

QUEEN of Camouflage

Tim Richards on the UK and the Rule of Law

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Early on in the General Election campaign I heard a confident Englishman contribute to a radio debate with the introductory statement, “I know a lot about the UK”, before peddling whatever it was he had to say.

“Do you?” I wondered. I rather doubted it.

Perhaps he might have learnt something from watching the State Opening of Parliament and the Queen’s speech. After all, the tourist attraction of the Queen visiting Parliament in her coach, attended by the Household Cavalry, is not just a traffic jam, it’s a pantomime hiding a secret. Why doesn’t she just pop in the car and drive down to the Houses of Parliament? The fact is that if the Queen decided for the first time in her life to drive one of her many luxury cars herself, we could well find ourselves in the middle of a constitutional crisis. All it would take would be just a moment of inattention, for her to knock someone down, and the United Kingdom would be rocked to its roots. How come? Well, who is going to prosecute her, for a start? No one!

But how can this be, you may ask? Come on! It’s the Queen who does the prosecuting. Just look at the title of a criminal law case and it’s there — Regina v. Jones, or whoever. Regina is the Latin word for the Queen. Why is it in Latin? Well, they don’t like to let out the secret that every time you and I get a fine or penalty points, it’s in the name of Her Majesty the Queen, Elizabeth II, defender of the faith, etc. It might make you a bit resentful. Not that the Queen knows anything about penalty points because she doesn’t drive, can’t drive, doesn’t have to drive, and it’s just as well.

Maybe you think I am being biased and neurotic. The Queen is not above the law, you say. I have got news for you. Yes, she is. The Queen is immune from prosecution, a law which is centuries old. The police actually swear an oath of allegiance, not to the Home Secretary, to Parliament or the Prime Minister, but to the Queen, and it would be em-

barrassing to have to consider prosecuting the boss. No point in calling in the Army to do it, either — they also swear allegiance to the Queen. The constitutional lawyers got together recently to make sure another embarrassing fact about the Queen was not bandied about: that in a constitutional crisis the final decision lies with her. In all the discussion before the election about a hung parliament, the potential constitutional problems were presented as solved. Luckily for the lawyers, and our gullible media, the majority the Conservatives had over Labour gave them the momentum, and the hand-over passed off smoothly.

The BBC were also economical with the truth when it came to numbers of votes needed by the party leaders. According to them, the target for a party leader to gain a majority in the House of Commons was 326 when all Cameron or Brown actually needed for a majority was 323 since 5 MPs never turn up — the members of Sinn Fein — Irish Republicans who are not likely to swear allegiance to a Protestant Queen. It's not that United a Kingdom. Although the decision was easy this time, potential problems still remain in the event of another election in a year or two when the number of seats held might be far more even.

This is because the UK has a partly written constitution — plenty of it is in writing from Magna Carta, through the Acts of Unions, the Bill of Rights 1689, the Act of Settlement, *ad infinitum*, plus a few groaning volumes of cases and the occasional personal view as exemplified by Dicey...

It's the unwritten bits that are interesting. The Queen is, of course, the leader of the UK. It was not that long ago that UK Passports referred to us all as Her Majesty's Subjects. All Acts of Parliament begin with the phrase: "Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows." And all Bills have to receive the Royal Assent. The constitutional lawyers confidently predict that the Queen will never refuse, and say that Queen Anne was the last queen to have done so, 300 years ago. I find these guys irritating, so to irritate them back, I ask what if the Bill was to abolish the Monarchy? What would happen then?

When the Queen visits the House of Commons to read her speech, it has, of course, been written for her by her Prime Minister (a constitutional invention during the eighteenth century); and it is worth remembering that when it comes to a hung Parliament, she chooses the Prime Minister on the basis that he is the party leader who can command the majority of the House of Commons and thus form and run a

government. The problem is that even though there are rules established by constitutional lawyers, these are in fact conventions, a very different animal. A rule is something laid down from above for people to follow. But the Queen is the ruler. She is not just above the law, she IS the law. This is the irony that is at the root of the constitution. How can you have a state which respects the rule of law when its ruler is the law? There is no way out — either we have rule by law or rule of law. Not that that worries anyone much, apparently.

But, if you really want to understand the United Kingdom, don't be so parochial as to look just at Britain when you look at the map. The Queen is leader of the United Kingdom and that title has enough anomalies to start with. For a start, why don't they call it the United Queen-dom? Come on Sister! Assert yourself! Well, maybe not...

What exactly is her Kingdom? The United Kingdom actually encompasses seven legislatures, four of those being Westminster, the Scottish Parliament, the Northern Ireland and Welsh Assemblies. While the Parliaments of the Isle of Man and Jersey and Guernsey are technically Crown dependencies, they are also part of the UK for the purposes of the European Convention on Human Rights as shown by the European Court of Human Rights case, *Tyrer v. UK* which declared judicial corporal punishment in the Isle of Man a breach of Article 3 as it was cruel and inhumane treatment. The ECHR dealt with it because the United Kingdom has responsibility for all the Isle's external affairs, including citizenship, the Isle's defence, good governance, and foreign relations. More confusingly, although the people of the Isle of Man, Jersey and Guernsey come under UK jurisdiction on broadcasting, they do not have representation in the British Parliament, and yet they count as British citizens.

Unfortunately, these places are also tax havens because their Parliaments make their own taxation laws... and, finally, the most embarrassing bit: it may not be exactly a secret but not many people know this. Perfect Pub Quiz Question on the United Kingdom: In what year did the last remnant of feudal government by landlords finally die out, giving all those over eighteen the vote?

