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TO WHAT EXTENT ARE THE COMPANIES VESTED WITH CONSTITUTIONAL HUMAN RIGHTS UNDER THE UK LAW?

Nkem Amadike
LLM Kingston University, London

ABSTRACT: *The existence of a UK constitution is undeniable in as much as the UK constitution is characterised by a code of rules guiding the distribution of functions and powers among the agencies and officers of the government as well defining the relationship existing between them and the public. This fundamental feature forms the essence of a constitution and is reflected on the UK constitution. As a country with an established constitution, the UK has also recognised the constitutional human rights. The issue concerns the constitutional human rights applicable only to the natural person and which also extend to the corporate person. In law, the company is seen as a person with a distinct personality from the corporate members. A corollary to corporate personality is that the company is entitled to some constitutional rights as a person in law. The constitutional human rights of the corporate person recognised under the UK law include the right to fair trial, right to property and freedom of expression and information. This essay critically examines the attribution of these constitutional human rights to the company conclusively affirming the validity and justifiability of their recognition.*

KEYWORDS: constitutional rights, right to property, right to fair hearing, freedom of expression

INTRODUCTION

The principle of separate personality was recognised in the significant case of *Salomon v Salomon*.[1] In that case, Lord Macnaghten stated unequivocally that the company is a person with separate personhood from the individual members. What follows from incorporation is the separate personality of the company from its members. As a person with separate personality, the company is neither the agent of the shareholders nor the trustee and members of the company are not liable to the creditors except in some restricted circumstances.[2]One of the legal implications of the separate personality principle is that the company being a distinct person in law enjoys some human or constitutional rights.

Against this background, this essay critically examines the alleged constitutional rights of the company; it seeks to inquire whether and to what extent the company possesses constitutional rights under the UK law. The pertinent questions are does the UK have a constitution? Does the UK constitution recognise the human or constitutional rights of the company and to what extent? What is the scope of the constitutional rights of the company under the UK law? To what extent are the companies vested with constitutional rights under the UK law? This essay

[1]*Salomon v Salomon Co. Ltd* [1897] AC 22
[2] Ibid 51 (Per Lord Macnaghten)

concludes that the existence of a UK constitution goes without saying; the UK constitution do recognise the human or constitutional rights of the company; and the scope of the constitutional human rights recognised under the UK law is justifiable.

DOES THE UK HAVE A CONSTITUTION?

The issue on whether the UK has a constitution has been a hot a debate bifurcating scholars into two schools of thought: those who believe that the UK has a constitution and those who do not. Ridley had opined that the UK has no constitution predicating his view on the absence of the four essential characteristics of a constitution. The four primary qualities of a constitution according to Ridley include that the constitution establishes the system of government and is not part of it; a constitution has an authority outside and above the order it establishes; a constitution is a form of law superior to all other laws: and it is entrenched.[3]

More so, Thomas Paine viewed the constitution as a thing antecedent to a government and the creator of the government. The constitution of a country, he opined, is not the acts of its government, but the acts of the people that constitutes a government. The constitution in his opinion contains the principle that concerns how the government should be established; the manner it ought to be organised; the extent of its powers and manner of elections, the tenure of parliaments, the powers of the executive and all that concerns a complete organisation of the civil government; the principle a government ought to follow and be bound. In essence, the constitution, for T Paine, is to a Government what the laws subsequently made by that Government is to a Court of Judicature. The law is not made by the courts and cannot be altered by the court; it only acts in line with the laws made and the government is in a similar way governed by the constitution. Following this perspective of understanding the constitution by Thomas Paine, it is clear that the UK would be considered as not having a constitution.[4]

On the other hand, KC Wheare holds that the UK has a constitution defining a constitution as the whole system of a country, the collection of rules which establish and regulate the country. He classifies constitution into written or unwritten; rigid or flexible; supreme or subordinate; federal or unitary; based on separation of powers or fused; and republican or monarchical.[5]

A written constitution is one that is contained in a single document or series of documents, with or without amendment, defining the rules of the state whilst an unwritten constitution is one that is not contained in a written document.[6] Countries like the US and France has a written constitution whilst the UK has an unwritten constitution. The constitution of US and France originated from the American War of Independence and the French Revolution respectively. Later constitutions were derived from the devolution of legislative power from the former colonial masters to the colonies either through peaceful means or violence.[7]Most states with a written constitution had a clear historical break from a previous constitutional

[3] FF Ridley, 'There is no British Constitution: A Dangerous Case of the Emperor's Cloth' (1988) 41 (3) *Parliamentary Affairs* 340
[4] Thomas Paine, *Rights of Man* (7th edn, Printed for J.S. Jordan 1791) 56-57
[5] K C Wheare, *Modern Constitutions* (OUP 1951) 19-45
[6] Hilaire Barnett, *Constitutional and Administrative Law* (4th edn, Cavendish Publishing Company 2002) 8
[7] Ibid

arrangement, providing opportunity for a fresh constitutional start. The absence of such a clear historical break in British history necessitates for the unwritten constitution of the UK.[8]

A rigid constitution is one that cannot be amended with ease, whereas a flexible constitution is one that can be amended with ease. Countries like US and Australia has a rigid constitution whereas the UK has a flexible constitution.[9] Under the US constitution for instance, constitutional amendments maybe proposed either by a two-thirds majority of both Houses of Congress or, following a request by the legislatures of two thirds of the state, by the convention summoned by Congress. To be accepted, the proposed amendments must then be approved by the legislatures of three-quarters of the state or by convention in three-quarters of the states.[10] In UK, the Parliament is the supreme law-making body and can pass any law by a single majority vote in the Parliament, on any subject matter whatsoever and no court may hold an act of Parliament to be void.[11]

A constitution is said to be supreme when it is above the legislature and cannot be easily amended by the legislature. Conversely, a subordinate constitution is one which can be easily amended by the law-making body. Countries like the United States, Australia, Switzerland, Eire and Denmark have a supreme constitution whilst the UK is classified as having a subordinate constitution.[12]

In a federal constitution, some powers are exclusively reserved to the federal government; the regional government and other held on the basis of partnership. The written constitution of a federal state is sovereign over government and legislature and their respective powers are not only defined by the constitution but also controlled by the constitution which will be interpreted and upheld in the Supreme Court.[13] In a unitary state, there is no written constitution defining and controlling the government and legislature. Federal states include US, Switzerland and Australia whilst the UK is an example of a unitary state. In the US the written constitution is sovereign over government and legislature. In the UK there is a sovereign body which represents the ultimate law-making power in the state. However, power is given to the Northern Ireland, Scottish and Welsh legislature and to local government under Acts of the UK Parliament, to fulfil defined functions.[14]

A constitution that has fused powers recognises a single figure or body who solely legislates, interprets and executes the law. A constitution in conformity with the separation of powers recognises the vesting of powers in the principal institutions of the state: the executive, legislative and the judiciary, and not concentrating powers in one institution so as to bring about checks and balances.[15] This is achievable under a written constitution in the US, although it is arguable whether a pure separation of powers is realistic. Under the largely

