



Human Rights Do Not Exist



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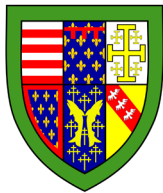
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The YLJ was founded as an online legal journal almost 4 years ago. Our aim was to provide a platform for people to express their views on big topics in a way that would get readers thinking. The worlds of law and politics are often exclusive ones where expertise or specialist knowledge is required to engage in debates. We see the YLJ as means of engaging anyone and everyone in the discussions that have previously been expert-oriented.

In this first edition, you will find articles written by our student-writers alongside those of individuals with great status in the legal and political arenas. All of which, we hope will enable you to begin to construct your own opinions on the topics concerned.

If you enjoy flicking through the pages to follow, I would strongly recommend visiting our website where you can find more similar articles.

We are extremely proud of this publication and are very grateful to our sponsors, everyone who contributed to this edition and all those who regularly write for us.

We hope that you find each and every article as engaging as we did.

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Write your way on topics that you find
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The People's Vote?

Nicky Morgan: Former Secretary of State for Education and Minister for Women and Equalities, Morgan is a Conservative MP who was most recently elected Chair of the Treasury Select Committee following the 2017 General Election.



Much has already been written about Brexit and I've no doubt that it will continue to exercise the finest legal minds (including those reading the YLJ) for many years to come. I hope, in this article, to stand back from the discussions about the terms of the UK's withdrawal from the EU and our future relationship and focus on the significant impact of Brexit on our democracy and our constitutional settlement.

Democracy is a precious thing and something which it is too easy to take for granted.

In this country we have a representative democracy described thus by Edmund Burke in 1774 as:

"..it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved

communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unremitted attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion...

...To deliver an opinion,

is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience,--these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution."

I believe that a referendum, such as the one we saw in 2016, with only two possible outcomes cuts right across the representative democracy we have in this country. Many people feel that now they've voted their elected parliamentary representative shouldn't exercise their own judgement on this issue but simply act as instructed by their local electorate.

One of the further problems

“Democracy is a precious thing and something which it is too easy to take for granted

is that the result of the referendum was not counted or declared by constituency but by local authority area. This means that it is very difficult to know how one's own constituents voted although some informed guesses have been made.

Another key principle of our constitution is that of 'parliamentary sovereignty' which:

"..makes Parliament the supreme legal authority in the UK, which can create or end any law. Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change. Parliamentary sovereignty is the most important part of the UK constitution."

In the months after the referendum result the question about how and even whether Parliament should be involved in delivering this most important step in our nation's history

was fiercely debated, including in our courts.

The formal step needed to trigger the Brexit process was the giving of notice by the UK Government to the EU under Article 50 of the Lisbon Treaty. The question which the courts were asked to rule on in 2016 and early 2017 by Gina Miller and others was whether Parliament had to give its formal approval for the serving of that notice.

In the end both the High Court and the Supreme Court ruled that Parliament must be involved by approving not just a motion but a piece of legislation, which we duly did – the European Union (Notification of Withdrawal) Act 2017.

This debate about Parliament's continuing involvement found its next real outlet in the December 2017 vote in which I and other Conservative MPs took steps to ensure that Parliament will have a meaningful vote on

the withdrawal in the same way that the EU Parliament will.

We continue to debate how meaningful the 'meaningful vote' really is. But the fact remains that as a result of the actions of the 'mutineers' Parliament will vote on both a motion on the withdrawal agreement agreed between the UK and the EU and then debate a piece of legislation which is drafted to enshrine the agreement in law. In this particular battle of the Executive vs Parliament the winner was Parliament.

In conclusion, it can be seen that leaving aside daily questions on the politics and economics of Brexit it is on questions of our constitution and our democracy where Brexit has the real potential to unleash an earthquake and set unintended precedents. Parliament must continue to manage this over the months and years ahead.



Boxing - An illegal sport?

Daniel Braun: Founder of The YLJ. He is currently reading Law at Queens' College, Cambridge.



It's been a year since Boxer Nick Blackwell suffered a bleed on the brain following his British middleweight title defeat by Chris Eubank Jr in London. The referee stopped the fight in the 10th round on the advice of the doctor, who said Blackwell was unable to continue because of serious swelling over his left eye. Such a dangerous and deathly sport raises legal implications and points to the question – Is boxing unlawful or even a criminal offence?

For some time, the British Medical Association as well as many other medical interest groups have campaigned for stricter legal regulation regarding the sport of boxing. Although two bills in the House of Lords which attempted to outlaw boxing for reward were defeated in 1995, Parliament has never declared boxing illegal and no court has ever decided a case involving the legality of boxing. The sport has been scientifically proven to endanger health and perhaps the 51 deaths due to injuries sustained from boxing adds emphasis to this point.

The deliberate or reckless



infliction of an injury normally has two legal consequences: the aggressor has committed a criminal offence and the victim can consequently sue for compensation. We say "normally" because the law has always allowed exceptions. An assault can be legal because of self-defence or consent, in the case of surgery, for example. Public policy can make an assault lawful or unlawful.

For example, "reasonable" parental chastisement and male circumcision are lawful. However, female circumcision is a criminal offence, and parents whose chastisement is excessive is also an offence.

The relationship in law between assault and contact sports is a matter of consent and policy. Public policy, as declared in case law, is that "properly conducted games and sports are needed in the public interest." A rugby tackle carried out on a player who has consented to be involved is neither a crime nor a tort. However, there are a multitude of limits to the sports violence which the law allows.

In *R v Lloyd* a player was convicted of assault because "what the appellant did had nothing to do with rugby football." An appeal judge stated that while rugby is a physical game it is not a licence for thuggery. Similarly, in *R v Marsh*, a rugby

“ Properly conducted games and sports are needed in the public interest ”

player was convicted after an “off the ball” assault on an opponent. Thirdly, in a football case of *McCord v Swansea City AFC Ltd*, the court declared that if a player is injured as a result of play that goes beyond the rules, the club or the aggressor can be made to pay compensation. For example, this case states that the footballer, Marco Materazzi, had every right to compensation after Zinedine Zidane head butted him in the World Cup final, 2006.

Whilst boxing shares with other contact sports the fact that it has a set of rules, boxing is different in a significant way. Physical contact in rugby or soccer, however risky, is not intended to cause injury. The rules seek to minimise risks of injury. In contrast, boxers do not breach any rules when they try to cause injury. The British Boxing Board of Control made this quite clear in its submission to the Law Commission. “Nobody can take part who is not licensed, and all who wish to box are warned of the risks of the sport and are given thorough

“ Most fights will be unlawful regardless of consent

medical examination and tests.” Additionally, the mere fact that there is always an ambulance present at each promotion which is staffed by paramedics with instructions to go to a named hospital emphasises that severe injury is a real risk.

How have the courts dealt with this difference between a sport where injury is incidental and one where it is deliberate? The answer is that they have not really considered the point. Frustratingly, no cases have actually ever concerned boxing, which means that the judges have never ruled on the issue of boxing.

In Attorney General's reference No 6 of 1980, two men agreed to a street fight. At first they were acquitted because they had consented to assault each other. However, the Court of Appeal ruled that despite consent, the fight was a crime if the intention

was to inflict injury. Lord Lane went on to say, “Most fights will be unlawful regardless of consent.”

It is accepted as fact that boxing is legal. The justification, when attempted, has been on the grounds that properly organised fights are not intended or likely to cause injury.

Analysis of law and science has been superficial or non-existent, for the straightforward reason that there has been no test case. However, it is certainly arguable that boxing is unlawful and indeed, a criminal offence. It was in 1994 that Lord Mustill in the case of *R v Brown* said, ‘ It is in my Judgement best to regard this (boxing) as another special situation which for the time being stands outside the ordinary law of violence because society chooses to tolerate it’. The real question is how long society will choose to tolerate it!

“

What the appellant did had nothing to do with rugby football



Human Rights Do Not Exist!

Peter Hitchens: Conservative English journalist and author and a columnist for The Mail on Sunday.



