Licensing Despotism

Constitutionality of QUANGOs, ULEZ.
(Quasi non Governmental Organisations)

An Essay based upon
our Constitution and The Bill of Rights

Consideration involving some Constitutional Principles and the potential consequences of their violation.

1. The presumed 'Sovereignty of the Crown in Parliament' is not an unlimited Power to legislate but defines a Constitutionally limited body for our Governance bound by lawful duty to uphold the 'Liberties of the Subjects'.
2. Imposing perjury upon the Crown. Imposing unconstitutional governance and engaging breach of the constitutional restraints intended to limited the powers of Parliament.
3. Administrative lawlessness.
4. The separation of the People from their Courts
5. Ministerial abuse of the Royal Prerogative.
6. The irrelevance of the Doctrine 'No Parliament may bind its successors.'
7. The independence of the Judiciary.
8. Judicial duty.
9. Proof of the grant of Constitutional authority for the courts to declare the unconstitutional implementation of rules regulations and enactment invalid, as being 'no law at all'

Lord Hewart of Bury authored a book in 1929 firing a warning shot across the bows of the administration. He declared some of their actions amounted to 'administrative lawlessness'. He forewarned that direct regulation was by-passing Parliament and the Courts to the detriment of our undoubted Liberties and obfuscating the constitutional separation of powers. He opined that the goal was to use every contingency to accrue more power to the Executive and by vastly expanding the administration and its auhtorities. It was doing so by deliberately passing unfettered powers to Ministers and their departments through wide open legislative clauses, ousting the People from their courts and simultaneously accruing power to facilitate administrative ideals and enforcement thereof, it was titled the "New Despotism".

He was the sitting Lord Chief Justice at this time and thus to talk of 'administrative lawlessness' was highly controversial. His book resulted in a Committee for Ministers' Powers being convened. He declined to take part in it. The Committee reported in a famous Command Paper 4060 published in April 1932. This led to a solution that was in part erroneously based and in its conclusions it claimed that dictatorial powers or what are known as Henry VIII powers (arbitrary governance) were from time to time constitutionally acceptable albeit basically despotic in nature.

This was part erroneous because it reasoned that when Henry VIII had the Bishop of Rochester's cook, Richard Roose boiled to death in April 1532 at Smithfields, it was an extreme proof and demonstration of Parliament's unfettered and absolute power. They assumed Parliament was free to do as it chooses with no constitutional restraint. This

conclusion does not align with the historical Settlement of our Constitution by the Glorious Revolution of 1688/9 and the Act of Settlement 1700 and Acts of Union 1707 and the duties imposed therein.

The Committee took no account in the report of the Limitations of the Crown arising from the Glorious Revolution specifically in its constitutional bar upon 'Cruel and Unusual Punishments'. Thenceforth the 1688/9 Settlement committed all in governance to undertaking prerequisite oaths of office and swear obedience to the law, to secure the firm establishment and obedience in our governance to written parts of our Constitution defining and constraining the Rule of Law itself. There can be no more 'Acts against Poisoning to condemn to death by boiling' as per Henry VIII. The Revolutionary Settlement emphatically placed any such supposed power as unconstitutional; enacted or not!

Lord Hewart's concern centred on the fact that enactments were being made that had administrative catch-all clauses attached to them to devolve generalised powers of governance to Government Ministers to make regulatory decisions. And which when made were to be treated as though the Ministerial words were effectively part of the 'delegating' enactment. Here is an example as quoted in the book:-

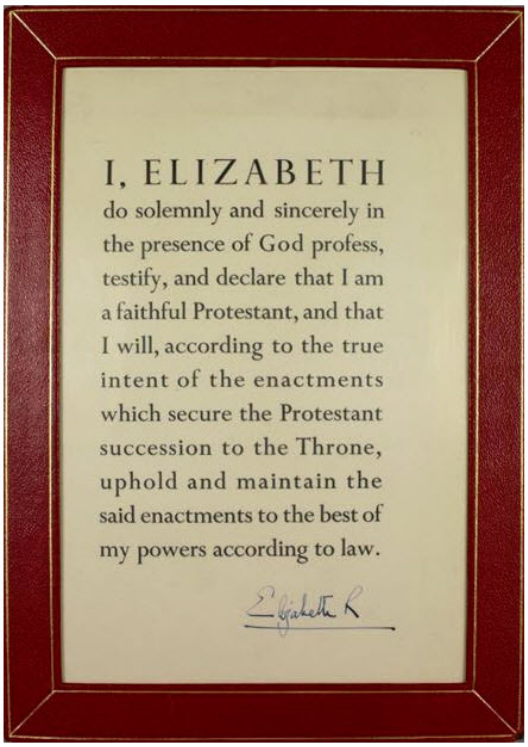
"The Minister may confirm the order and the confirmation shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act"

It was recognised by the Committee on Ministerial Powers that some formalisation of subordinate regulatory instruments was required. This eventually culminated in the birth of the now ubiquitous Statutory Instrument system. The report was the fore runner of the Statutory Instruments Act of 1946 to formalise the creation of all Subordinate Legislation.

The Glorious Revolution of 1688/9 resulted in a Constitutionally Limited Monarchy. The prior Stuart Kings had been practicing rule by 'Divine Right' or despotic power. The Revolutionary Settlement by asserting the certain limitation of the Monarchy was effected by setting out constitutional fundamentals for the Subjects' Liberty. And it should be noted all this at a time when the Monarch was the undoubted power in Governance. It contracted Monarchical Governance of the nation only to be in accordance with the settlement terms all listed in the Declaration of Rights 1688. And by which terms the Crown was passed to William and Mary and on to this present time. This Settlement was additionally consolidated and entrenched by the requirement for prerequisite oaths to be sworn and the fundamentals of the Declaration of Rights being enacted in the Bill of Rights 1689 to engage and confirm it in undoubted Statute form and more.

