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Systemic Bias Against Prisoners Who Maintain Innocence

Some 60 people met at the House of Commons on 10th December to review the problems faced by wrongly convicted prisoners, ex-prisoners maintaining innocence, and their families. Highlight of the meeting was a vigorous discussion about how best to improve the efforts made to recognise their situation in jail, and after release, and how to improve attitudes in the legal profession. The meeting was attended by solicitors and other legal professionals working in the field, and representatives of groups campaigning for justice for wrongly convicted prisoners, ex-prisoners maintaining innocence and the families of prisoners. The meeting opened with four presentations by Dean Kingham (Parole Board lead solicitor for the Association of Prison Lawyers), Dr. Ruth Tully (a forensic psychologist specialising in the field) and two ex-prisoners who had each served a decades-long prison sentence while continuing to maintain innocence.

A lengthy and robust discussion followed. The many difficult issues raised included - • the patronising indifference of the legal and prison systems to the claims of innocence from convicted prisoners • the assumption that every conviction is correct in fact as well as in law • the specific penalties inflicted on prisoners for denying guilt, including longer sentences • the huge problems prisoners claiming innocence have coping with frustration • the need for prison psychologists to accept that some prisoners have been wrongly convicted, and respond accordingly • the failure of the system to recognise that there are a significant number of individuals in prison whom are innocent and were wrongly convicted • the expensive pointlessness of the CCRC which refuses to investigate possible miscarriages, and claims it cannot do so • the dire shortage of legal aid after conviction • the failure of the legal system to disclose unused evidence to prisoners.

The meeting organized by 'Progressing Prisoners Maintaining Innocence' concluded that the undeniable evidence of systemic bias against prisoners who maintain innocence needed serious attention at the highest level. A question posed to Dean Kingham was whether the Parole Board was fit for purpose? He gave a robust talk indicating the faults within our system primarily rest with the Justice Minister, the Ministry of Justice and Parliament. He gave a number of pertinent examples. Without any specific or justifiable reason, spending years more in prison after expiry of the sentence was vigorously condemned. Furthermore, the consequences of wrongful convictions had proven costly to the public purse, and to the individuals and their families – an aspect of wrongful convictions which ought to concern all tax-payers. The consensus view of the meeting was the need to address these issues seriously, and at the highest legal and political levels. Such executive action was long overdue.

Bird-Brained Thief Caught Stealing a Dozen Budgies

A man has admitted stealing a dozen budgies from a woman's home before offering to help her look for the pets - while a couple of them sat on his shoulder. Edinburgh Sheriff Court heard that Mohammed Rahman, 37, broke into accountant Anne Ferguson's flat with a hammer last April. Ms Ferguson later discovered Rahman sitting nearby with two of the birds sitting on him. He claimed that the birds were his, but offered to help her look for her missing pets. After the pair discovered her discarded birdcage with a single live bird inside, Rahman handed over the two birds for Ms Ferguson to look after on his behalf. Sheriff Norman McFadyen said Rahman had committed a "bizarre" offence and jailed him for a year.

Big Rise in Number of Children Held in Custody Before Trial

Jamie Doward, Guardian: Hundreds of children arrested by the police are being locked up before trial by "risk-averse" judges, who often view them as gang members, according to a significant new report. The research, the first of its kind for almost a decade, paints a picture of a criminal justice system that views children as "mini adults", with the result that many are remanded into custody with potentially traumatic consequences. The "overuse" of pre-trial detention – described in the report by Transform Justice, the national justice charity – is at odds with what happens to most of the children post-trial. Of those remanded, two-thirds do not go on to receive a custodial sentence. Measures introduced in 2012 by the coalition government were supposed to reduce the number of children on remand, but they now make up a quarter of the child prison population compared with one-fifth when that legislation was introduced. In June, 30% of children in custody were on remand, the highest monthly figure for 10 years. Last year, children were remanded in custody 1,269 times

The new report highlights the disproportionate number of children from ethnic minority backgrounds detained. Although these children comprise just under a quarter (23%) of all child arrests, they make up more than half (54%) of children remanded. UK has signed up to the UN principle that children should be detained only as a last resort. But the report describes how many are treated like adults: held in police and court cells, delivered to court in secure vans, accompanied by security guards and placed in secure docks. It adds: "Their remand hearing can be presided over by magistrates with no youth training, bail is opposed by non-specialist prosecutors, and the law applied mirrors adult remand law. A lack of suitable accommodation means alternatives such as remand to local authority are woefully underused." "Under-18s should be dealt with by the youth court system, but many slip through the cracks."

Writing in the foreword to the report, Dr Laura Janes, legal director at the Howard League for Penal Reform, says: "Custody is... much more than a deprivation of liberty: for many it can be a deeply traumatic experience, and on occasion, such as in the tragic suicide of William Lindsay, 16, at Polmont in Scotland, it can be a death sentence." The Scotsman reported that the vulnerable teenager, who had been in and out of care, killed himself at a young offender institution within 48 hours of being remanded there in October, despite having been flagged as a suicide risk.

