



podcast

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Baroness  
Helena Kennedy KC



Openness



Hello and welcome to the Good Governance Institute public good podcast, where today we'll be discussing the Nolan Principle of openness, which requires holders of public office to act and take decisions in an open and transparent manner. It also stipulates that information should not be withheld from the public unless there are clear and lawful reasons for doing so.

My name is Jaco Marais, I am your host, and I think you'll want to listen to this.

I'm delighted to welcome my special guest for this episode, Baroness Helena Kennedy KC, one of the country's most distinguished lawyers.

A member of Doughty Street Chambers, she has acted in some of the highest profile cases of our times, including the Brighton Bombing trial, the Michael Bettany espionage trial, and the Guildford Four appeal.

She has also chaired public inquiries, including one for the Royal College of Pathologists and the Royal College of Paediatrics and Child Health into sudden infant death, following miscarriages of justice where mothers were wrongly convicted of murdering their babies.

She is active in the House of Lords, where she takes a special interest in issues around human rights, civil liberties, social justice and culture.

Baroness Kennedy was also a founder member of Charter 88, the reform group set up in 1988 to address concerns about the failure of British institutions to serve our democracy – an initiative that was instrumental in the reform of the House of Lords, and the incorporation of the European Convention on Human Rights into British law.

Among her many other accomplishments is her work to promote equal opportunities for women in the law – lawyers, victims and defendants alike. She has written two seminal books on the subject. The first – *Eve Was Framed: Women and British Justice* – was published to great acclaim in 1992. The second, which was equally well received, appeared 27 years later in 1992. It's called *Misjustice: How British Law is Failing Women* and it was described by one critic as 'unflinching... it challenges acquiescence to everyday sexism and inspires change'.

I could go on – and on – about Baroness Kennedy's many accomplishments but the last one I'll mention is that she was the recipient of GGI's Good Governance Award last year for dedicating her professional life to giving voice to those who have least power within the system, championing civil liberties and promoting human rights.

Accepting our award last September, Baroness Kennedy said: "*The driving thing for me has been about wanting to create fairness in the systems.*" So I'm very much looking forward to hearing her views on whether she agrees with us that fairness should be added as an eighth Nolan Principle. Welcome Helena and thank you so much for joining us.

Also with us today is my colleague David Cryer, a principal consultant here at GGI. David started his career in management consultancy before moving into the public sector, working in central government – including as finance director in the Department of the Environment, Food and Rural Affairs – and then in the NHS.

His health service career began as a director of strategy in an East London primary care trust, where he led the development of the strategic plan and the transfer of community services to a local mental health trust.

He has led considerable change in the NHS, bringing a value-based approach to improving patient outcomes, investing in a single data record and measurable outcomes before population health management was the high priority it is today.

One of his many NHS roles was as finance director in NHS England, where he worked with the New Models of Care team and with five CCGs in the south-west, all of which achieved significant improvements in their financial performance.

David then took a role in Sussex where, as chief finance officer and then director of strategy, he helped to lead the transformation of a challenged system through significant improvements to become an early adopter integrated care system.

Throughout his career, David has been interested in change – whether through the launch of a new consumer product, winning new clients or introducing rigorous financial practices into a central government department.

Welcome David.

For something to be open, that needs to be understandable by the public. How are the public being bamboozled?

**Baroness Helena Kennedy:** This morning, when I had a sift of the newspapers, there's a story about the huge amounts of money that local authorities are having to pay the private owners of care homes for very poor-quality offerings, which are available then to the ordinary people in our in our society who aren't able to pay the £8,000 a month to be in a very decent care home.

So there are categories of care homes and the care homes being provided by local authorities aren't owned by the local authorities. They're actually owned by private individuals or companies, or offshore companies. And the billions of pounds that are being paid of taxpayers money are going into the pockets of people who aren't even themselves paying tax into this country and there is something corrupt and terrible about that.

We have had the same thing in relation to, for example, the care of children in our society. We take children into care. Sometimes it's because there's ill health in the family. It may have been a mental breakdown by the primary care parent, maybe the mother. It may be that the family is completely dysfunctional and that parents have parted, and the child can't be cared for.