Let me make a mildly shocking factual statement. Human Rights do not exist. They have no objective foundation which requires us to acknowledge that they are present among us, and that we must be guided by them. If we chose not to believe in them, they would disappear like so much vapour in a stiff breeze. This truth is visible, for instance, in the People's Republic of China, where even (in fact especially) the nicer parts of the Human Rights pantheon are absent in practice from the courts, from government and from daily life. If you protest about this, you too will probably disappear, even though the Chinese state will claim to be sympathetic to the concept in general.

In this lack of a compelling objective foundation, Human Rights are very much like religious belief. But in another way they are very unlike religion, and especially unlike

Christianity, the founding faith of Western civilisation. In our modern secularised world, a rational person may choose to accept or reject religion, or to stay neutral about it. It is, in the end, a choice driven by desire, like most world-views.

But in modern western societies, it is far harder to reject or doubt the fashionable secular faiths than it is to treat Christianity in the same way. Scorn Christianity, and people will applaud and buy your books. Mock Egalitarianism, Human Rights or the claim that global warming is caused by human activity, and you will be in trouble. It will not, as yet, be physical trouble. Nobody will come to arrest you. But your career and even your employability may be in danger, and people will shun you as they once shunned religious heretics, afraid that they will be contaminated by your presence.

What is all this about? After

all, many of the principles now called Human Rights broadly reflect or assist beliefs which have arisen in free societies as a result of Christian, especially Protestant, thinking. I believe that for many people in our secular world they have replaced the precepts of Christianity, and they were probably intended to.

But they have also taken on another life, as a licence for law courts to intervene in an Unchristian way in the politics of formerly Christian societies. Sometimes they genuinely support liberty of speech, assembly, thought and conscience. Sometimes, they do not. But in my view they are pretty feeble substitutes for the hard protections of liberty which go back to Magna Carta. These old, gnarled statutes arise from the belief that even the King is subject to law because law comes from God, the King of Kings. This is the foundation of the stern and perhaps rather cynical provisions of the English Bill of Rights of 1689 (now almost forgotten in its own country) and the American near-copy of it a

“Human Rights are very much like religious belief

century later. These are not vague pronouncements of what is and is not virtuous. Nor do they conflict with each other, as the 'right' to privacy conflicts with the 'right' to freedom of speech. They are clear limits on the abuse of state power, and as far as that goes, more useful than a trainload of conflicting, cloudy Human Rights. Speech is freer, and arbitrary power weaker, because of these ancient safeguards. But where the awkward Protestant spirit - of opposing autocracy and arbitrary power - fades, these protections weaken (as they have in Britain). Or they are massaged into something quite different, as happens in the USA. Instead of forgetting their Bill of Rights, the Americans have decided to deliberately misunderstand it as a sort of Human Rights

“ Use the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill

Charter. And the most important way in which they done this has been over a subject where Human Rights have been tortured out of shape to provide a nonsensical justification for what we wanted to do anyway – abort millions of babies.

This is quite obviously not a human right, because it involves the total destruction of all the rights of a human baby, in some cases when that baby could be

independently viable. Any objective and honest person must see that this question involves a conflict of 'rights', or 'duties' or (my favoured term) a conflict of freedoms. So the concept of Human Rights cannot by itself resolve them. It is simply assumed that, because the times are liberal, the law must be liberal. For example, the Center for Reproductive Rights has as its stated aim to 'use the law to advance reproductive freedom as



a fundamental human right that all governments are legally obligated to protect, respect, and fulfill.' By reproductive freedom it means, among other things, unrestricted abortion.

And the courts follow. The European Court of Human Rights declared in December 2010 ('CASE OF A, B AND C v. IRELAND') that the then Irish abortion law breached the Article 8 rights (to private life) of a woman who sought an abortion, though she sought it under very unusual circumstances. This was a faint echo of the US Supreme Court's equally ingenious use of a 'right to privacy' to strike down anti-abortion laws in the Roe v Wade judgement of 1973. The drafters of Article 8 (like the drafters of the 14th amendment to the US Constitution) might have been shocked by this application of their words. After all, Article 1 of the ECHR states 'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the

execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law'. The few exceptions given do not include abortion. And the United States Declaration of Independence is equally unequivocal about a right to life in the famous words 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.'

But it is in the nature of Human Rights law that the words of dead men can be made extraordinarily flexible in the hands of inventive judges. Far from providing the absolute prohibitions that a religiously-based rule of law claims to offer, Human Rights law unashamedly moves with the ethical fashions of the times. This may delight those who currently benefit from it. But if the times shift in another direction, and the ECHR, or the US Constitution, are

moulded to fit that direction, will they be so pleased?

Anyone looking at the political landscapes of Europe or the USA today must admit that the old liberal certainties about the future are dissolving quite quickly. It may well be that people who make the current governments of Hungary and Poland, or Donald Trump, seem liberal will be appointing the judges of the Supreme and Human Rights Courts. And it may well be that such judges will decide how we live and die in the 2050s. When they do, these judges will have astonishing precedents for broad, imaginative interpretation of the mere words in front of them. Those who now rejoice in the free interpretation of these documents will plead in vain for old-fashioned strict construction of judgements on the narrow basis of the written law. And their enemies, finally in control of the machine which liberals created for their own aims, will laugh in their faces.



Polish Your Shoes!

Nick Freeman: Owner of legal practice Freeman & Co and is best known as a celebrity defence lawyer, nicknamed “Mr Loophole”.



The timing of the careers advice ambush can be as varied as it is unpredictable.

In my case it has happened when playing golf, walking my dog, and putting petrol in the car.

At a recent wedding reception, I even had to stop midway between mouth and canapé thanks to the enthusiasm of an ambitious parent keen to pick my brain about work experience for her clearly embarrassed law student son.

I suppose I should be flattered. Like anyone who has achieved a certain degree of success in professional life, it's not unusual for young people (or, as demonstrated, their excitable parents) to seek some direction.

Certainly – and it's a sentiment I bear with humility not hubris – they may look to my career in criminal law and assume it will bring assured solvency.

Often, my reply isn't what those who ask want to hear.

For rather than extol the virtues of a career in criminal law, I tend to paint its epitaph. I tell those who want careers advice that criminal law is in a state of crisis – cannibalised by years of cuts to legal aid, astronomical training fees and slashed pay rates.

It's the very reason I made no attempt to encourage my own children to follow my career path. In fact I actively put them off.

Little wonder that data unveiled by the Law Society, which represents solicitors across England and Wales, shows those specialising in criminal work are an increasingly ageing bunch, with few lawyers joining this branch of the profession.

Or that although between May 2014 and January 2018 the overall number of practicing solicitors rose by 7.8%, the proportion

specialising in criminal work fell by 9.4%.

In fact last year, legal aid spending was £950m less than in 2010

So think about it. Why on earth would you want to trade three years at university, further exams at law school and then completing a training contract only to find that the newly qualified criminal lawyer is paid roughly the same hourly rate as my cleaner? (And she doesn't get called out to police stations in the middle of the night, attend countless unpaid administrative hearings or generally work ridiculous hours)

It's a diabolical situation (for criminal lawyers, not my cleaner), since this is an absorbing and exciting area of the law. One where, as a young solicitor, I found myself meeting the kind of villains and bank robbers I only thought existed in gritty TV dramas. However, the difference was that when I started out in 1981, the remuneration was decent, and enabled me to bide my time, work hard and really

“Rather than extol the virtues of a career in criminal law, I tend to paint its epitaph

hone my skill until I could balance my public defender work with a choice private client base.

However, isn't just dire for criminal lawyers.

In general the competition for all lawyers is immense.

A glut of courses and private colleges of law has created a surfeit of lawyers. In August last year, the Solicitors Regulation Authority reported that the number in England and Wales passed 140,000 for the first time.

So are you wasting your time even thinking about qualifying?

Well, a law degree endures as a hugely respectable barometer of skill and intellect – with many graduates taking positions in fields which spread well beyond jurisprudence.

But for those who really want to work within the law – how do you get to smash the competition, grab those elusive training contracts and

“ Make sure you're hungry enough to want it – and never lose a taste for that. The day the adrenaline stops pumping is the day you hang your boots up.

become a success?

