

Funding the Future

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I posted this thread this morning:

I note that David Wolfson QC, who is also Tory peer Baron Wolfson of Tredegar, and who was until fairly recently a Tory justice minister, has responded to my thread on the threat from right wing layers, [published yesterday](#). Some thoughts....

First, this is David Wolfson's comment:



David Wolfson  @DXWQC · 23h
We actually have a third - and better - choice.

...

And that's to support the Rule of Law, which means that you don't identify the lawyer with the client, and that everyone deserves representation.

(While also avoiding rather silly, and false, dichotomies).

#RuleofLaw

 **Richard Murphy**  @RichardJMurphy · Aug 23

We have a choice. We can support lawyers who support justice: the woke ones, that is. Or we can support lawyers who promote injustice. Our government supports the wrong ones. It's our job to support justice in that case.

[Show this thread](#)

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↑

I also note Jo Maugham from the Good Law Project has already replied, saying:



Jo Maugham  @JolyonMaugham

...

For so long as QCs are available only or primarily to those who can afford to pay high fees they identify with clients: rich ones.

How is a QC saying s/he acts to improve the position of those without wealth or power analytically different?

 **David Wolfson**  @DXWQC · 23h

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(While also avoiding rather silly, and false, dichotomies).

I have a lot of sympathy with what Jo has to say. However, so naive is David Wolfson's comment, and so misleading is it that I think it worthy of a response.

What Lord Wolfson wants us to do is imagine there is a concept called 'the rule of law', which he says exists. It is upheld, he says, by lawyers acting on behalf of clients from whom they are independent, providing those lawyers with an objective status that is beyond criticism.

I trust David Wolfson will forgive me for saying so, and I make clear that I comment on this within the political sphere, but this claim is risible. Let me offer an analogy as a way into offering explanation.

This claim is as naive as that of the economist who suggests there are 'free markets' in which independent firms compete as price takers seeking to service customers, each of whom gets the best deal possible because they have perfect knowledge and equal access to capital.

I stress, the assumptions just noted are the basis on which most microeconomic theory still claims that markets are the solutions to all problems. That economic twaddle is the whole basis of Tory political economy. And it is, of course, utter nonsense.

Why is that? Three reasons. First, firms are not independent. As Adam Smith noted, they act in collusion against the public interest. Second, modern companies are not price takers. Try haggling at the supermarket check-out if you want to prove that.

Third, there are massive asymmetries of knowledge in markets, with the odds all stacked against the consumer. Your Tesco Clubcard proves that. And fourth, as is glaringly obvious, not all consumers do have equal access to capital within the marketplace.

Why is this analogy worth offering? Simply because it exposes the incredible ability of the right-wing brain to believe that which is not credible whilst ignoring the power relationships that actually influence the real world to the advantage of those usually voting Tory.

How does it compare to what David Wolfson claimed? First, the Rule of Law is an idea that is as far removed from reality as is the free market. Both are convenient theoretical fictions whose existence is denied by the practice of powerful elites in society.

In the economy those powerful elites are in business, actively aided and abetted by politicians who see it as their job to enable those elites. Call them Tories if you like, but New Labour was also pretty good at this.

In the law those elites are the lawyers, and most especially the powerful law firms, both on and offshore, who do most definitely act with quite clear political agendas that are

intensely pro-market.

Those lawyers and the clients who instruct them, and the counsel they engage, are not independent of each other, or the political economy that sustains them. Their clear common interest is to sustain that political economy and the relationships of power within it.

It is those relationships of power that the economists that I refer to ignore when undertaking their work. It is those same relationships of power that David Wolfson also appears to ignore, in my opinion. And it is these relationships of power that matter.

It is relationships of power that ensure that the Tory-aligned press attack some parts of the legal profession whilst ignoring the attacks on society that other parts of that profession enable, as I discussed in my original thread.

It is relationships of power that let lawyers create structures using offshore that undermine the rule of law and democracy in the UK.

It is relationships of power that decided that most people are denied access to legal aid in the UK, meaning that millions are denied legal aid when they need to defend themselves from criminal charges and when conducting vital civil litigation e.g. on divorces.

And it is relationships of power that have denied funding to courts so that they might clear backlogs of cases, and to lawyers so that they can afford to represent clients run those cases.

Let's not pretend that these relationships of power that have skewed access to legal remedies towards a very few in society do not exist, because they very obviously do.

And let's also not pretend that any of this was by chance: much of it was done under governments led by the Tories, who ennobled David Wilson and who he was happy to serve as a minister.

Now, if in this tweet David Wolfson is saying he misused his time in office, and was mistaken in his belief that the Tories were interested in the rule of law, then I will of course withdraw my criticism.

And if what he is actually arguing for is that anyone with a need for representation will get at a fair cost, I am delighted. But I am not convinced that is what he is saying, although he might correct me.

Instead he seems to be saying there is a rule of law where objective lawyers act independently of the economic status of their clients.

That, I think is nonsense intended to distract discussion from the very real issues that

we face when trying to deliver justice for all in the UK, which can only happen when the relationships of power preventing that from happening are properly understood.