# Socialist Lawyer

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# Hillsborough and Orgreave

by **Michael Mansfield QC**
and **Henrietta Hill QC**

## Haldane Society of Socialist Lawyers

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**www.haldane.org**

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.



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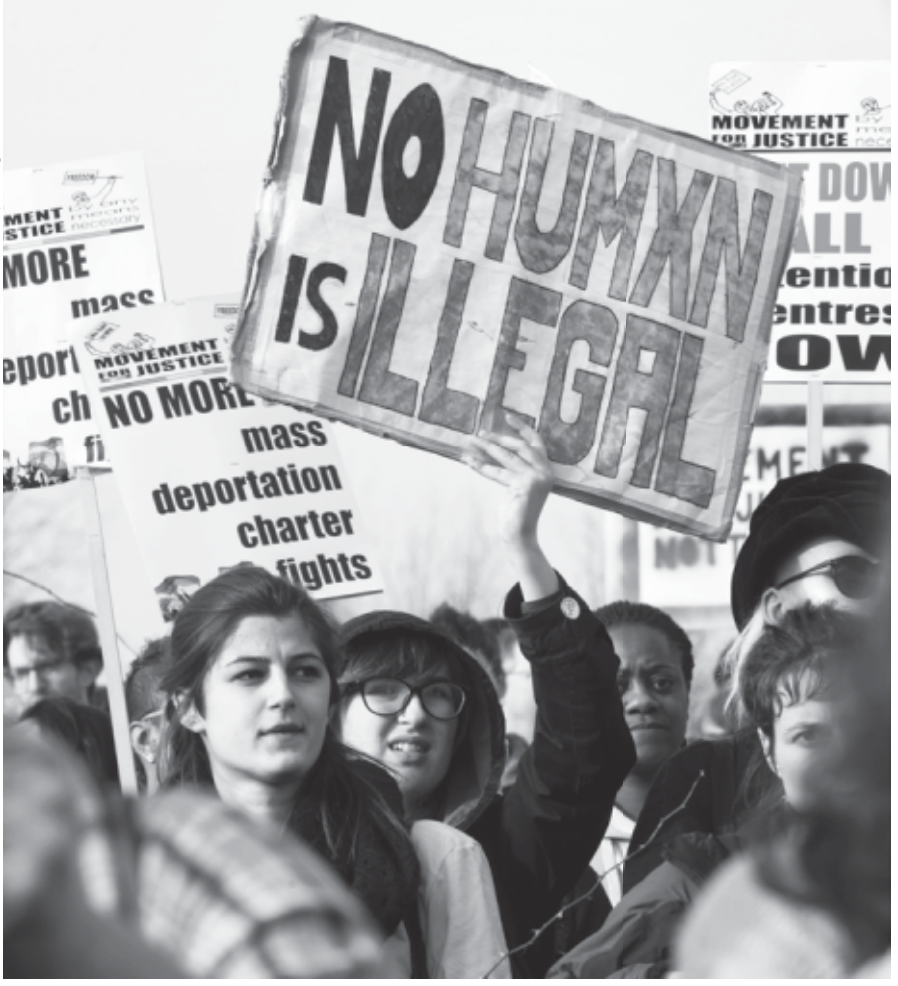



Picture: Jess Hurd / reportdigital.co.uk

# Number 73, June 2016

# The state of justice

Karl Marx was once summonsed to court for inciting the people to refuse to pay taxes. Marx told the jury that, because the 1848 revolutions had changed the social relations upon which laws are based and made the incumbent government obsolete, it was not he who had broken any laws but the government that had violated the rights promised in the imminent constitution. 'The effect on the jury was so great', according to historian Edmund Wilson, 'that Marx was thanked on their behalf by the foreman for his "extremely informative" speech'.

Today's socialist lawyers could hardly hope to outdo that, but there are echoes of Marx's speech in so many of the issues in which lawyers are currently involved. This edition of the magazine illustrates some of the ways in which progressive lawyers are exposing and challenging state biases and injustice.

Governments still fail to understand and reflect social relations, and in legislating they load the dice. Sarah Ricca points out the state's persistent failure to address violence against women and girls in any meaningful way, and the highlights the immunity that the state enjoys when it acts negligently. Stephen Knight argues the socialist case against Brexit, pointing out UK governments' failure to protect workers and migrants of its own volition. Carlos Orjuela and Amy Murtagh expose the horrifying impact of states' inability – or unwillingness – to help Europe's migrants.

But worse than its tendency to pass one-sided laws is the state's active role in perpetrating injustices. In this edition Michael Mansfield QC reflects on the Hillsborough disaster and on the inquest that, so long after the event, confirmed the truth. Henrietta Hill QC follows with a discussion of Orgreave and calls for an inquiry to bring the state to account. Melanie Strickland – one of the Heathrow 13 – describes how she was targeted by the state for taking action in support of a crucial cause. Ciaran Mulholland outlines the prejudiced and oppressive way in which the state achieved the convictions for murder for two men in Northern Ireland.

Of course, these issues are troubling. But this edition is designed to celebrate the role of lawyers in counteracting systemic injustices. There is a great deal that dedicated, radical practitioners can achieve through their work.

This edition also features its usual accounts of the news, meetings, campaigns, lectures and events that the Haldane Society has taken part in since we last went to press, as well as book reviews and reports from around the world. As ever, I hope you find it 'extremely informative'.

**Nick Bano**, editor

# From my 'diary of a Lesvos volunteer'

In January I travelled to Lesvos, Greece. At the time, during what was supposed to be a winter lull, thousands of people were still arriving on the island. I joined hundreds of other people who have been compelled to volunteer, stealing a couple of weeks away from my day job. Due to the EU-Turkey deal arrivals have completely ceased, so this report is a snapshot from a particular time.

Emerging from the night ferry from Athens to the port of Mytilene, Lesvos, I am hemmed in by the Turkish mainland. Mytilene faces the Turkish town of Izmir, where refugees wait until night to be crammed onto flimsy rubber boats, to make perhaps the most dangerous part of their journey to safety. The landmass seems only a stone's thow away, unbearably and treacherously close.

Wandering around the town near the port I see many refugees, waiting for the ferry to Athens. If lucky enough to arrive safely on the beaches or rocky shores of Lesvos, wet refugees are dragged off boats or out of the water, shivering and clutching their few belongings. Shaking with relief, fear or hypothermia, they are bundled into dry clothes by volunteers, hastily given sugary tea or wrapped in a foil blanket, and eventually moved to a camp to for registration.

Once registered, refugees can buy a ferry ticket to travel to mainland Greece for onward journies. The 'right kind' of refugees (Syrian, Afghan, Iraqi), are given papers allowing them to travel further into Europe. Watching the refugees milling around the port, tired, anxious and weary, clutching their bags feels strange and uncomfortable.

The volunteer infrastructure on Lesvos is immense. There are many NGOs, and a constant flow of volunteers. There is a mixed reception by the locals. Many volunteers want to work directly, meeting refugees off the boats, but there are countless different needs to be met on the island. The main transit and registration camp, Moria (an old detention centre) is chronically short of volunteers to provide support to its thousands of refugees. There are projects providing medical aid, meals, tea, sea rescue projects, donations warehouses, even a project to wash and recycle the endless wet and dirty clothing and bedding discarded on the island.

I heard about Pikpa during the 'Migrants and Borders' workshop with Natasha Tsangarides at Haldane's International Women's Conference. Pikpa is unlike other transit camps. Its volunteers are self-organised, and work along principles of solidarity. It offers unconditional support – that is, not in return for registration. Pikpa supports some of the most vulnerable refugees – sick and disabled people, vulnerable families, pregnant women. People so traumatised they just can't go any further for the time being. The camp is in an old holiday village, sheltered by trees, just a short walk away from the sea. It's a tranquil place, full of sadness yet also full of the love and generosity of its volunteers. Personally, I'm not desperately keen to jump in the water at 3am to meet boats: it feels voyeuristic to see someone at such a moment of extreme vulnerability. I decided to spend a few days compulsively sorting through a mountain of clothes in the warehouse.

I chatted with other volunteers at Pikpa. There are various projects which have grown from the needs on the island and the skills of the volunteers. A therapeutic garden, a kitchen preparing hundreds of meals that are sent over to feed the many frustrated, hungry mouths in Moria camp. An art project recycling used lifejackets that are washed up onto the shores. As we sit there pulling them apart, we reflect sombrely on the fact that

## January

**27:** The Danish Parliament passed legislation introducing a package of measures designed to discourage asylum seekers from coming to Denmark. Authorities were empowered to confiscate valuables of asylum seekers and extended the period of time before a refugee could apply for family reunification.

## February

**18:** After more than 30 years of the Courts applying the wrong interpretation of 'joint enterprise', the Supreme Court has clarified that foresight is evidence to infer intention to commit murder but not sufficient proof of guilt by itself. The case of Jogee has corrected the controversial law under which numerous defendants were convicted for murder despite not inflicting a fatal injury.

**21:** *The Observer* reported that it had received documents showing that the UK, together with Saudi Arabia, successfully influenced the UN Human Rights Council to water down UN criticism of Bahrain's ongoing human rights abuses. Saudi Arabia and Bahrain are major purchasers of British made weapons and military hardware.

**25:** Environmental activists, known as the Heathrow 13, protesting the possible expansion of Heathrow airport, were found guilty of aggravated trespass and entering a security-restricted area of an aerodrome in an unprecedented case. They received suspended sentences of six weeks.


they are all fake – stuffed with cheap polystyrene material which, far from keeping you afloat, actually makes you sink more quickly. Cynically pedalled for profit by the smugglers in Izmir.

I also spoke to some of the families staying in the camp. A sweet, warm and tragic family from Pakistan recounted their terrible journey, walking for days through snowy mountains, sleeping without shelter with their five-year-old daughter and elderly grandmother, who now both have pneumonia. Imprisoned by authorities, losing everything they had along the way. The little girl wearily does some colouring-in after passing through some of the most dangerous environments imaginable.

Slightly overwhelmed by the number of volunteers on Lesvos, I make a snap decision to travel to Chios island, which experiences similar numbers of arrivals, but has only a handful of volunteers. I buy a ticket back the other way, towards Athens, which stops at Chios. I embark with a handful of other volunteers, completely taken aback by the sea of thousands of refugees also boarding, heading to Athens. I have never seen anything like it, it feels apocalyptic. But, as I am coming to realise, this is normal. In contrast to the rest of the Greek economy, business is booming for the ferry operators.

Tensions are running high, people fight to get on first, security guards shouting and pushing them back. Due to torrential rain and high winds, the ferry can't leave the harbour for another 36 hours. Over the next day and a half, the refugees are crammed on the ferry, hot, hungry and in stasis. I pick my way across the deck, bodies strewn everywhere. Children are restlessly storming about, crying, screaming or sleeping. Shamefully, I and my fellow volunteers Europeans are allowed to luxuriate in an expansive, sanitised relaxed lounge area, off-limits to refugees. I'm sad to say I take advantage of it because on the other side it's heaving, noisy and it stinks.

On Chios I find my home in the 'boutique' – a clothes distribution hut in the registration centre, Tabakika. I arrive in the early hours of the morning, handing out dry clothes to wet refugees who have travelled through the night, avoiding Frontex. I wrap up many wet, shivering and ill children. One six-year-old girl's face was so distorted her eyes bulged out of her face. I have no idea what was wrong with her. She may have been lucky enough to see a medic but ultimately I imagine she will be bundled off to sleep in the camp, and will continue on her exhausting journey in a few days' time.

A baby passes out on the counter in front of me, overheated from all of the layers his mother so diligently wrapped him up in so he stayed warm on the crossing. Later he recovers a bit and grins deliriously, but happily. These children behave with no drama – this grotesque situation is normal to them. Later I read about the deaths of a four-year-old boy and his father, and a 40-year-old woman, due to hypothermia. I think back to all the fragile, shivering bodies that I dressed that day and sent on their way.

And so I spend the next the next week-and-a-half. A drop in the ocean, menial work but it feels good to do something purposeful instead of watching on from home, feeling powerless. I return home, feeling a little reassured that in the face of such an enormous catastrophe, you can do something, even if it's a tiny thing.

