

# Affidavit of Michael Burke

to

Her Majesty Queen Elizabeth II

I, a man of England, known in the county of Berkshire as Michael Burke, in pursuit of justice and right and in full exercise of my undoubted & lawful duty to My Sovereign Lady, Her Majesty Queen Elizabeth II *per se*, come now to set down the truth regarding taxation and our constitution in England that Her Majesty's Court of Record may restore our liberties and the Rule of Law in this country and govern by *Statutes in Parliament agreed on*.

## **Legal Arguments**

It is a fundamental principle of law in this country that no man or woman can have lawfully imposed upon or collected from them any taxation of any sort or kind, unless that taxation had been put into a Finance Bill, unless that Bill had passed through its First Reading, Committee stage, Second and Third Readings, and has been sent up to the House of Lords to be fully debated and passed through all its stages in that House and further has received the Royal Assent.

Taxation without representation was one of the grievances that led to the revolution of 1688, following which, limitation was placed upon the Monarch by changes to the Coronation Oath and by the Declaration and Bill of Rights. This was an undoubted limitation upon the source of all governing power.

Sir William Blackstone (10 July 1723 – 14 February 1780) dedicated a short chapter of his commentaries to the '*Duties of the King*' which he regarded as certain. **One such duty or limitation was that the Declaration and Bill of Rights were to be followed and observed as the mode of government.**

The Declaration amongst other things, outlawed all cruel and unusual punishments. Today it is once again being asserted that Parliament has the same unlimited powers as had Henry VIII. Our constitution

28 clearly sets out that it does not. The Declaration and Bill of Rights enumerated the grievances and the  
29 remedy for them. The prohibition against the suspending and dispensing of statutes and the levying of  
30 tax without prior consent of Parliament are shown below.

31

32 **The Grievance:**

33 *'Whereas the late King James the Second by the Assistance of diverse evill Counsellors Judges and Ministers*  
34 *imploied by him did endeavour to subvert and extirpate the Protestant Religion and the Lawes and Liberties of*  
35 *this Kingdome*

36

37 *'1. By Assumeing and Exerciseing a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes*  
38 *without consent of Parlyament.*

39

40 *'4. By Levying Money for and to the Use of the Crown by pretence of Prerogative for other time and in other*  
41 *manner than the same was granted by Parlyament.'*

42

43 **The Remedy:**

44 *'And thereupon the said Lords Spirituall and Temporall and Commons pursuant to their respective Letters and*  
45 *Elections being now assembled in a full and free Representative of this nation takeing into their most serious*  
46 *Consideration the best meanes for attaining the Ends aforesaid Doe in the first place (as their Auncestors in like*  
47 *Case have usually done) for the Vindicating and Asserting their auntient Rights and Liberties, Declare;*

48

49 *'1. That the pretended Power of Suspending of Lawes or the Execution of Lawes by Regall Authority without*  
50 *Consent of Parlyament is illegall.*

51

52 *'4. That levying Money for or to the Use of the Crowne by pretence of Prerogative without Grant of Parlyament for*  
53 *longer time or in other manner than the same is or shall be granted is illegall. And they do Claime Demand and*  
54 *Insist upon all and singular the Premises as their undoubted Rights and Liberties and that noe Declarations*  
55 *Judgments Doeings or Proceedings to the Prejudice of the People in any of the said Premisses ought in any wise to*  
56 *be drawne hereafter into Consequence or Example. To which Demand of their Rights they are particularly*

57 encouraged by the Declaration of his Highness the Prince of Orange as being the onley means for obtaining a full  
58 Redresse and Remedy therein.'

59

## 60 **The Coronation Oath**

61 Adjustments were made in 1688 to the Coronation Oath as it '*hath heretofore beene framed in doubtfull*  
62 *words and expressions with relation to ancient laws and constitutions at this time unknown.*'

63

64 The Coronation Oath is as close as we come to the usual preamble of written constitutions. The promise  
65 of the Sovereign was about the 'people' and it was made to God and not to the Sovereign's Government  
66 nor the United Kingdom's Government.