[8] Ibid (n5) 8-9
[9] Ibid 24
[10] Ibid (n6)
[11] *Edinburg and Dalkeith Railway v Wauchope*[1842] UKHL 710, 8 ER 279; *Sillars v Smith* (1982) SLT 539
[12] Ibid (n5) 25-26
[13] Ibid 26-30
[14] Ibid (n6) 12
[15] Aristotle, *Politics* (OUP 2009) R F Stalley (editor) Ernest Baker (Translator) 376, 1297b;Henry St John Viscount Bolingbroke, *Remarks on the History of England* (University of Michigan Library 1780) 80-83

unwritten constitution of UK, the separation of powers is respected under the constitution. But at the practical level, there are so many inconsistencies and exception to the 'pure' doctrine.[16]
A republican constitution provides for the post of a democratically elected President which is answerable to the electorate while a monarchical constitution does not. The US is constitutionally republican while the UK is monarchical.[17] The US has a democratically elected President which is accountable to the electorate.[18] In the UK, there is the Queen which is unelected and unaccountable to the electorate in any democratic sense.[19]

By and large, the existence of a UK constitution goes without saying. Going by its etymology, constitution is derived from the term *constituere* meaning 'to regulate'. In this sense, constitution can be seen as a code of rules which aspire to regulate the allocation of functions, powers and duties amongst the various agencies and officers of the government and to define the relationships between these and the public.[20] This is evident in the UK constitution. Constitution can also be written or unwritten. The UK has a written constitution in form of statutes,[21]court judgements,[22]works of authorities,[23]and unwritten in form of parliamentary conventions[24] and royal prerogatives.[25]

The UK constitution has been described by Dicey, relating to three doctrines: the rule of law, the separation of powers and parliamentary supremacy.[26] However, this argument can be torpedoed by maintaining that, the rule of law, separation of powers and parliamentary supremacy have not been realized in the UK. The demand of the use of ADR in the Civil Procedure Rule 1998 breaches the principle of the rule of law.[27] The doctrine of separation of powers has not been realized in as much as the Parliament legislates and more or less performs an executive duty as it is responsible for its own internal affairs;[28] government ministers are members of the Parliament and also make delegated legislation;[29] the courts both interpret and make laws;[30]government ministers play a judicial role when they determine appeals regarding disputes that arise under for example, town and country planning

[16] Ibid (n6) 13
[17] Ibid (n5) 41-42
[18] Ibid (n6) 14
[19] Walter Bagehot *The English Constitution* (Fontana Press 1993) chapter II
[20] Ibid (n5)
[21]Police Act 1997; The Constitutional Reform and Governance Act 201
[22]*Salomon v Salomon*[1897] AC 22; *Prest v Petrodel*[2013] 2 AC 415; *Adrian v Metropolitan Police Commissioner* [2009] ECWA Civ 18 [2009] 4 All ER 227
[23]Erskine May, *A Treatise Upon the Law, Privileges, Proceedings and Usage of Parliament*(Cambridge University Press 2015) ; Tom Bingham, *The Rule of Law* (Penguin 2011)
[24]Geoffrey Marshall, 'What are Constitutional Conventions' (1985) 38 (1) *Parliamentary Affairs* 33
[25]*Case of Impositions* (1606) 2 St Tr 371; *Attorney General v De Keyser's Royal Hotel* (1920) A.C. 508; *Madzimbamuto v Lardner-Burke* (1969) AC 645; *Attorney General v Jonathan Cape* (1976) QB 752; *R v Secretary of State for the Home Department Ex p. Northumbria Police Authority* [1989] Q.B. 26
[26] Albert Venn Dicey, *An Introduction to the Study of the Laws of the Constitution* (8th edn, Liberty Fund Inc. 1982)
[27] The Civil Procedure Rules 1998 Parts 1.1, 1.4, 26.4, 44.3, 44.5
[28] John Alder and Keith Syrett, *Constitutional and Administrative Law* (11th edn, Palgrave 2017); J A G Griffith and Michael Ryle, *Parliament* (eds R. Blackburn and A Kennon) 2nd edn, 2002 403
[29] AW Bradley and KD Ewing, *Constitutional and Administrative Law* (15th edn, Pearson 2011) 79
[30]*Donoghue v Stephen* [1932] UKHL 100; [1932] A.C. 562; *Ryland v Fletcher*[1868] UKHL 1;LR 3 HL 330

legislation;[31] and the magistrates perform administrative cum judicial duties whereby they grant licences.[32] The European Community Act 1972 which allows the UK law to be interpreted in the light of the community law torpedoes the principle of parliamentary supremacy. Thus the parliament can no longer make and unmake any law as opined by Dicey. This is a good riddance! However the boat of this argument can as well be rocked by maintaining that the rule of law is more or less realized as demonstrated in *Entick v Carrington*[33]. This case is considered a leading authority on the rule of law as it provides that the executive whilst acting must have a legal authority allowing and justifying such actions.[34]The decision acted as an impetus to the Fourth Amendment (Amendment IV) to the United States Constitution and was described by the US Supreme Court as a significant judgement and one of the strong pillars of the English constitution and a guide in understanding the content of the Fourth Amendment.[35]More so, as regards the compliance to the separation of powers, the question is, does it matter whether the UK comply with the doctrine of separation of powers? The point to be made here is that while the doctrine should be accorded recognition and respect in the constitution, it is not necessary that the UK complies in entirely with the doctrine. A complete compliance with the 'pure' doctrine, would rock the boat. It would be counterproductive as there would be the prevention of the abuse of power by preventing the exercise of power.[36] Blackstone suggested that a complete separation of powers may lead to the dominance of the executive by the legislature.[37] The separation of powers is not an end in itself, but merely a means to an end. The end is to bring about common good by avoiding the abuse of power. Thus, the extent to which any constitutional system precisely adheres to the doctrine is insignificant. The important matter is whether the system is designed to bring about common good through accountability.[38] The British governmental system had for long serve this purpose. However, while a complete compliance to the doctrine is not a matter of necessity, it is equally germane to recognize and respect it in the constitution. For any constitutional system without any vestige of the separation of powers, would run a very great risk, if not an inevitability of the abuse of power[39] in that absolute power, corrupts absolutely. More so, the Parliament still has its supremacy as an Act of Parliament brought the ECA 1972 into force and the Parliament can still repeal this ACT as seen in the move towards 'Brexit' and the enactment of the European Union (Withdrawal) Act 2018. Hence, Dicey's demonstration of the existence of the UK constitution in terms of the rule of law, separation of powers and parliamentary supremacy still stands.