Then the borders close. Europe has had enough. Scenes of utter panic and devastation as refugees congested in their thousands at the border, blocked from continuing their journey. The EU-Turkey deal was hastily concocted – a rushed and desperate attempt to halt 'illegal' migration into Europe. For every refugee returned to Turkey, a Syrian refugee will be re-homed in Europe. Despite a cacophony of protestations over the lawfulness and safety of returning people to Turkey, and how the plans would be implemented, deportations start. Like some kind of sick joke, refugees are making the crossing in reverse, every refugee accompanied by one Frontex border guard.

Thousands are backed up in the camps at Idomeini, with not enough food, shelter or clothing. Not enough milk to feed babies. Refugees are now being detained and I am shocked to see images from Moria camp in Lesvos. Once an open camp, refugees are now imprisoned. Or, according to the International Rescue Committee's information website: 'If you arrived on or after 20th March, 2016: You will be placed in Moria, which is a closed centre. This means you are not permitted to leave'.

My comrades from Pikpa camp are no longer allowed access to Moria, but they speak to refugees protesting at their detention. 'We sleep in bad condition, our babies are sick and we are kept in a prison – this is why we protest'. The conditions are very bad, the refugees have almost no access to information or and legal aid, food is scarce, people feel unsafe, there are reports of assaults and mafia groups developing. It seemed that the refugee crisis in Greece couldn't get any worse, but it did. In the words of one Syrian man detained in Moria: 'We ran out of our country because of the dead and then we made the death trip across the sea. Now, in the camp we are dying a slow death here'.

**Amy Murtagh**

You can read more about, and find out how to support the work of Pikpa solidarity camp at *www.lesvossolidarity.org*

## 120,000

Kilis, a Turkish city on the border with Syria, has taken in about 120,000 Syrian refugees. That's about 90 times as many as the whole of the UK.

## March

**14:** As the Investigatory Powers Bill had its second reading, 200 senior lawyers signed a letter condemning it. Earlier in the week, Joseph Cannataci, the UN Special Rapporteur on Privacy said the bill authorised bulk interception and legitimised mass surveillance.

**17:** The UK Government said they would scrap the 'tampon tax' after a deal was reached at the European Council to allow greater flexibility in setting tax. Earlier in the month, five women launched a class action suit in New York against a law exempting medical products which apply to men but not women's sanitary products from tax.

**18:** Turkey reached a deal with the EU in an attempt to limit the movement of people into Europe. Turkey will accept the return of migrants and refugees who crossed into Greece and were refused refugee status and, in exchange, the EU will take thousands of Syrian refugees and provide Turkey with visa-free travel to the EU, money and progress in the EU membership application.

# ‘Free Her’: women political prisoners

Having missed the workshop on political prisoners during Haldane’s International Women’s Conference in November, I was unprepared for how extraordinary this lecture was going to be. For two hours on an unassuming Thursday evening in February, two fiercely intelligent women – Shiva Mahbobi and Dr Radha D’Souza – gave accounts of state violence that were shocking and at the same time inspiring; their talks were both academic and deeply personal.

Shiva Mahbobi is a former political prisoner and organiser for the Campaign to Free Political Prisoners in Iran (CFPPI). In the first part of her talk she discussed the religiously-motivated oppression of women by the state in Iran.

Shiva took the audience back to the Iranian Revolution of 1979, after which women were forbidden to leave the house without wearing the hijab. Thousands of women resisted and were arrested. ‘Every street was a battleground’, Shiva explained, with the hijab becoming symbolic in the domestic war against women.

She gave examples of the way in which women’s rights have been curtailed in areas such as education, sports, divorce, inheritance and travel. As a woman in Iran, she said, ‘wherever you want to go, whatever you want to do, to study, there is a law around that’. As a result, fighting oppression has become a prominent part of women’s lives.

Shiva gave horrifying examples of the gender-specific torture that women faced at the hands of the state. Just one example was women being taken to prison with their young children, who were forced to watch their mothers being raped and tortured during their incarceration.

Responding to an audience question about her own imprisonment, Shiva explained how she survived solitary confinement and torture at 16-years-old: ‘you look at prison as part of your fight’, she said. ‘They didn’t break me’.

But the situation for women in prison is not improving. Firstly, because ‘it is impossible to have any significant change in Iran for women, when the law of the country suppresses the slightest voice of opposition’. Secondly, Shiva argued, the situation of women cannot significantly improve under an Islamic regime, because ‘the Quran says women are not equal to men’. This sparked an impassioned debate about different interpretations of Islam. Shiva believed the narrative of interpretations ‘has become fashionable [as a way] to make excuses for Islam’. Dr D’Souza disagreed, contending that the Islam practised in different countries varies greatly as ‘the adaptation of religion to culture occurs everywhere’.


Haldane Society of Socialist Lawyers
in association with the Mansfield Student Law Society at London Metropolitan University
invite you to a
Human Rights Lecture
Thursday 4th February
Free her! Women political prisoners
Speakers:
Dr Radha D’Souza
Shiva Mahbobi

Dr Radha D’Souza – barrister, lecturer, freelance writer and social justice activist – began her own presentation by comparing India and Iran. ‘India’ she said ‘is the opposite of Iran in most [British] people’s minds’. India and Britain are both democracies, and we have a shared history.

But Britain’s history in India is in part responsible for the violence committed against women by the armed forces. Radha explained that India’s first anti-terrorism law was introduced in 1914 under the British Empire. Since independence, India has never had a period without such laws, which provide for the armed occupation of parts of India and give the armed forces immunity from prosecution. Currently, she said, “almost a third of India is under […] anti-terrorism laws”.

The army see their role in occupation as to “control the population”. This results in gendered sexual violence because “state violence against women is not only about controlling the women” but “the entire society”.

Radha gave examples from a number of high-profile cases that ‘have become a national rallying cry’ to fight against this violence.

Picture: Jess Hurd / reportdigital.co.uk

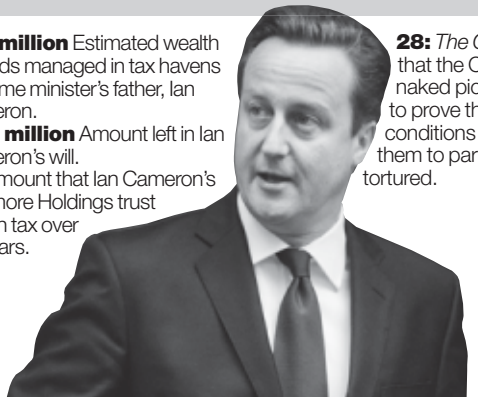

*Though totally ignored by the mainstream media, 150,000 joined the People’s Assembly March for Homes, Health, Jobs, Education in London on 16th April.*

## March

**21:** Jean Pierre Bemba, former Vice-President of Congo was found guilty of war crimes at the ICC. The trial was significant as it was the first to focus on sexual violence as a weapon of war. It also had the highest number of victims participating in a trial – 5,000 in total.

**24:** Survivors and family members of victims expressed disappointment after Radovan Karadzic was sentenced to 40 years for war crimes, including the 1995 Srebrenica massacre. It had been hoped that the former Bosnian Serb leader would receive a life sentence after ICTY presiding judge found that Karadzic was the only person with the power to intervene and prevent the killings in Srebrenica.

**£10 million** Estimated wealth of funds managed in tax havens by prime minister’s father, Ian Cameron.
**£2.7 million** Amount left in Ian Cameron’s will.
**£0** Amount that Ian Cameron’s Blairmore Holdings trust paid in tax over 30 years.



**28:** *The Guardian* reported that the CIA routinely took naked pictures of detainees to prove their medical conditions before sending them to partner countries to be tortured.

Irom Sharmila, for instance, has been on hunger strike for 15 years in protest against army brutality, and says that she will not stop until the armed forces leave her state. Soni Sori, who was arrested in 2011, knew that she would be tortured in custody and approached the Supreme Court to request bail on that ground. The court denied her bail and she was subsequently brutally sexually assaulted in prison.

Radha expressed her support for new campaigns in India opposing political violence against women specifically, for their acknowledgement of the role of women 'as political agents […] at the forefront of political struggles'.

In response to an audience question about campaigning on behalf of female, rather than all, political prisoners, Radha acknowledged that 'identity politics is a very middle class thing' and that 'as you go down the class/caste hierarchy, identity politics loses its place […] the politics is a universal one […] about land […] about eviction […] about displacement'. However, she said, the demand for the recognition of women political prisoners and state violence against women requires the state to reform anti-terrorism laws universally. 'Our struggles', she said 'are always for the whole of society, not only for women'.

Having engaged with issues as diverse as religion, colonialism and identity politics, the audience left the lecture with a final question posed by Shiva Mahbobi: 'How are we going to build international solidarity to force governments to release all these political prisoners?'

**Catherine Rose**

**30:** ECHR dismissed the appeal by Charles De Menezes' family against the UK government for failing to prosecute individual police officers who killed him. The decision marked the end of the De Menezes' family search for justice after Charles was shot several times in the head in a botched surveillance operation in 2005.

# 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**

# Bringing justice Bach

After several years of access to justice being besieged by a pincer movement of brutal cuts to legal aid and huge increases to court and tribunal fees, there might just be cause for cautious optimism. In recent months the courts have held the discriminatory residence test and the restrictive domestic violence evidence criteria for legal aid to be unlawful, the Bach Commission to review legal aid policy for Labour has begun its work and the verdict from the Hillsborough inquests demonstrated the importance of publicly-funded legal representation to ensuring that justice is done.


Picture: Jess Hurd / reportdigital.co.uk

*Labour's commission to review legal aid is very welcome...*

At the time of writing, the written judgment of the Supreme Court in the residence test case is awaited, but the success of the appeal brought by the Public Law Project is heartening for those of us who believe that equality before the law is fundamental. The families of the 96 people who lost their lives at Hillsborough on 15th April 1989 have had the truth confirmed by a jury. Their experience shows that justice and accountability for state failings very often depends on legal representation, which is frequently denied to grieving families at inquests.

When the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was passed the government pledged to conduct a review of the legal aid cuts three to five years after implementation. The beginning of April marked the third anniversary of LASPO coming into force, and Young Legal Aid Lawyers (YLAL) joined The Law Society, The Bar Council, Legal Aid Practitioners Group and other representative groups in co-signing a letter to the Guardian calling on the government to fulfil this commitment to assess the impact of the cuts at the earliest opportunity.

As yet, there has been no announcement from the government, and our recent meeting with the minister for legal aid, Shailesh Vara MP, left us with the impression that the Ministry of Justice has no imminent plans to review LASPO. However, the opposition is carrying out its own evaluation of the state of access to justice in the age of austerity, which 'will explore establishing access to justice as a fundamental public entitlement'. The starting point of the Bach Commission is that access to justice is an essential public service, equal to healthcare or education. YLAL wholeheartedly agrees.

In May YLAL submitted its response to the Bach Commission's call for evidence. Part of the commission's remit is to consider the consequences of LASPO, and we emphasised the extensive denial of justice resulting not only from cuts to the scope of legal aid, but also from overly stringent means tests for legal aid and drastic increases to court and tribunal fees in recent years. We set out our belief that these three factors have created and entrenched a two-tier justice system, which only serves wealthy individuals and organisations while millions of ordinary people are denied legal representation and access to the courts.

Of course, the Bach Commission, comprised as it is of eminent lawyers including Sir Henry Brooke, Nicola Mackintosh QC, Carol Storer, Raju Bhatt and YLAL founder Laura Janes, will be well aware of the damage imposed by recent governments. The challenge for Lord Bach and his commissioners is to develop a credible and principled legal aid policy, as well as seeking to influence the present government to make changes to existing policy before 2020.

In our submission to the Bach Commission, we explained our view that ultimately a significant funding commitment is needed in order to ensure access to justice for all, given the sustained under-investment in the justice system in general and legal aid in particular by both Conservative and Labour governments over the last decade. We believe that access to justice is a public good that should be funded by everyone through general taxation, and we believe that legal aid is the most effective means of delivering access to justice, particularly in an adversarial justice system.

The Bach Commission's call for evidence asked respondents to consider what practical steps could be taken to ensure that access to justice for all was a reality. The ambitious and wide-ranging changes we called for **>>>**

## Young Legal Aid Lawyers

**>>>** were as follows:

- Repeal LASPO, bring the areas of law that were removed from scope back into scope and return to a presumption that a case that satisfies the means and merits criteria is within the scope of legal aid except in limited categories which are specifically excluded;
- Increase the thresholds and simplify the financial means tests for civil and criminal legal aid to ensure that representation is not reserved for only the poorest and most vulnerable, but is available to anyone who is unable to afford to pay for legal advice and representation; and
- Conduct an independent and comprehensive review of the impact of court and tribunal fees on access to the courts and recognise that the cost of justice should be primarily borne by society as a whole, rather than by people using the courts to defend or protect their rights.