It may be that the child is showing signs of having serious problems themselves, and so the state has a responsibility on our behalf to take care of them. But what we're hearing about now is that that was put into private hands too. It used to be that it was very much the responsibility of local authorities – of arms of the state representing us, trying to create a caring society. But those children are put into places that are totally unsuitable, frequently with very little oversight. There's none of the sort of caring that one would expect of the government.

And we're finding out that huge amounts of profits are being made by, again, private companies that have taken over these care homes. And instead of it being the responsibility of a caring state – a government taking on that responsibility on our behalf – we're finding that it's outsourced and that profitability is the major driver.

Now, did we all know this before it was reported last year by investigative journalism? There's something wrong in our society when it takes investigative reporting to disclose where our own taxpayers' money is going in relation to this ideological commitment to outsource everything.

There are some moral things in our midst which I think deserve and demand proper openness so that we can see where public money is going and whether it is reaching the standards and moral standards that I think are expected of a proper, caring state.

**David Cryer:** It's a struggle everywhere in the NHS at the moment, not just because of finances, but because of the inability to recruit staff. We deal with lots of NHS organisations all across the country and the themes are depressingly consistent. There is perhaps a degree of honesty and openness and transparency – I'm not sure of the right word – politically and around the NHS, to develop a sustainable model. We don't have a sustainable health care system and I think that's due to a lack of honesty and openness in politicians. We seem to lurch between brief periods of being well funded and having frankly a reasonably good 21<sup>st</sup> century Western health care system to quite long periods of decline and generally receiving fantastic care but in an extraordinarily stretched environment.

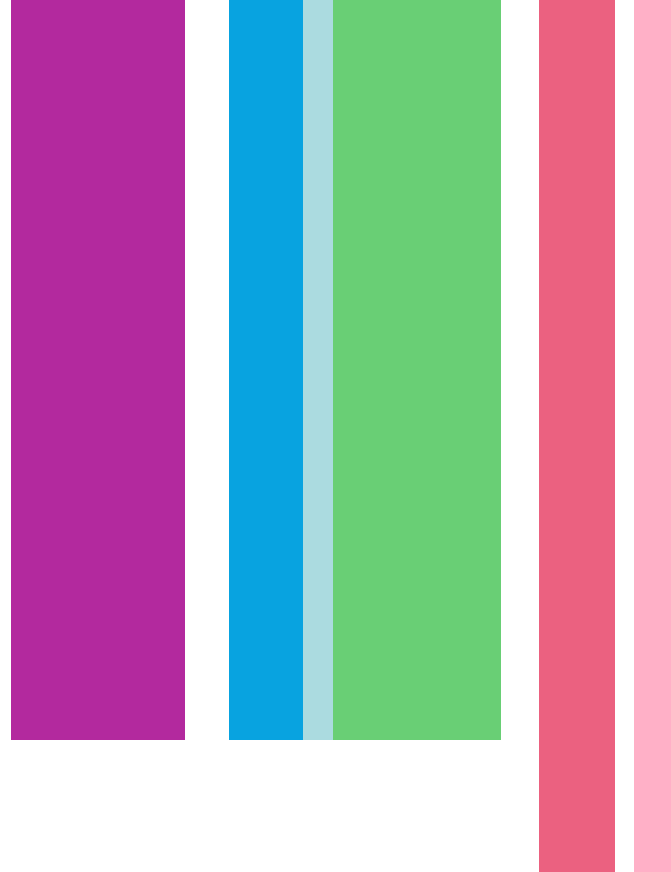
And if you throw strikes into that, it creates almost a perfect storm. But I think the state of the health service is commonly understood. What isn't really talked about – and I think this is a reflection of our political discourse at the moment – is the challenge of how we improve things. We have a very adversarial political system, which somehow removes the ability

to have intellectual thought about how we collectively solve problems. So that's a problem in taxation policy and health policy and all sorts of areas. I think we understand what's happening in the NHS but we don't collectively have a conversation about how we improve the situation. It ends up as a political football with a price tag on it and I think it's much more sophisticated and I think as a public we could absolutely engage in that discussion. I think that's where we fall short and let ourselves down.

