

# “Democratic Legitimacy”

## (1) Vox Cuius?

During the public uproar about the High Court’s ruling in favour of Sharon Shoesmith in her case of wrongful dismissal (27 May 2011), both the responsible minister in the Labour government, Ed Balls, and the present Prime Minister, David Cameron, expressed unease at the possibility that the courts might be usurping the functions of “elected” politicians. (This was the same week as another great media story about “super-injunctions”, where the courts were accused of developing case-law instead of leaving it to Parliament to legislate in more detail.) The word *elected* is crucial. Judges are appointed, not elected; therefore their authority is taken to be less than that of a member of an elected government. At the same time, however oddly, it is a commonplace of political comment that MPs are not much respected.

In a civilised society one of the functions of the judiciary is to keep governments (elected or not) within the bounds of law, and not to leave it to politicians or the public to decide what the law is. Does anybody suppose that if judges were elected (on a single transferable vote, first-past-the-post, or some other system) the majesty of the law would somehow be enhanced?

Ministers of the Crown [not of the people] are not in fact elected. Messrs Balls and Cameron were elected to seats in the House of Commons. Mr Cameron was elected party leader by an odd process of the Conservative Party. Nobody elected either of them to be ministers of the Crown. Ministers are appointed. Ministers have no more authority if they are members of the House of Commons than if they are members of the House of Lords or not members of parliament at all.

Then (9 June 2011) the Archbishop of Canterbury is reported as attacking the coalition for forcing through policies nobody voted for. There is no “democratic mandate” for changes to the NHS or education. But our tradition of the last couple of centuries or so is representative government, not direct enactment of the will of the people.

Nevertheless, the question raised after the rioting of August 2011 was, in the words of James Naughtie introducing the Radio 4 7.00 a.m. news on 16 August 2011, “What sentences are appropriate and fit public demand?”. The two really are not the same. Or if they are, we have surrendered to the kind of lynch law possible to the age of mass communications. In this case, some sober commentators believe that inappropriate sentences have been handed down.

The confusion is not restricted to journalists.

Home Secretary Theresa May has hit back at senior police chiefs over political criticism of their initial riot response, insisting it was her job to tell forces “what the public want them to do”. . . “It is my job as Home Secretary, to ensure that the police know what the public want them to do.”  
—Press Association 14 August 2011

If Mrs May doesn’t know what the duty of the Home Secretary is, nor to whom the Home Secretary is responsible, it should not be surprising that she is not a good Home Secretary.

On 8 June 2011 the question was about badgers. The BBC reported that 63% of the respondents of a public opinion poll were against killing badgers to reduce the spread of bovine tuberculosis, and that the government had undertaken to listen to public opinion. How to decide whether the threat of badgers to cows is real, how significant, etc. are not questions that the general public has an informed opinion about. Taking a straw poll of the opinions of the electorate is not a good way of deciding anything, and is not even democratic.

Whether what is just can be decided by parliaments in Brussels/Strasbourg or Westminster is a good question. What ought to be beyond question is that it is not decided by public opinion polls.