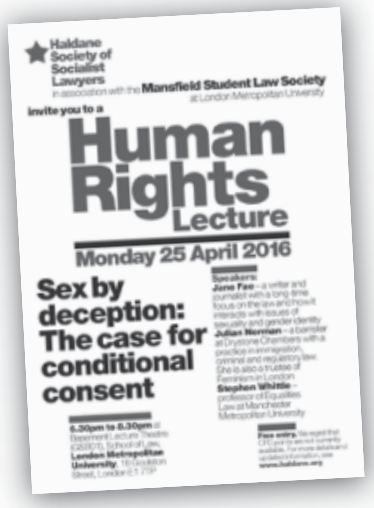
We look forward to following the progress of the Bach Commission and hope that it will succeed in designing the blueprint of a new legal aid scheme that better meets the vast unmet need for legal advice and representation. If it is successful, the commission could have a revolutionary lasting legacy, just as the Rushcliffe Committee did, following the creation of the post-war legal aid scheme by the Legal Advice and Assistance Act 1949. At the very least, its report – which is due to be completed in time for the Labour Party annual conference in September 2016 – will help put access to justice on the political agenda. For that, we can be grateful to Jeremy Corbyn.

**Oliver Carter**, co-chair of Young Legal Aid Lawyers

# Love in the time of bigotry: Haldane hears the case for conditional consent

In the latest of our human rights lecture series on 25th April, Jane Fae (writer and journalist), Stephen Whittle (professor of Equalities Law at Manchester Metropolitan University), and Julian Norman (barrister at Drystone Chambers) joined Haldane members for an intimate discussion, with contributions from the floor, about issues of conditional consent in the realm of sexual offences, focussing in particular on trans issues.

As Jane Fae explained, in a series of recent cases individuals had been convicted of sexual offences on the ground of deception as to gender. Many deceptions can lead people to have sexual relations that they otherwise would not have engaged in. The courts have repeatedly held that not all such deceptions negate consent in law. For example, if an individual lies about their marital status, or even their status as an




undercover police officer, the law will not generally hold that this negates consent. Nonetheless, deceptions as to a person's gender have in fact been held to negate consent. This is therefore something of an aberration. Indeed, recent cases would suggest that being transgender appears to matter more than any other status. This could well be a consequence of the inbuilt prejudices of those who develop and interpret the law, who can imagine practising a certain type of deception themselves, but are appalled at being the victim of another such type.

However, she also pointed out that complainants had genuinely suffered trauma in the event of sex by deception as to gender, and there must therefore be some way of determining where the limits of deception and conditional consent lie. One possibility put forward was that an actual lie may vitiate consent, whereas a failure to openly state one's position may be different. However, practically speaking such an approach may create considerable evidential difficulties, and may fail to capture cases of genuine harm where the conditions of consent may be so obvious that they are never stated openly (for example, a person may never tell their partner that their consent is conditional on the partner not being an undercover police officer sent to spy on them, because the condition is so obvious as not to need articulating).

Stephen Whittle spoke of advice he would give to trans people when engaging in a new relationship: tell people as soon as possible, as the longer you leave it to tell someone in building an emotional relationship the more deceived and hurt they may feel when they find out. Whilst this may be sound practical advice based on experience, it of course does not clarify the legal position.

What should we, as a society, require disclosure of? One end of the spectrum is that all trans people should be required to disclose their gender assigned at birth all of the time. The opposite end of the spectrum is to never require disclosure. Should there be some legal rule to the effect that people should not have to disclose the gender they were assigned at birth as soon as they hit some transitioning milestone, such as beginning to transition, obtaining a gender recognition certificate, or even receiving certain surgery?

Julian Norman discussed the current legal position. Frauds as to the sexual act itself do vitiate consent. So where sexual intercourse was falsely presented as a surgical operation or as an act to improve a girl's breathing this would vitiate consent because the consent was conditional on the nature and character of the act

## April

**1:** Eurosceptic, and leading member of the Vote Leave Campaign, Michael Gove has been made responsible for selecting the next British judge for the European Court of Human Rights. Critics questioned whether Gove was appropriate to handle the selection as he is also responsible for drafting a proposed bill of rights to replace the ECHR.

Lesbian and Gay Support the Migrants campaigners burned £35,000 of fake bank notes printed with the face of Theresa May outside the Home Office in London. It was in protest over a new law that will force thousands of non-EU migrants, who earn less than £35k a year, to leave the UK or be deported.

**5:** Eleven and a half million files have been leaked from Mossack Fonseca, one of the world's biggest offshore law firms. The leaks expose a hidden industry of offshore tax regimes used by politicians and the extremely wealthy to hide assets and avoid tax.


Pictures: Jess Hurd / reportdigital.co.uk

*15th April: 'Stop DSEI arms fair' direct action activists win their case at Stratford Magistrates Court in east London.*

being different to the act actually carried out. Equally, frauds as to one's identity would vitiate consent. However, frauds in the inducement to sexual relations, such as a promise to pay for sex which a man had no intention to keep, would not vitiate consent, even if the ostensible consent was very clearly premised on the condition.

However, even a cursory analysis will show that this divide between frauds in the factum and frauds in the inducement is fallacious. If a person was selling a car, turning the odometer back may induce a customer to purchase it: we conceive of this as criminally wrong and fraudulent, even though the nature of the car itself has not changed, the only fraud being in the inducement. Replace the odometer with some characteristic a person claims to have, and the sale of the car with sexual relations, and this shows just how vacuous the distinction is between fraud in the factum and fraud in the inducement. Since the inducement is as essential to consent as the sexual act itself, focussing only on the act itself is unable to deal with a vast array of cases where people suffer genuine harm.

It appears clear then that where ostensible consent is in fact given only on a condition and that condition is not met, then the consent is negated. Sexual relations without consent are inherently harmful, and are on their face criminal. It appears equally clear that, whether we like it or not, gender and trans status do matter to many people in their choice of sexual partner. Where sexual relations occur and consent is conditional on gender or trans status, then if there is deception (or non-disclosure) about gender or trans status the ostensible consent must be vitiated by deception. If we value the autonomy of an individual over their own body, that ought to be the law's starting point.

However, our society is only just beginning to accept the rights of gender non-conforming individuals. For what reason other than longstanding prejudice should gender be so important to people's decisions about sexual consent? After all, gender is only one aspect of any individual's multi-faceted identity. The reality is that it is only the repugnant prejudice and bigotry created by our patriarchal culture that causes people to make their consent to sexual relations conditional on full disclosure of gender or trans status.

It is therefore a question for our society as a whole to answer whether, in such circumstances, the law might be more just if it created a specific exception to the general rule that consent is negated by non-disclosure or deception, in the case of deception or non-disclosure of trans status. Such a head-on approach to the problem may be the only way of tackling bigotry whilst protecting the bodily autonomy rights of the greatest number of people. Until such an approach is taken by the law, then the advice of a lawyer to every trans person must be to disclose trans status before the first kiss with any new partner, just in case. Such a scenario surely cannot be fair.

**Stephen Knight**, author of 'Libertarian Critiques of Consent in Sexual Offences'

**5:** Eighteen months after the ICC dropped charges against President Uhuru Kenyatta of Kenya, charges against his vice-President, William Ruto, have also been dropped. They had been charged with inciting post-electoral violence in 2007 when 1,300 people were killed. There are no remaining suspects charged before the ICC in relation to this case.

**18:** The Supreme Court unanimously ruled that the government cannot introduce a discriminatory residence test for legal aid. Very unusually the court did not reserve judgment but ruled at the final hearing, emphasising the strength of its decision in rejecting the MoJ's policy.

**21:** The Ministry of Justice has announced that Asylum and Immigration Tribunal fees are to be increased by more than 500 per cent in a further attempt to dissuade appeals. Immigration application fees for visas, family reunion and naturalisation are also set to increase significantly. However, multinational companies fees to recruit foreign workers will not be affected.

**26:** After a two-year-long inquest, a jury found Chief Superintendent David Duckenfield guilty of manslaughter by gross negligence of 96 fans who died at Hillsorough football stadium on 15th April 1989. The inquest exposed the deception and flagrant lies employed by the South Yorkshire Police force to cover up police failings at the disaster.

# Housing Bill becomes law – axe it!


Pictures:Debbie Humphrey

*A national 'Kill the Housing Bill' demo was held in March. Join the 'Axe the Housing Act' national march on 18th June.*

The Housing and Planning Bill has received Royal Assent and is the Housing and Planning Act 2016. It will be brought into force by statutory instrument. Much of the detail will be contained in Regulations, yet to be published. However, it is clear that this Act is a right-wing assault on the very idea of secure council homes.

The assault takes two forms: diminution of existing social housing stock, and an end to security of tenure.

Right to buy, introduced by Thatcher in 1980, has already substantially diminished council housing stock. More properties have been sold under right to buy since 1980 than are currently owned by councils. More than one in three of those properties is now owned by private landlords, letting the property out at private market rents. Council estates these days are a mixture of council tenants, owner-occupiers and private tenants.

In October, the government came to a voluntary deal with housing associations, introducing right to buy at a discount to housing association tenants. The cost of the discount would be raised by requiring councils to sell off 'higher' value council homes when they become empty, rather than letting them to families on the waiting list, and pay the proceeds to the Treasury.

'Pay to stay' has received much publicity. The government refused to accept the House of Lords' amendments which would have made it voluntary for councils. Tenants whose joint income is £31,000 outside London (£40,000 in London) will be required to disclose their finances and councils will have power to get information from HMRC. If tenants refuse, the maximum rent will be charged. The only concession was that the rent increase will be tapered, at a rate of 15p for each £1 increase, rather than a large one-off hike. The worry about 'pay to stay', besides its implications for working council tenants who suddenly find their rent is unaffordable, is that it will make economic sense for council tenants paying higher rents to buy their properties instead.

In so far as any council properties remain, they are no longer to be let on secure tenancies, or homes for life. Once the Act comes into force, any tenancies granted by councils will be for fixed-terms of a minimum of two years and a maximum of ten years (or until a child's 19th birthday if the household contains a child aged less than nine). The government had originally wanted a maximum term of five years; pressure caused a rethink and a concession. A ten year tenancy gives more security of tenure than two years, or even five years, and gives the tenant more of a chance to regard the property as "home". Which means, of course, that when the tenancy ends, leaving will be even more of a wrench. We await Regulations and guidance as to when councils should use the minimum, and when they should use the maximum, terms.

The right-wing ideology underpinning the end of security of tenure is that the market should provide for housing. The argument goes that the role of the welfare state is limited to short-term assistance – for between two and ten years – where someone can't manage private renting or owner-occupation. But the expectation is that the tenant will use that period to get back on his or her feet, and house him or herself through the market. As both house prices and private rents continue to rise above inflation, and as the largest single cause of people becoming homeless is the loss of private rented accommodation, this faith in the market seems misplaced.

**Liz Davies**


## Axe the Housing Act – secure homes for all, control rents

**Saturday 18 June**

**Assemble 12 noon Hyde Park Corner to march through London**

**The 'Kill the Housing Bill' campaign has become the 'Axe the Housing Act'. Contact details remain as below for the time being. Facebook:** Kill the Housing Bill - secure homes for all **Email:** killthehousingbill@gmail.com **Twitter:** @KillHousingBill **Phone** 07432 098440 **Website:** killthehousingbill.wordpress.com

## May

**7:** In a resounding victory, Sadiq Khan was elected Mayor of London, reinstating a Labour mayor after eight years. In his first days in office, Sadiq Khan declined the offer to be an 'exception' to Donald Trump's proposed ban on Muslims entering the USA.

**9:** Unite the union secured a £10 million settlement with some of Britain's biggest construction firms on behalf of 800 unfairly targeted workers. The Consulting Association, a shadowy organisation set up by the construction industry, monitored thousands of building workers and operated a blacklist for over 30 years.

**12:** The Electoral Commission applied for a court order requiring the Conservative Party to hand over key documents being withheld. The Conservative Party is also being investigated by police forces across the country over allegations that it broke spending rules in the General Election in 2015.

# European lawyers on the front line

On 7th May the executive committee of the European Lawyers for Democracy and Human Rights (ELDH) met at the building of the Athens Bar Association, hosted by Haldane's sister organisation and member of the ELDH, the Alternative Intervention of Athens Lawyers (AIAL) (*www.epda.gr*).