All this was setup to ensure that arbitrary power would be constitutionally illegal and void and the separation of the power of conviction by the People through their Juries and not by fiat or the State. I have covered the mechanics of this in my video presentation at www.everyright.org. mentioning the separation of powers. It should be noted that King Charles III took the prerequisite Oaths on Accession and at His Coronation, as did His Mother Her Majesty Queen Elizabeth the Second in 1952/3. The formal documents of Her Late Majesty are illustrated here for securing the continuation of the Constitutional Limitations of the Crown during Her Reign.

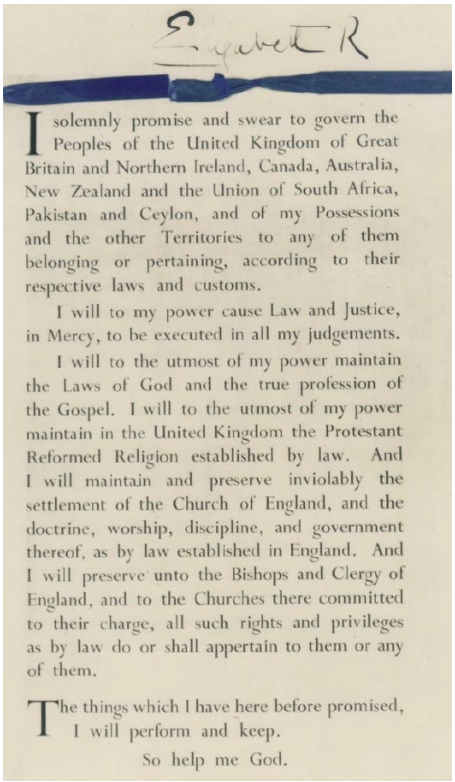
Her Late Majesty Queen Elizabeth the Second's
Accession Declaration Oath
& in Establishment of the Declaration and Bill of Rights 1688/



I, ELIZABETH
do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne, uphold and maintain the said enactments to the best of my powers according to law.

Elizabeth R

Her Late Majesty Queen Elizabeth the Second's
Coronation Oath.



Elizabeth R

I solemnly promise and swear to govern the Peoples of the United Kingdom of Great Britain and Northern Ireland, Canada, Australia, New Zealand and the Union of South Africa, Pakistan and Ceylon, and of my Possessions and the other Territories to any of them belonging or pertaining, according to their respective laws and customs.

I will to my power cause Law and Justice, in Mercy, to be executed in all my judgements.

I will to the utmost of my power maintain the Laws of God and the true profession of the Gospel. I will to the utmost of my power maintain in the United Kingdom the Protestant Reformed Religion established by law. And I will maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England. And I will preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them or any of them.

The things which I have here before promised, I will perform and keep.

So help me God.

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It should be noted that the Accession Declaration Oath has its roots in the Bill of Rights and is taken in support of it. The text of the oath includes these two phrases the *'true intent of the enactments*' and *'according to law*' whose meaning and implications may be deduced directly from the Bill of Rights. This is investigated in the video presentation on my web pages at **www.everyright.org**.

It is my contention that all arbitrary power is denied in our governance. It ought not to be doubted that this was the intention of the Settlement. It is recorded in the Declaration and Bill of Rights:-

"*… the glorious instrument of delivering this Kingdom from popery and* ***arbitrary power"***

The question arises can we see recurring that which might qualify as administrative lawlessness in recent times? Is it in use or creeping back into any of our government departments and administration and might dubious measures therefore be unconstitutional and open to challenge on Constitutional grounds either in the Courts or through Petition of Right to the King (note this is not the same as Petitioning Parliament)? Petitioning the Crown is a constitutional means assured the Subjects for securing remedy where breach of the constitutional fundamentals may be shown to exist and in need of mandatory assertion. It is declared in our Bill of Rights 1688.

Scrutinising the constitutionality of ULEZ and QUANGOcracy

Today we have implementation of the ULEZ scheme in London. It would seem to have come about by such means and be of dubious and odious nature. At its root is the Creation of the Greater London Authority by enactment in 1999 Chapter 29. A Clause is as follows:-

295 Road user charging.

(1) Each of the following bodies, namely—

(a) Transport for London,

(b) any London borough council, or

(c) the Common Council,

may establish and operate schemes for imposing charges in respect of the keeping or use of motor vehicles on roads in its area.

(2) Schedule 23 to this Act (which makes provision supplementing this section) shall have effect.

(3) For the purposes of this section and that Schedule motor vehicle has the meaning given in section 185(1) of the M1 Road Traffic Act 1988, except that section 189 of that Act (exception for certain pedestrian controlled vehicles and electrically assisted pedal cycles) shall apply for those purposes as it applies for the purposes of the Road Traffic Acts.

Commencement Information

I1 S. 295 wholly in force at 3.7.2000; s. 295 not in force at Royal Assent see s. 425(2); S. 295 in force (8.5.2000) for specified purposes by S.I. 2000/801, art. 2(2)(b), **Sch. Pt. 2**; s. 295 in force (3.7.2000) in so far as not already in force by S.I. 2000/801, art. 2(2)(c), **Sch. Pt. 3**

Marginal Citations

M1 1988 c. 52.

It would seem that the listed bodies at (1) a,b & c, Councils and a Statutory Corporation are empowered to establish and operate schemes for imposing charges in respect of keeping or use of a motor vehicle on roads in its area. The scheme deployed as of today 29th of August 2023 makes provision for cars which do not comply with its emission regulation pay a £12:50 charge per day they are used and for non

compliance a levy of £180 halved to £90 if paid within 14 days. There has been widespread protest at this and it has been headlines of many papers. As mentioned in my essay ULEZ v The Bill of Rights (to be found at the 'Papers' column at www.everyrigth.org) this would appear to be arbitrary in its various arrangements.