67

68 The arch-bishop or bishop shall say,

69 "*Will you solemnly promise and sweare to governe the people of this kingdome of England and the dominions*  
70 *thereto belonging according to the statutes in Parlyament agreed on and the laws and customs of the same?"*

71

72 Blackstone is emphatic that **the preservation of the liberties of the subject is the duty of all who**  
73 **govern.** He called the rights and liberties absolute. He points out the duty of preservation of our  
74 liberties as being beyond doubt. The Coronation Oath is the contract by which the Monarchy is bound to  
75 exert only lawful power. He refers to the **Coronation Oath as being a contract** beyond any doubt: -

76

77 '*However, in what form it soever be conceived, this is most indisputably a fundamental and original expres (sic)*  
78 *contract" BL Comm Vol 1 p229. As to the certainty of its obligation he says " ... and to reduce that contract to a*  
79 *plain certainty. So that whatever doubts might be formerly raised by weak and scrupulous minds about the*  
80 *existence of such an original contract, they must now entirely cease; especially with regard to every prince, who*  
81 *has reigned since the year 1688."* BL Comm Vol 1 p226

82

83 The words which forced the Monarch into a constitutional limitation were "**govern according to the**  
84 **Statutes in Parliament agreed on**" which were not in the oath of James II or his predecessors. It was  
85 this addition to the Coronation Oath at the Glorious Revolution 1688 which defeated the Divine Right of

86 Kings and altered the course of history and the English Constitution permanently.

87

88 Never again could the King rule by absolute power. Thenceforth there was to be no doubt that the rule  
89 of law was supreme, integral and inherent in our Constitution. The Revolution was not a victory of  
90 parliamentary power but of the **certainty of the ‘supremacy of the rule of law’**.

91

92 **Our constitutional laws prohibit assertion or accumulation of absolute power.** Power of enactment  
93 is only by the concurrence of our tripartite system, consisting of the Lords and Commons and exercised  
94 by the Monarch’s grant of Royal Assent. The assent is the grant of the power which itself is a  
95 prerogative of constitutionally limited authority. It is the grant of Royal Assent that promotes a bill to  
96 the power of statute law. Illegal use of prerogative cannot be said to make good or legitimate law; the  
97 proof lies in the constitutional events of the seventeenth century that caused and effected the  
98 limitation of the monarchy by contract.

99

100 The rules of law and custom that determine that we have as a ‘birthright’ our liberty, are all  
101 prerequisite to the duty of office sworn to be upheld when taking any office under the Crown. We have  
102 the responsibility of preserving and protecting this gift from our forbears so that in turn, every future  
103 generation, ad infinitum, may also benefit from and enjoy their liberty, under the rule of law. **The**  
104 **liberty of Englishmen depends upon the supremacy of the rule of law**, its observance and their  
105 right to control their laws, their content and making. The right of self determination under the rule of  
106 our own law is the very fabric of England’s liberty.

107

108 When it is said that Parliament is sovereign it confirms no more than the supremacy of the rule of law.  
109 What is meant but often misunderstood or ignored, is that the highest power known to the Constitution  
110 is the rule of law. This is the greatest power in comparison with the other subordinate powers  
111 established by the law under our Constitution.

112

113 ***“Be ye King or Commoner the law is above you”- Sir Edward Coke.***

114

115 There may never be any legitimate secession of sovereign power to an alien potentate. Delegation must  
116 always be to subordinate bodies; otherwise allegiance is breached and sovereignty broken. It is  
117 essential that the ordinary Common Law courts shall retain ultimate control in respect of the principle  
118 of legality; any step which tends to deprive the subject of the protection of the common law Courts  
119 against unlawful encroachments on his private rights would be against all the principles of English Law  
120 and English government; and would imply a return to Star Chamber methods.

121

122 In 1641, the Long Parliament abolished the hated Star Chamber and all but Common Law Courts, though  
123 the name *Star Chamber* still survives to designate arbitrary, secretive proceedings in opposition to  
124 personal rights and liberty.

125

126 **The 'Rule of Law' is entrenched in our constitution and therefore cannot be ignored or**  
127 **abandoned.** It is the fundamental, constitutional, prerequisite duty of holding any official office under  
128 the Crown and indeed the duty of all who owe allegiance. This is its meaning and the true power of the  
129 law.

130

131 Between the **rule of law** and what is called **administrative law**, there is the sharpest contrast. One is  
132 substantially the opposite of the other because administrative law exempts public officials acting in  
133 performance or purported performance of their official duties from the jurisdiction of the ordinary,  
134 customary courts.

135

136 The separation of powers refers to and can only refer to the principle that the Judges are independent  
137 of the Executive instead of what can be termed a quasi judicial tribunal for administering that special  
138 branch of law.

139

140 Administrative law, or what can also be termed civil international law, is carried out under what is  
141 usually referred to as an emergency or dispensing power, also known as Henry VIII clause. This means  
142 that although we are in a Common Law jurisdiction where the normal rules of evidence etc. should  
143 apply, an alien form of law incompatible with our Common Law is being imposed upon us to oust the

144 jurisdiction of the ordinary and customary Common Law courts which are supposed to exist, but are  
145 nowhere to be found.

