**The Attorney General and Renewed Controversy Over the Law/Politics Divide**

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1. **CONTROVERSY OVER THE ATTORNEY GENERAL’S REMARKS**

On the 19th of October 2021 the Attorney General of England and Wales, Suella Braverman QC MP, delivered the keynote speech at the 2021 Public Law Project Conference. This speech defended the government’s ongoing proposals to reform aspects of judicial review procedure and, more broadly, the constitutional legitimacy of inviting Parliament to overturn jurisprudence it considers to be erroneous.[[3]](#footnote-3)

The Attorney General accepted that there has long been debate over the “proper role of the Courts in interpreting Parliament’s legislative supremacy” but suggested that several recent Supreme Court judgments represented a “radical departure from orthodox constitutional norms” which severely threatened the delicate balance of the UK Constitution. The Attorney General cited *Adams*[[4]](#footnote-4)*, Miller I*[[5]](#footnote-5)and *Miller II*[[6]](#footnote-6) *, Evans*[[7]](#footnote-7) */ UNISON*[[8]](#footnote-8) and *Privacy International*[[9]](#footnote-9), as examples of Supreme Court cases that “strained the principle of Parliamentary sovereignty and introduced uncertainty into the constitutional balance between Parliament, the Government, and the Courts.”

While the Attorney General proceeded to welcome signs of a shift by the current Supreme Court back to what she characterised as a more orthodox, traditional, approach to judicial review, she proceeded to defend the government’s recent proposal to reform judicial review[[10]](#footnote-10) and, the constitutional propriety of the executive deciding that it is “worthwhile and important to invite Parliament to legislate to overturn” judicial decisions it thinks erroneous.

While emphasising the centrality of an independent, apolitical, judiciary to the United Kingdom’s separation of powers, the Attorney General argued that failure to correct Supreme Court judgments which disturb constitutional orthodoxy and expand the judicial remit into more starkly political issues, risked the “legitimacy and reputation of our judiciary, which is inextricably linked to its political neutrality” which in turn could weaken the rule of law.[[11]](#footnote-11)

The Attorney General’s speech was criticised by some legal commentators.[[12]](#footnote-12) Given the nature of the subject matter, this was not unexpected. However, some critiques about the substance of the remarks also appeared to adopt an underlying but unstated premise that the Attorney General, in giving these remarks, had somehow overstepped her role by pushing at constitutional boundaries either by attacking the judiciary or inappropriately politicising her office.

For example, Joshua Rozenberg QC (hon), one of the UKs most prominent legal commentators, argued that the Attorney General’s remarks were “trumpeting a political message” that politicized her office and undermined the idea she can “act independently in the public interest while remaining the government’s chief legal adviser.”[[13]](#footnote-13) The distinguished public lawyer, Professor Mark Elliot, agreed with Rozenberg’s critique. For Professor Elliot, the passage of Rozenberg’s article which alleged the Attorney General was politicizing her office “nicely illustrates how readily the fabric of the constitution can begin to unravel when appropriate restraint, in any quarter, is not practised.”[[14]](#footnote-14) Shortly thereafter, *the* *Economist* ran articles that made reference to the Attorney General’s remarks, suggesting that rather “than defending judicial independence, the attorney-general…has joined the attack”[[15]](#footnote-15) and that the remarks were part of an “anti-judicial agenda…at odds with the separation of powers.”[[16]](#footnote-16)

In this short essay, we make two observations about this controversy. First, we argue the Attorney General’s decision to offer public remarks on judicial review did not push impermissibly at the constitutional boundaries of her office. When one takes a contextual analysis of the Attorney General’s remarks - through a lens which gives due weight to the Office’s dual political-legal dimensions - the natural reading is that they did not involve an inappropriate partisan politicisation of the office. Instead, in making a good faith constitutional critique of important Supreme Court jurisprudence, and defending legislative intervention to correct them, the remarks constituted the kind of political activity entirely consistent with the dual legal and political role of that office.

