A COMMON LAW OF HUMAN RIGHTS: HISTORY, HUMANITY & DIGNITY

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I. BAHA MOUSA

The Baha Mousa Inquiry Report,[1] if nothing else, is a chronicle of death foretold. It charts painstakingly, how in the fog of war that was ill-prepared for, mostly good men did evil things with insufficient supervision and because their training conditioned them to see nothing wrong in what they were doing.

As with many public inquiries it is easy to become complacent about them after the event in the sense that "*Somehow we would have found out any way*", or "*It has not told us anything we did not know*". As someone who literally had a front row seat at the inquiry, I can tell you that there was nothing ordained about the torture of Baha Mousa and nine others coming to light. The battle to let the world know about it began with Baha's father, Colonel Daoud Mousa, who in post Ba'aathist Iraq had to launch himself into the public sphere as both a former regime police chief and a Shia. He had two pieces of good fortune. One was to meet with the journalist Robert Fisk, who first wrote about the story internationally.[2] The other was to find in his lawyer Phil Shiner a constituency of what, at first, contained just one person, who went on to convince other lawyers and then courts, that European Human Rights applied, not only beyond the frontiers of the members states, but beyond the European space.

And as regards telling us things we did not know, the Report of Sir William Gage is critical to the themes I want to speak about tonight. If the present renaissance of common law theory is to come to anything, we must understand history better, we must recognise that humanity is sovereign over state, and we must search more steadfastly for what is meant

[1] Sir William Gage, The Baha Mousa Inquiry Report, 8 September 2011, HC 1452 2011-12 (https://www.gov.uk/government/publications/the-baha-mousa-public-inquiry-report).

[2] *Robert Fisk, Independent on Sunday, 4 January 2004, 'British soldiers 'kicked Iraqi prisoner to death'* (p. 1) and *'The British said my son would be free soon. Three days later I had his body'* (p. 16).

by the concept of human dignity. For people like me living warm in my safe house in Grays Inn, the opportunity to be involved in the Baha Mousa Inquiry was the greatest privilege of my working life. And though I do not doubt for one moment that the lawyers in PIL and Leigh Day would say the same, the chilling effect on British solicitors who have dared to stand up for the rights of foreign residents who have been the victims of UK human rights abuse is an unacceptable aspect of current politics.

And bearing in mind my themes for tonight, and the present campaigns against both the Human Rights Act and the European Union, it is noteworthy to register the dissonance between the value of the Baha Mousa Inquiry Report itself and the extent to which the gift of learning lessons from history risks being denied, humanism has given way to nationalism, and human dignity (particularly of strangers) whether refugees, suspected enemy others, or hapless civilians within the reach of airstrikes, is still something that struggles for recognition in concrete legal protection.

Tonight I want to offer some thoughts on these difficult subjects in honour of my client Doaud Mousa, his son Baha, and my mentors, colleagues and friends in Public Interest Lawyers and Leigh Day who were central in claiming back some justice for that family.

II. COMMON LAW ZEITGESIT

Whatever happens with the direct incorporation of international human rights treaties in this country, the zeitgeist is about the renaissance of the common law.

Let us consider two constructive criticisms that are made of the Human Rights Act. The first has been the limiting of (legal) imagination. We have moved from unincorporated parochialism to over-dependency on one particular international source of human rights philosophy: and so we have run a new risk of limiting our research and encouraged a new form of parochialism grounded in European regionalism. Shame on me in one sense, especially for those who need those mantra paragraphs in Strasbourg judgments to have any rights at all. But just as a cure for cancer will never be found by consulting scientists

in one country,[3] it will also not be found by consulting a set of European scientists who operate in one institute in another country. And proof of the same, is that Strasbourg has comprehensively begun over the last 10 years to cite other national, regional and international human rights sources in its exploration of general principles.

Most recently in the case of *Bouyid v Belgium* (the Art. 3 slapping case)[4] the positive duty to protect human dignity – especially for those who are detained – gets its most emphatic endorsement by extensive reference to the coverage of human dignity in international Treaty law since 1945: from the Preamble to the United Nations Charter and Universal Declaration of Human Rights to Article 1 of the EU Charter of Fundamental Rights. This gives further foundation to the Strasbourg case law principle that, despite not being mentioned anywhere in its text, "*respect for human dignity forms part of the very essence of the Convention*". [5]

The second problem with the Human Rights Act involves a legitimacy deficit. Hence the current political climate concerning the Act. On this there was perhaps too much complacency that people would automatically understand and appreciate the extent to which human rights were both part of our national traditions as well as being "*elementary considerations of humanity*".[6] Not everyone can be like Rene Cassin, who concluded his speech accepting the Nobel Peace Prize in 1968 with the words "*I adore my country with a heart that transcends it borders. The more I am French, the more I feel a part of humanity*".[7]

So how might the common law of human rights gain deeper roots in domestic culture, but also integrate with a broader appreciation of global rights values? The question is not only posed by current politics, but also by the United Kingdom Supreme Court that in the

[3] Jeremy Waldron, *Foreign Law and the Modern Ius Gentium, Harvard Law Review* Vol. 119, No. 1 (Nov., 2005), pp. 129-147.

[4] App. No. 23380/09, 28 September 2015 §§45-47.

[5] Ibid §89. See also *Pretty v United Kingdom* (2002) 35 EHRR 1 §65.

[6] *Nicaragua v United States (Military and Paramilitary activities in and against Nicaragua)* [1986] ICJ 114 §218.

[7] Mary Ann Glendon, *A World Made New, Eleanor Roosevelt and the Universal Declaration of Human Rights* (2001), p. 210.

recent cases of *Osborn* [8] and *Kennedy* [9] has been particularly concerned to emphasise that the common law is not dependent upon, or superseded by the HRA.

If we have been told that the common law should not become an "*ossuary*", how should contemporary lawyers seek to build it? Let me suggest three principles: history, humanity and dignity. All of these are not without their difficulties. But each of them needs to be developed together with international human rights law and not at the expense of it. If we are to have a debate about the future of human rights in this country it should firstly be underpinned by a better understanding of how particular historical narratives have framed our legal awareness. Secondly, we must appreciate the extent to which we all now live under a system of humanity's law that is both reflected in the European Human Rights regime, but also goes far beyond it. And thirdly, we should embrace the idea of respect for human dignity as a form of human rights protection that not only encapsulates the essence of the ECHR, but inspires us to moral restraint and active empathy in a time when both of those qualities are particularly valuable.

