

The UK – A case of democratic backsliding?

The Judiciary

1. The importance of an independent, respected and effective judiciary

- Fundamental to any democratic society as part of the rule of law
- Enforcing private law rights and obligations, and administering criminal law
- Especially important constitutionally, (i) to enforce constitution, and (ii) to hold executive to account
- Especially important in a system where legislature is often dominated by executive

2. Specific examples of attacks on the Judiciary or courts:

- The attack on Judicial Review and ouster clauses
 - Government sets up a working party under Lord Faulks
 - Despite a sensible and moderate report government pretends much needs to be done to clip judicial wings
 - The consequential Bill is mild in its effect, but more is threatened,
 - Ouster clauses
 - Attempts to reverse *Miller II*
- The attack on Human Rights
 - Government sets up a working party under Sir Peter Gross
 - Despite a sensible and moderate report government pretends much needs to be done and produces a loaded questionnaire
 - Watch this space
- The threatened baseless attack on the Supreme Court
- Government Bills which approve breaching international law
 - The Internal Markets Bill
 - The threatened Northern Irish Bill
 - The Immigration and Nationality Bill
- Ministerial law breaking and cheating the system
 - The PM and Chancellor fined
 - Owen Patterson and Matt Hancock

- The underfunding of the courts and legal aid

3. The notion of unelected overmighty Judges subverting the democratic will

- With parliamentary supremacy, any judicial decision can be reversed by parliament
- With no overriding constitution, UK judges are, in international terms, relatively weak
- In terms of human rights and devolution, Parliament decided to give the judges the power they have
- The two most controversial, “*Miller*”, cases involved the courts standing up for Parliament
- The judges form an important counterweight especially in a country such as the UK
- Do we really want elected judges?

4. The basic causes of the problems

- The constitutional ignorance and lack of interest of politicians
- The absence of a “real” Lord Chancellor
- The degradation of law officers
- The craven attitude to some newspapers
- The absence of a coherent constitution

5. And yet

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28 April 2022