(Usually the ambitious parents and wannabee lawyers lurking at garages and wedding receptions are put off by my negative prologue and don't hang around for this bit)

First of all, make sure you're hungry enough to want it – and never lose a taste for that. The day the adrenaline stops pumping is the day you hang your boots up.

After 37 years in law I'm still ravenously ambitious. I want to hammer the opposition using all my legal savvy, including exposing flaws in the prosecution case. (The press may call them loopholes – thus my nickname - when in fact it is simply the law)

It doesn't matter whether it's Sir Alex Ferguson or Joe/Jill. Nobody. I fight for the client, because that's what they are paying me for. But I also fight because I love to win. There's no room for complacency. It's a fact that a combination of sloppy police work and untroubled prosecutors has gifted me so many victories.

In any area of law, knowledge is king. It's why you might find me on holiday sitting on the beach, my nose in Wilkinson's Road Traffic Law when everyone else is devouring the latest Dan Brown best seller.

It also means putting every ounce of your being into your work.

When I first defended David Beckham for an allegation of speeding in Cheshire, I argued that my client was, - as would come out in court - escaping a photographer who had tailed him for 10 miles along the A34 near Stockport. As part of the preparation for my defence, I spent hours on that bloody road, familiarising myself with every lamp post, twist and turn.

So, at that elusive interview, be knowledgeable – about the firm you're applying for,



of course. But about the area of law you think you want to work in. Don't resort to cliché when explaining what attracts you. Follow your gut and be honest about that hunger to, say, defend the innocent, resolve family disputes, enjoy the adrenaline rush of sealing the deal. Don't let success be a dirty word, polluted by the prism of political correctness.

Indeed a young newly qualified lawyer once secured a position with my firm after spotting my car – then a 500 SL Mercedes AMG in the car park of Warrington magistrate's court.

Let me explain. The blue hood and shiny white paintwork – okay, it was the 90's – had snared his attention and this young man wanted to know what kind of person drove such a car.

Making a few enquiries inside the court, he discovered the car belonged to me, and sought me out to make an introduction.

His candor was charming since he explained it wasn't so much the car that had caught his eye. It was the fact that it reflected success and a can-do (some might have said gung-ho) attitude.

It was such an unexpected encounter, yet I immediately liked this young man and his refreshing line of introduction. So much so that I, invited him for an interview and he got the job.

So, flavour your hunger

with honesty. It's actually, in my view, an algorithm for integrity and may well put you ahead of the pack.

But what else can you do to excel in the law? Well – and the PC minded may want to look away now or move onto the horoscopes and TV pages – to many this may seem like a minor point but you have to look as good as you sound. Presenting an immaculate case – during your interviews for jobs and internships – in my view, means looking immaculate too.

That doesn't mean designer suits. It does mean clean shoes, ironed shirts, neatly pressed trousers. The way you look reflects who you are. If you look like you care about yourself then it's likely an employer will think you'll care about your work too.

Sure we live in a world where the insouciant casualness often aces straight-laced formality. But why take the chance? I've spoken to plenty of prospective employers – not all of them as prehistoric as me – who say they place great store by how a person presents themselves.

Believe me, if someone came for an interview at my firm with tattoos snaking up their neck, a ring in their nose or generally appeared to have a long distance relationship with the washing machine, then they wouldn't have a chance. In fact I've turned down candidates

for such very reasons. No matter how brilliant the achievements on their CV.

If you can't be bothered to look clean and smartly attired then it telegraphs to me that either you don't realise or you don't care. Either way it's enough for me to wish you well – on someone else's payroll.

You see I want to give the job to someone who would be comfortable representing me if I was the client. Who makes me listen when they speak. I don't want the human equivalent of *vin ordinaire*. You shouldn't want to be that too.

The current state of the legal profession may make it difficult to succeed. As I've said, in my own area, the criminal profession is evaporating. A dangerous scenario since it opens the door for the State to assume control without discerning lawyers to test the system and put the Crown to proof. The net effect of which could be a subversion of the very fulcrum of criminal law – to acquit the innocent and punish the guilty.

But a career in any area of law can be stimulating, infuriating, challenging and - ultimately - supremely satisfying. So in answer to my earlier question, are law students, wasting their time?

Not if you work hard and show how much you want it.

Just make sure you polish your shoes too.

Sky is the Limit for Murdoch - A brief overview of Comcast's acquisition of Sky UK.



Joshua Tray - Founder of The YLJ. He is currently reading Law at St Catherine's, Oxford.

In 2010 Rupert Murdoch signaled his intent to purchase the 61% of UK telecommunication company 'Sky' that he didn't already own. As 2010 turned to 2011 he became somewhat distracted by his name being on the front page of every (well, almost every) newspaper in the country. Being just about old enough to take an interest in the news and semi-vividly remembering the News of the World phone-hacking scandal meant that when the 61% of Sky was finally sold last month, there was an (extremely) mild sense of satisfaction at having unwittingly (loosely) followed the developments of the acquisition from start to finish.

As well as 39% of the Sky, Murdoch also had a number of other entertainment-based assets. Following the scandal he divided these into NewsCorp and 21st Century Fox. The former becoming a publicly traded company and the latter becoming

the fourth largest media conglomerate in the world. 4 years later, the scandal was a little less fresh and Murdoch embarked on another takeover bid for Sky.

Holding 39% of a company is certainly significant, but it does not provide one with control over that company. The prospect of the owner of fourth largest media conglomerate obtaining control of the UK's largest digital subscription television company, with a substantial footprint in Europe, understandably caused warning lights to flash in the offices of global antitrust/competition regulatory bodies. Lengthy investigations from Ofcom and a number of other bodies prevented any speedy acquisition

in late 2016. In early 2018, Murdoch won the UK competition regulators over with an agreement to sell Sky News following a takeover, however by this point, US giants Comcast and Disney had decided that they wanted to join the fight for the UK company. This was part of wider plans to obtain the entirety of 21st Century Fox's assets. The weakened pound following Brexit made Sky an attractive place to start.

Sky, now holding the renewed rights to broadcast Premier League football in the UK, was seen as an extremely valuable asset for any media company seeking to rule over one of the world's most sought-over industries and ward off competitors

“Holding 39% of a company is certainly significant, but it does not provide one with control over that company

such as Netflix.

Disney, who had made considerable progress on their prospective acquisition of Fox, thought it appropriate to remove themselves from the fight for Sky. This left Murdoch's Fox and Comcast in a heads-up duel for the majority stake.

7 months of tactical bidding and careful calculations led us to an unprecedented one-day auction on September 22nd. Comcast assembled a team in a hotel near Buckingham Palace whilst Murdoch sat within walking distance in his London flat. Final sealed bids were submitted to a site run by the UK Takeover Panel and verified over the phone at 7pm. In November 2016 a share in Sky plc would have cost you £7.26. Murdoch offered to buy the remaining 61% at £15.67 per share.

Unfortunately, this wasn't sufficient to take control of a company that he had sought-after for 8 years. Comcast's £30 billion offer (£17.28 per share) won them the majority shareholdings in the UK company.

Following this, it seems that Fox will sell Comcast the remaining 39% stake for £11.6 billion and then proceed with the transfer of its remaining assets to Disney for a measly \$71 billion.

Murdoch, now aged 87, has bowed out of the quest for world (media) domination. Disney and Comcast, however, will continue battling it out. The next combat zone likely to be streaming service Hulu where, following the acquisition of Fox, Disney will own 60% of, with Comcast holding 30%.

Its tough to see who the losers are with this

transaction. Whilst Murdoch, began 2010 intending to add the entirety of Sky to his collection of media super-companies but looks likely to end 2018 losing not only his stake in Sky but the entirety of 21st Century Fox, he would appear to have amassed a suitable retirement fund. His sons James and Lachlan may have lost the assets that they had likely assumed would be theirs one day, however one would suspect that their woes were adequately soothed by a steep raise in pocket money following the sales. Disney appear in a fantastic position to push on towards the top of the media pile and Comcast won Sky. It would seem that everyone is a winner. However, Comcast's winning bid being £2.5 billion bigger than it needed to be to win the auction may give their success a bitter aftertaste.