In showing the sense in which the UK does not have a constitution Ridley uses the term 'constitution' in a technical way. There is an absence of an objective meaning of constitution in Ridley. He tends to push the technical and the subjective into the realm of general and

[31] Neil Parpworth, *Constitutional and Administrative Law* (7th edn, OUP 2012) 21
[32] Ibid
[33] *Entick v Carrington* [1765] EWHC KB J98
[34] Timothy AO Endicott,'Was Entick v Carrington a Landmark?'inAdam Tomkins and Paul Scott, eds, *Entick v Carrington: 250 Years of the Rule of Law (Hart Publishing 2015) pp 109-130*
[35] *Boyd v. United States* 116 U.S. 616, 626 (1886)
[36] Ibid (31) 29
[37] William Blackstone, *Commentaries on the laws of England* (2nd edn, Clarendon Press 1765-69) Book 1, Chap. 2
[38] M Elliot and R Thomas, *Public Law* (1stedn, OUP 2011) 101
[39] Ibid 92

objective. In as much as Ridley is allowed to have his own subjective and technical concept of constitution, it is illogical for him to use it as an objective paradigm for ascertaining the existence or inexistence of a constitution. Such technical approach rather should be used for differentiating one constitution from another, for instance a written constitution from non-written constitution. The existence of a UK constitution is also justified knowing that ironically, so many written constitutions have their existence from the UK constitution. For instance the US constitution was based and created from the UK constitutional framework. It is accepted in the light of logic that *nihilo ex nihil fit* (out of nothing, nothing comes). Thus it can it cannot be said that these constitution were created out of nothing or something inexistent. It is illogical to maintain that these constitutions having been created from the UK constitution, the UK constitution should be dismissed as non-existing. Having shown that the UK has a constitution, below concerns if and the extent the companies are vested with constitutional rights under the UK law.

HUMAN RIGHTS UNDER THE UK CONSTITUTIONAL LAW

In the UK, the constitutional human rights are provided under the Human Rights Act 1998[40] which *gives effect* to the European Convention on Human Rights 1950.[41] Prior to the advent of the Convention, human rights had been recognised and respected under the English law. Traditionally, the British approach towards protecting civil liberties and human rights had been greatly shaped by the views of Dicey.[42] He opined that it was necessary stating the fundamental principles that operate in form of a higher law, in that political freedom was properly secured under the common law and by an independent Parliament which checkmates the operations of the executive.[43] There are common law principles which sought to protect individual liberty and human rights prior to the drafting of the European Convention on Human Rights 1959 and the attendant Human Rights Act 1998. In *Entick v Carrington*[44], the secretary of State issued a warrant to search and seize any seditious literature found in the premises of John Entick. The minister claimed that for the common good of the state, the existence and exercise of such a power were relevant. The legality of the conduct was successfully challenged and the court maintained that there exists no authority in British jurisprudence requiring such warrants to be issued in such a manner.[45]

Similarly in *Beatty v Gillibants*[46] members of the Salvation Army were barred from marching on Sundays in that their presence brought a large hostile crowd of people, thus occasioning a breach of peace. The order not to assemble was ignored by the Salvationists and they were bound over to keep the peace being accused of committing the crime of unlawful assembly. Upon appeal, the Salvationists were considered not to have done anything wrong and the order that bound them was set aside. The court opined that they could not to be prevented from assembling by the mere reason that their lawful conduct could make others act unlawfully.[47]

[40] The Human Rights Act 1998
[41] The European Convention on Human Rights 1950
[42] Ibid (n26) ch 6
[43] Ibid
[44] Ibid (n33)
[45] Ibid
[46] *Beatty v Gillibants*[1882] 9 QBD 308
[47] Ibid

The protection of liberty through the common law is also exemplified by the more recent case of *A v Home Secretary (No 2)*.[48] In this case, the issue concerned whether the Special Immigration Appeal Commission could admit evidence obtained through torture. It was unanimously held by the House of Lord, that such evidence remains inadmissible. Lord Bingham noted that common law principles 'compel the exclusion of third party torture evidence as unreliable, unfair, offensive to ordinary standards of humanity and decency and incompatible with the principles which should animate a tribunal seeking to administer justice'.[49] Nonetheless, there was no *consensus ad idem* among the members of the House as regards the required standard of proof necessary for such evidence to be excluded. It is the view of the majority that evidence should remain inadmissible whereby it is concluded on a balance of probabilities that it was obtained through torture. In contrast, the minority considered that any evidence ought to be excluded except it is satisfied that there was no real risk that it had been obtained by torture.[50]

The traditional English approach has been criticised on two grounds. First, the common law principle have the freedom to do anything which the law does not prohibit also seems to be applicable to the government. As a consequence there is the possibility that individual freedom could be violated by the government even though it was formally authorised to do so, on the basis, that such an action was not prohibited in any way by the law.[51] For instance, in *Malone v Metropolitan Police Commissioner*[52], the practice of telephone tapping was considered to have been done by the executive without any vivid authorisation. An application by Mr. Malone for a declaration of the act of tapping his telephone was dismissed. The court held that Mr Malone did not explicitly refer to any legal right of which the government was under a duty not to violate.[53]

The second problem with the traditional British approach is that freedom is particularly prone to erosion. The provision of the common law is merely that people are at liberty to do anything that is not lawful, but this does not prevent the legislature from enacting new legislative restrictions. Nevertheless, it is paradoxical to know that many restrictive laws on liberty are still proved by the common law. The truth is that the executive most times do not find it convenient seeking new powers from the parliament, but usually seek a decision of the courts for the restrictive development of the law and the creation of a precedent of general application. Rules of this nature, being a source of restriction on human freedom can be effective as a legislation made by the Parliament.[54] The common law restraints on individual liberty can be seen in the case of *Moss v McLachlan*.[55] In this case, the Divisional Court extended the common law powers of the police in controlling and regulating public assemblies to include the prevention of people from assembling at all.[56] Also in *Spycatcher*[57],

[48]*A v Home Secretary (No 2)* [2005] UKHL 71
[49]Ibid Para 51-52 (Per Lord Bingham)
[50]Ibid
[51] Ibid (n29) 399
[52]*Malone v Metropolitan Police Commissioner* [1979] Ch 344
[53]Ibid
[54] Lord Browne-Wilkinson, 'The Infiltration of the Bill of Rights' [1992] *PL* 397; Sir John Laws, 'Is the High Court the Guardian of Fundamental Constitutional Rights?' [1993] *PL* 59
[55]*Moss v McLachlan* [1985] IRLR 76
[56]Ibid
[57]*A-G v Guardian Newspapers Ltd* [1987] 1 WLR 1248

among others, the court held that injunctions could be granted to Attorney-General in restricting the publication of confidential government secrets.[58]

