Socialist Lawyer

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plus Syria, squatters and more

Haldane Society of Socialist Lawyers

Socialist Lawyer

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The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates. The list of the current executive, elected at the AGM in November 2012 is as follows:

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'We have a responsibility to speak up for our brothers and sisters who face arbitrary arrest, detention, imprisonment and even assassination'

The Defending Human Rights Defenders Conference, held a year ago, made it clear that The Haldane Society's commitment to our brothers and sisters at risk for defending human rights was not confined to lawyers. Human rights defenders under threat include journalists, trade unionists, and other civil society activists. We stand in solidarity with all of them.

For the last two years, however, our comrades in European Lawyers for Democracy and Human Rights have designated 24th January as 'the Day of the Endangered Lawyer' and this issue of *Socialist Lawyer* contains accounts of persecuted lawyers in several countries.

This year's Endangered Lawyer protests focused on lawyers in the Basque country.

Spain may be a democratic country, but our President, Michael Mansfield QC, explains how the Government accuses defence lawyers who have represented members of ETA of themselves committing terrorist crimes on behalf of ETA or insulting the Spanish State. This persecution continues, indeed seems to have stepped up in intensity, despite there being a peace process.

Identification of lawyers with their clients, particularly clients accused of terrorist offences, brings back memories of the murders of Pat Finucane and Rosemary Nelson in Northern Ireland. In December 2012, the Government's review into Finucane's murder was published, confirming that the British State had collaborated with Loyalist gunmen. However, the review stopped short of attributing responsibility to the State. The fact that Douglas Hogg MP, then Under-Secretary of State for the Home Department had said in Parliament just four weeks before Finucane's murder that there were 'a number of solicitors who are unduly sympathetic to the cause of the IRA' – thereby identifying lawyers as targets for paramilitary activity – was ignored.

In Kazakhstan, human rights and trade union lawyer Vadim Kuramshin is embarking on a shocking 12-year sentence of imprisonment, for a charge of extortion which he firmly denies, he has previously been acquitted of, and is said to have been the State's response to his own attempts to expose corruption. His defence lawyers, Raziya Nurmashev and Iskander Alimbayev, are fighting to retain their licences to practice. The account of his trial is appalling. The previous jury, who had acquitted him of corruption charges, has even formed an action committee to defend him.

More optimistically, Taimour Lay reports on the Free Syrian Lawyers Association, formed to protest against the Assad regime, but also determinedly trying to ensure due process and justice within the Free Syrian Army, fighting against the Assad regime, and its treatment of prisoners.

In Gaza, our comrades at the Palestinian Centre for Human Rights, like every other resident in Gaza, were subject to Israeli air strikes in November 2012. One hundred and fifty six Palestinians, including 33 children, were killed and nearly 1,000 people, including 274 children, wounded.

As *Socialist Lawyer* went to press, we heard of assaults on our close comrades in Turkey and in Colombia.

In Turkey, members of CHP, the Progressive Lawyers' Organisation and sister organisation to The Haldane Society, have been arrested in dawn raids and detained. They include CHP President, Selcuk Kozağaçlı, who addressed our Defending Human Rights Defenders Conference last year. These arrests are part of a pattern. Forty-six lawyers are already on trial accused of taking orders, rather than simply representing, PKK leader Abdullah Ocalan. Again, a client's beliefs and actions are imputed to his lawyers.

And in Colombia, our friends and comrades in MOVICE (Movement of Victims of State Crimes) and CPDH (Committee for the Defence of Human Rights) have had their protection removed, and some have received death threats. We have sent urgent letters to the Colombian Ambassador to the UK and the British Ambassador to Colombia asking for an investigation,

Lawyers – or at least lawyers committed to the defence of human rights – are clearly endangered.

Lawyers in Britain may face public spending cuts but, now that there is peace in Northern Ireland, we don't face death threats just for doing our jobs. We have a responsibility to speak up for our brothers and sisters who face arbitrary arrest, detention, imprisonment and even assassination.

For more information, keep an eye on our website at www.haldane.org/endangered-lawyers and our new website coming soon www.haldane-dhrd.org. Watch out for email alerts asking for urgent action in support of our endangered comrades.

Liz Davies chair@haldane.org

International Association of Democratic Lawyers send delegation to Gaza

Members of The Haldane Society along with lawyers from around the world, including France, Italy, USA, South Africa, Vietnam, Philippines, Haiti, Costa Rica and Spain, all took part in a week long delegation to Gaza at the end of September 2012.

The primary aim of the delegation was to show solidarity with the Palestinian people in their struggle for self-determination and to call for an end to the illegal Israeli occupation. Through meetings with Palestinian civil society the delegation also aimed to learn first hand about the actual situation on the ground.

The IADL met with the Gazan Prime Minister, Minister of Justice, members of the different political factions as well as various human rights organisations and UN agencies. Through these meetings the delegation's members became aware of the current political, economic and social situation in Gaza.

What rapidly became clear is that the coming year will see an alarming deterioration in the lives of the people of Gaza and the emergence of a humanitarian crisis in the area. It was also obvious that despite the occupation being the root and direct cause of this tragedy, the Israeli army and authorities continue to act with almost complete impunity.

With the above in mind, a conference entitled 'Setting the Agenda: Accountability for International Law Violations in the Occupied Palestinian Territory' was held on 27th September 2012 with various members of Palestinian civil society in attendance. Topics included accountability, the closure of Gaza and the plight of political prisoners in Israel.

On the last day of the delegation the group published a declaration summarising its experiences and intended future projects of solidarity. In particular the declaration called for 'setting up and assisting in the coordination of an international network of jurists who stand in solidarity with Palestinian people… using all national and international legal instruments available to challenge Israeli impunity, end the occupation, closure and consequent human rights violations.'

The declaration can be seen at www.pchrgaza.org

For more information regarding the IADL please visit www.iadllaw.org

Carlos Orjuela

How to beat the 'Wallace courts'

On 21st November 2012, The Haldane Society, CAMPACC and CASE held a seminar on the 'Justice and Security Bill: Covering up State Crimes' chaired by Louise Christian, Vice President of The Haldane Society. Speakers included Clare Algar from Reprieve, Dinah Rose QC, *Guardian* journalist Richard Norton-Taylor, and Saghir Hussain from Cage Prisoners.

We heard that the Government's intention is to introduce closed material proceedings (CMPs) into civil claims for damages and judicial review so that cases where they deem the evidence harmful to national security can remain secret. The Justice & Security Bill once passed, will introduce CMPs and provide the Government with a mechanism not to disclose evidence or their defence to claimants alleging State complicity in international crimes such as rendition and torture. A special advocate representing the claimant would see the Government's evidence but the claimant and their lawyers would not. The Government state they are presently forced to settle for large sums of money rather than let the evidence become public and risk 'British lives' and national security, CMPs they argue would resolve this problem.

Dinah Rose QC described how the principle of natural justice is to know the case against you and through an adversarial trial hear the other side's evidence which can be tested under cross examination. Under CMPs the special advocate is unable to call the evidence and the claimant would be unable to rebut what they have no knowledge of. A fundamental process of the legal system is to advise a client on the merits of their case and the funding options available and the associated risk of taking a case. A lawyer cannot advise on these matters if they do not know the case against the client or the Government's defence. Further, judges will have to produce a secret judgment for the Government and a public judgment for the claimant. Dinah Rose QC described how the common law develops through case by case analysis and questioned how this would work in practice if we lose sight of the judge's reasoning.

We heard from Richard Norton-Taylor that the UK is reliant on information given to them by America and there is huge pressure not to disclose it. He said that the UK Government perceives disclosure as risking the 'special relationship' and as such that in itself is a national security risk. He said that there was strong evidence of collusion and torture by the British and that CMPs will prevent journalists publicising cases. He said that had the bill already been passed we would never have heard about the families that were taken by rendition to Libya.

Saghir Hussain described how the equality assessment demonstrates that CMPs will impact men, those of Asian origin and those whose religion is Islamic. Saghir compared the extradition cases of Talha Ahsan and Gary

October

11: Joaquim Barbosa is appointed president of the Supreme Court of Brazil, becoming the first black person to hold the post. He was elected by his fellow judges. He was born into a poor family. While studying law in Brasília he worked as a cleaner in one of the city's courts. He was first appointed to the Supreme Court in 2003 by then President Luiz Inacio Lula da Silva.

24: Female workers formerly employed by Birmingham City Council win an equal pay claim in the Supreme Court. The effect of the decision was said to in effect extend the time workers have in which to bring equal pay claims from six months to six years.

24: The Attorney General, Dominic Grieve, warns David Cameron that ignoring the European Court of Human Rights' decision on prisoner voting risks sullying Britain's reputation as an advocate of human rights. Cameron had said that prisoners would not get the vote under his Government.

26: Two gay Jamaicans launch legal action against laws criminalising homosexuality in the country. The two argue that the laws are both unconstitutional and promote homophobia. The case will be heard in the Inter-American Commission but as Jamaica is not a full member any ruling is not binding.

Mckinnon to illustrate how racism remains unchallenged and described how Cage Prisoners have documented cases and summaries of torture.

Clare Algar felt Reprieve were responsible for the introduction of the Bill as it derived from the case of Binyamin Mohammed who was tortured and where the judge said the United Kingdom's involvement in his treatment went beyond that of a bystander. The Government's attempt to keep evidence secret related to its embarrassment rather than national security. The Government received legal advice on whether the Bill complied with the European Convention on Human Rights but they declined to disclose that advice, stating it is not in the public's best interest to disclose it. Clare said the Government's argument that CMPs would only be used for terrorism cases is disingenuous. CMPs began with control orders, she said, and then moved to SIAC and now civil cases and there would be nothing to stop it extending further to witnesses and Ministry of Defence cases.

Concluding the meeting, Richard Norton-Taylor said that we should lobby Liberal Democrat MPs as a more effective option than targeting Labour or Tories. Dinah Rose QC suggested we publicise CMPs as 'Wallace Courts' after Lord Wallace who is promoting the Bill in the House of Lords on behalf of the Liberal Democrats. She met with him and told him people would call CMPs 'Wallace courts' and he showed a flicker of concern. Embarrassment was viewed by the panel as a good way to challenge the Bill's passage.
Rebecca Harvey

30: A Spanish judge launches a prosecution of 7 agents from the Chilean intelligence agency during the Pinochet dictatorship for the kidnap, torture and murder of the Spanish citizen and UN diplomat Carmelo Soria Espinoza who was working in Chile when he was kidnapped by security agents as he was leaving work on 14th July 1976.

On the picket line

A new breed of Judge?

Jonathan Sumption's appointment in January 2012 to the Supreme Court was a surprise. He was the first English barrister in decades to have been recruited to our top court without any previous period of full-time judicial service. Sumption is also the first judge in living memory to have had his appointment commented on by another senior Judge, Sedley LJ in the *London Review of Books*.

Part of the Sumption controversy rests in his own response to promotion, which was to give a public lecture called 'Judicial and Political Decision-Making: The Uncertain Boundary' criticising the previous judiciary for their supposed intervention in areas best left to Parliament. 'English public law has not developed a coherent or principled basis', Sumption told his listeners 'for distinguishing between those questions which are properly a matter for decision by politicians answerable to Parliament and the electorate, and those which are properly for decision by the courts'. The key task for the Judiciary, he argued, was to cease using a judicial position to rewrite the law, and to leave politics to Parliament.

Since his appointment, Sumption's most controversial decisions have been in employment law. His first significant minority decision, *Birmingham CC v Abdulla*, arose in an equal pay case. The claimants brought an equal pay case in the High Court outside the ordinary employment tribunal time limit of six months but within the civil limitation period of six years. The employer defended the claim on grounds of jurisdiction. Until this case, it had been the established understanding of employment lawyers that equal pay claims, unlike all other individual claims, could be brought in either the civil courts or the Tribunal. Indeed this was buttressed by the clear words of section 2(3) of the Equal Pay Act 1970, which enables claims to be redirected from the tribunal to the civil courts if it would be more convenient to hear them there.

Birmingham drew an analogy with the *'forum conveniens'* rules that operate in international law. We do not usually allow magnates with a strictly domestic dispute having no connection to Britain to sue in this country; the UK courts are not the 'convenient' venue. Birmingham argued that the same arguments applied to equal pay claims, which should always be heard in the Tribunal as the specialist court. Unsurprisingly, judges found this analogy a poor one. The reasons why non-UK cases are not heard in the UK courts are expense, lack of knowledge of the law and lack of authority; none of these problems applies to the High Court hearing employment claims. Accordingly, Birmingham's appeal failed at each of the three tiers of the judiciary who heard it.

Sumption is an extremely bright judge, and had to find some reasons to justify a decision in favour of the employer. He held that: 'The view that court proceedings in support of an equal treatment claim should rarely or never be struck out where they would be time-barred in an employment tribunal has the effect of making the statutory protection of the employer available to him only at the option of the employee.' In other words, the protection of the employer through the Employment Tribunal's narrow time limits is an overriding principle – it, and the employer's general interests, for which it stands – should override anything, even the plainest, unambiguous words of a statute.


Nice work if you can get it...

In December 2012, a further split Supreme Court decision again concerned the rights of employers. In *Geys v Société Générale* a worker, Geys, was summarily dismissed by his employer in breach of his contract. He was later paid the notice pay to which he was entitled. His notice pay was however paid late, entitling him to further bonus payments for work he had done over the previous two years.

It has for 30 years been settled law that where an employer repudiates a contract of employment, this repudiation takes effect only from the moment when the employee accepts it. Sumption held that the common law should be rethought to prevent employees benefitting. It was ridiculous, he maintained, to think that an employer might be required to keep a worker in employment when that worker did not have any duties. But as any experienced employment lawyer could have told Lord Sumption, there are circumstances where an employer keeps a worker in employment, albeit without giving them any duties, and the employee is deemed to remain in employment – e.g. if she is incapable of work due to sickness or injury, see section 212(3)(a) of the Employment Rights Act 1996.

Again, we see an extremely bright Judge trying to nudge his contemporaries into decisions which would alter the texture of settled areas of law – with no apparent motive other than an overriding need to promote the interests of the employers.

In both cases, Sumption was part of a losing minority. But readers should watch him with care: the anxiety must be that the legal left now faces a better-entrenched, more political antagonist than any we have known in 30 years or more.
David Renton

Colombian Human Rights Defender Aidee Moreno visits the UK

Aidee Moreno, director of human rights for the National United Agricultural Trade Union Federation (FENSUAGRO) and member of the Victims of State Crime Movement (MOVICE) and the Permanent Committee for the Defence of Human Rights (CPDH), took time out from her hectic European tour in December 2012 to talk to *Socialist Lawyer* about the current situation in Colombia.

Aidee has reached the last stop on a trip which has taken her to Belgian, German and UK Parliaments alongside meetings with NGOs, activists and lawyers from these countries. The UK leg of her visit was organised by British NGO Justice for Colombia.

She tells us that the tour has been to raise awareness of 'La Europa', a case involving the recent displacement of agricultural labourers from their land in the north of Colombia, the title to which had been granted to them collectively at the end of the 1960s.

The displacement began in the mid 1990s at the hands of paramilitary organisations in collusion with the government and military. Their strategy involved mass disappearances and assassinations, campaigns of torture and various massacres to intimidate people into leaving their land.

Following these displacements, paramilitary leaders have taken the opportunity to purchase these abandoned parcels of land. Those rural workers who have chosen to stay face daily intimidation from these paramilitary groups to sell their land.

MOVICE, FENSUAGRO and CPDH not only call for the immediate return of the land to these displaced people, but also to guarantee the safety of those that live and work there in order to prevent future displacements from occurring.

The problem of La Europa is not unique in Colombia and is reflected in other parts of the country. It is therefore not surprising that agrarian reform is the first topic of discussion in the fledgling peace process between the Revolutionary Armed Forces of Colombia and the Government.

'A discussion about what to do with the land has been a topic of discussion for the last 500 years' says Aidee with a wry smile. 'To be successful, agrarian reform must involve more than a simple redistribution of land. It must involve social investment. By this I mean there must be attempts to meet the needs of those who end up going back to the rural areas from the cities, such as access to health care, education, electricity etc.'

This is what Aidee and her companions in MOVICE and FENSUAGRO have tried to present to the Colombian Government, prior to and now during the current peace process. These attempts have at best been met with indifference by the Colombian establishment, and at worst with targeted assassination.

Aidee tells us that she has herself been tragically affected by the latter State-sponsored practice. Her husband, brother, mother and 16 year old niece have all been murdered in an attempt to silence Aidee. Her whole family has had to move to another part of the country after threats received from paramilitaries. She is still subject to threats and intimidation.

Regardless of this extreme pressure, Aidee continues to campaign for peace with social justice. She is adamant that despite the Government's attempts to exclude civil society in the current talks, the only way forward is to include the marginalised in the peace process. 'Peace cannot be decreed, it is constructed.'

The Haldane Society has campaigned to support human rights in Colombia, by working closely with British NGO Justice for Colombia and last year launched a campaign in solidarity with Aidee's organisation, MOVICE.

Justice For Colombia has been working in the British Parliament and with cross-party politicians and trade unionists in Northern Ireland, to share knowledge and build support for Colombian civil society in the peace process.

At our recent AGM, Haldane also committed to providing much needed practical assistance for civil society in the peace process.

Carlos Orjuela

Picture: Jess Hurd / reportdigital.co.uk

Tax avoidance campaigners UK Uncut occup

October

31: The Equality and Human Rights Commission says that plans to extend secret courts could be incompatible with the Human Rights Act. John Wadham, the commission's general counsel, said '[the] process is incompatible with the Human Rights Act and the principle of a common law right to a fair trial.'

November

1: Officers who failed to help a man who had collapsed in the back of their police van will not be prosecuted for their failings. Leonard McCourt had earlier been pepper-sprayed after police were called to his home in County Durham. An inquest heard how officers did not to help him for nine minutes after they discovered him.

6: The European Court of Human Rights rules that a bus driver should not have been sacked for being a member of the British National Party. The court said that his dismissal breached his rights to freedom of association. The court ruled in Mr Redfearn's favour by four votes to three.

by Starbucks cafe off Regents Street in December.