**Jaco Marais:** How do we take the politics out of these debates and still be open and transparent with the public?

**Helena Kennedy:** Before we go there, I do think that we've injured many areas of our public service by the introduction of the language of commerce. The very fact that we are talking about doctors and nurses as 'units of productivity' is disgusting. We can be business-like without turning things into businesses. And it's a mistake that has been made over, I would say, probably 40 years. It started with the shift that took place with Thatcherism. Is the public sector doing far too much of it now? I would agree that there are certain things that the state shouldn't be doing, but I also think that we have privatised too many things where outsourcing is not the appropriate way.

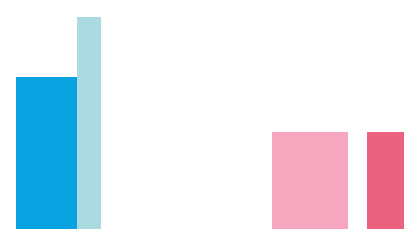
I mentioned some of them earlier, the business of care – the care of our elderly who are not well. Obviously, you know, people are rich, they can send their children to Eton. I have no objection to them doing it. That's fine. You know, rich people can buy themselves places in the fanciest of care homes so it's like they're living at The Ritz. Good luck to them. But for the majority of people, that's not possible. And



when it comes particularly to care, I don't believe that we should be, you know, shrinking away from the responsibilities that we have as a society.

**Jaco Marais:** Would it be worth considering the difference between government and governance and when one starts and the other stops?

**David Cryer:** If you think about the governance of an institution, it's within an environment, within a context that is set for it. I was thinking about finance. We've just had another potential banking problem. We inevitably blame regulation for the banks. But what was the board doing? Why isn't the board being held accountable? We went through a banking crisis that crashed the economy; it caused all sorts of problems. How many of those boards were genuinely held to account and paid the price for the huge damage that was caused to people's lives, to the economy? We don't take the governance role as seriously as we should do. And it's a very complex role – it's a very difficult job to sit on a board and I don't underestimate the challenges, but that is what



they are being paid for. And certainly in the private sector they can be paid very significant sums of money.

The situation of that bank in California – it was banking 101. It was misaligning the deposits against the lending. I could work out that that was not sustainable, and they were doing it, as Helena was saying earlier on about care homes, to maximise profit in the short term, knowing that the downside was only to walk away and try it somewhere else. And I think that gets really dangerous.

**Helena Kennedy:** To do that thing of looking at the difference between governance and government, governments should be involved in good governance, just like anybody who has particularly a fiduciary duty, a duty to look after moneys – even if you're a charity and you're not being paid to be on a board. I think people

often enter into these things out of goodwill, but they're not adequately informed of what comes with the role of being on a board or an executive committee, for example, of a membership organisation where moneys are paid by members into trade unions or into other kinds of membership organisations, and that the executive committee, the board, have responsibilities to make sure that those moneys are spent in appropriate ways, and that there should be openness about how the money is spent. And I think that in lots of organisations that's not the case.

I've just played a role in an inquiry into some bad behaviour inside a trade union. But what came through was not just that there was bad behaviour inside the machinery of running the union, but also that there was very poor governance – that there was an executive committee that was kept informed in a very limited way. And that's a classic thing that happens inside bodies – even on the boards of companies. People are very happy to be there – the House of Lords is full of people who sit on boards of companies and they're paid a significant sum of money. If you can collect a



whole set of boards, you can be doing pretty well for yourself.

Now, you're sent the board papers. Does everybody read all the board papers? Do they really examine them, for what's not being told to you, but might be underneath that? There's a great saying – and I don't want to be vulgar on your podcast – but it's that the board should be treated like mushrooms: you keep them in the dark and you feed them manure and that happens in lots of places where, you know, you carefully manipulate the telling of the story that goes to the board. And so half the time the board is not asking the right questions because they're not mindful of the fact that they have a duty beyond sitting around there with a crowd of people who've become sort of friends. So the chief executive and the chairman can often manipulate all of that in order to give the board the information.