In wake of the World War II there was a quest to make all of Europe free, happy and peaceful.[59] Consequently, the European Convention on Human Right 1950[60] followed the Universal Declaration of Human Rights by 1948[61] by two years drawing inspiration from the wide principles contained in the Declaration. Upon signing the Convention in Rome in 1950, it was ratified by the UK in 1951 and was in force among the member states ratifying it in 1953. The Convention provides for certain human rights which ought to be protected by in various member states. In the UK, the contents of the Convention were further given effect by the Human Rights Act 1998.[62] By implication, the convention rights became enforceable in UK courts and tribunals. In the Human Rights Act 1998 the Convention Rights are appended as Sch. 1 and spelled out in full. They include the following by article: The right to Life (Article 2);[63] Prohibition of torture, inhuman or degrading treatment and punishment (Article 3);[64] Prohibition of slavery or forced labour (Article 4); [65]Right to liberty and security of the person (Article 5);[66] Right to fair and public trial (Article 6);[67] Prohibition of retroactive or retrospective criminal laws (Article 7);[68] Right to private and family life (Article 8);[69] Freedom of thought, conscience and religion (Article 9);[70] Freedom of expression (Article 10);[71] Freedom of assembly and association (Article 11);[72] Right to marry (Article 12);[73]Effective Remedy (Article 13);[74]Freedom from discrimination (Article 14);[75] Restrictions on political activity of aliens (Article 16);[76] Prohibition of abuse of rights (Article 17);[77] Limitation on use of restrictions on rights (Article 18);[78] Right to property (First Protocol, Article 1);[79] Right to education (First Protocol, Article 2).[80]

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[58] Ibid
[59] Penny Darbyshire, *Darbyshire on the English Legal System* (10th edn, Sweet & Maxwell 2011) 99
[60] Ibid (n41)
[61] The Universal Declaration of Human Rights 1948
[62] Ibid (n40)
[63] *R v (Middleton v West Somerset Coroner)* [2004] UKHL 10; *Van Colle v Chief Constable of Herts* [2007] EWCA Civ 325
[64] *A (FC) v SS for the Home Department* [2005] UKHL 71
[65] Ibid (n 40) Article 4
[66] *A(FC) v SS for the Home Department* [2004] UKHL 56
[67] *R (on the application of Anderson) v SS for the Home Department* [2002] UKHL 46; *SS for the Home Department v AF* [2009]UKHL 28; *R (on the application of G) v X School* [2010] EWCA Civ 1
[68] Ibid (n 40) Article 7
[69] *R v SS for the Home Department Ex p. Daly* [2001] UKHL 26; *Campbell v MGN* [2004] UKHL 22; *Douglas v Hello!* [2005] EWCA Civ 595; *Murray v Express Newspapers* [2008] EWCA Civ 595; *R (on the application of F) v SS for the Home Department* [2010] UKSC 17
[70] *R (on the application of Williamson) v SS for Education and Employment* [2005] UKHL 15
[71] *R v Shayler* [2002] UKHL 11
[72] *R (on the application of Laporte) v Chief Constable of Gloucestershire* [2006] UKHL 55
[73] *Bellinger v Bellinger* [2003] UKHL 21
[74] *R v SS for the Home Dept Ex p. Amin* [2003] UKHL 51
[75] *R (L) v. Manchester City Council [2001]* EWHC 707; The Welfare Reform and Pensions Act 1999
[76] Ibid (n 40) Article 16
[77] Ibid Article 17
[78] Ibid Article 18
[79] Ibid Protocol 1, Article 1
[80] Ibid Protocol 1, Article 2

It is important to note that section 2 of the Human Rights Act 1998 provides that a court or tribunal whilst determining a question bordering on a Convention right it 'must take into account' judgements, decisions or declarations of the European Court of Human Rights and opinions or decisions of the Commission or the Committee of Ministers. This is not to say that the decisions of the European of Human Rights are binding and care should be taken in differentiating this with the binding decisions of the European Court of Justice under the European Communities Act 1972.[81] It is also provided under section 3 of the 1998 Act that 'so far as possible, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.'[82] Where a piece of legislation cannot be interpreted as compatible section 4(2) requires that some senior courts may make a declaration of incompatibility. The senior courts include the High Court, Court of Appeal, Supreme Court, Judicial Committee of the Privy Council and the Courts Martial-Appeal Court.[83]

The Human rights Act has been criticised and blamed for decisions which are considered as privileging the rights of criminals and terrorists. The values contained in it have been viewed as those of a different generation and there is in particular an absence of children's rights, information rights and socio-economic rights.[84] The UK politician once remarked that parliamentary debates during 2003 to 2004 on controversial issues relating to terrorism and asylum did show that 'the more 'fundamental' the rights at stake, the fiercer the desire of politicians to preserve their right to have the final say'.[85] There had also been a call by the Conservatives for the Human Rights Act to be repealed and replaced with a Bill of Rights.[86]
The criticism of the Human Rights Act 1998 notwithstanding, it has been commended in no small measure. Keir Starmer criticised the critics of the Human Rights Act 1998. He said that the UK played a significant role in designing and drafting of the European Convention and it would odd and sincerely impossibly to defend the view that the human rights should stop in the English Channel.[87]J Cooper and C Warburton asserted that the Human Rights Act 1998 could not be repealed by the UK in that it would not be beneficial to anyone; in line with the Lisbon Treaty, EU member states were under obligation to ensure compliance with the EU Charter of Fundamental Rights which was built on the Convention; and there has been a long tradition of protecting the fundamental rights as seen in the common law and such protection has been immensely influential prior to the advent of the Human Rights Act.[88] In a particular delivered in 2002, Lord Wolf ventilated that should the values of the Human Rights Act be rejected by people, then the standards of Western society would inevitably be rejected.[89] The Human Rights Lawyers Association whilst celebrating ten years of the Human Rights Act expressed in a pamphlet that the 1998 Act had assisted the court in balancing the competing

[81] *R v Horncastle & Other* (2009) UKHL 14
[82] *A Lester* [1998] EHRLR 665; *Ghaidan v Godin-Mendoza* [2004] UKHL 46; *R v A* [2001] UKHL 25
[83] Ibid (n40) s 4(2)
[84] John Wadham et al, *The Human Rights Act 1998:Blackstone's Guides*(OUP 2011) para 1.39, 1.49, 1.27
[85] D Nicol, 'The Human Rights Acts and the Politicians' (2004) 24 *Legal Studies* 451
[86] Ibid (n 59) 132
[87] Keir Starmer, 'Human rights don't discriminate'The Guardian (London 22 October 2009)<https://www.theguardian.com/commentisfree/libertycentral/2009/oct/22/human-rights-act-conservatives1> accessed 23 July 2019
[88] John Cooper and Chris Warburton, 'HRA 1998: irreversible?' (2010) 160 *NLJ* 1605
[89] Lord Woolf, 'The Human Rights: Have the Public Benefited?' speech, October 15, 2002

rights of various groups. More so by allowing the courts to interpret legislation in a compatible manner with the Human Rights Act, rights had been strengthened without weakening the Parliament.[90]

It suffices to say that UK has been a party to numerous treaties and agreements which confer fundamental rights and freedom aside the European Convention on Human Rights. The treaties include the Convention on the Elimination of All Forms of Racial Discrimination;[91] the International Covenant on Civil and Political Rights;[92] the International Covenant on Economic, Social and Cultural Rights;[93] the Convention on the Elimination of All Forms of Discrimination Against Women;[94] the United Nations Convention Against Torture;[95] the Convention on the Rights of the Child;[96] the Convention on the Rights of Persons with Disabilities;[97] the European Social Charter;[98]the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;[99] the Convention on Action against Trafficking in Human Beings;[100]the Framework Convention for the Protection of National Minorities[101]; the European Charter for Regional or Minority Languages[102]; among others. Some of these have been ratified and incorporated into domestic law. The UK operates as a dualist state and by implication, treaties and agreements ratified by the government but unincorporated into domestic law have no effect. Nevertheless, unincorporated treaties can have effect on domestic law in many ways including the interpretation of legislation, the relevance of public policy and the assessment of the legality of the exercise of administrative discretion.[103]

