

Profile: Elizabeth Truss, who does not quite know how to talk to the judges, and vice-versa

It would be hard to exaggerate how angry the judges are with Elizabeth Truss. A few days ago, the Lord Chief Justice, Lord Thomas of Cwmgiedd, [condemned the Lord Chancellor](#) for failing to stand up for them in November, when the [Daily Mail](#) denounced them as “Enemies of the People”:

“I regret to have to criticise her as severely as I have, but to my mind she is completely and absolutely wrong about this, as I have said, and I am very disappointed. I understand what the pressures were in November, but she has taken a position that is constitutionally absolutely wrong.”

The Lord Chief Justice, who will soon retire, also complained that Truss’s officials had allowed her to make a serious error about the new arrangements to ease the ordeal of giving evidence in rape trials:

“Yesterday, I had to write to all the judges to explain that unfortunately what the ministry had said was wrong.”

Lord Thomas’s evidence on rape trials, delivered to the Lords Constitution Committee [and watchable here](#) (one of the most damning outbursts, quoted above, occurs at 10:57:38), reveals a history of acute dissatisfaction with the department which long predates Truss:

“To make clear what I am saying, we fought – there can be no other word for it – the ministry from 1999 right through to about 2015 to get the pre-recording of children’s evidence brought into effect. It had been recommended by Judge Pigot in 1989, but we were told, ‘No money, no this, no that’. Through the very hard work of three judges, Judge Collier at Leeds, Judge Goldstone at Liverpool and Judge Ader at Kingston, we have made the pilot work, and we want to roll it out carefully. It is quite difficult to change the culture. Instead of what we said was sensible, which was to move it to the adult victims of sexual crime and to start piloting that at the same courts, it was announced that this would be rolled out across the country. It was a complete failure to understand the impracticalities of any of this. That is the kind of thing that is very troubling.”

Truss and her civil servants between them managed first to misinform the

press about this, and then to take quite a long time to clear up the misinformation. Were it not for the wider Brexit story, the deterioration in relations between her and the judiciary would be attracting far more attention.

But Jacob Rees-Mogg MP this week told ConservativeHome that it is quite wrong of Lord Thomas to use “his authority as Lord Chief Justice to undermine and belittle the Lord Chancellor”, and continued:

“He can’t expect politicians to defend the independence of the judiciary if he behaves like a Labour Party activist.”

In Rees-Mogg’s view, “an independent judiciary is an apolitical judiciary”, and “it is unwise of judges to make statements other than from the bench”. The public trust them “because they don’t seem to have any preconceptions”.

It follows that “what the Lord Chief Justice did was deeply disgraceful and improper”, for it meant “getting involved in politics in a very sensitive way”, and this in a case in which “he was personally involved”, as one of the three judges who heard the Brexit case in the High Court and were attacked by the press.

In Lord Thomas’s defence, it should be repeated that he accurately reflects opinion among his colleagues. They feel Truss deserted them in their hour of need, when they could not defend themselves because the Brexit case had not yet ended.

Lord Judge, who preceded Lord Thomas as Lord Chief Justice, brushed aside the statement in support of judicial independence which the Lord Chancellor did at length issue as “too little, too late”, and told [The Times](#):

“The words she used were almost exactly the same as the Prime Minister used a couple of hours later. That’s my explanation why it took her so long.”

The judges see a Lord Chancellor who takes orders from Theresa May, who in turn is more anxious to keep on the right side of Paul Dacre, the editor of the *Daily Mail*, than to defend judicial independence.

A Lord Chancellor with a proper understanding of the grandeur and antiquity of the office, far more ancient than that of Prime Minister, would not have waited for clearance from Downing Street before upholding the rule of law. One need not be a judge to wonder whether Truss will ever have the intellectual self-confidence to speak her own mind.

But as Charles Moore [this week pointed out](#), it is Tony Blair’s fault, not hers, that the lord chancellorship is no longer held by a lawyer steeped in legal tradition, and presiding from the Woolsack over the House of Lords. Blair failed to abolish but

“succeeded in downgrading the post. He created a Justice Ministry (another continental idea) and tacked the Lord Chancellor’s residual roles on to that. So being Justice Secretary and Lord Chancellor became just another political job rather than one requiring legal learning. There was no more reason for a lawyer to have to occupy the post than for a doctor to be Health Secretary.

“So the governmental system has lost its umbilical connection with the judiciary. The judges are right to regret this, but it is partly their fault. Most of them were in favour of the changes I have described above.”