A board should be full of people on their mettle, knowing that that's what goes on. Good governance is about people taking on those duties in a very inquisitive and inquiring way in order to get to the real facts. Now, there's a problem for me in all of this in the business of governance, which is that unfortunately, more and more folk, after they do their initial degree, go off to business schools. Maybe David's been to one. Did you go to business school, David?

**David Cryer:** I did, I'm afraid.


**Helena Kennedy:** Yes, I guessed it. Jaco, did you go to business school?

**Jaco Marais:** I did go to business school, yes.

**Helena Kennedy:** Yeah, well, one of the things a business school is – and it's the mantra that came out of the Harvard Business School tradition – is that your primary concern, and the major interest of any company, and your role as the chief executive or a senior executive, is to maximise shareholder value. And so that becomes the priority: to get as much money in, to give it out in the form of shares. And I think in a decent society, which is well governed, where good governance matters, there should be responsibility to more than the shareholder.

And so I was always very interested in a much wider conception of what the role of any of these bodies – whether it's a charity, whether it's a non-profit thing, any of these things – it should always be about who are our stakeholders? And inevitably, it's the wider community. You don't have workers in a business unless people are well-educated and, even for the lower-level jobs, you need people to be literate. So that





has to inevitably come out of public funding. If you want people to work for you that have skills, you have to invest in a machinery that creates skills and skilled people. If you want to have a national health service – if you have a heart attack in the street, whether you're rich or poor, you're likely to be taken to the emergency room, to A&E and you want good people there to meet you at the door to identify immediately what's happened to you.

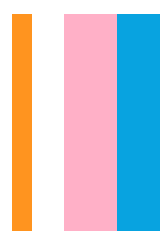
It's just crazy for us to want to turn our nation into a place in which we aren't carefully calibrating how good governance works in every aspect of our lives, whether it's in school boards, whether it's in hospital boards and trusts, in all of those areas. And I'm afraid that old secret of keeping them in the dark has been the way of things.

The other problem we've got is that Britain is particularly secretive. It's one of the things about the British state that we passed around the colonies, which was to tell people as little as possible. Tell them only what they really need to know. It was a paternalistic thing: don't tell people things that are going to make them panic, which they're not smart enough to fully understand, keep them in the dark about it. That's one of the concerns I have about the way in which we do business and government in this country.


**Jaco Marais:** Well, these are absolutely the values of the Good Governance Institute, that were really born from Nelson Mandela, who employed Judge Mervyn King to launch the King Committee, where they looked at capitalism – not just being for shareholders. They wanted to invent a new form of capitalism for a new South Africa that created value for the community. And they did this through integrated reporting, which reported on the impact that an organisation has, not just the shareholder profits, and that's how good governance was born or social responsibility. And Judge Mervyn King is still involved with the Good Governance Institute and frequently speaks to different topics.

Now, talking about the public being kept in the dark and fed manure, shall we comment on the ongoing Party Gate inquiry? I think there's quite a few Nolan principles that come to mind, particularly one we want to add to the list, which is fairness. It just feels very unfair and it's a real, visceral example of not being open and transparent.

**Helena Kennedy:** Boris Johnson's position is that we know that there were social gatherings and so on that went on inside Downing Street. We don't have to revisit that. The question is, what did he come to Parliament and say? And he came to Parliament and said 'we absolutely abided by all the rules' and so on, and you'd have to be a fool to think that he did. I happen to think that you have to deal with the man that's before you. I'm a person who has spent my life in the courts and I've represented people who will look you in the eye and say 'I didn't do it', when all the evidence points in the direction that they did do it.







He has convinced himself that he really was really just being a decent guy, and he wanted to say farewell to people and there was no mal-intent. We know things about Boris Johnson, but people making judgements learn – as our judges do – that you have to learn something about leaving to one side any gut feeling you might have and say, where does the evidence take us here? Is it of a high enough standard? Does it reach the thresholds that are necessary? Now, I think that in the modern world, the idea that it has to be proved beyond reasonable doubt for a prime minister that he was not being truthful, I think that's too high a bar for the circumstances we're in.