III. HISTORY

By history I do not mean an Anglo-centric self-satisfied account of eternal progress.[10] However, the first thing to understand about the common law is that it involves invented traditions, mythologies and blind spots.

Invented traditions [11]

Many of the so-called Constitutional statutes, expressly take away rights from serfs, women, Jews and (after the Reformation) Catholics. Magna Carta was being feted for its

[8] *Osborn v Parole Board* [2014] AC 1115 §63.

[9] *Kennedy v Charity Commission* [2015] AC 455 §§46 and 133.

[10] In English historiography this has been described as the Whig interpretation of history that was particularly dominant in Victorian England's imperial sense of it own greatness (see Hebert Butterfield, *The Whig Interpretation of History* (1931)). For common lawyers, it has particular resonance, because the foundation for the myth was that all progress in the world derived from Parliament's defeat of the Stuart monarchy.

[11] Eric Hobsbawm and Terence Ranger (ed), *The Invention of Tradition* (Canto Classics reissue 2012).

800th anniversary last year notwithstanding that it provides that Jews cannot enforce interest payments on their loans to Barons, and women are restricted in standing witness against men before Courts.[12]

The common law has seen extraordinary variation in standards of interpretation: not just over time, but between the metropolitan and peripheral parts of empire. While it was well understood that the unreasonable use of force in purported self-defence in security operations would constitute a murder – at least by 1911 – people were being murdered in that respect across colonial situations such as Palestine, Malaya and Ireland, throughout the late colonial period. The *Lee Clegg* case[13] concerning the shooting of a vehicle driving away from a Northern Ireland check point in the 1990s was the product of determined institutional forgetting on the part of the Ministry of Defence.

To take the example of the killing 24 unarmed civilians by the Scots Guards in Batang Kali Malaya in December 1948, no one in England seriously questioned a January 1949 written statement to the Parliament by Colonial Secretary, Arthur Creech Jones, that *"had the Security Force not opened fire, the suspect Chinese would have made good an attempt at escape which had been obviously pre-arranged"*. These men were all unarmed rubber plantation workers, some of them 50, 60 and 70 years old, who had been subject to interrogation in the night that included mock executions. Since litigation began by the surviving children of Batang Kali in 2010, the Divisional Court, the Court of Appeal, and the Supreme Court have all regarded that official conclusion to be both legally and factually unsustainable.[14]

Fairness is not quite what it used to be. In *R v H and C*,[15] Lord Bingham cited the case of a defendant convicted of theft at the Old Bailey in the 1840s after a trial which lasted 2

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[12] Aidan O'Neal QC, *Not waving but drowning – EU Law, Common Law Fundamental Rights and the UK Supreme Court*, in Daniel Clarry and Christopher Sargeant (eds.) Volume 5 *UK Supreme Court Annual Review - 2013/2014 Legal Year* (University of Cambridge, 2015), pp 176-187. See also Sir Hersch Lauterpacht, *An International Bill of the Rights of Man* (Oxford 1945 reissue 2013), p. 56 ("*It is now generally accepted that the crucial Clause 39 of the Charter was a partisan instrument exhorted from the King for the benefit of feudal claims and privileges 'inimical alike to the Crown and popular liberties*'" citing W.S. McKechnie, *Magna Carta* (Glasgow 1905), p. 387).

[13] *R v Lee Clegg* [1995] 1 AC 482, 493.

[14] *R (Chong Keyu) v SSD* [2012] EWHC 2445 Admin §§142-143, 146-147; [2015] QB 57 §§75-76 and 82; [2015] 3 WLR 1665 §§137, 204 and 309(1).

[15] [2004] 2 AC 134 §11.

minutes 53 seconds, including a terse jury direction: "*Gentlemen, I suppose you have no doubt? I have none*."

National security is a cultural construct. In the *Spycatcher* case (*Att. Gen. v Guardian Newspapers & Ors* [16]), notwithstanding that the book was published in full in the United States, and there were several thousand copies in the UK, a majority of 3:2 of the House of Lords in 1987 upheld an injunction on media reporting, which the then Mr Justice Brown-Wilkinson, as the first instance judge, had described as making the law look like an ass.[17] The view of the minority was eventually endorsed at the trial of the issue, [18] but not before Lord Oliver's critique of the attempt to hold onto secrecy when the information was already in the public domain by citing Virgil: "*the path to Hell is easy to descend*".[19] In 2014 the Court of Appeal Civil Division printed a letter between Sir Mark Allen of the Security and Intelligence Service and Musa Kusa of the Libyan External Security Organisation, which had been acquired as result of the revolutionary storming of government buildings in Tripoli in 2011.

The section of the letter cited by the Court of Appeal claims credit on behalf of MI6 for "*the cargo*" that was the Libyan Islamic Fighting Group's leader, Abdel-Hakim Belhaj. By arrangement, obviously involving British collusion, he and his four month pregnant wife had been the subject of a US rendition from Malaysia, via Thailand.[20] No one has sought an injunction against Leigh Day for having the letter on its website.

Necessary mythologies

If we need to be aware of the invention of tradition, we should also take account of the necessity of mythology. There was a reason why in *A & Ors (No 2) v Secretary of State for the Home Department* [21] (the Torture evidence case) that the House of Lords, needed to

[16] [1987] 1 WLR 1248.

[17] Ibid, p 1269F.

[18] *Att. Gen. v Observer Newspapers & Ors* [1990] 1 AC 109.

[19] [1987] 1 WLR 1248, p 1321 expressly endorsed by Scott J (as he then was) at trial ([1990] 1 AC 109, 172).

[20] [2015] 2 WLR 1105 §13.

[21] [2006] 2 AC 221.

remind itself of Coke and Blackstone presupposing that James I had asked his Privy Council in 1628 to give him an advisory opinion on whether torturing the man suspected of murdering the King's favourite, Lord Buckingham, would violate the law of England. The reason for citing the authority, named after the assassin John Felton, was not in order to discover historical truth. Rather it was to highlight the relationship between symbols and justice.