Finucane report 'a whitewash'

It was, said Pat Finucane's widow, Geraldine, a 'sham' and a 'whitewash'. On 12th December 2012, nearly 14 years since the Belfast solicitor's murder, Sir Desmond de Silva QC's *Report of the Patrick Finucane Review* was published. The family had already told of their low expectations of the review ahead of its release. John Finucane had spoken of his fear that the report on his father's murder would be 'flawed'.

In 1989 Finucane was shot dead in his home by armed intruders. He was at home with his family in north Belfast when two men entered his home by smashing through his front door with a sledgehammer. Inside, the men felled Finucane with two shots before shooting him a further 12 times. In 2003 the *Stevens Report* into collusion between loyalist paramilitaries and State security services in Northern Ireland confirmed that it was precisely this corrupt alliance which had conspired to bring about Finucane's death. Tony Blair later pledged to establish a public inquiry into the murder but this was never realised.

On the afternoon of 12th December 2012, David Cameron addressed the House of Commons and apologised to the Finucane family. Following Cameron's statement Geraldine Finucane spoke at a press conference in Westminster.

'The dirt has been swept under the carpet without any serious attempt to lift the lid on what really happened to Pat and so many others. This report is a sham, this report is a whitewash, this report is a confidence trick dressed up as independent scrutiny and given invisible clothes of reliability. But most of all, most hurtful and insulting of all, this report is not the truth. I regret to say that once again we have been proved right,' she told those assembled.

Pat Finucane: Tony Blair promised a public inquiry – it didn't happen.

She also cast doubt on the independence of the report noting that it was 'compiled by a lawyer with strong links to the Conservative party who was appointed by the Conservative Government without consultation.'

Geraldine Finucane said she accepted the Prime Minister's apology but added, 'I will give him the benefit of the doubt and accept the apology but it doesn't go far enough because I don't really know what he is apologising for.'

Russell Fraser

19: In a speech to the CBI in London David Cameron makes the surprise announcement that he plans to limit the availability of judicial review. Cameron made the largely unsubstantiated claim that judicial review costs too much and is an impediment to economic growth. Lawyers immediately criticised the plan with The Law Society saying, 'Judicial reviews are an important check on government and other bodies if and when they make poor and ill-thought-through decisions.'

Picture: Jess Hurd / reportdigital.co.uk

Picture: Jess Hurd / reportdigital.co.uk

Lois said her union, the PCS, is at the forefront of the fight against the cuts.

The injustice of privatisation

In a slight departure from our usual format, The Haldane Society invited two non lawyers to speak at the final lecture for 2012. Those in attendance at the College of Law were not disappointed however as Lois Austin and Owen Jones delivered two passionate and informative speeches which focused upon the injustice of privatisation.

Lois is a full time officer for the Public and Commercial Services Union (PCS) which organises civil servants including in the Ministry of Justice. In her introduction, she described the crippling effect that Government cuts are having on the efficiency of the court service and also the impact on the living standards of the workers themselves.

As the full impact of the Government's savage assault on public services takes effect, politicians have attempted to scapegoat welfare recipients. Ministers shed crocodile tears for working people, so called 'strivers', while demonising those who are unemployed as 'shirkers'. The predicament of PCS members gives the lie to such vile assertions. Far from being curtain-twitching layabouts, many hard working civil servants are forced to claim some of the very benefits they administer to others.

Lois's message was not one of total gloom however. She told the audience that her union, led by Mark Serwotka, is at the forefront of trying to fight the cuts and is campaigning for industrial action among its members. In the months ahead we can expect to see civil servants struggling to defend their pay and conditions and the services that so many of us rely upon.

We were reminded that lawyers have a role to play in supporting those struggles. Respecting picket lines is a matter of principle for socialists, but there can be real practical difficulties when court cases are listed on days when strike action has been called. Refusing to enter the building would leave vulnerable clients at the mercy of the courts with potentially terrible consequences. Haldane has consulted PCS on a practical proposal for lawyers faced with such a dilemma. If it is simply impossible to avoid crossing a picket line, those that are forced to do so are encouraged to make a generous donation from their day's pay to the strike funds.

Owen Jones' sympathies are clear from his first book, *Chavs – The Demonisation of the Working Class*. Since its publication in 2011 he has become a regular columnist in the *Independent* and has made frequent media appearances including the BBC's *Question Time*.

Owen observed how socialism has become a dirty word particularly in the wake of the collapse of the old Soviet Union. Yet in recent decades there has been a huge redistribution of wealth from the poor to the rich, most spectacularly in the form of the massive bail out for the banks.

Far from joining the pessimists however, he too indicated that he retains confidence in working people to struggle for a better society and he is keen to explore new forms of social ownership. As he has argued elsewhere, socialism in the 21st century cannot simply involve a return to the top down nationalisation we experienced for example in the 1970s. Instead, he suggested that we must develop genuinely democratic models which involve working people and consumers in the management and control of institutions and utilities.

The full scale reconstruction of society may not currently be on the horizon but it is to be hoped that calls for solidarity with public sector workers will be a pressing consideration in the months to come. We must all be ready to stand four square behind them.

Brian Richardson

Support the call to free Vadim

At its AGM in 2012 The Haldane Society affiliated to 'Campaign Kazakhstan', recognising that the campaign not only fights for social, labour and human rights for Kazakhstan workers, but most importantly it has activists and socialist campaigners in the country itself.

Haldane was immediately thrown into the international campaign to raise the case of Vadim Kuramshin, a human rights lawyer. We have written several letters of protest and are grateful to The Law

The market is devaluing education

On 17th January 2013, Dr Adam Gearey, a legal academic at Birkbeck and UCU activist and Michael Chessum, a National Campaign Against Fees & Cuts (NCAFC) activist, NUS NEC member, and President of ULU braved the winter weather to speak to a Haldane Society lecture on 'Higher Education for Sale'.

The speakers discussed the current neoliberal project of privatisation of higher education, including changes in the law which give private institutions a range of

November

20: The Justice Secretary Chris Grayling says prisoners who are released should have a mentor to prevent them re-offending. Grayling's plan would be implemented by private and voluntary groups who would be paid if re-offending was reduced.

29: Lord Justice Leveson recommends press laws being placed on a statutory footing in his report of the inquiry into the practice and ethics of the press. Fleet Street had been implacably opposed to anything which looked like State regulation but Leveson's report denied that was the purpose of his proposals.

December

4: An independent commission is launched to examine how best to respond to the legal aid cuts. The Low Commission's website says it was 'established to develop a strategy for access to advice and support on social welfare law.'

10: The Council of Europe admonishes for delaying the grant of votes to some prisoners. The committee criticised the third option, continuing with the current total ban, in the draft bill put before parliament. Although no punishment was proposed, the Council will return to the topic in September 2013.

Society who have also raised their objections.

Vadim Kuramshin was arrested on 23rd January 2013. He was charged with 'extorting money' from the public prosecutor, Uderbaev, whom Vadim wanted to take legal action against, hoping to highlight corruption within the prosecutor's office. The charges were fabricated in order to hide the corruption in Kazakhstan that Vadim was trying to expose.

The original trial against Vadim violated the Kazakhstan Criminal Procedure Code and was constantly postponed, causing Vadim to declare a hunger strike in order to get the court to reconvene. Vadim's mother, Olga Ivanovna, who had been present throughout the court procedures, declared, 'a miracle has happened!' when Vadim was convicted only of one incriminating act under Article 327 of the Criminal Code – 'arbitrariness' – receiving one year of conditional freedom. He was released in the courtroom itself in August 2012.

At the time Vadim could not hide his joy. 'I want to thank all my friends and colleagues who have conducted an energetic campaign; it helped me enormously. Indeed, there has never been a result like this before on previous occasions when I have been convicted for clearly political reasons.'

However, this could not go unanswered by the regime in Kazakhstan. The Appeal Court revoked the decision. Vadim was once again arrested, a new 'trial' took place and was then sentenced to 12 years imprisonment.

Under the lead of Judge Nurmukhammat Abidov this latest trial was rushed through and the sentence declared without either Vadim or his advocate being present in the courtroom. They were replaced by a court-appointed lawyer who, according to campaigners, sat there as if he was an extra piece of furniture.

The trial was conducted with many breaches of procedure. From the beginning the judge took the side of the prosecution. Not one objection from the defence was upheld, neither defence nor prosecution witnesses were questioned. Vadim was not even allowed to see the documents submitted to him.

The Nazarbayev regime are out to seek revenge against Vadim who is seen as a fighter against corruption. His re-arresting so annoyed the members of the previous jury that they have formed their own action committee in support of Vadim.

In the run up to the appeal the authorities have demanded that the licence to practice be withdrawn from Vadim's lawyers, Raziya Nurmashev and Iskander Alimbayev. They are acting *pro-bono* in a politically motivated trial aimed at removing an effective human rights campaigner from activity, while the two lawyers are themselves being punished.

At the time of writing the appeal was due to be heard. Please send letters of protest to Kazakh embassies in your country – see www.embassypages.com/kazakhstan

Paul Heron

benefits, access to the emerging higher education market on the same footing as public institutions, full access to State-backed student loans, and even taking over existing universities. The past few months have already seen the takeover of the College of Law by a predatory private equity firm, with the Government giving permission for a change in its name to the 'University of Law'.

The marketisation of education requires the creation of the bureaucratic, costly, time and resource heavy structures needed to artificially turn education into a commodity. One has to transform students into customers or consumers, to drive students to demand improvement of universities. This leads to the devaluation of the grading system. Creating a truly free market may require more changes to the functioning of universities to allow students to exercise genuine choice in the market, moving between universities each year as a better, perhaps easier or cheaper, offer comes along from somewhere else.

Dr Gearey said that research has shown that the social benefit of education is far greater than the benefit to the individual student. This is what we should focus on when considering how to fund education. If education is funded out of general progressive taxation, then those graduates who do benefit financially from education will pay for it proportionately more than those who do not benefit. However, capital will always seek to maximise its profits subject to the political limitations placed upon it. This means that where capital seeks to maximise its profits at the expense of the quality of our education system, we must place limits on markets.

Michael Chessum said the introduction of the fee system in 1998 involved the privatisation of university income streams that prefigured the privatisation of the structures themselves. So the elite universities aren't having problems with their income. It is universities such as London Metropolitan University that are suffering. A two-tier system is being created and this will only get worse.

He went on to discuss the ideological underpinning of the marketisation of education. Student debt is a terrible quality debt for the Government to hold, and tuition fees are linked to the CPI so as they rise, they cause rises in other areas of Government spending in terms of pensions and benefits.

What can be done? The NCAFC and other groups are currently leading the struggle outside of the NUS for a radical student movement. Occupations and demonstrations continue today. There is a role for lawyers as well. Legal support from experts is always helpful when students engage in civil disobedience such as the occupations of university property, something which members of The Haldane Society have already been involved in. Those with experience in trust law and charity law can provide assistance by helping the NCAFC to redraft student union constitutions. Those of us in academia can help to shape legal education so students learn about the wider political, social and economic issues.

Stephen Knight

January

18: The Commission on a Bill of Rights fails to reach a consensus on whether human rights legislation should be reformed. Two Tory members of the commission recommended withdrawing from the European Convention on Human Rights while two others opposed any change.

19: The High Court quashes the original inquest verdict which followed the Hillsborough disaster. The Lord Chief Justice Lord Judge said it was 'desirable and reasonable for a fresh inquest to be heard'. A new inquest will begin in 2013.

10: DCI April Casburn is found guilty of trying to sell confidential information to the *News of the World*. Casburn had said she simply wanted the public to know that counter-terrorism officers were being moved to the phone hacking investigation.

18: The High Court rules that the cases of women seeking damages against the police for being tricked into sexual relationships with undercover police officers must be heard in secret. Harriet Wistrich who represents some of the claimants, said 'this decision prevents both the claimants and the public from seeing the extent of the violation of human rights.'

Come to Berlin with us

Haldane's International Sub-Committee has come back to life. It has a group email list at internationalcommittee @haldane.org. All are welcome to join this group to receive news of the international solidarity activities of Haldane, European Lawyers for Democracy and Human Rights (ELDH) and the International Association of Democratic Lawyers (IADL).

The Executive Committee of the ELDH met in Brussels on 12th January 2013 at the office of Jan Fermon of the Progress Lawyers Network. Despite apologies from our Greek and Turkish comrades for understandable reasons the meeting was well attended and very lively. There was a new application for membership from Spain from the Left Lawyers Forum – Democratic Lawyers Network/ Foro de Abogados de Izquierda – Red de Abogados Demócratas (FAI-RADE). Their application will be considered at the ELDH Annual Assembly in May 2013.

The meeting started with a political report and discussion, surveying a full year of activity, starting with ELDH participation and support for Haldane's Defending Human Rights Defenders conference. On 13th January 2013, the day after the Executive meeting, the European Network 'European Lawyers for Workers' (ELW) was founded.

Recent ELDH activities included protests across Europe on 24th January 2013 for the 'Day of the Endangered Lawyer'. This was coordinated with European Democratic Lawyers and the European Lawyers Human Rights Institute (IDHAE).

The Progress Lawyers Network will hold a colloquy on the prison system in Brussels with ELDH support on 15th March 2013. ELDH will take part in the World Social Forum in Tunis on 26th-30th March 2013 and at the International Association of Lawyers Against Nuclear Armaments conference in Bremen, Germany on 26th-28th April 2013.

The high point of the year for ELDH will be the General Assembly on 5th May 2013 in Berlin at the headquarters of the major German trade union ver.di. On the previous day there will be a conference on 'Migrants: Outlaws Everywhere'. If you are interested please do come to Berlin from 4th-5th May 2013.

The latest Skype meeting of the IADL Bureau took place on 9th February 2013 with all continents represented. An IADL conference and bureau meeting will be held in Paris on 24th-27th May 2013. The IADL world congress takes place every four years. Haldane participated in the last congress in Hanoi. The next congress will be in Brussels on 15th-19th April 2014, with the headline 'Lawyering for people, until human and peoples' rights are more important than property rights'.

Haldane, IADL and ELDH will actively engage in solidarity with the lawyers of our Turkish sister organisation, who have been arrested and charged with terrorist offences. Trial observations and solidarity delegations are planned.

Bill Bowring

Picture: www.boycottworkfare.org

Cait Reilly (right) was required to work unpaid at Poundland.

Support housing workers' fight

Pay cuts of up to £8,000 per year for supported housing workers for a big London housing association, One Housing Group, mean that homelessness prevention workers are seriously frightened of becoming homeless themselves. Unite the union has proposed arbitration but management have refused, raising the prospect of industrial action.

As support providers increasingly compete for contracts on price they are undermining staff conditions and service quality. A recent report by Homeless Link, *Who is Supporting People Now?*, has highlighted the risk to services. Unite argue that employers and commissioners should agree standards to protect pay and services and to guarantee conditions for staff transferred between employers. A pernicious aspect of the current picture is that employers win contracts knowing that they will only be able to deliver them on the basis of pay or staffing cuts. This leads to complex TUPE disputes. A national agreement would avert this. However senior executives, with pay packets that heavily incentivise growth seem uninterested in protecting the future of these services or their workers.

According to the group's accounts the chief executive got an extra £31,000 last year; more than the annual salary of the workers affected. It is true that massive Government cuts form the backdrop and perhaps housing bosses could devote themselves to highlighting the damage they will

January

23: Maina Kiai, the UN special rapporteur on the rights to freedom of peaceful assembly and of association, criticises the use of undercover police officers to infiltrate protest groups and calls on the Government to launch a public inquiry. Kiai said the case was a 'clear violation of basic rights protected under the Human Rights Act.'

February

4: Spain's Tory prime minister Mariano Rajoy and leading members of his cabinet face allegations of corruption after *El País* published documents that appear to show secret illegal payments to members of Rajoy's party, the PP, dating back to the 1990s. Rajoy himself appears repeatedly in the "hidden accounts", which are believed to have been written by the party's former treasurer Luis Barcenas.

5: The military clampdown in Egypt claims more lives after Mohamed El-Gendy, a 28 year old protester, died of brain injuries in hospital after allegedly being tortured in police custody. The Egyptian economy is in deep crisis and severe price rises on basic goods are threatened. The US is set to provide £1.2 billion aid to Egypt. But 80 per cent will go to the military.

6: The Court of Appeal has ruled that a Government scheme to force people to work for free or lose benefits is illegal. Three judges unanimously rule that the scheme breached laws banning slavery and forced labour. Thousands of people could now claim compensation.

Young Legal Aid Lawyers

This regular column is written by YLAL members. If you are interested in joining or supporting their work, please visit their website **www.younglegalaidlawyers.org**

Unlawful!

Judges in the Court of Appeal declared that almost all of the Government's "work-for-your-benefit" employment schemes were unlawful.

Geology graduate Cait Reilly and unemployed HGV driver Jamieson Wilson both succeeded in their claims that their unpaid schemes were legally flawed after the court found the DWP had exceeded its powers.

The court ruling means unemployed people who have had benefits docked for not properly taking part in schemes such as work experience and the work programme are entitled to a rebate.

over pay cuts

do to vulnerable service users? But look at the financial position of One Housing Group: Surplus £12million, Care and Support Department surplus £1.2million. Savings from pay cuts £490,000. This is not an organisation in desperate straights with no alternative course of action. The cuts are designed to fund their aggressive expansion strategy; they want to undercut other providers to win contracts. Their own publicity material boasts that they can undercut NHS directly provided services by as much as 80 per cent. You don't have to be a management genius to see how they achieve that.

Sign the petition in support at: http://is.gd/A3QOsA

Paul Kershaw Chair – Unite, Housing Workers Branch 1/1111

15: Any disabled person capable of walking 20 metres is set to lose their mobility payments when the Government scrap the disability living allowance (DLA) on 1st April. It is set to be replaced by the new Personal Independence Payment (PIP). But this will push thousands of people off the higher rate of mobility support.

It doesn't add up

As the Legal Aid Sentencing and Punishment of Offenders Act 2012 wended its way through Parliament, the Government always made one thing clear: that judicial review was safe. While legal aid for other areas of law was pared to the bone or removed entirely, judicial review was left alone. In the words of the Government in their 2011 legal aid green paper 'proceedings where the litigant is seeking to hold the State to account by judicial review are important, because these cases are the means by which individual citizens can seek to check the exercise of executive power'. The green paper became a Bill. The Bill became an Act. Judicial review emerged relatively unscathed. And that, we thought, was that.

