THE LAW OF THE LAND AND ALIEN LEGAL SYSTEMS: CAN THEY CO-EXIST? A MATTER OF ALLEGIANCE

Speech by Torquil Dick Erikson © 2017

EUROPEAN LAW – Will it go away with BREXIT?

(Torquil was the first person to expose "Corpus Juris", the project by Brussels for a single EU-wide criminal code)

Well, last week Ms Amber Rudd Home Secretary gave us the answer to that second question, in the negative, when she told Parliament that:

"Britain will try to remain in European Union security organisations and systems such as Europol - the EU's law enforcement agency - and the European Arrest Warrant (EAW) after Brexit".

This looks like a discordant note, a legacy from the bad old days when the Home Secretary was a Euroenthusiastic – I might even say Eurofanatical – person, going by the name of Theresa May, who pushed and chivvied her party into reconfirming the EAW, which they did with a large majority in November 2014, even thought they had opposed it in 2003 when it was introduced by the then Labour government.

And yet we Brexiteers are all so fired up with Mrs May's resolutely Brexiteering rhetoric, her refusal even to stay in the single market, her no-nonsense handling of opposition in the Commons and the Lords, not to mention from the SNP, that it seems a pity to carp over what appears to be just a loose end.

However, as I shall show, it is a loose end which, if firmly grasped and pulled by the Eurocrats, can unravel us and reduce us to complete subservience to their project.

In any case, we see now that Ms Rudd, presumably with the agreement of Mrs May, wants to keep us under the EU's law-enforcement powers, for ever. I shall be returning to the specifics of the EAW later.

But first, I wish to establish something that is not properly known or recognised in this country, to wit, that the legal systems of continental Europe ARE in fact ALIEN to us. In particular as regards criminal law.

I will later explain how criminal law is in fact the basis on which any State rests, necessarily, and how little this in appreciated in Britain.

ARE THE LAWS OF EUROPE ALIEN TO US?

Nobody could fail to see that Sharia law is alien to us, and incompatible with our way of life, as Anne Marie has so eloquently illustrated.

But the laws of Europe, are they too alien? Most people in Britain think they are not, that they pursue the same goals as our own; indeed they and we are all signed up to the European Convention on Human Rights, so “that must be all right”.

However, the short answer is Yes, they are alien to our way of life, although not to the same extent as is Sharia law. But they are alien. And if they were imposed on this country, as indeed the EU plans or planned to do with the Corpus Juris project, their application would be perceived as monstrously unjust.

The roots of our divergence from the laws of continental Europe go back 800 years.

In 1215 we had Magna Carta. Magna Carta crossed the oceans, and it is revered as the foundation of the laws of North America and Australasia. But it never crossed the channel.

When we had Magna Carta, that bulwark of individual freedom, on the continent they got the Holy Inquisition, that absolutist denial of individual freedom.

In 1215, the Pope in Rome, Innocent III, was setting up the machinery of the Inquisition.

Now while Magna Carta sought to limit and constrain the arbitrary power of the King – ie the State – over the individual, the Inquisition sought to expand and deepen this power.

Its essential innovation was to unify the functions of accusation and judgement, into the same hands, those of the Inquisitor. The function of defender was kept quite separate. With the Inquisition the dice were loaded in favour of the accuser.

It ravaged the countries of Europe for centuries, seeking out and punishing heresy, witchcraft, and scientific thought.

Its methods were soon adopted by secular rulers, as a means of stamping out political opposition.

Then in 1789 came the French Revolution, which swept away much of the old order. A new order was soon established, with Napoleon at the helm of France and much of Europe which his armies had conquered.

Napoleon was a law-giver. His codes underlie many of Europe’s laws to this day. Unfortunately he did not adopt the English system, derived from Magna Carta, which aimed to limit the power of the State over the individual. Instead he adopted and adapted the essential methods of the inquisition. Continental European criminal-law systems are called “inquisitorial” to this day. He adapted the system by reorienting it, from the service of the Church to the service of the State.

So what are the important, irreconcilable, differences today between our system, and the Napoleonic inquisitorial systems used in continental Europe?

I listed a number of these in my detailed submission to the House of Lords sub-committee in 2014, giving reasons and arguments why we should not re-confirm our acceptance of the EAW and 34 of the EU’s other JHAmeasures. I provided ample evidence to show that the continental legal systems are alien to, and incompatible with, ours. Their Lordships did not engage with my arguments but dismissed them out

of hand in one line. However you can read them by clicking on the link http://campaignforanindependentbritain.org.uk/wp-content/uploads/2017/06/SeriousRisks.pdf also to be found towards the end of the webpage https://savebritishjustice.wordpress.com. I will deal with a few of the major differences here, shortly.