Lord Hoffmann in particular understood this aspect of the prohibition on Torture, when he described it as carrying "*a symbolic significance as a touchstone of English liberty which influences the rest of our law*". As Hoffmann immediately put it in the same sentence, "*the rejection of torture by the common law has a special iconic importance as the touchstone of a humane and civilised legal system*". [22]

This kind of judicial writing is literally myth making. It functions not simply to tell us about an event that once occurred, but to underscore the status of what Jeremy Waldron calls a "*legal archetype*" by which he means "*a particular provision in a system of norms which has a significance going beyond its immediate normative content, a significance stemming from the fact that it sums up or makes vivid to us the point, purpose, principle, or policy of a whole area of law*."[23] Waldron's writing was expressly cited by Hoffmann in A No 2.

Stephen Sedley has reflected on this issue of legal history as myth in his new book, *Lions Under the Throne*.[24] He cites Geoffrey Wilson[25] that "*The courts do not operate on the basis of real history, the kind of history that is vulnerable to or determined by historical research. They operate on the basis of an assumed, conventional, one might say consensual, history in which events and institutions often have a symbolic value*."

So how should contemporary common law writing engage with history? In the seeking of justice there is probably a role for both the deconstruction of myth and the (candid)

[22] [2006] 2 AC 221 §83

[23] *Torture and Positive Law: Jurisprudence for the White House" (2005) 105 Columbia Law Review* 1681-1750, reprinted *Torture, Terror, and Tradeoffs: Philosophy for the White House* (Oxford University Press (2012), p 228.

[24] Stephen Sedley, *Lions Under the Throne, Essays on the History of English Public Law* (Cambridge 2015), p 2.

[25] Postscript to M. Nolan and S. Sedley, *The Making and Remaking of the British Constitution* (1988), pp 128-129.

deployment of it. There is an emerging school of thought that (even as Advocates) we must be disciplined in distinguishing between those two endeavours. I agree. But we should also remain interested in the folklore of law and invoke it for the ends of protecting the vulnerable and conserving with pride the human rights victories that history has bestowed.[26]

Rule of law as an unqualified human good

Let us take an example in Dicey's highly contested concept of the rule of law, designed by him to justify the unfettered Parliamentary supremacy and Anglo-centric complacency about the end of history in the 1880s. Despite its unpromising start the rule of law is now an idea worth struggling for *everywhere* for *everyone*. Nevertheless, it is worth recalling that for Dicey the rule of law meant the "*omnipotence or undisputed supremacy*", not only of Parliament, but of central government, by which he meant the Crown both in and outside Parliament.[27] The same strain of thought that today objects to the EU and the ECHR, tends to also object to the growth of judicial review. It has no meaningful principled based answer to the repetition of the Nuremberg laws enacted by a freely elected Reichstag in Nazi Germany; and unless a hypothetical Bill of Rights would entrench a right to vote, there would be no constitutional basis to prevent the enactment of Apartheid, just as right now prisoners are being denied the right to vote, even though the omission to do so breaches international law, and could be complied with merely by giving the vote to a prisoner who will be freed within the life of a Parliament that he or she is excluded from electing on a blanket basis, regardless of his or her crime.

But the rule of law as an archetype, beyond merely a law of rules, did not stop with the festishisation of the Crown in and outside Parliament. It features in the preamble to the United Nations Charter and the ECHR and is now enshrined in ss. 1 and 17 of the Constitutional Reform Act 2005. It clusters together a range of common law protections including access to court, equality before the law, fairness, rationality, human rights and compliance with international law in the absence of express legislative choice. The last gift of Lord Bingham to the rule of law in this country was to write about its salient precepts,

[26] For a first draft attempt at grappling with these issues, see Danny Friedman, *Torture and the Common Law* [2005] 2 EHRLR 180.

[27] Stephen Sedley, *Lions Under the Thrown*, Op Cit. pp 269-271.

and he did so in a way that was culturally rooted in English traditions, but also cosmopolitan in outlook.[28] It taught us that we have moved to a Post-Diceyean universe, in which the nation state still functions as an important unit, but nationalism cannot reasonably isolate itself from the fundamentals of international law.

On the Marxist left in this country, the rule of law had a noteworthy modern adherent in the historian E.P. Thompson. His classic *Whigs and Hunters* concerned the origins of the 18th century Black Act, which led to economic growth in England by rationalising profit from the enclosure of land that was once common to all. Enclosure simultaneously criminalised the conduct of commoners in grazing and hunting on property that had previously been without title. Often the response of the dispossessed was to turn violent.

In his famous critique of the class conflict consequence of the legislation, Thompson drew a distinction between unjust legal rules and the rule of law: "*I am insisting only on the obvious point, which some modern Marxists have overlooked, that there is a difference between arbitrary power and the rule of law. We ought to expose the shams and inequities, which may be concealed beneath this law. But the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power's all-intrusive claims, seems to me to be an unqualified human good.*"[29]

That leads to the second of my three common law principles: humanity.

IV. HUMANITY

Even without the Human Rights Act, the days in which international human rights could be ring-fenced from the judicial review of the exercise of power are gone. There are public law statements going back to Lord Diplock and Lord Bridge in the 1980s, which collapse many of the distinctions between a rationality challenge and a proportionality challenge.[30]

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[28] Tom Bingham, *The Rule of Law* (Allen Lane 2010).

[29] *Whigs and Hunters: The Origins of the Black Act* (1975), p. 266. See also Daniel H. Cole, '*An Unqualified Human Good': E.P Thompson and the Rule of Law (2001) 28 Journal of Law and Society*, pp 177-203

[30] See the discussion of the issue in *Kennedy*, Op cit, §§51-55, *Pham v Secretary of State for the Home Department* [2015] 1 WLR 1591 §§59-60, 94-100, 103-110 and 112-121 and most recently in *Keyu v Secretary of State for FCO* [2015] 3 WLR 1665 §§133-134, 271-283 and 304, 308-311.

There is now an established principle of legality applicable to both statutory construction[31] and the exercise of discretionary power. [32] It assumes an intention to comply with international human rights law in the absence of an express legal impediment.

Even if human rights and humanitarian law treaties are unincorporated they are usually enshrined in high level policy commitments, such that a breach of the policy provides a gateway for vindicating a breach of the rights that the policy has adopted. This approach was exemplified in the case of *Haider Hussain* (concerning the compatibility of a prisoner interrogation policy with the Geneva Convention).[33]

And even the areas once thought to be forbidden territory, such as foreign policy, include a right of access to court to discover whether any relevant public law exceptions apply. This is what occurred in the Secretary *of State for the Foreign and Commonwealth Office v Rahmatullah*.[34] In that case the refusal of the United Kingdom to even point out to the United States that they breached, not only the Geneva Conventions, but a bilateral agreement between the two countries not to remove each other's captured persons from Iraq without consent, did indeed furnish the basis for a public law remedy.