**David Cryer:** I think it's pretty clear that the individual shouldn't be in parliament. He should never have been prime minister. And I don't underestimate that the damage he's personally caused to the country is enormous in economic terms, in political terms, through Brexit... through all sorts of things. I think the damage is huge and my children will suffer.


It does seem that he's being held to account. He was in front of a public committee of peers, of other MPs, and the House who referred him to that committee is going to make a going to make a judgement. And as you say, I think the evidence does seem to speak for itself. And in the context of what was going on – the tragic consequences of so much of what happened during that period – it does look as if he's going to have to pay the consequences. I think it would be good if there was a by-election; he should be thrown out on his ear. That feels like the right thing to do, and it looks as if the system is saying that it's unacceptable, that kind of behaviour, and we are going to treat that in what seems to me like an appropriate way. So I think for some people it will be slightly cathartic to see that happen.

**Jaco Marais:** There is undoubtedly moral damage and the psychological effects of continually seeing cover-ups that are later revealed to be untrue is really real for people. And I know a lot of people that have switched off the news because they just cannot within themselves handle it and continue with their lives in a productive way. Is the lack of openness damaging public confidence in our democracy as a whole?

**Helena Kennedy:** Here were people who whose families were dying. My daughter was on the Covid wards in a London hospital as a young doctor, and she was having to hold up iPads to people to say 'Your dad's now on a ventilator and he'll be in a coma. And so we just want you to know this'. And so they hold up the thing and people will say, 'Dad, I haven't told you enough how much I love you. And I don't feel that I understood when they put you into the ambulance that this was how serious it was.' The horror of being separated and never being able to go in there...

So, if you were to ask the doctors who dealt with all of that, and the people's loss and the separation, the deprivation of experience... and to find out that at the same time in Downing Street, they were having parties? And that you as the boss person didn't bother to make sure that you knew exactly what was going on? I think that is going to be a hard one to judge. I think you have to ask, was he reckless about the information he was giving to parliament?

As somebody on the outside watching it, I think I have great trust that this committee will do the right thing. Whether you create a situation where you have a by-election and so on, I don't know, but I do think that what we're seeing is an example of fairly good due



process. These things are hard, and due process has to operate inside workplaces when people make complaints against their superiors, and so on. Explaining the nature of due process is difficult sometimes, but it has to be about fairness. People have to feel that they were listened to – that they were heard. And there's an awful lot of people who will be watching that thinking 'a different set of rules operated for some people to the ones that operated for the majority'.

**David Cryer:** I'm one of those people that Jaco referred to who doesn't watch the news anymore because I'm liable to throw something at the TV. I get so angry. But why do our politicians get away with this appalling language with migration when any young person I talk to finds it abhorrent that you have that kind of approach. Why aren't they revolting? I'm not sure why. It might help if they did, I think.

**Jaco Marais:** I think as a country we want to be seen as a fair country. I think that's absolutely how we pride ourselves. But it's not bearing out in the facts. Should we add fairness to the list of Nolan principles? Would that help?

**Helena Kennedy:** When the Millennium Dome was created, we were stepping into a new millennium and the Millennium Dome was created to be a great sort of festival of this moment. And one aspect of it was a sort of celebration of the great things about Britain. And teams of people put their heads together to try and decide what the great things of Britain were: our cultural product – we're great at filmmaking, we're great at theatre, we're great at music, we're great at all manner of things. And we think of all of these things, which we

don't really invest in very much either. You know, there's the BBC closing down its choirs and things like that and having to rethink it because of public outrage. The BBC is one of those great things and yet it's being attacked all the time.

One of the things that Britain very proudly exhibited as being one of its things was fairness. They spoke about the whole business of the rule of law. How we are looked to as not just the mother of parliaments, what a great place we were deemed to be, and we boasted about our position on fairness, due process, the rule of law, Britain as the home of justice. And I'm afraid that we're tearing that up because of the ways in which we are dismissing our commitments that we made to international conventions.