146

147 Halisbury's on Administrative Law 2011 confirms, **that this system of administrative law is carried**  
148 **out by an arrangement between the executive and the judiciary.**

149

150 *'For the purposes of this work, administrative law<sup>1</sup> is understood to mean the law relating to the discharge of*  
151 *functions of a public nature in government and administration. It includes the law relating to functions of public*  
152 *authorities and officers and of tribunals, judicial review of the exercise of those functions, the civil liability and*  
153 *legal protection of those purporting to exercise them and aspects of the means whereby extra-judicial redress may*  
154 *be obtainable at the instance of persons aggrieved.'*

155

156 **The venue for this business** is Her Majesty's Courts, under Her Majesty's Royal Coat of Arms, **without**  
157 **the assent of Her Majesty and Parliament.** As such, not only is the display of Her Majesty's Coat of  
158 Arms fraudulent misrepresentation, it is also **fraudulent and treasonous** to use Her Majesty's Courts in  
159 which to conduct their business.

160

161 The rules which govern the procedure to be adopted by the Courts in administrative proceedings are  
162 carried out under a dispensing power and which was the subject of a decision in the House of Lords in  
163 the case of *Pretty v. Director of Public Prosecutions* [2001] 3 November 2001.

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1 For at least half a century after the publication of Dicey's Law of the Constitution (1st Edn) (1885), the term 'administrative law' was identified with *droit administratif*, a separate body of rules relating to administrative authorities and officials, applied in special administrative courts. As thus defined, administrative law did not exist in England: see Dicey's Law of the Constitution (10th Edn) 330. ... *R v Lancashire County Council, ex p Huddleston*[1986] 2 All ER 941 at 945, 136 NLJ Rep 562, CA, per Sir John Donaldson MR ('Notwithstanding that the courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. This development has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration').

164

165 Mrs Pretty began by asking the Director of Public Prosecutions to give her husband, in advance,  
166 immunity from prosecution under Section 2 (1) of the Suicide Act 1961. It was a request which his office  
167 had no choice but to refuse; as Lord Bingham of Cornhill said in dismissing her appeal, “**the power to**  
168 **dispense with and suspend laws ... without the assent of Parliament was denied to the Crown and its**  
169 **servants by the Bill of Rights 1688”.**

170

171 In the great constitutional battles of the seventeenth century the use of the prerogative by the Stuart  
172 monarchs to avoid inconvenient legislation was one of the abuses which culminated in the Declaration  
173 and Bill of Rights against the suspension of statutes. The rule of law demands that statutes cannot be  
174 set aside on a discretionary basis by the Crown.

175

176 The exercise of arbitrary power is neither law nor justice, administration, or anything at all. The very  
177 conception of “law” is a conception of something involving the application of known rules and  
178 principles, and a regular course of procedure.

179

180 It is essential to the proper administration of justice that decisions should be based on evidence, and  
181 that the evidence should be heard in the presence of both parties, who are given the opportunity of  
182 cross examination.

183

184 The Judges are personally responsible for their decisions governed by the impartial application of  
185 principles which are known and established and that all parties are fully and fairly heard. In other  
186 words, the decision of the Court is in every important respect sharply contrasted with the edict,  
187 however benevolent, of some hidden authority, however capable, depending on a process of reasoning  
188 which is not stated and the enforcement of a scheme which is not explained.

189

## 190 **Oaths of allegiance**

191 All Judges take the Judicial Oath when they are sworn in:

192

193 *'I will well and truly serve our Sovereign Lady Queen Elizabeth the Second, in the office of Justice of the Peace and I*  
194 *will do right to all manner of people after the laws and usages of the realm without fear or favour, affection or ill-*  
195 *will.'*

196

197 Administrative law forms no part of the laws and usages of the realm which Judges swear to the  
198 Sovereign to uphold through their oath of Office, which is a promissory Oath that binds them to a  
199 specified course of conduct, otherwise he cannot be said to perform his judicial duties impartially.  
200 Performing administrative acts on behalf of the Executive is incompatible within the terms of the oath  
201 which Judges take when they were created as Judges under Section 2 of the Promissory Oaths Act, 1868,  
202 which every judge must take. A breach of that Oath is perjury.

203

204 If the argument is that Common Law has no basis in administrative law proceedings and therefore it is  
205 irrelevant that taxation has not been sanctioned by Parliament, then this alien form of law must by its  
206 very nature be superior to both Common and Statute Law.

207

208 Actions which overthrow and subvert the laws and constitution of this Kingdom and which would lead  
209 to the destruction of the constitution are unlawful.

210

211 The case of R v Thistlewood (1820) established that *"To destroy the constitution of the country is an act of*  
212 *treason."* A conviction for treason can lead to imprisonment, unlimited fines, forfeiture of civil service  
213 employment and pension.