Youth offending teams (YOT) told Transform Justice they believed the rise in remand may be due to a "more punitive and risk-averse" reaction to knife crime. The number of offences involving possession of a knife or offensive weapon committed by children has increased 11% since 2012, while the number committed by adults has dropped 10% over the same period. Almost half of those remanded (45%) are awaiting trial for violence against another person. Just over a fifth (21%) are on remand for robbery. "Remand becomes particularly likely if the child is said by the prosecution to be involved in a gang, particularly given that the government's definition of gang-related violence is broad," the report states. Children involved in the "county lines" drug trade who are arrested far away from home form a significant proportion of those being remanded. "I can't speak for the other courts, but I think if you're from the city and you end up in some shire, and they're not used to it, they might see these young people as some kind of gangsters," one YOT member told Transform Justice. "I don't think they see that behind it they might be criminally exploited, or vulnerable. They just see the impact of this visitor to their county selling drugs on a large scale so they might be quite strict."

A spokesman for the judiciary said a working group was examining the issue of youth remand and that judges received guidance on appropriate use. "All magistrates and district judges who sit on youth cases are trained in relation to all aspects of practice and procedure in relation to children and young people," he said.

White and Male UK Judiciary 'From Another Planet', Says Lady Hale

Owen Bowcott, Guardian: The judiciary needs to be more diverse so that the public feel those on the bench are genuinely "our judges" rather than "beings from another planet", the president of the supreme court has said. In an interview to mark the centenary of the 1919 act that dismantled barriers preventing women from entering the professions, Lady Hale called for a more balanced gender representation on the UK's highest court as well as swifter progress promoting those from minority ethnic backgrounds and with "less privileged lives".

Women working in law and other professions are increasingly aware and resentful of earning less than men, said Hale, who is the court's first female president since its creation 10 years ago. She also described the compulsory retirement age of 70 for judges as a "waste of talent". Hale has supported the pursuit of gender equality as consistently as she can within the constitutional restraints of her position. There are currently three female justices on the UK's 12-seat supreme court – a rapid advancement on the position up until mid-2017 when she was the only woman. But how many women should there be?

"Ruth Bader Ginsburg [the long-serving US supreme court justice, when asked the same question] famously said: 'When there are nine'. There are [only] nine justices on the US supreme court bench," Hale explained. "My own view is up to a quarter [on the UK supreme court] is an important breakthrough but that there's no right number of justices of either gender. An ideal balance would be at least 60/40 either way. And so we still have a little way to go towards that."

There are several reasons for desiring a more diverse judiciary in terms of gender balance, ethnicity and social background, Hale said. The most important of these is so the public can "look at the judges and say 'They are our judges'," rather than seeing them as "beings from another planet". In the high court, court of appeal and supreme court, a quarter of judges are women. Among district judges, around a third are female. Diversity, Hale said, also helps by bringing "different perspectives to the discussion", particularly on a "collegiate" court. "We are all products of our background and our experiences, so the greater the diversity, the better." Having more than one woman on the supreme court had demonstrated that "women are as different to one another as men are" she said, acknowledging that it had been "refreshing" to sit with other women.

While overt discrimination is illegal, there remain hurdles to overcome. "We do have in this country a gender pay gap to worry about," she said. "The more pay is [delivered] through individual negotiation rather than collective agreement, the greater the risk of imbalance.

"[Women] are just waking up to the fact that they are not being paid as much. I have heard terrible stories about even successful women barristers being offered out by their [chamber] clerks at less than their male equivalents. That's an area where there's still work to do."

Sexual harassment has also caused problems for women at the bar, Hale said. She had not personally experienced problems during her career, she said, but was aware of its sexist culture – at least in the past. "I do recall that when I was being elected to the northern circuit they required young women being elected to get on the table [as an initiation rite]," she said. "They didn't require me to get on the table. [I don't know] whether they thought I could not get up or whether [it was because] I was already married to a member of the circuit."

More progress was needed in advancing people from ethnic minority backgrounds into the higher judiciary, Hale said. "It's not surprising that [the pace of promotion] is slower: it is [only] more recently that members of ethnic minorities have joined the legal profession in larger numbers. Although there's definitely a way to go, [the discrepancy] may not be as bad as we thought." There is already a strong presence of ethnic minority judges in tribunals, county courts and among district judges, she said. "The way we can try and improve diversity in the higher echelons is being more open to transfers from other [courts]. And there have been appointments from the upper tier [tribunals] to the high court. So that is beginning to happen [though] it's still quite slow." She hoped the judiciary would attract "more people who have had less privileged lives". Hale added: "I have had a privileged life [but] I don't come from a privileged background and that is helpful. I have experienced various disappointments and setbacks in my life. I think all of this is quite helpful."