Second, we anticipate this defence will be unsatisfying to those whose concern about the Attorney General’s remarks implicitly stem from a more deep-seated anxiety: that the incumbent dual legal-political model of the UK government’s apex legal advisor is imprudent and should be reformed. On this score, we make the short point that any proposed reform will not be a panacea for the difficult trade-offs between expertise, independence, and democratic accountability around the work of apex legal advisors, and that any alternative models will involve their own risks that require earnest scrutiny.

1. **THE ATTORNEY GENERAL AND THE LAW/POLITICS DIVIDE: REDUX**

“The painfullest taske in the realme”[[17]](#footnote-17), “my idea of hell”[[18]](#footnote-18), “if it were not so fascinating in scope, it would be oppressive in its demands”[[19]](#footnote-19) - these are the colourful words past Attorneys General have used to describe the work of their office. An examination of the history and nature of the office and the duties it performs, provides a useful window into what might have motivated the dramatic choice of words of its previous incumbents.

The Attorney General of England and Wales is an office ancient in origin, with roots traceable to the 13th Century.[[20]](#footnote-20)Initially the Attorney General was the King’s lawyer, an eminent counsel who was expected to fiercely represent the sovereign’s interests. Today, the Attorney General of England and Wales is one of the UKs several “Law Officers”, a group of legal advisors to the UK and devolved governments.[[21]](#footnote-21) The Attorney General is by convention a minister of the UK government, either elected to the House of Commons or a peer appointed from the House of Lords. The functions of the Attorney General are truly daunting in their variety and volume, ranging from acting as the apex legal advisor to the government, guardian of the public interest, and superintendent of the prosecution services. They additionally shoulder the responsibilities that accompany ministerial and parliamentary office.

Aside from the sheer workload attending the office, perhaps the ‘*painfullest*’ aspect of the office is the tension its holder must deftly navigate between its legal and political aspects. Professor Edwards memorably argued the Attorney General constantly walks a tightrope in the British constitutional order.[[22]](#footnote-22) That is, Attorneys General must always maintain a careful balance when simultaneously carrying out their role as legal advisor and guardian of the public interest/rule of law on the one hand, and their position as a highly political animal and member of government on the other. Successfully negotiating this institutional tension - being both an ideologically sympathetic political appointee and an impartial legal advisor and guardian of the public interest - is perhaps the most important and sensitive charge the Attorney General shoulders. It is also the charge that attracts the most controversy.

For defenders of the UK model, an Attorney General’s capacity to withstand political pressure savouring of party advantage *can* be secured; through a combination of a supportive constitutional culture and tradition, a dedication to constitutional norms of independence in functions concerning the public interest and rule of law, adherence to legal professional ethics, legal expertise, and above all, the personal integrity of the law officer. Defenders of the current dual political-legal model of Attorney General would argue that if these are adhered to, they will help ensure an Attorney General’s political sympathies do not obstruct their duty to strive for independence and detachment in their advice giving and public interest functions. Attorneys General whose role carries a political dimension therefore try and marry their political commitments and roles to the longstanding traditions of their constitutional office and to those of the independent legal profession in which they are trained, both of which embrace the values of legality and the rule of law.

In discharging their advice-giving role, for instance, successive Attorneys General have consistently maintained that they try to offer impartial detached advice in the manner of a lawyer’s advice to any client: to give an objective analysis of the law as they see it.[[23]](#footnote-23) The fact previous Attorneys General have felt confident in offering forthright advice, even where it has had unwelcome political consequences for the government, is perhaps testament to their ability to maintain a stance of detachment.[[24]](#footnote-24) A good concrete example of this disposition in action can be seen in Geoffrey Cox QC’s advice on the legal effects of the Northern Irish Backstop in the EU-UK Withdrawal Agreement, advice which proved a serious political thorn in then Prime Minister May’s attempt to secure parliamentary approval for her Brexit deal.[[25]](#footnote-25)

But Attorneys General do not simply see themselves as technocrats. They also seek to combine their professional expertise as trained lawyers with a desire to assist their ministerial colleagues in the common goal of implementing the government’s policy agenda.[[26]](#footnote-26)Defenders of the present status of the Attorney General argue these dimensions of the office are, in fact, complementary. The political aspect is said to provide the Attorney General with tacit and intimate knowledge of the policy goals and pressures on ministerial colleagues, which in turn aids the task of offering constructive advice about both the constraints they are bound by, and any possible lawful and proper alternatives they can avail of.[[27]](#footnote-27)