214

215 The following is from Blackstone's Commentaries on the Laws of England:

216

217 *'Hence it is, that no suit or action can be brought against the king, even in civil matters, because no court can have*  
218 *jurisdiction over him. For all jurisdiction implies superiority of power: authority to try would be vain and idle,*  
219 *without an authority to redress; and the sentence of a court would be contemptible unless that court had power to*  
220 *command the execution of it; Who says Finch, shall command the king?*

221



222 *'Hence it is likewise, that by law the person of the king is sacred, even though the measures pursued in his reign be*  
223 *completely tyrannical and arbitrary: for no jurisdiction had this power, as was formerly claimed by the pope, the*  
224 *independence of the kingdom would be no more: and, if such a power were vested in any domestic tribunal, **there***  
225 ***would soon be an end of the constitution, by destroying the free agency of one of the constituent parts of***  
226 ***the sovereign legislative power.***

227

228 *'NEXT, as to cases of ordinary public oppression, where the vitals of the constitution are not attacked, the law has*  
229 *also assigned a remedy. For, as a king cannot misuse his power, without the advice of evil counsellors, and the*  
230 *assistance of wicked ministers, these men may be examined and punished. The constitution has therefore*  
231 *provided, by means of indictments, and parliamentary impeachments, that no man shall dare to assist the crown*  
232 *in contradiction to the laws of the land. But it is at the same time a maxim in those laws, that the king himself can*  
233 *do no wrong; since it would be a great weakness and absurdity in any system of positive law, to define any possible*  
234 *wrong, without any possible redress.'*

235

236 **We have seen that any genuine constitution must define limitations of power.** This being  
237 prerequisite, it is fundamental that a constitutional system will include a means of redress such that  
238 abuse will always have a remedy, most importantly where the excesses of governmental power breach  
239 the constitution. Apart from the events of 1215, 1628 and 1688 the inherent right of remedy is recorded  
240 in English jurisprudence in the famous test case of *Ashby v White* in judgement 14th January 1704 Holt  
241 CJ : -

242

243 *'If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is*  
244 *injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy, for*  
245 *want of right and want of remedy are reciprocal."* *Ubi jus ibi remedium (where there is a right there is a remedy).'*

246

247 **Proceedings conducted whilst sitting under the Royal Coat of Arms.**

248 The Royal Coat of Arms is displayed in court rooms since the Monarch is the fount of justice in England.  
249 The law Court is part of the Court of the Monarch, hence its name. Judges are officially representatives  
250 of the crown, demonstrated by the Queen's Coat of Arms which sits behind the judge on the wall of

251 every court in the land. Judges sitting under the Royal Coat of Arms cannot act in anything other than  
252 in a judicial capacity.

253

254 This is reinforced by an extract from Halsbury's Law under the section entitled *The Royal Prerogative*.

255

256 That the Sovereign cannot adjudge personally means delegation of power to Judges.

257

258 'By our constitution, the King is the fountain of every species of justice, which is administered in this kingdom. The  
259 King is *de jure* to distribute justice to all his subjects, and because he cannot do it himself, to all persons, he  
260 delegates his power to such as the Judges, who have the custody and guard the Kings Oath and sit in the seat of the  
261 King concerning his justice.' R v Almon (1765) Wilm 243; 97 ER 935

262

263 The royal coat of arms signifies that justice is being delivered in the name of Her Majesty the Queen. It  
264 is the very authority of the head of state, who happens to be the Queen, that guarantees neutrality—or  
265 "impartiality", and the neutral environment that is the very essence of adjudication in any state that  
266 upholds the rule of law. The head of state is the fount of justice and that establishes the neutrality of  
267 the court. The duty of the judiciary is to protect and uphold the rule of law.

268

269 The Judge is to determine according to law, without fear, favour or affection, questions which arise  
270 between Her Majesty's subjects or between any of Her Majesty's subjects and either the throne or the  
271 executive.

272

### 273 **Judgement Confirming Taxation Without Representation Illegal**

274 The case in *Bowles v. Bank of England*, confirms the principle of no taxation without representation and  
275 upheld the Bill of Rights against it.

276

277 'By the statute 1 W. & M., usually known as the **Bill of Rights**, it was finally settled that there could be no taxation  
278 in this country except under authority of an Act of Parliament. The Bill of Rights still remains unrepealed, and **no**  
279 **practice or custom, however prolonged, or however acquiesced in on the part of the subject, can be relied**

280 **on by the Crown as justifying any infringement of its provisions.**

281

282 *'It follows that, with regard to the powers of the Crown to levy taxation, no resolution, either of the Committee for*  
283 *Ways and Means or of the House itself, has any legal effect whatever. Such resolutions are necessitated by a*  
284 *parliamentary procedure adopted with a view to the protection of the subject against the hasty imposition of taxes,*  
285 *and it would be strange to find them relied on as justifying the Crown in levying a tax before such tax is actually*  
286 *imposed by Act of Parliament.'* Bowles v. Bank of England - [1913] 1 Ch. 57, 84-85

287

288 The law is absolutely clear on this subject. There is NO authority for administrative courts in this  
289 country and no Act can be passed to legitimise them because of the constitutional restraints placed  
290 upon her Majesty at Her coronation. The collection of revenue by such means is extortion, and  
291 extortion has been found reprehensible since ancient times.