Well, while the constitutional lawyers insist that the UK constitution has the ability to adapt, it took until 2008 before Sark, a Bailiwick of Guernsey, finally joined us in the twenty-first century as a democracy in which those over eighteen have the right to vote.

In fact the UK constitution is creaking; its internal conflicts are multiplying, and the unwritten bits are rapidly becoming black holes.

How about looking into one such dark internal conflict which will not go away? A government that obeys the principle of rule by law requires a legal adviser who is independent of the government; but the Attorney-General is both the government's legal adviser and a member of the government — a flaw that became glaringly obvious with Lord Goldsmith's advice that the invasion of Iraq was legal. His argument that a second UN resolution was not needed to sanction the invasion of Iraq was a mirror image of the Americans' justification, both of which fly in the face of international law.

The Blair years tested the limits of the rule of law. Finding manoeuvring space to accrue executive power, Tony Blair turned into the most powerful "peacetime" UK PM in history. In 2002 he joined George Bush in the "War on Terror" and by autumn of that year, behind the scenes, something fundamental had changed — the rules on how suspects were to be treated. To make them exempt from the normal laws dealing with Prisoners of War, they were labelled "Unlawful Enemy Combatants" by the Americans, and "High Value Detainees" by the British. We can see the outline, starting with the introduction of internment and the secret hearings that went with them, followed by the decision to attempt to use evidence which might (in fact usually did) come from torture. As the Baha Mousa Inquiry has revealed, the banned "conditioning" techniques used to "soften up" suspects before questioning (used on Irish Republicans interned by the British Army thirty years ago) were secretly reintroduced by autumn of 2002, and the same techniques were used by the US on Binyam Mohamed. We will never know who authorised that because it is a secret.

Even when we do finally get to know what the Army has done, something the Saville Report on Bloody Sunday has achieved, it would be naïve to expect that anyone will ever be convicted of murder, or even prosecuted as a result. The Public Prosecution Service for Northern Ireland (PPS) would have to be convinced that they can construct a case after thirty-eight years that would have a better than 50 per cent chance of persuading a jury of guilt, and they would be restricted to evidence which has survived the passage of time. Even if this could be achieved, the director of the PPS then has to decide whether a prosecution is required in the public interest. Justice delayed is justice denied — but then denial is something that the UK government does all the time, and secrecy is the key to them getting away with it.

At the heart of the United Kingdom is complete paranoia about the intelligence services being scrutinised. Secrecy is vital to maintaining the veil of legitimacy while bending the rules. Released "information" can be quite surreal, as summed up by the recent Parliamentary Report on

the secret services communications section, GCHQ, where we learn about its budget that:

*GCHQ spent £***m in 2008/09 (against a combined budget of £***m) which was an increase of 5% on the previous year. GCHQ's total planned resource budget for 2009/10 is £***m which, added to a capital budget of £***m, gives them a total budget of £***m (an increase of 5% on 2008/09).*

This passage was helpfully illustrated by a chart — as you can guess it shows a budget shooting upwards. The lack of hard information is down to another constitutional anomaly, the Committee that is supposed to oversee it, and I quote:

*The Intelligence and Security Committee (ISC) is a committee of parliamentarians, but not a committee of parliament. Unlike parliamentary select committees, the ISC is a statutory committee appointed by the Prime Minister after consultation with Opposition leaders. It meets in secret within the Cabinet Office, and is staffed by Cabinet Office officials rather than parliamentary clerks. It has no power to require the agencies to provide information, and reports directly to the Prime Minister, who may censor its reports before they are laid before parliament.**

*Hugh Bochel, Andrew Defty, Andrew Dunn, University of Lincoln.

Oh, and the Association of Chief Police Officers (ACPO) makes official operational policy for themselves. OK, you might say, this is not a matter of life and death, is it? Yes, it is, because the “shoot-to-kill” policy which justified the shooting of Jean Charles De Menezes by police in Stockwell tube station was devised by the ACPO, allegedly with the help of the Israelis — but we don’t have to worry our heads about this, because the ACPO refuse to tell us what the policy actually is, let alone publish it.

When I explain this huge gap in the UK constitution to my overseas students, they are all amazed but again, it is a gap so large that our rulers would prefer we ignored it — after all the police are loyal to the Queen, not to all those interfering politicians, so why talk about it? Occasionally it becomes embarrassing, such as when the police ignore the European Court of Human Rights, (ECHR) as they have done by retaining the DNA of innocent people, like me.

Yes, me — a respectable Law lecturer and Welsh republican. I have to admit to a slight chip on the shoulder here. At the time of the Queen’s jubilee in 2002, I was minding my own business organising a “Stuff the Monarchy” weekend when I got raided, taken to Pontypridd police station, questioned, DNA swabbed, etc. and charged with inciting people to paint anti-monarchist slogans in the Rhondda, despite the fact that

no slogans had been painted. At the end of a long and often farcical set of three trials the charge was dropped; but the Queen's men still have my DNA because no one controls them and instructs them to respect the ECHR's ruling

No. There's no getting away from it. The UK constitution is headed by an enormously wealthy Queen whose real worth is to be a symbol that Unites the Kingdom.

But the price we pay for clinging to that symbol, and the myth of the UK monarchy, is a dysfunctional constitution. This, in turn, raises serious questions about who is responsible for what and fails to ensure that the government, the state and all its agencies operate within the rule of law. At present, in the spaces where the law does not reach, there are some very dark shadows. An overhaul is desperately needed, a new politics. For us in Wales, this will only come about when we finally think independently and shape our own constitution. We do not need to hang on to an ancient and disintegrating UK constitution which has always treated us as subjects. It's time, instead, for a serious debate about what independence might mean, about its purpose and structure, starting afresh with the objective reality of Wales today and then thinking, debating and imagining a new Wales.