Closing Article no. 1 – 31 October 2019

The Queen and the Law

by

Peter M. Southwood

Historical Background

The main work of the Paris Peace Conference was completed by the time of the signing of the Treaty of Versailles on 28 June 1919. The political leaders of France, Great Britain, Italy and United States left the remaining tasks in the hands of foreign ministers and diplomats while retaining overall control of decision-making. Preparations for the establishment of the League of Nations continued leading up to its formal inauguration in January 1920.[1]

Likewise, the main educational task of the Paris Peace Conference 1919 Remembered was completed with the publication of the seven letters and articles (including one communique) between 18 January and 28 June 2019. This is the first of three closing articles whose purpose is to establish why Her Majesty is a living symbol of what 'acting in good faith' means, without which it is impossible to apply an 'irenical perspective' objectively to secure peace in our time.

1. Fount of Justice

Her Majesty's position on 'The Queen and Law' is clearly explained on the royal website:

> In the earliest times the Sovereign was a key figure in the enforcement of law and the establishment of legal systems in different areas of the UK. As such the Sovereign became known as the 'Fount of Justice'.
>
> While no longer administering justice in a practical way, the Sovereign today still retains an important symbolic role as the figure in whose name justice is carried out, and law and order is maintained.
>
> Although civil and criminal proceedings cannot be taken against the Sovereign as a person under UK law, The Queen is careful to ensure that all her activities in her personal capacity are carried out in strict accordance with the law.[2]

The issue, therefore, is whether this commitment to lawfulness in her personal capacity can be carried through to lawfulness in the Queen's public capacity as Fount of Justice?

Here 'public capacity' means legal competency in roles Her Majesty carries out as Head of State.[3] These are distinguished from personal matters, e.g. which charities the Queen decides to support or who she appoints as her personal advisers.

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2. A Constitutional Convention

The issue arose because of two appeals before the United Kingdom (UK) Supreme Court which were decided unanimously on 24 September 2019 by eleven justices (the maximum number permitted to sit). The President and Deputy President put the matter like this:

> The issue is whether the advice given by the Prime Minister to Her Majesty the Queen on 27th or 28th August 2019 that Parliament should be prorogued from a date between 9th and 12th of September until 14th October was lawful. It arises in circumstances which have never arisen before and are unlikely ever to arise again. It is a 'one-off'.[4]

The issue before the Court may be accepted as a 'one-off' but the same cannot be said of the prospect of the Queen being led into unlawfulness again in her public capacity, as the Court subsequently concluded she had been.

In this instance the Supreme Court view on the Queen's legal position is instructive. Before considering if it could adjudicate on whether the Prime Minister's advice to the Queen was lawful, i.e. its justiciability, the Court made clear:

> First, the power to order the prorogation of Parliament is a prerogative power: that is to say, a power recognised by the common law and exercised by the Crown, in this instance by the sovereign in person, acting on advice, in accordance with modern constitutional practice. *It is not suggested in these appeals that Her Majesty was other than obliged by constitutional convention to accept that advice. In the circumstances, we express no view on the matter.* That situation does, however, place on the Prime Minister a constitutional responsibility, as the only person with the power to do so, to have regard to all relevant interests, including the interests of Parliament.[5] [Emphasis added.]

Before addressing the findings of the Court on this issue it is instructive to turn now to how Her Majesty's Attorney General responded to the decision of the Supreme Court that the advice Her Majesty received on the prorogation of Parliament was unlawful.

3. Her Majesty's Attorney General

The day following the Supreme Court judgment, Parliament resumed its business – as it had not been prorogued – and the Attorney General answered questions on 'Legal Advice: Prorogation'. His opening statement on the legal advice given to Her Majesty the Queen underlined the Government's defence of its position:

> The Government accept the [Supreme Court] judgment and accept that they lost the case. At all times, the Government acted in good faith and in the belief that their approach [to prorogation] was both lawful and constitutional. These are complex matters, on which senior and distinguished lawyers will disagree…[6]

At no point did he summarise why the Supreme Court arrived at a different decision to that of the English Divisional Court, led by the Lord Chief Justice, or the outer house of Scotland.

