

Constitutional Considerations re the Chagos Affair.

Written in Support of the initial Injunction issued to halt a Breach of Sovereignty
and hereby supporting a Constitutionally based challenge to the Overturning Injunction.

An Essay by John Bingley a layman.

The Chagos Archipelago is a part of the Realm, a Sovereign British Territory.

Our Government has decided to forgo our Sovereign jurisdiction of the Islands and pass them over and into the governance of Mauritius. It includes a payment as an additional benefit to them estimated at a total of £3.4 billion Pounds, at an initial rate of £101 million per annum, an ongoing charges for the next 99 years. This is the Government's announced estimation of the costs. There are reasons to doubt these figures and the Daily Telegraph has today (24/5/2025) in an article placed an estimate of overall costs in the order of £30 Billion pounds a vastly differing assessment.

We are to be paying for servicing a lease back arrangement to ourselves and for other expenses. The island of Diego Garcia has an American air base of great strategic importance. It exists having previously been authorised by the UK. Our 99 year lease back arrangement with Mauritius is said to help secure the future of this base.

This offloading action would seem to conflict directly with written and enacted parts of our Constitution; placing the Monarch in breach of His Oath of office! No Minister should seek a breach of the Oaths.

So what might be the areas of potential Constitutional conflict or breach?

The following list of extant Constitutional instruments would all appear to protect the Subjects of the realm and thus the islands from any such eviction and separation from their Sovereignty and Birthright:-

The Coronation Oath,
The Accession Declaration Oath,
The Privy Council Oath,
The Coronation Oath Act 1688 (1Wm & M, Ch6),
The Accession Declaration Oath 1910 (Ch29),
The Bill of Rights 1688 (1Wm & M Ch2),
The Act of Settlement 1700 (12 & 13 Wm III, Ch2).

King Charles III has undertaken, sworn and signed His Coronation Oath and likewise His Accession Declaration Oath. He has thus contracted Reign long the Constitutional obligations arising from them to his Subjects. He is duty bound to fulfil the Oaths which therefore becomes the constitutional duty of all who serve under the Crown.

The Crown may do no wrong, why, because it is only authorised constitutionally to do and provide Right. If wrong arises then the Crown is said to have been deceived in its Grant and thus those responsible for the deceit are entirely accountable. Inherently it must therefore be held as per Lord Coke *"a law that is unjust is no law at all and it is the duty of the courts to strike it down"*.

This is a Fundamental Constitutional contractual arrangement to ascertain that we are governed by a Constitutionally Limited Monarchy only providing Right under the rule of our law which is declared to be 'the Birthright of the People'. The upkeep thereof is the

absolute Duty of all officers and Ministers whatsoever to govern accordingly. This is clearly commanded in our statute law and entrenched by allegiance and Royal Oath, all of which is undertaken prerequisite to governance. It is not optional.

Ministers of the Crown who serve on the Privy Council are all sworn to uphold the Privy Council Oath of Office. The Prime Minister is amongst them.

The Coronation Oath Act states that the fundamental purpose is to maintain the Rule of Law so as to secure us in our Spiritual and Civil Rights and Properties, as being the Birthright of the People.

The Bill of Rights 1688 lays down ancient and Indubitable Rights for the People and constrains all Prerogative to be used in compliance with the rule of law, to maintain and uphold the basic Liberty of the Subjects and eliminate all arbitrary power.

The Act of Settlement 1700 is an Act of the English Parliament to further enshrine the purpose of the Revolutionary Settlement as being a limitation upon the Crown. Today's Royal House of Windsor and its Parliaments are founded upon this Revolutionary Settlement.

The Coronation Oath Act 1688

Requires the following to be fulfilled:-

King Charles III agreed to govern according to the '*law*' and '*Custom*'.
This was duly affirmed as a '*solemn*' undertaking.

King Charles III then undertook "*to your power cause Law and Justice, in Mercy, to be executed in all your judgements?*"
He affirmed "*I will*"

The Accession Declaration Oath Act 1910. Also sworn at the Coronation:-

"I Charles 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."

Both **Oaths** have been duly **Signed by the King**.

Areas of contention here are plain to see. The Monarch is prevented from Governing what was/is part of the Realm, Sovereign territory. The Subjects are deprived of their Homeland, their Properties, Civil Rights and Custom all as a matter of administrative convenience. This action can hardly be rated as providing *law* with *justice in mercy* to the displaced inhabitants and all whilst purporting to be in accordance with our *law* and *custom*.