It follows that a process of systemic integration between common law and different sources of international law is the way of the world. The approach is part of a wider discipline of construction in international law, especially in the field of human rights protection, designed to systemically combine various sources of law. Article 38(1)(c) of the Statute of the International Court of Justice, cited and adopted by the ECtHR in the 1975 case of *Golder v UK*,[35] requires the Court to apply "*the general principles of law recognized by civilized nations*". Article 31(3)(c) of the Vienna Convention on the Law of

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[31] *R (Simms) v Secretary of State for Home Department* [2000] 2 AC 115 at 131E per Lord Hoffmann.

[32] *R v Lyons* [2003] 1 AC 976 §27 (also per Lord Hoffmann).

[33] [2013] EWHC 95 (Admin) §§20 and 39 upheld in the Court of Appeal [2014] EWCA Civ 1087 §28 ("*Normally, the legal standard by which the policy is to be judged would be derived from principles of domestic administrative law. The present case is somewhat unusual in that the statement of policy itself imports from international humanitarian law, and in particular the Geneva Conventions, the legal standards by which the policy is to be judged*."). See also *Maya Evans v Secretary of State for Defence* [2010] EWHC 1445 (Admin) §§236-238 (an Afghan handover policy mirroring Art 3 ECHR).

[34] [2013] 1 AC 614.

[35] (1975) 1 EHHR 524 §35.

Treaties 1969, cited and adopted the Strasbourg Court in Al Adsani v United Kingdom,[36] provides: "*There shall be taken into account, together with the context:…(c) any relevant rules of international law applicable to the relations between the parties*".[37]

Comparative law is therefore not just an essential ingredient of good judgment. It is dictated by the continuing recognition dating from Blackstone in 1769,[38] but retrieved by Lord Denning in Trendtex in 1977[39] that customary international law, must enjoy authority in common law interpretation, unless displaced by some other overriding constitutional principle. As Lord Mance has recently put it in the Keyu case, "*Common law judges on any view retain the power and duty to consider how far customary international law on any point fits with domestic constitutional principles and understandings…..CIL, once established, can and should shape the common law, whenever it can do so consistently with domestic constitutional principles, statutory law and common law rules which the courts can themselves sensibly adapt without it being, for example, necessary to invite Parliamentary intervention or consideration* (emphasis added)." [40]

In that respect a United Kingdom Bill of Rights (even if the non-English parts of the country would accept it) would almost invariably lead us to the same place as the HRA. Of course, in the process there would be uncertainty, expense and some cases would fall though the gaps. But are we sensibly to live in a system of human rights in one country (or on one Island) that does not apply what Jeremy Waldron describes as "*a body of law*

[36] (2002) 34 EHRR 11 §55.

[37] As the classic article on the subject by Professor Campbell McLachlan has put it, "*…Article 31(3)(c) expresses a more general principle of Treaty interpretation, namely that of systemic integration within the international legal system. The foundation of this principle is that treaties are themselves creatures of international law.*": *The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention, (2005) 54 International and Comparative Law Quarterly* (2005) 279, 280.

[38] Blackstone found it proper to invoke "*the law of nations*" to inform the common law, "*without which it must cease to be part of the civilised world*" (Sir William Blackstone *Commentaries on the Laws of England*, (1765-79) Vol.4, pp 66-67)

[39] *Trendtex Trading v Central Bank of Nigeria* [1977] QB 529, 553 ("*the rules of international law are incorporated into English law automatically and considered to be part of English law unless they are in conflict with an Act of Parliament*").

[40] [2015] 3 WLR 1665 §§146, 150. Although Lord Mance said he was speaking only for himself, that part of his judgment was also expressly adopted by Lord Neuberger and Lord Hughes at §§122.

purporting to represent what various domestic legal systems share in the way of common answers to common problems"?[41] Obviously the answer is no.

And that is so, not just because the common law ship has sailed with human rights in its sails, but because we now live under what Ruti Teitel calls "*humanity's law*", by which she means "*the law of persons and people*".[42] Let me give you the archetype and then say something about the history. Humanity's law is the (just) legacy of modernity gone wrong; the apologetic answer for totalitarianism and imperialism. In the aftermath of total war, the world chose human rights as a discipline to ensure fundamental limits on human and social behaviour. Human rights constitute the ultimate (re)commitment to modernity and enlightenment, at a moment where there was every reason to doubt both. If the rule of law is an unqualified human good then this moment recognises a starting point for appreciating how a democratic state subject to the rule of law might not be an unqualified human bad. [43]

There is actually a complex and multi-layered history being written about what lies beneath these articles of faith, and that history is particularly associated with the writing of Samuel Moyn.[44] His thesis in a nutshell is that the obsession with finding the origins of human rights at the earliest juncture is misguided. The Greek concern for humanity was profoundly elitist. The 18th century concern for the rights of man was principally grounded in the rights of citizens and the creation of nation states. The post-1945 Declarations were about managing the peace. Holocaust prevention was hardly discussed. Barring some notable exceptions it was not even a primary unspoken context.[45] Socialists and communists focused on social and economic redistribution, not atrocity

[41] Jeremy Waldron, *Foreign Law and the Modern Ius Gentium*, Op Cit.

[42] Ruti G. Teitel, *Humanity's Law* (Oxford, 2011), Preface (x).

[43] I tried to capture some of the value of this archetype in honour of Edward Fitzgerald QC, in Danny Friedman, *Torture and Modernity* [2013] EHRLR Issue 5, 494-511.

[44] Samuel Moyn, *The Last Utopia: Human Rights in History* (Harvard University Press, 2010). See also Samuel Moyn, *Human Rights and the Abuse of History* (Verso 2014) and Samuel Moyn, *The Secret History of Constitutional Dignity* (2014) Yale Human Rights and Development Journal Issue 1, 39-73.