It was too good to be true. In November 2012, Prime Minister David Cameron and Justice Secretary, Chris Grayling noisily announced plans to curb citizens' access to judicial review as the remedy for the country's economic woes. Announcing his plans, in a speech to the CBI amid a raft of other supply-side measures intended to boost growth, Mr Cameron was quick to write-off many applications for judicial review as 'completely pointless'.

A consultation paper, adding flesh to the bones of the political rhetoric, was swiftly published. Chief among the Government's arguments in support of these changes was the increase in citizens' recourse to judicial review over the last 40 years. In the words of Mr Grayling, 'the number of applications has rocketed in the past three decades, from 160 in 1975 to 11,200 last year – an increase of almost 7,000 per cent'.

Putting aside the fact that a large proportion of these applications relate to challenges to immigration decisions – a development which has little to do with economic growth, or lack of – this analysis displays a disappointing lack of historical awareness.

The fact is that in the early 1970s and before, judicial review simply did not exist in the way that we recognise it today. Mr Grayling could do little better than to acquaint himself with the history of administrative law so lucidly mapped out by Lord Diplock in the case of *O'Reilly v Mackman* [1983] 2 A.C. 237. The story starts with the case of *R v Northumberland Compensation Appeal Tribunal, Ex parte Shaw* [1951] 1 K.B. 711; the genesis of the modern jurisdiction. In that case, Lord Goddard 'rediscovered' the long-forgotten power of the High Court to quash a decision of any body of persons having legal authority to decide questions affecting the rights of citizens, not only on the ground that it had acted without jurisdiction but also where the court could see from the body's written decision that it had got the law wrong. The usefulness of this development was initially stymied by the fact that the remedy was only available where an error of law was clear from the body's decision. So if the body gave no reasons for its decision then, practically, the remedy was unavailable. But in time this limitation was swept away by the passing of the Tribunals and Inquiries Act 1958 which placed an obligation on the majority of statutory tribunals to give reasons for their decision.

The other key feature of the Tribunals Act was that it repealed, with certain exceptions, the majority of existing ouster clauses; an ouster clause being a clause within a statute which precludes the decision of a tribunal from being challenged in a court of law. It was one of the few remaining ouster clauses – found in the Foreign Compensation Act 1950 – which fell to be considered by the House of Lords in *Anisminic Ltd. v Foreign Compensation Commission* [1969] 2 A.C. 147. Prior to *Anisminic* the prevailing view had been that there was a distinction between errors of law made by tribunal acting within its jurisdiction and those without. The former, it was thought, could not be challenged. The latter could. *Anisminic* swept away this distinction. In simple terms, no Tribunal had the jurisdiction to get the law wrong. And any statutory clause attempting to oust the jurisdiction of the High Court to quash such an error would be narrowly construed. *Anisminic* went hand in hand with the 1964 decision in *Ridge v Baldwin* [1964] A.C. 40 which broadened the class of body amenable to the supervision of the High Court. In turn these substantive developments in the law were given practical effect by the procedural changes brought about in 1977 to Order 53 of the Rules of the Supreme Court. The modern procedure for judicial review was beginning to take shape.

The fact that judicial review has developed beyond recognition in the last 40 years is not to say that it is a new remedy. It was as early as 1600 when Chief Justice Coke in the fourth volume of his Institutes proclaimed the jurisdiction of the court of the King's Bench to correct 'errors and misdemeanors extrajudicial, tending to the breach of the peace, or oppression of the subjects… or any other manner of misgovernment'. Meanwhile the writ of prohibition, referred to now as a prohibiting order, emerged in the 13th century as a tool to restrain the power of the Ecclesiastical court. It was from these beginnings that the modern concept of judicial review emerged.

This early history serves to illustrate that judicial review is a cornerstone of our constitution every bit as venerable and important as Magna Carta or as *habeas corpus*; legal institutions whose names fell easily from the mouths of our Ministers when in opposition. More recent history illustrates that the Government's reliance on modern statistical trends is misplaced.

Considered in this context, this latest attack on the institution of judicial review forms part of what Emily Thornberry MP has described as a 'sustained onslaught on British citizens' access to justice'. It is an assault which encompasses cuts to legal aid and the erosion of employee's rights. And, like those changes, this attack should be taken seriously.

Connor Johnston is the Co-Chairperson of Young Legal Aid Lawyers

by Michael Mansfield QC

The day of the endangered lawyer

Thursday the 24th January 2013 marked a day of protest across Europe on behalf of the plight of lawyers. This time in Spain. But it could have been almost anywhere. It went unnoticed and unremarked in all the UK mainstream media, and yet it is an increasingly threatening and oppressive situation which deserves universal attention. It is not about money. It is about liberty. The liberty of defenders and that of those they represent.

It is easy to overlook and take for granted the huge risks faced by those who are courageous enough to speak for and defend people who are regarded as subversive and hostile to the State in which they live.

Do not imagine it only happens in ex-satellite Russian States and banana republics. Pat Finucane and Rosemary Nelson paid with their lives in the North of Ireland. Both cases involved agencies of the British State. In Pat Finucane's case that has been emphatically accepted by a series of reviews ending with an apology by the Prime Minister last year. The full truth and full accountability is still denied.

The instant protest concerns the shocking arrest and ill-treatment of Basque lawyers by the Spanish Government. Here in London and in the Hague, Berlin, Amsterdam, Paris, Rome, Milan, Athens and Madrid people have gathered in solidarity to demand that the Spanish Government abides by international and European law and the rule of law and ceases this attack on justice.

In Spain the Basque peace process continues, with ETA having laid down arms, and with an agreement in place to pursue the cause of self-determination through peaceful means. However, the Spanish Government continues its own war on terror, banning Basque organisations, closing down newspapers, harassing activists and by these and other means, criminalising the Basque population.

Over the last two decades in Spain, more than 20 defence lawyers representing alleged members or supporters of ETA have themselves been subjected to incommunicado detention and ill-treatment, accused of terrorist crimes connected to ETA or insulting the Spanish State.

The arrests of these lawyers were often accompanied by high profile media campaigns justifying the charges made, while the lawyers themselves were kept for days in isolation and interrogated. Many of those detained were held far from the Basque country, making visits from friends and family very difficult. Their clients were deprived of the right to be represented by a person of their choosing.

Following sometimes lengthy periods of pre-trial detention the lawyers have either been acquitted or the

Picture: Jess Hurd / reportdigital.co.uk

charges dropped, with considerable damage having been done to the rule of law and all involved.

Julen Arzuaga's offices were searched and he was put on trial for involvement with ETA, only to have all charges dropped in 2008, when it was acknowledged he was carrying out legitimate legal work. Aiert Larrarte was charged with defaming the security services of the State after giving evidence of his client's torture at a press conference in April 2006, only to be acquitted in May 2009.

Iñaki Goioaga was arrested at gunpoint, his offices searched with no warrant produced, and held incommunicado. Without access to lawyers he was interrogated, insulted and threatened. He gave evidence before the court without representation. Afterwards the prosecution sought a 25-year sentence of imprisonment for crimes linked to ETA. He was acquitted in October 2012.

It is fundamental to any fair legal system for a lawyer to be able to represent his or her client without fear of reprisal. Without an unfettered defence a fair trial is impossible.

In the Basque country lawyers were targeted because of their involvement with politically sensitive cases. It is clear that in the eyes of the Spanish State Basque lawyers should be subject to the same suspicion as their clients: that being Basques, they must be part of the struggle, and if part of the struggle, they must be (at least) sympathetic to ETA. This cannot be allowed to pass uncriticised. It is illegal. These acts are a violation of human rights, under the European Convention of Human Rights Article 6, Paragraph 2 and the United Nations Basic Principles on the Role of Lawyers which sets out that 'All persons are entitled to call upon the assistance of a lawyer of their choice' and 'Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions'.

The harassment of lawyers who defend those on terrorism charges is a manifestation of the injustice of the 'exceptional measures' ushered in by sweeping anti-terrorism legislation. It undermines the advancement of a peaceful resolution to the long-running conflict in Spain.

This is but a microcosm of what is happening throughout the world. Not just to lawyers but anyone who defends human rights be it in Turkey, Colombia, Yemen or the Phillipines.

It is part of a relentless denigration of human rights themselves where they are seen to stand in the way of power and territory.

Michael Mansfield QC is President of the Haldane Society

Stop secret courts

by Louise Christian

In September 2011 Eliza Manningham Buller, the Director General of MI5 from October 2002 to April 2007 said in a BBC Reith Lecture that she had 'never thought it helpful to refer to a "war on terror"', conceding that terrorism is a 'technique not a state' and that it should be treated as a crime. This was an astonishing admission from the head of our security services at a time, when to question the phrase was almost regarded as a heresy. Since 9/11 a whole new vocabulary of doublethink has consumed our legislators. Not all the euphemisms have found their way into legislation. Since our politicians deny complicity in extraordinary rendition or enhanced interrogation techniques, these memorable phrases are not actually in any Acts of Parliament. Now we have the doublethink of 'closed material procedures' (CMPs) and the Justice and Security Bill. For this, read denial of both natural and open justice and the Injustice and Insecurity Bill.

CMPs would abrogate the fundamental principles guaranteeing a fair trial – the right to know the evidence against you and the right to know the reasons for the judgment of the Court as well as excluding public scrutiny of the proceedings.

The Government first tried to introduce CMPs in the Al Rawi actions brought against it by former Guantánamo detainees, in which I acted for one of them, Martin Mubanga. They hoped to persuade the courts that new procedures could be imported by the back door into the Civil Procedure Rules, without the need for legislation. They had the advantage of precedent legislation in other forums. It all started with the Special Immigration Appeals Commission, originally set up to consider cases of people being deported on grounds of national security to replace the old 'Three Wise Men' consideration of such cases, which was completely closed. After the European Court of Human Rights ruled that this contravened Article 6 in the case of Chahal, SIAC was set up instead with a system of Special Advocates, who could see the national security material, but not take instructions on it or communicate with their so called clients. It was this body, which was then given extended powers to deal, first with the cases of people detained without trial indefinitely, then when the House of Lords ruled that indefinite detention was unconstitutional, with people under control orders and now of course the re-named TPIMs – lighter touch control orders. In the meantime the use of Special Advocates and secret hearings was spread into the criminal courts and employment tribunals for 'national security' material. If the Government is successful in importing similar rules into ordinary civil cases, there will be no area of law where you are guaranteed to know the case against you, once someone utters the magic words 'national security'.

The Government's attempt to bring in CMPs without legislation in Al Rawi was thrown out by the Supreme Court. But this was not, as is sometimes claimed, the reason why they settled the actions. The settlements came before the case ever got to the Supreme Court and was a direct consequence of the open disclosure which the claimants had been able to obtain, despite two years of the Government trying to filibuster any disclosure at all, claiming that there were too many documents, that they did not have the resources to go through them and so on. However documents disclosed about Mr Mubanga were of sufficient evidential value in proving his claim that the UK Government had colluded in his kidnapping by the US from Zambia and unlawful removal to Guantánamo, that Michael Fordham QC advised that an application for summary judgment against the Government and the security services could be made. At the time the case was settled, this application had been given a hearing date and would, I believe, have been successful.

The more fundamental point is that the Government settles cases where it knows it will not succeed on the merits of the case. This was also surely true of the recent settlement for a large sum of money of a case brought by Sami al Saadi, a Libyan who accused the Government of complicity in rendition and torture. The Government may hope that it can alter the outcome of such cases by introducing prejudicial security assessments into secret hearings, but this, in itself, should make anyone concerned about justice draw breath.

The Supreme Court was unanimous in the Al Rawi case in deciding that CMPs are not compatible with fundamental fair trial principles, of which, as Lord Hope pointed out, the Court is the Guardian. He went on to say:

'It is a melancholy truth that a procedure or approach which is sanctioned by the Court expressly or on the basis that it is applicable only in exceptional circumstances none the less often becomes common practice.'

He referred to the warning in a 1913 case, Scott v Scott [1913] AC 417, about the 'usurpation of justice proceeding little by little under cover of rules of procedure' and then said this:

'…weakening [of the law's fundamental defences] in the face of advances in the methods and use of secret intelligence in a case such as this would be bound to lead to attempts to widen the scope for an exception to be made to

Picture: Jess Hurd / reportdigital.co.uk

'If the Government is successful in importing similar rules into ordinary civil cases, there will be no area of law, where you are guaranteed to know the case against you, once someone utters the magic words "national security"'

the principle of open justice. This would create a state of uncertainty in an area of our law which would be inimical to the concept of a fundamental right.'

The current situation in civil cases has always been good enough in the past to deal with sensitive evidence. The rule is that the most important consideration is the level playing field and that if both parties cannot see the evidence, then it cannot be relied upon. This is the principle behind the public interest immunity procedures in the CPR. I have personally been involved in at least two cases, where Public Interest Immunity (PII) claims have been dropped by defendants, after the basis for them was challenged. The problem with CMPs is that because it allows the Government and the police to rely on evidence not shown to the claimant, there can by definition be no really effective challenge. It is also inevitable that more and more reasons will be found to include material, which is just embarrassing rather than genuinely impossible to release. An example is the evidence which David Milliband sought unsuccessfully to withhold in the judicial review proceedings brought by Binyam Mohammed. The Court ruled that there was no national security reason to prevent its disclosure.

Ken Clarke, who is promoting the Bill despite ceasing to be Justice Secretary, has repeatedly made risible claims that the Bill will not lead to the withholding of any evidence which is now heard in open court and even that:

'This Bill will allow light to be shone on material that is currently kept in the dark'.

The only light to be shone will take place in the absence of any meaningful scrutiny by one party to the litigation and of the public itself. Sadly the House of Lords, during its consideration of the Bill, concentrated on getting through amendments to import more judicial scrutiny – i.e. allowing a Judge the say on whether a CMP can be used – rather than defeating the Bill altogether. Ken Clarke has not yet said whether the Government will agree these amendments, but they do nothing to meet the main concerns about the Bill, since they merely reinforce the co-option of the judiciary into the abrogation of fair trial principles.

There is still the possibility of substantial opposition to the provisions. The Liberal Democrat conference voted against them and the Tory backbencher Andrew Tyrie published a report with Anthony Peto QC called *Neither Just nor Secure* which warns that the Government is in danger of 'closing down access to the truth'. Both *The Guardian* and *The Daily Mail* have campaigned against the Bill. The Labour Party is compromised by its interest in closing down scrutiny of its own culpability while in Government, but could prove it has moved on by a far more robust opposition to the proposals.

Haldane members should do all we can to highlight the likely impact of CMPs in practice. Letters to newspapers, lobbying your MP and joining in campaigns such as that by Liberty are all useful. Our positions as lawyers give us a special responsibility to make the public aware of the likely consequences of allowing the Government's desire for secrecy to trump the whole foundation of our system of justice.

Louise Christian is a Senior Consultant at Christian Khan and acted for Martin Mubanga in the Al Rawi proceedings.

Syria's legal fight amid the gunfire

Ahmed Hassoun first crossed back into Syria in August 2012, through the mountains at nightfall from Turkey where he had spent a year as a refugee. As a firm supporter of the uprising against President Bashar al-Assad, he travelled with the Free Syrian Army (FSA) but carried no gun and wore no uniform.

At risk of attack from mortars and fighter jets, Hassoun arrived at a town in rebel-held Idlib province to perform a task many see as a quixotic, even counter-revolutionary, distraction from the armed struggle: he went to defend 12 men in an ad hoc FSA court accused of supporting the Assad regime.

'I did it because they're human and because I'm a lawyer and if someone needs to be defended I'll defend them,' Hassoun tells me, claiming the men were eventually released by a tribunal that included an Islamic scholar. He worries about what happened to them next. 'If we don't try to apply legal process, the revolution will look as bad as the regime. Some in the FSA realise this and they invite us in. Others do not.'

Hassoun is a leading member of the Free Syrian Lawyers Association (FSLA). What started online as a Facebook group in May 2011, calling on the country's lawyers to join the anti-Assad protests 'out of our professional obligation', has now taken organisational form in the refugee camps of Turkey where dozens of lawyers from northern Syria have since fled.

'In April 2011 I was invited to join a delegation to Assad with the governor of our province,' says 56-year-old Hassoun. 'We were told we could make demands for water and electricity but nothing political. I objected and said of course we had political demands. They interrogated me in four different security buildings and I knew they would come for me again. I hid until 23rd June and then I knew I had to flee to Turkey.'

