The EAW is unconstitutional. Here is how it can be struck down

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Not just EAW arrests are unconstitutional, but so are all arrests **made on no evidence**.

This is the chief difference between an arrest made on a domestic arrest warrant and an arrest made on a European Arrest Warrant.

A domestic arrest warrant must be backed by evidence already collected, under our UK laws on Habeas Corpus, based on Magna Carta sec.38 (see below).

In contrast, under the Napoleonic-inquisitorial systems used in continental Europe, a suspicion based on clues held by the investigator (who usually wears a judge s robe), is enough to order an arrest and imprisonment. Then they seek evidence,

This is the nub of the case of the **Catalan Professor Clara Ponsati**, and which, it is to be hoped, will be at the heart of the debate to be held in the Sheriff s court in Edinburgh on April 12th next, or perhaps subsequently.

Here, in summary, is my suggestion as to **how the EAW against her can be dismantled**:

1. She is accused by the Spaniards of violent rebellion and misuse of public funds . (It is clear that Prof. Ponsati has never used nor advocated violence, the use of the term shows bad faith on the part of Spain s judiciary, an intention to smear her character before public opinion.)
2. She should ask the prosecution to produce evidence of this.
3. The court will respond that under the terms of the Extradition Act 2003 this is not necessary, these are matters that will be dealt with by the Spanish courts, and her request will be refused.
4. At this point she can quote Habeas Corpus and Magna Carta sec. 38, which stipulate that no legal proceedings can be started against anyone without evidence (see details below).
5. The court will reply that the Extradition Act 2003 dispenses with the need for the foreign judicial authority to produce evidence to a British court, and its provisions supersede the earlier ones in Habeas Corpus and Magna Carta, by implied repeal.
6. At that point she can say that Habeas Corpus and Magna Carta are CONSTITUTIONAL LAWS, which are not subject to implied repeal, quoting the precedent of the Metric Martyrs judgement by Lords Laws and Crane (see details below).
7. It then becomes apparent that the EAW is unconstitutional, repugnant to our Constitution, and invalid in the UK.

I cannot see how the Court can answer this. They might wish to refer it to the European Court of Justice, which of course will have no regard for our Habeas Corpus or Magna Carta safeguards (unknown in continental Europe), but at that point the matter takes on enormous public interest, not just in Scotland and Catalonia, but world-wide.

Two contrasting legal systems will be seen to be in conflict. Our Magna Carta based heritage, versus the Napoleonic-inquisitorial heritage of continental Europe (adopted in toto in the EU s Corpus Juris proposal for a single EU-wide criminal code, which was rejected by the UK in 1999. The EAW is the first step towards Corpus Juris).

Domestic arrests, whether made in England, Scotland or Northern Ireland, have to be supported by evidence of wrong-doing already collected by the investigators beforehand. To make sure that this happens, Habeas Corpus stipulates that an arrested person must appear in open court within hours, or at the most a few days (or in very extreme terrorist cases, 28 days), and there charged formally with a precise accusation. And if so required, the prosecution must be able to produce their evidence of a prima facie case to answer, at that hearing.

This fundamental right, which protects innocent people who are wrongly suspected of crime, descends from Magna Carta, section 38. This (usually unnoticed) section is the basis of Habeas Corpus, which prevents people from being arrested and imprisoned arbitrarily, on no evidence.

In their incredible and foresightful wisdom, 800 years ago, our forefathers laid down, in Latin and the Latin is important in just fifteen words, the basis of our freedom from arbitrary arrest and prosecution or persecution and harassment by officers of the State. It says:

Nullus balivus ponat aliquem ad legem, simplici sua loquela,

sine testibus fidelibus ad hoc aductis.

In English:

No legal officer (balivus, originally bailiff) shall put anyone to the law ie shall start legal proceedings against anyone (NB anyone aliquem this is a universal human right, not limited to free men), on his own mere say-so, without reliable witnesses who have been brought for the purpose.

N.B. Note the use of the past participle aductis : the witnesses, the evidence, must have already been collected

having sold bananas by the pound weight instead of by the kilogram as had become compulsory under an order complying with an EU directive, issued under the legal force of the European Communities Act 1972 (ECA72). The defendants of this absurdly unfair conviction became known as The Metric Martyrs . They appealed against their conviction, but their appeal failed.

We must look at the reasons given, why their appeal was turned down.

When the Appeal Court Lords Laws and Crane confirmed the conviction of the Metric Martyrs, they gave a novel answer to the defence s arguments: the defence had argued that the 1985 Weights and Measures Act (WMA85), which allowed market produce to be sold in lb and/or kg, was subsequent to the ECA72 (under whose provisions the order criminalising the sale of fruit by the pound weight instead of by the kilogram had been issued). Therefore, argued the defence, the WMA85 over-rode that part or that effect of the ECA72 under the doctrine of implied repeal, whereby if there be a conflict between laws then the subsequent law is deemed to have over-ridden and annulled the provisions of the earlier law.

Not so, said their Lordships. They said that **the ECA72 had the status of a constitutional act , and so could not be over-ridden by subsequent legislation under implied repeal, but only if the repeal was explicitly spelt out in the text of the subsequent Act.**

Since the WMA85 did not explicitly repeal any provisions of the ECA72, which it might have done by including words like any provisions in or deriving from the ECA72 notwithstanding , but didn t, then in this case the earlier ECA72 must be held to prevail over the later WMA85. They even added, as a consolation sop to the defence, that Parliament is in any case free to repeal the ECA72 whenever it wishes, as long as it does so explicitly.

The Metric Martyrs now presented an appeal to the House of Lords, but it was thought that their appeal was not worthy of consideration, so the decision of the Appeal Court acquired the status of LEGAL PRECEDENT, which as every law student knows, is now binding on subsequent decisions.

This innovation by Laws and Crane can be summarised in general terms as follows:

1. There are now two levels of law in the United Kingdom:

over-ride Habeas Corpus and Magna Carta sec. 38, it should have said so explicitly. In fact it did not abrogate section 38 of Magna Carta! Indeed section 38 is hardly ever talked about because, in the English-speaking world at least, it is considered too obvious that you need evidence of wrong-doing before starting legal proceedings against anyone.

To get round this, a UK court would have to deny that Magna Carta and Habeas Corpus had constitutional status, or Parliament would have to repeal them. It is highly doubtful that either would have the heart and stomach to do so. The wave of public anger and indignation would be overwhelming.

That the European Arrest Warrant is in fact incompatible with Habeas Corpus is dealt with by Jonathan Fisher QC in his learned Opinion (para. 4 page 2, and para.s 70-85 pages 19-22):