292

### 293 **Separation of powers**

294 Today, in the year 2011, we find for example, that in the council tax regulations, the billing authority,  
295 the prosecuting authority and the enforcement authority are all vested in the same body. The same  
296 bodies even purport to issue their own legal documents, by tacit agreement with the Courts. In our  
297 system of Common Law, the rule of law demands that we have a separation of powers.

298

299 Today, the powers are not separated. The executive is not a distinct, **free-standing leg of the tripod.**

300 The executive now emerges directly from within the elected Chamber of the legislature where  
301 previously it emanated directly from the Monarch. That leads to constitutional confusion—because the  
302 executive has seized and misuses Parliament's democratic credentials for its own, destructive, purposes.

303

304 Fortunately, we have something to which we can turn to preserve our ancient laws and freedoms. We  
305 have the Oath that Her Majesty The Queen took at her coronation by which she is solemnly bound and  
306 from which no one in England, Wales and Scotland has released her. At Her Coronation the Queen  
307 swore to govern us, "*according to [our] respective laws and customs*". Certainly, among our reputed  
308 "*customs*", is precisely that invaluable and widely admired tripartite division of the powers. The

309 judiciary is part and parcel of our customary system of internal sovereignty—“*the Queen in Parliament*”.  
310 It is one of the three separate but symbiotic powers, and it is a capricious and self-serving contention  
311 that it should not have the power to preserve the authority of the legislature over the executive.

312

313 It is a constitutional principle that the assent of the Queen & Parliament is prerequisite to the  
314 establishment of a Court which can operate a system of administrative law in Her Majesty’s Courts in  
315 England. This was confirmed by Lord Denning during the debates on the European Communities  
316 Amendment Bill, HL Deb 08 October 1986 vol 480 cc246-95 246 at 250: “*There is our judicial system deriving*  
317 *from the Crown as the source and fountain of justice. No court can be set up in England, no court can exist in*  
318 *England, except by the authority of the Queen and Parliament. That has been so ever since the Bill of Rights.*” 08  
319 -10 - 1986 vol 480 cc246-95 246 at 250.

320

321 Lord Denning also referred to the rights and duties of English subjects and of the allegiance to the  
322 Monarch, and the corresponding duty of the Monarch to protect these rights. He noted that the idea of  
323 allegiance was unknown in Europe.

324

325 **Lord Denning**

326 ‘*... Now I come to the British Constitution. We have a basis which is quite unknown in Europe. Each one of us, and*  
327 *each judge (certainly each one here) has the oath of allegiance to the Queen and, corresponding to that in our*  
328 *constitution, is a duty on the Queen to protect us. By our constitution The Queen is the source and fountain of*  
329 *justice. It is at her behest that we have Royal Courts of Justice here; it is at her behest that our judges are Her*  
330 *Majesty’s judges, and it is at her behest, for the protection of all of us in response to our allegiance to her, that she*  
331 *sets up the courts of justice to hear and decide our disputes.*

332

333 ‘*I would like to emphasise that unknown in Europe is this constitutional principle of the allegiance of the British*  
334 *subject on the one hand, and, on the other, the duty of the Crown to protect the British subjects. Let me remind*  
335 *your Lordships of the oath of allegiance. It is constitutional, the oath which every Member of your Lordships’*  
336 *House takes, and it is from an Act going back 100 years or more: “I do swear that I will be faithful and bear true*  
337 *allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law. So help me God.”*

338 Every one of your Lordships knows that oath of allegiance. It is part of our fundamental constitution. Let me  
339 remind you of our judges' oath as well: "I do swear that I will well and truly serve our sovereign lady Queen  
340 Elizabeth the Second in the office of a justice of the High Court, and I will do right to all manner of people after the  
341 laws and usages of this realm without fear or favour, affection or ill-will." There is our judicial system deriving  
342 from the Crown as the source and fountain of justice. No court can be set up in England, no court can exist in  
343 England, except by the authority of the Queen and Parliament. That has been so ever since the Bill of Rights.

344

345 'This is also part of our Constitution: corresponding to that duty of each British subject to the Queen, the Queen  
346 herself is under corresponding duty to protect British subjects in our rights, which we have inherited all the way  
347 down the line. ... That duty in England, the duty of protection of our citizens, the correlative of allegiance by the  
348 Queen, is done by provision of the police force to protect us, and by the courts of justice which she has established.

