen the Prime Minister flanked by his medical advisers setting out the public policy measures his government has taken 'on scientific advice'. That is the right relationship. Public opinion cannot override medical facts or sound diagnosis and 'success' is measured in reduced cases/deaths. This relationship already exists in matters of war where government has its military advisers (which should be objective, if not scientific). No such relationship exists in matters of peace; just the sycophantic relationship of political and social scientists illustrated in my Closing Bulletin no. 3 of 27 January 2020.
- iii. *By analogy with theology.* On 28 June 2000, the charity regulator and Attorney General knew that an injustice had been committed because the Court had not arrived at its decision by exclusively lawful and objective means. Yet out of the 'death' of Prodem came IPP. All they had to do for the public benefit was to apply the legal framework. God's offer of mercy on the first Good Friday, if rejected, did not negate His justice. Those in power then, who did reject it, received judgement in AD70. If we are not to share the same fate in another Great Power war an irenic perspective must be applied.

The Author

This Bulletin has been written and published by Peter M. Southwood (Dr) who accepts full and sole responsibility for its contents. He describes himself as the Law Officer for Public Benefit in England and Wales or LawPB (*de facto* but not yet *de jure*) because the official body responsible for promoting public benefit is not itself acting for the public benefit as the English courts determined it to be in the Prodem case [1998] and [2000].

Acknowledgements

For the public benefit, I thank Mr Justice (later Lord Justice) Carnwath for acting with legal integrity in the Prodem case, without fear or favour to anyone, and thereby setting the standard for advocacy it has been possible for me to aspire to and make the basis for a genuine charity regulator. Additionally, Lord Justice Chadwick for writing one of the cleverest judgments in English charity law in the whole post-Second World War period that can only be read truly by someone who does not judge by appearances (John 7: 24). In the end, not clever enough, but a masterful effort that rendered to Caesar the things which are Caesar's and to God the things that are God's (Matt. 22: 21).

Distribution & References

Please see overleaf.

Distribution

This Bulletin is being copied, inter alia, to:

- (i) *Foreign embassies in the United Kingdom* who host educational and development charities in their own countries to warn them, if they are not already aware, that the liberal system of charity regulation in England and Wales permits, and sometimes encourages, political activities in their jurisdictions that would not be permitted by a conservative system here.
- (ii) *University Vice-Chancellors in England and Wales* to warn them that the requirement on their governing bodies to defend academic freedom under the law does not permit scholars to use their academic positions to promote, rather than test, their political views. They are respectfully encouraged to request that any political or social scientists who object to this requirement (analogous to the political neutrality required of judges) to write to LawPB setting out a reasoned case for rejecting the legal framework provided in the Prodem case and explaining how the public benefit of their political opinions is to be proven.

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Notes and References

Almost all the relevant references – apart from my personal testimony here – will be found in the letters, articles and Closing Bulletin no. 3 of the Paris Peace Conference Remembered 1919 series. Note, especially, Letter and Article nos 2 and 5 at: <https://www.directionofconflict.org/what-we-do>

Para. 2 Information taken from the drama-documentary ‘The Flu That Killed 50 Million’ on the BBC iPlayer (25 September 2018) – viewed end-March 2020. The most prescient film I have seen.

Para. 3 The list of Charity Commission Board members was taken from: <https://www.gov.uk/government/organisations/charity-commission/about/our-governance#the-board> – downloaded on 7 April 2020 at 9.15am.

Paras 4-9 For copies of the Prodem judgments, see: <http://www.ipp2000.org/ipplaw.html>
The quoted paragraphs from the High Court judgment [9 October 1998] are: 10, 11, 22, 26, 31. Those from the Court of Appeal judgment [28 June 2000] are: 16, 24, 25, 27-29, 30.

Para 10 See Private Action, Public Benefit: A Review of Charities and the Wider Not-For-Profit Sector, Strategy Unit Report (Cabinet Office, September 2002), especially pp. 5-6, 43, 92 (Annex 1).

Paras 10-13 The references are contained in the text and can be produced as and when required.

Paras 14-16 The information on the governing document of the Atlantic Council is taken from the Court papers in the IPP case against the Charity Commission [28 August 2009]. Details from Its website on 31 March 2020 at: <https://www.atlanticcounciluk.org/about-us>

Para 17 Full details of the Prodem/IPP Briefings in Closing Bulletin no. 3 (27 January 2020), p. 7.