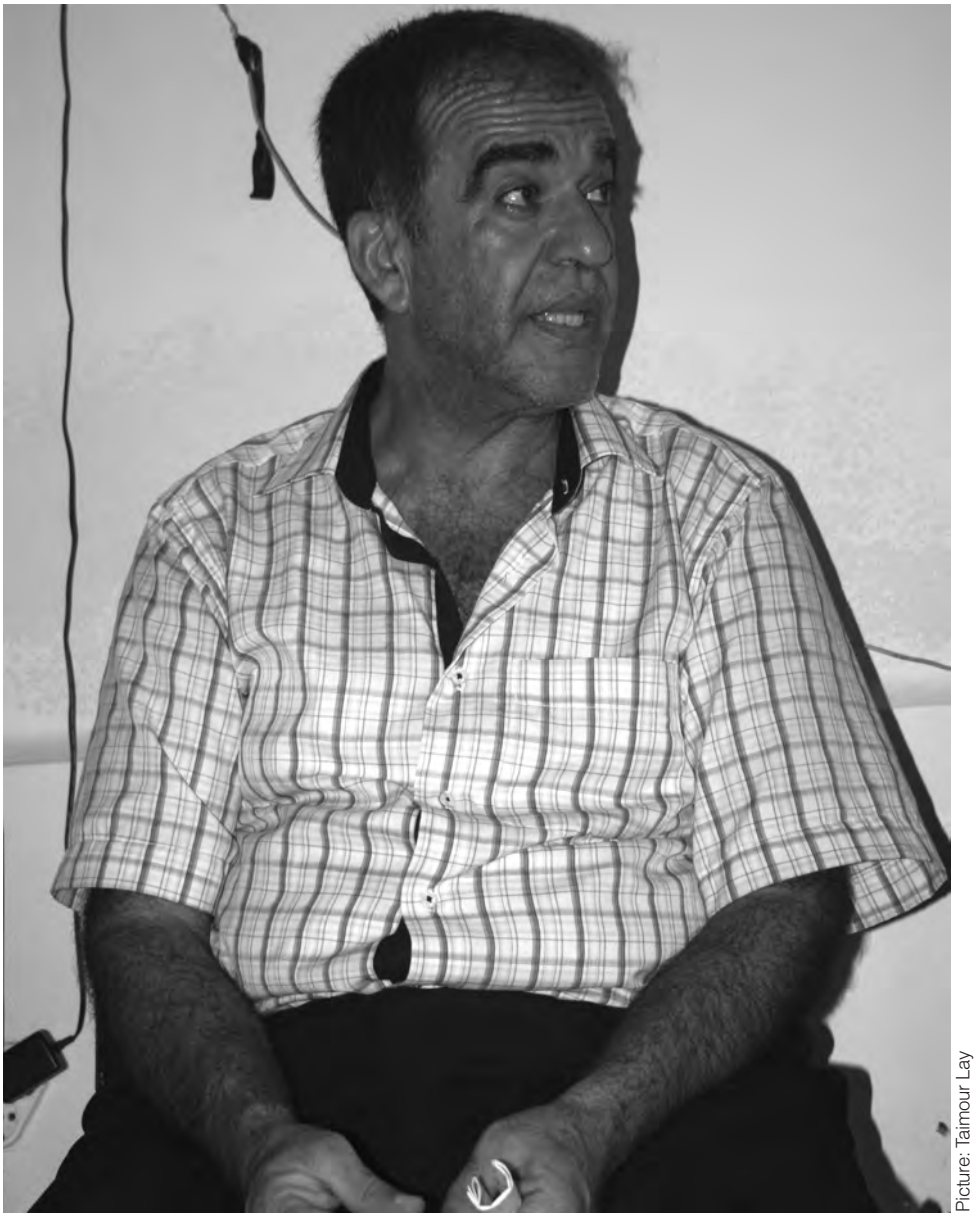
Over 30 Syrian lawyers spent the summer of 2012 taking testimony from refugees in the five camps that stretch along the border around Antakya, southern Turkey, hoping to lay the foundation for prosecution of the Syrian regime and State-sponsored *shabiha* (gangs). They have already collected evidence of thousands of rapes and hundreds of cases of torture and indiscriminate killing by the regime.

Despite being refugees themselves, they also take huge risks to return to Syria. They do so to supervise FSA interrogations of captured army soldiers, monitor rebel 'courts' and provide representation to defendants accused of supporting the government. 'The ultimate aim is to set up temporary criminal courts in all liberated areas,' says Hassoun. 'We are still using the existing criminal and civil codes [to conduct trials] but we are arguing against the death penalty.'

Rough justice

It is an uneasy, limited alliance with the armed groups, including jihadist militia, who themselves stand accused of extra-judicial killings as the civil war intensifies. The lawyers are under no illusions that their influence remains fragile in such a climate. Quasi-legal initiatives by rebel commanders, such as issuing warrants for the arrest of those accused of government collaboration, have the potential to descend into arbitrary killing rather than due process.

Ahmed Hassoun discusses the Free Syrian Lawyers Association.



Picture: Taimour Lay

Forced to flee the country after standing up to Assad, radical lawyers are now working to protect human rights in rebel-held areas. But the longer the conflict continues, the harder it will be to keep progressive voices heard, reports **Taimour Lay** from Antakya.

'Summary executions are happening, of course,' admits Abdul Salam Abo Khaleel from the FSLA's one-room headquarters, the ground floor of a residential building in Antakya. 'The FSA allow us to investigate and supervise verdicts but only for cases that don't involve people directly participating in the fighting. The rest,' he gestures with his hand, 'is happening away from us.'

The reality is that parts of the fractious, decentralised FSA, out of conviction but also under international pressure, are becoming more open to calls for transparency and civilian involvement in the Military Provincial Councils. It is part of the positioning for money and weapons from patrons. Other armed groups are much more wary and accuse the lawyers of being paid to disrupt 'military justice'.

The end of 2012 saw yet another shift towards fragmentation with the mushrooming of dozens of local militia and battalions whose agendas are driven more by local fighting for spoils and the competing agendas of Turkey, Saudi Arabia, Qatar, and the USA than any politics of revolution.

The left in Syria faces a huge challenge if it is to maintain a foothold. 'The more progressive elements within the opposition have been marginalised from emerging structures, such as the Coordination Committees and the National Council, from regional opposition meetings and even from demonstrations and relief work,' says Syrian activist and journalist Shiar Youssef.

'Many of these leftists – former Communist Labour Party, for example, or independent young activists – have started to feel pessimistic about the future. This feeling is further enhanced by the continued infighting between various leftist factions and a fashionable obsession with pacifist "civil society" activism, which doesn't exactly strike a cord with people at the moment, given the context of extreme violence.'

What's left of the war

The majority of activist lawyers, who range from liberals and socialists to self-styled Baathist nationalists who resiled from the severity of Assad's crackdown, say the armed struggle is necessary but also admit that other voices are being marginalised. 'I'm worried because extremists were not there at the beginning and they're growing,' warns Hassoun. 'It can be contained now but the longer the war, the harder it will be.'

The Syrian army does not now contest – at least not with ground troops – many areas of the north. In December 2012, the FSLA was able to hold a public gathering inside Syria, in Azaz, 20 miles from Aleppo near the Turkish border. Samira Sa'aed addressed her fellow lawyers, who had been invited from Aleppo: 'Now you can see lawyers in the free parts of our homeland, and that gives… power to our people. It's not a civil war as the West said. It's a revolution of people.' If that was a sign of growing confidence, it was premature - the meeting soon dispersed after an airstrike was reported nearby.

Such are the conditions for those still willing and able to pursue democratic answers. Mahmoud, a left-wing activist from Damascus, is now a refugee. He was one of the first to hit the streets in 2011 but it soon became clear that this was not going to be Tunisia or Egypt. 'I have lost many friends,' he says. 'The problem is how to keep going when protest is not going to work and armed struggle against a security State has big costs.'

Over the months that Syria's uprising remained non-violent in 2011, lawyers were playing a key legitimating role. In Aleppo one-third of the city's 6,000 lawyers signed an FSLA petition. At the same time the Committee of Syrian Lawyers for Freedom was quickly formed in Damascus, articulating longstanding anger at the Syrian Bar Association's record of disciplining members for even minor displays of courtroom independence.

Many recall the farce of Syrian courtrooms before the uprising. 'There was a case when I was listening to the judgment being read with my client,' says Hassoun, 'and a *mukhabarat* [intelligence] guy just walked up to the judge and changed the verdict!'

As in Egypt, once protests started, all access to detainees was forbidden, with the Syrian Bar Association appointing *mukhabarat* officials with law degrees to represent defendants in military tribunals. Once lawyers themselves began to be arrested, the refugee flight among activist advocates began in earnest.

They are now being targeted by *shabiha* in Aleppo – in August 2012 a leading woman lawyer survived an assassination attempt. Only an hour before I sit down with the FSLA, news comes in of another lawyer crossing the border into Turkey with a gunshot wound in the leg.

People crowd round two laptops on Abdul Salam's desk. A social network site shows photos of a torture victim. Lawyers rush in and out, mobile phones at the ready. Syria is only two hours away by road. This area of Turkey is now part of the struggle: two days before, local Alawis, the religious sect of the Assad family, protested in the town centre calling for all Syrians to be confined to the refugee camps around Antakya. There were plans for a counter-demonstration but the FSLA worry they will be picked up by Turkish police and stopped from working.

Meanwhile, the nearly 100,000 refugees in Turkish camps are facing many more months, if not years, in limbo. The 'problem' of flight has, for now, been regionalised by Western powers. 'Turkey is not processing people for political asylum, they stopped in August 2011,' says Hassoun. 'Some Syrians want to go to Europe but it's difficult and expensive and who knows if governments will accept them.'

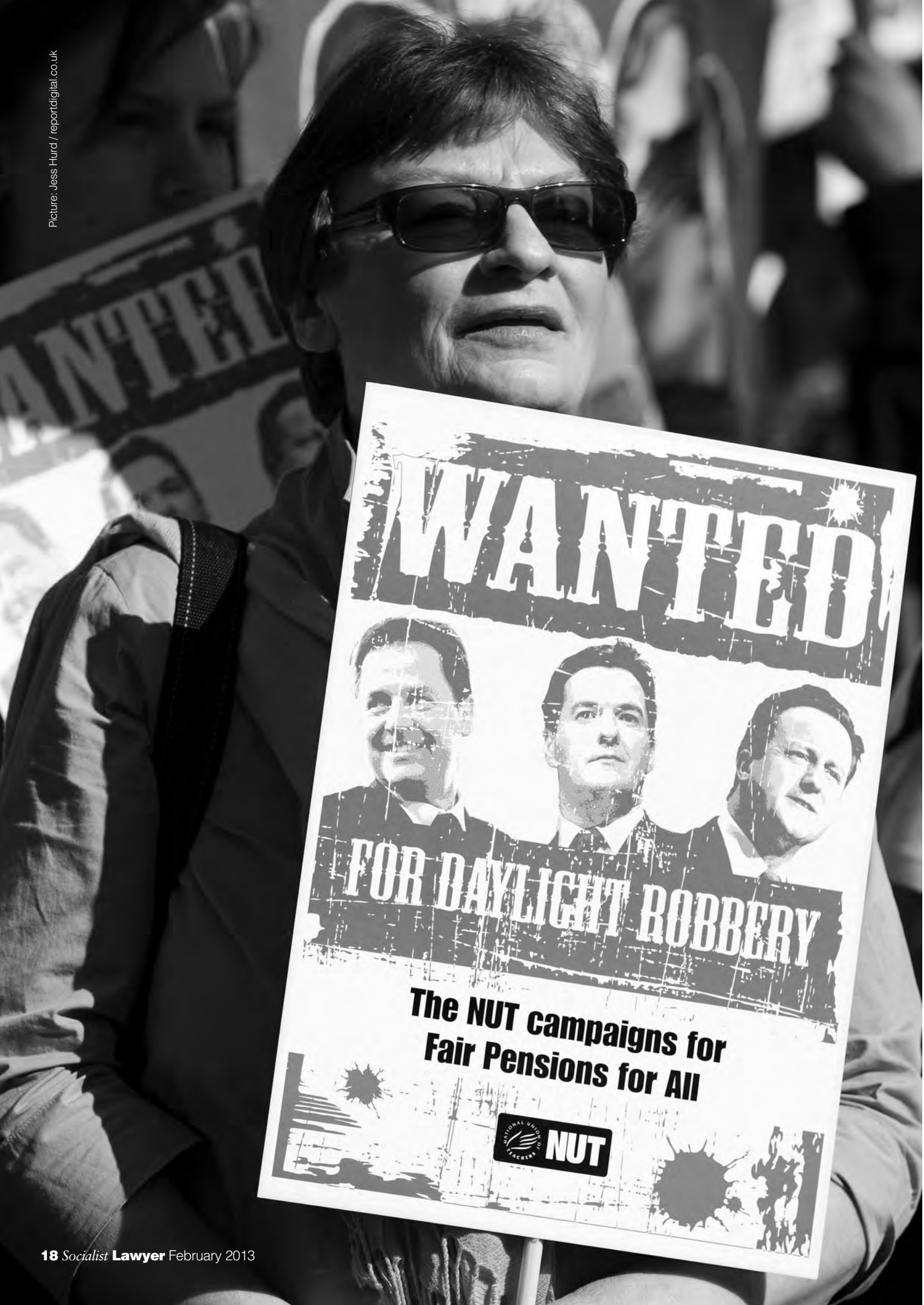
Limits of law

Lawyers have played a mixed role in the 'Arab Spring'. From the courthouse radicals of Benghazi to the human rights defenders of Cairo, they have often found themselves at the forefront of change but then sidelined by the fighters and the party politicians. Other parts of the middle class profession have stuck close to the status quo for fear of losing privileges.

These activist lawyers, like many on the left in Syria, are now constrained by the war being waged around them. And yet protests and politics continue, often against the armed groups in 'liberated areas' as well as the regime. 'There are still many leftists and ordinary people taking up arms and fighting the regime forces, working on the ground in self-organised groups providing much-needed relief aid and documenting what's happening,' adds Shiar Youssef. 'There are many inspiring examples of acute political awareness across the country, such as the self-management of services and facilities in the "liberated town of Yabroud". But the longer the fighting continues, the more likely it is that Islamists will dominate after the regime's fall.'

In Antakya, Hassoun refuses to concede that the hope of revolution has slipped away. 'The first protests were by lawyers. We were there right at the beginning, before all the violence. This is still our struggle too.'

Taimour Lay is a pupil barrister at Garden Court Chambers



Picture: Jess Hurd / reportdigital.co.uk

Socialist **Lawyer** *interview*

EMILY ELLIOTT and **NATALIE CSENGERI** speak to NUT teachers' union leader **CHRISTINE BLOWER**

'They want schools to become even more like exam factories'

What has been your response to Michael Gove's proposals of 5th December 2012 to dismantle the national pay structure and introduce performance related pay for all teachers?

The proposals from the School Teachers' Review Body, accepted by Michael Gove, are the biggest change to teachers' pay in living memory. As one would expect, the NUT has voiced our opposition to these proposals. We are now engaged in a series of briefings and rallies with our members all over the country to both ensure that members understand the seriousness of the situation and to gauge members' attitudes towards further industrial action.

How will this impact upon schools with the poorest financial status and what is the NUT doing to counter what is reported as very low teacher morale?

Any attempt to create individualised pay will mean that those schools with tighter budgets may well seek to hold down teachers' pay.

Picture: Jess Hurd / reportdigital.co.uk

CHRISTINE BLOWER is the General Secretary of the National Union of Teachers (NUT). She began her career in teaching in 1973 and occupied a number of posts within the NUT's West London association between 1986 and 2004. She was elected as the first woman General Secretary of the NUT on 5th May 2009.

On the question of teacher morale, we have been taking action short of strike action since October 2012 and in conjunction with the NASUWT. With this action, we aim to win back greater professional autonomy and reduce an unacceptably high workload.

Why did the NUT support the large-scale mobilisation of workers and activists for the TUC demonstration on the 20th October 2012 and why should people come out to demonstrate?

October 20th was an important part of the TUC's 'A Future That Works' campaign for an alternative to austerity. As the fifth largest affiliate to the TUC and the largest teachers' union in the United Kingdom, it is critical that we play a role, not merely on behalf of our own members, but a role to promote policies based on fairness and social justice. What we are getting from those policies the Government is currently pursuing is just the opposite.

>>>

>>> **What else do you think could co-ordinate people to effectively challenge the Government's austerity agenda?**

The NUT is keen to take action alongside the greatest number of other unions. 30th November 2010 showed us what we can do if we act in concert. Our policies are always about working with others where we have common interest. This complements the TUC's work of building a coalition so as to fight the Government's welfare cuts and to undo the damage being done to our public services.

The national executive of the NUT has been criticised over its decision not to strike over pensions in June 2012. Why do you think this decision was made and what is your response to this criticism?

The decision to take strike action at a particular time is always a difficult one. It must be said that the NUT certainly always reflects carefully before calling members out on strike.

Members of NUT and NASUWT have voted for strike action before Easter 2013 and the NUT executive are in agreement to 'build towards strike action in the spring term.'

Over what issues are workers calling for a strike?

The NUT Executive will take a decision on strike action on the 24th January 2013. At this time, the current issues we are facing are reflected in our extant ballots: attacks on our pensions; on our pay; and on our workload.

You are the first female to be elected General Secretary of the NUT. Twenty-twelve also saw Frances O'Grady elected as the TUC's first female General Secretary. How do you think the fact that women are filling these positions impacts upon leadership, policy and the rank and file in the union?

I am pleased to say that there are now more women in senior positions in the trade union movement than ever before. Teaching is a predominantly female profession and it is important that women see other women achieving high office. It is my hope that this will encourage more young women to become active in whichever union they join.

The Government has revealed plans to scrap all GCSEs in the English Baccalaureate subjects and replace them with an English Baccalaureate Certificate. What are your views on the proposal?

The NUT is opposed to the Government's plans to move to English Baccalaureate Certificates. The NUT is concerned that the effect of these proposals would be to skew the curriculum away from sport, technical subjects, and creative as well as vocational areas of learning. Schools will become even more like exam factories, and this is not what teachers want. It is clear from the sheer breadth of the EBacc campaign and petition that the NUT is running that numerous people and interest groups oppose these changes. *

The change in GCSE grade boundaries and subsequent GCSE results has sparked suspicions of political interference, which has led to a

Picture: Jess Hurd / reportdigital.co.uk

Christine Blower (front left, speaking to Mary Bousted of the ATL) joins striking union members demonstrating in June 2011 in defence of jobs, pensions and against pay cuts. Mark Serwotka, leader of the civil servants union, the PCS and John McDonnell MP are pictured behind her.

"The NUT was at the forefront of legal action taken in order to ensure justice for those young people robbed of the grades they deserve."

judicial review of the exam boards and the exam regulator in December 2012. What are your views on this?

At the time of writing, we do not yet have the outcome of the GCSE results scandal. The NUT was at the forefront of legal action taken in order to ensure justice for those young people robbed of the grades they deserve. Prior to the court action, we petitioned Michael Gove as the Secretary of State at the Department of Education to follow the lead of his counterpart in Wales, who required the exams to be re-graded, but Michael Gove remains steadfast in his position.

You are a vocal critic of the privatisation of education, particularly of free schools and academies as well as the injustice of 'forced academies' under the Education Act 2010. What are your main concerns about these new schools and how do you feel the campaign against them is progressing?

The NUT is categorically opposed to State-funded education being run for profit. We believe this privatisation of education has always been Michael Gove's ambition. Now we see it made plain in announcements from Bright Blue. [Bright Blue, according to their website, states that they campaign for 'the Conservative Party to implement liberal, progressive policies that draw on Conservative traditions of community, entrepreneurialism, responsibility, liberty and fairness.'] In contrast, we are both pleased and surprised by the extent to which the joint report released by the Pearson Centre for Policy and Learning and RSA on 'academisation' reinforced many of our own criticisms of the academy programme.