The Bill of Rights requires the Crown to ensure that its clauses are observed as widely as possible. It Specifically calls upon the judiciary to interpret it in the widest possible way for the benefit of the Subject's liberty.

Here are clauses from it and quoted in my ULEZ essay aforementioned:-

Bill of Rights
Crucial texts:-

A clause of precedence to outlaw anything to the contrary. It is enforced and mandated here as a duty of Governance for all occasions or eventualities whatsoever:-
"...their undoubted rights and liberties, and that no declarations, judgements, doings or proceedings to the prejudice of the People in any of the said premises ought in any wise to be drawn hereafter into consequence or example;..."

A clause demanding and empowering, as a direct duty for all to follow and to use the widest possible interpretation for upholding the Liberties of the Bill of Rights.

"...are the true, ancient and indubitable rights and liberties of the People of this Kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be; and that all and every the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration, and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come."

These quotes quite plainly command the Crown, its Government, the legislator, and the Judiciary and all *'Ministers whatsoever'* a clear duty to maximise the Liberty of the Subject in any area where encroachment may be the tendency. It fulfils the clause of the Accession Declaration Oath *'according to law*'. Importantly this has existed as lawful duty for all governance since its creation in 1688. The Monarchy is bound by the Accession Declaration and Coronation Oaths to uphold the Bill of Rights to the utmost of its powers. You can review Her Late Majesty's Signature, I hope that King Charles's will be made available soon, it has been sworn. Parliament may not make any exception to this, true allegiance is owed and mandated and quite rightly it is most certainly current constitutional legislation and more.

The principle of 'No Taxation without representation' is commanded by this text;

A clause for the Levying of Money:-
"That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, for longer time, or in other manner than the same is or shall be granted, is illegal;"

It applies to all monies **levied** by the Crown. Well *'Grant of Parliament'* means an enactment must give specific permission for a particular levy. If that levy is not specified in the enactment then surely we may detect potential arbitrary power and constitutional conflict. This is mentioned in the famous case of:-

Attorney-General v Wiltshire United Dairies 1921 Court of Appeal

Held: Lord Justice Scrutton: 1921 CA said:

'It is conceivable that Parliament, which may pass legislation requiring the subject to pay money to the Crown, may also delegate its powers of imposing such payments to the Executive. But in my view the clearest words should be required before the courts hold such an unusual delegation has taken place.' After citing Gosling v Veley (see below): 'A great deal of time was occupied in arguing whether the requirement of this payment was a 'tax'. I prefer to use the words of the Bill of Rights which forbids 'levying money for the use of the Crown without grant of Parliament,' and the requirement of this 2d. (old pence) appears to me clearly to come within these words. It is true that the fear in 1689 was that the King by his prerogative would claim money; but excessive claims by the Executive Government without grant of Parliament are, at the present time, quite as dangerous, and require as careful considerations and restriction from the Court of Justice.'
Lord Justice Atkin: 'Though the attention of our ancestors was directed especially to abuses of the prerogative, there can be no doubt that this statute declares the law that no money shall be levied for or to the use of the Crown except by grant of Parliament. We know how strictly Parliament has maintained this right – and, in particular, how jealously the House of Commons has asserted its predominance in the power of raising money. In these circumstances, if an officer of the executive seeks to justify a charge upon the subject made for the use of the Crown (which includes all the purposes of the public revenue), he must show, in clear terms, that Parliament has authorized the particular charge.' and 'It makes no difference that the obligation to pay the money is expressed in the form of an agreement. It was illegal for the Food Controller to require such an agreement as a condition of any licence. It was illegal for him to enter into such an agreement. The agreement itself is not enforceable against the other contracting party; and if he had paid under it he could, having paid under protest, recover back the sums paid, as money had and received to his use.'

This court of Appeal Judgement was appealed into the House of Lords

Attorney-General v Wilts United Dairies Ltd: HL 1922

The House heard an appeal by the Attorney-General against a finding that an imposition of duty on milk sales was unlawful.
Held: The appeal failed. The levy was unlawful. Lord Buckmaster said: 'Neither of those two enactments enabled the Food Controller to levy any sum of money on any of his Majesty's Subjects. Drastic powers were given to him in regard to the regulation and control of the food supply, but they did not include the power to levy money, which he must receive as part of the national fund. However the character of the transaction might be defined, in the end it remained that People were called upon to pay money to the Controller for the exercise of certain privileges. That imposition could only be properly described as a tax, which could not be levied except by direct statutory means.'

Gosling v Veley was cited: 1850Wilde CJ said: 'The rule of law that no pecuniary burden can be imposed upon the subjects of this country, by whatever name it may be called, whether tax, due, rate, or toll, except under clear and distinct legal authority, established by those who seek to impose the burden, has been so often the subject of legal decision that it may be deemed a legal axiom, and requires no authority to be cited in support of it.'

From the Footnote of the 295 schedule which is at Chapter XV Titled 'New Charges and Levies' of Greater London Authority Act 1999 Ch29 shown above, it would seem that Statutory Instruments have been used to implement the whole procedure for ULEZ. It seems to me that this falls very short of the demands of the Bill of Rights clause for the levying of money only with the Grant of Parliament for the time and manner specified.

It would seem to pass an arbitrary power to the various authorities to raise funds as they see fit for any vehicle using the roads. It appears to pass powers of conviction by the imposing of financial charges and penalties which are potentially extracted without any conviction in a court r path to a common law test by the people. Is a discounted 'charge' payment for instance, a payment without a conviction? Is it in principle a form of extortion? Is it designed to evade the court passing a power of induced self condemnation to the administration and in conflict with the separation of powers?