Greece is not only on the front line of the crisis of the EU, subject to an imposed neo-liberal state policy of austerity, but is also at the epicentre of the EU's migrant crisis. We arrived in Athens to find that all forms of public transport were on strike, and we attended a massive demonstration in Syntagma Square on Sunday evening, 8th May.

AIAL members provided wonderful Greek hospitality and delicious food during the weekend.

Haldane was a founder member of the ELDH in 1993, and there are now lawyer members in 18 countries. The ELDH Executive meets twice a year, in a European capital; the last meeting was in Madrid, the next, in November, will be in Lisbon. Wendy Pettifer, Carlos Orjuela, and Bill Bowring are Haldane members of the ELDH Executive; Bill is President of ELDH. All Haldane members are very welcome to attend Executive meetings.

Around the table were lawyers from Azerbaijan, Bulgaria, England, Germany, Greece, Italy, Spain, and Turkey, including the leader of our Turkish sister organisation CHD, Selçuk Kozağaçlı. There were apologies from members in Austria, the Basque country, France, Latvia, Netherlands, Portugal, Russia, Serbia, and Switzerland.

*The ELDH executive committee meeting in Athens in May.*

The meeting heard reports from Greek colleagues on hot topics: privatisation, refugees, the social situation, and the lawyers' strike, from Dimitris Sarafianos, a member of AIAL, on the legal framework of privatisation in Greece; from Palaiologos Palaiologos, a specialist on labour and social security law; and from Dimitris Belandis, a member of the board of the Athens Bar Association.

Carlos Orjuela, joint international secretary of the Haldane Society, reported from his three months working in the refugee camp in Calais, where up to 7,000 refugees live in dreadful conditions (see his report on pages 14-17 of this issue). Together with other lawyers he established a legal centre, which was burned down. They gave consultation and legal guidance, and represented refugees' interests. With their help unaccompanied minors were sent to the UK. They also seek to promote public awareness. Wendy Pettifer, a Haldane member of ELDH executive, has taken his place in Calais.

Carlos followed the meeting by evaluating, together with the lawyers from AIAL, the situation in Greek refugee camps in Lesbos and Idomeni which he visited, to find out if a similar project can be started there. He will try to fund such work through crowdfunding rather than seeking grants.

ELDH has established a committee for the further preparation of our activities in relation to migrants: Elena Vazquez (Spain), Carlos Orjuela (England), Ceren Uysal (Turkey), Dimitri Sarafianos (Greece), and Joachim Kerth-Zelter (Germany). They will meet using Skype.

Many activities are planned for the next period. On 30th June to 1st July 2016 Thomas Schmidt, a German trade union lawyer and ELDH general secretary, will travel to Moscow to attend the seminar 'Labour Law, Social Security Law and Market Economy: problems of interaction', organised by the ELDH Russian member, the Centre for Social and Labour Rights and its Lawyers for Workers.

ELDH will continue to send observation missions to many political trials, including those of our members, in Turkey. The Kurdish lawyer's association ÖHD (Lawyers Association for Freedom, Turkey) has joined ELDH along with CHD.

ELDH helped to found European Lawyers for Workers network, ELW, and on Saturday 26th November 2016 there will be a seminar in Brussels: 'Trade Unions Fighting Back', at the building of the Belgium trade union ABVV-FGTB.

Finally, the next Executive meeting will take place in Lisbon on 13th November 2016, following a conference for the 50th anniversary of the United Nations International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR), on 10-12 November 2016, organised by Portuguese organisation APJD.

All welcome in Lisbon: contact me at *b.bowring@bbk.ac.uk* for details.

**Bill Bowring**

**12:** The Housing and Planning Act 2016 received Royal Assent. The government's agenda of destroying security of tenure and further reducing the stock of social housing survived its passage through Parliament all-but unscathed.

**29:** Around 30 people were rescued from the English Channel after their boat capsized while they were trying to reach the UK. Two men were charged with immigration offences.

**'Cold, unfriendly, charmless, not as clever as she thinks she is, lacking imagination, unable to think outside the railway lines and intellectually dishonest'** A Tory MP's opinion of the Home Secretary, Theresa May

**'I would, of course, vote for her'** The same Tory MP when asked if they would back May for next Tory leader

**30:** A man was charged under the Public Order Act for wearing a T shirt implying that the Hillsborough disaster was an act of divine intervention to assist a pest control firm.


# Shut it down!

In October 2015 *Socialist Lawyer* featured Movement for Justice's Antonia Bright (*SL*71), who wrote about the campaign to shut down Yarl's Wood Immigration Detention Centre in Bedford. Since then the pressure to end immigration detention has dramatically increased, both from people inside and outside Yarl's Wood (this demo took place in March) and other centres.

Yarl's Wood is among the


Pictures: Jess Hurd / reportdigital.co.uk




most notorious of all the immigration removal centres in the Home Office estate. In January 2015 it was reported that the UN's rapporteur on violence against women was denied access to the facility, which provoked widespread speculation that the government is hiding the extent of the brutal regime. The centre is shrouded in allegations of sexual assault and privacy abuses against its predominantly female detainees. And of course the centre is only one link in the UK's vast and opaque network of immigration detention facilities.

MFJ specifically and proudly seeks to mobilise the righteous anger of oppressed black and Asian youth. MFJ also has organisers operating inside Yarl's Wood. The members inside and outside cooperate with each other to develop collective disruption tactics that make it more difficult for the government to deport women. For example, detainees not facing immediate deportation form a human chain around those women being deported.

MFJ first started its campaign against Yarl's Wood when a handful of dedicated activists travelled to protest outside the remote detention centre. From those beginnings, the movement has grown exponentially. Thousands of protestors now come, bussed in from all over the country to express a simple, unified demand: shut down Yarl's Wood; end immigration detention!

MFJ have a large web presence and welcome new supporters to their cause. Follow them on Twitter – *@followMFJ* – and find them on Facebook, where their protests are circulated.

**Franck Magennis**

*Left: Graffiti art on the beach in Calais. The periscope looks towards the UK, which is visible from the shore.*
*Opposite page: Two children with a Haldane volunteer at their goodbye party before their transfer to the UK under the Dublin procedure for unnacompanied minors.*

# Human rights and solidarity in action

## **Carlos Orjuela** reports from the Calais Legal Shelter based in 'The Jungle'

Following the establishment of the Calais Legal Shelter by French lawyers and jurists in December of last year, the Haldane Society has helped to keen a permanent presence in the 'Jungle' camp in order to shed light on the continued breaches of human rights against the camp's inhabitants and to find legal solutions that, in some cases, have made a difference to the lives of those seeking a better life in the UK.

### 'A Living Hell'

The Jungle, a refugee camp currently based on the eastern side of Calais, is difficult to describe. Hidden behind a noxious smelling chemical plant and the major road to the Calais ferry terminal, the camp is an isolated, chaotic place, full of contradictions and nationalities, 'staffed' by NGOs and guarded by the CRS (French riot police).

The vast majority of inhabitants have made the perilous journey from their own countries all the way to northern France in order to try get to the UK. Their reasons vary. Some want to reunite with their families. Others want to work and believe that they're most likely to be productive in the UK. Many also feel a strong connection to the UK, a complex affinity which itself is a legacy of UK colonialism and neo-colonialism in Africa and the Middle East, and strengthened by the presence of large minority communities of the same nationality that have already moved there for the same reason.

The camp is disorganised, a makeshift mess born out of the French government's refusal to take responsibility for its inhabitants. It is the latest incarnation of a camp that first arose in Sangatte, west of Calais, in the 1990s, after the war in Kosovo.

The inhabitants live in terrible conditions: many live in plastic tents and wooden shacks, although some live in overcrowded caravans and 'containers' provided by the state. Many choose not to live in the containers despite the fact that they are better equipped, because they require the provision of digital fingerprints, information that can identify them as being present in the camp and could prejudice their attempts to claim asylum outside of France.

In the winter it is bitterly cold, with a combination of regular rain and strong sea winds that overwhelm the various forms of shelter. The mud can reach up to the knee. It is a constant battle to stay clean and warm. People huddle around fires in the evenings to momentarily regain the feeling in their hands and feet.

Those conditions led McCloskey J in *R (on the application of ZAT and Others) v Secretary of State for the Home Department IJR* [2016] UKUT to acknowledge the description of the camp as a 'living hell'. He said 'the conditions prevailing in this desolate part of the earth are about as deplorable as any citizen of the developed nations could imagine'.

And yet, there is life here. There are artists, poets and musicians. Farmers, workers and professionals. Makeshift cafes, restaurants and clubs, full of people who have made the long journey from Afghanistan, Iraq, Pakistan, **>>>**


SOLAR PANEL
WATER TANK

‘We hope to continue the work in the camp, advancing the rights of its inhabitants


*Left: Volunteers of the Legal Shelter, which was set on fire (below right).*

**>>>** Iran, Syria, Sudan and elsewhere, often losing loved ones on the way, each with a solemn, harrowing and heartbreaking story. The mixture of cultures is intoxicating, with different nationalities, religions and languages combining in these extraordinary circumstances.

There are also volunteers from all over Europe, who show a great deal of humanity. There is, for the most part, a conscious rejection of the way in which Europe is handling this crisis.

No matter how hard the inhabitants and volunteers try to make things work, the feeling of despair is palpable. It arises from the waiting. Waiting without knowing what will happen. Will they ever get to the UK? Will they be transferred against their will to another country in Europe? Will they be deported to the country they sacrificed so much to get away from? It often feels like a horrible lottery.

Each night the inhabitants ‘try’. They attempt to sneak on to lorries bound for the Channel Tunnel, or for the ferries to Dover. These attempts are dangerous. Sometimes they result in victory: the camp cheers when a person makes it across, there is hope. They can also, however, result in injury, disability and sometimes death. The latest fatality came in April of this year, when Mohammed Hussain, a Kurdish teenager, was killed while clinging to the underside of a lorry. There is naturally a huge sense of frustration and anger when things like this happen. The inhabitants feel it shouldn’t have to be like this. They shouldn’t have to risk their lives to join loved ones, to work or just to be in the UK. Some also feel that the UK has a responsibility to accept them, as a country that is among those principally responsible for creating the refugee crisis through its military policies abroad.

The local Calaisians are divided in how they see the inhabitants of the camp. Some see them as an expensive nuisance or as a source of crime. Far-right protests heighten tensions in the city. Violence against refugees and migrants by the CRS and fascist groups is shockingly regular.

There are also those who understand, who give a helping hand in the camp, who assist the volunteers, who confront the racists.

### The Calais Legal Shelter

The Calais Legal Shelter is the only independent and permanent presence in the camp that provides legal information to its residents. It was built in December 2015 and officially opened on the 11th of January 2016 after the ‘Calais Appeal’ organised by artists, journalists, intellectuals and other members of French civil society.

The legal team, made up of lawyers and jurists from countries including France, Italy and the UK, provides information and assistance on asylum, immigration and actions against the police.

The Legal Shelter is a vital service for the inhabitants of the camp, who are mostly unaware of their rights and are either unable to find organisations that can answer their questions, or are intimidated by the prospect of asking government appointed bodies for fear of being deported.

The Legal Shelter, built by ‘Carpenters Without Borders’, would see hundreds of people a week, all with complex backgrounds and legal problems.

### Victories

The Legal Shelter has had a substantial impact in shaping the narrative within France on the problems within the Calais camp.

Our permanent presence in the camp has allowed us to collect valuable data, which forms the basis for advocacy campaigns that have featured in all forms of media, including national newspapers such as *Le Monde*, national radio and mainstream French television. We have even featured in comic strips!

Our work has led to 25 investigations into police officers and 16 investigations into individuals accused of racially motivated assaults.

The asylum team’s work has also led to the successful transfer of ten unaccompanied minors to the UK. This work built on groundbreaking legal work conducted by the UK-based organisation Safe Passage, which led to *R (Zat) v SSHD*. The case contained severe criticisms by UK judges of the inadequate procedures for family reunification in Calais. The Legal Shelter’s sustained legal work and advocacy following the ZAT case, alongside that of other actors, has had a substantial effect in establishing a more effective system of family reunification under the Dublin III regulation.

### Destruction of the South

This legal work, however, does not operate in a vacuum.

On 19th February 2016 the Prefect of Calais ordered the destruction of the southern part of the camp. This was in spite of the heavy presence of vulnerable groups, including unaccompanied minors. It would lead to thousands of people becoming homeless.