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As to a remedy, the Attorney General did say:

> … I am bound by the long-standing convention that the views of the Law Officers are not disclosed outside the Government without their consent. However, I will consider over the coming days whether the public interest might require a greater disclosure of the advice given to the Government on the subject. I am unable to give an undertaking or a promise to the hon. and learned Lady at this point, but the matter is under consideration.[7]

Another MP asked the following question:

> … The United Kingdom Head of State was asked by the Prime Minister to agree to an illegal course of action based on incorrect advice. What does the Attorney General believe should be the consequences for those responsible?[8]

To which the Attorney General replied:

> The same consequences that flow from any good-faith implementation of advice that, at the time, is perfectly respectable and tenable advice, as this was. The fact of the matter is that the Government's position was that Prorogation was lawful and it was constitutional…[9]

Another MP denied that the Prime Minister had broken the law for the following reason:

> Does my right hon. and learned Friend agree that, contrary to the repeated claims of the Prime Minister's many political opponents that the moment he announced Prorogation, he broke the law, the fact is that he did not, because as we all now know, the Supreme Court judgment yesterday set new law?[10]

The Attorney General responded thus:

> The Supreme Court judgment said that the Government got the law wrong. We have to accept that, but it is perfectly true that in doing so, it effectively invented or created a new legal principle which hitherto had been a political convention and defined that principle in a new legal test. It is crystal-ball gazing to know whether any court would decide to do that. It did, though the Court below, led by the Lord Chief Justice, concluded that it should not.[11]

In fact, the Supreme Court did not claim to set new law, rather it concluded on justiciability:

> As we have explained, it is well established, and is accepted by counsel for the Prime Minister, that the courts can rule on the extent of prerogative powers. That is what the court will be doing in this case by applying the legal standard which we have described. That standard is not concerned with the mode of exercise of the prerogative power within its lawful limits. On the contrary, it is a standard which determines the limits of the power, marking the boundary between the prerogative on the one hand and the operation of the constitutional principles of the sovereignty of Parliament and responsible government on the other hand.[12]

The next section will briefly outline the legal standard and how it was applied.

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One further question in the House of Commons on 25 September ’19, concerning the importance of the convention that the advice which the Attorney General gives to Government is not leaked and is not disclosed, elicited this response from him:

> … I do of course agree with [the questioner] that legal advice, and particularly the role of the Attorney General, is always difficult, because one polices and intersects a very difficult line between giving advice of an impartial, and politically impartial, character, and being a political Minister, but I hope that I have endeavoured to do that with all the conscience and candour at my disposal…[13]

Reading the full account in Hansard of the Attorney General’s responses to MPs’ questions on ‘legal advice’, this writer could be left in no doubt as to which role was the dominant one on that day. At no point was the position of the Sovereign given any serious attention.

4. The Supreme Court Judgment

In considering the legal standard referred to above, by which the lawfulness of the advice to the Queen is to be judged, the Court postulated that:

> Two fundamental principles of our constitutional law are relevant to the present case. The first is the principle of Parliamentary sovereignty: that laws enacted by the Crown in Parliament are the supreme form of law in our legal system, with which everyone, including the Government, must comply. However, the effect which the courts have given to Parliamentary sovereignty is not confined to recognising the status of the legislation enacted by the Crown in Parliament as our highest form of law. Time and again, in a series of cases since the 17th century, the courts have protected Parliamentary sovereignty from threats posed to it by the use of prerogative powers, and in so doing have demonstrated that prerogative powers are limited by the principle of Parliamentary sovereignty… [14]

How the limit upon the power to prorogue is to be defined consistently with the first principle was then asked in relation to the second:

> The same question arises in relation to a second constitutional principle, that of Parliamentary accountability, described by Lord Carnwath in his judgment in the first *Miller* case as no less fundamental to our constitution than Parliamentary sovereignty… Ministers are accountable to Parliament through such mechanisms as their duty to answer Parliamentary questions and to appear before Parliamentary committees, and through Parliamentary scrutiny of the delegated legislation which ministers make. By these means,… citizens are protected from the arbitrary exercise of executive power.[15] [Emphasis in the original.]

