Why Britain must repudiate the European Arrest Warrant

1) The EAW is unjust and oppressive, and tramples on our historic rights and freedoms

Habeas Corpus presupposes that any order to arrest a person must be based on *evidence of a prima facie case to answer* that has already been collected by the authorities. This requirement is negated by the EAW, which forbids UK courts from asking to see evidence collected by the requesting state. The reality is that under the Napoleonic-inquisitorial systems of criminal justice used on the continent, suspects are arrested on the basis of mere clues, and most of the investigation to seek evidence is conducted with the suspects under lock and key. This can last many months, and there is no right to any public hearing during this time. This cannot happen under British procedures, where Habeas Corpus ensures that within hours of arrest, a suspect must be brought into an open court hearing and there charged, with evidence already available to be shewn.

2) It is based on a false conception – that the European Convention on Human Rights gives equivalent protection to our rights in all EU countries.

Neither the governmentt nor even the legal profession has conducted any systematic research into continental criminal law systems. They all rely (lazily) on the fact that all EU states are signed up to the ECHR, and this is supposed to guarantee the fairness of their systems and their worthiness

of recognition by our own. It is (presumably) supposed that the matter of evidence need not be examined by a British court, because the foreign court can be relied on to deal with it adequately and fairly.

The trouble with this is that the ECHR is vague and woolly in its wording, and totally inadequate when compared to the safeguards provided by our own Common Law system. For example, article 6 says a prisoner has a "right to a public hearing before an impartial tribunal in a reasonable time". But it doesn't say what is "reasonable". This can be as long as a piece of string. For us it is *hours* after arrest. In Italy, for example, and in the EU's Corpus Juris proposal for a single criminal code for all Europe, it can be up to *six months*, extensible. During this time there is no right to a public hearing. The time is used by the investigators to interrogate the suspect in prison, and to try to build a case against him.

3) It will give the EU the key power of statehood – arbitrary physical coercion over our bodies

Only a State has the right to arrest someone and put them in prison, depriving them of their liberty. If anybody else does it, it is a kidnap, and kidnappers are common criminals. By giving the EU this power – which is henceforth to be submitted to the jurisdiction of the ECJ and the enforcement powers of the Commission, so placed quite beyond the reach of our Parliament – we will effectively be granting it Statehood.

By granting the EU the power to have people arrested in Britain on no evidence, we grant them the power to exercise physical coercion over us quite arbitrarily. The real reasons for arresting a person may be quite different from the ones ostensibly stated – ie the charges can be trumped up. Their purpose could be political.

4) The European Public Prosecutor will be able to use it against us (despite our opt-out)

The idea of "mutual recognition" by EU states of one another's legal systems was originally put forward at Tampere in 1999 by Jack Straw as an alternative to the Corpus Juris proposal for a single system of criminal justice imposed on all (which he realised would be immediately unacceptable to the British people). The EAW is the first fruit of this idea. However the very first mention of a "European Warrant for Arrest" is actually in Corpus Juris itself (see below).

What seems to have escaped notice in Britain is that the EAW is not a permanent alternative to Corpus Juris, it is a stepping stone towards it. The centrepiece of Corpus Juris is the establishment of the European Public Prosecutor (EPP). Corpus Juris is the rule-book that defines his tasks and his powers. At least nine EU states are going ahead anyway with the EPP, under enhanced cooperation, though the UK has opted out.

However, our opt-out can be, and doubtless will be, sidestepped as have some other opt-outs in the past. Article 24.1.b of Corpus Juris (original edition, 1997) provides that "a European Warrant for Arrest, issued on the instructions of the EPP by a national judge… is valid across the whole territory…". Obviously, since Britain has opted out of the EPP proposal, the EPP will not be able to instruct a British judge to issue an EAW. But he can order, say, a Belgian judge to issue one against a person in the UK. Unless we repudiate the EAW now, the British police will receive the EAW from Belgium, and will simply have to execute it, with no questions asked. The person will be trussed up and shipped over to Belgium, where he will await the pleasure of the Belgian judge, who will doubtless hand him over to the EPP, and there he will languish, under lock and key for up to six months, extensible

by three months at a time (Corpus Juris, art. 20.3.g), and with no right to any public hearing during all this time.

Our own lawyers may well opine that "this would be an illegitimate use of the EAW", but unless we repudiate the EAW now, the entire matter will be subject to the jurisdiction of the ECJ, so out of our hands. And as we know, the ECJ's mission statement says its decisions must always further the aim of "ever-closer union"…

It is not yet known who will have power to appoint the EPP, but it is highly likely that the unelected Commission, which holds the monopoly of legislative proposals in the EU, will have a say. Doubtless there will be some statement in the legislation to say that the EPP "must be impartial and independent" but he will surely feel beholden to whoever it was who selected him, and who will doubtless have a say in his re-selection when his term comes to an end.