They're even talking about just ignoring decisions of the European Court of Human Rights. I mean, we wrote the European Convention on Human Rights; it was British lawyers. There's something going on here. I think we're seeing a degrading of the things that made us as a nation stand out in the world. We may have been small, but there we were, you know, in the Security Council at the United Nations. We may be small, but there we were, signing up to the International Criminal Court. We don't even have a judge now on the International Court of Justice. And do you know why? Because all the European countries didn't vote for us after Brexit. All our ex-colonies are pretty pissed off with us for many other things that we failed to do. Many of the countries where the Queen was the head of state are now saying: 'Well, she was a wonderful woman. We wouldn't have wanted to do that to her while she was alive. But now we're wanting our separateness'.

We've got to reckon with what's happening and what we should be standing for – our values. And I'm afraid we are diminishing the commitment that we had to those values.

**David Cryer:** How do we turn that round? What changes that? I think that if you did that exercise now, that we did at the millennium, to think 'what are the great things about Britain that we want to celebrate?', it would be a much shorter list, wouldn't it, for all the reasons that you say.

**Helena Kennedy:** It sure would be. We're talking here about the Nolan principle of openness and transparency. There are some aspects of what goes on in our society that are in a darker corner of our world. If people have no cause to ever think twice about what happens in the justice system, then it's not an area where they're going to get exercised about deprivation.

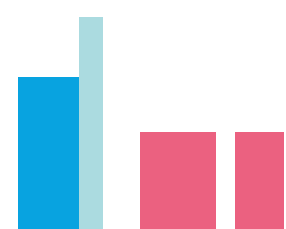
You mentioned, David, the full horror of 2007, the banking crisis, which was a global crisis. But there was a kind of lie told then, which was that it was all down to the fact that Labour had mismanaged the economy. Under Labour, an awful lot of good things happened in the health service and in schools for our children and so on. But let's just turn to the business of that economic crisis, because it was faced in many places. One of the things that was done at that time here in Britain, more than anywhere else, was austerity. We introduced policies of austerity that were so biting. But the real purpose of that was an agenda to shrink the state – we had this welfare state offering a cushion and so on... shrink it. This is our opportunity to really shrink it down to the bones. And as a result, we've ended up with, for example, let's just deal with my area: justice took a hit of 40%. Just think about that. I think it was the biggest hit of any government

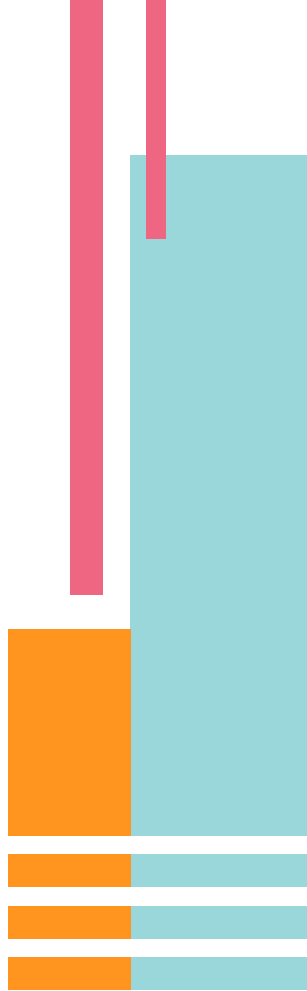
department, any ministry. And it meant that the probation service was privatised, and it's now a recognised that it was a disaster, a total disaster.

And so of course you can't talk about alternatives to prison, having a probation service to run alternatives. You can't talk about dealing with people on parole and stopping them reoffending, rehabilitating people, if you don't have a well-trained, highly developed probation system. I'm telling you; we destroyed something that was wonderful in this country.

We got rid of money out all those things like youth work in our communities. Then they complain about crime. We have a backlog which we limited the number of courts and therefore the number of sitting hours that judges do because there are so few of them. We sold the courts off to be made into flats, you know, so people were making money out of it, like, you know, like bandits.