Lady Hale does not approve of positive discrimination, chiefly because "no one wants to feel they have got the job in any way other than on their own merits". Better outreach efforts to encourage candidates are more productive, she said. Now 73, she is one of a small number of judges appointed before 1995 who are permitted to stay on the bench until they reach the age of 75. All those appointed since then have to retire at 70. Hale follows her predecessor, Lord Neuberger, in questioning that rule given the current shortage of high court judges. "[He] called for the retirement age to go back to 75 and there's obviously a case for that," she said. "There's a waste of talent." It would help solve the "difficulty of recruiting to the high court bench so that people could be attracted after the most expensive years of life", she said. "My husband sat until he was 75 in a … property tribunal and no one could possibly doubt he still had a huge amount to offer."

The argument against extending the compulsory retirement age has been that it creates "bed blocking", slowing the progress of younger judges up the career ladder. "The longer the old, white men [stay on] … the fewer posts there are for the younger more diverse judges," she said. "But given the recruitment problems, I'm not sure that holds good. It does seem rather sad in these days to have a [retirement] age of 70." This year the supreme court, having visited Edinburgh and Belfast, is due to sit in Wales. Hale, who was born in Yorkshire, would like to hear cases outside London in the north of England and the West Country. One of her proudest moments, Hale said, was the article 50 case in 2016 that decided the course of Brexit amid a political and media furore. Following the high court decision, the judges were condemned as "enemies of the people" for ruling against the government. "I'm proud of the [article 50, Gina] Miller case because it was a classic constitutional issue about what the government could do and what parliament could do," Hale explained. "It was reminiscent of the 17th-century battle between parliament and the king. We were reinforcing principles that had been established then." Moving the law lords out of parliament and into a separate supreme court had made "judicial independence more visible", she said. The way the media treated the article 50 case at the supreme court was very different to coverage of what happened in the high court, Hale said.

This month the supreme court will host a display celebrating the centenary of the Sex Disqualification (Removal) Act, which enabled women to join the legal profession and others. After Brexit the supreme court is unlikely to continue referring questions about EU law to the European court of justice in Luxembourg. "We shall have to work it out for ourselves," she said. "Whether it will be for the better or worse, we don't know."

Regina -V- Paul Anthony Finlay

1. Lord Justice Buxton: This appellant, Mr Paul Anthony Finlay, faced two counts of manslaughter at a trial before His Honour Judge Broderick and a jury in the Crown Court at Winchester as long ago as February 2002. Both counts emanated from the same incident and it will be convenient to describe the incident in broad terms before we turn to the counts, the verdicts on them and the law.

2. The deceased was a lady called Jasmine Grosvenor who had a serious history of drug and alcohol abuse. She died of an overdose of heroin. The appellant was by his own admission pres-

ent when she took the fatal dose. The prosecution case was on two alternative bases: first, that the appellant had personally injected the deceased with the heroin, that is to say had himself operated the syringe; or alternatively, that the appellant had cooked and prepared the heroin, loaded the syringe and then handed it to the deceased who had injected herself. The defence said that the appellant had not personally injected the deceased. She had done it herself and he had not caused any taking of heroin on her part because, as the judge put it to the jury as the defence case, she was determined to take heroin regardless of anything that was said or done by him.

3. The significance of those two different ways of putting the case was this. The allegation in both cases was of unlawful act manslaughter. The unlawful and dangerous act was said to be the offence under section 23 of the Offences Against the Person Act 1861: "Whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, so as thereby to endanger life."

It was accepted that if Mr Finlay had himself injected Miss Grosvenor with the heroin, as was alleged under count 1, then he would indeed have unlawfully and maliciously administered a noxious thing to that lady, and therefore would have committed the offence under section 23. However, it was the prosecution case at trial that, even if the appellant had not himself wielded the syringe, he would have committed an offence under section 23 if he had caused an administration of the heroin, even though he did not himself physically administer it. The importance of that way of putting the case will become apparent hereafter.

4. It is necessary to say something in brief terms as to the background against which these counts were brought. The deceased's general practitioner gave evidence that she had an addictive personality and was addicted both to alcohol and to drugs. She had clearly had an extremely damaged and traumatic experience of life. She had been involved in a number of abusive relationships, had attempted suicide on several occasions and had given birth to no fewer than six children, all of whom had unfortunately had to be removed from her care. Other evidence suggested that this lady, although she took heroin as well as alcohol, did not know how to prepare heroin or to inject it: other people would inject her.

5. On the day in question she (Miss Grosvenor) had said, according to one witness, that she wanted alcohol, but it had been suggested to her that she should in fact take heroin and she had been with the accused at the time of the death.