Successfully walking the constitutional tightrope described by Professor Edwards is by no means easy. But the constitutional culture around the office makes it very clear that respecting the values of legality and the rule of law requires an Attorney General, *at a minimum*, to not allow partisan bias, party political concerns, or pressure from colleagues, to obscure good faith attempts to offer proper legal advice, or to taint a conclusion that a particular decision is in the public interest, or cause them to sign-off on the legality of government policies under flimsy and strained legal justification.

In the UK, an Attorney General who is perceived to have descended into partisan decision-making, or succumbed to political pressure, not only risks breaching the constitutional and professional norms that underpin the work of the Office (and, more broadly, those that underpin the legal profession generally), but the public and parliamentary confidence and credibility on which the office depends.[[28]](#footnote-28) In the instances where Attorneys General *have* previously been criticised for their advisory or public interest work, it was invariably based on the allegation they permitted partisan political pressure to influence their work.

For example, the allegation that Attorney General Lord Goldsmith QC succumbed to political pressure to alter his initial advice over the legality of the UK’s involvement in the Iraq War continues to generate deep controversy nearly two decades later.[[29]](#footnote-29) Perhaps even more politically explosive in its day was the controversy that brought down the first Labour Government of Ramsay McDonald in 1926 where a large factor in that Government’s collapse was the allegation that Attorney General Patrick Hastings KC had acceded to political pressure from Cabinet colleagues in discontinuing a prosecution against a communist newspaper editor for incitement to mutiny.[[30]](#footnote-30) The seriousness of these kind of previous controversies is a measure of how seriously the norms surrounding the Attorney General’s office are taken.

With this constitutional context in mind, we can ask: did the Attorney General’s remarks represent a good faith jurisprudential disagreement with the Supreme Court designed to explain and justify the political and legal legitimacy of the government’s reform initiatives? Or, alternatively, are they an example of partisan party politics pressing the Attorney General to undermine judicial independence and the rule of law? The former would be an unobjectionable example of the Attorney General drawing on her legal expertise to help discharge her role in its larger ministerial and parliamentary context, with due respect for the separation of powers and rule of law. The latter would breach what are generally regarded as the constitutional norms of the office.

We suggest that a close look at the subject matter and text of the speech shows that it comfortably falls on the side of the former. For a start, at several stages the Attorney General was careful to reiterate the critical role played by the judiciary in the Constitution. Judges, said the Attorney General, are “entitled to the greatest respect, and in our system are beyond reproach, and rightly so”.[[31]](#footnote-31) The Attorney General emphatically stated “I accept their decisions, even if I disagree with them.”[[32]](#footnote-32) The Attorney General also correctly stressed that “an independent, apolitical, judiciary is crucial to upholding the Rule of Law.”[[33]](#footnote-33) Moreover, the substance of the speech cannot reasonably be read as anything like an attack on the judiciary or its constitutional position; but instead reads as a reasoned explanation and justification - steeped in case law and public law scholarship – for the legitimacy of the executive inviting the legislature to intervene where it disagrees with the constitutional propriety of a line of jurisprudence.

The heart of the speech touched on several complex, often technical, legal topics central to the constitutional balance of the UK, including: the appropriate scope of judicial review over prerogative powers like prorogation, the propriety of more intensive standards of judicial review like proportionality, the cogency of the Supreme Court’s approach to statutory interpretation and ascertaining parliamentary intent, and where to draw the conceptual line between subject-matter properly subject to judicial determination and that which is nonjusticiable due to its high-political nature. In assessing the propriety of the Attorney General’s remarks, it is important to note that her critique of the Supreme Court on these issues, and her own proffered alternatives, are not eccentric or extreme constitutional positions, but views shared by many in the judiciary, legal profession, and academy.