WHAT IS CRIMINAL LAW FOR?

One of the problems we face in dealing with these matters in Britain is that we consider criminal law to be just about catching criminals, and nothing more. It is considered secondary, unimportant.

We have had peaceful constitutional development and changes of government for 350 years now. Unlike our continental friends who have nearly all witnessed violent changes of government in living memory.

The point is that criminal law is the basis of State power, and seizing control of the criminal law is essential if one is to take over an existing State, or to build a new State, as the EU seeks to do.

Why? Because the essential distinguishing feature of any State is the ability to use violent coercion on the bodies of the citizens – **legally**.

If anybody else seizes a person and locks them up against their will, beating and physically hurting them if they resist, they are just kidnappers. But the exact same action by an officer of the State, acting under the criminal laws of that State, will be legal. It is considered to be Justice.

Different peoples with different value-systems have different ideas of Right and Wrong, what is Justice and what is Injustice. We see this with crystal clarity when we consider Sharia law.

But in any case, the criminal laws are the handle for regulating State power over the individual. It is therefore in the criminal laws that the safeguards of our FREEDOM are to be found.

NOW WHAT IS WRONG WITH THE EAW IN ITS PRESENT FORM?

The essential defect of the EAW is that it does not allow, makes no provision for, a court in the receiving country, to ask to see, let alone assess, any evidence of wrong-doing by the person who is to be arrested.

It was assumed, blindly and blithely, by the hundreds of MPs who voted to reconfirm it in 2014, that the requesting state must surely have already collected enough evidence of guilt before issuing the warrant, just as in the UK. Since Misses May and Rudd want to continue with the EAW system indefinitely, they too must be making the same assumption, equally blindly and blithely.

Someone will say, “But all the EU states have signed the European Convention on Human Rights, so it must be all right”.

But what does the European Convention actually say?

It does not contemplate what we in Britain would consider a right of Habeas Corpus. All it says, in article 6 is that a prisoner has a right to a public hearing before an impartial tribunal in a “reasonable” time. But nowhere does it define what is “reasonable”.

For us in Britain, the preliminary public hearing in open court, where the prisoner is formally charged, must take place within hours, or at the most a few days, after his arrest and detention.

Some years ago there was an attempt to extend this, in serious terrorist cases, to three months, then reduced to six weeks.

An MP called David Davis fought a noble battle of principle against this – he resigned his seat and stood again for Parliament on this very point – Habeas Corpus. He won and was returned to his seat. In the end, Parliament fixed a maximum limit of 28 days of detention without charge, and only in exceptional cases of terrorism. This is what we in Britain consider to be "reasonable".

But for many EU states, under their Napoleonic-inquisitorial jurisdictions, it is considered "reasonable" to keep a prisoner under lock and key with no public hearing for six months, extensible by three months at a time. These are the terms of the Commission's Corpus Juris proposal for an embryo single uniform criminal code to cover the whole of Europe, including the British Isles.

This what is faced by anyone in Britain who is targeted by a European Arrest Warrant. And on a long list of crimes, not just terrorist cases. Now is the David Davis who resigned his seat to stop the sixweeks detention bill on no evidence, the same David Davis now in charge of the govt's Brexit department? If so, does he share Ms Rudd's wish to keep us subject to, not six weeks, but six months, and in the case of Andrew Symeou, nearly a whole year's detention with no public hearing? If he opposes it, will he please say so openly? If he does not answer this challenge, I think he has some explaining to do.

This is no marginal matter. As I have shown, whoever controls criminal justice, controls the police and prisons, and thus holds the ace of trumps in the struggle for power over a country.

And that is precisely what Brexit is really about – who shall hold power in this land? Shall it be the unelected bureaucrats in Brussels? Or shall it be the people of Britain?

So we see that the European Convention is a very thin blanket, designed to cover systems with Habeas Corpus and those without. It can only work if the woolly ambiguity of its use of words like "reasonable" remains unchallenged.

One might ask, why do the European courts need to be able to keep a prisoner in prison for so long before formally charging him?

There is a simple reason. In Britain, the Habeas Corpus right to a speedy public hearing after arrest ensures that the investigators have to find some pretty solid EVIDENCE of a prima facie case to answer BEFORE they arrest someone. This is based on Magna Carta's article 38. It seems to us to be mere common sense.