The implementation of penalty charge notices with discounts if you pay promptly without any court hearing or the imposition of a tribunal to hear cases which is not a customary court of law. Where juries are empanelled the power of conviction is in the hands of one's peers / the People not the State (Note a command of Magna Carta). This is an important separation of power between the people and the State. All law placed in front of a

Jury becomes subject to the Common law test of the circumstances surrounding the case and each Jury has a right to declare a not guilt verdict if it deems the non enforcement of that law in that case, appropriate. Whereas a tribunal appointed by the Minister appears to violate the Constitutional Separation of Powers, does the common law test exist is there an appeal path to it? All these features would seem to intrude upon the Bill of Rights clause about levying of monies by arbitrary power, and also other clauses about excessive fines, jury trials and 'pernicious Courts' and the maintaining of a fully independent judiciary:-

The Bill of Rights:-

Some relevant clauses:-
"*That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted;*
That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;
All grants and promises of fines and forfeitures of particular persons before conviction are illegal and void."

If the ULEZ powers are indeed as perceived here then the Bill of Rights effectively declares them to be 'no law at all'. The Judiciary are empowered and instructed by the Bill of Rights to uphold the limitation of our Constitution. All confirmed and entrenched individually and made a prerequisite to the uptake of governance by the Crown both in and out of Parliament and all who serve it. The Bill of Rights places a definite duty to uphold this written part of our Constitution and grants power to strike down the unconstitutional as has been amply demonstrated above and has done so since the Glorious Revolution of 1688/9.

There are those who might argue that the doctrine 'No Parliament may bind its successors' invalidates this. They are very wide of the mark for the Doctrine can have no bearing upon the law in force, for it is a doctrine about the power to repeal law not to a doctrine to override or by-pass Statutes in force or place them in anyway aside or to excuse the breaching of solemn Oaths. To legitimately set the Declaration and Bill of Rights aside and the renunciation of the binding principles of the oaths for duty of office without very formal and express rearrangements has to be illegitimate. The Monarchy would in all likely hood have to abdicate at very least if such an undertaking was required.

In the famous case of :-

Bowles V Bank of England Parker J 1912 Chancery Division
"The Bill of Rights still remains unrepealed, no practice or custom, however prolonged, or however acquiesced in on the part of the subject, can be relied on by the Crown as justifying any infringement of its provisions."

The above quote is of enormous significance. Again in 1976 Lord Denning gave Judgement in Congreve here it is and is worth reading through :-

Congreve v Home Office [1976] QB 629; [1976] 1 All ER 697.

Lord Denning Master of the Rolls:-

Every person who has a colour television set must get a licence for it. It is issued for 12 months, more or less. The fee up to 31st March 1975 was £12. As from 1st April 1975 it was increased to £18. This increase was announced beforehand by the Minister, but it did not become law until the very day itself, 1st April 1975. Up till that date the department could only charge £12 for a licence. On and after that date it was bound to charge £18. This gave many People who already held a licence, a bright idea. Towards the end of March 1975 they

took out new licences at the then existing fee of £12. These would overlap their old licences by a few days, but the new licences would last them for nearly the next 12 months. So they would save the extra £6 which they would have had to pay if they had waited after 1st April 1975. To my mind there was nothing unlawful whatever in their trying to save money in this way. But the Home Office were furious. They wrote letters to every one of the overlappers. They said, in effect: 'We are not going to let you get away with it in this way. You must pay up the extra £6 or we will revoke your new licence'. I will quote the very words:

"By renewing the licence before the existing licence expired the increased fee has been avoided and we have been instructed by the Home Office, for whom we act as agent in operating the television licensing system, not to allow this. I am, therefore, required to ask you to remit the additional fee of £6 together with the enclosed receipt form within 14 days ... In the event of failure to pay the additional fee, we have been instructed by the Home Office to revoke the licence taken out in advance. It will then no longer be valid and you will have to renew your licence which expired at the end of March 1975 at the new rate".

So the overlappers would forfeit the £12 which they paid and would have to pay £18 for another licence.

A lot of timid ones succumbed to that threat. They paid up the £6. But the strong minded ones did not. They went on using their television sets under their £12 licences. Two months later, as a sop, the Home Office modified their threat. They said to the recalcitrants: 'Pay up the £6 or we will revoke your new licences after eight months. By that means we will make you pay at the increased rate.' I will again set out their very words of the letter of 27th August 1975:

"If you do not make this additional payment now, your licence will be allowed to run for eight months from the date of your previous licence and will then be revoked".

After getting that letter, again the ranks of the overlappers broke. Some paid up. But others stood firm. Their £12 licences were still in force. They went on using their television sets. On 11th November 1975 the Home Office gave another warning:

"If you would now send me a remittance for £6...I will arrange for the validity of your licence to be extended to 31st March I976. I am sorry to have to remind you that, unless you do so, your television licence will be revoked as from 1 December 1975. If thereafter you use a television set without holding a valid current licence, I am afraid that you will render yourself liable to prosecution....".

A few days later the Home Office carried out their threat. On Wednesday 26th November 1975 - even whilst an appeal to this court was known to be pending - they sent out notices revoking the £12 licences with effect from 1st December 1975. I set out the words of the letter of revocation:

"This sum of £6 has not been received. Accordingly, I am directed by the Secretary of State to give you NOTICE that the LICENCE obtained by you in March 1975 is hereby REVOKED with effect from 1 December 1975....If you are to continue using a colour television set, you should take out a fresh licence promptly at the current fee of £18".

If those notices are valid, every one of the overlappers must stop using his television set or be guilty of a criminal offence. They appeal to this court to help them.

Mr Congreve is their leader. His case is brought to test all of them. Counsel on his behalf submitted that the demand of the Home Office for £6 was an unlawful demand; that the licence was revoked as a means of enforcing that unlawful demand; and that, therefore, the revocation was unlawful.

Counsel for the Minister submitted that, by taking out an overlapping licence, Mr Congreve was thwarting the intention of Parliament; that the Minister was justified in using his powers so as to prevent Mr Congreve from doing it.