We suggest that the existence of deep and wide disagreement on these questions supports the view that what was advanced by the Attorney’s speech was not political in the narrow, inappropriate, partisan sense of that term. Instead, the more natural reading is that it was only political speech in the richer sense of that word – concerning as it did philosophical disagreement about a contentious line of jurisprudence – of the kind it is entirely appropriate for a constitutional actor with both legal and political dimensions to engage in.

The Attorney General has never been considered an apolitical actor in *this* richer sense. Attorneys General must, of course, avoid political partisanship in their public interest determinations, and the kind of public remarks that would bring the judiciary and Rule of Law into contempt. But these are entirely distinct from advancing a good-faith constitutional rationale for policy reform mooted by the Government, or the legitimacy of the executive inviting Parliament to correct what it views as an erroneous and constitutionally heterodox line of Supreme Court jurisprudence.

It also cannot be overlooked that there are precedents for this kind of political engagement with the jurisprudence of the senior judiciary. Similar respectful, but firm, public remarks voicing concern and disagreement with jurisprudential trends were given during the tenures of the last several Attorneys General.[[34]](#footnote-34) In the UK, the principle that judgments and trends in judicial thinking are properly debateable has been, and should always remain, an important contribution to determining where the common good lies.  Law officers, with their dual political and legal roles and ability to grapple with the minutiae of judicial doctrine and legal commentary, seem to us have a useful role to play in these debates.

To disagree with an aspect (or all) of the Attorney General’s remarks on recent case-law is one thing, and entirely appropriate, but to suggest that this kind of engagement with Supreme Court jurisprudence transcends the proper constitutional bounds of the office of Attorney General, seems overblown.

1. **PROPOSED REFORM AND THE INEVITABILITY OF TRADE-OFFS**

Our defence of the Attorney General’s remarks will be cold comfort for those whose concerns are motivated by a broader objection: that Attorney General’s role continues to have *any* kind of political dimension. Proposals to reform the Office have significant support amongst respected public law commentators[[35]](#footnote-35) and calls to do so intermittently emerge within political circles. In 2007, for example, the House of Commons Public Administration and Constitutional Affairs Committee strongly advocated reform of the office, on the basis it would be much preferable to have an unelected career civil servant perform the role of Government legal advisor as opposed to a political appointee.[[36]](#footnote-36) The Committee concluded that ‘On balance we have concluded that legal decisions in prosecutions and the provision of legal advice should rest with someone who is appointed as a career lawyer and who is not a politician or a member of the Government.’[[37]](#footnote-37)

We do not here propose to offer substantive arguments for, or against, replacing the UK’s current model with an apolitical chief legal advisor drawn from the civil service or private practice. Instead, we want to briefly note how any proposed reform in this direction would involve very difficult trade-offs; between values and principles like legal expertise, concern for the rule of law, independence from partisanship, concern for the government’s ability to implement policy for the common good, and democratic accountability. There is no or one size fits all approach for structuring the work of senior government legal advisors, but different models each entailing different kinds of advantages and risks.

Some legal systems - like Japan and Israel – do opt for non-elected career lawyers to serve as chief legal counsel to government, with very high levels of insulation from politics.[[38]](#footnote-38) In Japan, the Cabinet Legislation Bureau is the key advisory organ to the government over legal and constitutional affairs. An autonomous[[39]](#footnote-39) and technocratic[[40]](#footnote-40) institution, it is staffed by career lawyers appointed on the basis of academic excellence and promoted on the basis of seniority. The Director of the CLB is formally nominated by the government, but by convention the latter will accede to the former’s internal choice.[[41]](#footnote-41)

In Israel, the Attorney General is formally appointed by the Government but the choice is highly fettered. The Attorney can only be chosen from an approved list drawn up by an independent panel. This panel consists of a former Supreme Court judge appointed by the Chief Justice, a former Attorney General appointed by the Government, and a representatives appointed on behalf of the legal academy and bar association. It is also a requirement that a candidate be eligible for appointment to the Supreme Court. Upon appointment, the Attorney General serves a fixed term of 6 years and cannot be removed save in very limited circumstances.[[42]](#footnote-42) The Attorney General is guardian of the public interest, in charge of State litigation, final decision-maker in respect of prosecutions, and exclusive legal counsel to the government. The Attorney General’s advice on the legality of policy decisions or proposed bills is *binding* on the government, and the latter cannot seek advice from any other lawyer without the former’s prior consent.[[43]](#footnote-43)