[45] For the important role played by Jewish international lawyers in developing human rights who were animated by that context in the post war period, including Rafael Lemkin and Hersch Lauterpacht, see Philippe Sands, *The Memory of Justice: The Unexpected Place of Lviv in International Law – A personal history*, (2011) 43 Case Western Reserve Journal of International Law, 739-758 and Philippe Sands, *East West Street: On the Origins of Genocide and Crimes Against Humanity* (2016 forthcoming).

prevention. The anti-colonialists prioritised struggle for the single but collective right of self-determination, not individual rights. Only the collapse of other utopian visions in the 1970s caused human rights to come to the fore. Let us look at some of this.

Hersch Lauterpacht, the British jurist who had published his own draft Bill of Rights in 1945, immediately recognised that the rights would be nothing without means of enforcement. A declaration thus emaciated he wrote "*would come dangerously near to a corruption of language*" for "*by creating an unwarranted impression of progress it would, in the minds of many, constitute an event that is essentially retrogressive*".[46]

The prominent human rights activists routinely recognised how irrelevant human rights were to the politics of the post-war reconstruction. As one long time NGO chief, Moses Moskowitz, observed in 1968, the idea of human rights had "*yet to arouse the curiosity of the intellectual, to stir the imagination of the social and political reformer and to evoke the emotional response of the moralist*".[47] It is truly surprising how little international human rights were discussed in English jurisprudence in the period prior to the Human Rights Act coming into force. They were even less relevant to the protection of individuals in the late colonial states of emergency.

To take but one colonial example, I mentioned Batang Kali before. On 1 January 1949 the High Commission in Kuala Lumpur wrote tersely to the Colonial Office in London, "*we have a war on terrorism on our hands and we are at the same time endeavouring to maintain the rule of law*". It was urged on all to be "*conservative in our criticism of the [British soldiers] who are undoubtedly carrying out a most arduous and dangerous job*". Despite claiming to investigate exhaustively the Attorney General of the Federation of Malay later admitted that "*No enquiries [were] made of [Batang Kali's] inhabitants, [and] none questioned, for a very good reason, because they were most unlikely to talk, and if they did talk to tell the truth*".[48] Does any of this ring a bell when today there is a concerted political campaign to freeze out

[46] Sir Hersch Lauterpacht, *An International Bill of the Rights of Man* (Oxford 1945 reissue 2013), p. 9

[47] Samuel Moyn, *The Last Utopia*, p. 3. Moskowitz also famously said that "*Human Rights died in the process of being born*" (Ibid, p. 47).

[48] For the available evidence on the massacre see the Claimants' written submissions at http://www.bindmans.com/documents/Batang_Kali_Skeleton.pdf.

some of my colleagues for daring to criticise woefully inadequate investigations of killing and abuse in Iraq?

But the complex relationship between the colonizer and colonised has more to add to this story. For the fate of human rights in the post-colonial world has been dominated by the failure of independent states to secure the human rights of their self-determining peoples. Of course this has a legacy dimension, as well as a cold war clientele dimension; but it is clearly not all the fault of the West. Self-determination as a right of all peoples, even if only enshrined belatedly in 1966 in Article 1(1)of the International Covenant on Civil and Political Rights, is an 18th century concept grounded in the rights of man and citizenship, with no automatic relationship with 20th century human rights. That very soon begged the question whether the non-citizen had rights, and whether the enemy of the people should be excluded from the fold.

This is highly relevant to the history of the present, because in many of the Middle East and North African countries young people, often exposed to human rights abuse, lost faith with any and all of the trinity of nationalism, communism and capitalism. Upon that loss of faith was built a very modern return to the fundamentals of Islam, including (for some) the virtues of Islamic jihad. Western legacy and ongoing interference provided gasoline for the fire. But so too did post-colonial illusions of collective responsibility. One thinks of the video message of the 7/7 bomber, Mohammed Siddique Khan ("*Your democratically elected governments, continuously perpetrate atrocities against my people all over the world, and your support of them makes you directly responsible…*").

If there is a constructively engaging answer to such an illusion, then it might involve correcting the failure to appreciate that human rights are not just "*Values in a Godless Age*".[49] In fact, it turned out to be a God-full Age, for in this crisis of utopianism and the failures of transition, Muslims were not the only ones being born again. As the secular romance of the Zionist project faltered in Israel after 1967 especially with the near defeat in the 1973 war, there was also a puritan turn within Jewish fundamentalism that led to the settlement expansion in the Occupied Palestinian Territory. At a strikingly similar

[49] Francesca Klug, *Values For a Godless Age: The Story of the United Kingdom's Human Rights Act* (Penguin Books, 2000).

time, the economic and political decline of the United States stimulated its own fundamentalist development of American non-conformist Protestantism.[50]

The secular West too witnessed its own disenchantment with utopias. The meteoric rise of Amnesty International in the 1970s is the *par excellence* case in point.[51] Amnesty's founder Peter Benenson wrote privately as early as 1961 that the purpose of the organisation was "t*o absorb the latent enthusiasm of great numbers of...idealists who have since the eclipse of socialism, become increasingly frustrated; similarly it is geared to young people searching for an ideal…*"[52] All the same AI's claim to transcendence above politics was perhaps its principal innovation; an innovation that continues to resonate in social media campaigns of all persuasion today.

While the radical left in the West realigned its attitude to Marxism, there were movements in Latin America and Eastern Europe who in the midst of gross human rights abuse, developed projects that prioritized legal-institutional reforms, over other claims orientated toward social justice and redistribution.[53] Progressive politics is still working through the consequence of that choice for broader visions of change. As Tony Judt was to put it, "*Not to imagine better worlds, but rather to think how to prevent worse ones*".[54] Yet it is well

[50] For the historical context for the rise of Islamism, see Gilles Kepel, *Jihad, The Trail of Political Islam,* trans. Anthony F. Roberts (2006); Alastair Crooke, *Resistance, The Essence of the Islamist Revolution* (2009) and Adnan A Musallam, *From Secularism to Jihad – Sayyid Qutb and the Foundations of Radical Islamism* (2005) and Fawaz A. Gerges, *The Far Enemy, Why Jihad Went Global* (2005). For a study of the generic concept of fundamentalism across Judaism, Christianity and Islam, see Karen Armstrong, *The Battle for God, A History of Fundamentalism* (2001).

[51] This was notwithstanding the view expressed by a cabinet document from 1971 in which the retired Lord Chief Justice Lord Parker described the organisation's attitude to the prohibition on torture as "*extreme*" and the Prime Minister, Sir Edward Heath, described the organisation itself as "*disreputable*" (Danny Friedman, *Torture and Modernity*, p. 500).