By also taking into account that a power conferred by statute, rather than one arising under the prerogative, normally requires reasonable justification, the Court concluded:

> For the purposes of the present case, therefore, the relevant limit upon the power to prorogue can be expressed in this way: that a decision to prorogue Parliament (or to

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> advise the monarch to prorogue Parliament) will be unlawful if the prorogation has the effect of frustrating or preventing, without reasonable justification, the ability of Parliament to carry out its constitutional functions as a legislature and as the body responsible for the supervision of the executive. In such a situation, the court will intervene if the effect is sufficiently serious to justify such an exceptional course.[16]

The Court pointed out that that standard is one which can be applied in practice as it is a question of fact of a kind which the courts routinely decide.

Thus, in deciding whether the advice to the Queen was lawful, the Court proceeded as follows:

> The first question, therefore, is whether the Prime Minister's action had the effect of frustrating or preventing the constitutional role of Parliament in holding the Government to account.
>
> The answer is that of course it did…[17]

The factual evidence does not need to be summarised here.

The Court then asked itself:

> The next question is whether there is a reasonable justification for taking action which had such an extreme effect upon the fundamentals of our democracy. Of course, the Government must be accorded a great deal of latitude in making decisions of this nature. We are not concerned with the Prime Minister's *motive* in doing what he did. We are concerned with whether there was a reason for him to do it. It will be apparent from the documents quoted earlier that no reason was given for closing down Parliament for five weeks…[18] [Emphasis in the original.]

Again, a summary of the evidence is not required here.

In particular, the Court says of a Memorandum in the Prime Minister's office dated 15 August 2019:

> Nowhere is there a hint that the Prime Minister, in giving advice to Her Majesty, is more than simply the leader of the Government seeking to promote its own policies; he has a constitutional responsibility, as we have explained in para 30 above. [Cited on p. 2 of this article.]
>
> *It is impossible for us to conclude, on the evidence which has been put before us, that there was any reason – let alone a good reason – to advise Her Majesty to prorogue Parliament for five weeks*, from 9th or 12th September until 14th October. We cannot speculate, in the absence of further evidence, upon what such reasons might have been. It follows that the decision was unlawful. [19] [Emphasis added.]

In providing a remedy, by making the declaration sought by Mrs Miller, the Court went on to consider whether the prorogation of Parliament was valid? It concluded that, since the advice to her Majesty was unlawful, all the steps taken to actual prorogation were 'unlawful, null and of no effect.'[20]

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5. Acting in Good Faith

The basis of the Attorney General's defence, in the Supreme Court case concerning prorogation, is that 'At all times, the Government acted in good faith…'

There is no overriding law or principle of law in England that we must act in good faith to one another. Nor is there any universal definition of what 'good faith' means which the courts rely upon when settling disputes (often of a commercial nature). In one such case, Lord Bingham noted that the English courts have preferred to develop piecemeal solutions to demonstrated problems of unfairness. He described good faith as being most aptly conveyed by colloquialisms like '*playing fair*', '*coming clean*' or '*putting one's cards face upwards on the table*' concluding that it '*is in essence a principle of fair and open dealing*.'[21]

This is matched by another common law jurisdiction, the United States, where one legal dictionary describes good faith as '*Honesty; a sincere intention to deal fairly with others.*'[22]

The first point being that sincerity is not enough. A politician may sincerely believe that what he says is true, but he must also demonstrate that he has dealt fairly with others, if he is to prove that he has 'acted in good faith.'

The second point is: to whom the Government must deal fairly? Obviously, Her Majesty. Additionally, Parliament, as the Supreme Court stated in relation to the Prime Minister's constitutional role.

Consequently, it is now possible for this writer to ***draft a statement*** which a chief legal adviser to the Crown (as opposed to the Government) would have made to the House of Commons consistent with the principle of acting in good faith:

Legal Advice: Prorogation

25 September 2019

The Attorney General

It is a matter of profound regret that Her Majesty was led to act unlawfully on the advice of the Prime Minister in the matter of the supposed prorogation of Parliament. The Supreme Court of the United Kingdom made clear the two constitutional principles upon which his legal advice to the Queen should have been based:

- The sovereignty of Parliament which limits the use of prerogative powers; and
- Accountability to Parliament by Ministers to protect citizens from arbitrary rule.