6. Mr Finlay's evidence was that he was concerned on the day in question about the deceased's appearance and the fact that she appeared to have been attacked by somebody. He had injected another lady with heroin. The deceased said that she would like some and asked him to get it. She said that she preferred heroin to beer. He bought some heroin from his dealer and then they both went to her address where he prepared the heroin. He filled a syringe for himself and half a bag for the deceased, saying, as he claims, that it was her decision whether to take it or not. He said that she then injected herself. An hour or so after she asked for the other half-bag. He tried to persuade her not to but, as he put it, she badgered him. He filled a syringe for her, she took it out of his hand, injected herself, went into shock, and died. He agreed in cross-examination that he had asked the deceased whether she wanted the second half of the bag, but she had said that she was all right and could handle the matter. His account of the events was seriously challenged in cross-examination.

7. There was an application at half time for count 2, that is to say the count upon which Mr Finlay was eventually convicted, to be withdrawn from the jury. We will come back to that shortly.

8. The jury were given directions by the learned judge, which again we will come to, and duly retired, he having told them that they should start their consideration with count 1, that is what

we might call direct injection, and only if they acquitted on that should they go on to count 2, which is the count alleging involvement, as we will call it for the moment, in injection.

9. Things did not work out in that way because the jury returned to court and said that although they were not able to reach a verdict on count 1, they had reached a verdict on count 2; which, as we have seen, was a guilty verdict. The judge was concerned by that turn of events since it involved the jury approaching the matter in an order different from that which he had advised, indeed directed, them. However, he did in due course take that verdict and discharged them from a verdict on count 1.

10. In his submissions to us Mr Gibson-Lee suggested that this course of events might imply that the jury did not properly understand the task they had in hand. That, we have to say, does not appear to have been the view of the learned judge and it does not, in our judgement, follow from what happened. It also, we are bound to note, is not a ground of appeal before us. The jury may very well have not been able to agree on the first question (that is to say, whether Mr Finlay himself did the injection) but were satisfied of his involvement in the events indicated in count 2. That, as it seems to us, is a possible view for a jury to take and in no way indicates that they did not understand the case.

11. With that rather lengthy introduction we can now turn to the substance of the appeal. Effectively the only matter in issue was whether it was open to the judge to leave to the jury the possibility that there was a version of events that caused Mr Finlay to be guilty of an offence under section 23 of the 1861 Act even though he had not himself held the syringe. There is a history to that point, which has been the subject of a number of authorities in this court.

12. In the first relevant case, R v Kennedy [1999] Crim.L.R 65, a situation very close to the present was before the court. The judge in our case pointed out in his observations on the submission of no case to answer that the facts of Kennedy were effectively indistinguishable from those in the present case and that Kennedy therefore was binding upon him. He did, however, express caution about one aspect of the judgment in that case. That was at the very end of the judgment where this court explained its conclusion that the appellant in that case might have been guilty of an offence under section 23 in those words: "Perhaps more relevantly the injection of heroin into himself by [the deceased] was itself an unlawful act, and if the appellant assisted in and wilfully encouraged that unlawful conduct, he would himself be acting unlawfully."

That analysis was subject to severe criticism by the late Professor Sir John Smith in the note in the Criminal Law Review report. We would respectfully agree with that criticism. The reason is this: the court in Kennedy clearly proceeded upon the assumption that the person who supplied the syringe -- and we will call him in neutral terms "the helper" -- would have been guilty on the basis of being an accessory to an offence committed by the deceased. The reason why that analysis cannot be correct is that there is no offence of self-injection. By injecting himself Mr Bosque, the deceased in the Kennedy case, was not administering a noxious thing to another. Since no principal offence had been committed, it is black letter law of the blackest sort that there can be no offence of aiding and abetting. It was for that reason and that reason only that Kennedy was criticised.

13. That criticism was adopted by this court in R v Dias [2002] 2 Cr.App.R 5, where the court accepted that there could be no offence of self-injection. However, this court recognised that there might be a different basis for a section 23 offence. At paragraph 25 the court specifically envisaged the possibility that there might be other ways in which an accused could be guilty, and they said this, and we emphasise this is only only an obiter observation but it is of importance: "We accept that there may be situations where a jury could find manslaughter in cases such as this, so long as they were satisfied so as to be sure that the chain of causation was not

broken. That is not this case because causation here was not left to the jury." And for that reason, lack of causal connection, it was held that the conviction was unsafe and would be quashed. It is perhaps also important to note that the court in Dias did envisage the possibility that mere supply of heroin might count as an unlawful act for the purposes of the law of unlawful act manslaughter, leaving aside the issue under section 23.