The model of apex government legal advisors in these systems is, compared to the UK, very apolitical and technocratic. The work of these lawyers – who are drawn from the civil service or private practice - also tends to have a larger degree of detachment from the policymaking and political concerns of the government.[[44]](#footnote-44) This model has several obvious qualities. For example, opting for an entirely technocratic and apolitical system may act as a powerful safeguard against abuses of executive authority. They may also decisively remove any perception the provision of legal advice or public interest functions have been subject the inappropriate politicisation. Such qualities are especially important where building political and popular trust in the legality of government action is of paramount importance.[[45]](#footnote-45) The point we want to stress here is that such qualities must be balanced against potential costs.

One of us has written elsewhere that highly technocratic and apolitical bodies like the CLB may tend toward conservatism and caution when dispensing legal advice. Apex government lawyers who lack political experience might develop a risk averse disposition, approving only those policies they feel are consistent with the ‘best’ view of the law they think a Court might reach. They may also generally be less likely to approach legal analysis with the same inclination to constructively assist the government implement its policy mandate while staying within lawful bounds, at least when compared to a lawyer whose office has dual legal-political dimensions.[[46]](#footnote-46)

In some cases, this kind of ‘constitutionally conservative’ approach to legal advice risks developing its own pathologies. It might, for example, excessively legalise the democratic policymaking process, hamstring the political branches from testing the boundaries of the law where it is uncertain, and, by privileging legal advice, prevent or impede good-faith dialogue between the political branches and Courts about matters such as the content of the law, the extent of constitutionally permissible change, or how the law should be best interpreted.[[47]](#footnote-47)

More generally, there can be democratic costs that accompany a highly technocratic and apolitical model, given that it will inevitably allow unelected legal advisors to wield considerable influence and power over the policymaking process. It may grant ‘considerable and controversial influence over the functions of the elected branches’[[48]](#footnote-48) to officials who will be, by deliberate design, largely unaccountable for their decisions.

Of course, none of the above warrants the conclusion an apolitical and technocratic model of apex legal advisor lacks merit or is inherently less desirable than the status quo. Such systems can and do work perfectly well. It is merely to stress that the rules and norms that govern a government’s appointment of its leading lawyers, and the appointee’s self-understanding of their constitutional role, will have serious ramifications for constitutional politics.

Any proposed alteration in the office of Attorney General in the UK should have to pass through a well-rounded and clear-eyed assessment of the potential advantages and observable disadvantages that will accompany any new, technocratic, model. We should take pause and ask: is the health of the Attorney General’s Office so poor such that a transplanted organ is really necessary?[[49]](#footnote-49)

1. Lecturer in Law, University of Liverpool School of Law and Social Justice. [↑](#footnote-ref-1)
2. Queens Counsel and former Attorney General of Northern Ireland (2010-2020). This essay is an updated and extended version of a report produced for the think-tank *Policy Exchange*. The report is available here, <https://policyexchange.org.uk/publication/crossing-the-line/>. [↑](#footnote-ref-2)
3. Suella Braverman QC MP, ‘Judicial Review Trends and Forecasts 2021: Accountability and the Constitution**’** *Public Law Project Conference* (19th October 2021). [↑](#footnote-ref-3)
4. [2020] UKSC 19. [↑](#footnote-ref-4)
5. [2017] UKSC 5. [↑](#footnote-ref-5)
6. [2019] UKSC 41. [↑](#footnote-ref-6)
7. [2015] UKSC 21. [↑](#footnote-ref-7)
8. [2017] UKSC 51. [↑](#footnote-ref-8)
9. [2019] UKSC 22. [↑](#footnote-ref-9)
10. ## Contained in the Judicial Review and Courts Bill 2021–22.

    [↑](#footnote-ref-10)
11. Braverman (n 3). [↑](#footnote-ref-11)
12. # Mark Elliot, ‘Response to the Attorney-General’s Public Law Project keynote speech’ (October 20, 2021) *Public Law For Everyone*, <https://publiclawforeveryone.com/2021/10/20/response-to-the-attorney-generals-public-law-project-keynote-speech/>.