In applying these principles to the evidence for 'reasonable justification' of prorogation the Court found:

- 'It is impossible for us to conclude… that there was any reason – let alone a good reason – to advise Her Majesty to prorogue Parliament for five weeks…'

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On behalf of the Government, I offer this defence… /no defence [*edit as appropriate*].

In any event I must accept that as I oversee the Law Officers' Departments, I bear overall responsibility for Her Majesty acting unlawfully in the matter of prorogation based on advice which, by a current constitutional convention, she was bound to accept.

As Attorney General it was incumbent on me to well and truly serve Her Majesty but, as chief Law Officer, I have in this instance inadvertently failed to treat her fairly. Thus I am bound to offer my resignation to the Prime Minister and I have informed him that I will be doing so…

For the avoidance of doubt, this writer is not calling for the resignation of the Attorney General. He is making the statement that he would have made had he been that Law Officer. It is based on the premise that the Prime Minster took and acted on legal advice (apart from that within 10 Downing Street) concerning prorogation, as the Attorney General's opening statement to the Commons on 25 September seems to imply. (He could not be considering greater disclosure of the Law Officers' advice if such advice was not given and accepted.)

It remains to consider the question of a remedy to reduce or eliminate the possibility of her Majesty being put in the position again, in her public capacity, of acting unlawfully. The Supreme Court drew attention to the incongruity of a 'constitutional convention' leading the Queen into (what they went on to decide was) unlawfulness without her having the option of refusal (p. 2 above). The court could not propose a resolution, or even suggest one was needed, without detracting from the central issue it had to address. Obviously, though, a 'constitutional' convention which has that effect, of drawing the Fount of Justice into unlawfulness, cannot in law be constitutional. The convention must be amended in a way that deals fairly with the Queen and allows her personal commitment to acting 'in strict accordance with the law' to be reflected in her public role.

Her Majesty's legal competency rests entirely in the hands of others: Parliament that enacts laws in her name; judges who act on her behalf; and the Government whose advice she must accept (contrary to all other citizens of sound mind for whom advice can always be rejected). That the Sovereign cannot be sued or prosecuted in the courts reflects this fact. It is not a privilege; still less an indication that she is 'above the law'. In her public capacity she has fewer rights than a person accused of a serious crime because her dependency on others is so complete that she could not resist unlawful advice even though she knew it was being challenged in the courts. To rectify this manifest injustice is the duty of every office-holder and other citizen who has sworn to, (or affirmed that they will), 'be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, *according to law*.'[23] [Emphasis added.] To which is added 'So help me God.' As the Queen did at her Coronation.

Before making a recommendation to achieve this purpose, it is necessary to draw public attention to the legal competency of Attorneys General in their respective public roles.

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6. Conflicts of Interest

The Queen in her public and private capacities is a living symbol of 'acting in good faith' in that, throughout her long reign, she has been true to her Coronation Oath.[24] In her public capacity Her Majesty has no conflicts of interest since she does, and has always done, what was constitutionally required of her (even, in this case, when it was found to be unlawful). This can be acknowledged by all her subjects, whatever their individual political viewpoints.

Additionally, she has, like her father King George VI, combined unstinting support for the UK armed forces with an unequivocal commitment to a state of peace and, therefore, to peaceful means of conflict resolution. The Commonwealth has been a special focus of her attention. Though she could hardly have known of this, one of the judges of the Supreme Court, Mr Justice Carnwath (as he was then called), gave judicial definition to this universal aspiration on 9 October 1998 in a charity case about the Project on Demilitarisation (Prodem). The term is called an 'irenical perspective'.[25] Both the case and the term were initiated by this writer.

Turning, then, to Her Majesty's Attorney General the same principle applies to him as to the Prime Minister on the question of their accountability to Parliament. In the case concerning prorogation, the Supreme Court cited Lord Diplock on justiciability:

> It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge.[26]

As he himself acknowledged before the House of Commons on 25 September 2019 (cited at p. 4 above), the Attorney General enforces, i.e. '… polices and intersects a very difficult line' between his role in giving impartial advice and being a political minister. In considering whether this amounts to an admission of a conflict of interest the following summary of evidence from this writer is relevant:

(i) The claim for judicial review this writer initiated in 2018 against the current Attorney General's predecessors in 2003 (as Defendant) and in 2018 (as Interested Party) which the current Attorney General took over on 9 July 2018 on entering office. It was reported on as part of the Paris Peace Conference 1919 Remembered series.[27]