14. That is how the matter stood at the time of the trial in this case. The judge had a difficult problem in assessing what the standing of the case of Kennedy, and what it taught as to the nature of unlawful act manslaughter in the context of section 23. After the judge's rulings, to which we will come back, this court had to return to the matter in the case of R v Rogers [2003] 1 WLR 1374, a constitution presided over by the Vice President, Rose LJ. That was a case where the victim had injected himself while the defendant held his belt around the victim's arm as a tourniquet. The victim died. The defendant was charged with one count under section 23 and one count of manslaughter, it clearly being laid that the unlawful act in respect of the manslaughter was a section 23 offence committed by the defendant Mr Rogers. The court accepted the criticisms that had been made by Sir John Smith of the reasoning in Kennedy, and drew attention also to the criticisms made by this court in Dias. This court said: "[We] accept Sir John Smith's criticisms of the reasoning in R v Kennedy: in so far as that reasoning was based on self-injection being an unlawful act, it was wrong."

However, the court also identified that, whilst it was incorrect to say that in circumstances such as we are concerned with the helper could be found liable on the basis of aiding and abetting, that did not exclude the possibility that he could be found liable on the basis of joint principleship. That was clearly the issue before the court in Rogers. The court said earlier in paragraph 6: "It was common ground between counsel that the crucial question at the heart of this appeal is whether the appellant's conduct was that of a principal: if so, he was guilty of both offences. If, on the other hand, his conduct was that of a secondary party, merely aiding the deceased, he could not be guilty of either offence, because no offence was committed by the deceased."

Rogers is thus clear authority for saying that if a "helper" is in fact a joint principal with the deceased, then he can be guilty of an offence under section 23 even though the deceased is not guilty of an offence by self-administration. That follows from the classic understanding of what is meant by joint principalship, as set out in the 10th Edition of Smith and Hogan at page 161. That work of authority says: "A and B are joint principles where each does an act which is a cause of the actus reus; eg, each stabs P who dies from the combined effect of the wounds; or A and B together plant a bomb which goes off and kills P; but then each is liable for his own act, not because he has 'participated' in the acts of another; and each is liable to the extent of his own mens rea."

The learned authors finish the paragraph by saying: "there are two principals and two offences". The test therefore is whether each of the parties has done an act which is a cause of the actus reus and it was that test that was applied by this court in Rogers. In paragraph 7 the court said this: "... by applying and holding the tourniquet, the appellant was playing a part in the mechanics of the injection which caused death. It is therefore, as it seems to us, immaterial whether the deceased was committing a criminal offence.

There is nothing in Dias which is inconsistent with this conclusion. Indeed, on the contrary, paragraph 25 of the judgment expressly envisages that, even where a victim injects himself, the supplier of the heroin may be guilty of manslaughter, provided causation is established. Edwards ... is to like effect. A fortiori, as it seems to us, a person who actively participates in the injection process commits the actus reus and can have no answer to an offence under

section 23 or a charge of manslaughter if death results. Once the appellant is categorised as such a participant, it being common ground that death resulted from the injection, no question arises in relation to causation."

15. The learned judge in his observations on the application to remove count 2 from the indictment seems to us, with great respect, strikingly to have anticipated the analysis that this court adopted in the case of R v Rogers. Having expressed caution about Kennedy, he went on at page 9F of his ruling: "So it seems to me that subject to one further point, to which I will turn almost immediately, cooking up heroin, loading it into a syringe, and then giving the syringe to someone who is clearly going to inject themselves almost immediately, is capable of coming within the terms of section 23. Whether or not it does so in any given case is a question of fact which falls for the court to the jury and not the court to decide.

The last remaining point in relation to section 23 is this. In order to establish limb two of their case, the prosecution would have to prove that the defendant caused the heroin to be administered to, or be taken by, the deceased. In my view it is not necessary for the Crown to prove that the defendant's actions were the sole cause of the deceased injecting heroin. Here, by cooking up, loading the syringe, and handing it to the deceased, the defendant produced a situation in which the deceased could inject and in which an injection by her into herself was entirely forseeable. It was not a situation in which injection could be regarded as something extraordinary. That being the case, it seems to me that on the authority of Environment Agency v Empress Car Company Limited [1999] 2 AC 22, that it would be open to the jury to conclude that the defendant's action caused heroin to be administered to, or to be taken by, the deceased. At the end of the day this is a question of fact for the jury to decide."

That clearly sets out the law as it was understood by this court in the case of R v Rogers. The test is one of causation. In this case, could it be said that the act of the deceased in taking up the syringe and using it on herself, which are to be assumed to be the facts, prevented Mr Finlay's previous acts being causative of the injection. The judge rightly referred to Environment Agency v Empress Car Company [1999] 2 AC 22. In that case Lord Hoffman said that the prosecution need not prove that the defendant did something which was the immediate cause of the death. When the prosecution had identified an act done by the defendant, the court had to decide, particularly when a necessary condition of the event complained of was the act of a third party, whether that act should be regarded as a matter of ordinary occurrence which would not negative the effect of the defendant's act; or something extraordinary, on the other hand which would leave open a finding that the defendant did not cause the criminal act or event. That, said Lord Hoffman, with the agreement of the rest of the House of Lords, was a question of fact and degree to which, in the case before him, the justices had to apply their common sense, as in a jury trial the jury has to apply its common sense. That was exactly the way in which the judge directed himself in his observations on the application that count 2 should be removed from the jury.