Trump Tweet Intended for Jurors

Shanin Specter: Pre-eminent American trial lawyer. He is a founding partner of Kline & Specter, one of the leading catastrophic injury firms.



President Trump's latest outrageous tweet characterizing the charges against Paul Manafort as a "hoax" is a huge gift to the Manafort defense and a criminal act by the President.

Let's start with the gift.

Remember that the President is the chief law enforcement officer of the United States. As such, his statements bind the Department of Justice. To the extent that they are relevant to a criminal prosecution, they are likely admissible at trial.

When the President says that charges are a hoax, that's an admission by the United States that the prosecution is not meritorious. Should a jury know that?

Consider a product liability case where a car owner alleges an accident occurred because his brakes were defectively designed. If the CEO of the car company says — or tweets — that their brakes are defective, that statement is plainly admissible at trial. So, too, with the President's "hoax" tweet



alleging that the prosecution is defective.

If I were defending Paul Manafort, I'd offer the tweet into evidence. And if I were the judge, I'd admit it into evidence. It's likely that some of the jurors are Trump supporters and it's highly plausible that this evidence would prevent a conviction.

Is that the President's intention? Of course it is. He wants Manafort acquitted or the jury to hang, as that'd be a body blow to Robert Mueller's efforts. And an acquittal would remove Manafort's incentive to cooperate with Mueller against Trump so as to avoid a long sentence.

Let's also remember that while the judge has told the jury not to read anything about the case, he hasn't

sequestered them or seized their iPhones. Chances are one or more of the jurors know or will learn of the President's dissing of the charges. Thus, the President is likely to affect this case regardless of whether the tweet is admitted.

So where's the crime? Well, if the tweet isn't admitted but jurors learn of it, that may affect their deliberations just as easily as if it were introduced in open court. It's natural to infer that this "hoax" message is intended, at least in part, for the jury, and is also intended to coax an acquittal.

It's illegal to hand jurors literature while they're walking on the sidewalk that's intended to affect their deliberations. And in 2018, it's also illegal to affect their deliberations by tweet. It's called jury tampering.

Some might say something like "yeah, but that's just Trump popping off." If the point is that this is the kind of stuff Trump does all the time, that's true.

This is the same guy who

urged the Russians to hack Hillary Clinton's emails, who fired the FBI director to stop the Russian probe and who's repeatedly cajoled his Attorney General to do the same thing.

But while some bad acts might anesthetize us to more bad acts, that's no excuse. And now the President is messing with a criminal trial — while it's occurring.

Judge Ellis shouldn't put up with it. He has a responsibility to do all he can to assure the integrity of the proceeding in front of him. That integrity is threatened by this corrupt President.

Few remember it, but it was another federal district

court judge, John Sirica, who ordered the release of the Watergate tapes and set in motion the demise of the Nixon presidency. Something similar could happen here.

This tweet won't change public opinion. Nearly everyone in America seems to have chosen sides and nothing seems to move them.

But nearly everyone isn't everyone. And the remaining

neutrals include Judge Thomas Selby Ellis III and the rest of the federal judiciary. So while this tweet won't affect the polls, they may bring the ire of a federal judge and his brethren. And that may influence or lead to a charge, conviction or other legal consequence for Donald J. Trump — sometime, somewhere, by someone.

“ Yeah, but that's just Trump popping off.”



A Fast-Track to Human Rights Violations and Worse

Amy Kerr: YLJ Writer



I've recently moved abroad to study for the year and despite months of whining in various states of hysteria to my friends about my host university's accommodation office (I think the phrase 'I'm going to be homeless' might have been used approximately 76 times), I am very grateful to them for two interrelated reasons. Firstly, if they'd provided me with accommodation as they probably were supposed to, I wouldn't have met my flatmate G or her cat (he's good for the soul). And if I hadn't met G, I would have remained completely ignorant of recent abhorrent human rights abuses in Moldova.

...

I knew shamefully little about Moldova and its political state. To be safe, I'll assume some of you know as little as I did, and give a brief overview:

- G is one year older than me, but grew up to see Communism try and fail. Communism.
- In November 2016, pro-Russian Socialist Igor Dodon was elected president. During his election campaign, he



pledged to steer Moldova away from the EU and back towards Russia

- Transparency International's 2017 Corruption Perception Index ranks the country 122nd out of 180 countries. Their 2013 report found that 76% of Moldovans felt the police was corrupt or extremely corrupt; 75% for political parties; 80% for the judiciary; 75% for Parliament and the Legislature
- The criminal justice system is looking good, with reports of unfair trials and torture and ill-treatment
- In May, Pride in the capital Chişinău was stopped by police due to 'security concerns', and Dodon made some lovely homophobic statements ("I have never promised to be the president of the gays, they should have elected their own president", and posting on his official Facebook page that he "is categorically

against the march of the LGBT community, as it flagrantly contradicts our traditional values, Orthodox religion and morality")

...

On 6th September, 7 teachers from G's school were deported to Turkey, without trial. From track record, they will probably be tortured and killed (after the failed coup in Turkey in 2016, thousands of public servants were rounded up, including Gokhan Acikkollu, a history teacher, who died on August 5 2016 after being tortured in police custody – Stockholm Center for Freedom).

They were taken from the streets on the way to school; the intelligence services literally knocked down one teacher's door. One teacher was with his child, and that child was detained with them for a while.

This was an illegal deportation and a violation of basic human rights. They had no access to their lawyers. they weren't informed of their rights at the time of detention, nor the charges against them (Amnesty International). There was no legal procedure, no

clear evidence, no fair trial.
No trial.

...

The school is part of a chain of private schools financed by Gülen, who Turkish President Erdoğan accuses of being behind the attempted coup in 2016. Turkey has put pressure on countries to deport people believed to be linked to schools financed by Gülen, declaring the movement a terrorist organisation.

In a 2017 interview, Gilles de Kerchove (EU counter-terrorism coordinator) said the EU doesn't believe the Gülen movement is a terrorist organisation and is not "likely to change its position soon"

The Moldovan Intelligence Service is saying the teachers are 'suspected terrorists' and allegedly involved in threats to national security. But you can't deport someone without evidence: decisions must be based on clear evidence, not suspicions. So regardless of what the Gülen movement is or isn't about, these teachers should not have just been extradited without any legal process.

And there is a huge (and quite important) difference between being part of an

“ They put them on a fast-track to further human rights violations such as an unfair trial

Islamist group and being part of an Islamic fundamentalist group. The list of fundamentalist organisations known as extremist or terrorist does not include the Gülen Movement.

They're teachers. As Rebecca Harms MEP tweeted, teaching children is not a crime.

An article released by a newspaper based in Chişinău stated that members of the Moldovan Embassy in Berlin received death threats from representatives of an Islamist group, including the 7 teachers. They allegedly threatened to cut off the heads of children of Moldovan diplomats. The Embassy was apparently evacuated because of these threats. Yet bizarrely, the Moldovan Ambassador in Berlin, Oleg Serebrian, denied that the Embassy was evacuated and said "no one has received such indications".

This is part of a horrible and terrifying pattern. In Kosovo in March, 6 Turkish nationals, also school employees, were abducted and unlawfully returned to Turkey without the knowledge of the country's highest authorities and without the ability to challenge what happened to them (Amnesty International). Azerbaijan, July. Greece, June 2017. Malaysia, May 2017.

...

Amnesty International really quickly got behind this, releasing a solid statement on the day:

"We are deeply concerned about the fate of the seven detained Turkish nationals. The Moldovan authorities should have ensured their protection from forcible return to Turkey, but chose to do the opposite and instantly deport them. The Moldovan authorities didn't just violate these individuals' rights once by deporting them – they put them on a fast-track to further human rights



violations such as an unfair trial"

Amnesty highlighted that as the teachers had requested asylum in Moldova, claiming they would face persecution in their homeland, their deportation violated international obligations – "forcible return of those seeking protection in Moldova is a flagrant violation of Moldova's international human rights obligations"

Amnesty has called for the state authorities to immediately hold to account those responsible for the arbitrary detention and expulsion of the Turkish nationals. I really don't know if that will happen, but that this international organisation is raising awareness and speaking out against this, is a really positive thing.