    [↑](#footnote-ref-12)
13. Joshua Rosenberg QC (hon), ‘Back in your box, attorney tells judges: Suella Braverman pushes the constitutional boundaries’ *A Lawyer Writes* (21st October 2021), <https://rozenberg.substack.com/p/back-in-your-box-attorney-tells-judges>. [↑](#footnote-ref-13)
14. <https://twitter.com/ProfMarkElliott/status/1451148309167493128>. [↑](#footnote-ref-14)
15. ‘Boris Johnson treats checks and balances with contempt’ *The Economist* (6th November 2021). [↑](#footnote-ref-15)
16. # ‘Judicial independence is under threat in Britain’ *The Economist* (4th November 2021).

    [↑](#footnote-ref-16)
17. Attributed to Francis Bacon QC. Elwyn Jones QC, ‘The Office of Attorney-General’ 27 *Cambridge Law Journal* (1969) 43. [↑](#footnote-ref-17)
18. Attributed to Patrick Hastings QC. Id. [↑](#footnote-ref-18)
19. S.S.C. Silkin QC, ‘The Functions and Position of the Attorney-General in the United Kingdom’ (1978) 58 *The Parliamentarian* 149, 158. [↑](#footnote-ref-19)
20. id., 149. [↑](#footnote-ref-20)
21. For invaluable overviews of the work of the Law Officers see Conor McCormick and Graeme Cowie, ‘The Law Officers: A Constitutional and Functional Overview’ HC Library Briefing Paper, No. 08919 (28 May 2020); James Hand, ‘The Attorney-General, politics and logistics – a fork in the road?’ (Forthcoming 2021) Legal Studies 1. [↑](#footnote-ref-21)
22. JLJ Edwards, *The Law Officers of the Crown:* *A Study of the Offices of the Attorney-General and Solicitor-General of England with an Account of the Office of the Director of Public Prosecutions of England* (Sweet & Maxwell, 1964) ix; Gabrielle Appleby, *The Role of the Solicitor-General: Negotiating Law, Politics and the Public Interest* (Hart 2016) 54. [↑](#footnote-ref-22)
23. Conor Casey, ‘The Law Officers: The Relationship between Executive Lawyers and Executive Power in Ireland and the United Kingdom’, in (Oran Doyle, Aileen McHarg, & Jo Murkens eds., 2021) *The Brexit Challenge for Ireland and the United Kingdom: Constitutions Under Pressure*; Terence Daintith and Alan Page, *The Executive in the Constitution: Structure, Autonomy and Internal Control* (Oxford University Press 1999) 297. [↑](#footnote-ref-23)
24. Id. [↑](#footnote-ref-24)
25. Casey (n 23). [↑](#footnote-ref-25)
26. JLJ Edwards, *The Attorney-General, Politics and the Public Interest* (Sweet & Maxwell 1984) 185. [↑](#footnote-ref-26)
27. Ben Yong, ‘Risk Management: Government Lawyers and the Provision of Legal Advice within Whitehall’ (2013) *Constitution Unit/ Constitution Society* 61. [↑](#footnote-ref-27)
28. Casey, (n 23). [↑](#footnote-ref-28)
29. See Robert Verkaik, ‘Goldsmith under pressure from legal profession over impartiality’ (29 April 2005) *The Independent,* <https://www.independent.co.uk/news/uk/crime/goldsmith-under-pressure-from-legal-profession-over-impartiality-3903.html>. [↑](#footnote-ref-29)
30. Jones, ‘Office of Attorney General’ (n17) 50. [↑](#footnote-ref-30)
31. Braverman QC MP, ‘Judicial Review’ (n3). [↑](#footnote-ref-31)
32. Id. [↑](#footnote-ref-32)
33. Id. [↑](#footnote-ref-33)
34. # See Robert Wright and Jane Croft, ‘UK attorney-general backs calls to curb judges’ powers’ (12 February 2020) *The* *Financial Times.* The *Financial Times* article is a report based on Geoffrey Cox QC MP’s extended interview with the *Institute for Government* think-tank. The headline represents quite an unfair and lop-sided summary of what was an extensive and nuanced hour-long conversation. However, the then Attorney General did make the comments cited in the article about the appropriate balance of power between the Courts and Parliament and mentioned there were legitimate concerns that decisions where increasingly being taken by the former that ought to be reserved to the latter. The full interview is available here: <https://www.youtube.com/watch?v=N5TzdjkGu2k>. See also Jeremy Wright QC MP, ‘The Attorney General on who should decide what the public interest is’ (8 February, 2016), <https://www.gov.uk/government/speeches/the-attorney-general-on-who-should-decide-what-the-public-interest-is>; Dominic Grieve QC MP, ‘European Convention on Human Rights: current challenges’ (24th October 2011), <https://www.gov.uk/government/speeches/european-convention-on-human-rights-current-challenges>.