When the Crown no longer governs the islands with our law and custom then Sovereignty is ceded. Surely the enactments and Oaths are breached?

The Accession Declaration Oath.

The importance of this cannot be stressed enough. This Oath not only secures the establishment of the Protestant Religion but it also secures the Rights and Liberties of the Subjects to be secured to the **best of the Crown's Powers to the true intent of the said**

enactments according to law. The law is utterly clear. Two of the enactments that are thus encompassed and entrenched by this Oath are, the Bill of Rights and the Act of Settlement.

The Bill of Rights.

The importance of the Bill of Rights is paramount to our Constitutional arrangements. The Bill of Rights is the short title given to the enactment (1Wm & M Ch2) its full title is:-

An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown.

The Accession Declaration Oath is in part founded by the Bill of Rights. It is commanded that the Accession Declaration Oath be sworn by a new Monarch prior to acting in Governance. The Bill of Rights does indeed secure the Protestant Religion to the Throne and so it is undeniable that the Accession Declaration Oath requires the Crown and all who serve under it to fully observe the commands.

The Bill of Rights serves to eliminate all arbitrary power. It does so by requiring 13 clauses that constrain power, to be maintained and upheld to the best of the Crowns Powers. It appears that several of the clauses may be violated by this treaty and its renunciation of Sovereignty.

Here are relevant clauses of complaint raised in the Bill of Rights against the abuses of the Stuart Kings:-

By assuming and exercising a power of dispensing with and suspending of laws and the execution of laws without consent of Parliament;

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;

Illegal and cruel punishments inflicted;

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;

Because of these complaints the following Remedies of principle were specified to remove all arbitrary power from future governance:-

That the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal;

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;

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

That all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void;

If the Coronation Oath Act, The Bill of Rights, or any other applicable Act is violated or ignored does it not amount to a suspension of that law?

The levying of Money clauses were to ensure that there could be 'no taxation without representation'. There appears to have been no enactment or even debate in Parliament about the cost of this treaty. In the days of the Divine Right of Kings, notably James II had prorogued his Parliament and imposed arbitrary powers of taxation. Thus the rectification of this complaint ensured that money could only be raised for use of the Crown by grant of Parliament. Thus the people would have representation and power via the Commons as to any and all levying of money. Levies may only be legitimised once a corresponding budgetary Bill is enacted by its receiving Royal Assent.

This Treaty would appear to be so expensive that it will indeed need financing arrangements to levy money into the long term future. Does the Treaty amount to the Prerogative causing a levying of money without an enactment? It certainly looks like it!

I would dare to venture most people would adjudge that the failure to even consult the displaced inhabitants of the Islands over this treaty would rate as a cruel and unusual punishment. That would amount to a violation of the Bill of Rights

Obviously there is no conviction of any sort, yet forfeiture has been imposed upon the Chagosians. This seems to amount to an arbitrary procedure. If that is so then it is automatically void if it violates the clause for no fines and forfeitures without conviction. Dose it therefore accrue an arbitrary power to the executive?

The Bill of Rights requires that the Judiciary interpret its application to the widest possible extent. The purpose is stated to remove all arbitrary power thus it is about principles not specifics. It is unlike most other enactments entirely because it is emplaced to secure the liberty of the Subjects to the widest extent from any encroachments whatsoever. These next two quotes show the wording used to secure that intent. No precedent ought or may be set against it.

"...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."

"... it may be declared and enacted that all and singular the rights and liberties asserted and claimed in the said declaration 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."

The above commands determine constraint in Governance. They authorise and enforce Judicial corrections to remedy anything to the contrary. Here is found the consent of Parliament which is entrenched by Royal Oath for The Bill of Rights to be upheld by the Judiciary and so to be maintained above all else.

A Further clause of the **Bill of Rights**:-

"That it is the Right of the Subjects to Petition the King, and all commitments and prosecutions for such petitioning are illegal;"

This clause ensures that the Subjects can seek redress and remedy where injustice resides. It is said that the Monarch accepts the advice of its Ministers. Whilst this should generally be the case, if Ministers or even Parliament has erred and stepped outside the bounds of the Constitution (Bill of Rights and more) then there is surely constitutional compulsion of duty upon the Crown to nullify any unconstitutional action. If this was not the case then there would remain a breach of the Monarchical Oaths, breach of law and a state of Perjury.