We are still achieving successes in opposing the conversion of individual schools to academies but all the real power resides with the Secretary of State at the Department of Education. Michael Gove has changed the rules so that he can 'force' schools to become academies on the basis of criteria which he sets. A key issue for the NUT is the correction of the false claim that academies 'improve standards'. Some do, some do not. We wish to emphasise that there are better, proven ways to secure school improvement. The outcomes from the 'London Challenge' programme [established in 2003 as an initiative which 'uses independent, experienced education experts, known as London Challenge advisers, to identify need and broker support for underperforming schools'] demonstrates that schools working together, without being taken out of local authority control, can be greatly successful.

Do you have any thoughts regarding the current balloting requirements for trade unions? What would you suggest to improve them or, alternatively, to replace them?

The anti-trade union legislation remains a big problem. It is a matter of much regret that nothing was done to improve matters during Labour's years in office. One small, but entirely fair, change would be to allow industrial action balloting to be extended beyond its current methods. One example would be the ability to ballot electronically. Of course, solidarity action is another major issue which we would like to see addressed.

What do you think accounts for the fall in trade union membership overall? Conversely, how can numbers and union sentiment grow at the NUT in times of austerity and more generally among workers as a whole?

Despite an overall fall in trade union membership generally, the NUT continues to grow as trade union values resonate with all who stand for social justice and fairness. Across the movement we have to be more responsive to the concerns of those whom we wish to recruit. This means paying attention to the campaigns that catch the imagination of young workers and ensure that we always put ourselves on the side of anyone who suffers discrimination or disadvantage.

** Since the interview was done Michael Gove announced on 7th February 2013 a U-turn on his plans for an English Baccalaureate. The judicial review of GCSE grades has been dealt with. The NUT's press release responding to the judicial review decision can be found at* www.teachers.org.uk/node/17598

Emily Elliott and Natalie Csengeri are both members of The Haldane Society's Executive Committee

Shell runs aground as climate campaigners win in Amsterdam court

by Daniel Simons and Richard Harvey

Picture: © Greenpeace / Christian Aslund

On a frigid morning last September, polar bears wandered through the forecourt of one of Shell's largest fuel stations in the Netherlands. At the same time, activists hung bicycle locks around the fuel nozzles, while others explained that they were stopping fuel sales in protest against Shell's plans to drill for oil in the Arctic. Over the course of the morning, 72 out of about 600 Shell petrol stations in the country were similarly 'frozen'. >>>

Greenpeace activists shut down a Shell petrol station early in the morning in Breukelen near Amsterdam. They hold banners with the text: 'Stop Shell, save the Arctic, Greenpeace'. In the foreground two volunteers, disguised as a polar bear. The same action has taken place in more than 57 Shell petrol stations throughout the Netherlands.

>>>On 31st December 2012, capping off a year of setbacks for the oil giant, Shell's Arctic drilling barge Kulluk ran aground off the coast of Alaska while being towed back to harbour in Seattle. During the year, Shell representatives admitted that there were bound to be oil spills as a result of drilling but they had no idea how much a clean-up operation in the Arctic would cost; in September 2012 their oil spill containment system 'crushed like a beer can' during testing; in July 2012 their drill ship Noble Discoverer ran aground in a 'stiff breeze' and in November 2012 specialist fire crews had to be brought in to put out a fire in the ship's engine.

However, containment of polar bears on forecourts seemed to be Shell's greatest concern. Its lawyers rushed straight to court with a 100-page legal complaint – obviously prepared well in advance – ready to stop those irksome environmentalists once and for all. They demanded a court order permanently banning actions by Greenpeace or its sympathisers within 500 metres of all Shell properties worldwide, with an automatic penalty of €1 million per breach. The essence of Shell's complaint was that an injunction was needed to protect from further financial harm a company that made $31billion in profits last year.

The case boiled down to this simple question: does the right to make profit trump the right to criticise?

It is not often that one of the world's richest companies does not get what it wants. But on 5th October 2012, Shell not only failed to win the sweeping injunction it applied for, but was told in quite forceful terms that it must accept the consequences of its reckless plans to drill for oil in the Arctic. In a decisive victory for the right to peaceful protest, the judge held that:

'A company like Shell, which performs or wishes to perform activities that are controversial in society and to which many people will object, can and must expect that actions will be taken to try to persuade it to change its views. To be effective, such action will also be able to cause damage to Shell." (Shell Nederland Chimie BV cs/ Stichting Greenpeace Nederland, District Court of Amsterdam, 5th October 2012. English translation at http://tinyurl.com/bgmq7xp).

Shell had taken Greenpeace Netherlands and Greenpeace International to court, asking for an incredibly broad injunction. If granted, any Greenpeace 'action' – illegal or legal – within 500 metres of a Shell property could have led to a million Euro fine for the organisation. An activist handing out leaflets about Arctic drilling on a street corner could have breached the terms of the injunction.

Judge Han Jongeneel recognised that non-violent direct action (NVDA) has a long and honourable history. He noted that:

'Greenpeace uses the instrument of actions in public in order to make its views known to a wide-ranging public in a forceful manner. Greenpeace claims that its actions should be seen as a form of civil disobedience. In the past, action in the form of civil disobedience has achieved change in situations originally viewed as legitimate (such as slavery, the denial of women's right to vote and racial discrimination). Greenpeace is seeking in a similar way to bring an end to Shell's drilling for oil in the Arctic (which is currently still regarded as legitimate).'

Prior to the hearing, Shell narrowed its demand to a certain degree, but the judge was unimpressed and reminded Shell's lawyers that he had the power to deny an application for an over broad injunction outright, or alternatively,

'Shell representatives admitted that there were bound to be oil spills as a result of drilling but they had no idea how much a clean-up operation in the Arctic would cost... However, containment of polar bears on forecourts seemed to be Shell's greatest concern.'

Pictures: © Greenpeace / Michiel Wijnbergh

impose a lesser one. They took the hint and toned down their request further. Shell still failed to get what it wanted. Instead, the judge held:

'The basic principle is that organisations such as Greenpeace are in principle free to take action and to make their views publicly known. The sole fact that such action causes inconvenience to the company targeted by the action – in this case, Shell – does not mean that such action is wrongful.'

The judge ruled that Greenpeace's actions were both proportionate and justified, given their earlier efforts to change Shell's mind in other ways. He also ruled that actions may continue in future, within certain limits. All Shell got was a narrow ruling, that Greenpeace Netherlands and Greenpeace International would face penalties if they interrupted the normal running of Shell offices or other properties in the Netherlands for longer than two hours, or disrupted fuel sales at petrol stations for more than one hour at a time.

Shell had accused the activists of failing to use 'legitimate' ways to protest Arctic drilling. This begs a further question; what would Shell consider to be legitimate ways of protest. What if citizens around the world together petitioned governments to protect the Arctic and develop alternative solutions to fossil fuels for our transportations systems? How many signatures would such a petition need to be good enough for Shell? Two million? Well, Greenpeace did that and many Haldane activists signed it. Shell pressed on.

Would it be legitimate to question the validity of the drilling permits, or to contest the approval of Shell's inadequate oil spill plans in court? Apparently not, since Shell is currently suing Greenpeace US and 12 other US environmental and indigenous groups, asking for a court order to prevent legal ways of contesting Arctic drilling.

Shell has ignored repeated attempts to change its mind on Arctic drilling, and instead flexed its financial muscles to obtain licences and tie its critics up in lawsuits.

What began as a desperate attempt by Shell to stem the tide of criticism generated by the Greenpeace Arctic campaign has now ended in an important precedent for freedom of expression. Sometimes things work out for the little guys, just as in the McLibel case *Steel & Morris v United Kingdom*, 15th February 2005, Application No 68416/01, where the European Court of Human Rights held that the scope of acceptable criticism is wider in the context of large public corporations.

Daniel Simons is legal counsel at Greenpeace International, where he advises the organisation's oceans, forests, agriculture and Arctic campaigns. Richard Harvey is a barrister at Garden Court Chambers.

‘The quality of human life depends

In a landmark ruling with far-ranging implications, Big Oil and the Nigerian government have suffered a major legal defeat and Nigeria has been ordered to protect the environment and hold oil companies to account. >>>

on the quality of the environment'

by Richard Harvey

>>>On 14th December 2012, the Court of Justice of the Economic Community of West African States (ECOWAS) unanimously found Nigeria responsible for environmental abuses by oil companies.

In *SERAP v Nigeria*, ECW/CCJ/JUD/18/12, citing the ICJ's Advisory Opinion on Nuclear Weapons, the Court held:

'The environment, as emphasised by the International Court of Justice, "is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn" (Legality of the threat or use of nuclear arms, ICJ Advisory Opinion of 8th July 2006, paragraph 28). It must be considered as an indivisible whole, comprising the "biotic and abiotic natural resources, notably air, water, land, fauna and flora and the interaction between these same factors" (International Law Institute, Resolution of 4th September 1997, Article 1). The environment is essential to every human being. The quality of human life depends on the quality of the environment.'

SERAP, the Socio-Economic Rights and Accountability Project, charged that Nigeria, together with Shell and five other major oil companies, were operating in violation of the International Covenant on Economic Social and Cultural Rights and the African Charter on Human and Peoples' Rights.

Specifically, the plaintiff alleged: 'Violations of the right to an adequate standard of living, including the right to food, to work, to health, to water, to life and human dignity, to a clean and healthy environment; and to economic and social development – as a consequence of: the impact of oil-related pollution and environmental damage on agriculture and fisheries.'

SERAP also alleged 'oil spills and waste materials polluting water used for drinking and other domestic purposes; failure to secure the underlying determinants of health, including a healthy environment, and failure to enforce laws and regulations to protect the environment and prevent pollution.'

In a binding and final judgement, the ECOWAS Court held that Nigeria violated Article 24 of the African Charter (the right of peoples to a general satisfactory environment favourable to their development). ECOWAS held that the Government had failed to protect the Niger Delta and its people from the operations of oil companies that have long devastated the region.

The Court held that it is not enough for governments merely to pass laws or appoint agencies. They must take effective action:

'The adoption of … legislation, no matter how advanced it may be, or the creation of agencies inspired by the world's best models, … may still fall short of compliance with international obligations in matters of environmental protection if these measures just remain on paper and are not accompanied by additional and concrete measures aimed at preventing the occurrence of damage or ensuring accountability, with the effective reparation of the environmental damage suffered.'

Passing the buck won't work. The Court firmly rejected Nigeria's 'attempt to shift the responsibility onto the holders of a licence for exploitation':

'[T]he damage caused by the oil industry to a vital resource of such importance to all mankind, such as the environment, cannot be left to the mere discretion of oil companies and possible agreements on compensation they may establish with the people affected by the devastating effects of this polluting industry.'

The Government sought to exclude a comprehensive report prepared by Amnesty International on the oil industry's pollution of the Niger Delta. The report was based on an in-depth investigation in 2009 into pollution caused by the international oil companies, in particular Shell, and the failure of the Government of Nigeria to prevent pollution or sanction the companies. The ECOWAS Court held the report admissible and found that the evidence before it proved that:

'It is clear Nigeria failed to prevent oil companies causing pollution.. a major ste

Pictures on previous pages. Main: Pastor Christian Lekoya Kpandei contemplates the damage done to his fish farm in Bodo, which flourished before the August 2008 oil spill. The pollution destroyed his fish farm, leaving him and his workers without a regular income. Inset: Dead periwinkles covered in oily mud from Bodo creek, May 2011. © Amnesty International.

'[D]espite all the laws it has adopted and all the agencies it has created, the Federal Republic of Nigeria was not able to point out in its pleadings a single action that has been taken in recent years to seriously and diligently hold accountable any of the perpetrators of the many acts of environmental degradation which occurred in the Niger Delta Region.'

SERAP's lawyers, Femi Falana San, and Adetokunbo Mumuni, called the judgement: '[A]n important step towards accountability for government and oil companies that continue to prioritise profit-making over and above the well-being of the people of the region.'

Michael Bochenek, Director of Law and Policy at Amnesty International, called it:

'[A] crucial precedent that vindicates the human right to a healthy environment and affirms the human right of the Nigerian people to live a life free from pollution … The judgment makes it clear that the Nigerian Government has failed to prevent the oil companies causing pollution. It is a major step forward in holding the Government and oil companies accountable for years of devastation and deprivation.'

The court ordered the Government to move swiftly to fully implement the judgment and restore the dignity and humanity of the people of the region.

This judgment comes at a time when oil is being discovered in many member states of ECOWAS. Other states in Africa and beyond will need to read it carefully, since it lays down minimum standards of operations for government and oil companies involved in the exploitation of oil and gas.

Article 15(4) of the ECOWAS Treaty makes the Judgment of the Court binding on all Member States, including Nigeria. Also, the Treaty's 1991 Protocol provides that the decisions of the Court shall be final and immediately enforceable. Non-compliance can be sanctioned under Article 24 of the Supplementary Protocol of the Court and Article 77 of the ECOWAS Treaty.

On 30th January 2013, the Hague District Court ordered Shell to pay damages to a Nigerian claimant for failing to prevent oil spills in the Niger Delta. Friends of the Earth brought five claims against the parent company and its Nigerian subsidiary in *Friday Alfred Akpan & Milieudefensie v Royal Dutch Shell PLC and Shell Petroleum Development Company of Nigeria Ltd.*, District Court of The Hague, Case no. C/09/337050/HA ZA 09-1580. The full judgment is available online in English. Four claims were dismissed.

The importance of the case lies in the Dutch court's recognition of: 'an international trend to hold parent companies of multinationals liable in their own country for the harmful practices of foreign (sub-) subsidiaries …' and holding that 'the *forum non conveniens* restriction no longer plays any role in today's international private law.'

The Dutch court therefore held it 'has jurisdiction over the claims initiated in the subject proceedings, not only against the legal entity [Royal Dutch Shell] in The Hague, but also against the Nigerian legal entity [Shell Petroleum Development Corporation].'

On the specific facts of the case, the parent companies escaped condemnation, the court holding that, under Nigerian law, based on English precedent, *Smith v Littlewoods* [1987] UKHL 18 and Chandler v Cape PLC [2012] EWCA 525, a parent company is not 'generally' obliged to prevent harm caused by its subsidiaries to third parties abroad. It found no 'special grounds' to deviate from the general rule.

The case was argued in The Hague before the decision of the ECOWAS Court. Friends of the Earth have three months to appeal. If they do so, it will be interesting to see whether the Dutch courts recognise the ECOWAS decision as providing 'special grounds' to hold the parent companies liable. Watch this space.

Richard Harvey is a barrister at Garden Court Chambers.

ep forward in holding them accountable for years of devastation and deprivation.'

Below: Cecilia Teela searching the oil-covered shore of Bodo creek, where she used to collect periwrinkles. Today, she has to travel to a neighbouring state to make a living. © Amnesty International.

The Human Rights Act – still under threat

by David Renton

The December 2012 report of the Commission on a Bill of Rights by a seven to two majority proposed repealing the Human Rights Act and replacing it with fresh legislation. A British Bill of Rights would incorporate 'all' of the UK's obligations under the European Convention on Human Rights, the chief difference being that the new Bill, unlike the present Human Rights Act (HRA), should be 'written in language which reflected the distinctive history and heritage of the countries within the United Kingdom'. If all that was being proposed was the same legal rights with no change save wording, you might wonder why such a change was needed.

We can only understand the Commission's proposals by placing them in the context of the British constitutional settlement. Our political system is different from the majority of contemporary liberal democracies, most of which were rewritten, from first principles, in the modern age. Sovereignty is not said to reside in the British people but in our representatives, 'the Queen in Parliament'. Further, the doctrine of 'parliamentary sovereignty' implies all sorts of second-order theories, including that the decisions of the Government also should not be capable of scrutiny by the courts.

Britain has long had a political culture in which the executive has been singularly above formal democratic control. This is the world portrayed in programmes such as *Yes, Minister* or *The Thick of It*, a world of career civil servants who are only weakly accountable to ministers, and where mere voters have no direct input into the appointment or scrutiny of key State positions.

Now the legal principles which underpin our constitutional settlement have been decaying in coherence for at least 30 years. As a condition of membership of the European Union, the UK is subject to European legislation and therefore to the jurisprudence of the Court of Justice of the European Union(CJEU). Inevitably, EU membership subordinates Parliament, if only in areas which Parliament has ceded to Europe.

By article 6 of the Lisbon Treaty of the European Union, the principles of the European Convention for the Protection of Human Rights are general principles of EU law. Britain is in effect required to sign up to the European Convention on Human Rights (ECHR) and has in any event since 1966 allowed people living in the UK to take cases to the European Court of Human Rights (ECtHR) in Strasbourg. Within the limited civil and political and democratic rights afforded by the Convention, the ECtHR is relatively activist. As with the CJEU, subordination to the European Court of Human Rights weakens Parliament.

Moreover, our present 'neo-liberal' moment, in contrast to the politics of post-war Britain and the world, is characterised by the demise of strategies for popular incorporation which attempt to tie economic reforms to national institutions reflecting a supposed consensus between rulers and ruled. In place of the old State measures of redistribution, the State is used more and more to finance units of private capital such as Atos, Capita, G4S etc. New strategies to make free market politics popular are required, whether the 'Thatcherite' tax-dodging and share-purchasing culture of the 1980s, or the subtler proliferation over 30 years of supposed individual rights. Trends such as the transfer of power towards the EU intensify this process. Juridification in turn makes it more difficult to justify old doctrines such as the placing of executive decisions above private legal scrutiny.

Further, in 1998, when the Human Rights Act was passed and the Strasbourg jurisprudence became directly effective in the UK, New Labour provided, in effect, that any future laws passed by Parliament must be compatible with the European Convention on Human Rights. This is done through section 3 of the Human Rights Act, which requires any court to interpret legislation in a way which is compatible with the rights set out in the Convention, and section 4, which authorises the High Court to declare any statute incompatible with the Convention. While this does not make the statute unenforceable; and for that reason Parliament remains sovereign; a declaration of incompatibility binds the hands of subsequent courts, making it difficult for the legislation to continue. The first New Labour Parliament limited the space for successor Parliaments not to legislate in certain ways. This, in the classical understanding of the British political settlement, is precisely what Parliament is never allowed to do.