CONSTITUTIONAL HUMAN RIGHTS OF THE COMPANY UNDER THE UK LAW

Gilbert Ryle illustrated about a foreigner who happened to be visiting Oxford or Cambridge for the first time was shown a number of colleges, libraries, playing fields, museums, scientific departments and administrative office. The foreigner yet proceeded seeking for the University.[104] The foreigner explained his confusion that he had seen the residence of the members of the college, place of work of the registrar, the laboratory for the scientists, among others. Nevertheless, he was yet to see the University where the members of the University

[90] Human Rights Lawyers Association, 'Ten years of the Human Rights Act: Providing Protection, Participation and Accountability' 2010
[91] The Elimination of All Forms of Racial Discrimination 1969
[92]The International Covenant on Civil and Political Rights 1976
[93] The International Covenant on Economic, Social and Cultural Rights 1966
[94] The Convention on the Elimination of All Forms of Discrimination Against Women 1979
[95] The United Nations Convention Against Torture 1987
[96] The Convention on the Rights of the Child 1990
[97]The Convention on the Rights of Persons with Disabilities 2008
[98] The European Social Charter 1965
[99] The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment 2002
[100]The Convention on Action against Trafficking in Human Beings 2008
[101] The Framework Convention for the Protection of National Minorities 1998
[102] The European Charter for Regional or Minority Languages 1998
[103]*J.H. Rayner (Mincing Lane) v Department of Trade and Industry*, [1990] 2 AC 418, 500;Richard Clayton and Hugh Tomlinson, *The Law of Human Rights*(OUP 2009) para 2.05
[104] Gilbert Ryle, *The Concept of Mind* (University of Chicago Press 1949) 16

lives and work. The foreigner had to be clarified that the University is not a separate collateral institution or some ulterior counterpart to the colleges, laboratories and offices seen by him.[105] All he had seen is the form in which the University is organised. When he had seen the colleges, laboratories and offices and how they are coordinated, then he had seen the University. Gilbert Ryle described his misunderstanding as a category-mistake:

> His mistake lay in his innocent assumption that it was correct to speak of Christ Church, the Bodleiaon Library, the Ashmoleon Museum *and* the University, to speak, that is, as if 'the University' stood for an extra member of the class of which these other units are members. He was mistakenly allocating the University to the same category as that to which the other institutions belong.[106]

The company is understood as an artificial person different from a natural person and to avail the company with constitutional rights applicable to the natural person is to be guilty of what Gilbert Ryle described as a category-mistake. The nature of the corporate person is different from that of a natural person and accordingly the constitutional rights available to the corporate person ought not to be exactly the same with that of a natural person.[107] In *Salomon v Salomon*[108] Lord Macnaghten fittingly explained that the company is a person with separate personality from the individual members.[109]Chief justice Marshal in *Dartmouth College*[110] also aptly noted: 'Being the mere creature of law, [a corporate] possess only those properties which the charter of its creation confers upon it either expressly or as incidental to its very existence.'[111] Then Justice William dissenting in the American case of *First National Bank v Belloti*[112] best captured it: 'Since it cannot be disputed that the mere creation of a corporation does not invest it with all the liberties enjoyed by natural persons…our inquiry must seek to determine which constitutional protections are 'incidental to its very existence.'[113]

The corporate person it cannot be denied should be able to claim some constitutional rights. The relevant question is what constitutional rights should the company be able to claim and when? Under the UK common law, the courts have decided on numerous cases constitutional rights which are incidental to the very existence of the corporate person as different from the natural person. The constitutional rights of the company recognised by the UK courts include the right to a fair trial in the determination of its civil rights and obligation or any criminal charge against it (Article 6);[114]protection of property (Article 1 of the First Protocol to the Convention);[115] and freedom of expression (Article 10).[116]

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[105] Ibid
[106] Ibid
[107] Chris O' Kelley, 'The Constitutional Rights of Corporations Revisited: Social and Political Expression and the Corporation after *First National Bank v Bellotti*' (1979) 67 *Georget. Law J* 1347, 1350
[108] Ibid (n1)
[109] Ibid
[110] *Trustees of Dartmouth College v Woodward* (1819) 17 US, 518
[111] Ibid 636
[112] *First National Bank v Belloti*(1978) 435 US 765
[113] Ibid 824
[114] *R(Alconbury Developments Ltd) v S S for Environment, Transport and the Regions*[2001] UKHL 23
[115] *R (Infinis Plc) v Gas and Electricity Markets Authority*[2013] EWCACiv 70
[116] *Autronic AG v Switzerland*(1990) 12 EHRR 485

The Right to a Fair Trial

In *R(Alconbury Developments Ltd) v S S for Environment, Transport and the Regions*[117], Alconbury Developments Ltd and other challenged three separate procedures: the ability of the Secretary of State in determining an application which he himself had called in for determination instead of the local planning authority; the power of the Secretary of state to reach a decision regarding a proposal where he had recovered jurisdiction from his appointed inspector; the power of the Secretary of State to approve compulsory purchase orders under the Highway Act 1980 and Acquisition of Land Act 1981 and application promoted under the Transport and Works Acts 1992. The claimants submitted that their civil rights were affected by the decisions; following the requirements of ECHR Art. 6(1) those issues ought to have been decided by an independent and impartial tribunal; there was lack of adequate judicial control. The House of Lord held that the extant British planning system is to all intents and purposes in line with the contents of Article 6 of the European Convention on Human Rights which provides for the right to a fair hearing by an impartial and independent tribunal.[118]The court acknowledged that although the claimant company is entitled to the protection of ECHR Art. 6(1) regarding fair hearing, nevertheless, a government minister can be both a policy maker and a decision maker without violating ECHR Art. 6(1).[119] The court concluded that the decision making powers exercised by the Secretary of State in the case are not incompatible with the right to a fair trial under Article 6 of the European convention on Human Rights.[120] The significance of this case is two fold: the Secretary of State can act both as a policy maker and decision taker in the circumstance; and the company can invoke Article 6 of the Convention seeking for a fair trial in the determination of its civil rights and obligations.