16. And that is exactly how he directed the jury when he came to sum up. At page 14F he said this: "Whether or not the defendant caused heroin to be administered to or taken by the deceased is a question of fact and degree which you have to decide, and you should decide it by applying your common sense and knowledge of the world to the facts that you find to be proved by the evidence. The prosecution do not have to show that what the defendant did or said was a sole cause of the injection of heroin into the deceased. Where the defendant has produced the situation in which there is the possibility for heroin to be administered to or taken by Jasmine Grosvenor, but the actual injection of heroin involves an act on part of another - in this case Jasmine herself - then if the injection of heroin is to be regarded in your view as a normal fact of life, in the situation proved by the evidence, then the act

of the other person will not prevent the defendant's deeds or words being a cause, or one of the causes, of that injection. On the other hand, if in the situation proved by the evidence, injection is to be regarded as an extraordinary event, then it would be open to you to conclude that the defendant did not cause heroin to be administered to or taken by the deceased." That was consistent with Rogers; it was also consistent with the direction of the House of Lords in the Empress Car case.

17. Mr Gibson-Lee really advances two reasons why the judge should not have taken that view, and why he should have considered that count 2 should not have gone to the jury. The first is that on the assumption that it was the deceased who injected herself, that act of itself breaks the chain of causation between whatever it was that the accused did and the actual event of injection. That is a view that is also taken in a critical commentary on the decision in Rogers in in the Criminal Law Review. We have to say that that approach is not correct. It seeks to make the existence of what used to be called a novus actus interveniens, and can now more simply be regarded as an act of another person, as something that as a matter of law [emphasis added] breaks the chain of causation. It was that view or assumption that was rejected by the House of Lords in the Empress Car case. Intervening acts are only a factor to be taken into account by the jury in looking at all the circumstances, as the judge told them to do.

18. Secondly, Mr Gibson-Lee says that in any event the facts of this case were such that it simply was not open to the jury to conclude that Mr Finlay had caused the injection. He had done no more than form part of the background, or provide the opportunity of which the deceased availed herself:- in other words, that the case was so extreme or so clear that it was not appropriate for the jury to look at it as a case of causation at all. The judge did not take that view, nor do we. The unhappy circumstances of this case, and in particular the unhappy circumstances of this lady's life and condition, in our view indicate that it was certainly open to a jury to conclude in Empress Car terms that in those circumstances, and we emphasise that, it was what Lord Hoffman described as an "ordinary" occurrence for the purpose of the law of causation that she should have taken advantage of whatever it was that Mr Finlay did towards her or with her. It is not necessary for that conclusion to decide, as Mr Gibson-Lee suggested it was, that she was incapable of knowing what she was doing or had ceased entirely to be a rational being. All that is necessary, in our judgement, is that the circumstances should be such that it could properly be said to fall within the ambit of possible and ordinary events that she will take the opportunity given her. We quite accept that, on facts different from these, there might be more difficulty in coming to that conclusion.

19. Third, we do not accept the argument that Mr Gibson-Lee also put forward that Rogers was simply irrelevant to this case because Mr Finlay's acts were much further removed from the actual act of injection than was the act of Mr Rogers in applying the tourniquet. We of course accept that there was a difference on the facts, but the passage that we have read from Rose LJ indicates that he certainly did not think that the facts of Rogers were the only type of facts that could fulfil a case of joint principleship. It will be remembered in particular that in paragraph 8, having referred to mere supply in Dias being a possible case of liability, Rose LJ described the placing of the tourniquet and so on as a case a fortiori of a supply case.

20. We are therefore satisfied that on the facts of this case it was open to the judge to leave count 2 to the jury. Having done that he directed them in terms that we consider to be impeccable, and which accurately foresaw the law set out in Rogers, which is the law which now governs this not altogether easy area of the law of homicide.

21. For those reasons, therefore, we would dismiss this appeal.

Scotland: Prison Sentences of Less Than 12 Months to be Brought to an End

Scottish Legal News: Short term prison sentences of less than 12 months will be brought to an end this year, Scotlands Justice Secretary Humza Yousaf has announced. New figures showed more than 1,000 people spent last Christmas in prison on these ineffective sentences. The figures, provided by the Scottish Prison Service in response to a freedom of information request from the Scottish Liberal Democrats, show 1,022 prisoners out of a total prison population of 7,332 were on sentences of 12 months or less. A Scottish government consultation on a presumption against sentences of twelve months or less closed over three years ago, with 85 per cent supporting extending the presumption to a year including HM Chief Inspector of Prisons, penal reform experts and the Liberal Democrats.