(ii) During this judicial proceeding the Interested Party made a false declaration in his Acknowledgement of Service (AoS) dated 24 April 2018 but did not admit error. The relevant pages of my claim for judicial review issued on 26 March 2018 and the Interested Party's AoS to prove this are published today for the public benefit.[28]

(iii) On appeal to the Court of Appeal (Civil Division), the judge wrote that the Claimant's request, for an order setting out the Court's view on whether a possible offence under the Perjury Act 1911 should be referred to the police, was 'misconceived' but did not give …any reason, let alone a good reason,… for his advice.[29] Nor issue a denial.

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Consequently, this writer has produced a case for a private prosecution of all three current or previous Attorneys General for offences under the Perjury Act 1911. The overview of this case, together with one letter of evidence in relation to each suspect, are also published today for the public benefit.[30]

The reason for a private prosecution[31] rather than a reference to the Metropolitan Police is that the Appeal Court judge's advice makes it unlikely that the Met would take the matter up. Moreover, even if they did and referred the case to the Crown Prosecution Service, the CPS is under the supervision of the Attorney General. The Director of Public Prosecutions, who heads the CPS, would face a potential conflict of interest.

However, despite preparing a full case for such a private prosecution of the three current or previous Attorneys General (called D1, D2 and D3), this writer concluded on further inquiry that for reasons of cost alone it was not possible to instruct a legal team to proceed. In view of the relevance of this case to the conflicted loyalties of English Attorneys General to Constitution or Government revealed in the second *Miller* case this writer, in his capacity as the *de facto* Law Officer for Public Benefit in England and Wales, has deemed it self-evidently for the public benefit for the overview of this criminal case to be published.[32] (The names of lower level officials have been edited out as the case is focused against the principals.)

As this writer's full case puts it:

> The desired outcome is to demonstrate that D1, D2 and D3 were so irrationally opposed to the judicially approved principle of the public benefit of an 'irenical perspective', in my judicial review claim in 2018, that they [each] (voluntarily) chose to commit a crime, rather than admit error.[33]

Naturally, this claim is unproven in a court of law, the suspects are assumed to be innocent and, in any event, are currently unindictable. But it puts a further question mark against the presumption that Attorneys General act in good faith when facing conflicts of interest.

'No man can serve two masters…'[34] and the *Miller* case [2019] shows that the Prime Minister (and, by necessary implication, his legal advisers) put the interests of the Government above those of the Crown (Constitution). This must now be remedied – their Oath requires it.

7. Recommendation

The two cases on prorogation heard by the UK Supreme Court are instructive for different reasons. The *Cherry* case was brought in Scotland, before the Queen was advised to prorogue Parliament, which aimed to pre-empt, on legal grounds, such an eventuality. It mirrored, therefore, the purpose of the Prodem case in the 1990s which was to forewarn of the return to global conflict and secure the legal foundation for educational bodies to provide authoritative guidance of the same in the 2000s and beyond. As the Supreme Court noted:

> Meanwhile, on 30th July 2019, *prompted by the suggestion made in academic writings in April* and also by some backbench MPs, and not denied by members of the Government, that Parliament might be prorogued so as to avoid further debate in the

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> run-up to exit day [from the European Union], a cross party group of 75 MPs and members of the House of Lords, together with one QC, had launched a petition in the Court of Session in Scotland claiming that such prorogation would be unlawful and seeking a declaration to that effect and an interdict to prevent it.[35] [Emphasis added.]

On the other hand, the *Miller* case, launched in the English courts as soon as prorogation was announced, was sustained by the knowledge that thousands or millions of people in this country would be sympathetic or supportive of the legal issue raised. Many others, of course, would be unsympathetic or hostile in varying degrees. This writer's three legal cases, all ostensibly unsuccessful, attracted almost no public attention but were fought exclusively on the principle of applying relevant law to the material facts of each case. (On that basis none of the cases were lost.[36]) Her Majesty, if this writer may be so bold, is in the same position of powerlessness as her loyal subject except that he can defend the principle both believe in for the public benefit, without regard to lack of public interest, whereas she cannot.

