

## Methinks the lawyers doth protest too much: a reply to ...

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The lawyer and legal commentator David Allen Green (DAG hereafter) has taken exception to the comments [I made earlier this week](#) on the behaviour of some lawyers.

DAG [said in a blog post](#) that he was anxious not to misrepresent my arguments, and so posted this section from the Twitter thread I had written, as follows:



It is unfortunate that DAG failed to notice [the follow-up thread and blog as a result of exchanges with David Wolfson](#): a lawyer really should assemble all their evidence, and

DAG has not. He should read that blog to get up to speed. But, leaving this obvious failing aside, let's just look at the response he made to the comments he has noted that I posted.

His argument (if I can credit it with being one) would seem to be that in an unequal world it is good that the rich have access to lawyers even if others are denied that opportunity because those lawyers can then tell their rich clients what they may not do, which is apparently what he thinks is all that they do for their clients.

Now I happen to think both lawyers and accountants play an enormously useful role in telling people what they may not do. Encouraging legal compliance is a vital task for a professional person, ably explained by David (now Clair) Quentin [in this paper](#), which I suggest that DAG reads. In it Quentin argues that professional people can be a force for good by encouraging legal compliance. But, they can also, as he notes, help their clients take deliberate legal risk, which he suggests that many might do when it comes to tax. He calls this 'risk mining', and as Quentin and I both know, this is commonplace in tax practice, where the construction of risky tax positions that might not be legal remains too commonplace. I reflect that fact in a couple of the points I make, and by implication in the others.

DAG does not recognise this or, apparently, the possibility that such conduct might exist. Instead, he says this:

*I think Murphy is wrong.*

*I think – perhaps counter-intuitively – that it is a Good Thing that those who are powerful in society have to have lawyers in place when exercising their power.*

The starting point is the simple observation that modern societies – unless there is some happy intervention – tend to be unequal.

This means that in modern societies there tends to be people with more power than others.

These people would tend to have power, regardless of whether they have lawyers or not.

So why do those powerful people need to have lawyers?

It is because of a thing called “*the Rule of Law*” which means that every exercise of power has to have a lawful basis.

“*The Rule of Law*” means the powerful cannot do as they wish: instead they have to comply with the law.

That is why powerful people often have lawyers.

Imagine a society where those with power did not need lawyers – that the powerful could exercise their power without worrying about whether they are breaking the law.

That would be an even more brutal and unequal society.

In each of the categories that Murphy posits in his thread, the real significance is that the powerful have to have lawyers – because however mighty those powerful people are, the law is mightier.

What would be more worrying is if the powerful could get their way in each of Murphy's categories without needing lawyers.

What this has to do with what I said is very hard to work out. However, [a tweet he published](#) last night adds some clarity. In it he offered this clarification:



*This helped me, because what it showed is that DAG is making up what I said. Nowhere did I say that the rich should not have access to lawyers. It is quite absurd to claim that I did. As a consequence, everything DAG says in his blog post is a pure straw-man argument.*

*What I actually said was that there are lawyers who exploit the fact that the rich are the only people with access to lawyers (as he acknowledges to be the case) and that some of them do so to provide their clients with a deliberate unjustified advantage within society at cost to other people. If DAG had read my exchange with Lord Wolfson he would have seen that I placed this within the context of relationships of power (which again, he seems to acknowledge exist), which are the usual concern of political economists, and within the context of the arbitrage of law to secure economic advantage, which is another near perpetual theme of that discipline, both of which matters very clearly exist. But not only did DAG not read that, he simply made up an argument that he has attributed to me that was not in any way implicit in anything I wrote.*

*At the same time he used the defence Lord Wolfson also used, which is that I am wrong to blame this situation on a lack of access to the law, to which his solution, like Wolfson, is to suggest that in an ideal world this would be resolved by providing equal*

access to the law for all and the problem would go away. This, he apparently thinks (as David Wolfson did) to be his killer argument. I, of course, agree. That would be wonderful, just as a fully functioning democracy, an NHS that could deal with all patients without massive delays in ambulances outside hospitals and an education system that really provided equal opportunity for all would all be similarly great things. But we have not got them and are unlikely to see them for some time to come, just as the prospect of a legal system where all have access to a lawyer looks as unlikely as Ipswich Town winning the Premiership this season, much as I might wish it.

In that case, I suggest that DAG should deal firstly with the arguments that I actually made and secondly with the real world rather than that fantasy one in which he places his arguments. In that real world that we do have unequal access to the law is a fact, as it is also a fact that there are some lawyers (I never said all, and never intended all) who abuse this situation in very specific ways of the types I mention.

In addition, DAG needs to note why I said all this. I did so when referring to the abuse that is heaped on those supposedly left-wing lawyers who do actually uphold the rule of law on behalf of the victims of abuse from those in power to prevent injustice from arising. This abuse is currently being dished out towards human rights lawyers by Rishi Sunak, Liz Truss and the tame right-wing press, wholly inappropriately. What I was suggesting instead was that there were lawyers who really were a problem in society by acting for the rich in some quite specific ways to effectively undermine the rule of law for their own advantage. DAG, like Wolfson and others who have commented from the legal profession, has ignored this. Instead, DAG says I am wrong to present an argument I never, even remotely, made.

I look forward to his apology, and his acceptance that I have raised an issue that does need to be addressed because it is very apparent that some lawyers do act in the way I suggest. If in doubt, I suggest he muse on who offered advice to P&O that they could sack all their staff, illegally as most agreed to be the case, and replace them with agency staff and that they were likely to get away with this breach of the law without prosecution, as it turned out was the case.

And, one final point that others have raised, which is that this is most definitely a matter for lawyers and not politics. The legal profession is self regulating. There is abuse of power on behalf of clients that does undermine the rule of law that goes on within it, as I noted. The idea that all lawyers simply tell their clients that they may not do things is absurd when it is readily apparent that some lawyers spend a great deal of time working out how to bend the law to suit their client's desires. This is a practice that an ethical legal profession could and should stop, most especially when it is known to all, DAG and Wolfson included, that many of those who might suffer as a result (either directly, or indirectly in the case of tax haven abuse) can never have access to the law. But the legal profession does not seem to want to stop that, any more than those lawyers who practice in this way seem willing to show their clients who want to use their power to abuse their relationships with others the door, which is an option

*always available to them. So the defence that lawyers cannot be blamed for what is happening is also quite wrong.*

*Very politely, DAG should stop making claims about what I said that are very obviously wrong. We might have a proper debate if he did. As it is, he is simply defending the indefensible by suggesting in an ideal world this would not happen when in the real world it most definitely does, and that is far from good enough from someone who claims that he provides "independent commentary on law and policy from a liberal constitutionalist and critical perspective", which seems not to be the case based on the post he has made.*