349

350 'I need not go into all the cases. This principle can be found back in the time of Lord Coke, in Calvin's case, as  
351 between England and Scotland: Ligeance is the mutual bond and obligation between the King and his subjects,  
352 whereby subjects are called his liege subjects because they are bound to obey him; and he is called their liege Lord  
353 because he should maintain and defend them.

354

355 'The most recent illustration of it is the China Navigation case, reported in 1932 King's Bench. So the Queen is  
356 bound to protect us and to afford courts of justice on which we can rely and to which we can go. In Europe that  
357 constitution is unknown. There is no one source or fountain of justice in Europe. Let me tell you the oath which,  
358 under this Treaty of Rome, each judge takes: "**I swear that I will perform my duties impartially and  
359 consistently, and preserve the secrecy and deliberations of the court. I repeat: I will perform my duties**".  
360 What are those duties? Nowhere are they spelt out in the Court of Justice except in Article 162: "The Court of  
361 Justice shall ensure that in the interpretation and application of the Treaty the law is observed." The only duty of  
362 those Community judges is a duty to see that the law is observed; in other words, that Community law is observed,  
363 not the law of England. There is no duty to protect the British subject. Are we then today to say that British  
364 subjects are not to go to our courts in England or to Her Majesty's judges in order to secure justice? and that they  
365 are not to seek the protection of the law as we know it under the hearings and procedures which we have  
366 established over the centuries, but to go to an attached court, to the Court of Justice in Luxembourg?

367

368 *'According to this proposed article the attached court will operate according to the same modes of procedure as at*  
369 *the moment. It is a procedure and process which has already been condemned by the Court of Appeal in England*  
370 *as quite dissimilar from our English law and indeed merely administrative. Are British subjects to be compelled to*  
371 *go there? That is my criticism of this article which is mentioned in two or three places in this part of the group*  
372 *that we are discussing now, as I tried to point out, because you cannot see it other than by reading through them.*  
373 *There it is in Amendment No. 42 on the Marshalled List: The provisions of Article 168A of the EEC Treaty "— that is*  
374 *the article that we are now considering and it is the one which establishes these attached courts in Luxembourg—*  
375 *shall not be interpreted or applied so as to enable any such attached court to sit in the United Kingdom, or to*  
376 *exercise any jurisdiction over British subjects resident in the United Kingdom". 252 That is subsection (1).*

377

378 *'Subsection (2) states: "In lieu of the jurisdiction of any such attached court, every British subject resident in the*  
379 *United Kingdom and owing allegiance to Her Majesty the Queen shall be entitled to the protection of Her Majesty,*  
380 *according to the law of England, administered by Her Majesty's Judges sitting in the Royal Courts of Justice under*  
381 *the Rules of the Supreme Court".*

382

383 *'I am stressing the constitution there. Then in subsection (3) there is a parallel jurisdiction where we do it*  
384 *ourselves: If and in so far as under Article 168A "... any such attached court is given jurisdiction to decide disputes*  
385 *according to Community Law, a like jurisdiction shall be exercised by Her Majesty's Judges also to decide them*  
386 *according to Community Law (in so far as that is made part of the law of England ...)." So there it is. It is simple*  
387 *and intelligible, I hope. All it is saying is that we British subjects owe allegiance to the Queen and the Queen is*  
388 *under a duty to protect us. She has performed this duty by providing the Royal Courts of Justice to which we can*  
389 *take our disputes and have them decided by Her Majesty's judges. We should not be compelled to go over to a*  
390 *court in Europe manned by we know not whom or in what circumstances in order to go through a procedure and*  
391 *process that are altogether unknown to our law and which the Master of the Rolls has said are quite dissimilar to*  
392 *our own procedure and practice.'*

393 08 -10 - 1986 vol 480 cc246-95 246 at 250.

394

395 The reference that Lord Denning made to the Bill of Rights 1688 was article 1.

396 **The grievance was:**

397 *'By Assumeing and Exerciseing a Power of Dispensing with and Suspending of Lawes and the Execution of Lawes*  
398 *without consent of Parlyament.'*

399

400 **And the remedy was:**

401 *'That the pretended Power of Suspending of Lawes or the Execution of Lawes by Regall Authority without Consent*  
402 *of Parlyament is illegall.'*

403

404 **The grievance in Article 3 of the Bill of Rights was:**

405 *'By issueing and causeing to be executed a Commission under the Great Seale for Erecting a Court called The Court*  
406 *of Commissioners for Ecclesiasticall Causes.'*

407

408 **And the remedy to Article 3 was:**

409 *'That the Commission for erecting the late Court of Commissioners for Ecclesiasticall Causes and all other*  
410 *Commissions and Courts of like nature are Illegall and Pernicious.'*

411

412 **Elective Dictatorship**

413 Given that the Government increasingly, and without precedent, insults our laws and customs, the  
414 questions have arisen as to how has the "elective dictatorship" come about? And what redress do we  
415 have? Does this not deserve incisive examination, given the division of the powers that our system  
416 **used** to embody? Is it now taken as a mere theory? It has come about because of the conflation within  
417 the House of Commons—a subset of the legislature—of the legislative power with the executive power  
418 which now emanates directly from it. The executive now has full control of that part of the legislature.  
419 But that democratically elected part of the legislature is not only not The Queen's; it is not the  
420 executive's either. It is the electorate's and it alone democratically represents those whose laws and  
421 customs The Queen's Coronation Oath binds Her Majesty to protect.