Mr McArthur said: “Last year over 1,000 people were behind bars at Christmas due to a short-term sentence. Rather than being given short spells in prison, such offenders would be better serving tough, community-based sentences. “We know that 60 per cent of people given ineffective and disruptive short-term sentences re-offend within a year of release, whereas robust community-based sentences are far more successful and reduce the chance of more people becoming victims of crime. This way there’s a benefit to individuals, families and, very importantly, communities. These are not soft options, but they do help preserve family links and limit the damage on dependent children.

“It is over a decade ago since the Prisons Commission concluded people on short-sentences are “more troubling than dangerous” and three years since the consultation on extending the presumption against short sentences closed. Responses were overwhelmingly in favour of this shift, with experts including HMIPS backing a new 12-month rule." He added: “In her Programme for government the First Minister committed to taking these measures forward. However, it is now important that she holds her nerve and follows through on that promise. “Scottish Liberal Democrats will continue to push for a long overdue common-sense overhaul of our prisons to ensure that justice is served and communities have a chance to rebuild.”

Human Dignity is in Danger. in 2019 - We Must Stand as One to Survive

Ai Weiwei: Persecution, censorship and environmental destruction are on the rise – but resistance is possible: What does it mean to be human? That question sits at the core of human rights. To be human has specific implications: human self-awareness and the actions taken to uphold human dignity – these are what gives the concept of humanity a special meaning.

Human self-awareness and human actions determine the interplay between individual thought and language and the wider society. It is our actions as humans that deliver economic security, the right to education, the right to free association and free expression; and which create the conditions for protecting expression and encouraging bold thinking. When we abandon efforts to uphold human dignity, we forfeit the essential meaning of being human, and when we waver in our commitment to the idea of human rights, we abandon our moral principles. What follows is duplicity and folly, corruption and tyranny, and the endless stream of humanitarian crises that we see in the world today.

More than two centuries have passed since the concept of human rights was first developed. During that time humanity has gone through various stages of history and the world has seen enormous changes. In Europe, what was once a collection of colonialist, autocratic states has transformed into a democratic society with a capitalist orientation, establishing a mechanism that protects individual rights. Other societies are also seeing structural changes, and the concept of human rights is facing grave challenges.

In part these challenges stem from the disparate demands of countries in different stages of development, with contrasting economic situations and competing interests. But challenges also come from divergent conceptions and understandings of human rights, human dignity, morality and responsibility, and from different interpretations and applications of the core principles of human rights. In the contemporary world, as our grasp of the fundamental values and principles of human rights and humanitarianism weakens, we risk losing our rights, responsibilities and our power to uphold human dignity.

History shows that a moral failure is always accompanied by painful realities, visible everywhere. The global refugee crisis is worsening daily, and 70 million refugees have been forced to leave their homes by war and poverty. Our living environment is constantly being degraded, and the ecological balance is ever more fragile. Armed conflicts persist and potential political crises lurk; regional instabilities grow more acute; autocratic regimes brutally impose their will, while democratic governance is in decline. Unreasoning and unrestrained expansion under a nationalist, capitalist order is exacerbating the global gap between rich and poor. Our views of the world have become more divided and more conflicted than ever.

Individuals in many countries and regions lack the opportunity to receive an education, to access information or communicate freely. They have no chance to exercise their imagination and creativity or fulfil their ideals; no chance to enjoy freedom of belief and freedom of association. Such rights and freedoms pose a fatal threat to autocracy and authoritarianism. This is why, in so many places, lawyers have been imprisoned, journalists have been disappeared and murdered, why censorship has become so pervasive, why religious and non-governmental organisations have been ruthlessly suppressed. Today, dictatorships and corrupt regimes continue to benefit from reckless arms sales, and enjoy the quiet support of capitalist nations. Religious divisions, ethnic contradictions and regional disputes all feed into primitive power plays. Their logic is simple: to weaken individual freedoms and strengthen the controls imposed by governments and dominant elites. The end result is that individuals are deprived of the right to live, denied freedom from fear, and freedom of expression, or denied the rights to maintain their living environment and develop.

The concept of human rights needs to be revised. Discussions of human rights used to focus on the one-dimensional relationship between the state's rights and individual rights, but now human rights involve a variety of relationships. Today, whether demands are framed in terms of the rights of the individual or the goals pursued by political entities and interest groups, none of these agendas exists in isolation. Historically, the conditions governing human existence have never been more globally interdependent.

The right of children to grow up and be educated, the right of women to receive protection, the right to conserve nature, the right to survival of other lives intimately connected with the survival of the human race – all these have now become major elements in the concept of human rights. As science and technology develop, authoritarian states invade privacy and limit personal freedom in the name of counter-terrorism and maintaining stability, intensifying psychological manipulation at all levels. Through control of the internet and command of facial recognition technology, authoritarian states tighten their grip on people's thoughts and actions, threatening and even eliminating freedoms and political rights. Similar kinds of controls are being imposed to varying degrees within the global context. From this we can see that under these new conditions human rights have not gained a common understanding, and if discussion of human rights becomes narrow and shortsighted, it is bound to become nothing more than outdated, empty talk.

