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Journalism, Assange and Reversal in the UK High Court. The Extradition Procedure

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British justice is advertised by its proponents as upright, historically different to the savages upon which it sought to civilise, and apparently fair. Such outrages as the unjust convictions of the Guilford Four and Maguire Seven, both having served time in prison for terrorist offences they did not commit, are treated as blemishes.

In recent memory, fewer blemishes can be more profound and disturbing to a legal system than the treatment of Australian citizen and WikiLeaks founder, Julian Assange. The British legal system has been so conspicuously outsourced to the wishes of the US Department of Justice and the military-industrial complex Assange did so much to expose. The decision of the UK High Court, handed down on December 10, will go down in the annals of law as a particularly disgraceful instance of this.

From the outset, extradition proceedings utilising a First World War US statute – the Espionage Act of 1917 – should have sent legal eagles in the UK swooping with alarm. 17 of the 18 charges Assange is accused of have been drawn from it. It criminalises the receipt, dissemination and publication of national security information. It attacks the very foundations of the Fourth Estate's pursuit of accountability and subverts the protections of the First Amendment in the US constitution. It invalidates motive and purpose. And, were this to be successful – and here, the British justices seem willing to ensure that it is – the United States will be able to globally target any publisher of its dirty trove of classified material using an archaic, barbaric law.

It should also have occurred to the good members of the English legal profession that these lamentable proceedings have always been political. Extraditions are generally not awarded on such grounds. But this entire affair reeks of it. The US security establishment wants their man, desperately. With the coming to power of President Donald Trump, one counterintelligence officer, reflecting on Assange's plight, made the pertinent observation that, "Nobody in that crew was going to be too broken up about the First Amendment issues."

The original decision by District Court Judge Vanessa Baraitser was hardly grand. It was chastising and vicious to journalism, cruel to those revealing information that might expose state abuses and an offense to the sensibility of democratic minded persons. The point was made that security and intelligence experts, however morally inclined or principled, were best suited to assessing the merits of releasing classified information. Journalists should never be involved in publishing such material. Besides, thought the Judge, Assange was not a true journalist. Such people did not purposely go out to disclose the identities of informants or propagandise their cause.

The only thing going for that otherwise woeful judgment was its acceptance that Assange would well perish in the US legal system. Noting such cases as Laurie Love, Baraitser accepted that the prosecution had failed to show that Assange would not be placed in a position where he could be prevented from taking his own life. Should he be sent across the Atlantic, he would face Special Administrative Measures and conclude his life in the wretched cul-de-sac of the ADX Florence supermax. Any extradition to such conditions of sheer baroque cruelty would be "oppressive" given "his mental condition".

The prosecution had no qualms trying to appeal and broaden the arguments, citing several propositions. Contemptibly, these focused on Assange the pretender (suicidal autistics cannot give conference plenaries or host television programs), expert witnesses as deceivers (neuropsychiatrist Michael Kopelman, for initially "concealing" evidence from the court of Assange's relationship with Stella Moris and their children), and the merits of the US prison system: matronly, saintly, and filled with soft beds and tender shrinks. Why, scolded the prosecutor James Lewis QC in October, had the good judge not asked the US Department of Justice for reassurances? Assange would not face the brutal end of special administrative measures. He would not be sent to decline and moulder in ADX Florence. He could also serve his sentence in Australia, provided, of course, the Department of Justice approved.

In reversing the decision to discharge Assange, the Lord Chief Justice of England and Wales Ian Burnett, and Lord Justice Timothy Holroyde were persuaded by two of the five grounds submitted by the prosecutors. Sounding astonishingly naïve (or possibly disingenuous) at points, the justices accepted the prosecution's argument that undertakings or assurances could be made at a later stage, even during an appeal. Delays by a requesting state to make such assurances might be tactical and stem from bad faith, but not entertaining such assurances, even if made later, might also result in "a windfall to an alleged or convicted criminal, which would defeat the public interest in extradition."

Judge Baraitser should have also been mindful of seeking the assurances in the first place, given how vital the issue of Assange's suicide risk and future treatment in US prisons was in making her decision against extradition.

It followed that the justices did "not accept that the USA refrained for tactical reasons from offering assurances at an earlier stage, or acted in bad faith in choosing only to offer them at the appeal stage." Diplomatic Note no. 74 contained "solemn undertakings, offered by one government to another, which will bind all officials and prosecutors who will deal with the relevant aspects of Mr Assange's case now and in the future."

This meant that Assange would not be subjected to SAMs, or sent to ADX Florence, and that he would receive appropriate medical treatment to mitigate the risk of suicide. (The justices

erred in not understanding that the assurance to not detain Assange ADX "pre-trial" was irrelevant as ADX is a post-conviction establishment.) He could also serve his post-trial and post-appeal sentence in Australia, though that would be at the mercy of DOJ approval. All undertakings were naturally provisional on the conduct of the accused.

As the original judgement was premised upon Assange being subjected to the "harshest SAMs regime", and given the significance of the evidence submitted by Kopelman and Dr Quinton Deeley on Assange's suicide risk in "being held under such harsh conditions of isolation", the justices were "unable to accept the submission that the judge's conclusion would have been the same if she had not found a real risk of detention in those conditions."

Such narrow reasoning served to ignore the ample evidence that such diplomatic assurances are unreliable, mutable and without legal standing. In terms of solitary confinement, the US legal system is filled with euphemistic designations that all amount to aspects of the same thing. If it is not SAMs, it is certainly something amounting to it, such as Administrative Segregation.

Previous diplomatic assurances given by US authorities have also been found wanting. The fate of Spanish drug trafficker David Mendoza Herrarte stands out. In that case, a Spanish court was given an assurance that Mendoza, if extradited to the US to face trial, could serve any subsequent prison sentence in Spain. When the application to the US Department of Justice was made to make good that undertaking, the transfer application was refused. The pledge only applied, it was claimed, to allow Mendoza to apply for a transfer; it never meant that the DOJ had to agree to it. A diplomatic wrangle between Madrid and Washington ensued for six years before the decision was altered.

And just to make such undertakings all the more implausible, the "solemn assurances" were coming from, as Craig Murray pointedly remarked, "a state whose war crimes and murder of civilians were exposed by Julian Assange."

The justices also failed to consider the murderous elephant in the room, one that had been submitted by the defence at both the extradition hearing and the appeal: that US government officials had contemplated abducting and assassinating the very individual whose extradition they were seeking. This was a view that held sway with former US Secretary of State and CIA chief Mike Pompeo.

In the United States, talking heads expressed their satisfaction about the glories of the US justice and prison system. Former Democratic Senator Claire McCaskill told MSNBC that, "This was really a guy who just violated the law". Concerns by Assange's defence team that his "safety in [US] prison" would be compromised showed that "they really don't have perspective on this".

It is fittingly monstrous that this decision should be handed down the same day the Nobel Peace Prize was being awarded to two journalists, Maria Ressa and Dmitry Muratov. Or that it should happen on Human Rights Day, which saw US Secretary of State Antony Blinken's boast that "we will continue to promote accountability for human rights violators." Except one's own.

Inevitably, these cruel, gradually lethal proceedings move to the next stage: an appeal to the Supreme Court. As the paperwork is gathered, Assange will muse, grimly, that the entire period of his discharge never saw him leave Belmarsh Prison.

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