Despite a legal challenge brought against the prefecture by French lawyers in collaboration with the Legal Centre, the destruction went ahead (save for those structures which provided services for the inhabitants of the camp, which included the Legal Shelter). The police presence during the days of destruction rocketed, as did the incidents of police violence and arson.

The night before to the destruction, some of the legal team were hosted by a young Iranian couple in their home. They made us wonderful


food and sang songs for us. They forced us to sing songs too. It was a beautiful evening that made us forget about the realities of the camp. Their home was destroyed the next day. They had tried to prevent its destruction by climbing onto the roof and refusing to come down. The woman held a knife to her wrists and threatened to kill herself if they destroyed the shack. After an impasse of hours, the police managed to violently remove the couple and – outrageously – arrested them for obstructing police. The sentencing judge said he was showing leniency by giving them suspended prison sentences.

The inhabitants of the south now either live in the heavily overcrowded north or have simply disappeared.

**Attacks on the Legal Centre**

The success of the Legal Shelter did not go unnoticed by the police or the fascists.

Members of our team began to receive anonymous death threats. The French police started to deny our cars access to the camp. At times they would obstruct inhabitants who wanted to see us.

On the night of 12th March the Legal Shelter was broken into. This had become easy since the clearing of the south had isolated the building: there were three other break-ins in the following days.

Finally, on 17th March 2016, the Legal Shelter was set on fire. Thankfully, nobody was in the Shelter at the time of the incident. Members of our team managed to reach the Shelter only after it had already been consumed by flames. French police were there before our volunteers, but simply stood back and watched. From witness statements taken at the time of the incident, it was clear that the fire had been set from inside the Centre and would have involved a planned and concerted effort by the arsonists.

The incident has been reported to the police and an investigation is currently being conducted into the events of that day.

**The Work Continues**

The day after the arson attack, the team returned to the site of the Centre to continue the work.

The files were safe: they weren't in the Shelter at the time of the fire. We sat on the floor and took queries. Our regulars were happy to see that we were still there, fighting.

Within two weeks the camp's inhabitants donated a shack. Many of the inhabitants clearly appreciate us, particularly given the results we are now achieving after months of work on family reunification and police violence.

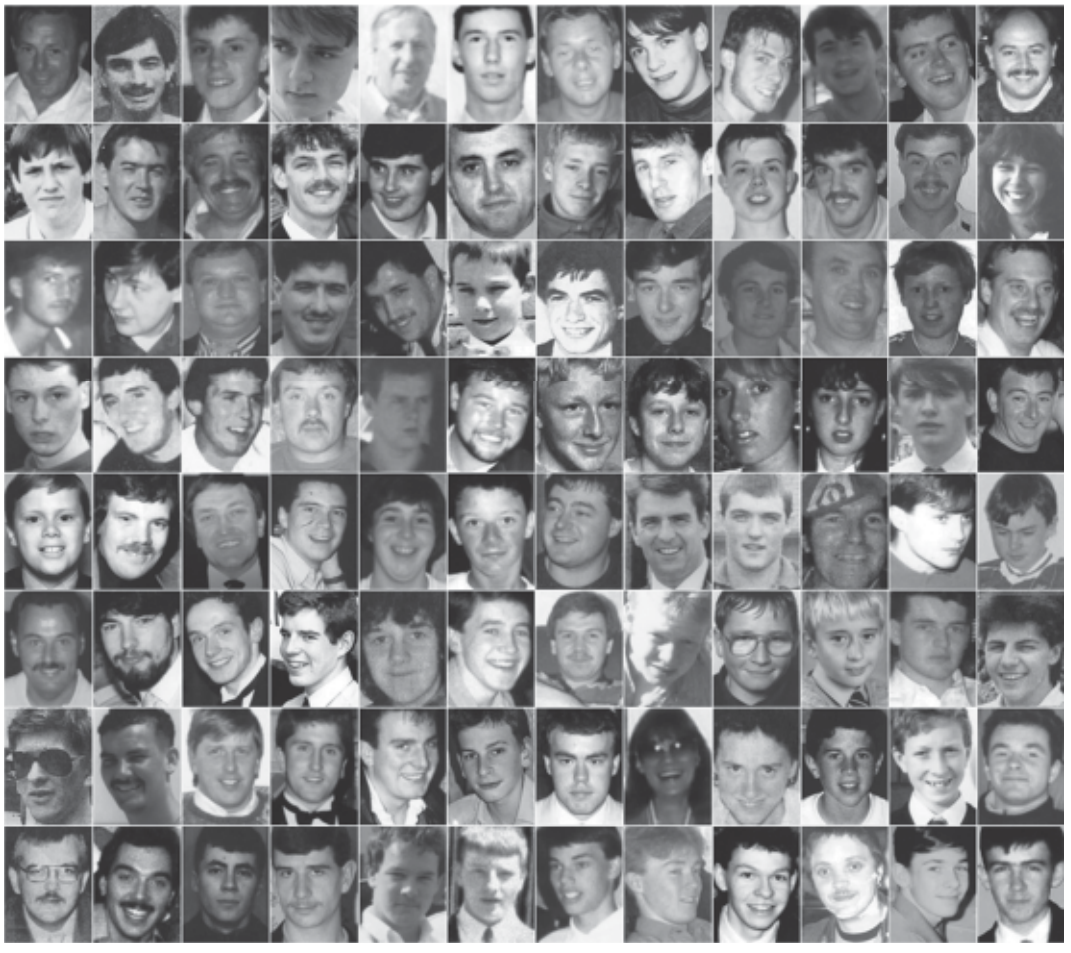
Unaccompanied minors continue, slowly, to be transferred to safety and reuinion with their family members. One boy decided to walk around the camp to say goodbye to his friends the day before his transfer. He was 13 and had lived in Afghanistan until the Taliban killed his father. He lost contact with his mother and he fled to Calais, miraculously making the long journey on his own through Pakistan, Iran, Turkey, Bulgaria, Italy and then France over seven months. He had been in Calais for months before to coming to the Centre: Another lost boy in the Jungle. His only goal was to join his brother in the UK, the only remaining relative he knew was still alive. His friends consisted of a few Afghan adults who had decided to take responsibility for him. They were clearly emotional about his impending departure. One of them said 'How can you go to London with such dirty trousers!' and a mad search began to find him new clothes. They found some, embraced him and said goodbye. I asked why the boy had no luggage. He answered with a smile: 'I am leaving my old life here. I am going to see my brother and am starting a new life in the UK'.

We hope to continue the work in the camp, helping advance the rights of its inhabitants until the French and UK governments finally stop ignoring this catastrophic situation and fulfil their obligations under international law. The practical and moral support shown by the Haldane Society has been a vital source of solidarity and we hope that it continues in the future.

**How you can help**

We are in constant need of volunteers with a background in asylum and immigration law to help in the Legal Shelter. Please contact the team on permanencejuridiquecalais@gmail.com.

You can also help to fund our work through our crowdfunding page on *www.leetchi.com/c/legalsheltercalais*



# Hillsborough: the power of the people is so much stronger than the people in power

**Michael Mansfield QC**

on the longest jury hearing in British legal history and the lessons that go far beyond British football safety.

Whilst the aphorism above was crafted by an internet activist in relation to a popular uprising for democracy in Egypt, it carries an even greater significance when applied to the fundamental struggle by ordinary people to achieve truth and justice. This democratic force has been relentlessly represented by the families of the 96 victims of the Hillsborough disaster In turn their efforts have been acknowledged and endorsed by the sweeping findings of nine ordinary people sitting in judgement as jurors in the recently concluded inquests. The longest jury hearing in British legal history.

Such a fusion of forces lies at the heart of our system and needs to be treasured and continually nurtured. It provides a rare antidote to the arrogance of political power.

The preconceptions, prejudice and collusion by successive arms of the establishment right through to the present day have been torn apart and reduced to monumental rubble.

This was not just a disaster involving football fans but a disaster perpetrated by those who lied on the day, lied in the days that followed and by those thereafter who steadfastly refused to acknowledge this endemic disease. Senior police, South Yorkshire Police federation spokespersons, high profile politicians and their acolytes, tabloid lackeys, and finally a flawed judicial process of inquests and review, all combined to create one of the biggest stains, if not the biggest, on the English system of justice. It is yet to reach finality with some form of accountability.

Before anyone trots out the usual retorts about 'it couldn't happen now' and 'water under the bridge' and so forth, let's be very clear the whole unhappy saga could happen again, has been happening again and continues to do so now.

A few poignant examples bring the message home. Between 1968 and 2008 there was a rampant police state within a state. A large unit of police, the 'Special Demonstration Squad', worked with impunity within perfectly legitimate political democratic groups in order to gather information and facilitate their activities. Their MO was deceit on a >>>

>>> major scale. It is inconceivable that a select number of senior police and politicians did not know what was going on given the amount of taxpayers' money being spent. The current Pitchford Inquiry into undercover policing will be examining a situation that the Home Secretary described as appalling. Further examples of lies in the recent past include the initial lies told about the death of Mr Tomlinson during G20 protests and the machinations and fabrication surrounding Mitchell-gate in order to impugn a cabinet minister.

Alongside this comes the intransigence and crass unwillingness of key people related to Hillsborough to acknowledge what has been obvious for many years. Even at the start, the Taylor report fundamentally exculpated the fans and placed responsibility for the disaster on the lack of police control. This merely provoked the police into a drawn-out and dogged campaign to reverse that conclusion and blame drunken ticketless Liverpool fans. This permeated and tainted the police investigation, and the first inquests, which returned verdicts of accidental death. From then on this became the repeated mantra by the authorities. The families knew the truth and persisted against all the odds to put the record straight. Through their collective efforts, supported by the people of Liverpool (dramatically expressed at the 20th anniversary at Anfield in the middle of a speech by Andy Burnham), an independent panel chaired by the Bishop of Liverpool was established. Its objective was to collect and collate all documentation from a multitude of sources and ascertain what new light it shed upon the events of 1989. The panel's report in 2012 was groundbreaking and resulted in the High Court quashing the original verdicts and granting fresh inquests.

During the course of this process it was once again made abundantly clear that the half-baked shrivelled chestnut describing 'drunken ticketless Liverpool fans' as a cause was baseless. This was spelt out in graphic detail in the Hillsborough

Independent Panel report and equally in the words of the High Court when granting fresh Inquests. The Lord Chief Justice, Igor Judge, explicitly and pointedly referred to the police campaign and strongly deprecated its continuance: 'notwithstanding its falsity the tendency to blame the fans was disappointingly tenacious and it lingered on for many years'. You would be forgiven for believing that 'that should have been that', to adopt Judge LCJ's aside.

For a brief moment there was a communal sigh of relief, especially when the Chief Constable of South Yorkshire gave a fulsome apology to the families for failing them, made a substantial admission about police loss of control, heavily criticised the disgraceful lies that blamed the fans for the disaster, and recognised the pain caused by these factors.

Game over.

Not a bit of it.

Once the new inquests got under way the wearisome and empty allegations were resurrected and regularly repeated, especially by those representing the match commanders and South Yorkshire Police, even to the extent of ensuring at the end that the vital question on fan behaviour for the jury (Q7) was split into three parts making the task of saying 'no' extremely difficult and convoluted. The jury, however, roundly and unanimously rejected fan behaviour as playing any part.

The reason this exposition is necessary is to highlight the extent to which elements of establishment culture lurks and lingers on. It is not a thing of the past, it is very much a thing of the present which requires urgent eradication. What has been revealed is the real 'enemy within'.

How did this come about? What was the chief constable (now suspended) doing throughout the two-and-a-half years of proceedings, which allowed this approach to be rerun? What was Dr Billings, the police and crime commissioner, doing?

One of the things we now know from recent revelations in *The Guardian* is that a special spin doctor had been employed to put a gloss on evidence hostile to the police at the inquests. On 5th May this year David Conn, who had reported on the daily proceedings at the inquests more assiduously than anyone else, disclosed an interview with Hayley Court, an experienced media officer who found her brief unethical. One of her tasks was to emphasise misbehaviour by Liverpool fans. She complained about this policy and was subject to criticism and bullying. She was signed off sick with depression in November 2014.

This does not suggest that South Yorkshire Police is a repentant force, which has learned lessons and which is eager to demonstrate a willingness to restore public faith and trust. Given everything else (Rochdale) this is a spent force, which requires a root and branch makeover. Special measures should be the order of the day.