Now for the statutory provisions. The granting of television licences is governed by the Wireless Telegraphy Act 1949, and the regulations made under it. The 1949 Act said (so far as material):

1.-(1) No person shall ... install or use any apparatus for wireless telegraphy except under the authority of a licence in that behalf granted by the [Minister].

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(2) A licence ... may be issued subject to such terms, provisions and limitations as the [Minister] may think fit. . .

(3) A licence shall, unless previously revoked by the [Minister], continue in force for such period as may be specified in the licence.

(4) A ... licence may be revoked, or the terms, provisions or limitations thereof varied, by a notice in writing of the [Minister].

2.-(1) On the issue or renewal of a ... licence, and ... at such times thereafter as may be prescribed by the regulations, there shall be paid to the [Minister] by the person to whom the licence is issued such sums as may be prescribed by regulations...

The 1970 and 1971 regulations provided:

On and after 1st July 1971 on the issue of a broadcast receiving licence ... the licensee shall pay an issue fee of the amount specified ... in Schedule 3, whatever may be the duration of the licence.

The amount specified in Sch 3 for colour television was £12.

The 1975 regulations came into operation on 1st April 1975 and said:

'These Regulations...shall come into operation on 1st April 1975... The principal Regulations shall be amended by substituting ... *(b)* for "£12...£18".

Now for the carrying out of the statutory provisions. Undoubtedly those statutory provisions give the Minister a discretion as to the issue and revocation of licences. But it is a discretion which must be exercised in accordance with the law, taking all relevant considerations into account, omitting irrelevant ones, and not being influenced by any ulterior motives. One thing which the Minister must bear in mind is that the owner of a television set has a right of property in it; and, as incident to it, has a right to use it for viewing pictures in his own home, save insofar as that right is prohibited or limited by law. Her Majesty's subjects are not to be delayed or hindered in the exercise of that right except under the authority of Parliament. The statute has conferred a licensing power on the Minister; but it is a very special kind of power. It invades a man in the privacy of his home, and it does so solely for financial reasons so as to enable the Minister to collect money for the Revenue. It is a ministerial power which is exercised automatically by clerks in the Post Office. They cannot be expected to exercise a discretion. They must go by the rules. The simple rule - as known to the public - is that, if a man fills in the form honestly and correctly and pays his money, he is to be issued with a licence.

Now for a first licence. Test it by taking a first licence. Suppose a man buys on 26th March 1975 a television set for the first time for use in his own home. He goes to the Post Office and asks for a licence and tenders the £12 fee. He would be entitled to have the licence issued to him at once; and it would be a licence to run from the 26th March 1975 until 29th February I976. I say 'entitled', and I mean it. The Home Secretary could not possibly refuse him. Nor could he deliberately delay the issue for a few days - until after 1st April 1975 - so as to get a fee of £18 instead of £12. That would not be a legitimate ground on which he could exercise his discretion to refuse. The Minister recognises this. He allows newcomers who apply for a licence before 1st April 1975 to get their licence for the next 12 months for the £12 fee.

Now for a second licence. But the Minister says that it is different with a man who already has a licence for a television set expiring on 31st March 1975. The Minister says that he is entitled to refuse to issue such a man with a new licence until after the old licence has expired. See what this means. The man must wait until some time in April to get his new licence. It may be two or three days - or even weeks - before he can get to the Post Office. Meanwhile, he will be guilty of a criminal offence every time he turns on the television. The Minister says that does not matter. He will make it right afterwards. This seems to me a very cynical approach to the law. I think the man is entitled to protect himself - and keep within the law - by taking out a new licence before the end of March 1975. Take a simple case. Suppose on the 26th March 1975 a man is going away for a month and wants to get his new licence at once so that his family can use the television whilst he is away. He goes to the Post Office and tenders the £12 fee. The Minister could not lawfully refuse to issue it. He would have to issue the then current licence, that is from the 26th March 1975 onwards for 12 months, more or less. There would be no legitimate ground on which he could refuse. Not until 1st April 1975 could the Minister have demanded the £18; and then he must demand the £18, and no less. That is a simple illustration of an overlapping licence which is perfectly lawful. So with many others. To my mind any man is entitled, if he pleases, to take out an

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overlapping licence; and the Minister has no discretion to stop him. It would be a misuse of his power for him to do so. In the present case, however, there is no difficulty. On 26th March 1975 Mr Congreve went to the Post Office. The Minister did not refuse to issue him with a licence. The lady clerk did not even ask him whether he had an existing licence. Mr Congreve filled in the form. He paid his money, £12. She issued him with a licence from 26th March 1975 to last until 29th February 1976. That licence was obtained perfectly lawfully. The Minister cannot dispute it. Nor does he now; though he did before the judge.

Now for the power of revocation. But now the question comes: can the Minister revoke the overlapping licence which was issued so lawfully? He claims that he can revoke it by virtue of the discretion given him by s1(4) of the 1949 Act. But l think not. The licensee has paid £12 for the 12 months. If the licence is to be revoked - and his money forfeited - the Minister would have to give good reasons to justify it. Of course, if the licensee had done anything wrong - if he had given a cheque for £12 which was dishonoured, or if he had broken the conditions of the licence - the Minister could revoke it. But, when the licensee has done nothing wrong at all, I do not think the Minister can lawfully revoke the licence, at any rate, not without offering him his money back, and not even then except for good cause. If he should revoke it without giving reasons, or for no good reason, the courts can set aside this revocation and restore the licence. It would be a misuse of the power conferred on him by Parliament: and these courts have the authority - and I would add, the duty - to correct a misuse of power by a Minister or his department, no matter how much he may resent it or warn us of the consequences if we do. *Padfield v Minister of Agriculture, Fisheries & Food* is proof of what I say. It shows that when a Minister is given a discretion - and exercises it for reasons which are bad in law - the courts can interfere so as to get him back on to the right road. Lord Upjohn put it well when he said:

"[the Minister] is a public officer charged ... with the discharge of a public discretion affecting Her Majesty's subjects; if he does not give any reason for his decision it may be, if circumstances warrant it, that a court may be at liberty to come to the conclusion that he had no good reason for reaching that conclusion and order a prerogative writ to issue accordingly".