On the continent, in contrast, they only need a suspicion, based on mere clues or what we would consider to be very flimsy and insufficient evidence, in order to arrest and imprison a person. They can then seek EVIDENCE AFTER they have arrested him. And of course it is quite "reasonable" for them to say that this can take months.
This is the official reason. Of course there may also be other reasons, derived from the historic roots of their system in the Inquisition. In the bad old days they used the rack and thumbscrews, but nowadays they may be hoping that the harshness of unpredictably lengthy prison conditions will induce the prisoner to CONFESS.

IS THE EUROPEAN CONVENTION AND COURT OF HUMAN RIGHTS ANY GOOD?

In fact, there is no intention by this government to withdraw the UK from the European Convention or Court.
They aim to keep us in the Convention and under that Court.

And this, despite all the harrumphing in recent years that the ECHR is a "terrorists'charter", preventing us from dealing with terrorists and other criminals as we see fit. It must be said that, not only that, but it does not even do what it is supposed to say on the tin, making no provision for defending a basic right such as our Habeas Corpus.

In any case, Britain cannot be considered independent if we allow a court made up of judges from across Europe, political nominees of regimes, some with highly questionable human rights records, to define for us what our human rights should or should not be. Especially considering that there is no appeal against its decisions, which are final.

To be free, and self-governing again, we must withdraw from the European Convention and from our subordination to that Court. This will not put us on a par with Bielorussia, as has been claimed, but will bring us in line with Australia, New Zealand and Canada, which, not being European, are not subordinate to it.

WHY SHOULD WE WITHDRAW FROM THE EAW?

As I said, the EAW was passed on the assumption that European requesting states would only issue EAWs where they already had enough evidence to start a prosecution. This requirement was spelt out by the govt in the Parliamentary debate in 2003, that extraditions would only be granted if the case against the prisoner was "prosecution-ready". I remember the remarks by government spokesman, Bob Ainsworth, to that effect. It must have been further assumed that the evidence, of a *prima facie* case to answer, would be exhibited in open court **shortly** after the prisoner had arrived in the requesting State. It must have been on this basis, that it was declared, by high legal authorities, that the EAW was compatible with Habeas Corpus.

Then in practice, it was discovered in more than a few cases, this expectation was not met. There was tut-tutting and murmurs of "sloppiness" and "negligence by continental authorities", especially in certain countries, who "failed to maintain proper standards".

In 2003 I prepared a six-page briefing paper on aspects of Italian criminal procedure to show that these assumptions were not justified. It was read aloud in Committee proceedings by Nick Hawkins MP during the debate on the EAW. Bob Ainsworth did remark "well we see that Italian procedure is very different from ours", but the substance of the matter was airily ignored, and the legislation was passed regardless.

What was not, and still is not, realised, is that the continental authorities do not even try to work to what we consider to be "proper standards". They work to an entirely different yardstick. Their system is indeed alien to ours, as ours is alien to them.

Their Napoleonic-inquisitorial heritage allows them to arbitrarily arrest a suspect and imprison him on little or no evidence, and then spend months seeking to build a case against him, while he rots in duress vile. This for them is not a case of "abnormal failure to keep up standards". It is for them NORMAL ADMINISTRATION.

The two systems cannot co-exist in the same state. One must prevail.

So what should the UK do now? Tear up the EAW legislation?

Against this we have had the **"honeypot"** argument: "Britain will become a sanctuary, a honeypot, for criminals and terrorists. They will all come here, from all over Europe." Well that argument assumes that the lack of border controls will remain. However, when we leave the EU, border controls will be brought back. Known criminals will be kept out.

Then there is the argument that the **police like to keep the EAW**. The British head of Europol, Rob Wainwright, wants to keep it, and wants to keep us in, and under, Europol too. Well, one can see why the police like it, it makes their work much easier. But the police are only one part of our finely-tuned legal system with its checks and balances, which must aim not only to catch and punish criminals, but also to identify and spare the innocent. If we allowed the police to dictate policy, we would have something like a … police state.

There is the argument that "The **EAW keeps us safe** from criminals and terrorists". Hah! How safe are we when any dodgy judicial authority in any EU state can order any of us to be plucked from their beds in a dawn raid, by our own police, trussed up and shipped over to some dreadful dungeon there to wait months, and to learn in the end that there is no serious evidence at all? Or even to learn that the crime of which we are suspected, never actually happened.