The police are not alone in this regard. Much of the time they received support from the prime minister of the day, Margaret Thatcher, and a local Sheffield MP, Irvine Patnick.

Thatcher regarded Liverpool and its citizens as subversives. Their football supporters she happily branded as louts and 'tanked up' hooligans and yobs. She was aided in her task by her press secretary Bernard Ingham (knighted for his services to the cause) who was totally unapologetic for his views about the tanked up yobs being responsible. He described this as an 'uncomfortable truth' and said that blaming the police was 'contemptible' in a letter in July 1996 to a Liverpool fan. Even since the jury findings this year he has steadfastly refused to change anything, let alone apologise. Fortunately he is no longer in power but the power of the people has brought about a ringing defeat for such entrenched political bigotry. **>>>**

>>> What needs to be remembered is another apocalyptic event that took place five years before Hillsborough at the hands of the same force (South Yorkshire Police) during the miners' strike. Orgreave was but one instance. Some of the officers including the chief constable were in the same roles during Hillsborough and many other links have been uncovered during the inquests. Lies were told once more. Miners, like Liverpool supporters, were demonised and criminalised. Statements were dictated and regimented to fit the charges. Plain paper was used instead of notebooks. Forgery of signatures was proved. New operational public order hardware was deployed as well as the tactic of kettling, mounted police charges, and extreme baton force. These manoeuvres are now used regularly on those participating in political protest. The worst examples – the student marches in autumn of 2010 against education cuts and fees – were handled by the Metropolitan Police. Another force that enjoyed not only the money but also relished the task itself.

At Orgreave, despite numerous well-documented and recorded head injuries not a single officer faced prosecution or internal discipline. No one was made accountable. South Yorkshire Polce has never admitted liability. The IPCC has recently declined to take action because of the lapse of time while at the same time acknowledging that serious offences had been committed and a lapse of ethical standards. Beyond their remit was the overarching question of political directives and political control of the police to bring about the intended demise of NUM leadership.

It is time for an independent investigation and Inquiry into Orgreave.

On a broader front the Hillsborough result extends well beyond the police to the shortcomings of other agencies. South Yorkshire Ambulance service, Sheffield Wednesday Football Club, the club's consultant engineers, and the local council. In relation to all these there was a sweeping unanimous critique spread over 13 questions containing 25 criticisms. These have been largely overlooked in the media melee but they underscore the lethargy that pervades power in all its forms.


Such a narrative returned by nine people after two years of gruelling evidence on a daily basis is an amazing testament to the virtues of the jury system. We must not forget the periodic attacks, mounted by Tories and Labour alike, using arguments about cost and an inability to marshall intelligible judgments. The stamina, patience and focus of this jury is to be rated alongside other landmark cases where juries have withstood enormous pressure and returned conscientious verdicts (Bushel's trial of Penn 1670 ). The annals of legal and democratic history have been enhanced by their commitment.

There are many other ramifications for the future that need to be heeded. To reemphasise, Hillsborough is not just about a football disaster.


Perhaps one of the most poignant lessons, again overlooked in many quarters, is the ever-present culture of complacency. It is an aspect of the way power corrupts.

Prior to 1989 there had been a number of disasters at football stadia in the UK involving injury to spectators. Of the 39 in total just under half concerned crushing, including the first FA Cup Final at Wembley. Consequentially there were nine official reports on safety with recommendations about crowd management outside the ground in the build-up to kickoff as well as inside on the terraces. Lord Justice Taylor lamented this deplorable state of affairs in which little or no notice had been taken. The lengthy operational orders for the day made no mention of the risk of crushing nor did the laborious briefing by the match commander. Nor was anyone else on high alert at a capacity game that this risk might materialise if there were any miscalculations. The design of the ground, the provision of sufficient turnstiles, proper capacity figures to take account of terrace alterations, dedicated systems of monitoring numbers entering particular pens, and regulated crowd build-up outside the ground were all areas of foreseeable hazard and of neglect.

The process by which the fresh inquests were achieved after so many other judicial processes had failed should be revisited for the benefit of posterity. The disclosure exercise performed by the independent panel was a model capable of being adopted in similar situations. Instead of dealing with events 20 years late, a standing oversight commission of independent panellists could be on standby to ensure state agencies fulfil their obligations, pursue proper lines of enquiry, preserve evidence and implement robust protocols of disclosure. Presently this function is not performed by any one authority. The coroner will not be involved unless there are deaths, and in any event a coroner does not have an oversight role. The police cannot be trusted; and the IPCC are yet to inspire confidence given their poor record and dependence on ex-police investigators.

The Disasters Bill promoted by Lord Michael Wills and Maria Eagle (a private member's bill) which is slowly wending its way through both houses of parliament is a modest step in the right direction. It proposes an advocate to undertake the guardianship function.

It is essential that the work of the Hillsborough jury is heeded and respected. The lessons are far beyond football crowd safety, but touch the very heart of power and the way it is wielded. Even after the miscarriages of the 1980s, the MacPherson Report on institutional racism and policing, and potentially the Pitchford report on undercover policing, there has to be a clear pathway to democratic and legal accountability. Restoring public confidence in the system itself and the rule of law is now imperative.

Michael Mansfield QC is president of the Haldane Society. He acted for the bereaved families at the Hillsborough inquest.

SAY
NO TO
NON-STATE TORTURE


*Socialist* **Lawyer**
*Magazine of the Haldane Society of Socialist Lawyers*
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**www.haldane.org**

Elizabeth Gordon is an artist and activist who survived non-state torture in childhood. She uses art to tell her story in her advocacy against familial child trafficking, captivity and torture.

This lino-cut poster was created for a UN European poster competition on the theme 'Say NO to violence against women and girls' and was inspired by the lino-cut prints of the 30 articles of the Universal Declaration of Human Rights by Brazilian artist Octavio Roth that are displayed at the United Nations building in Geneva. Non-state torture is a specific form of violence perpetrated in the home and other private places. For more information about legal and social recognition of non-state torture please visit www.nonstatetorture.org

● *Elizabeth Gordon*
*www.artprintsnst.net*

# An Orgreave inquiry – the time is now

In June 1984, five years before Hillsborough, and just eight miles away, police had attacked striking miners. **Henrietta Hill QC** shows how and why justice must now prevail.

The resounding conclusions of the Hillsborough jury – rejecting as they did the narrative sustained by South Yorkshire Police for decades, and vindicating the fans entirely from any blame for the disaster – has added yet greater force to the imperative for an inquiry into the 'Battle of Orgreave' at the height of the miners' strike of 1984/5. The parallels between the two events are plain: both had at their heart South Yorkshire Police and both involved an apparently industrial-scale fabrication of police evidence and collusion with the media, in a concerted attempt to cover up of the truth. The catharsis and justice delivered to the Hillsborough bereaved must now be provided to those so adversely affected by Orgreave.

The Orgreave coking plant stood on the outskirts of Sheffield, just eight miles from the Hillsborough stadium. On 18th June 1984, just over five years before the Hillsborough disaster of 15th April 1989, Orgreave was the scene of astonishing events. South Yorkshire Police recruited assistance from forces around the country to effect a pre-planned, and militarised, police operation against the striking miners.

Approaching Orgreave that day the pickets found that the road-blocks, which generally prevented them from exercising their lawful right to protest, were opened. They were ushered – we would now say 'kettled' – into the 'topside' field, which was bordered on all sides by police officers and dogs, with a limited escape route over a narrow railway bridge into Orgreave village.

The pickets, bare-chested in the sunshine, engaged in what were no more than 'ritual pushes' against police lines. Yet there then came a point when the police lines suddenly parted and dozens of mounted officers armed with long truncheons charged up the field, followed by officers in riot gear with short shields and truncheons. Many had no police officer numbers displayed, in a crude attempt to avoid accountability for their actions. Large numbers of pickets were assaulted, many with baton strikes to the head (despite the instruction that can be **>>>**


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>>> heard on the police recording, that officers should strike 'bodies not heads'), and dragged back through the police lines. Ninety-five of their number were arrested and taken to local police stations. Many were denied the medical attention they so obviously needed. Fifty-five, all arrested on the topside, found themselves prosecuted in many cases for riot, which at the time carried a potential life sentence, while the other 40, who were arrested the other side of the coking plant, were charged with unlawful assembly.

The print and television coverage of events that night shortly and in the immediate aftermath was heavily distorted, to present the miners as the instigators of the violence when the police's own recording and amateur footage showed the reverse to be true. The coverage by the BBC in particular would later lead its own assistant director-general, Alan Protheroe, to accept that the coverage 'might not have been wholly impartial', such that he felt 'haunted' by the contrast between the BBC's presentation of the day's events and the amateur footage. But the public narrative was negatively shaped by this sanitising coverage, and the processes of diverting any sympathy for the miners and burying the truth began. The parallels with the notorious coverage in *The Sun*, which purported to tell 'the truth' about the Hillsborough disaster by laying the blame squarely with the fans, are stark. The Hillsborough jury has now, 27 years later, finally dislodged that media-led public narrative about the disaster, and the same correction of false history must occur in relation to Orgreave.

In May 1985 the first of the Orgreave trials – of 15 of the miners – began. After 48 days, the trial collapsed. It had become apparent during the trial that many junior officers had given evidence about things that they simply could not have seen. Details of a process emerged by which senior officers dictated the content of parts of junior officers' witness statements.

This resonates strongly with the process of evidence gathering that the Hillsborough jury heard about in such detail: a process by which junior officers were told not to write up their notebooks after the disaster, but to commit their accounts to undated statements on plain paper, which were then reviewed and in many cases altered by senior officers and South Yorkshire Police's solicitor. Both processes surely reflect an overt attempt to manipulate the police's internal story, in conjunction with ensuring the media portrayed the same account externally. It also emerged during the trial that unlawful public order policing tactics had been set out in a new ACPO Public Order Tactical Options Manual, agreed behind closed doors and involving a usurping of police power without the constitutionally required legislative approval of Parliament. The manual was never


disclosed, the trial collapsed and the prosecution quietly dropped the cases against the remaining 80 miners.

There was never any investigation into the conduct of the police for assaulting, wrongfully arresting and falsely prosecuting so many miners at Orgreave, nor for lying in evidence. No officer faced disciplinary or criminal proceedings. Under pressure from the National Council for Civil Liberties, the Home Office did consider holding 'a carefully constructed inquiry' but the idea was later abandoned. Five years later, and a year after the Hillsborough disaster, South Yorkshire Police agreed to pay civil damages to 39 of the miners, without any admission of liability.

The Orgreave Truth and Justice Campaign (OJTC), founded in 2012, is demanding a full and independent inquiry into what happened at Orgreave, just as the Hillsborough campaigners demanded an impartial investigation into the causes of the Hillsborough disaster. The momentum for such an Orgreave inquiry is now unstoppable.

The failure of the contemporaneous legal system to deliver any truth, justice or accountability to the Orgreave miners strikes at the heart of the British principle of policing by consent: why should we consent to such policing if that policing does not consider itself subject to the rule of law it is meant to uphold? And if the legal system fails to hold any unlawful policing to account?

The consequences of Orgreave permeate particularly through the former mining communities, where distrust in the police remains endemic, and has been understandably passed down to the grandchildren of the pickets.

Officers present at Orgreave have begun to break rank and tell the truth about what happened. In October 2012 a retired police inspector who was on duty at Orgreave, Norman Taylor, explained to a BBC *Inside Out* documentary the process by which he and other officers had had parts of their statements dictated to them. Other officers are also beginning to come forward, just as with the passage of time many junior officers felt able to give fulsome accounts to the Hillsborough jury of the pressure put on them to alter their accounts.

In January 2014 the prime minister's private office files and Cabinet Office records from 1984 were released under the 30 year rule. They raise yet further issues of concern around the policing of the strike, the role of the central government in influencing due process within the courts, the manner in which the press presented the events of Orgreave, and the strike more generally.

Moreover the core themes of the Orgreave miscarriage of justice remain very current.

The police tactics used at Orgreave marked a fundamental turning point**>>>**

>>> in policing of lawful protest in the UK. Groups such as Defend the Right to Protest, founded in response to the violent policing and criminalisation of student protesters in 2010, continue to raise concerns about inappropriate kettling, excessive force, mass arrests, collusion with the media, overcharging and police impunity at demonstrations.

There are still concerns about the manner in which police accounts are captured after serious incidents, about the ability of police to 'confer' when recording those accounts together and the insistence on treating officers as witnesses and not suspects when the latter would be justified.