422

423 What is essential for the liberty of the individual subject is that no one organ of the Constitution shall  
424 exercise to a substantial extent the functions vouchsafed primarily to another organ of the Constitution.

425

426 Lord Hewart of Bury warned about this state of affairs in his book entitled *The New Despotism*, written  
427 in 1929. The following is taken from his book:

428

429 *“The constitutional principle at issue is that the recognition by the Common Law of the supremacy of Parliament is*  
430 *based on an assumption, that Parliament will not surrender its law making powers to the Executive (or an*  
431 *international body) nor on an uncontrolled and uncertain basis.*

432

433 *“Two of the leading features of the Constitution are the supremacy of Parliament and the rule of law. (Principle of*  
434 *legal certainty) Whilst it may be considered a serious undertaking to tamper with either of them, by the use of an*  
435 *ingenious method of using one to defeat the other, it establishes a despotism to the ruins of both.*

436

437 *‘In the old days, Kings like James II would use his prerogative powers to suspend or dispense with laws eventually*  
438 *but suffered the consequences of defying Parliament. The new method is by the use of the Whipping system and*  
439 *coercion to subordinate Parliament, to evade the Courts and to render the will of the Executive unfettered and*  
440 *supreme.’*

441

#### 442 **The Solution**

443 The fundamental terms on which William and Mary were invited to accept the sovereignty of this realm  
444 and the conditions upon which the Crown holds its office were laid down in a Declaration and a Statute  
445 dated 1688 which did not deal simply with the acts of the Crown itself, but deals with acts of “*evil*  
446 *counsellors and Ministers*” as they are called in the Statute.

447

448 It is against evil counsellors and Ministers that the Statute is directed rather than against the Crown  
449 itself. It refers to divers counsellors, judges, and Ministers who endeavoured to subvert the laws and  
450 liberties of the Kingdom. Many of the most significant victories for freedom and justice have been won  
451 in the English law Courts and in that, the liberties of the Englishman are closely bound up with the  
452 independence of the Judges. When, for any reason or combination of reasons, there has been a lack of  
453 courage on the Judicial Bench, the enemies of equality before the law have succeeded, and the



454 administration of the law has been brought into disrepute. It is therefore necessary to be astute to  
455 preserve judicial independence against any assault, however insidious.

456

457 The supremacy of the law means the exclusions of arbitrary power and the rule of law denotes the  
458 following principles:

459

460 1) No one can be lawfully restrained or punished, or condemned in damages, except for a violation of  
461 the law established to the satisfaction of a Judge or jury or magistrate in proceedings regularly  
462 instituted in one of the customary ordinary common law Courts of Justice. The rights of personal  
463 liberty, freedom of the press and right of public meetings are all the result of the application of this  
464 fundamental principle. (*Note the reference to customary ordinary Courts*).

465 2) Everyone, whatever his position, Minister of State or government official, is governed by the  
466 ordinary law of the land and personally liable for any acts or omissions done by them contrary to  
467 that law and are subject to the jurisdiction of the ordinary Courts of Justice, civil and criminal. This  
468 would involve the issuing of Summonses against the council officials concerned to be brought before  
469 the ordinary Courts and to justify their actions. The plea of "*act of state*" is not permissible as a  
470 defence to an action in respect of anything done within the realm because the maxim "*the King can do*  
471 *no wrong*" means not only that the King cannot be proceeded against for any alleged wrong, but also  
472 that he cannot authorise any wrongful act so as to justify the wrongdoer.

473

474 If our laws and customs are persistently flouted and should The Queen continue to accept legislation  
475 which is incompatible with the country's laws, customs and her Oath, then allegiance to The Queen  
476 ceases and British subjects themselves are to take on the duty to demonstrate lawful resistance against  
477 injury from unlawful actions of the government. This resistance is undertaken with a view to restoring  
478 the law and seeking, without sedition, redress from the injury. Thus the law will be restored.

479

480 **When the People have no remedy at law to protect their rights they are by definition oppressed.**

481 If constitutional remedy is sought where there is certain breach, it may not be and should not be  
482 lawfully denied by any court. If redress is not given it can readily be seen that arbitrary power will have

483 taken hold and ousted the means of redress. Our Constitution affords several remedies.

