

PIP Regs = Social Security (Personal Independence Payment) Regulations 2013 SI No 377

SSA 1998 = Social Security Act 1998

SSWP = secretary of state for work and pensions

UC = universal credit

UCT Regs = Universal Credit (Transitional Provisions) Regulations 2014 SI No 1230

UT = Upper Tribunal

- 1 *Chen and Zhu v Secretary of State for the Home Department* Case C-200/02, 19 October 2004.
- 2 See also July/August 2022 *Legal Action* 41.
- 3 See also July/August 2022 *Legal Action* 42.

### CE-File references

New style CE-File references have become common since 7 March 2022. Their use is still discretionary. As well as being part of the online system for filing documents electronically at the UT (Administrative Appeals Chamber), they form a database enabling users to access their own cases online. CE-File references are explained in the chamber president's guidance note, *Electronic filing of documents online: CE-File*.\*

The final suffix denotes the subject area. Some, such as RP, are obvious. Others, such as ULCW, take a little longer to work out (universal limited capability for work). But USTA, apart from denoting a universal credit claim and students, is more opaque. HM Courts and Tribunals Service has confirmed that there is no published list of suffixes.

\* [www.judiciary.uk/announcements/guidance-note-from-the-president-of-the-upper-tribunals-administrative-appeals-chamber-using-ce-file](http://www.judiciary.uk/announcements/guidance-note-from-the-president-of-the-upper-tribunals-administrative-appeals-chamber-using-ce-file).

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# Book review

## *Overruled: Confronting Our Vanishing Democracy in 8 Cases*<sup>1</sup>

Sam Fowles

**Overruled provides a timely look at the erosion of constitutional values in our political system, writes Christopher Stanley.**



This is an important and timely book. It is in the tradition of Will Hutton's *The State We're In* (Jonathan Cape, 1995) in that it is of its time and captures – in eight cases – the zeitgeist of our democratic system. Our shared democratic rights and constitutional values are being *Overruled*.

Constitutional backsliding is at the core of this analysis, elegantly and persuasively presented by Sam Fowles by way of four themes: accountability; bullshit ('statements which treat truth as immaterial', page 8); centralisation; and enfranchisement.

Fowles is anxious that '[w]e have allowed principles that were once inviolable to become contestable' (page 7). A contested principle, such as power, means it is relational to other factors that, in the present circumstances and era of *English* constitutionalism, means living in a weakened democracy governed by an elective dictatorship from Downing Street serviced by unelected SPADs. *English* because of devolved arrangements including the Northern Ireland Protocol and the out-workings of Brexit in Cardiff, Edinburgh and Belfast. The article 50 – prorogation litigation led by Gina Miller included applications from both Scottish and Northern Irish *citizens* (not *English subjects*).<sup>2</sup>

*Overruled* examines the seismic relational shift in the *English* constitutional settlement premised

on John Locke's separation of powers doctrine. Those with the power to govern and to practise the art of government and governance are no longer being held accountable or answerable to the judiciary and the legislature, those institutions preserving the rule of law that serves to protect our democratic liberties and freedoms.

The contested principles – the purposes of democracy – now serve those in/power: the executive *not in* Whitehall but *in* Downing Street. Power now means the delivery of the democratic mandate (the profoundly unread and obliquely drafted manifesto of pledges) in the interests of party supporters (read: donors). The executive knows best in an expression of a venal paternalism corrupting the letter and the spirit of the received constitutional settlement through the erosion of those core checks and balances that serve to secure truth, accountability and transparency through the rule of law.

I declare a vested interest at this juncture. I was the requester of file CJ4/6052 'Provisional IRA intentions and activities in Great Britain' catalogued by the National Archives but retained by the Northern Ireland Office. My request is now reported as *Christopher Stanley (KRW Solicitors) v Information Commissioner and Northern Ireland Office* EA/2019/0019. Sam Fowles acted pro bono in this appeal. The case is discussed in chapter 6 of *Overruled*. My quest for clarity on behalf of the relatives of the victims of the Birmingham pub bombings in 1974 was mired by the imposition of the never-defined rationale of National Security. If National Security exists, it must be to uphold the rule of law, which guarantees transparency and accountability. Not as a reason to deny truth: 'A government which does not trust its citizens is always frightening' (page 127).

Fowles has been instructed (even as a bag carrier) in eight cases (including the article 50 *Miller* litigation) that constitute the narrative of this book. Each case is an examination in the erosion of what I call constitutional 'values' and Fowles calls constitutional 'rights'. 'Constitutional rights are the

most important thing we have because it is only by protecting our democracy that we can preserve and achieve everything else that is important to us in the political realm' (page 85).

Constitutional rights/values reflect – and I think Fowles would concur – the demand for governance for and in the public good. Which is why the separation of powers between executive, legislature and judiciary is so necessary, and why the executive attacks (systemic over at least 30 years) – be they on, inter alia, access to justice funded by legal aid, restricting judicial review, denying access to information, the intent to repeal the Human Rights Act 1998, the occasional tossing of red-meat legislation to Tory backbenchers by way of command papers and bills or lucrative job offers and junior ministerial postings, whether by way of law-making by delegated legislation or the insertion of Henry VIII clauses, etc – are so very insidious, corrosive, self-serving.

Fowles does not advocate a written constitution for the UK but rather a short binding statement of constitutional values – democracy, parliamentary sovereignty, the rule of law, the separation of powers, and human rights (page 191). These, he suggests, could serve as the 'Lodestar of the British Constitution' (as he has titled chapter 1).

Hear, hear to that. Such a short binding statement of constitutional values should be embedded in the curriculum of our schools, in the institutions that facilitate civic engagement and discourse, and in the oaths taken by those who seek to (over) rule over us.

- 1 Oneworld Publications, print ISBN 978 0 86154 247 5, eBook ISBN 978 0 86154 248 2, June 2022, print £16.99, eBook £9.99.
- 2 *R (Miller) v Prime Minister; Cherry and others v Advocate General for Scotland* [2019] UKSC 41; December 2019/January 2020 *Legal Action* 40.



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