Today, Europe, the US, Russia, China and other governments manufacture, possess and sell arms. Pontificating about human rights is simply self-deluding if we fail to curb the dangerous practices that make armed conflict all the more likely. Likewise, if no limits are placed on capitalist global expansion and the pervasive penetration of capital power, if there is no effort to curb the sustained assault by authoritarian governments on natural human impulses, a discussion of human rights is just idle chatter. Such a blatant abdication of responsibility can lead to no good outcome. Human rights are shared values. Human rights are our common possession. When abuses are committed against anyone in any society, the dignity of humanity as a whole is compromised. By the same token, it is only when the rights of any individual and rights of the people of any region receive our care and protection that humanity can achieve a shared redemption. Such is the principle of human rights, in all its stark simplicity. But a shared understanding of that truth still eludes us. Why so? Could it be that we are too selfish, too benighted, too lacking in courage? Or, perhaps, we are insincere, we don't really love life enough: we con ourselves into imagining we can get away without discharging our obligation to institute fairness and justice, we fool ourselves into thinking that chaos is acceptable, we entertain the idea that the world may well collapse in ruin, all hopes and dreams shattered. If we truly believe in values that we can all identify with and aspire to – a recognition of truth, an understanding of science, an appreciation of the self, a respect for life and a faith in society – then we need to eliminate obstacles to understanding, uphold the fundamental definition of humanity, affirm the shared value of human lives and other lives, and acknowledge the symbiotic interdependency of human beings and the environment. A belief in ourselves and a belief in others, a trust in humanitarianism's power to do good, and an earnest recognition of the value of life – these form the foundation for all human values and all human efforts.• Ai Weiwei is a leading contemporary artist, activist and advocate of political reform in China

Court Warns - Again - About Risks of Bad Skeleton Arguments

Law Gazette: A Court of Appeal judge has warned parties they should expect harsh treatment if they continue to burden the courts with irrelevant and lengthy submissions. Lord Justice Hickinbottom used the judgment in Harverye v The Secretary of State for the Home Department to reiterate his call for lawyers to remind themselves of the rules about documents submitted for appeal hearings. In the case, an appeal by a Zimbabwe national against his deportation order was dismissed, as the court ruled there had been a material change in circumstances. But, according to Hickinbottom LJ, a 'straightforward and narrow' issue was 'all but lost in the plethora of paper' involved with the appeal. The judge said it would have been simple for the secretary of state to set out in his notice of decision what the material change of circumstance had been. Instead the court was forced to spend considerable time and effort on issues that were never going to be relevant. But the judge stressed that lawyers could not avoid all blame, and he noted the grounds of appeal, skeleton arguments and oral submissions 'lacked the required and expected focus'. 'The grounds of appeal are the well from which the argument must flow,' added the judge. 'The reasons why it is said the decision is wrong or unjust must not be included in the grounds, and must be confined to the skeleton argument.'

Hostages: Sally Challen, Naweed Ali, Khobaib Hussain, Mohibur Rahman, Tahir Aziz, Roger Khan, Wang Yam, Andrew Malkinson, Michael Ross, Mark Alexander, Anis Sardar, Jamie Green, Dan Payne, Zoran Dresic, Scott Birtwistle, Jon Beere, Chedwyn Evans, Darren Waterhouse, David Norris, Brendan McConville, John Paul Wooton, John Keelan, Mohammed Niaz Khan, Abid Ashiq Hussain, Sharaz Yaqub, David Ferguson, Anthony Parsons, James Cullinene, Stephen Marsh, Graham Coutts, Royston Moore, Duane King, Leon Chapman, Tony Marshall, Anthony Jackson, David Kent, Norman Grant, Ricardo Morrison, Alex Silva,Terry Smith, Hyrone Hart, Glen Cameron,Warren Slaney, Melvyn 'Adie' McLellan, Lyndon Coles, Robert Bradley, John Twomey, Thomas G. Bourke, David E. Ferguson, Lee Mockble, George Coleman, Neil Hurley, Jaslyn Ricardo Smith, James Dowsett, Kevan & Miran Thakrar, Jordan Towers, Patrick Docherty, Brendan Dixon, Paul Bush, Alex Black, Nicholas Rose, Kevin Nunn, Peter Carine, Paul Higginson, Robert Knapp, Thomas Petch, Vincent and Sean Bradish, John Allen, Jeremy Bamber, Kevin Lane, Michael Brown, Robert Knapp, William Kenealy, Glyn Razzell, Willie Gage, Kate Keaveney, Michael Stone, Michael Attwooll, John Roden, Nick Tucker, Karl Watson, Terry Allen, Richard