Newspapers such as the *Telegraph*, *Times* and *Daily Mail* have been running for years a story to the effect that the Human Rights Act 1998 which gives partial domestic effect to the European Convention on Human Rights, is a major impediment to good government, i.e. neo-liberalism. It protects the rights of individuals, often unpopular individuals, and it infringes onto grounds such as national security or foreign policy which might be expected to be the exclusive domain of politicians. The newspapers are able to say this and be believed because while this story is essentially untrue it contains enough truth to be plausible.

Readers of this magazine well know that our senior judiciary has not been transformed from a bastion of conservatism into a workers' shield. Key decisions of the courts in the past 20 years have been responsible for some of the worst features of British life. In employment law, it was the courts not Parliament which deprived Britain's million-plus agency workers of the right to bring a claim of unfair dismissal. In housing law, the higher courts fought a desperate rearguard action for many years to enforce Parliament's attempts to make whole categories of people evictable at will before conceding a partial defeat in the face of repeated, contrary decisions of the ECtHR.

That said, during the period of New Labour, whose authoritarian decision-making was clearly at odds with the instincts of its electorate, the senior judiciary showed a certain independence, which it proved difficult for the politicians to restrain. If the best-known judge of the 1960s and 1970s was Lord Denning, then the Master of the Rolls, who showed

Picture: Jess Hurd / reportdigital.co.uk

extraordinary creativity in inventing new measures of penalising workers' strikes, the most authoritative figure in the judiciary of the 1990s and early 2000s was Lord Bingham, who as Lord Chief Justice presided over a House of Lords which reached a number of 'liberal' decisions, including outlawing the indefinite detention of non-UK national terror suspects, and finding that destitute asylum seekers were entitled to State support. Moreover, while in the mid-1990s, the legal challenge of authoritarian government had generally been done through reliance on legal fictions resting on the notion of an unlimited British 'common law', in practice, the broad language of the ECHR has meant that the terrain of contest has shifted to the ECtHR and the Human Rights Act.

The ambition of the *Daily Mail* and its allies in Parliament is not to depoliticise the judiciary, but to repoliticise the judiciary on fresh terms, to force back into the background its 'Bingham' tendencies and to make it more 'Denning'.

The desire to repoliticise the law can be seen in the biographies of the Commission on a Bill of Rights. Three of the nine appointees, Lord Faulks, Jonathan Fisher and Anthony Speight, were members of the Society of Conservative Lawyers, while a fourth, Martin Howe, was in 2006-2010, a member of the Conservative Party's Commission on a Bill of Rights for the United Kingdom. The Chair Sir Leigh Lewis, was formerly the senior civil servant at the Home Office with responsibility for Crime, Policing and Counter-Terrorism. This majority was 'balanced' by Sir David Edwards, a judge with no political background, Lord Lester, a Liberal Democrat peer, Helena Kennedy QC, a Labour critic of Blairism in the Lords during the years of the Blair-Brown governments and Philippe Sands QC, author of *Torture Team*.

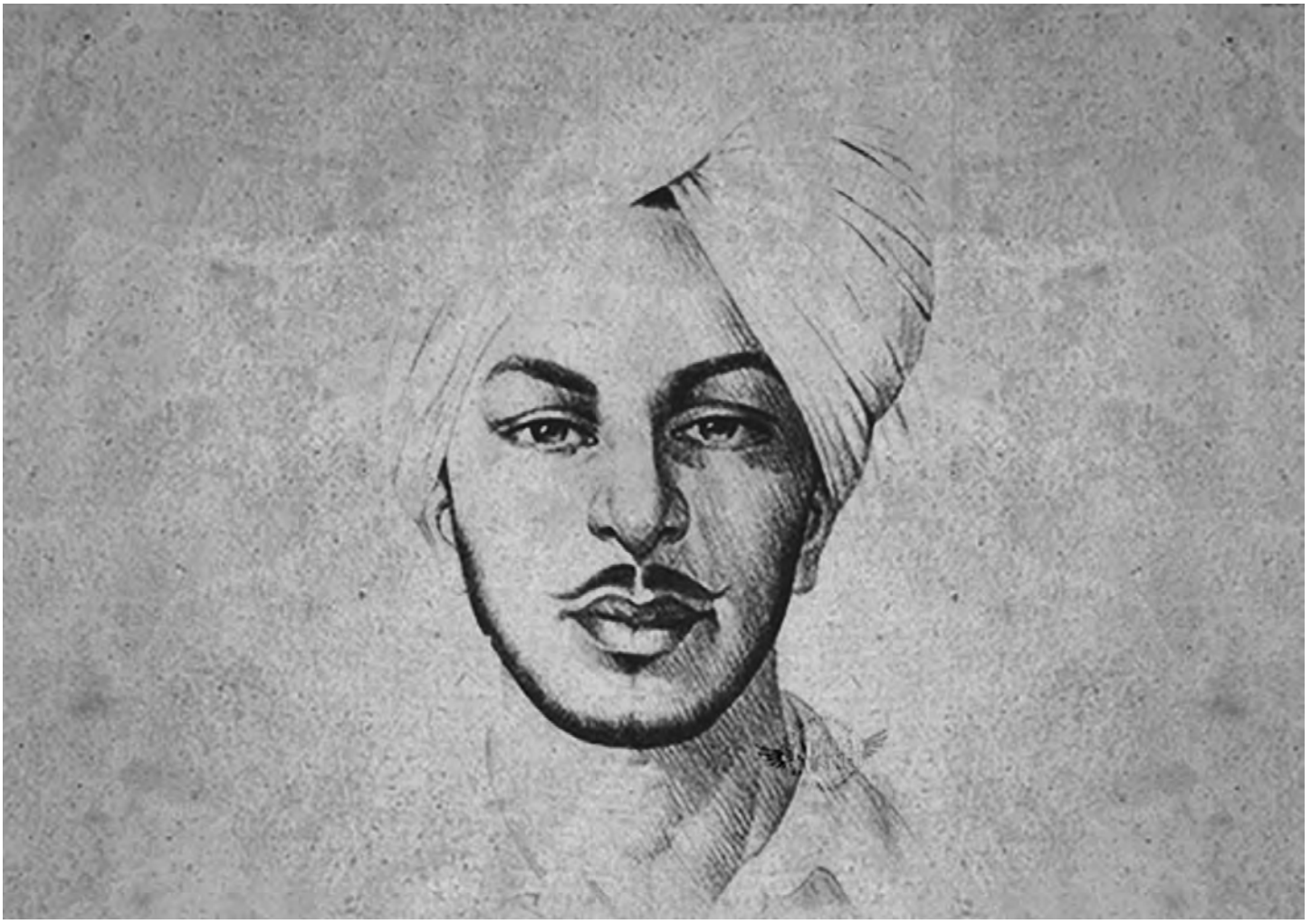
The Commission majority justified their proposals to repeal the Human Rights Act on the basis that repeal would not be needed 'if there were widespread public acceptance of the legitimacy of our current human rights structures, including of the roles of the Convention and the European Court of Human Rights. But they believe there is not'. It is hard not to feel scepticism as to who is supposed to make up the 'public' that does not consent to the HRA. The Commission organised two consultations, a large majority of responses opposed the proposed Bill, and the Commissioners accepted that the HRA is popular in Wales, Scotland, and Northern Ireland, as well as in large parts of England too.

Two Commissioners opposed the recommendations of the majority, Philippe Sands QC and Helena Kennedy QC. Their main arguments were as follows: there could be no 'British' Bill of Rights when Northern Ireland as part of the peace process was consulting on its own Bill of Rights and when, depending on the outcome of the Scottish devolution vote, large parts of the implementation of the new rights contained in the Bill would no longer be capable of discussion at Westminster, but would pass to Holyrood under either independence or enhanced devolved powers.

They further suggested that the Tory barristers who dominated the Commission had been proposing a British Bill merely as a halfway house towards their real goal which was to resile from the rights contained in the Convention: '[T]he view [was] expressed in the course of the Commission's deliberations by a number of their colleagues on the Commission, to the effect that they would like the United Kingdom to withdraw from the European Convention on Human Rights.'

What the Government needed from the Commission was a clear mandate in favour of the removal of the Human Rights Act. The result is more equivocal; and in particular the minority seem to have persuaded the majority that the issue should at least be put on hold until the outcome of the Scottish referendum. The next step will be for the politicians to take rather than the lawyers. But the appetites of the Tory right have been whetted and we should expect them to come back for more.

David Renton is a barrister at Garden Court Chambers and a member of the executive committee of The Haldane Society.



Bhagat Singh

is hailed as being one of the most influential revolutionaries of the independence movement in India. **Paramjit Ahluwalia** looks at the way the legal process reacted to a young man who fought to have his political rights voiced within the climate of fear that existed within India at that time and the judgment of the Privy Council which wholly failed to protect the rights of a 24-year-old man, leading to his execution on 23rd March 1931.

'You may crush certain individuals, but you cannot crush this nation. As far as this ordinance is concerned, we consider it to be our victory...'

Bhagat Singh's family were Sikh and he was born in Punjab, the idyllic green belt and agricultural heart of India, regardless of where boundaries came to be drawn in 1947.

During the time of his adolescence, India would suffer atrocities such as Jallianwallah Bagh. Individuals such as Brigadier General Dyer had formed the view that Punjab was a hotbed for radicals. In Amritsar, Vaisakhi, Dyer ordered shots to be fired into a peaceful crowd. Conservative estimates are that 1,000 people were killed on that day. No warning was given, and the justification was that the 'Indians should be punished for disobedience'.

Violence against peaceful protesters was a continuing theme and in particular Singh was deeply affected by the events of 1928, which involved Bhagat Singh's educational mentor, Lala Lajput Rai. Rai led a silent protest in 1928 against a Commission that the British had set up in India which only allowed one Indian member. During the protest superintendent James Scott ordered a *'lathi'* charge to take place, namely a baton charge. The crowd were seriously assaulted, and Rai was injured and later died.

Revolutionaries Rajguru, Thapar, Azad and Bhagat Singh among others vowed revenge for the death of Rai and formed a plan to kill Scott. Despite the target having been Scott, a superintendent John Saunders came to be shot by Rajguru and Singh.

Bhagat Singh fled in disguise and literature from the Hindustan Socialist Republican Army (HRSA) spoke to say 'we are sorry to have killed a man. But this man was part of a cruel despicable and unjust system and killing him was a necessity...'

In April 1929, Bhagat Singh and the Hindustan Socialist Republican Army wished to show solidarity with the labour movements, who were facing oppression by the arrests of those within the labour movements and the Trades Disputes Bill.

On the 8th April 1929, Bhagat Singh and Dutt threw two bombs inside the central legislative assembly from the visitors' gallery. The bombs used were not intended to kill. Minor injuries resulted to a few. The magistrate hearing the case agreed with the considerations that the bombs were not intended to kill. At the time of throwing the bombs, chants of *'Inqilab Zindabad'* or 'long live the revolution' were heard.

Red leaflets were thrown into the assembly that outlined the following message: 'let the government know that while protesting against the Public Safety and Trade Dispute Bills and the callous murder of Lala Lajput Rai, on behalf of the helpless Indian masses, we want to emphasise the lesson often repeated by history, that it is easy to kill individuals but you cannot kill the ideas.'

Singh was convicted of attempted murder and sentenced to 14 years' life imprisonment. However, a Lahore bomb factory was found by the police, and other members of HRSA turned informants, resulting in Singh being charged along with 27 others with the murder of Saunders and for waging war against the King.

Bhagat Singh was moved to Mianwali jail and it was here that he witnessed the discrimination between European and Indian prisoners and as a result went on hunger strike in protest. Singh's argument was that all those convicted of offences actuated by political motives and not for any personal gain or object should be regarded as political prisoners. This hunger strike gained much sympathy worldwide. Efforts were made to force feed individuals and one hunger striker, Das, died after 63 days of hunger strike. On occasion, Bhagat Singh had to be stretchered in to attend his trial, such was his condition at that stage.

Further events took place, after an incident involving the throwing of a shoe in court, leading to individuals being beaten up in court and jail for failing to attend. Bhagat Singh and his fellow revolutionaries struck a chord with the masses. His determination was that the whole proceedings should propagate their ideas, objectives and methods and to inspire the youth of the country.

Such a slow trial and the international attention gained by the hunger strikers infuriated the British government. The Viceroy of India, Lord Irwin declared an emergency ordinance.

Section 72 of the Government of India Act provided that 'the Governor General may in cases of emergency make and promulgate ordinances for the peace and good government of British India or any part thereof and any ordinance so made shall for the space of not more than six months from its promulgation have the force of law as an Act passed by the Indian legislature.'

The emergency ordinance passed came to be known as the Lahore Conspiracy Case Ordinance and resulted in a special tribunal being set up. This meant that the trial of Bhagat Singh could be expedited, and for the trial for murder to function without any of the accused being present.

Bhagat Singh on being read the special ordinance on 2nd May 1930 wrote to the court saying that 'you know thoroughly well and everyone concerned knows it, that it is not hunger strike that forced you to promulgate the ordinance... but let us declare once and for all that our spirits can not be caved by ordinances. You may crush certain individuals, but you cannot crush this nation. As far as this ordinance is concerned, we consider it to be our victory... we wanted to make the Government throw off its veil and be candid enough to admit that fair chances for defence could not be given to the political accused. We congratulate you for the candour and welcome the ordinance.'

The trial opened before the special tribunal on the 5th May 1930, and in reaction to the defendants singing a national song and then refusing to be handcuffed, they were forcibly removed from court. The presiding judge refused to apologise for this treatment of the defendants and the tribunal members replaced, yet still no apology came.

On 7th October 1930, the tribunal gave its judgment of 300 pages, finding the participation of Singh, Sukhdev and Rajguru beyond reasonable doubt, and they were sentenced to hanging.

This ordinance that set up the very special tribunal that condemned these men to death, lapsed on the 31st October 1930. Such ordinance had neither been passed in the central assembly in India nor the British Parliament. It was simply a decision made by one man, the Viceroy Lord Irwin.

A further aspect to the ordinance was that it limited appeals to simply one, to the Privy Council. And an appeal took place. There is an extremely short judgment given by Viscount Dunedin in this case, two pages' worth. The short shrift determinations by Dunedin were as follows:

'A state of emergency connotes a state of matters calling for drastic action which is to be judged as such by someone. It is more than obvious that that someone has to be the Governor General and him alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action and that action is prescribed by the Governor General.

It is said that the ordinance did not conduce to the peace and good government of British India. The same remark applies.'

Bhagat Singh, Sukhdev and Rajguru were sentenced to death and ordered to be hanged on 24th March 1931 but that schedule was moved forward by 11 hours to 23rd March 1931. And there the story should end, but it does not.

One untold chapter still remains.

Lincoln's Inn and the British Library have copies of all judgments, and indeed all skeletons arguments, witness statements, all exhibit copies that relate to Privy Council cases. Neatly filed, bound, kept together and indexed. It is a beautiful sight to behold. All sorts of cases, family law disputes, land boundary issues. All except for one. One remains missing, *Bhagat Singh and others v King Emperor*.

Over 80 years have passed and yet the Privy Council decision remains.

Paramjit Ahluwalia is a barrister at Farringdon chambers.

Picture: Jess Hurd / reportdigital.co.uk

The ICC and Colombia: Massacres under the looking glass

by Daniel Kovalik

The International Criminal Court (ICC) published its Interim Report on Colombia in November 2012. It is an interesting read, revealing as much about the ICC itself as it does about Colombia. In the Report, the ICC explains that Colombia has been under preliminary examination by the ICC since June 2004. This is quite curious given the ICC's conclusion in the report that the worst crimes of the Colombian military – the 'false positive' killings in which the military killed around 3,000 innocent civilians and dressed them up to appear as guerillas – 'occurred with greatest frequency between 2004 and 2008.'

In other words, the military carried out its most notorious violations while under the ICC's scrutiny. Perhaps the ICC was too busy trying Africans – apparently the sole target of ICC prosecutions – to have done anything to deter such crimes.

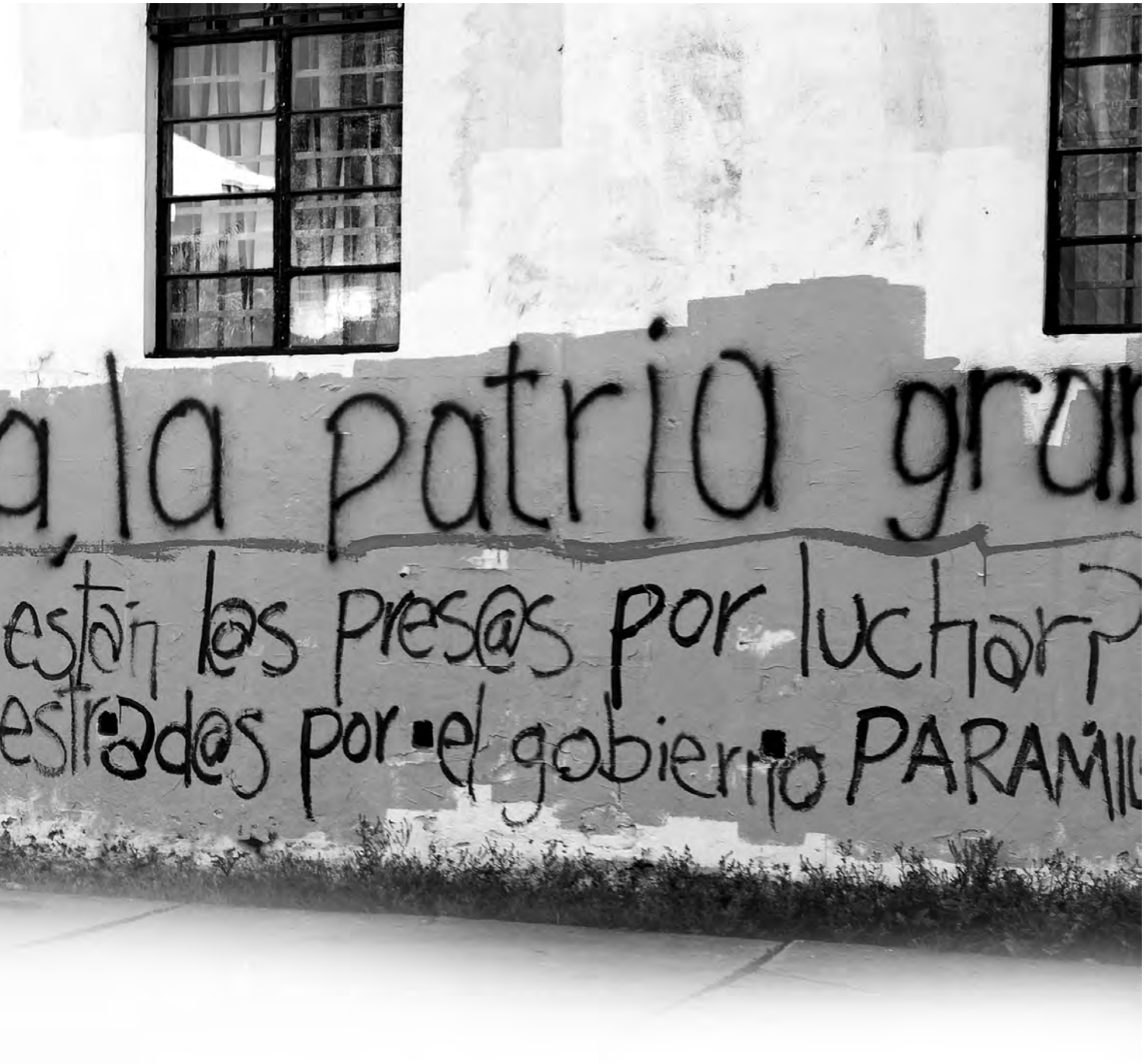
In any case, the ICC's conclusions about the 'false positives' scandal raise many questions about the Colombian military, and, more importantly, about its US patron. Thus, the high water mark for the 'false positives' (2004 to 2008) also corresponds with the time in which the US was providing the highest level of military aid to Colombia. This appears to be more than a coincidence.