The Act of Settlement 1700.

The Act of Settlement reinforces and reaffirms the Settlement terms of the **Glorious Revolution of 1688** and makes this important command:-

And whereas the laws of England are the birthright of the people thereof and all the Kings and Queens who shall ascend the throne of this realm ought to administer the government of the same according to the said laws; and all their Officers and Ministers ought to serve them respectively according to the same.

Sovereignty is absolute in concept. You either have it or you don't, it is not divisible. The Nation vests the Sovereign power in the Monarch under the Rule of our Law. For the Rule of our Law to remain as the Birthright of the People, thus it cannot be subservient. Clearly the Ministers of the Crown are instructed by the above command from the Act of Settlement. Once again to ignore this Statutory duty in favour of foreign law is surely to suspend the Birthright of the People particularly the Chagosians by assertion of arbitrary power.

Our law must be asserted by and in our Courts. If there is failure then Petition of Parliament is a further avenue to seek redress and remedy and if all else fails there is separately Petition of Right to the King. 'Ubi Jus ibi remedium' a Latin maxim of our law meaning Where There is Right There is Remedy.

The Sworn Duty of Allegiance emanating from the Privy Council Oath of Office.

Extracts from the Privy Council Oath:-

"You do swear by Almighty God to be a true and faithful Servant unto The King's Majesty as one of His Majesty's Privy Council. You will not know or understand of any manner of thing to be attempted, done or spoken against His Majesty's Person, Honour, Crown or Dignity Royal, but you will lett and withstand the same to the uttermost of your power...

...You will to your uttermost bear Faith and Allegiance to the Kings's Majesty; and will assist and defend all civil and temporal Jurisdictions, Pre-eminences, and Authorities, granted to His Majesty and annexed to the Crown by Acts of Parliament, or otherwise, against all Foreign Princes, Persons, Prelates, States, or Potentates. And generally in all things you will do as a faithful and true Servant ought to do to His Majesty SO HELP YOU GOD"

It is the Royal Duty, that the Prime Minister and all the Right Honourable Members of the Privy Council are required to undertake and follow, when on appointment to the council, they affirm their Privy Counsellor's Oath of Office. In essence Ministers may not do what the Crown cannot do, they must bear true allegiance. In the case of the Chagosian issue can it not be said that the command to *'lett and withstand to the uttermost of your power'* is called into question re the *Crown* and the *Crown's 'Dignity Royal'*? Further in the second part of the Oath there is obvious conflict. It can hardly qualify as assisting the temporal Jurisdiction or Pre-eminences of the Crown against all foreign potentates!

In support of the Bill of Rights there is case law and opinion which must surely contradict the Government re the **Chagos Island** give away and directly refutes that there are no Constitutional limitations upon Parliament as per the overreach of the Austin and Dicean advocacy.

Sir Robert Megarry V-C Manuel V Attorney General 1983 (C.A.)

"As a matter of law the courts of England recognise Parliament as being omnipotent in all save the power to destroy its own omnipotence."

And from a letter by Lord Kilmuir Lord High Chancellor which was placed into secrecy for 30 years re the Treaty of Rome:-

"Parliament may do many things but what it may not do is surrender any of its rights to govern unless we have been defeated in war"

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.

In 1976 in the Court of Appeal Lord Denning M.R., upheld the Bill of Rights with this statement in:-

Congreve v The Home Secretary

*'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. ... 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. **Padfield v. Minister of Agriculture Fisheries and Food [1968] A.C. 997** 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 the right road. Lord Upjohn put it well when he said at pp. 1061 –1062. 'A Minister is a public officer charged by Parliament 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.'*

So far as the etiquette of Treaty making is concerned the UK is signatory to:-

The Vienna Law on Treaty making 1969

SECTION 2. INVALIDITY OF TREATIES

Article 46 — Provisions of internal law regarding competence to conclude treaties

1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

Observing our Constitution is of absolute fundamental importance to maintaining a Constitutionally limited Monarchy and providing truth to the Rule of Law.

I firmly believe that all of the above should be tested through the Courts.
And if necessary by Petition of Parliament and ultimately by Petition of Right to the Crown.

Potential offences possibly committed?

- Misfeasance in Public Office.
- Malfeasance.
- Perjury.
- Treason.