In *Marpazecland BV v Netherlands*[121], it was further decided that the right to a fair trial also extends to the determination of any criminal charge against the company.[122] In this case, the activities of the applicant companies and their director were being investigated by the officials of the Fiscal Intelligent and Information Service following a suspicion of forgery and tax fraud. During a preliminary judicial investigation, the investigating judge heard extensive testimony of large number of witnesses and refused to hear further five witnesses by the counsel to the applicant companies. The investigation was concluded and fines imposed on the applicant companies whilst the director was sentenced to two years imprisonment.[123] Following an appeal by the applicant companies and the director, the Advocate General to the Court of Appeal initiated negotiations with the applicant companies and the director for the appeal to be withdrawn. The appeal was subsequently withdrawn on the grounds that the fines and the sentence imposed on the applicant companies and the director respectively, would be reduced. However, the remission of the sentence was refused following the withdrawal of the appeal and the applicant companies with the director made

[117]Ibid (n 114)
[118]Ibid Para 70 (Per Lord Hoffman)
[119] Ibid Para 139 (per Lord Clyde)
[120]Ibid Para 48 (Per Lord Slynn)
[121]*Marpazecland BV v Netherlands*(application 46300/99) (2004) 40 EHRR 34
[122]Ibid
[123] Ibid Para 8-16

further appeals.[124] At the European Court of Human Rights, the issue concerned whether there has been a violation of Article 6(1) of the convention has been violated as regards the fair hearing and the length of the criminal proceedings against the applicant companies. The court held that there had been an actual violation of Article 6(1) of the Convention regarding the fairness and the length of the proceeding against the applicant companies. Damages were also ordered to be paid to the applicant companies.[125]The precedence established by the case is that the companies are also entitled to a fair hearing in a criminal case.

To ascertain if a particular right is incidental to the very nature of the corporate person, our inquiry will concern whether the attribution of a particular right to the company would do violence to the artificial personhood of the company; whether the recognition of such a fundamental right would present the company more of as a natural person or does such a right fit in within the scope of corporate artificial personality. With respect to the right to fair hearing, it is a fact that the company possesses the right to sue and be sued in a court of law. In *Salomon v Salomon*[126], Lord Macnaghten stated:

> When the memorandum is duly signed and registered, though there be only seven shares taken, the subscribers are a body corporate 'capable forthwith,' to use the words of the enactment, 'of exercising all the functions of an incorporated company.' Those are strong words. The company attains maturity on its birth. There is no period of minority - no interval of incapacity. I cannot understand how a body corporate thus made 'capable' by statute can lose its individuality by issuing the bulk of its capital to one person, whether he be a subscriber to the memorandum or not. The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act.[127]

In *Foss v Hartbottle*[128] Wigram VC stated it more clearly that company is the proper plaintiff with the capacity to sue when there is a wrong against the company[129], although a company may sue and be sued by its own members in some limited circumstances. These limited circumstances involve actions concerning *Ultra vires* and illegality;[130] a special majority;[131] invasion of individual rights;[132]and frauds on the minority.[133]

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[124] Ibid Para 28
[125] Ibid Para 76
[126] Ibid (n1)
[127] Ibid 51 (per Lord Macnaghten)
[128]*Foss v Harbottle* (1843) 2 Hare 461
[129]Ibid 490 (per Wigram VC)
[130] The Companies Act 2006 s 39; *Cockburn v. Newbridge Sanitary Steam Laundry Co.* [1915] 1 IR 237, 252-59 (per O'Brien LC and Holmes LJ); *Smith v Croft (No 2)*[1988] Ch 114;
[131]*Edwards v Halliwell* [1950] 2 All ER 1064
[132]Ibid; *Pender v Lushington*(1877) 6 Ch D 70, per Jessel MR
[133]*Daniels v Daniels*[1978] 1 Ch 406; *Gambotto v WCP Limited* (1995) 182 CLR 432 (Aus); *Atwool v Merryweather* (1867) LR 5 Eq 464

The capacity to sue and be sued as an implication of incorporation is somewhat codified as follows:

> The subscribers to the memorandum, together with such other persons as may from time to time become members of the company, are a body corporate by the name stated in the certificate of incorporation. The body corporate is capable of exercising all the functions of an incorporated company.[134]

The principle that emanated from these authorities is that the company as an artificial person has the capacity to sue and be sued in a court of law. A corollary to the corporate capacity to sue and be sued is that the corporate person is entitled to a fair hearing in any legal action for and against the company. The institution or defence of a suit in a court of law is inseparable from hair hearing. If the company can sue and be sued, invariably the principle of *audi alteram partem* also extends to the company as a matter of fundamental right.

Freedom of Expression and Information

In *Autronic AG v Switzerland*[135], the applicant, Autronic AG, was a private commercial company dealing on home electronics, in particular, dish aerials.[136] The company made applications to Swiss authorities to be allowed to show a public television programme received from a Soviet Satellite through a private dish aerial. The aim was to show the technical capabilities of the equipment for the promotion of sales. The request by Autronic AG was declined because the authorities did not obtain consent from the Soviet Embassy.[137] Autronic AG argued that to base the permission in receiving broadcasts on the consent of the broadcasting State amounts to a violation of its rights to receive information as enshrined in Article 10 of the European Convention on Human Rights.[138] One of the issues concerned whether the freedom of expression as expressed in Article 10 of the Convention allowed a company to receive information across borders for strictly economic gain; whether there could be a restriction on receipt of information when the information was broadcast abroad without the consent of the broadcasting state. It was decided that neither the legal status of Autronic AG as a limited company, the fact that its operations were commercial, nor the intrinsic nature of freedom of expression could deny it of the right contained in Article 10. The provisions of Article 10 were considered applicable to both natural and artificial persons and it applied to profit-making corporate bodies as well as to the means of transmission or reception.[139]

Similar issue was also considered in the case of *R (North Cyprus Tourism Centre Ltd) v Transport for London*.[140] In this case, North Cyprus Tourism Centre Ltd was a company registered in the UK and carried on advertisement on London buses featuring a family strolling along a beach, boats beneath the Crusader/Venetian fortress at Kyrennia and the

[134] The Companies Act 2006 s 16(2) (3)
[135] Ibid (n114)
[136] Ibid Para 10
[137] Ibid Para 13-16
[138] Ibid Para 17-18
[139] Ibid Para 47-48
[140] *R* (*North Cyprus Tourism Centre Ltd) v Transport For London* (2005) EWHC 1698

ruined Augustinian Abbey at Bellapais, all in Northern Cyrpus.[141] The Transport of London introduced a ban on the advertisement on the ground that the Turkish Republic of Northern Cyprus is not a country recognised by the UK government.[142] The court held that the first claimant company that sought to advertise holidays in North Cyprus has a standing to bring a claim for judicial review of the decision of Transport for London. More so, the ban was considered a restriction of the freedom of expression of the first claimant; a denial of a vital medium for its advertisements and had sought no legitimate end required in a democratic society. The ban thus violated Article 10 of the European Convention on Human Rights.[143]

Issue regarding the entitlement of the company to freedom of expression was also clarified in the case of *Meltex Ltd and Mesrop Movsesyan v Armenia*.[144] There, the applicant company Meltex Ltd was granted a five-year broadcasting license in 1997 by the Ministry of Communication.[145] Later in 2000 a Law on Television and Radio was passed which introduced a new licensing procedure and the granting of licenses entrusted to the National Television and Radio Commission (NTRC). The Commission did renew the license of the applicant until there were competitions for licensing. Tenders were called for by the Commission on various broadcasting frequencies.[146] The Commission appointed another company as having won the call for tender. The electricity supply to the transmitter of applicant was disconnected and its broadcasts ceased. The applicant made several unsuccessful attempts to have the decision annulled before the courts. The applicant successfully submitted bid for other frequency competitions, but was refused a license on each occasion.[147] The applicant company brought a complaint under Article 10 of the Convention in that the Commission infringes on the right to freedom of expression. It was found by the court that there has been an actual violation of the alleged freedom of expression entitled to by the applicant as guaranteed under Article 10 of the European Convention in Human Rights. Costs were also awarded against the respondent State and in favour of the applicant.[148]