The ICC describes the 'false positives' phenomenon as follows:

'State actors, in particular members of the Colombian army, have also allegedly deliberately killed thousands of civilians to bolster success rates in the context of the internal armed conflict and to obtain monetary profit from the State's funds. Executed civilians were reported as guerillas killed in combat after alterations of the crime scene…. The available information indicates that these killings were carried out by members of the armed forces, at times operating jointly with paramilitaries and civilians, as a part of an attack directed against civilians in different parts of Colombia. Killings were in some cases preceded by arbitrary detentions, torture and other forms of ill-treatment.'

The ICC concluded that these killings were systemic, approved by the highest ranks of the Colombian military, and that they therefore constituted 'State policy.'

The killings – which the ICC characterised as both 'murder' and 'forced disappearances' – were not random, but rather, as the ICC concluded, were directed at 'particular categories of civilians,' including 'marginalised' individuals from remote areas, such as unemployed persons, indigents and drug addicts; political, social and community activists; indigenous persons, minors, peasants and persons with disabilities. Moreover, the regions most affected by these killings, in descending order were Antioquia, Meta, Hila



and Norte de Santander. As the ICC noted, the 'false positive' victims many times ended up in mass graves.

The ICC, relying upon the findings of the UN Special Rapporteur, found a peculiar fact – that the 'false positives,' though occurring with varying frequency back to the 1980s, began to peak when the threat of the guerillas themselves were actually decreasing in the early 2000s. As the ICC, quoting the UN Special Rapporteur, explains:

'As security in Colombia began to improve from 2002, and as guerillas retreated from populated areas, some military units found it more difficult to engage in combat. In such areas, some units were motivated to falsify combat kills. In other areas, the guerillas were perceived by soldiers to be particularly dangerous and soldiers were reluctant to engage them in combat. It was "easier" to murder civilians. In still other areas, there are links between the military and drug traffickers and other organised criminal groups. Local military units do not want to engage in combat with the illegal groups with which they are cooperating, so killing civilians falsely alleged to be part of these groups make military units appear to be taking action.'

One thinking about US policy toward Colombia should be greatly concerned by these details. First of all, it is apparent that during the period that the US was providing Colombia with the greatest amount of military assistance under Plan Colombia from 2000 to 2009, the Colombian military was engaged in its worst crimes and quite unnecessarily so, at least if the stated goal of eradicating drugs was indeed the real goal. Thus, the Colombian military was knowingly killing civilians in lieu of killing guerillas while also taking a hands-off policy towards drug traffickers and other organised criminal groups because the military was actually working with these groups.

As the ICC explained, an example of the organised criminal groups which the Colombian military has been closely working with are the right-wing paramilitaries which, as the ICC explained, 'assisted the Colombian military in their fight against the FARC and ELN guerillas' by attacking, not the guerillas themselves, but the civilian population – for example, through 'mass killings of civilians; selective assassination of social leaders, trade unionists, human rights defenders, judicial officers, and journalists; acts of torture, harassment, and intimidation; and actions aimed at forcing the displacement of entire communities.' And, in terms of the displacement, the ICC concluded that this took place in 'resource-rich regions of Colombia.'

One does not have to ponder the 'false positive' scandal or the military-paramilitary assault on civilians to conclude the obvious – that the war of the Colombian State, backed by the US, is targeted at least as much, if not more, against the civilian population, as it is against >>>

>>> guerillas and drug traffickers. Certainly, it appears to be the case that the Colombian military, in engaging in its 'false positives' campaign, did so in order to justify continued aid from the US by showing the US results in the form of claimed dead combatants. However, I believe that this 'body count mentality' explanation is not the complete explanation, for it can't in my view explain the need for the military to have tortured the 'false positive' victims first as the ICC found they did in many instances. I would posit that at least one major reason for such a policy is to terrorise the civilian population into submission and to retreat from their land – especially 'resource-rich' land as the ICC concluded. This policy is working, at least as judged from the results, with Colombia now being the country with the largest internally displaced population in the world at over 5 million.

And, in addition to the oil, coal, gold and other important minerals being extracted in Colombia by multi-national concerns, a critical resource which is now growing exponentially in Colombia is African palm, the oil from which is used for biodiesel. As we learn from Gary Leech in his wonderful article, The Oil Palm Industry: A Blight on Afro-Colombia, palm oil production in Colombia grew by 70 per cent between 2001 and 2006 – that is, in the initial years of Plan Colombia and at roughly the same time the military was targeting civilians for assassination with greatest frequency. In addition, the just-passed Colombia Free Trade Agreement is encouraging the growth of palm oil as well. Moreover, three of the four departments most affected by the 'false positive' scandal (Antioquia, Meta, and Norte de Santander) are palm growing regions, Meta and Norte de Santander being two of the major regions for this crop.

Olivia Gilmore, in an article entitled Fueling Conflict in Colombia: Land Rights and the political ecology of oil palm, explains the grim reality that:

'Poor indigenous and Afro-Colombian communities have been disproportionately affected by this phenomenon, as they often are less likely to have formal land titles or access to legal avenues through which to address their grievances. Individuals and communities are forced off of their land by large, multinational palm oil corporations, paramilitaries, or often a collaborative effort of the two. Armed incursions, murders, and massacres related to palm oil interests have become the norm in all of the major palm oil complexes throughout the country. The central Colombian government, with support from the United States Agency for International Development (USAID), actively promotes palm oil expansion as a crop substitution for coca, to meet the demands of a growing and lucrative bio-fuel market, and to promote economic development at both the local and national levels. As such, palm cultivation in Colombia has increased dramatically in recent years, making it the fastest growing agricultural sector in Colombia and the fifth-largest producer in the world.'

Since the rise of palm oil production in the early 2000's, nearly all areas of expansion of

Restorative justice in Central America

by Mike Phipps

It became customary a few years ago to end a protracted period of civil conflict with a truth and reconciliation commission, most famously in South Africa – but also in a score of other countries. Some of these were in Central America, a small region of the world, but currently its most violent.

Two countries had prolonged civil conflicts followed by truth commissions. The one in El Salvador was established by the United Nations (UN) and received thousands of submissions on behalf of victims. Five days after it issued its report in 1993, the Salvadoran parliament approved an amnesty law covering all the violent events of the war.

In Guatemala, where an estimated 200,000 people lost their lives in the long civil war, there was a lot more work. Tens of thousands of submissions and years of documentation and analysis produced a stark conclusion: indigenous Mayan people accounted for 83 per cent of the victims, and 93 per cent of the atrocities committed during the conflict had been the work of the armed forces.

So much for truth. Reconciliation is more elusive, justice even more so. But it is this quest for justice that has begun to be a little more fruitful in recent months.

On 28th January 2012, a Guatemalan judge ruled that General Rios Montt, the US-backed dictator who ruled the country in 1982 and 1983, should face charges of genocide for the scorched earth policy he operated. The charges identify him as the intellectual author of crimes carried out in the Ixil Triangle in the El Quiché department. These include the forced displacement of 29,000 people, the deaths of 1,771 individuals in 11 massacres, as well as acts of torture and 1,485 acts of sexual violence against women. The case has major implications for Guatemala's new president, Otto Pérez Molina, who was a military commander in the Ixil Triangle where the genocide was carried out.

The war of the Guatemalan State against its citizens lasted 36 years. Some 200,000 people were killed and a further 45,000 'disappeared' in this period. It peaked in the early 1980s and involved acts of unbelievable cruelty. One documented case was a massacre of over 200 villagers by government soldiers in the village of Las Dos Erres in 1982. According to the US-based Human Rights Watch, the abuses included 'burying some alive in the village well, killing infants by slamming their heads against walls, keeping young women alive to be raped over the course of three days.' In March 2012, a Guatemalan court sentenced former soldier Pedro Pimentel Rios to a symbolic sentence of 6,060 years in prison. He was the fifth person to be convicted of this massacre.

This was not an isolated incident, but one of over 400 massacres that were documented. In 2004, the Government of Guatemala admitted to the Inter American Court of Human Rights that the Rios Montt regime had practiced a strategy of genocide. Now the old amnesties are being swept aside and those at the top are going to face charges.

The role of the USA in all this is worth mentioning. Human Rights Watch went so far as to say that 'the Reagan Administration shares in the responsibility for the gross abuses of human rights practised by the Government of Guatemala.' The CIA worked inside the Guatemalan army at this time, operating torture centres and helping to run a unit responsible for thousands of killings.

Guatemalan military officers were trained at the notorious US-run School of the Americas in Panama, which relocated to Fort Benning in Georgia in 1984. Manuals used in the training of officers contain instructions in motivation by fear, bounties for enemy dead, false imprisonment, torture, execution, and kidnapping a target's family members. The Pentagon eventually admitted that these manuals were a 'mistake'.

The School has graduated over 500 of the worst human rights abusers in the western hemisphere. One of them, a former Guatemalan Defence Minister, gave an address to the school just two years after a US court ruled he was responsible for the gang rape of an American nun as part of his 'anti-terrorist' operations in Guatemala. In El Salvador, 10 out of the 12 army officers cited in a UN report as responsible for a 1981 village massacre of over 200 people, the majority children, were graduates of the school. The same was true of the officer responsible for the rape and murder of three American nuns and a lay missionary a year earlier.

El Salvador's dark past is also being revisited. The country's Foreign Minister recently issued an apology for the El Mozote massacre 30 years ago. This was perpetrated by the US-trained Atlacatl Battalion of the Salvadoran army, who rounded up the over 1,000 villagers and systematically tortured, raped and murdered them, before setting fire to all the buildings. Girls as young as 10 were raped and children had their throats slit and were hanged from the trees.

The Reagan administration dismissed the reports as 'gross exaggerations' and the actions of the Battalion were described in the US Senate at the time as 'commendable' and 'professional'. To this day, the US has never apologised for its role in the affair.

Human rights have rarely been a consideration for the US in this region of the

palm plantations have coincided geographically with paramilitary areas of expansion and presence. Much like coca's role in funding guerillas and paramilitaries, the costs involved in the production process of palm oil make growers an easy target for armed groups. There have been numerous allegations of palm oil companies meeting with paramilitaries in order to arrange the violent displacement and illegal appropriation of people's lands. Earlier in 2012, the office of Colombia's Prosecutor General charged 19 palm oil businesses of allying with paramilitaries after investigations linked the economies of palm oil and funding to such groups. While some farmers have been able to escape from the violence and coercion of guerilla groups by switching to crops other than coca, the link between palm oil and the funding of violent conflict still exists. So strong is this correlation that a study conducted by the Universidad de los Andes argues that a legal product such as palm oil has an equal capacity to finance armed groups as similarly lucrative illegal products.

In the end, the civilian population of Colombia, particularly in the countryside, is viewed as the enemy by both the Colombian State and the US which continues to back that State. While the violence takes different forms, and is fueled by various material incentives, the result is the same over these many years – the destruction of the peasantry, including the Afro-Colombian and Indigenous populations, which are inconveniently living on land designated for multi-national exploitation and expropriation. Colombia, with one of the worst distributions of wealth and land in the world, with its multiple free trade agreements, and with its over-bloated military aid from the US, is a quintessential example of unrestrained capitalism and neo-colonialism.

As Noam Chomsky has often commented, the foregoing is a function of the maxim of Thucydides that 'the strong do as they wish while the weak suffer as they must.' And, this maxim also explains why the ICC, which has yet to prosecute anyone in Colombia for these high crimes, will certainly never prosecute the top intellectual authors of these crimes residing in the United States. Indeed, in the ICC's 93-page report, the United States which has funded these crimes for years is not mentioned even once.

Since this article was written, an oil worker from the USO union, Milton Enrique Rivas Parra, was murdered in the municipality of Puerto Gaitán, Meta Department. In addition, Afro-Colombian leader Miller Angulo Rivera, a member of the Association of Internally Displaced Afro-Colombians (AFRODES), was murdered in the city of Tumaco, Colombia. These murders are emblematic of the violence directed against the civilian population, and in particular, against civil society leaders.

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A US Army armed patrol drives at speed through Baghdad, Iraq. Next stop Honduras?

Picture: Jess Hurd / reportdigital.co.uk

world. It is now acknowledged that hideous medical experiments were carried out by US officials on Guatemalan citizens in the 1940s – including the deliberate infection of individuals with the syphilis bacteria. President Obama has apologised but a test case brought to the US district courts on behalf of seven of those subjected to the experiment was recently dismissed. No justice on that occasion.

Nor is there much likelihood of Nicaraguans getting any compensation from the US Administration for the long campaign of destabilisation it waged against them in the 1980s, including funding and training armed terrorists – the contras, described by President Reagan at the time as the 'moral equivalent of our founding fathers'. Their activities included targeting health care clinics and workers for assassination; kidnapping, torturing and executing civilians, including children; raping women and seizing and burning civilian property.

In a 1986 judgment, the International Court of Justice at The Hague ruled that the US had violated international law by supporting the contras and by mining Nicaragua's harbours. The US blocked enforcement of the court's judgment at the UN Security Council and thus prevented Nicaragua from obtaining any compensation. To this day, the US continues to ignore the ruling and has never paid Nicaragua a penny in damages.

The 'Uncle Sam's backyard' mentality continues today. In June 2009, a military coup overthrew the popular Zelaya government in Honduras. All Honduran army officers from the rank of captain upward trained at the aforementioned School of the Americas, now renamed the Western Hemisphere Institute for Security Cooperation.

The Obama administration pushed for fresh elections, which duly took place under a state of emergency, without the participation of the ousted president, and were subject to widespread fraud and intimidation. Both presidential contenders in the fraudulent election backed the coup. Zelaya's supporters called for a boycott and hundreds of candidates for congress and local councils withdrew their names and shunned the elections.

Some 800 US personnel oversaw the poll, however, and were quick to proclaim its legitimacy. The Obama administration hailed the poll as a 'very important step forward for Honduras', despite 23 Latin American and Caribbean nations of the Rio Group refusing to recognise the election and Amnesty International proclaiming a 'human rights crisis' in Honduras. Abstentions were at a record high and there was evidence of government employees being ordered to vote and some residents being herded to the polls at gunpoint. Time magazine headlined its coverage 'Obama's Latin American Policy Looks Like Bush's'.

Yet while activists are shot down in broad daylight, the Obama administration appears to side with the death squads. 'Now it's time for the hemisphere as a whole to move forward and welcome Honduras back into the inter-American community,' US Secretary of State Hillary Clinton said in June 2010. Within days, the US resumed military aid to the Honduran regime. Since then, the situation has only worsened.

In March 2012, 94 members of the US House of Representatives sent a letter to Secretary of State Hillary Clinton asking her 'to suspend US assistance to the Honduran military and police given the credible allegations of widespread, serious violations of human rights attributed to the security forces'. The Obama administration, meanwhile, asked for increased military aid for Honduras for 2012.

Just how this 'aid' might be spent was underlined by a report in May 2012 from the Honduran human rights group, COFADEH. It reported that agents of the US Drug Enforcement Agency (DEA), dressed in military uniforms, killed at least four and possibly six civilians in a raid which took place on 11th May 2012. The victims included two pregnant women and two children. One of the victims leaves behind six orphans. Apparently, the DEA agents fired from helicopter gunships upon a riverboat carrying civilians in the Mosquito Coast area of Honduras.

An article in the *New York Times* in May 2012 headlined 'Lessons of Iraq Help US Fight a Drug War in Honduras' explores the link between the wars of George W Bush and Obama's tactics in Central America. The experiences of Iraq – specifically the need for flexible forward bases, multi-disciplinary missions, involving advisors, CIA 'kill teams', mercenaries and local troops – all are being reintroduced into Honduras.

There is one more detail connecting Iraq to Honduras. Significant oil reserves have been discovered in the Mosquito Coast region. The Texas based Honduras Tejas Oil and Gas Company, which is seeking to exploit the region, estimate that there are six to eight billion barrels of oil reserves there. And for that exploitation to begin, the country needs to be made safe for US investment.

Mike Phipps lived in Nicaragua in the 1980s while researching his doctorate. He maintains an interest in the region, is on the editorial board of *Labour Briefing* and is co-editor of the fortnightly e-newsletter of Iraq Occupation Focus.

GIMME SHELTER

The view from the Advisory Service for Squatters

Four months into the new law against squatting in residential properties, and it's that time of year when we normally get more desperate calls, and more people wanting to help out those on the streets, so what do we do?