There's a backlog of 156,000 cases at the moment. Think about that – think about the victims who are not seeing justice in that. I mean, it's a scandal. But of course, for most people, they don't see it. And it's an invisible part – it's one of those bits of our system that is fundamental, but that is almost invisible. And so is it any wonder that women are outraged about the failure of the justice system for them? And policing, of course, was also cut to the bone. Is it any wonder that people of colour, minorities, gay people, so many people feel the system just doesn't work for them because when they are wronged... Our social contract is: bring me





your wrongs, bring them to us, don't go off and sort it out yourself and punch the lights out of somebody that's done something that you don't like, or that is a harm to you. Let us do it – the justice system. And then the justice system's in this state? And yet it's invisible.

So, I feel that if we're talking about transparency and openness, the stories that can be told about the full horror of that, you know – I'm sorry, you're getting my full blast here – one of the things that we've done is we've de-professionalised the professions. In this great neoliberal experiment that we've been engaged in, we have said the real thing to do is to become a banker. I was the head of an Oxford College for a while, and I had young people who are doing degrees in physics, engineering, material science... brilliant young people. They were all headhunted to go into the City to become bankers because they understood algorithms.

So they didn't become the producers of new ideas and new things. No, they were in there in the banking system because they were earning so much money. And of course, now education has become something makes people indebted. So who wouldn't want to earn a lot of money and earn, at the drop of a hat, £100,000 for their first job, when young doctors earn a quarter of that if they're lucky. So we've de-professionalised our professions – you only have to talk to young lawyers who work in the public sector. There's no Legal Aid for Immigration now. The expertise is disappearing. So I'm afraid that I feel we're in an even graver mess, David, than you described earlier on. We are in a serious, serious mess in this country. I pity any government that comes in to replace what we've got just now, because I just think I just don't know where you start.

**David Cryer:** It is interesting, isn't it, and frankly, rather depressing. On a personal level, I'm involved in an employment tribunal. It's taken two and a half years from the thing that happened to an appearance in an employment tribunal – two and a half years. I barely remember the details of what happened and I'm going to be examined about the details. It's an appalling situation, really.

**Helena Kennedy:** There are people waiting for criminal cases and the date that they've been given already is three years ahead.

**David Cryer:** That's not justice being done, is it? That is justice being delayed. You look at what's going on in France, where they're trying to change pension rules by a relatively small amount – not as much as over here. And people are rioting. The response from the public is interesting – the public here just seem to put up with things. Why aren't our young people out there? Where are the university students, getting angry and organising votes





and organising a political response? I don't quite understand.

**Helena Kennedy:** It's heart rending, actually. I'm so interested, Jaco, that you use that term of moral damage. I think that, for example, inside the Home Office just now, one of the things that I've discovered by sitting on a select committee that was about home affairs and justice, we had evidence being given to us.

One of the problems inside the Home Office is the turnover of staffing is a churn. And so the people who are having to do these cases – here is Tariq Ahmed from somewhere who's applying for asylum, and they're doing his case and in it he describes the horrible things that he experienced in Syria or wherever. And first of

all, it's eating away at their own souls reading about this stuff. But also the culture inside is to be saying no. And so the moral damage to people is very real. And I think it's what leads to this churn. People can't live with themselves because of what it is they're expected to do. And also, of course, they're paid poor money. That's why you're having civil servants going on strike as well.

All these areas are the stuff which is the mortar, you know, that holds everything together. They've picked away at that mortar. And so now the whole edifice is shaking and there's a sort of callousness about not going into the detail – it's the Boris Johnson way of doing government – and it's certainly not about good governance.

**Jaco Marais:** So I'm very interested to hear what our listeners have thought about today's podcast. But what I think I've learned was that we should never stop fighting for fairness and openness, and we should, as the public, fight for our right to party.

So, thank you very much to my guests. David Cryer, principal consultant at the Good Governance Institute, and Baroness Helena Kennedy KC. Thank you very much for joining us today.

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