Colin Dines is a retired British judge. How safe did he feel when he was hauled out of bed by British police acting on an Italian EAW, trussed up and shipped over to overcrowded Rebibbia prison in Rome, as part of an investigation into an Italian telecoms company, investigation which later collapsed completely? His MP, who took up the cudgels on his behalf, is Dominic Raab, who surely will have more details.

How safe do Andrew Symeou, Deborah Dark, the "Budapest two", and other innocent victims of the EAW feel, who have experienced first-hand the legal violence of foreign states on their persons?

How safe can we all feel, now that the European Public Prosecutor will soon be established, giving the unelected rulers in Brussels powers to issue EAWs against anyone in Britain (that the EPP will have this power, sidestepping our ostensible opt-out from his jurisdiction, is confirmed by the learned Counsel's Opinion of Jonathan Fisher QC, linked from savebritishjustice.wordpress.com). National public prosecutors will be under a duty to assist the European Prosecutor, so his writ will run large.

The lack of any requirement for evidence, opens the door to trumped-up charges, masking underlying, unconfessed, even political, motives. If the powers that be want to get rid of someone whom they consider a nuisance, they can launch an investigation, take the person out of circulation for many months, and by the time the case has collapsed, that person will have had his life ruined, and will have been taught a "lesson" he will not forget. This is a road to generalised tyranny for all.

My proposal is that the UK should withdraw at once from the EAW, and replace it with an arrangement similar to that which prevailed before the EAW was brought in.

Dominic Grieve MP, Attorney General, replied, somewhat dismissively, to a constituent, "You can hardly expect us to extradite only to countries that have trial by jury". Indeed this would rule out extraditions to any mainland country across the channel, for none of them have what we would call trial by independent jury.

What the UK must vouchsafe to its citizens at the very least, however, is that our Habeas Corpus rights be respected. This is the first duty of any British government, to safeguard the basic rights and freedoms of our citizens.

I think I have shown that Habeas Corpus is not respected in any of the countries governed under the Napoleonic-inquisitorial dispensation prevalent in mainland Europe, in that no right to a swift public hearing, is guaranteed to a prisoner after his imprisonment. A public hearing where he may demand to know what evidence there is against him.

Therefore, before allowing an extradition, Britain must itself provide that guarantee, to British citizens and to others who are legally on British soil. Far from being a honeypot for criminals, we will become once again, a beacon of freedom.

We must restore the power of a British court, in extradition cases where a person is sought for prosecution purposes, to demand to see, and to assess, the evidence on which the prosecution is based. The mere say-so of a legal officer is not enough, as provided by section 38 of Magna Carta itself.

Also, where a person has been convicted in absentia by a foreign court (a proceeding not allowed in Britain), and is sought merely so that he or she shall serve the sentence, the British court must be empowered to order that the extradition be consented only on condition that the case be reopened in the foreign court within a specified, short period, so that the prisoner may defend himself.

And the ultimate power to refuse extradition in cases where it is thought that it would be oppressive or unjust to allow it, must be restored to a British authority, as was the case up until 2002.

What keeps us safe in Britain? It is certainly not the EAW, which keeps us vulnerable and exposed to the vagaries of alien legal systems of which little is actually known, even to our legal professions, not to mention the government. There are to my knowledge no chairs of comparative criminal procedure in any university or law school in the country. And the Labour and Conservative governments to all appearances commissioned no research into the subject before passing and then re-confirming the EAW legislation, which exposes British citizens in Britain to alien systems which are not merely unfair or unjust, but are actually … unknown.

What keeps us safe? Two things keep us safe, and they are celebrated in the grand old song that many of us like to belt out at the last night of the Proms:

“This is the Charter, the Charter of the Land…” sings the soloist. And the Charter of course is Magna Carta, whose 800th anniversary was celebrated with much pomp and circumstance, but little understanding, by the government, two years ago. Magna Carta with its basic principles keeps us safe from legalised domestic tyranny.

Then the chorus, “Rule, Britannia, Britannia rule the waves” and this of course means we must keep and maintain a strong navy to keep us safe from invasion and tyranny from overseas.

And indeed while we are about it, we must also reclaim from the EU the 200-mile or median territorial waters to rebuild our fishing fleet. This is another gap in Mrs May’s stated Brexit programme that needs to be filled.

So that is how we can ensure that “Britons never, never, never, shall be slaves!”

[Delivered at a conference of the C.I.B., hosted in the House of Lords by Lord Pearson of Rannoch, on 15th March 2017.]