The solution is, therefore, clear. It is **recommended**:

(i) That Her Majesty has access to independent legal advice on constitutional and charity law whenever she has grounds for believing that she may be asked by H.M. Government to act unlawfully, contrary to her Ministers' Oath of Allegiance;

(ii) That, in her public capacity, she and not her Ministers, shall choose who her independent advisers are, whether and when such advice may be sought and whether to act on the advice offered;

(iii) That this shall be for the sole purpose of ensuring that the constitutional convention that the Sovereign accepts the advice of her Ministers is only and always for lawful purposes in keeping with her Coronation Oath.

As to the mode of operation of this revised constitutional convention: where on independent legal advice she considers she has reasonable grounds for believing that her Government is asking her to act in a way that may be unlawful she will have the right to decline to act until the legal issue has been resolved in the courts. As before Her Majesty will neither initiate, prosecute or defend any civil or criminal proceedings. The costs of her independent legal advice, as and when required, to be met by the State.

By this means harmony between the Sovereign's public and private roles shall be restored consistent with the principle of acting in good faith towards Her Majesty on the part of her Government and all her subjects and in keeping with the laws of God she vowed to uphold at her Coronation.

Thereby the sanctity of all oaths, affirmations and declarations will be upheld before Almighty God and the laws of Parliament and shall not be made lightly, frivolously or of no account.

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[4] . *R (on the application of Miller) (Appellant) v The Prime Minister (Respondent)* and *Cherry and others (Respondents) v Advocate General for Scotland (Appellant) (Scotland)* [2019] UKSC 41 at para. 1.

[5] . Ibid, para. 30.

[6] . House of Commons Hansard, vol 664 (25 September 2019), col. 652.

[7] . Ibid. The 'hon. and learned Lady' is the Rt Hon Joanna Cherry QC MP (Scottish National Party).

[8] . Ibid, col. 666. The question was asked by the Rt Hon Catherine McKinnell MP (Labour).

[9] . Ibid, col. 667.

[10] . Ibid, col. 668. The question was asked by the Rt Hon Andrew Bridgen MP (Conservative).

[11] . Ibid.

[12] . *R (Miller) v The Prime Minister* [2019], UKSC 41 at para. 52.

[13] . Hansard, (25 September 2019), cols 655-6. The question was asked by the Rt Hon. Robert Neill MP (Conservative).

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[15] . Ibid, at para. 46 referring to *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5.

[16] . Ibid, at para. 50.

[17] . Ibid, at paras 55-6.

[18] . Ibid, at para. 58.

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[24] . See https://www.royal.uk/coronation-oath-2-june-1953 downloaded on 24 October 2019.

[25] . It was reported on by this writer in Article nos 1 and 2 of the Paris Peace Conference 1919 Remembered series on 18 January and 6 March 2019 respectively. See https://www.directionofconflict.org/what-we-do

[26] . *R (Miller) v The Prime Minister* [2019], UKSC 41 at para. 33 citing *R v Inland Revenue Comrs, Ex p National Federation of Self-Employed Small Businesses Ltd* [1982] AC 617, 644.

[27] . See note 25 above.

[28] . See www.directionofconflict.org/closing-bulletins

[29] . See note 25. The terminology this writer uses adapts the very words used by the Supreme Court in the Miller [2019] case at para. 61.

[30] . See www.directionofconflict.org/closing-bulletins

[31] . A private prosecution is permitted under the Prosecution of Offences Act 1985, s. 6(1) unless the offence is one for which the consent of the Attorney General or the Director of Public Prosecutions is required before it can proceed.

[32] . The circumstances in which the writer came to describe himself in these terms were explained in his open letter to the members of the former Iraq Inquiry Committee of 18 January 2019 and article no. 1 of the same date. See https://www.directionofconflict.org/what-we-do

[33] . Peter M. Southwood, 'Request for [name of law firm withheld] to Consider Proceeding on Instruction with This Private Prosecution Under the Prosecution of Offences Act 1985, s. 6(1)', p.28. [Confidential document.]

[34] . The Holy Bible, King James version (British & Foreign Bible Society, London, 1941), Matthew 6: 24.

[35] . *R (Miller) v The Prime Minister* [2019], UKSC 41 at para. 23.

[36] . See note 25 above, especially in relation to Article no. 2.

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