5) Its supposed advantages are non-existent for Britain

It is said by its apologists that the EAW is good for Britain because it enables us to obtain the speedy extradition of our own criminals who have taken refuge in other EU countries (and by the way, if we controlled our own borders this would not be so easy for them). Now our own police and crown prosecution service will never request the arrest of someone (whether inside or outside Britain) unless they have already collected enough prima facie evidence against him. They do this anyway, and they did it before the EAW – they would send an extradition request with an indication of the evidence against the suspect. They would continue to do it after the EAW was repudiated and we reverted to the previous arrangements. Our own procedures would not change. The difference would be that the foreign prosecutors requesting us to extradite someone would also have to provide evidence against the wanted person.

At present they can have people extradited on a mere whim, or a hunch, or a "feeling" that the person in question is guilty, they do not need to shew any hard evidence.

The subtext of what the apologists for the EAW are saying is actually that, unless we continue to allow the foreign authorities to haul over anybody they fancy, providing no evidence, then they will retaliate, and put up all sorts of difficulties when we request an extradition from them. Even though our extradition requests are furnished with serious evidence. If this is really how they would behave, then they would be behaving in a petty and spiteful manner, and their behaviour would amount to blackmail. The British response to any type of blackmail should surely be robust.

6) It will have good political traction with the public

It is said that arrests and extraditions only affect a tiny minority of the public, so people are not too concerned about it. It would thereby not be worth investing political capital in this matter. As long as we have confidence in the justice system under which we live, so that only real criminals are badly affected, this consideration may well be true.

However, one of the reasons to be proud to be British, is that British people actually do care when they see an innocent person wrongfully locked up. We do not just shrug and say "Well, that's tough, but that is how the cookie crumbles". On the whole we tend to get indignant, and we say "That is not how the cookie should crumble, and if it does, we damn well need to change it." Hundreds of years ago, the English poet William Blake summed up the national feeling when he wrote, "A robin redbreast in a cage, Puts all heaven in a rage". British people know, in their bones, that freedom from arbitrary arrest and wrongful imprisonment is important. Indeed it is important enough for past generations to have fought wars and

laid down their lives to prevent it happening to us in our own country. Freedom and fairness are the values inscribed on our banner, in our laws, and in our hearts. We may be a “nation of shopkeepers” and we do realise the importance of economics, but we also cherish higher values than money (and indeed without freedom economics languishes).

At present people in Britain are accustomed to enjoying personal freedom and the safeguards of British law such as Habeas Corpus and Trial by Jury, as much as they are accustomed to breathing air without having to pay for it. Some are perturbed at some of the cases thrown up by the EAW, but overall they have accepted – so far – the bland reassurances by the politicos regarding the ECHR (“you know the Convention was drawn up largely by British lawyers…”), and by the unspoken assumption that the other EU countries are politically democratic and so surely must have fair and democratic criminal law systems too, even though not quite as scrupulously applied as our own. So they do not feel immediately threatened. They are like people lying on a beach facing the land and not seeing the tsunami wave rushing in from the ocean to drown them all. We just need to give them the facts, ie tell them to look over their shoulders towards the sea. When they see the tidal wave coming, they will react, just as they did in 1940.

7) Repudiating it will not require the government to breach the Treaty, so no renegotiation is needed.

It seems to be insufficiently appreciated that this is an open goal. Under Lisbon, our government and Parliament were entirely at liberty to exercise the block opt-out from the 130 Justice and Home Affairs measures listed. They have done that, despite the shrill protests from Commissioner Reding. And now it is entirely up to us to choose freely which measures to opt back into, or not. No negotiation is needed. No permission or

agreement from any EU body nor any other EU state is required. Opting back in is an entirely voluntary act.

8) Not to repudiate it will make a mockery of Cameron's stated aim to "claw back powers from the EU"

In view of the above, the government's stated aim to opt back into 35 of the JHA measures, including the EAW, makes a mockery of Cameron's other stated aim to "claw back powers from the EU".

Especially since the EAW is the ace of trumps, it is the *key state power trumping all others, it will grant de facto statehood to the EU.*

9) Not to repudiate it will make a mockery of the Magna Carta celebrations currently planned by the government.

800 years ago, England made a major contribution to human civilisation, by beginning a process of *limiting the power of the State*, putting constraints on the power of the king. There is a general awareness in Britain today, and in the English-speaking world that shares our traditions, that in 1215 we did something good and important, and worth celebrating.

But we must also realise that at the same time, in continental Europe the Pope was setting up the machinery of the Inquisition, which vastly *extended the power of the State* over the individual. Only England to a fair extent escaped the ravages of the Inquisition during the centuries that followed. The EAW, and then Corpus Juris, by submitting us to the writ of continental prosecutors and judges, and of the EPP himself, will bring us under the sway of a Europe that uses the Napoleonic-inquisitorial method. Thus we shall be terminating 800 years of our own distinctive legal history, where the law

has also been *a shield* for the individual against the otherwise overweening power of the State, instead of merely *a weapon* for the ruler to impose his will on the people.