484

485 **The effect of the Declaration and Bill of Rights 1688, taken together with the Coronation Oath**

486 **was an absolute prohibition on all but Common Law Courts.** Since then, no Court can exist in this

487 country without the assent of the Monarch and Parliament. The only Courts which have such authority

488 are our ordinary, customary Courts. The role the Judges have in the protection of these constitutional

489 liberties which the Monarch has sworn to uphold at Her Coronation is clearly laid out in the judgement

490 in the case of: THE KING against ALMON. Hil. 5 Geo. III. 1765.

491

492 *'By our constitution, the King is the fountain of every species of justice, which is administered in this kingdom. 12*

493 *Co. 25. The King is "de jure" to distribute justice to all his subjects; and, because he cannot do it himself to all*

494 *persons, he delegates his power to his Judges, who have the custody and guard of the King's oath, and sit in the seat*

495 *of the King "concerning his justice."*

496

497 *'The arraignment of the justice of the Judges, is arraignment of the King's justice; it is an impeachment of his wisdom*

498 *and goodness in the choice of his Judges, and excites in the minds of the people a general dissatisfaction with all*

499 *judicial determinations, and indisposes their minds to obey them and whenever men's allegiance to the laws is so*

500 *fundamentally shaken, it is the most fatal and most dangerous obstruction of justice, and, in my opinion, calls out*

501 *for a more rapid and immediate redress than any other obstruction whatsoever; not for the sake of the Judges, as*

502 *private individuals, but because they are the channels by which the King's justice is conveyed to the people.'*

503

504 So there we have it quite clearly. The Judiciary are the "guardians" of the Oath. The fundamental

505 principles are contained in Magna Carta and its descendants. Redress must be sought by all legitimate

506 means but ultimately there is a constitutional right of resistance until such time as redress is made. The

507 nature of such resistance is defined in Chapter 61 of Magna Carta.

508

509 This course of action was confirmed in the Sacheverell's Case 1710: *'Your Lordships on this occasion will*

510 *again consider the ancient legal constitution of the government of this kingdom; from which it will evidently*

511 *appear to your Lordships that the subjects of this realm had not only a power and right in themselves to make that*

512 *resistance, but lay under an indispensable obligation to do it. The nature of our constitution is that of a limited*  
513 *monarchy, wherein the supreme power is communicated and divided between queen, lords, and commons, though*  
514 *the executive power and administration be wholly in the crown. The terms of such a constitution ... express an*  
515 *original contract between the crown and the people... The consequences of such a frame of government are*  
516 *obvious... If the executive part endeavours the subversion and total destruction of the government, the original*  
517 *contract is thereby broke, and the right of allegiance ceases. That part of the government thus fundamentally*  
518 *injured hath a right to save or recover that constitution in which it had an original interest...'*

519

520 In referring to the Green Paper of January 1989 on rights of audience to higher Courts, Lord Lane, then  
521 the Lord Chief Justice, thought that the very foundations of our democracy were being destroyed by this  
522 proposal. He observed:

523

524 ***'Loss of freedom seldom happens overnight ... Oppression does not stand on the doorstep with a***  
525 ***toothbrush moustache and a swastika armband. It creeps up insidiously; it creeps up step by step; and***  
526 ***all of a sudden the unfortunate citizen realises that it has gone.'***

527

## 528 **Conclusions of law**

### 529 **The grievances:**

530 1) That the UK Parliament acting on its own over the course of a century since the Parliament Act 1911  
531 has led to a situation of government by dispensing power.

532 2) There is no conscious agreement or 'meeting of minds' between the Monarch and Parliament.

533 3) All UK courts are now administrative tribunals and are operating under a dispensing power whilst  
534 sitting beneath the Royal Coat of Arms.

535 4) Her Majesty Queen Elizabeth II *per se* has been isolated by Parliament, the Courts and the Executive  
536 and there is no Court of Record of Her Majesty Queen Elizabeth II in the land known as England.

537

### 538 **The remedy lies in**

539 1) Limiting the power of the House of Commons just as in 1688 the Monarch was limited by contract.

540 2) Abolishing the 'star chamber' courts of this country and restoring customary, ordinary common law

541 courts of Her Majesty Queen Elizabeth II, just as it was done in 1641 by the Long Parliament.

542

543 Affiant confirms that all of the above are “Yea, yea; Nay, nay for whatsoever is more than these cometh  
544 of evil.”, as stated in relevant section, Matthew 5:33-37 of the King James Bible, to the best knowledge  
545 and consciousness of the Affiant.

546

547 God Save the Queen!

548

549

550 Michael Burke

551 All Rights Reserved

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