

Is David Davis going to set us free from the EAW?

It is very good to see that David Davis, by raising the point about the supremacy of the ECJ's jurisdiction over the EAW, has taken a first step to breaking us free from the shackles of the continental inquisitorial justice system, so alien from ours. I am hoping that he might now take a second step, viz, as follows:

In my speech on Alien Legal Systems, at the CIB event in the House of Lords on March 15th this year, I mentioned David Davis. Here is an extract from that speech, with my personal challenge to him which he might now answer, and indeed perhaps he will answer it:

"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 is what is may be 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 six weeks' detention bill on no evidence, the same David Davis now in charge of the government'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?

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 as well as those without. It can only work if the woolly ambiguity of its use of words like “reasonable” [in article 6, referring to a prisoner's right to a public hearing within a “reasonable time”] remains unchallenged.”

[For your ease of reference, the whole speech is here (7 pages)]