[52] Samuel Moyn, *The Last Utopia*, Op Cit., p. 130.

[53] Paige Arthur, *How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice*, 31 Human Rights Quarterly, (2009) 321-367, Ruti G Teitel *Transitional Justice* (Oxford University, 2000).

[54] Tony Judt, with Timothy Sneider, *Thinking the Twentieth Century*, p, 304. The seed was already there in the immediate post-war when Albert Camus collected his Nobel Prize for literature in 1957 under the cloud of having broken with Sartre and De Beauvoir over his condemnation of the violence of both sides in the Algerian War, but as he was to put it "*Probably every generation sees itself as charged with the remaking of the world. Mine, however, knows that it will not remake the world. But its task is perhaps even greater, for it consists in keeping the world from destroying itself*" (Mary Ann Glendon, *A World Made New,* pp 208-209).

to remember again, this was not just a cold war construct simply brought on by Jimmy Carter's 1977 embrace of human rights. [55]

Into this extraordinary cauldron of change in the history of ideas, came the jurisprudence of the Human Rights Courts that Hersch Lauterpacht had identified as the missing link in 1945. By developing individual rights of petition, especially to the European Court of Human Rights and the Inter-American tribunals, the principles of humanity's law were built. *Lawless v Ireland* was the first individual petition case to be decided in Strasbourg and that was not until 1961. By the end of the 1970s the Court had only decided 17 cases. Some of the absolute fundamentals of contemporary human rights did not emerge until the 1990s and 2000s. For some radicals this has not been enough, and for some reactionaries it has been too much.

Either way, it reflects Lauterpacht's Kantian formulation that the value of the state system is only as good as an international system of rights and values that guide it. "*Democracy*" he wrote in 1945, "*although an essential condition of freedom, is not an absolute safeguard of it. The safeguard must lie outside and above the state*". [56]

For Lauterpacht, holocaust and crimes against humanity, were an undeniable context for his writing.[57] And his answer was to develop the common law of all mankind. For that he could go to Blackstone's *Commentaries on the Laws and Customs of England*, which notwithstanding their period piece commitment to the hard won supremacy of Parliament, were equally convinced that "*the principal aim of society is to protect individuals in the enjoyment of their absolute rights which were vested in them by the immutable laws of nature*". [58] The "*immutable laws of nature*" is not a phrase that we can easily share in today. But what we might contest less readily is that a reasoned principle of humanity is only capable of operating if it is underpinned by a commitment to human dignity. And that

[55] President Cater told Americans at his 1977 inauguration speech, "*Because we are free we can never be indifferent to the fate of freedom everywhere…Our Commitment to human rights must be absolute*". If he floundered in his Presidency in seeing that through, he also ended his time in office in 1981 by affirming that "*America did not invent human rights. In a very real sense, human rights invented America*".

[56] Lauterpacht, *An International Bill of the Rights of Man*, p. 50.

[57] Sir Elihu Lauterpacht, *The Life of Sir Hersch Lauterpacht* (Cambridge 2012).

[58] Lauterpacht, Ibid, p. 61 and Sir William Blackstone *Commentaries on the Laws and Customs of England*, (1765-79) Vol.1, p. 3.

leads to my final principle that I want to commend to the contemporary development of the common law.

V. DIGNITY

Complex emergence

Dignity has its shortcomings. It may be that it features so prominently in the international human rights instruments because it is wide enough to mean nothing. When mixed up with concepts of honour and virtue it has aided patriarchy. When deployed by the Catholic Church in the 19th and early 20th century it was designed to inspire acceptance of social position in order to differentiate from the demands of both socialism and communism.[59] Despite Kant's theory of dignity, treating the value of the human person as a means in itself and not a means to some other end, dignity does not feature in any of the 18th Century revolutionary constitutions. Romantics like Schiller, no less than theologians, saw dignity as "*tranquillity in suffering*".[60] Other contemporary writing aligns dignity with grace.[61]

The first known legal use of the phrase "*the dignity and freedom of the individual*" was not in the post-War statements of the UN Charter and Universal Declaration, but in the preamble to the new Irish Constitution of 1937. The text was almost certainly inserted to court favour from Pius XII who had just published his encyclical letter *Divini redemptoris*, which blamed Communism, for robbing "*human personality of all its dignity*".[62]

Even the words of the Preamble to the UN Charter committing the world to "*the dignity and worth of the human person*" were probably added to Jan Smut's first draft of the text by

[59] Michael Rosen, *Dignity: Its History and Meaning* (Harvard, 2012), pp 47-49. See especially Pope Leo XIII's encyclical on the relationship between labour and capital, *Rerum Novarum*, of 1891, in which he emphasised the "*dignity of labour*", and in his *Quod Apostolici Muneris* of 1878, in which he God "*had appointed that there should be various orders in civil society, differing in dignity, rights and power, whereby the State, like the Church, should be one body, consisting of many members, some nobler that others, but all necessary to each other and solicitous of the common good*".

[60] Ibid, pp 31-32.

[61] Ibid, p. 31 citing Henry Home's book *Elements of Criticism* that contains a chapter '*Dignity and Grace*'.

[62] Samuel Moyn, *The Secret History of Constitutional Dignity*, Op Cit, 49.

the Barnard College Dean, Virginia Gildersleeve, who spent much of the 1930s trying to bar Jews from her law school and gave speeches sympathetic to German expansionism.[63]

Is all this enough to regard the breakthrough of human dignity into the human rights discourse as a retrograde concession and something to be avoided in current legal thought. I think not.

An evolving foundation for all human rights

The influences that sought out dignity as a leitmotif of human rights were not solely catholic, and even when they were, they hardly spoke with one papal voice. With regard to all of the three major religions, the revolutionary thing about human rights is that it no longer takes suffering as ordained and something to be accepted without earthly remedy. This is tied into a debate known as theodicy: put simply *what kind of God makes his people suffer like this*? If in secular terms human rights are designed to recommit to the project of modernity and Enlightenment, then in religious terms it might be said they have been designed as a means of recommitting to God.[64] Either way, we are entering the terrain of what earlier eras would not have been afraid to describe as the human spirit, or soul, living under the dictates of natural law. We need a slightly different language.