Section 144 Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 came into force on 1st September 2012. The intention, according to its supporters was to stop peoples' homes being 'invaded'. The evidence that such things took place came from the pages of *The Evening Standard* and *The Daily Mail*. On closer inspection these were not people's actual homes, and they were not 'invaded' – a term most often used when referring to Eastern European families. Laws already existed to stop anyone squatting in somebody's home, and the fact that the Government is now talking about closing the 'loophole' that excluded non-residential properties from the law, shows that their interests lie elsewhere.

For Mike Wetherley MP, one of the proud architects of the new law, the issue is that squatters 'are all anti-capitalists. They have to be stopped.'

In the experience of the Advisory Service for Squatters and others squatters range from the desperate to the politically committed, and most are a bit of both. Most squatters in London are unable to afford extortionate private rents, even if they can come up with a deposit, and are not eligible for social housing or have been unable to access it. Some have found that the insecurity of private renting made squatting seem less scary.

The overnight criminalisation on 1st September 2012 took many people by surprise. The first person known to be jailed under the law, Alex Haigh, certainly didn't seem to have expected anything, and the landlords London & Quadrant Housing Association were already going through the normal court proceedings. Alex, a young bricklayer who had come to London looking for work was given an incredible 12 week custodial sentence. Like many vulnerable people, most squatters are not aware of what legal advice they can access and work on hearsay ideas of their rights.

Since the law came into force there seem to have been few occasions when police have taken it upon themselves to raid properties. They have generally waited for a complaint, but have then often acted on complaints without regard to their validity. The complexities of the new law such regarding licencees holding over, and practicalities such as whether the complainant or anyone else has a right to allege trespass, tend to be ignored.

There have been reports of sub-tenants being arrested and evicted but no confirmation has been received. The people affected by section 144 of LASPO are often vulnerable and unable or unwilling to access help, and are in any event busy finding themselves somewhere to live and getting on with their lives. The events have often happened at times when it would have been difficult to get advice. Those who do want to challenge what has happened to them often drift away when having to deal with delays and bureaucracy.

Some police, and in some cases council officers, have tried to find owners to make

Picture: Jess Hurd / reportdigital.co.uk

complaints and have made threats against people who have had a licence.

The police have used the new law to threaten occupiers with arrest unless they leave in order to re-secure property. In some cases people have been arrested and released without charge a few hours later while the property had been re-secured or given into the possession of those claiming to be the owner. We have seen very few charges being brought. This suggests that the police are using the law in a similar way to how accusations of 'criminal damage', 'abstraction of electricity' and 'burglary' are used as reasons to evict with the threat of actual arrest but with no intention to pursue charges.

When it comes to the residential/ non-residential divide most police have acted in a common-sense manner, while the rules themselves are vague and open to doubts. The Advisory Service for Squatters has remodelled its legal warning for non-residential properties only, with a special one for pubs. Understandably there has been an increase in non-residential squatting, but many people were already squatting in non-residential properties and a lot of long-term residential squats seem to be holding on.

In general the Advisory Service for Squatters is trying to get people ready to argue that the new law does not cover their circumstances; how the property isn't residential, how they have or have had a licence, how they are not living or intending to live in the property. There are a few test cases and there is advice from various sources, but pulling it all together is still slightly out of our reach.

There have been discussions with barristers about potential human rights and other technical challenges. However, in this country so far, the use of Article 8 has generally been of limited use in trespass cases. In the Netherlands a law criminalising squatting has led to an acceptance by the courts that squatters' rights under Article 8 demand that there should at least be a warning and the possibility of a court hearing before eviction. In England and Wales it remains to be seen whether any human rights challenge can effectively be brought against the enforcement of section 144 of LASPO.

The Advisory Service for Squatters and the Squatters Legal Network will continue to work alongside squatters and vulnerably housed people, as well as solicitors who may find themselves representing those charged under the new law.

The **Advisory Service for Squatters** have been advising squatters and other homeless and precariously housed people since 1974. They have an office staffed by volunteers every weekday and produce the *Squatters Handbook*.

The **Squatters Legal Network** is a new organisation running an emergency phone line and supporting people under threat from or arrested under section 144 of LASPO 2012. They are keen to hear of cases involving the new law and are open to queries and suggestions.

Both organisations are planning to host a workshop to bring together practitioners to discuss how to help give people more security and rights. If you are interested please get in touch through advice@squatter.org.uk and sln@aktivix.org.

Graffiti artist Banksy paints a mural in Chiapas while on an Easton Cowboys football tour.

More than a football club

Freedom Through Football: The Story of the Easton Cowboys and Cowgirls
by Will Simpson and Malcolm McMahon – Tangent Books

Football is perceived as the people's game. A game that brings people together for sport, exercise, comradeship, and entertainment. Sometimes it is hard to remember that's the case.

At the time of writing this review Manchester City fans only a few weeks ago had baulked at paying £62 for a ticket at the Emirates stadium, the modern day home of Arsenal. The fans factored in travel to London, a few beers, maybe a bite to eat, and quite rightly thought it was too much. Even before this many supporters, particularly those who follow a Premier League or even a Championship team, have been financially excluded from attending matches for many years.

When Carlos Tevez was suspended and fined by his own club, he lost a staggering £200,000 per week. Even within the Premier League, the richest clubs have excluded others from the on-field battle for major honours. More than that, many working class supporters have been excluded from the stands.

Stanley Matthews made the point: 'How many ordinary working people can afford to take their family to a football match these days? Too many clubs having worked hard to rid their stadiums of racism and bigotry are now simply practicing economic bigotry'.

It is therefore very refreshing to read a book about the fun, and the comradeship that can be derived from football.

Freedom Through Football tells the story of a football team in the working class area of Easton in Bristol. It tells of how just over 20 years ago a group of anarchists, socialists, and various waifs and strays got together for a kick around every week. During the course of the weekly friendly match and after a meeting in a pub they decided to form a football team and enter the local league. That in itself would make some kind of story, particularly if they went on to have success on and off the pitch.

However, as this book illustrates, the Easton Cowboys FC is a little more adventurous than that. While they competed week in, week out in the local Sunday league with enthusiasm, the book tells an even more inspirational story. This political football club initially toured to Germany and other parts of Europe. They then organised their own international tournament in Bristol before putting on an 'alternative World Cup' with teams from among other places South Africa.

The club even turned itself into an anti-fascist campaigning organisation and helped inspire clubs in the same vein across Europe. On top of that they even stopped the deportation of young asylum seekers in their early days – not bad for a football club.

Most inspiring of all were trips to Mexico, or more specifically Chiapas, to play football against teams representing the Zapatistas. The book outlines their international football trips to Morocco, Palestine, and Brazil among other destinations as a mark of solidarity and a simpler love of the game. Combining football with politics.

Over a 20 year period the Easton Cowboys have also given birth to a women's football team (the Cowgirls), a rugby league team, and a basketball team. In a surreal moment in the club's history their cricket team toured South Central Los Angeles playing against the Compton Homies & Popz.

The story is a rollercoaster of laughs, fun, inspired campaigns but most of all comradeship. There is no doubt that they have brought some truth to football being the people's game.

FC Barcelona has a motto – *'Més que un club'* – meaning 'more than a club'. I am sure that could easily be the motto of this football club from Bristol.

Paul Heron

Paying twice for drugs

Fire In The Blood
directed by Dylan Mohan Gray
Dartmouth Films (2012)

This excellent documentary plots the story of how the multinational pharmaceutical industry denied essential medication to tens of millions of people in the developing world affected by HIV and Aids. *Fire In The Blood* is a story of unfathomable cruelty and neglect as Western neoliberal governments did the bidding of the powerful pharmaceutical industry. By effectively blockading low cost Aids drugs to the developing world it is estimated that ten million people died. In pursuit of profit, lives and communities were destroyed.

The film explores why the system governing the development and commercialisation of medicine is deeply flawed and discriminates against those who cannot afford to pay. It shows how very few patents are new, novel, or improved, and how patent monopolies have been established to maximise profiteering.

As the film points out even people in the west, particularly in the USA, are also being 'priced out' of the market. As a result of the neoliberal agenda, western governments are now considered the 'bag carriers' to the pharmaceutical industry as they pursue bigger profits for their shareholders.

The film explains how treaties are used to prevent affordable generic drugs, particularly from India, reaching the developing world. In the field of 'research and development', globally governments and other public sources provide 84 per cent of funding; only 12 per cent of such research is funded by the pharmaceutical industry. Only 1.3 per cent of the profits of the multinationals go into new drug discovery research. As the former CEO of Pfizer comments in the film, people pay for the drugs twice – once through taxes and then to the pharmaceutical industry.

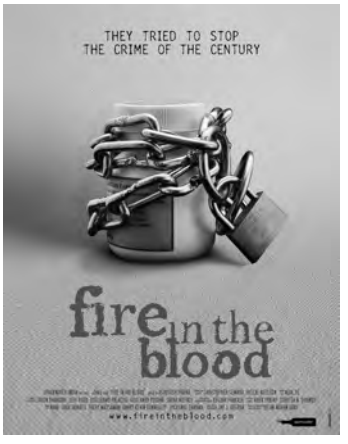
The statistics are damning. As a human story *Fire In The Blood* shows the devastating impact on lives, how millions died, and how working class and the poorest African communities were disproportionately impacted.

This documentary also tells you about the fight back being galvanised by the medical profession, lawyers, but above all the working class, and how a combination of mass campaigns, and even breaking the law, won a campaign for affordable generic 'first-line' antiretrovirals (ARVs).

However, the film also carries a warning. Millions of people with HIV/Aids in the developing world, whose lives were saved by these first-line ARVs will at some point need to switch to the more complex second and third line ARVs. Not surprisingly these are not available in generic form and the multinationals recently took steps under new trade agreements – under the auspices of the World Trade Organisation – to ensure that the next battle will not be lost by them so easily to allow cheaper generic drugs.

This is a film that fills the viewer with a feeling of betrayal by governments in the pocket of big business and shows the desperate need for socialised medicine, with health systems nationalised and under democratic control.

Paul Heron



Clear-eyed vision pro-migrants

Borderline Justice – The Fight for Refugee and Migrant Rights
By Frances Webber
Pluto Press
ISBN: 9780745331638

Immigration has for so long been captured by the cynical myth-making of the right that any call for a world of 'no borders' faces summary dismissal as utopian and detached from public opinion. Even more cautious manifestos for a freer and more humane regime are today cast well outside the political mainstream.

But a progressive vision, backed up by common sense and reasoned analysis, still exists among a group of immigration lawyers who have, since the 1970s, waged an ever more ingenious 'war of position' against the bewildering rules, regulations and restrictions that make up the United Kingdom's immigration and asylum system.

Frances Webber, formerly a barrister, has for 30 years been part of that fight and tells its story in a book that serves as an unapologetic defence of universal values at a time of ever narrower conceptions of rights and community. It is also a very practical guide to the system's dysfunctions, how cases are won and lost, and why a clear commitment to the rights of others to seek economic opportunity or humanitarian protection in the rich world demands not just legal nous but political awareness.

Webber sketches the landmark cases that sought to expand the reach of international principles and, more recently, human rights into a field characterised by ever more regressive law-making. Some victories represented real advances in the scope of protection for refugees, including the recognition of gender-based persecution. Others were rearguard actions against the more egregious acts of the State, from the removal of social security from asylum seekers to the effective erosion of appeal rights and criminalisation of 'illegal entrants'.

The author is alive to the contradiction that each legal advance has been met by political reaction, for every step forward, very many pushes back, usually in the form of immigration statutes that are so much more difficult to challenge. 'The floor of human rights protection became an ever lower ceiling,' she writes. 'The harsher climate for refused asylum seekers, undocumented migrants and ex-offenders post 2000 encouraged the right and tabloid press to raise demands for even more enforcement.'

She also stresses the lawyer's role in 'bringing the community into the courtroom' – literally, through the presence of the appellant's friends and family when so often our tribunals operate in a social vacuum and through advocacy, by putting 'the reality of clients' lives into focus to judges inevitably insulated by their position of privilege and under political, bureaucratic and time pressure to see cases as purely intellectual exercises'.

The ethical and economic arguments that underlie a challenge to our fortress-states have in fact never been more compelling; not the right-wing libertarian view that sees free movement of labour as the desirable concomitant to free movement of capital, but a socialist one which stresses each individual as more than a unit of labour, as a citizen protected by certain fundamental rights, as part of a community with whom free movement and association would not lead to the chaos and conflict of tabloid imagination, but rather to more prosperity, greater communication and interchange, more balanced demographics and material expansion.

The previous generation of radical lawyers has been accustomed to grounding its critique of the law explicitly in terms of race and class. Webber more than once approvingly quotes A Sivanandan – 'We are here because you are there' – and never loses sight of dynamics of power.

The regimes governing both economic migration and humanitarian protection, in different though connected ways, are a product of interests, prejudices and fears that run deep in British politics. We are now encouraged to see immigration as a question of management and technocracy – from 'common sense' quotas and rules for economic migrants to an effective restriction on refugee claims on grounds of realism and cost.

We are told we do not have the money or the space or the empathy to open the door to migrants, whatever their motivation. The danger is that even progressive lawyers fall into this reductive way of framing the debate, inside and outside the courtroom. Webber's clear-eyed, pragmatic but always idealistic book is a firm reminder of the arguments we still need to ensure are made and heard.

Taimour Lay

Positive film of uncovered negatives

The Mexican Suitcase
Director: Trisha Ziff
212 Berlin & Mallerich Films Paco Poch (2011)

On 12th April 1931, municipal elections were held across Spain in which the Republicans gained a landside victory. Two days later, the Spanish Republic was born and King Alfonso XIII fled Spain into exile. The progressive Republican constitution was promulgated on 9th December 1931. Article 1 defined Spain as 'a democratic Republic of workers of all classes, which organises itself through the principles of liberty and justice.' Workers were entitled to the minimum wage, the constitution protected freedom of association, thought, conscience and religion. It provided for the nationalisation of land, banks, services and the railways. Additionally, the constitution recognised women's rights and stated that marriage was founded upon the equality of sexes. Women over the age of 23 were given the right to vote and illegitimate children were given the same rights as those born in wedlock.

Needless to say, the Republican Government was unpopular with both the Catholic Church and the army. After five tumultuous years in power, civil war broke out in 1936 following a failed coup.

Over 30,000 volunteers from across the globe, appalled at the way that the army were trying to usurp a democratically elected government, joined the International Brigades to fight against the rise of fascism in Spain. Many from the British left went to Spain to join the Republican cause including Jack Jones, who subsequently went on to become the General Secretary of the

Transport and General Workers Union and George Orwell, whose book, *Homage to Catalonia* highlighted the damage that a fractured left can do to itself.

Despite the support from ordinary people, most governments left the Republicans to their fate. It was only the Soviet Union and Mexico who supplied the Republican Government with arms to fight off its former soldiers.

The Civil War ended in 1939 when General Franco's army finally defeated the Republicans. An estimated half a million people died and over 400,000 fled into exile. Many crossed the Pyrenees into France. Nevertheless, France had its own problems. It was still suffering from the economic crisis that had engulfed Europe throughout the 1930s and was about to be invaded on its Eastern front by other fascist forces. With little resources to assist, the French placed many of the Spanish refugees in concentration camps. Many, having fought against the fascists for three years, were finally defeated by the cold or starvation. Others went back to Spain, some to be tortured or executed, others to restart their lives under a regime that they had previously fought against.

Between 15,000 and 20,000 Republican refugees took up the offer of Mexico's President at the time, Lazaro Cardenas, of refuge in Mexico. At that time in Mexico agrarian and social reform were accompanied by political debate and a flourishing artistic and cultural scene and the Spanish refugees were welcomed with open arms. Mexico hosted the Spanish Republican Government in exile until after Franco's death.

Franco's regime lasted from the end of the Civil War in 1939 until his death in 1975. In 1977, an Amnesty Law was passed that prohibited the prosecution of members of Franco's Government for crimes committed during the Civil War and the regime that followed. This law was heavily criticised by the UN Human Rights Committee in 2008 and it caused outrage when Judge

Ziff's film might eventually encourage the Spanish Government to acknowledge the crimes that were committed during the Civil War.

Baltasar Garzón was charged with breaching the Amnesty Law after he announced that he would investigate around 114,000 forced disappearances between 1936 and 1951. It is no wonder that it is still common for younger generations in Spain not to know much about the Civil War, despite many having living relatives who had lived through it.

The story of *The Mexican Suitcase* is perhaps an analogy for the Spanish Civil War. The documentary follows the history of the Spanish Civil War through the photographs taken by Robert Capa, Gerda Taro and David Seymour, known as Chim. The three photojournalists went to Spain to report on the war as it happened from the Republican side. Capa became famous for the photograph of the 'Falling Soldier' taken in 1936 during the war and went on to send photos from the Second World War and beyond.

Gerda Taro was Capa's partner. The documentary casts her as a daring if not crazy photographer who ran across the battle while people were shooting in order to get a better picture. This type of war photography had been unheard of until that time. Taro died on 26th July 1937 from wounds after a tank reversed into her. Her photos for a long time were attributed to Capa despite their difference in style.

The negatives were sent back to Paris, where the three photographers were based at the time. The negatives left Paris with Capa's assistant in 1939 when the threat of the German invasion was looming but after this the photographs disappeared. Capa's brother spent years trying to find the negatives until they were uncovered in a suitcase in Mexico City in 2007. The negatives reveal the harrowing story of the Spanish Civil War from: the front; the murder of children; the flight of Republican refugees across the Pyrenees into France; and the concentration camps that were set up to host those refugees who made it.

The documentary presupposes some background knowledge of the Civil War. It takes the audience straight into the midst of battle with little explanation as to how the war started and what happened during the war itself. Nor does it give much information about the photographers themselves outside of their stint in Spain. Nevertheless, the stories told of exile in Mexico and the return to Spain by some of the subjects of those photographs, some 70 years after the images were taken, make the documentary very moving.

Perhaps the story of *The Mexican Suitcase* will eventually encourage the Spanish Government to acknowledge the crimes that were committed during the Civil War. As one of those who were photographed said: 'si olvidas tus fracasos, seguramente volveras a fracasar en lo mismo. No puedes forjar tu futuro sin memoria' – 'If you forget your failures, you will most likely fail again like you did before. That means you cannot build a future without your memories'.

Siobhán Lloyd

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