The ascription of the right to speech or freedom of expression to the corporate person is reasonable and has in fact been justifiably recognised in other jurisdictions like the US. In the American case of *First National Bank of Boston v Bellotti*[149], the Supreme Court had decided that the First Amendment applies to corporate speech. In that case, the Massachusetts General Court in 1976 proposed a constitutional amendment to the people of the state in which the legislature was allowed to impose on the income of individuals a graduate tax. This was opposed by some companies in that it would destroy their business. The companies consequently sought to spend money in publicising through newspaper advertisements and the likes, their challenge to the proposed amendment.[150] A statute was established prohibiting

[141]Ibid Para 1
[142]Ibid Para 2
[143]Ibid Para 75-78
[144]*Meltex Ltd and Mesrop Movsesyan v Armenia* (application 32283/04) 49 EHRR 40
[145]Ibid Para 8
[146]Ibid Para 10-16
[147]Ibid Para 10-45
[148]Ibid Para 109
[149]Ibid (n 112)
[150]Ibid 1265-1266

their expenditures, in particular, the statute forbade a company incorporated under the laws of Massachusetts or carrying on business within the state of Massachusetts from giving or expending anything of value. The statute also provided the irrebuttable evidentiary presumption that '[n]o question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation.'[151] Surprisingly, there was an absence of a similar prohibition against expenditures by natural person doing similar businesses. Companies sued Massachusetts Attorney, General Francis Bellotti, the Coalition for Tax Reform, and United Peoples, Inc., arguing that it was unconstitutional because it violated their right to free speech. The basic argument was that in as much as the US Supreme Court had decided that expenditures for expression are akin to speech, the provisions of the statute infringes on their rights under the First Amendment and deprived them equal protection of the laws. The US Supreme Court in its decision declared the statute unconstitutional in violation of speech right under the First Amendment.[152] Justice Powell concluded that legislatures are 'constitutionally disqualified from dictating the subjects about which persons may speak and speakers who may address a public issue.'[153] The stock of information available to the public would be impermissibly limited should the polity of the corporate view on any matter be denied.[154]

In a more recent US case, *Citizens United v Federal Election Commission*[155], the US Supreme Court had also similarly held that the free speech clause under the First Amendment prohibits the government from preventing independent expenditures for communications by companies.[156] In this case, Citizens United, a conservative non-profit organisation released a film, *Hillary: The Movie*, which was immensely critical of the Democratic presidential candidate, Sen. Hillary Rodham Clinton, shortly prior to the 2008 Democratic primary elections. This contravened the Bipartisan Campaign Reform Act[157] which outlawed the act of an 'electioneering communication' by a corporation or labour within 30 days of a primary election or 60 days of a general election. The Act also prohibited any form of expenditure pushing for the election or defeat of a candidate at any time. In the judgment of the court delivered by Justice Anthony Kennedy, the majority opined that the provision of Bipartisan Campaign Reform Act did violate the protection of free speech provided under the First Amendment.[158] Earlier cases such as *Austin v Mitchigan Chamber Commerce*[159] and *McConnell v FEC*[160] which had restricted corporate speech-related spending and corporate spending on electioneering communications respectively, were overruled. By implication, the freedom of speech extends to corporate electioneering communications and the direct push for the election or defeat of candidates.

[151] The Massachusetts General Laws(1979) ch. 55 § 8
[152]Ibid (n 112) 794- 795
[153]Ibid 795 (Per Powell J)
[154]Ibid
[155]*Citizens United v. Federal Election Commission*(2010) 558 U.S. 310
[156]Ibid
[157] The Bipartisan Campaign Reform Act 2002 s. 203
[158]Ibid (n155)
[159]*Austin v. Michigan Chamber of Commerce* (1990)494 U.S. 652
[160]*McConnell v. Federal Election Commission* (2003) 540 U.S. 93

However, fitting as the corporate right to speech is, its recognition has been heavily criticised. Justice White dissenting in *First National Bank v Bellotti* asked 'whether a State may prevent corporate management from using the corporate treasury to propagate views having no connection with the corporate business.'[161] He analysed that the interest of the corporate body appeared subordinate to the sovereign. The common good is an end and where this is not achieved by the unrestricted corporate involvement in the political process, the corporate activity is to be limited by the legislatures. He concluded that 'the State needs not permit its own creation to consume it.'[162]Of the decision in *Citizens United*, Sen. Elizabeth Warren once remarked that, 'Corporations are not people!'[163]In essence, only natural persons ought to have freedom of speech as enshrined in the Constitution. Justice John Paul Stevens dissenting in *Citizens United* opined that corporate speech should be restricted for the protection of shareholder's investment. He viewed the shareholders as the owners who pay for an electioneering communication having invested in the business of the company strictly for economic purposes.[164] Similarly, Professor Jaime Raskin in criticising *Citizens United* argued that companies ought not to spend in elections for 'after all, its [shareholders'] money.'[165]

Noticeably, the critics of corporate right to speech are supporters of the shareholder primacy theory. To push forward their firm belief of shareholder primacy, they attacked the artificial personhood of the company and hence the corporate speech right.[166] However, try as they may, the corporate right to speech is undeniable and any attempt to deprive the company of such a right would be harmful.

Right to Property

Under the Article1 of the First Protocol to the Convention it was expressly stated that the right to property is applicable to both natural and artificial legal person.[167] The corporate right to property has also been recognised in *R (Infinis Plc) v Gas and Electricity Markets Authority*.[168] In this case, the claimants are the owners and operators of two power stations which supplies electricity to the National Grid. It is the requirement that the claimant being electricity suppliers would enter into arrangements in generating electricity from no-fossil fuel sources. In line with these arrangements, suppliers are required to obtain Renewable Obligation Certificates (ROCs), or where they did not meet the targets, they would then pay a charge.[169] The power stations of the claimant could not be accredited by the authority because