...

Members of the European Parliament released a joint statement against the extradition.

We are deeply concerned that it has been completely forgotten that countries are bound to respect international conventions and protocols, which were laid to protect basic human rights.

Oh, maybe like the European Convention on Extradition which forbids extradition of people for political reasons (Article 3).

Or Article 3 ECHR – an absolute prohibition on torture and ill-treatment. You can't

deport someone to another country when substantial grounds have been shown that they would face a real risk of being tortured or subjected to ill-treatment in that country. In *Saadi v Italy* (2008), the European Court of Human Rights held the person's conduct cannot be taken into account. So even if these teachers had done anything other than teach their students, because history shows deportation would expose them to a real risk of torture or ill-treatment, this deportation is highly questionable in consideration of A3 ECHR.

The MEPs reminded Moldova that it is on the European road map (it's part of an 'association agreement', which established a free trade area, visa-free travel to the EU, etc. and requires Moldova to reform its laws to be closer aligned with those of the EU) and thus is expected to show commitment to EU Treaties and the EU Charter of Fundamental Rights.

Again, this is really encouraging. but why are there only a few signatures? 7 out of 751 MEPs.

...

It worries me that I didn't see any of this in any UK press. There's a tiny (and very limited) article in the NY Times. A few days afterwards, a small BBC News article was released. But that was it. I've been actively searching and

I can barely find anything. This is a huge, flagrant violation of human rights and international conventions, and it's nowhere.

I'm struggling to understand or explain what's happening. An easy route would be to become completely cynical about international agreements and institutions – what's the point in having laws and treaties against this kind of thing, if it's just going to happen. I'm struggling to see accountability. But I don't want to take that route.

I don't really know what can be done. A small – perhaps naive part of me – hopes that if there is enough response from international actors, like the European Parliament, these teachers may be given the fair trial they are entitled to.

The case is going before the European Court of Human Rights. The Court has asked the Moldovan government to submit information about the extradition, namely whether before extraditing the teachers, the authorities considered their claim that they are exposed to the risk of being subjected to inhuman treatment in Turkey. – The government has until 5th October. It will very possibly be too late for these teachers. But that the Court is asking these questions shows the case has passed the first admissibility hurdle, which suggests we could see a ruling of an A8 ECHR violation.

Hey, You Stole My Idea!

Connor Brown: YLJ Writer.



Take this article; did you know it holds a copyright that belongs to me? How about the magazine you are reading it in, did you know it has a patent owned by a specific individual? What about the corporate logo on this said device, did you know it is protected by a Trademark? Intellectual Property is everywhere, permanently entwined within our everyday lives; it is almost impossible to avoid. Like all legal principles, Intellectual Property (IP) is used to protect individual rights and freedoms, it enables people to earn recognition or financial benefit from whatever they invent or create through giving them an economic monopoly of a certain section of the market. IP is in fact so sacrosanct to society it is enshrined within the UN Declaration of Human Rights under Article 27: Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he/she is



the author.

At the beginning of the article I mentioned the three major tools used in IP; Copyright, Patents and Trademarks. Copyright is by far the most common branch of Intellectual Property, it is defined as any original literary, dramatic, musical or artistic works, sound recordings and films, and therefore any unique piece of expressionism is entitled to copyright protection which basically blocks anyone from reproducing the work without the owner's permission. The main reason it is so frequently used is because it is automatically granted as soon as the creator of

the piece deems it finished, the copyright also lasts until 50 years after the death of the owner at which point it becomes part of the public domain. Patents are basically the scientific version of a copyright, they are used to protect the inventions of the individual but are physically more complex to construct. To protect the new invention the owner must go to the Patent Office and apply for a patent, in exchange for the right to prevent others copying and commercially exploiting the work, the creator must sacrifice the precise details of how the device functions so it can be made available to the public after a disclosed amount of time. The final provision is Trademarks; they include anything from names, logos or symbols that distinguish one company's products or services from



Patents are basically the scientific version of a copyright, they are used to protect the inventions of the individual but are physically more complex to construct.

other businesses competing in the same market, the owner applies to the Trademark Office, pays a small fee (£170 in the UK) and much like copyrights and patents they gain protection from unwarranted use of the mark.

Although the main concepts seem very linear and straightforward these Intellectual Property laws are regularly ignored or disputed. A prime example when looking at copyright law is that of *A & M RECORDS, INC. v. NAPSTER, INC.* which saw the Hollywood music industry take down the pirate website Napster in 2002. The dispute arose after Napster was causing controversy by allowing the general public to download MP3s of already copyrighted music for free. Napster was in clear violation of copyright law as not only did they fail to gain permission from the music's respective owners but were also robbing them of potential revenue, as the consumers were able to bypass paying money to the record companies who already had a monopoly of that portion of the market.

Sometimes the verdicts are less clear cut, the case *LUCASFILM V. COMMITTEE FOR A STRONG AMERICA* showed that the laws on copyright and trademarks are still up for interpretation. The situation started in the mid-1980s when the Reagan administration's Strategic Defensive Initiative that planned to put anti-missile weapons in space

was coined the "Star Wars" program during television and media campaigns; a law suit was subsequently filed by the Star Wars creator George Lucas who understandably did not want his branding associated with American party politics, it would seem like a clear victory for Lucas' lawyers, but they lost. The judge ruling on the case stated that although the term Star Wars can have its brand safeguarded due to trademark laws the name lacked sufficient "originality" to warrant copyright protection. Unfortunately this is where IP can fall flat in a Common Law scenario, as it is up to the subjective opinion of the judiciary to decide whether stringing two words together is enough to fulfill copyright requirements. But what about the Trademark Protection, how were they defeated there? This came back to one of the key principles of Trademarks, as the phrase was not being used to sell and profit from products or services the Government could use it freely, clearly the judge did not see a potential increase in electoral votes as profiteering.

To conclude it is clear Intellectual property will be forced to continually evolve and adapt long into the future, the growth of the digital age and the internet has made it exponentially harder for copyright and trademark protection to be enforced, especially when vast amounts

of illegally distributed material is just a mouse click away. The ways patents are granted will also have to be revolutionised as global industry becomes increasingly complex, with investment in things like nanotechnology, programming and pharmaceuticals the lines will become blurred between what constitutes a new invention or a slightly altered replica of the same formula. The philosophical and moral principles behind Intellectual Property will be subject to constant debate as the outlook of society changes; it needs to strike an optimal balance between the power of exclusive rights to stimulate the creation of inventions and works of art, while at the same time allowing widespread public enjoyment of those creations, therefore the judiciary will have to decide whether IP should promote maximum social welfare or maintain the foundations of a capitalist society. In order for an economy to remain competitive its population needs an incentive to innovate and invent, and as sufficient payment for their hard work a monopoly over their creation would be expected. However this would be leaving the welfare of society at the wayside, as placing monetary restrictions on these products will inevitably stop an element of the population from being able to access, and ultimately enjoy them.

The Defence Bar: Fighting to Survive Yet Again

Jeremy Dein QC: English barrister (25 Bedford Row, London) specialising in criminal defence who presented the 2018 BBC1 series *Murder, Mystery and My Family*.



Earlier in 2018 the renewed threat of publically funded defence barristers going on strike was just about avoided. Action was postponed when the Ministry of Justice made an offer of 15 Million pounds to address concerns over slashed fee rates for Crown Court work. It has subsequently transpired that the 15 Million is, in real terms, closer to 8. Hence, one again, Bar mess's around the country are akin to a simmering volcanoes. The future is volatile and uncertain. This is the sad but inevitable consequence of incessant attacks upon us, defence barristers, government after government.