Now for the reasons here. What then are the reasons put forward by the Minister in this case? He says that the increased fee of £18 was fixed so as to produce enough revenue for future requirements. It was calculated on previous experience that no one would take out an overlapping licence before the 1st April 1975 - or, at any rate, that no appreciable number of People would do so. When he found out that many more were doing so, he tried to prevent it so far as he could. He gave instructions to the clerks that anyone who applied towards the end of March 1975 for an overlapping £12 licence should be told to come back on or after the 1st April 1975, and thus made to pay the increased fee of £18. His policy would be thwarted, he said, and the revenue rendered insufficient, if large numbers of People were allowed to take out overlapping licences. He said, too, that other licence holders (being the vast majority) would have a legitimate grievance. So he considered it proper to revoke the overlapping licences of those who had acted contrary to his policy.

Are those good reasons? I cannot accept those reasons for one moment. The Minister relies on the intention of Parliament. But it was not the policy of Parliament that he was seeking to enforce. It was his own policy. And he did it in a way which was unfair and unjust. The story is told in the report of the Parliamentary Commissioner. Ever since 1st February 1975 the newspapers had given prominence to the bright idea. They had suggested to readers that money could be saved by taking out a new colour licence in March 1975 instead of waiting till after the 1st April 1975.

The Minister did nothing to contradict it. His officials read the articles and drew them to his attention. They raised the query: should a letter be written to The Times, or should an inspired question be put in Parliament, so as to put a stop to the bright idea? But the Minister decided to do nothing. He allowed the bright idea to circulate without doing anything to contradict it. And all the time he kept up his sleeve his trump card - to revoke all overlapping licences. Thousands of People acted on the bright idea; only to be met afterwards by the demand, 'Pay another £6'.

The conduct of the Minister, or the conduct of his department, has been found by the Parliamentary Commissioner to be maladministration. I go further. I say it was unlawful. His trump card was a snare and a delusion. He had no right whatever to refuse to issue an overlapping licence or, if issued, to revoke it. His original demand, 'Pay £6 or your licence will be revoked', was clearly unlawful - in the sense that it was a misuse of power -especially as there was no offer to refund the £12, or any part of it. His later demand, 'Pay £6 or your licence will be revoked after eight months', was also unlawful. Suppose that, owing to mistaken calculation, the original £12 had been found inadequate. Would it be legitimate for the Minister to say after eight months: 'I am going to revoke your licence now and you must take out a new licence'? I should think not. The licence is granted for 12 months and cannot be revoked simply to enable the Minister to raise more money. Want of money is no reason for revoking a licence. The real reason, of course, in this case was that the

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department did not like People taking out overlapping licences so as to save money. But there was nothing in the regulations to stop it. It was perfectly lawful; and the department's dislike of it cannot afford a good reason for revoking them. So far as other People are concerned (who did not have the foresight to take out overlapping licences) I doubt whether they would feel aggrieved if these licences remained valid. They might only say: 'Good luck to them. We wish we had done the same.'

There is yet another reason for holding that the demands for £6 to be unlawful. They were made contrary to the Bill of Rights. They were an attempt to levy money for the use of the Crown without the authority of Parliament; and that is quite enough to damn them.

My conclusion is that the demands made by the Minister were unlawful. So were the attempted revocations. The licences which were issued lawfully before the 1st April 1975 for £12 cannot be revoked except for good cause; and no good cause has been shown to exist. They are, therefore, still in force and the licensees can rely on them until they expire at the date stated on them.

I would add only this. In the course of his submissions, Mr Parker QC [counsel for the Home Office] said at one point - and I made a note of it at the time - that if the court interfered in this case, 'it would not be long before the powers of the court would be called in question'. We trust that this was not said seriously, but only as a piece of advocate's licence.

.....

In these Bill of Rights cases we see the levying clause in fact only being partially quoted/considered/ deployed in the judgements encapsulating the *'Grant of Parliament'.* Importantly and additionally the whole clause actually goes further. For each clause in the Declaration and Bill of Rights the complaints against the Crown (the Mischief) were first listed and then the cures (The Remedies) were prescribed. In this case for the levying of money it was worded as follows:-

Bill of Rights:-

The mischief:-
"By levying money for and to the use of the Crown by pretence of prerogative for other time and in other manner than the same was granted by Parliament;"
The Remedy:-
"That levying money for or to the use of the Crown by pretence of prerogative, without grant of Parliament, ***for longer time, or in other manner than the same is or shall be granted, is illegal****;"*

'Grant of Parliament' means no less than 'consent of Parliament' in other words authorised by specific enactment. Parliament is a tripartite body consisting of the Two Houses, the Commons and the Lords with the Monarch/Crown. (Parliament is often described as the Crown in Parliament).

Royal Assent is granted to Bills which enacts them into Acts of Parliament. The Bills are transformed into enactment by the Crown's grant of 'Royal Assent' because it is the Crown who actually holds the Power of Governance under the customary constitutional and mandatory arrangements for Sovereignty of our Constitution and the Rule of Law. The individual Houses are component parts but do not constitute Parliament.

Returning to the differences between what has been upheld by the courts and what is stated additionally in the clause for the '*levying*' of money it becomes clear we need to consider the extra words:-

"...for longer time, or in other manner than the same is or shall be granted, is illegal."