Like Rene Cassin finding humanity in his French identity, the idea of the inherent dignity of all humankind helps to bind the particular to the universal. P. C Chang, another author of the Universal Declaration, had in mind in the concept of human dignity the Chinese word of *Ren*, which in literal translation means "*two-man mindedness*", but which might be expressed in English as "*sympathy*", or consciousness with one's fellow man.[65] A similar idea finds expression in the Zulu concept of *Ubunto* (uu-boon-tu) that means human kindness, humanness and describes a realisation that *I am/because you are*. [66]

These dignitarian ideas, even if emerging from outside of secular western thought, closely connects with the concept of *humane* treatment (which in dictionary terms concerns

[63] Moyn, Ibid, p. 59 and Moyn, *Human Rights in History*, Op Cit, p. 28.

[64] Danny Friedman, *Torture and Modernity*, Op Cit, pp 509-511.

[65] Mary Ann Glendon, *A World Made New,* p. 67.

[66] This also brings to mind the Koran, 49:13 "*O mankind! We have created you from a male and a female,* and *made you into nations and tribes so that you will come to know one another*".

compassion[67]). I do not think the duty of humane treatment, or the positive duty to respect human dignity that one finds in both the Geneva Conventions[68] and an emerging idea in Article 8 of the ECHR is the same idea as the prohibition on in*human* treatment that one finds in Article 3 ECHR, or the explicitly prohibited acts contained in Common Article 3 of the Geneva Convention.[69]

Jeremey Waldron describes the change that has taken place since 1945 as involving the upward equalization of rank, so that we now try to accord to every human being something of the dignity, rank and expectation of respect that was formally accorded only to nobility.[70] Waldron's approach to dignity is cited by Lord Reed in Osborn.[71] It is the process that Waldron describes as "*a sort of levelling up*" that enabled us to say in 2015 that the Magna Carta of 1215 is a key constitutional document for all, notwithstanding that its 'rights' were originally to be enjoyed by only a small delegation of Barons.

In recent cases concerning the British military we still see the process of this change in motion. In traditional society, the soldier could have honour and courage, but only higher rank could have dignity. The absence of a dignitarian commitment to the ordinary soldier runs the risk of an even lesser commitment to the ordinary enemy prisoner. In Haider Hussein the Court of Appeal described what it terms deplorable breaches of a reformed policy of UK military interrogation that was used in Afghanistan in the post 2013 period. Walls and desks were slammed. Families, religion, race and sexuality were insulted. There were instances of physical intimidation, including the gripping of a man's hand so that he could not move away for more than 30 minutes. Prisoners were told that unless they cooperated they could be detained indefinitely or handed over to the Afghan

[67] See Oxford English Dictionary definitions (as analysed in *Taunoa v AG* [2008] 1 NZLR 429, §§79-80). Humane: "*feeling or showing of compassion*. Humanity: "*the character or quality of being humane*". Inhumane: "*a word of milder meaning than inhuman…destitute of compassion*". Inhuman: "*esp. destitute of natural kindness or pity, brutal, unfeeling, cruel*".

[68] Common Art. 3 and Art. 13 of the Third Geneva Convention 1949 and Arts 5 and 27 of the Fourth Geneva Convention 1949.

[69] For the acceptance of both of those propositions, see the Court of Appeal decision in *R (Haider Hussein) v Secretary of State for Defence* [2014] EWCA Civ 1087 §§40 and 45.

[70] Jeremy Waldron, *How the Law Protects Dignity*' (2012) Cambridge Law Journal 200, 212, Jeremy Waldron, *Dignity, Rank and Rights* (Oxford 2012) p. 33.

[71] [2014] AC 1115 §68.

authorities. Authorised measures of shouting that were supposed to last for seconds, escalated into bouts of 5 and 10 minutes of screaming abuse and foul language.[72]

Why is it important for legal cases to act as the vehicle for telling these stories? They help us to recall the *moral restraints* that Jonathan Glover has identified as existing in everyday life, but becoming absent in times of abuse and atrocity.[73] Those moral restraints include what he calls '*the human responses*' ("*sympathy for other people and respect for their dignity*") and '*moral identity*': roughly, the sense of I am not the kind of person who does such things as murder or torture. For Glover, moral restraints fail sometimes by being neutralised or anaesthetized, and sometimes being overwhelmed by other factors. How can moral restraints be anaesthetized? As he puts it,

> "*The human responses can be deadened by distance, or by the victims presented as having no dignity to respect, or by cognitive illusions such as killing people in war is quite different. The sense of moral identity can fail as a restraint when an atrocity is complex and responsibility is fragmented: 'I am not killing people, I just drive the train taking them to the camp*".

Moral identity extends also to countries, because through the Cold War and the post-9/11 era, an important narrative in Britain, the United States and Israel in particular has been "*we are not the kind of country that does that kind of thing*". Equally, none of those countries are immune from their non-state actor enemies also losing moral restraints. The problem is that counter-points like that, as demands for reciprocity, themselves act as anaesthetics, trading illusions of collective responsibility and herding us into denying the dignity of the other, and so we assume the identity we have otherwise existentially disavowed.

The common law of dignity

Where does the common law come into all of this? In one sense I see it as a guardian of moral restraint. In that sense, the role of lawyers and the duty of judges is to ensure that moral restraints are not anaesthetised. The shame of the common law is that for most of its history its protections were unavailable to most. The cases before the English courts

[72] [2014] EWCA Civ 1087 §§75-77.

[73] Jonathan Glover, *Humanity: A Moral History of the 20th Century* (Yale, Second Edition, 2012) pp xix.

that have just now recalled Batang Kali[74] and Mau Mau[75] remind us of that shame; but the very fact that legacy complaints have been adjudicated on, even so belatedly, involves of itself a form of transitional justice. In *legal terms*, regardless of how many fail to get to court, there are now no non-people; no children of a lesser God.

However, but for Lord Reed's recent dignitarian citation, the major observation to make about dignity in common law writing is how little it is used. A pre-HRA lexis search brings up scant results. There is a dissenting judgment of Lord Scarman in *Home Office v Harman* [76] that deals with the implied undertaking not to disclose litigation documents to third parties. In examining the right to freedom of expression, that he attributed to Milton who told Parliament in 1694 ""*Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties*", Lord Scarman designated such matters as "*basic to human dignity*".