    [↑](#footnote-ref-34)
35. Jeffrey Jowell QC, ‘Politics and the Law: Constitutional Balance or Institutional Confusion’, JUSTICE Tom Sargant Memorial Annual Lecture, (17 October 2006) 11; Hand (n 21). [↑](#footnote-ref-35)
36. House of Commons Public Administration & Constitutional Affairs Committee, *Constitutional Role of the Attorney General* (July 2007) Following the report, the Government engaged in a consultation process over reform to the Attorney General’s office but ultimately decided not to proceed with any substantial reform. [↑](#footnote-ref-36)
37. Id., 22-24. [↑](#footnote-ref-37)
38. Michael Asimow and Yoav Dotan, ‘Hired Guns And Ministers Of Justice: The Role Of Government Attorneys In The United States And Israel’ (2016) 49 Israel Law Review 3, 12; David Kenny and Conor Casey, ‘Shadow constitutional review: The dark side of pre-enactment political review in Ireland and Japan’ (2020) 18 International Journal of Constitutional Law 51, 59-60. [↑](#footnote-ref-38)
39. Navraj Singh Ghaleigh, ‘Neither Legal Nor Political? Bureaucratic Constitutionalism in Japanese Law’ (2015) 26 K.L.J., 193, 205. [↑](#footnote-ref-39)
40. Mamoru Seki, ‘The Drafting Process for Cabinet Bills’ (1986) 19 L. Japan 168, 183. [↑](#footnote-ref-40)
41. Conor Casey, ‘Political Executive Control of the Administrative State: How Much is Too Much?’ (2021) 81 Maryland Law Review 257, 263. [↑](#footnote-ref-41)
42. Aviad Bakshi, ‘Legal Advisers and the Government: Analysis and Recommendations’ (2016) Kohelet Policy Forum 17. [↑](#footnote-ref-42)
43. Elyakim Rubinstein, ‘The Attorney General in Israel: A Delicate Balance of Powers and Responsibilities in a Jewish and Democratic State’ (2005) 11 Israel Affairs 417, 422. [↑](#footnote-ref-43)
44. Kenny and Casey, ‘Shadow Constitutional Review’ (n 38) 60. [↑](#footnote-ref-44)
45. Like politically divided communities such as Northern Ireland. [↑](#footnote-ref-45)
46. Conor Casey and David Kenny, ‘The Gatekeepers: Executive Lawyers and Executive Power in Comparative Perspective’ (Forthcoming 2022) International Journal of Constitutional Law 1, 31-32. [↑](#footnote-ref-46)
47. Gabrielle Appleby and Anna Olijnyk, ‘Executive Policy Development and Constitutional Norms: Practice and Perceptions’ (2020) 18 International Journal of Constitutional Law 1136-1165; Conor Casey and Eoin Daly, ‘Political Constitutionalism under a Culture of Legalism: Case Studies from Ireland’ (2021) 17 European Constitutional Law Review 202, 221-224; Aviad Bakshi, ‘Legal Advisers and the Government’ (n 42) 34. [↑](#footnote-ref-47)
48. Casey and Kenny (n 38) 63. [↑](#footnote-ref-48)
49. See, for provocative private law examples, Alan Watson *Legal Transplants* (Edinburgh, 1974). [↑](#footnote-ref-49)