The police continue to use the media to promote their own narrative of events in contentious cases, and to leak irrelevant, prejudicial and inaccurate information about those who have been wronged or died after police contact: the media duly reported police accounts that Jean Charles de Menezes had worn a suspiciously padded jacket, that officers had been pelted with missiles while coming to Ian Tomlinson's aid, and that Mark Duggan had fired first at officers, when the inquests in those cases later showed all those accounts to be untrue. Within days of the Hillsborough jury's conclusions, details emerged of the pressure placed on South Yorkshire Police's press officer to 'spin' the evidence given at the inquests, to ensure the media stressed the accounts of adverse fan behaviour, such that the IPCC now feels compelled to use its resources to investigate that allegation.

In June 2015, the Independent Police Commission produced the results of its two-year scoping investigation into complaints arising out of Orgreave. Its report contained some serious criticisms of the actions and attitudes of South Yorkshire Police, stating among other things that: 'It is […] of particular concern that our review found evidence that the senior officers became aware, after the event, of instances of perjury by SYP officers but did not wish it to be disclosed […] The unwillingness to disclose evidence of wrongdoing by officers does raise doubts about the ethical standards of officers in the highest ranks at SYP at that time'. The IPCC decided not to investigate further, largely because of its limited powers given that very few of the Orgreave officers are still serving.


In December 2015 the OTJC presented the Home Secretary with a weighty legal submission arguing for an inquiry. In terms of the form of that inquiry, the IPCC's report offered clear support for the suggestion that its work could properly be built upon by a panel such as the Hillsborough Independent Panel, which ensured all of the relevant contemporaneous documents were disclosed and reviewed to reach independent conclusions as to what


happened. Alternatively a full public inquiry, with the power to call live witness evidence, could be used.

The Hillsborough jury's conclusions in April 2016 are hugely significant for the Orgreave campaign. They reveal a complete rejection of the anti-fan public narrative which South Yorkshire Police sustained for decades, and must raise serious questions about the credibility of the same force's anti-miner narrative around Orgreave. They illustrate that the passage of time is no bar to a full and transparent consideration of the evidence and the delivering of truth. The events at Hillsborough and Orgreave together form two chapters of modern British history that have largely been hidden from view, even from many of those who lived through the 1980s. For those too young to have witnessed the coverage of these events, the uncovering of what really happened offer an important insight into a hitherto concealed past.

In many ways Orgreave is the 'back-story' to Hillsborough. There is clearly a concern that the lack of accountability after Orgreave fostered a culture of impunity, which meant that when the Hillsborough disaster happened the same tools – falsification of police evidence and collusion with the media to promote a skewed narrative – were easily deployed. After the Hillsborough conclusions the shadow Home Secretary Andy Burnham MP was quick to point out the links between the two cases. He told Parliament 'we won't have the truth about Hillsborough until we have the full truth about Orgreave […] underhand tactics were used first against South Yorkshire miners, before being deployed to much more deadly effect against Liverpool supporters'.

The Chief Constable of South Yorkshire Police was suspended shortly after the Hillsborough conclusions, largely because of his conduct of the inquests in continuing to blame the fans and indeed seeking to suggest that the police had not ordered the fatal opening of the exit gate to the ground. The new temporary chief constable, Dave Jones, has announced that he would 'welcome' an inquiry into Orgreave. The newly re-elected South Yorkshire Police and Crime Commissioner, Dr Alan Billings, has gone on record saying that the policing of the miners' strike is 'the nearest we came in my life to a politicised police force. I think the police were dangerously close to being used as an instrument of the state'. He believes that an Orgreave inquiry is 'inevitable' and the Home Secretary should announce one 'within a month' (so by early June 2016).

There are many who hope that, by the time you read this, Dr Billings will have been proved right: the case for an Orgreave inquiry is now unanswerable.

Henrietta Hill QC is a barrister at Doughty Street Chambers. She specialises in inquests and actions against the police

# Rights lost in leaving: consequences

## **Stephen Knight** asks: what we are voting for?

The narrative surrounding the referendum on the United Kingdom's membership of the European Union rarely considers the impact of Brexit on individuals rather than on society as a whole. The campaign literature of both the 'leave' and 'remain' camps focuses on economic and security arguments almost to the exclusion of all others. Even socialist campaigns to leave the EU frame the debate as one of principle. They attempt to transcend the racist narrative that dominates the leave campaign, turning the referendum into a vote on the EU's entrenched neoliberalist agenda and crippling austerity programmes. What is missed by such a broad-brush approach is the impact of Brexit on individual lives caused by the massive legal changes that would inevitably follow.

The first and most obvious consequence of Brexit would be an end to the four freedoms at the heart of the Treaties: free movement of goods; free movement of services; free movement of capital; and free movement for workers. As socialists, the first three of these freedoms may not overly concern us. However, the end of free movement of workers will have a dramatic impact on workers' lives. Given that the agenda of those who have secured this referendum is by and large to limit immigration to the UK from the EU, there is no reason to believe that free movement of workers between the UK and the EU would continue after Brexit.

The removal of free movement of workers will cause genuine harm to those who wish to move between the UK and the remainder of the EU. British workers will no longer be able to seek a better life in another EU country should they so wish, unless they satisfy the immigration rules of that country. Moreover, EU workers would have to satisfy the increasingly strict UK Immigration Rules, a virtual impossibility for vast numbers of potential migrants.

Potentially the most important consequence of this for individuals' lives is that families will inevitably be divided. EU citizens (other than Irish citizens, to whom a different regime is likely to continue to apply) in becoming subject to British immigration control in the same way as non-EU citizens, would have no automatic right to family reunification. Family reunification for non-EU citizens wishing to join a British citizen-partner currently requires the applicant to satisfy a host of suitability and eligibility requirements, including earning a minimum of £18,600 per year (plus £3,800 for the first child and £2,400 for each child thereafter), or to show that there are 'insurmountable obstacles' to continuing family life outside the UK. This test is obviously intended to have a disproportionately negative impact on those who are worse off economically, while having a limited impact on those who are well off. (Indeed, the capitalist class can simply buy their way out of the rules that apply to the rest of us). Similarly restrictive rules also apply to those wishing to care for dependent adult relatives. Of course, similar provisions may be applied by EU states to British workers who wish to move abroad. The impact of this would be truly tragic, with untold numbers of ordinary people's lives ruined.

What is often assumed by those on the left campaigning to leave the EU is that some legacy provision will be negotiated allowing those who have already migrated to remain in the state to which they have moved (whether British citizens in the rest of the EU, or EU citizens in Britain). However, there is no reason to believe this will be the case. The premise of the leave campaign (including, regrettably, the chauvinistic approach taken by some on the left) has been to preserve British jobs for British workers. No amount of wishful thinking on the part of those who campaign from a socialist standpoint to leave the EU will change this fact: the mainstream leave campaign want rid of foreigners from the UK's society and its economy. Article 50 of the Treaty on European Union, which deals with withdrawal from the EU, does not provide for any legacy provision to protect those EU citizens who already live in the UK. There is no reason to believe that the Conservative government, with its right wing in the ascendancy following victory in the referendum, would care to create legacy rights for EU workers in the UK. To campaign as a socialist for the UK to leave the EU is therefore to gamble with the lives of two million EU workers in the UK – and two million UK workers in the rest of the EU. This gamble may be a high price to pay for the perceived benefits of leaving. It is also a gamble that the millions of working class people affected, and who risk being deported from their adopted homelands, are unlikely to want to be taken.

EU citizens are not the only people who would be affected by Brexit. Third country nationals would also be impacted by the consequent legal changes. An area which affects third country nationals is the question of what happens to individuals who have no status in this country but who are the parents of EU or British citizen children. Without EU membership the UK government would be free to remove such individuals from the country. However, EU citizenship rights of children create a right for many such primary carers to remain in the UK. These so-called 'Zambrano carers' are very often single mothers left in the UK to care for young children of EU citizen fathers. With this status their presence in the UK is lawful due to a derived right of residence. Without Zambrano status they would all too often be left destitute as they would be forbidden from accessing benefits or housing services. The impact of this status on individuals' lives is profound, providing them with stability and the ability to raise their children in the country they have chosen to make home.

A group in an even more precarious position than Zambrano carers are those who come to the UK from third countries seeking

# the unintended of the leftist case for Brexit

protection. The EU has been rightly derided for its treatment of asylum seekers and refugees under the Dublin III system. The system effectively requires an asylum claim to be made in the first EU state in which an asylum seeker arrives, and permits Member States to return asylum seekers within the EU to the Member State of entry (very often Greece, Hungary, Italy, or Spain). A number of notable exceptions to this principle apply, most importantly in the cases of minors, and some organisations have had a degree of success in using the Dublin III procedure to force the UK government to accept child asylum seekers into the UK. Nonetheless, the system itself is imperfect and often brutal in its impact on asylum seekers.

However, what the EU does offer (which the UK outside the EU likely would not) is humanitarian protection. Gaining refugee status under the Refugee Convention requires a person to demonstrate that they have a well-founded fear of persecution because of their 'race, religion, nationality, membership of a particular social group or political opinion'. This excludes those who are fleeing indiscriminate violence. Such individuals are not, in law, refugees, no matter how serious the harm is that could be caused to them. However, the EU requires member states to offer humanitarian protection to individuals who, on their return to their country of origin, would face a serious and individual threat to their life or person by reason of indiscriminate violence. Given the government's callous disregard for the rights of migrants, and its incessant xenophobic rhetoric, it is difficult to see humanitarian protection surviving Brexit. This puts on the line the lives of a great number of people fleeing violence in conflict zones such as Syria and Somalia.

Thanks to the provisions of the 'social chapter', many areas of UK law that appear to be disconnected from the immigration field are also currently underpinned by EU law provisions. Employment law is one of these fields. The TUC's analysis makes clear that EU membership provides clear benefits to British workers' rights:

*'The gains UK workers achieve as a result of our membership of the EU include improved access to paid annual holidays, improved health and safety provision, rights to unpaid parental leave, rights to time off work for urgent family reasons, equal treatment rights for part-time, fixed-term and agency workers, rights for outsourced workers, information and consultation and significant health and safety protection.'*

In 2012 the Coalition government pushed through provisions creating 'employee shareholders' with the intention of creating a new category of worker with essentially no employment rights. The scheme met with only limited success, in part because many of the most important employment rights were written into EU law and so could not be derogated from. The present government, now unconstrained by the Liberal Democrats, would be only too happy to strip these rights not just from 'employee shareholders', but from every worker in the country. In the face of a trade union movement so weak that the Trade Union Act 2016 could be passed in a form that places massive restrictions on the right to strike, there is no reason to believe that the right wing of the Conservative Party, triumphant after a referendum victory, would not take their assault on workers further, overriding all the rights EU legislation presently defends.

EU legislation protects rights in unexpected places as well, which are also liable to come under attack in the event of the UK leaving the EU. One such example is the Directive on the right to interpretation and translation in criminal proceedings, which protects a right that has come under particular threat in the context of government outsourcing. Indeed, without the presence of this Directive there would be nothing to stop the government from allowing interpreters into the criminal courts who have no formal interpreting qualifications. The consequences of this could be disastrous.

The areas of life affected by EU law are, by now, too numerous to name. Different lawyers will be aware of the different impacts of the EU on their areas of specialism. Of course, EU law is not universally positive for British workers. The EU is fundamentally a capitalist project, limited in its excesses by a historically strong Europe-wide trade union movement which has extracted from it concessions. Socialists accept that many EU laws directly harm the working class. However, the nation state is also fundamentally a capitalist project, and many domestic British laws also harm the working class. There is nothing special in this regard about the EU. To call for an end to the EU without also calling for an end to the British state is to be blind to the interplay between capital and state power. When this is understood it should be apparent that Brexit will not act as a brake on neoliberalism; the effect will only be that a different section of the capitalist class, oriented away from trade with Europe, will move into the ascendancy, continuing the neoliberal project on a domestic level, but without the working class of Britain having the protections won from the European project. We will still be fighting the capitalist class. But the workers of Europe will be further from our side in that struggle.

As socialists we must also be internationalists, opposing the existence of borders between states, accepting that these exist not for the benefit of the working class, but for the benefit of the capitalist class. Setting up new borders will not bring an end to late capitalism, or to the deregulatory project of the capitalist class. In the British context, it will make exploitation of the working class easier. There is no option on the ballot in this referendum for a socialist Europe, or for a socialist Britain. It is therefore essential that we educate ourselves, and non-lawyers, about what exactly we are voting for.