I was called to the Criminal Bar in 1982. I am fiercely proud of the honesty, integrity, commitment, and professionalism exhibited by criminal barristers throughout my career. The profession is divided by prosecution and defence, yet united by a belief in the overriding importance of criminal



Justice, and due process. As someone who has dedicated his working life to the defence of the accused, and staunchly believes in it, that is my focus. We, the defence Bar, have come under attack from successive governments and patience is now at it's limits. If this goes on, before long, the Criminal justice system will have ground to a halt for want of legal representation. No empty threat. It's been coming, and matters are at breaking point.

David Gauke, the Justice secretary has openly

accepted that "Criminal defence advocates play a crucial role in upholding the rule of law". This is of course to state the obvious. It's like saying "A cabinet minister helps run the country". The important thing is that this government now puts its money where its mouth is. Over the last 8 to 10 years about 100 million pounds have been taken out of Crown Court advocacy, so the current determination for a 15 Million pound boost is no big deal. The truth is that the Criminal Justice process is on its knees. In particular defence barristers fees are at the centre of a devastated system. But there are all manner of other challenges. Court staff cuts, conditions, logistical problems, and terrible morale, all characterise what used to be a thriving Criminal

“Criminal defence advocates play a crucial role in upholding the rule of law”

justice concept. No longer. Things are bad, make no mistake. Remand prisoners are held like animals, without regard for the presumption of innocence. This must stop. The current situation is cruel and inhumane. So that there is no misunderstanding, convicted prisoners conditions are outdated, getting worse, and need urgent attention too.

Over the decades, I have watched with glee as the Criminal defence Bar has become more open to less privileged applicants. It is now a much more diverse branch of the profession. My chambers, 25 Bedford Row, where I am co-head, have the highest quota of diverse practitioners at the Criminal Bar. In 2018, this is how things ought to be, of course. Nowadays, however, I see the juniors in my set work harder than ever, yet fees are derisory, and going down.

Those who have struggled to qualify, sometimes from harsh backgrounds, are dreadfully rewarded. The courts might have gone digital, however, cases generate more material than ever. Modern hours of preparation are truly out of sink with payment received, and by a massive margin. Meanwhile, the recent collapse of trials due to serious disclosure failings requires the defence to be more vigilant than ever, and rising sentences trigger more and more, extensive grounds of appeal to be drafted. These are just examples of the issues confronting the junior defence Bar these tough days. For Silks, it is no better, but they, as I see it, are far from the priority.

So, what is the future? I hope, a healthier Criminal Bar than ever before. Despite the above, to be a defence barrister is a fantastic occupation, with

daily challenges anew, unpredictability at the fore, independence prominent, and a role in society of overriding importance as never before. The defence Bar is a cornerstone of our free society. What matters now is that the government, indeed the public, wake up to the need for strong defence, and healthy Criminal Justice, as a matter of urgency. If the attacks persist, the Criminal Justice system will fall apart, and young, talented defence barristers will leave the profession en masse. Only then will the public appreciate how fortunate it was to have a staunch, fierce, independent and effective defence Bar. Before it is too late then, let the defence be heard in the corridors of power. The developing alternative is that we may no longer be heard at all.



Is Our Current Divorce System Past Its Time?

Matti Brooks: YLJ Writer



I am encouraged to write an article on the current status of divorce in the UK and the implications that the introduction of no-fault divorce would have on the sanctity of marriage, in light of the Supreme Court's ruling in July: *Owen v Owens*.

Tini Owens petitioned the Supreme Court for a divorce from her husband of 40 years, on the basis that her once synergetic marriage had broken down to a loveless affair. 5 Supreme Court justices, in respecting the declaratory theory that governs the separation of powers, ruled with reluctance against the application for divorce. Supreme Court President Lady Hale found the case "very troubling", although she's understanding of the need for parliament to reform the law since the judiciary's powers are confined to merely 'declaring' the law, not rewriting it.

Due to the circumstances



of the case, Mrs Owens can only get divorced in 2020 after having been separated from her husband for 5 years. Under current UK law, a spouse cannot seek divorce without a spouse's consent unless they have separated for 5 years. Even with consent, they must prove two years of separation to be granted divorce rights. Should a spouse wish to divorce sooner, divorcing couples are currently required to blame each other on the grounds of unreasonable behaviour or adultery, and such 'fault' must be acknowledged and accepted by the respondent. If they disagree, the person filing for a divorce will need

to give more evidence to support their statement. Such a bitter process results in an acrimonious 'blame game' that proves a detriment to the welfare of parents who may be seeking an amicable divorce, need I mention the adverse psychological effect on the children which may be involved.

Justice Secretary David Gauke recently proclaimed: "Marriage will always be one of our most sacred institutions", though he recognises that it "cannot be right for the law to increase conflict between divorcing couples". He wishes to reduce the antagonism of citing fault. It was the case of *Owens v Owens* which prompted him to launch a public debate in favour of modernising legislation governing divorce that has not changed for almost 50 years.

So what would a 'no-fault divorce' entail and what are its respective merits and limitations?

Couples whose marriage has deteriorated to the point of irreconcilability, or who may wish to separate on more friendly terms, would

“ A spouse cannot seek divorce without a spouse's consent unless they have separated for 5 years

seek a no-fault divorce. Co-op's legal services defines this system as when "couples would be able to formally end their marriage without either person being held at fault". It is thought that such a procedure would be much more administrative, rather than having to be managed by court procedure. Given that a spouse cannot reject their counterparts' petition for a no-fault divorce, unhappy couples will be able to exit a loveless marriage without engaging in a malicious blame game. This system is more forward looking and family friendly as it allows the respective spouses to delegate more time towards financial and youth arrangements.

It should be understood that many divorces do not experience vicious blame games. Should a couple both acknowledge and consent to the terms of 'unreasonable behaviour' that were filed to the court then they may be entitled to get a divorce following the minimum threshold of a year. However, it seems illegitimate to force matrimonial lawyers to accuse the other spouse of a 'fault'

when it may be that the marriage has just lost its lustre that it once carried.

Currently, there exists a 12-week consultation run by the Ministry of Justice based on the following proposals:

- Making 'the irretrievable breakdown of a marriage' the sole grounds for a divorce.
- Removing the need to live apart or provide evidence of a partner's misconduct.
- Removing the opportunity for the other spouse to contest the divorce application.

Many couples choose to stay in loveless marriages rather than pursue an antiquated system that requires them to single out one party for blame and thus a no-fault divorce system would maximise happiness and remove hostility in divorce procedures.

On the other side of the coin, some cite arguments against no-fault divorce. There is an argument that couples may not think mindfully enough before entering into a marriage contract if they feel that they can exit from their marriage rather easily should it not work out. This may go some way towards

deinstitutionalising marriage as such a sacred contract.

Perhaps the most pronounced of concerns is the haste with which couples may seek a divorce when problems arise before pursuing sufficient mediation or counselling arrangements. Our legal system should encourage couples to discuss their problems and find mechanisms to overcome their respective faults, with divorce being a mere last resort. In place of a no-fault divorce option, it has been proposed that there could be an opportunity instead to utilise our education system to shine greater light on the implications of marriage and the financial risks that they could face if the marriage breaks down. However, as it currently stands, the legal system already strongly encourages the advice of counselling services before a divorce can be pursued. You also can't divorce in the first year of marriage and the cost of divorce also provides an element of caution to disagreement leading to divorce. Therefore, these concerns aren't as profound as they may first seem.

In conclusion, I think a no-fault divorce system should be the end goal as its harmonious benefits do outweigh its costs. Counselling and mediation should be pursued when issues are raised but it only seems right to allow couples to part ways without a requisite 'fault' element.



Brexit – What Now?

John Mills: British businessman and economist, known for founding UK-based consumer products company JML, where he is currently Chairman. In 2016, he founded Labour Leave, having previously been chair of Vote Leave.



What is going to happen to Brexit? Will Chequers stay the course? It is extremely difficult to say how events will pan out but here are some thoughts as of October 2018 about what the future might bring.

Neither the Parliamentary Labour Party, nor many Conservative MPs, like the Chequers proposals to which Theresa May is wedded. Nor is the EU27 – to say the least – at all enthusiastic about them. They would obviously be complicated to implement and they are clearly the outcome of tricky compromises about the Irish border and calculations

about parliamentary arithmetic. Backed by the Prime Minister, at whose dogged persistence one can only wonder, however, Chequers is still in play. How can this be?