[161] Ibid (n 112) 803 (White J dissenting)
[162] Ibid 809 (White J dissenting)
[163] David A Fahrenthold, 'Sen. Elizabeth Warren, The Teacher Reminds Democrats That 'Rally' Is A Verb' The Washington Post (Washington 28 October 2014) <https://www.washingtonpost.com/politics/sen-elizabeth-warren-has-become-a-master-of-the-stump-speech/2014/10/28/acfee026-5e0e-11e4-8b9e-2ccdac31a031_story.html?noredirect=on&utm_term=.f4e7c91c5702> accessed 4 July 2019
[164]Ibid (n 155) 475-476 (Stevens J dissenting)
[165] Jaime B Raskin, 'A shareholder solution after 'Citizens United'' The Washington Post (Washington 3 October 2014) <https://www.washingtonpost.com/opinions/a-shareholder-solution-to-citizens-united/2014/10/03/5e07c3ee-48be-11e4-b72e-d60a9229cc10_story.html?noredirect=on&utm_term=.a83812653fcb> accessed 4 July 2019
[166] Kent Greenfield, 'In Defense of Corporate Persons ' (2015) 366 *Boston College Law School Legal Studies Research Paper* 308
[167] Ibid (n 41)Protocol No. 1, Article 1
[168]Ibid (n 113)
[169]Ibid Para 3-6

there was an already existing Non-Fossil Fuel Order (NFFO) arrangement with the relevant power stations. Following the terms of the Renewable Obligations Order 2006 and Renewable Obligations Order 2009, the power stations of the applicants are excluded from accreditation and thus could not be issued with ROGs.[170] The applicants brought an application for judicial review of the decision by the Gas and Electricity Markets Authority in refusing to accredit the two power stations, which made them liable for charges. The Lindblom J at first instance held that the decision by the Gas and Electricity Market Authority not to accredit the generating stations of the applicants was unlawful.[171] He found that there had been a breach of Article 1 of the first Protocol to the European Convention on Human Right and awarded damages of over £3million due to the breach and this decision was also affirmed at the appellate level.[172] The underlying import of this authority is that the right to property is not only extended to the corporate body but also the company is entitled to damages in the event of a breach of such right.

In law, the nature of the corporate person allows it to conduct business and the acquisition of property is attendant to business transaction.[173] Consequently, the company should be justifiably vested with the right to property. Moreover, the company has a separate personality from its members and the individual members of the company cannot own property on behalf of the company.[174] In a situation where the corporate members acquire property in the name of the company, the separate personality would appear unreal and the artificial personhood of the company inauthentic.

However, a little confusion arises in the case of *R (Infinis Plc) v Gas and Electricity Markets Authority*[175]whereby the court awarded damages of over £3million in favour of the company. The decision can be contrasted with the earlier case of *R v Home Secretary, ex parte Atlantic Commercial Ltd*.[176] In this latter case, it was held that the Criminal Justice Act 1988 s 133 which directed that persons convicted of an offence should be compensated by payment and which was intended to give effect to the United Nations International Covenant on Civil and Political Rights (1966), art 14 (6) does not apply to the company.[177] In distinguishing both cases, it should be understood that the damages awarded in *R (Infinis Plc) v Gas and Electricity Markets Authority*[178]were in respect to the pecuniary benefit the company was entitled to by statute. Whilst the damages referred to in *R v Home Secretary, ex parte Atlantic Commercial Ltd*[179]concerns compensation of injury to human feelings arising from wrong done. The company in law is an artificial person with no human feelings unlike the natural

[170]Ibid Para 8-9
[171]Ibid Para 1
[172] Ibid Para 26-30
[173]*Gas Lighting Improvement Co. Ltd v Commissioner of Inland Revenue* [1923] AC 723
[174]*Metropolitan Saloon Omnibus Co Ltd v Hawkins* (1859) 4 Hurl & N 87; *South Hetton Coal Co Ltd v North Eastern News Association Ltd* (1894) 1 QB 133; *Jameel v Wall Street Journal Europe SPRL* [2006] UKHL 44, [2007] 1 AC 359
[175]Ibid (n 113)
[176]*R v Home Secretary, ex parte Atlantic Commercial Ltd*. [1997] BCC 692
[177]Ibid
[178]Ibid (n113)
[179]Ibid (n 176)

person and as such cannot be awarded damages in compensation of injury to human feelings for wrong done.[180]

Right to Privacy

In *R v Broadcasting Standards Commission*[181], the BBC made a secret filming of some sales transactions in Dixon store to see if Dixons had been selling second hand goods as new. The actions of the BBC were considered an unwarranted infringement of the privacy of the company by the Broadcasting Standards Commission. This was challenged through a judicial review by the BBC and the appellate court upheld the adjudication of the Broadcasting Standards Commission. The Court of Appeal made it clear that by virtue of the Broadcasting Act 1996, a corporate body can complain of invasion of privacy by a corporate body as different from invasion of privacy under Article 8 of the Convention. Notably, the court emphasised that it will not decided on whether a corporate body is entitled to the invasion of privacy in Article 8 of the Convention.[182]

The decision of the Court of Appeal is commendable and justifiable in as much as it was reasoned that the privacy of the company had been infringed, particularly in relation to the ambit of the Broadcasting Act 1996. The companies are empowered under this Act to make a complaint regarding an invasion of privacy. In truth, the meaning of infringement of privacy in the Broadcast Act 1996 differs from its concept provided under Article 8 of the Convention. Whilst former is applicable to the company, the natural person is exclusively entitled to the latter. Interestingly, the three members of the Court of Appeal held that they were not deciding whether the concept of in the Convention will apply to the company. The right to privacy under Article 8 of the Convention is by its very nature personal and human in nature and ought to be applicable only to the natural persons. Had the court decided that the right to privacy as understood under Article 8 of the Convention is to be extended to the corporate body, it would not only do violence to the nature of the corporate person but will also open the floodgate for companies to initiate suits on invasion of privacy. This will in no small measure jeopardise the success of criminal investigations on corporate bodies.

CONCLUSION

There is no gain saying that the UK has a constitution. The existence of the UK constitution is evidenced by the existence of the rule of law, the separation of powers and parliamentary supremacy as alleged by A. V. Dicey. In its objective sense, a constitution consists of rules regulating the distribution of powers, duties and functions among agencies and officers of the government as well defining their relationships with the public and this characterises the UK constitution. The UK arguably has a written constitution in form of statutes, court judgements, works of authorities and unwritten in form of parliamentary conventions and royal prerogatives. Interestingly, the substance of codified constitutions of most countries like the US was derived from the core of the UK constitution and this goes to show the existence of a UK constitution in that nothing comes from nothing.

Statutorily, the human rights have been recognised under the UK law and these fundamental rights include the right to life; prohibition of torture, inhuman or degrading treatment and

[180] *Collins Stewart Ltd v Financial Times Ltd* [2005] EWHC 262, [2006] EMLR 5
[181] *R v Broadcasting Standards Commission, ex parte British Broadcasting Corporation* [2001] QB 885
[182] Ibid

punishment; prohibition of slavery or forced labour; right to liberty and security of the person; right to fair and public trial; prohibition of retroactive or retrospective criminal laws; right to private and family life; freedom of thought, conscience and religion; freedom of expression; freedom of assembly and association; right to marry; freedom from discrimination; restrictions on political activity of aliens; prohibition of abuse of rights; limitation on use of restrictions on rights; among others.

By the nature of the company as an artificial legal person, some rights enjoyed by the natural person ought not to be attributed to the company. The constitutional human rights of the company acknowledged under the UK law include the right to a fair trial in the determination of its civil rights and obligation or any criminal charge against it; protection of property; and freedom of expression. The recognition of these constitutional human rights as applicable to the company is reasonable and valid.

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