How to rid ourselves of the European Arrest Warrant

THE EUROPEAN ARREST WARRANT (EAW) IS UNCONSTITUTIONAL.

IT MUST – AND CAN! – BE STRUCK DOWN.

HERE IS HOW.

Not just EAW arrests, but all arrests made on no evidence, such as those suffered by Lauren Southern, and others.

Most think the EAW is just about catching criminals. It is not. It is a tool for tyranny. It is a threat to the freedom of the innocent. It can be wielded by the British authorities, but also by any judiciary – however dodgy – anywhere in Europe, against any of us.

Theresa May and Amber Rudd want it to continue indefinitely, in a Security Treaty to be signed between the UK and the EU, even after Brexit.

Here is the shocking interview of Lauren Southern by Tommy Robinson,

Ms Southern, a Canadian citizen aged 22, was subjected to a banning order by the British authorities, preventing her from entering the UK, on grounds that she intended to interview Tommy Robinson, who they said was a "right-wing, racist leader". On a previous visit she had distributed leaflets saying that "Allah was a Gay God" – as an experiment to test

the reaction of the public and the authorities, and to verify the extent to which freedom of speech is curtailed now in the UK.

Not only was she banned from entering, she was also detained by Kent police for 3 days. During this time they telephoned her father in Canada to tell him that they were holding her under the Prevention of Terrorism Act, although they had no reason to suspect her of being a terrorist. Her father recorded the conversation.

It is indeed shocking, that people are now being detained, as Ms Southern was, on no evidence of wrong-doing. And as indeed happens regularly with the EAW, although there is in that case the (fake) excuse that the foreign authority issuing an EAW "must" already have evidence, although in fact the foreign authorities don't have to have any evidence under their own Napoleonic laws as I explained during the CIB conference that Lord Pearson kindly hosted in March last year.

What happened to Ms Southern is a clear breach of Magna Carta, section 38. This (usually unnoticed) section is the basis of Habeas Corpus, which prevents people from being arrested and imprisoned on no evidence.

In their incredible 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 been already collected BEFORE legal proceedings, such as an arrest, are started. In continental jurisdictions they often order suspects to be arrested first, and then, AFTERWARDS, they seek evidence. They are allowed to do this under the provisions of their own Napoleonic-inquisitorial systems, which are alien to our own Magna Carta heritage. This procedure, also called “fishing expeditions”, is NOT ALLOWED under Magna Carta and Habeas Corpus laws.

This means that nobody can be subjected to any legal act, like arrest or detention, without previously collected EVIDENCE.

Ms Southern and Tommy Robinson talk about legal redress for her dreadful experience at the hands of the British State. Might I suggest that what she suffered was an abuse of due process, indeed a *perversion of justice*, at the hands of the Kent police officers who detained her thus, on NO EVIDENCE. Her Habeas Corpus rights were VIOLATED.

Now if Ms Southern brings a case against the Kent police for unlawful detention (or some such offence, maybe false imprisonment…?), the Kent police might put forward the counter-argument that the PTA provisions gave them that power, and, since it comes after Magna Carta and indeed after the Habeas Corpus Act of 1679 (and any subsequent modifications), it over-rides those guarantees under the doctrine of implied repeal.

This counter-argument can be invalidated as follows:

There was a famous case some years ago, when some market traders in Sunderland were convicted and given a criminal record for 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. 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 their defence’s arguments: their defence had argued that the 1985 Weights and Measures Act, which allowed market produce to be sold in lb and/or kg, was subsequent to the 1972 ECA (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 WMA1985 over-rode that part or that effect of the ECA1972 under the doctrine of implied repeal, whereby if there be a conflict between laws then the subsequent law is deemed to have over-ridden 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 ECA1972, 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 and to Eurosceptics in general, 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 worth hearing, so the decision of the Appeal Court acquired the status of LEGAL PRECEDENT, which as every law student knows, is now binding on all 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: a) Constitutional laws and b) Ordinary laws. There are different rules applicable if Parliament wishes to repeal any of them.
2. In cases where there is a conflict between two ordinary laws, the later law is deemed to annul those provisions of the previous law in conflict with it, under the well-established doctrine of “implied repeal”, whereby that part of the earlier law, if found to be in conflict with the later, is declared null and void.
3. In cases where there is a conflict between an ordinary law and a previous constitutional law, then the constitutional law is held to prevail over the ordinary law, UNLESS the subsequent ordinary law EXPLICITLY repeals a provision in the preceding constitutional law. Parliament can repeal any constitutional law by simple majority vote, for one bedrock rule of our constitution is that No Parliament Can Bind Its Successors. This is also the basis for the doctrine of implied repeal.
4. However what Laws and Crane established is the principle that Parliament cannot change the constitution by implied repeal.
5. So by the same token, if there is a conflict between two “constitutional laws”, then it must surely follow that UNLESS the subsequent constitutional law EXPLICITLY repeals a provision in the preceding constitutional law, then the preceding constitutional law prevails.

So if in a case against the Kent police charging them with

unlawful detention or false imprisonment, their defending counsel should argue that the PTA1972 over-rides any provisions of Magna Carta 1215 or indeed Habeas Corpus, under "implied repeal", the counter-argument could be to say that Magna Carta has CONSTITUTIONAL status, and so has Habeas Corpus. Therefore if the PTA1972 had been intended to over-ride it 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.

After all the public razzmatazz (on both sides of the North Atlantic) about celebrating our Magna Carta heritage in 2015, I would like to see a judge having the brazen face to deny that Magna Carta has Constitutional Status! And since Ms Southern is a Canadian citizen, and Ms Pettibone (who was also so detained) is a US citizen, and both countries proclaim Magna Carta as a founding document of their – and our – civilization, I think that this argument ought to have the power to crush these miserable bureaucrats who try to steal our liberties.

As indeed was the original intention of those who drafted it, all those centuries ago.

And indeed as commentators from Coke to Churchill have repeated down the ages.

Previous attempts to get us out of the tentacles of the EU through the law courts have failed. Largely owing to the unwillingness of the judges to go against Parliament. And to the general climate of opinion which was held to be in favour of EU membership.

But now that Brexit has won the referendum, and the government is officially in favour, some judges might at least be willing

to follow the precedent of the Appeal Court’s Laws and Crane…. who will thereby be hoisted with their own petard!

Torquil has also brought to our attention another appalling example of why we must leave the EAW – the case of a Catalan Professor at St. Andrews University who faces possible extradition to Spain.