Truss is the third non-lawyer, after Chris Grayling and Michael Gove, to be Lord Chancellor, and the first woman. Grayling became immensely unpopular with the judges, and amazed me, when I [interviewed him for ConHome](#), by saying it was an advantage for him not to be a lawyer, because this meant he was not biased in favour of the legal profession.

Gove profited from not being Grayling, and from a natural eloquence which made him a ready defender of ancient liberties as well as modern prison reforms. But he spent only just over a year in office.

To Truss now falls the tricky task of trying to settle relations with a judiciary suffering from low morale and potentially very severe recruitment problems, and brought into unaccustomed prominence by the Brexit case. It cannot be said she has made a very promising start.

Her defenders say the judiciary condescend towards her because of her youth (she is only 41), her lack of legal experience, and because she is a woman. They add that although she consults with Number Ten, she does not take orders.

Her detractors say she rubs people up the wrong way, supposes she is more charming than is actually the case, and is an embarrassingly bad public speaker, who has inflicted some “toe-curling” performances on the Conservative Party Conference. They admit, however, that she is very bright.

Truss herself insists that she takes “very seriously” her duty under her oath of office to defend the independence of the judiciary. But in [a letter to The Times](#) she went on:

“However there is another principle at stake here: the freedom of the press. I believe in a free press, where newspapers are free to publish, within the law, their views. It is not the job of the government or lord chancellor to police headlines, and it would be a dark day for democracy if that changed.”

It ought to be feasible to defend both the judiciary and the press. The two are not mutually exclusive. Nor does one need to get hung up on “headlines”: general remarks about the indispensability of the rule of law, and how

fortunate we are to live under it, would be quite sufficient.

A Lord Chancellor who possessed a greater affinity with the Establishment would have no difficulty in producing that sort of thing on demand. But Truss is not that kind of person, which is one reason why she so disconcerts the judges.

They do not quite know how to talk to each other.

In the old days, by which I mean the era before 23 June 2016, if the Lord Chief Justice was worried about something, someone in his office would ring one of the private secretaries in Number Ten or the Treasury, with both of which they had direct lines of communication, and very likely the trouble would be sorted out.

The Lord Chancellor did not necessarily have to be involved. But the people at both ends who oiled the wheels have now moved on, or been moved on, and a different atmosphere prevails in Downing Street.

The Prime Minister and her joint chiefs of staff, Nick Timothy and Fiona Hill, want quite naturally to be in control. The avoidance of friction is not one of their instinctive preferences. For them, friction can be good.

An essential element in their style of government consists of showing that they will not be pushed around, and in particular that they will not yield a point just because a lot of high-minded liberals say how much easier and more pleasant life would be if a concession could just this once be made.

An obvious example is the proposal to remove students from the immigration figures. Almost all the friendly, civilised, liberal people say that doing so would make life easier and more pleasant, and May has refused to do it.

The judges are, for the most part, as friendly, civilised and liberal a group of people as you could hope to meet. They are delightful. Some years ago, when I used often to have lunch in the Terrace Cafeteria at the Palace of Westminster, I would usually see four or five of the Law Lords eating together in that long, modest, unassuming room, surrounded by researchers, police officers, cooks on their break and other Commons staff. How ready they were to be amused, and how completely without side.

A friend of mine who was a barrister used to lament that the abolition of the death penalty had removed much of the drama from criminal trials. It has certainly been accompanied by a change in the character of the judiciary. The majesty of the law, emphasised by occasional outbursts of eccentric savagery, is no more. Hangers and floggers are no longer required on the bench.

This may be a very good thing, but it makes the judiciary less frightening. Why should Truss, educated at a comprehensive school in Leeds, after which she read PPE at Oxford, defer to its opinions? Why should she not think instead that the judges need to loosen up a bit, become less worried about describing what their work entails?

In a profile of her [published three years ago on ConHome](#), I recorded the

toughness she showed in hanging on to the Conservative candidacy in South-West Norfolk in the face of opposition from “the TurnipTaliban”, as the press dubbed a group of local Tories displeased by the discovery of a scandal some years before in her private life.

A few days ago, [The Times](#) sided firmly with Lord Thomas, and with the rest of the legal Establishment, in a leading article. But its suggested remedy was a bit feeble:

“Ms Truss has not impressed so far in the job. She needs to take a good look at herself and ask whether she is up to it.”

Surely the person who will decide “whether she is up to it” is May. If anything, the attacks on Truss by the judiciary must make it less likely that in the near future she will be moved. The Prime Minister’s determination not to be pushed around will override other considerations, and will, one imagines, be shared by the *Daily Mail*.