It is because there is no

other obvious solution to the Brexit negotiations. The most obvious follow up from the June 2016 EU referendum was an outcome broadly along the lines of the CETA treaty, albeit with some augmentation especially round services, which the EU has negotiated with Canada. This was the thrust of the Prime Minister's January 2017 Lancaster House speech. The EU27 have always indicated that they would find an arrangement along these lines acceptable, but the UK parliament elected in June 2017 was not prepared to accept so clean a break with the European Union – and still is not prepared to do so

Instead, ever since the 2017

“The EU27 have always indicated that they would find an arrangement along these lines acceptable, but the UK parliament elected in June 2017 was not prepared to accept so clean a break with the European Union

general election, there has been a majority in the House of Commons for staying much closer to the EU27, particularly for the UK remaining in “a”, if not “the” Customs Union. The question then has been how this could be squared both with the huge number of people who had clearly voted - albeit by a relatively narrow majority - for Brexit in the referendum, and with the UK being able to negotiate free trade agreements on its own with countries outside the EU. The position became further complicated by the commitment given by the UK government in December 2017 about the Irish border, which effectively gave the EU27 a veto over what the EU was willing to accept in terms of regulatory alignment between Northern and Southern Ireland.

The Chequers proposals were designed to square these circles, with the UK effectively remaining in the Customs Union and collecting import tariffs on the EU's behalf while nominally outside the EU. Will some variant of these proposals get through the UK parliament as well as being accepted by the EU27, which is what the Prime Minister hopes will happen.? It is possible but far from certain.

One major hurdle is that the UK is expected to sign a formal, a legally binding Withdrawal Agreement either at the end of 2018 or the start of 2019, committing the UK to pay the £39bn

proposed by the Prime Minister in her September 2017 Florence speech – as well as binding the UK to accept its December 2017 Irish border commitment – but without any clear indication of what the UK is going to receive in trading and other respects in return. It is not by any means certain that parliament will endorse these proposals, and if it doesn't then a “no-deal” rather than Chequers outcome begins to look much more likely. Labour may become increasingly concerned about the electoral backlash in marginal seats in Wales, the Midlands and the North of England if the Party is seen to be backing a really poor deal. On the Tory right, members of the European Research Group may feel even less inclined to support the government on Brexit than they do now.

If there is then no deal which parliament is prepared to support, what happens then? One possibility would be to have another referendum, but this course of action is also fraught with problems. The electorate does not want another referendum. Nor does the government – and there are strong democratic arguments against another referendum being held. What would the questions be? Unless Article 50 is suspended, which may itself be difficult, for reasons of timing the UK will be out of the EU by the time the referendum is held. We would then have applicant

rather than membership status, potentially liable to lose our rebate, to be obliged to join the euro and to comply with EU migration policies. Would the EU want us back in again? And would the result then be any different from what it was in 2016?

In these circumstances, what seems most likely to happen is that “no deal” will morph into a collection of “temporary” arrangements to keep most of the status quo in being. Trade will continue, probably with some temporary but short-lasting disruption. Planes will fly. There will be a period of considerable uncertainty, but the economy will go on growing slowly, and there won't be an economic crash. Common sense will prevail among those on the ground who have to keep things moving, and some sort of normality will emerge.

Life will, therefore, continue much as before, but some things will change. Confidence in our political leadership will wane still further. Relations between the UK and the EU will continue to occupy centre stage, quite possibly on even greater extent than they do at the moment. The UK will suffer from even greater existential concerns about its future place in the world than it does now. We will continue half in and half out of the EU which in a way, is where we have been for a long time. Plus ça change

Students of European Law Rejoice

Lord Andrew Adonis: British Labour Party politician, academic and journalist; most famed recently for quitting the NIC amid a dispute over Brexit.



If there is one group that will undoubtedly benefit from the Government's Brexit plans it is British students of European law. Far from making their studies useless by making Britain leave the jurisdiction of European law, these plans will make them invaluable for many years to come.

This is because the Brexit that is facing us is a Blindfold Brexit, where we leave with no credible plan for our national future. To get over the line, the Government is kicking the can down the road on issue after issue. Under its plans, fundamental problems on our future legal relationship with the EU would have to be resolved for years to come.

The "facilitated customs arrangement" that the Government is seeking has been called the "fudge of the century" by a senior EU official, and it hardly even mentions services which are 80 per cent of our economy. Furthermore, the Government has itself conceded that "ongoing harmonisation" will require that UK courts pay "due regard" to European rulings, so the legal wrangling that Brexit has unleashed may never end. It would be a boon for British

experts on EU law, but a huge burden on British businesses. And this is just the current proposed deal that will almost certainly have to be further fudged because it does not address the problem of a hard border in Northern Ireland and is seen as a betrayal by hard-core Conservative Brexiters.

The likes of Jacob Rees-Mogg, Nigel Farage, and Boris Johnson reject all of this and endlessly spout the phrase that 'no deal is better than a bad deal'. This is a lie for one simple reason: a no-deal Brexit does not exist. Taken literally, a no-deal Brexit would mean planes not flying, crucial medical supplies being halted at the border, and power cuts in Northern Ireland because these activities all rely on treaties that would cease to hold after the 29 March 2019. This kind of catastrophe is unthinkable, and so even the thinnest of Brexit deals entails making agreements with the EU on key areas.

To get to the bottom of this, I have repeatedly asked Nigel Farage and Jacob Rees-Mogg to clarify what they mean by a 'no deal Brexit'. They are yet to give me a proper answer, which is of course because they know that their favourite

soundbite is complete nonsense.

It is also because they know that the moment they are forced to move from discussing fantasies, like the mythical return to WTO tariffs that increases our trade, to the realities of Brexit, it will become clear that the fundamental problem is Brexit itself. It simply cannot be done without causing huge damage to this country. This is becoming abundantly clear as the Government runs of road and has to decide what Brexit will actually look like. From protecting the Good Friday Agreement to protecting our exporters, there are no solutions that are even close to preserving the benefits we currently have in the EU.

This is why we urgently need a People's Vote on the terms of Brexit. So that we can decide our future without having charlatans like Nigel Farage and Jacob Rees Mogg decide it for us.

It may mean some lost income for those of you poring over European legal protocols, but it will give us a chance to continue shaping those laws rather than spending decades slowly tearing them up.



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Closing the Divide in a Polarised World

Sharon Booth: Founder and director of Solutions Not Sides, an educational organisation which promotes a non-partisan attitude to the Israeli-Palestinian conflict and a respect for the human rights of all.



I have come to the conclusion, through personal experience of working with left and right-wing activists and through some (admittedly limited) reading on the subject, that political left and right-wing activism is driven primarily through two strong and negative emotions. The more powerful the emotional drive that someone has, the more active and extreme they will be in their swing to left or right.

The overriding emotion of those on the political far left is anger. These people have often either experienced, or witnessed what they believe to be injustice, and their anger rises against the unfairness of their situation or the situation of those they attempt to defend.

The dominant emotion

of those on the political far right is fear. These people experience or perceive a sense of threat from some quarter or other, and the resulting fear is what motivates their political choices.

I see this of course, most strongly in the left/right dichotomy of positions in Britain adopted over the Israeli-Palestinian conflict. The right-wing recruit support for Israel, and because of the persecution Jews have suffered through the centuries and the rhetoric of hatred from many countries surrounding Israel, there is real fear over this issue that can lead people to swing to the right. The left-wing recruit support for Palestine out of anger at the fact that Palestinians' rights have not yet been granted and fulfilled,

and may never be.

Yet tragically, as these people take up their positions against one another, it is these specific emotions themselves that push the seemingly never-ending cycle of conflict around. The more angry Palestinians and the left-wing become, the more fearful and defensive the Israelis and the right-wing become that their very existence is threatened. The more fearful and defensive the Israelis and the right-wing become, the more angry the Palestinians and the left-wing become that their rights will continue to be denied.