If one thinks about core features of the common law; the right to be heard, the duty to give reasons, open justice, natural justice, and equality before the law, surely all of these rights concern the dignity of the parties under the rule of law. Conversely, if one analyses what is wrong about being denied those rights, it concerns the extent to which human dignity is *not* accorded due weight. It was that sentiment which lay behind the Supreme Court in *Osborn* supplementing due process rights onto a parole board process where Article 5 ECHR would not do so. It also caused the Court to enforce a common law right to information in *Kennedy*, where Article 10 ECHR could not do so, and when the available remedy was expressly excluded under the Freedom of Information Act 2000.[77]

Thus even if Schopenhauer described dignity as "*the shibboleth of all empty headed moralists*"[78], there is something in the history of the present that urges us to see more in its device. When the common law recognises the right to know, to be heard and to be treated

[74] *Chong Keyu v Secretary of State for Defence*, Op Cit.

[75] *Matua v Foreign and Commonwealth Office (No 1)* [2011] EWHC 1913 Admin; and *Matua v Foreign and Commonwealth Office (No 2)* [2012] EWHC 2678 Admin.

[76] [1983] AC 280, 311H.

[77] See the absolute exception of the Charity Commission from the duty of disclosure provided for under ss. 2(2) and 32(2) of the 2000 Act.

[78] Arthur Schopenhauer, *On the Basis of Morality* (Hackett 2nd Revised edition February 2000) p. 100.

with equality it is in effect speaking of human dignity without necessarily mentioning its name. For those who are heard and accorded due process in that way, there can be something both restorative and transformative in terms of social relations. Anyone who has been involved in an inquest or an inquiry that focussed upon the dignity of the bereaved will know that, just as anyone that has been involved in an inquiry that does not do this, will know that the process can engender its own secondary victimisation.

Indeed, if one is trying to understand how human rights itself evolved especially in the late 20th century, it was probably at the point in time in Latin America, when lawyers, activists, politicians and psychiatrists came together to formulate a set of principles for the field of transitional justice, in which human rights abuse was to be the subject of independent and effective inquiry, to which the victims had a right to participate in, both to secure their right to the truth, and as a proxy for the broader public interest in democracy and the rule of law. We know that those principles that were first discussed in the 1980s[79] travelled into the case law of the Inter-American Court,[80] then to Strasbourg[81] and can now be regarded as part of customary international law.[82] They operate in this country both through inquests,[83] but also the Iraq Human Rights inquiries[84] mandated as

[79] Paige Arthur, *How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice*, Op Cit.

[80] *Velásquez Rodríguez v Republic of Honduras*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), §172 and *Bámaca-Velásquez v. Guatemala*, Judgment of February 22, 2002 IACtHR (Ser. C) No. 91 (2002) §§75 and 77.

[81] *McCann v United Kingdom* (1996) 21 EHRR 97 §161; *Jordan v United Kingdom* (2001) 38 EHRR 1 §§109-118; *El-Masri v Former Republic of Macedonia* (2013) 57 EHRR 25 §191-192; and *Al-Nashiri v Poland* (2015) 60 E.H.R.R 16 p. 565 §§479-485 and p 571 §§ 494-497.

[82] Article 3(b) of UN General Assembly Res. 60/147 of 16 December 2005 on "*The Basic Principles and Guidelines on the Right to Remedy and Reparations for Victims of Violations of International Human Rights and Serious Violations of Humanitarian Law*": "*The obligation to ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: …. (b) Investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law…*" The *Basic Principles* at Article 22 also embody criteria for the discharge of the duty, including (b) "*verification of facts and full and public disclosure of the truth…*"; (d) "*an official declaration or a judicial decision restoring the dignity, the reputation and persons closely connected with the victim*"; (e) "*public apology, including acknowledgement of the facts and acceptance of responsibility*"; and (g) "*commemoration and tributes to victims*".

[83] *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182.

[84] *R (Ali Zaki Mousa) v Secretary of State for the Home Department (No 2)* [2013] EWHC 1412 (Admin).

a result of Colonel Daoud Mousa, Baha's father, becoming an applicant in the *Al Skeini* litigation in 2004.[85]

VI. CONCLUSION

Which brings us back to present politics and the attempt to chill various lawyers who I know will not be chilled. In this country, as in other democracies subject to the rule of law in more than name only, asking why and how state agents and agencies break the law, not only cements the rule of law, but gives rise to a better society for all. Any effort to bully or unduly economise the legal profession away from that endeavour should sound alarm bells.

We know, of course, that in other countries it is worse, but as Hannah Arendt wrote, "*the wrong done by my own people naturally grieves me more than the wrong done by other people*".[86] In that view she was influenced by the American philosopher John Glenn Gray who in his memoir of war time service, wrote:

> "*The enemy was cruel, it was clear, yet this did not trouble me as deeply as did our own cruelty. Indeed their brutality made fighting the Germans much easier, whereas ours weakened the will and confused the intellect. Though the scales were not at all equal in this contest, I felt responsibility for ours much more than theirs*".[87]

To blame human rights lawyers, and indeed universal principles of human rights, as part of a campaign to exclude people from access to the common law courts appears to be an exercise that, if allowed to go unchallenged, will weaken the will of dissent and confuse intellectual understanding about what it means to be civilised in the aftermath of total war. Daoud Mousa would not have allowed the torturing to death of his son on a British

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[85] *R (Al Skeini) v Secretary of State for Defence* [2008] 1 AC 153 and *Al Skeini v United Kingdom* (2011) 53 EHRR 18. For the development of that story, see further, *Hassan v United Kingdom*, App. No. 29750/09, 16 September 2014 [GC], §§79-80; *Jaloud v the Netherlands*, App. No. 477708/08, 20 November 2014, [GC], §§152-153, *Smith v Ministry of Defence* [2014] AC 52 §49 and *Chong Keyu*, Op Cit, §§180, 187, 189 and 198-201.

[86] Elizabeth Young-Bruehl, *Hannah Arendt: For the Love of the World*, 2 edition (Yale 2004), p. 336 discussing Arendt's, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin reissue 1994).

[87] J. Glenn Gray, *The Warriors: Reflections on Men in Battle* (1967)(reissued Bison Books 1998), p. 6.

army base in Basra to be obstructed by such a seduction. I want to end by thanking again those solicitors who are unwilling to do the same.

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