The phraseology that *'for longer time'* leads us to expect that a certain period for the existence of the charge may be expected to be defined or if it is not then the words *"in other manner than the same is or shall be granted"* confirms other specifications as to the levy amount and its duration. Thus if no time is specified and the amount of money to be taken is un-quantified or not defined and the means of so doing is not prescribed in *'particular'* it is deemed here to be illegal… *"is illegal"*.

Being that this is a direction in our current constitutional law commanding the Crown and all who serve it, it must surely amount to a constitutional obligation for all in governance and all in Parliament to obey. The Crown may not be advised by its Ministers to breach this. Are we not by tolerating ULEZ entering the dangerous road warned about in the two Judgements aforementioned?

Analysing the ULEZ affairs, we can see that the root enactment creating the Greater London Authority Ch29 1999 at clause 295 does not go beyond stating that the bodies mentioned may create systems for traffic regulation and support that with making charges. The various part are then enabled by the introduction of Statutory Instruments which are effectively the direct prerogative orders of the Crown and subordinate in nature to Enactments.

The Subordinate nature of Statutory Instruments is declared in the founding enactment here is the title part of the Statutory Instruments Act 1946

Statutory Instruments Act 1946

1946 CHAPTER 36 9 and 10 Geo 6

An Act to repeal the Rules Publication Act 1893, and to make further provision as to the instruments by which statutory powers to make orders, rules, regulations and other subordinate legislation are exercised.

[26th March 1946]

Constitutionally The Crown's Prerogative has three constraints upon it. It must not be used in repugnance to the law, it may not be innovatory, it must be used for the Public Good.
It is readily seen that the devolving of charge making regulations and powers has ostensibly been delegated to introduction by Statutory Instrument for constructing the regulations for levying of money and more. This I perceive then places a degree of arbitrary power to levy money in the hands of the Executive to set up virtually unlimited schemes under the broad remit of Schedule 295. The Statutory Instruments then become the source of the defined regulation along with the Ministerial orders thus the particular rules made for the levying of money do not have specific Grant of the current Parliament. Is this modus operandi is equivalent to a Licensed Despotism? It would seem to exhibit arbitrary power to define the actual charges, the levying et al. Does it place the Crown in violation of its constitutional obligation and undertaking? And if thus then, the 'no taxation without representation' prohibition in essence seems violated all in favour of a quasi subordinate from of governance.

Is ULEZ a levying of money by the use of prerogative arising from the clause 295 compliant with the definition for the levying of money in the Bill of Rights? Most particularly the precise mechanics of the system are unspecified at the Grant in 1999. The levy amounts and duration at the time of this 1999 enactment's gaining Royal Assent, is

largely nebulous? It all points to exhibiting a tendency contrary to the Bill of Rights. It seems to be delegating an arbitrary power to levy and that must be as in Lord Denning's MR words '*quite enough to damn them.'*

Beyond this what about the method and effects of monetary enforcement? Is not a penalty charge notice effectively an unconstitutional coercion? May a Corporation or Council body create a special trial procedure? Are those so employed 'sitting in judgement in their own cause'? does it infringe the 'no fines and forfeitures' of particular persons before conviction? What about Magna Carta?

The Famous Magna Carta of 1215 declares at Chp 29:-

"NO Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.".

Does it interfere with our liberty our free customs? We have liberty to use the highways of the land under due restraint of the law. We pay excise duty to use the roads thus are we to have additional 'duty' imposed by dictat not directly by our current Parliament? We hold driving licences to use motor vehicles on the Highway.

Violate ULEZ and its pay up within 14 days and pay £90 now or else pay £180. You may appeal to the Tribunal. If you pay you won't have to go to court, and we offer you a discount! Whoops its not a court of law it is a Tribunal set up under the regulations of the Minister.

The Bill of Rights

A Clause to ensure all non customary courts are illegal and pernicious:-

The Mischief
By issuing and causing to be executed a commission under the great seal for erecting a court called the Court of Commissioners for Ecclesiastical Causes;
The Remedy
That the commission for erecting the late Court of Commissioners for Ecclesiastical Causes, and all other commissions and courts of like nature, are illegal and pernicious;

Is a Tribunal a form of 'Star Chamber' (arbitrary) court setup by the Administration? And what about the so called Single Justice Procedures recently introduced. Does this separate the People from their true courts and Juries? Does it place a power of conviction in the hands of the State denying the accused justice though their juries and test at common law? If so is it not illegal and Pernicious being contrary to the Bill of Rights and Magna Carta?

Here is the Bill of Rights Clause:-

The Mischief
And several grants and promises made of fines and forfeitures before any conviction or judgement against the persons upon whom the same were to be levied;
The Remedy
That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void;

Is a Penalty Charge notice requiring payment in direct violation of this clause against levying money before conviction? Is there a common law test of breach of the regulation or is it an absolute offence. If the latter, does it not intrude upon the Separation of Power of enforcement only by the People and place direct enforcement in the hands of the State?

The Mischief
And whereas of late years partial corrupt and unqualified persons have been returned and served on juries in trials, and particularly divers jurors in trials for high treason which were not freeholders;
That jurors ought to be duly impanelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders;
And excessive bail hath been required of persons committed in criminal cases to elude the benefit of the laws made for the liberty of the subjects;
And excessive fines have been imposed;
And illegal and cruel punishments inflicted;

The Remedy
That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual
punishments inflicted;

Does the coercion to pay half the sum exacted by means of the penalty Charge Notice if you pay early and to avoid any court hearing not amount to an extortion and coercion detrimental to the liberty of the Subject and our rule of law. Is it erosive of the presumption of innocence to avoid a court hearing effectively to gain a conviction and secure a fine without any form of formal trial?

Does all this not add up to declarations, judgements, doings or proceedings to the prejudice of the People being taken into consequence and example against the principles of the Bill of Rights?