So, whilst these negative emotions can be good instigators and motivators for taking action to resolve real needs, I am now certain that they are not good tools or helpful factors for actually finding a resolution. In any conflict situation, emotions (as far as possible through certain techniques) must be set aside and cold, clinical problem-solving must be undertaken in order to reach a solution. This must involve clear, direct

“The more powerful the emotional drive that someone has, the more active and extreme they will be in their swing to left or right”

communication and a calm and collected approach, which is why external parties as negotiators can help, and calming practices such as mindfulness are also useful.

There is one emotion, however, that is not negative but positive that can hugely help in finding a solution - and that is compassion. Where compassion for the other side as fellow human beings exists, then both anger and fear can be conquered and the trust can be built that is necessary for finding a middle ground and executing an agreement. This can apply to all kinds of political issues, not just this conflict. Until the left-wing liberals stop seeing the right-wing as power-hungry, closed-minded and aggressive, and the right-wingers stop seeing the left-wing as naive, weak people that will expose us all to danger, then there will be no middle ground on issues such as terrorism, gun laws, foreign policy, etc.

In his recent book *The Righteous Mind*, psychologist Jonathan Haidt of the N.Y.U. Stern School of Business argues that if people could see that those they disagree with are not immoral but simply emphasising different moral principles, some of the antagonism would subside. He now finds value in conservative tenets that he used to reject reflexively: "It's yin and yang. Both sides see different threats; both sides are wise to different virtues."

“The more powerful the emotional drive that someone has, the more active and extreme they will be in their swing to left or right



After Taiwan, What's Next for Asia?

Katrina Hung: YLJ Writer.



Taiwan has long been home to Asia's most spirited LGBT communities, with the hashtag #TaiwanGayMarriageLegalization attracting over 11 million views on China's Weibo. The country has recently joined the United States, Canada and 18 others to rule in favor towards constitutional protection of same-sex marriage. But the question of what it symbolises in Asia remains unresolved. If the law functions to balance the need for stability with the demand for progress, Taiwan's announcement from May acts as a positive testament. The decision favoring constitutional protection confirms growing momentum in the country, where child adoption by unmarried same-sex couples is becoming increasingly popular. Yet until the legislation was passed, only one individual can be recognised as a legal

guardian. A condensed look reveals that legalising marriage is bound to cultural and political acceptance more deeply than economic concerns. It implies that the parliament has two years to amend laws regarding same-sex marriages. If not, couples will be permitted to register under the current framework. Both mothers or fathers of the adopted child could be entitled to equal welfare and property benefits. Around the world, controversies surrounding alternative ideas from LGBT to the businesses of Uber and AirBnB have demonstrated the difficulty of balance. Taiwan's ruling is undoubtedly a landmark for changing attitudes in Asia, but what does it signify for the rest of the hemisphere, where responses to minority cultural views remain conservative? Although attitudes to homosexuality were relatively liberal during the imperial

times in mainland China, the Communist revolution in 1949 led to more cautious attitudes. Despite having it removed from the list of "mental disorders" in 2001, the stigma remains. Naturally, responses from China have been two-folded. Some are excited by the milestone, but others remain disheartened to the possibility of achieving legislative change. While many were still rejoicing shortly after the Taiwanese ruling, China's most iconic lesbian socialising platform 'Rela' was shut down without explanation. Likewise, although LGBT is not prohibited in the South Korean constitution, many remain closeted due to pressure from cultural traditions. But this is understandable, when some of the largest mobile corporations in the country have agreed to remove homosexual dating apps on the market, and a

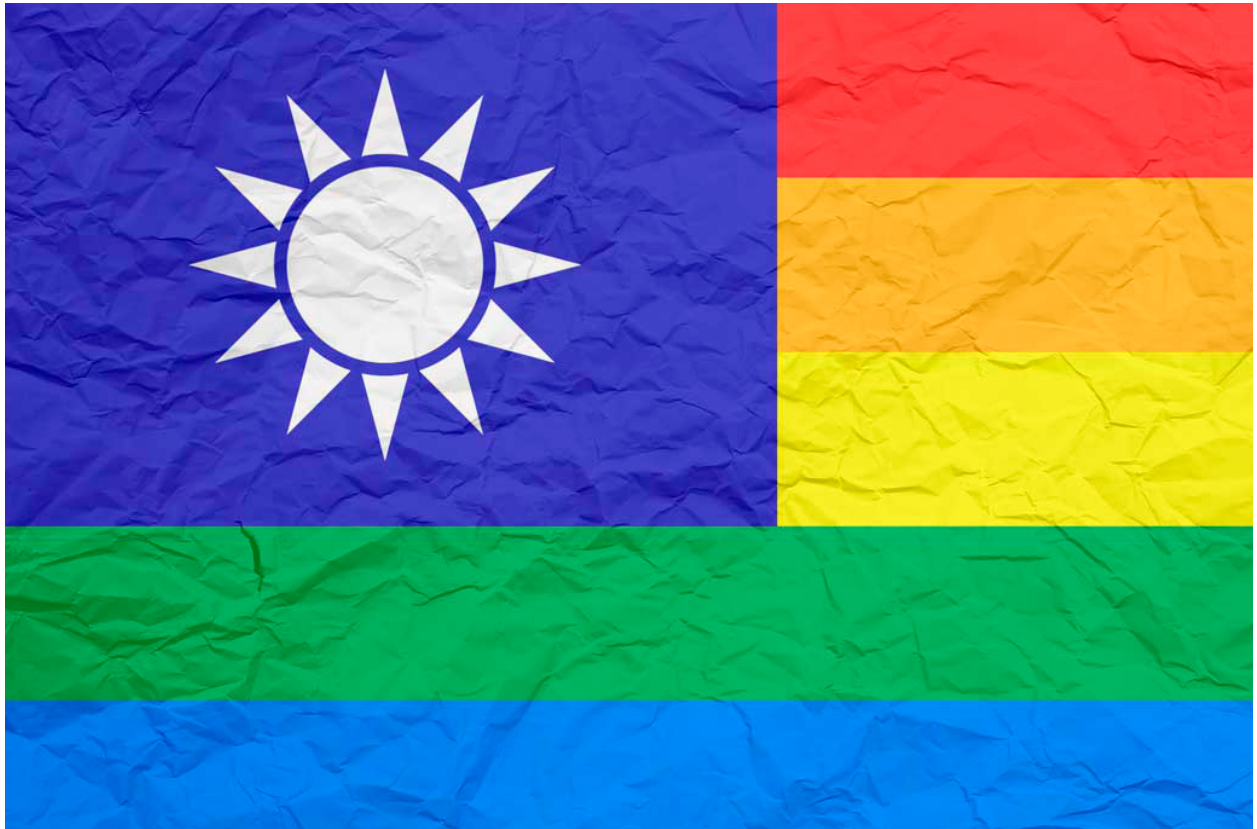
#TaiwanGayMarriageLegalization

presidential candidate openly attacks gay soldiers for “weakening the country’s military.” Whether the rest of Asia could follow Taiwan’s footsteps as the social forerunner is still open to question, and it is certainly unjustified to generalise one of the largest and most diverse continents with a handful of examples. But one can be certain that LGBT continues to grow as an influential social dynamic in many Asian societies. Although the tug of war between traditional cultural views and changing public opinion will persist, Taiwan’s ruling could induce a chain effect in the long term. When asking the youth

“ LGBT continues to grow as an influential social dynamic in many Asian societies

“what do you dream of the world,” perhaps many would speak of tolerance. Such an abstract idea will undoubtedly carry a fluid definition, but obscurity is both its limitation and its beauty. The road to constitutional desegregation in the United states during in the 20th century was a difficult journey back and forth, and the same will go for LGBT in our time. But

acceptance, before any legislative change is the first step that can go a long way. Regardless of whether one is in support of Taiwan’s ruling, it is an optimistic sign that societies are increasingly being warmed to the rights of gender and sexuality minorities through activism. It signifies not only acceptance of LGBT, but acceptance of cultural differences and their rights to equality before the law.



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