Is it a breach of and in violation of:-
"...their undoubted rights and liberties, and that no declarations, judgements, doings or proceedings to the prejudice of the People in any of the said premises ought in any wise to be drawn hereafter into consequence or example;..."

If this is all so then this should be sufficient to appeal to the courts and or the subject of a direct Petition to the Crown as is our right. Whilst the Crown will usually accept the advice of its Ministers it must surely follow the Rules of Law in favour of the Subject's Liberties.

The Bill of Rights:-
A clause for means of remedy and its protection:-
That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal;

And in interpretation of all the aforementioned matters we should see no precedence to

"be held in consequence or example"

against the liberties laid down and the fundamental liberties should be upheld to the fullest extent constitutionally recognizing these:-

"...are the true, ancient and indubitable rights and liberties of the People of this Kingdom, and so shall be esteemed, allowed, adjudged, deemed and taken to be; and that all and every

the particulars aforesaid shall be firmly and strictly holden and observed as they are expressed in the said declaration, and all officers and ministers whatsoever shall serve their Majesties and their successors according to the same in all times to come."

Reviewing the points of principle here and knowing how much Government has in recent times directed itself to managing the day to day affairs of the People and accruing ever more powers it is easy to see that the administrative zeal for interference in our lives has expanded beyond all conception since the writing of the New Despotism in 1929. We were forewarned and yet it has come to pass. We even have a Ministry for Justice, a politicisation of the independence of the judiciary just as Lord Hewart warned. We do however have the sure foundation of our Constitutional Fundamentals planted very firmly in our Law as a bedrock from which we may seek remedy. To reiterate the splendid judgement of the **Bowles v Bank of England** case it *emphasising so exactly* the power of these written parts of our Constitution:-

"The Bill of Rights still remains unrepealed, no practice or custom, however prolonged, or however acquiesced in on the part of the subject, can be relied on by the Crown as justifying any infringement of its provisions."

In the Wiltshire United Dairies case we can see the words of Lord Justice Scrutton who comments

"*that a delegation of power to the Executive might be contemplated but that it might only be done in the clearest words for such an unusual delegation."*

He continues:-

"... excessive claims by the Executive Government without grant of Parliament are, at the present time, quite as dangerous, and require as careful considerations and restriction from the Court of Justice"

Considering Lord Justice Scrutton's judgement do these words not allude to the Levying of Money clause and lend power to the position that any delegation may only be legal if it is specified in time or manner of fiduciary terms? If a power is delegated for a monetary purpose and for it not to have an aspect of arbitrary power, so as to fully comply with the Bill of Rights and deliver us from arbitrariness; must it not obviously have clear definition of form and manner all detailed in the Grant by Parliament?

A general power of devolvement as listed in the Greater London Authority Act 1999 at 295 seems to separate and diminish the People's representation through Parliamentary scrutiny. It allows for a degree of arbitrary rule and regulation to take hold by the whims of administrative arrangement and becoming autocratic in nature.

Clearly Lord Justice Scrutton in the Wiltshire United Dairies case thought the raising of money

"*... might only be done in the clearest words for such an unusual delegation".*

If we apply that to the birth of ULEZ we can see that a supposedly general power was granted by clause 295 to govern road use and charging. Then the whole construction of the ULEZ implementation involving arbitrary elements was evolved from clause 295, some 24 years later all

by administration utilizing statutory instruments and regulation, all subordinate legislation by nature arising from their dictum. Surely the actual sums of money to be extracted by ULEZ look not to have had the direct Grant of Parliament? If that is correct analysis the ULEZ may thus be deemed unconstitutional by that omission alone.

In the Wiltshire United Dairies case the judgement by Lord Justice Atkins wrote:-

"In these circumstances, if an officer of the executive seeks to justify a charge upon the subject made for the use of the Crown (which includes all the purposes of the public revenue), he must show, in clear terms, that Parliament has authorized the particular charge."

Notice the phrase '*Parliament* has authorized the *particular charge*'! Can such a nebulous thing as empowering a corporation or council with a general power granted 24 years ago to govern road use schemes and to set up and make charges through rules and regulations decades later be honestly described as a '*particular'* consent? Almost a quarter century has lapsed since this arose, 6 General Elections or Parliaments and seven Prime Ministers have passed since this general power in clause 295 was enacted/granted in 1999.

Lord Hewart of Bury warned that such 'delegations' or Licensed Despotism as he titled his book separated the People from their courts and most particularly from their representative governance in the House of Commons. Placing autocratic powers directly to the Executive and its administration for years to come or until repealed for the levying of monies. How may this or any newly implemented financial levying qualify as a '*particular'* charge authorised by a specified *'Grant of Parliament'*?

Lord Atkins pointed out :-
"*how strictly Parliament has maintained this right – and, in particular, how jealously the House of Commons has asserted its predominance in the power of raising money."*

As we have seen this case was appealed into the House of Lords. Lord Buckmaster judged:-

"That imposition could only be properly described as a tax, which could not be levied except by direct statutory means."

this statement must equate to a specified Grant or enactment of Parliament being required for legitimisation of any levy. Further there are penalty charges (a levy) emplaced for non compliance. Where is the limit of charging schemes to be drawn, how many more may be evolved? The answer again it seems is arbitrary power will dictate. Our Constitution mandates that the levying of money is decided in Parliament where the People have representation and not by arbitrary or administrative means such as QUANGOcratic administration. The delegation for the levying of money to a body (any QUANGOcracy) that avoids direct Grant of Parliament would seem to be a clear violation of the principles set out in the revolutionary Settlement and the Bill of Rights, are they ***'No law at all'***? They tend to separate the franchise of our Governance in favour of the autocratic and disengage the Subject's representation and decision making, a Constitutional Parliamentary duty.

Conviction is by ones peers which is not intended to become a general power of the State and its administration. It is my view that these ancient bulwarks of our Constitutional protection might and should be tested in the Courts and by Petition of Right.