Stephen Knight is a barrister at Mansfield Chambers practising in crime and immigration law, and is Secretary of the Haldane Society. A fully-referenced version of this article is available on request. Please email socialistlawyer@haldane.org

# The state and wom

**Sarah Ricca** looks at violence against women in the UK today, the British state's role and the struggle for accountability

*The law, in its majestic equality, forbids the rich and poor alike to sleep under bridges, to beg in the streets, and to steal bread.* Anatole France

The law reflects and protects existing power relations. This fundamental reality determines what it criminalises and what it legitimises.

That applies when it comes to the use of violence for political ends. We see the repressive state apparatus respond with immediate and ruthless force to the terrorist attacks in Paris and Brussels – quite understandably, you may well think. But that same state apparatus has failed to prosecute anyone for the massacre of Algerians in Paris in 1961, instigated by head of the Paris police Maurice Papon (Nazi collaborator as head of the police in Bordeaux, torturer of FLN fighters against French colonial rule as a civil servant in charge of a province of Algeria, French cabinet minister in 1978). Simone de Beauvoir wrote about the incident:

*The police waited for the Algerians to come up out of the metro stations, made them stand still with their hands above their heads, then hit them with truncheons […] Corpses were found hanging in the Bois de Boulogne, and others, disfigured and mutilated, in the Seine.*

The French government eventually admitted that 40 died but the real figure is believed to be around 200. Papon was convicted of crimes against humanity for his role in deporting 1,600 Jews to concentration camps under the Vichy regime, but there has never been an inquiry – criminal or otherwise – into the 1961 massacre.

And the same fundamental reality – the same majestic inequality – applies when it comes to the state's response to violence against women.

Lawyers, campaigners and citizens should bear two principles in mind. The first is that you get the legal system that you fight for. Put another way, change doesn't come from the law: the law only changes under pressure from the struggles and the resistance of ordinary people outside of the courts. Under pressure, even within an unjust political and economic system, you can achieve real victories. Without such struggles, you cannot build a struggle to create change at a higher level – you cannot change the political and economic system. The second is that you cannot take anything for granted – because what you win from one hand of those in power can be taken away by the other.

*Behind the statistics: some of the women and children subject to violence in 2008*

**Sabina Akhtar** was killed by her husband while her young son was in the house, two months after she told the police that her husband had assaulted her and threatened to kill her. The Coroner at the inquest into her death in 2012 found that there had been serious failings by the Greater Manchester Police, including inappropriate delay and inaction in response to her complaints.

**Domestic violence : the scale of the problem**

- According to official statistics, on average two women are killed every week by a current or former partner in the United Kingdom.
- Seventy-seven women were killed by their partners or ex-partners in 2012/13.
- Domestic violence is the largest cause of morbidity worldwide in women aged 19 to 44; greater than war, cancer or road accidents.
- Twenty-nine per cent of women in the UK have experienced physical and/or sexual violence by a current and/or previous partner (ranked fourth highest across EU member States).
- Domestic violence is gendered violence. Women have been found to constitute 89 per cent of all those who experienced four or more incidents of domestic violence.
- It is a feature of domestic violence that a woman will have experienced domestic violence on very many occasions (figures suggest an average of 35 times) before a report to the police is made, indicating that by the time a woman has made her first complaint to the police, the level of risk to her is likely to have escalated.
- One in seven children and young people under the age of 18 will have lived with domestic violence. Living with domestic violence can adversely affect children's healthy development, relationships, behaviour and emotional wellbeing. Domestic violence is a factor in the family backgrounds of two-thirds of the serious case reviews where a child has died.
- The impact of domestic violence is devastating to those who experience it and for children who witness it. In addition, it is a huge societal burden. Crime relating to domestic abuse constitutes some eight per cent of all recorded crime and one third of recorded assaults with injury. On average the police receive an emergency call relating to domestic abuse every 30 seconds. Domestic violence has been estimated to cost the taxpayer £15.7 billion each year.

# en's bodies

**The role of the state**

So what is the state's response to this level of criminal violence against women? Does the cliché of 'it's a domestic' still exist? Apparently so. Consider the 2014 report from Her Majesty's Inspectorate of Constabulary *Everyone's Business: Improving the Police response to Domestic Violence*: '[t]he overall police response to victims of domestic abuse is not good enough'; '[d]omestic abuse is a priority on paper but, in the majority of forces, not in practice'; '[t]ackling domestic abuse too often remains a poor relation to acquisitive crime and serious organised crime'.

**The struggle for accountability: negligence**

Most lawyers in England and Wales will be familiar with the law of negligence: the police cannot be held liable in negligence in relation to their 'core functions' on public policy grounds. Drivers can be sued in negligence for careless driving. Doctors can be sued for negligent treatment that causes loss. Social services can be sued in negligence for failing to protect children. But the police, generally, cannot be sued negligence for failing to take steps to protect people from crime.

It is interesting to look at the line of unsuccessful cases that have fallen foul of the public policy bar, because many have been brought by people who have faced discrimination.

The 'public policy' bar on negligence derives from *Hill v Chief Constable of West Yorkshire Police*. This case was brought by the mother of Jaqueline Hill, the last victim of Peter Sutcliffe, the Yorkshire Ripper. Sutcliffe was convicted in 1981 of killing 13 women. He had attacked many more. He first came to attention of police in 1969 (for a violent attack on a prostitute) and was finally captured in 1981. He was arrested and interviewed nine times. The investigation was littered with mistakes, many of which could be seen to point to discriminatory attitudes on the part of the police that prevented them from seeing what was right in front of them. But the House of Lords concluded that the police could not be held liable in negligence in these circumstances as a matter of public policy, concluding: 'From time to time they make mistakes in the exercise of that function, but it is not to be doubted that they apply their best endeavours to the performance of it'.

Another negligence case involved a victim of serious violent crime who was denied equal protection from the law: Duwayne Brooks, a friend of Stephen Lawrence and survivor of the racist attack that killed Stephen. The police failed Brooks in a number of ways after they arrived at the scene, causing him psychiatric damage on top of the trauma already sustained by witnessing the murder of his friend. Brooks was just 18 at the time. The MacPherson Report found a number of failings, including: the police assumed there had been a fight (ie they assumed Duwayne was a perpetrator not a victim); Duwayne was agitated because the police had arrived rather than an ambulance: the police took his agitation as hostility and aggression; the police failed to take an account from him; and the police failed to drive him round the area to show where the assailants had gone. The Macpherson report concluded:

*'We are driven to the conclusion that Mr Brooks was stereotyped as a young black man exhibiting unpleasant hostility and agitation, who could not be expected to help, and whose condition and status simply did not need further examination or understanding. We believe that Mr Brooks' colour and such stereotyping played their part in the collective failure of those involved to treat him properly and according to his needs.'*

But again the House of Lords concluded that no duty of care was owed – no doubt in through pressure from public opinion on the Lawrence case, it resiled to some extent from confidence in the British bobby that the House of Lords had expressed in *Hill*, commenting that 'Nowadays, a more sceptical approach to the carrying out of all public functions is necessary.' The court may have been more sceptical of the police, but not about the shiny new police complaints system **>>>**

**Cassandra Hasanovic** was killed by her estranged husband in front of her two young children and her mother as she was attempting to flee to a refuge, following numerous reports to the police (including of assault, sexual assault and threats to kill). An inquest into her death in 2014 found that Sussex Police failed to take appropriate steps to safeguard her life.

**Katie Boardman** was stabbed to death by her ex-partner with her children present in the home, after 11 calls to the police. Police had contact with Katie five times in the four days before her death. The IPCC found 'a number of failings' by the police force and individual officers.

**>>>** (the IPCC having been established a few years previously by the 2002 Police Reform Act): 'an aggrieved citizen may in cases such as those under consideration have to be content with pursuing a complaint under the constantly improved police complaints procedure'. Since then a number of aggrieved citizens, many of them black, have discovered the reality of that 'constantly improving' police complaints system in the UK – we remember Jean Charles de Menezes, Ian Tomlinson, Sean Rigg, Mark Duggan and many others.

The next authority on police negligence was *Smith v Chief Constable of Sussex police*, a challenge brought by a gay man. In December 2000 Gareth Jeffrey assaulted his partner Mr Smith. Jeffrey was arrested but not prosecuted. They split up. Jeffrey tried to resume the relationship, but Smith resisted. From January 2003 onwards Jeffrey sent Smith a stream of violent, abusive and threatening telephone, text and internet messages, including death threats. There were sometimes 10 to 15 text messages in a single day. They included 'U are dead'; 'look out for yourself psycho is coming'; and 'I am looking to kill you and no compromises'. Smith reported the threats and the history of violence. Police declined to look at texts and made no notes. Police told Smith that the investigation was progressing well, and he should call 999 if he was concerned about his safety in the interim. On 10th March 2003 Smith received a further text message from Jeffrey saying "Revenge will be mine". That same day, Jeffrey attacked Smith at his home address with a claw hammer, causing three fractures of the skull and associated brain damage. Jeffrey was arrested at his home address (which had already been provided to the police) on 10th March. He was charged and in March 2004 he was convicted of making threats to kill and causing grievous bodily harm with intent and sentenced to ten years' imprisonment.

**Rabina Bibi** was stabbed to death in front of her young daughter by her ex-partner. On the night of her death, Rabina called 999 to report her ex-partner banging on her door. The police graded this as an 'early response incident' requiring an officer to attend within 30 minutes. However, no officer responded until her daughter called the police (33 minutes later) at which time they did respond and found Rabina's body. The IPCC found that West Midlands Police had 'failed' Rabina.

**Arsema Dawit** was aged 15 when she was stabbed to death by her ex-boyfriend. Approximately six weeks before her murder she and her mother reported that her ex-partner had assaulted her and threatened to kill her. The Independent Police Complaints Commission (IPCC) found that the report was not 'sufficiently acted upon' and identified 'collective and organisational' failings. The inquest jury found failings that contributed to her death.

The negligence claim went to the House of Lords and, again, no duty was found (though Lord Bingham in a dissenting judgment did try to find a compromise position). Lord Carswell said 'One must recognise that police officers may quite properly be slow to engage themselves too closely in such domestic type matters, where they may suspect from experience the existence of a degree of hysteria or exaggeration on the part of either or both persons involved'.

The most recent challenge has been brought by the mother of a woman who was killed by her partner. Joanna lived in Cardiff with her two children who were aged seven years and 10 months. On 5th August 2009 at 2.29am Ms Michael called 999 from her mobile phone. She lived in the area of the South Wales Police, but the call was picked up by a telephone mast in Gwent and was routed to the Gwent Police call centre. It was received by a civilian call handler. The conversation was recorded .

*He come back and he told the guy to get out of the room, and then he bit my ear really hard and it's like all swollen and all bruised at the moment, and he just said 'I'm going to drop him home and* (inaudible) *[fucking kill you].*

The call was graded urgent and transferred to South Wales Police without the information of the threat to kill. South Wales police downgraded the call, requiring a response in six minutes. At 2.43am Joanna again called 999. The call was again received by Gwent Police. Ms Michael was heard to scream and the line went dead.

The case was heard in a packed courtroom that included campaign groups, a number of families bereaved by domestic violence and also (for part of the hearing) Duwayne Brooks. Two judges – Lord Kerr and Lady Hale – dissented and said the time had come for the police to be held liable in negligence in these circumstances. But the majority found no liability on the part of the police – though they did retreat further from *Hill*, reformulating the position not as an

immunity, but rather an absence of a duty of care where there is no assumption of responsibility and no reliance. This widens the crack in the door left by earlier decisions – so *Michael* is certainly not the last word on police liability for negligence in such circumstances.

It is worth contrasting this position with cases where the duty has been found – for example, another case with which most of us will be familiar *Dorset Yacht Co Ltd v Home Office*. In that case, Borstal trainees had taken a joy ride in a yacht, which then collided with another yacht. The owners sued the Home Office in negligence – and won. So the law protects people whose yachts are at risk from young offenders – but not women and gay men at risk from partners known to be violent, or black people at risk from racist attack. There we see the majestic inequality of the law in action.

It would be wrong to overstate the case. There are other cases on very narrow facts involving injury to people where negligence has been found – and cases of damage to property where negligence was not found. Society's power relations rarely reproduce themselves in a robotic or conspiratorial way – it is more subtle than that. It is a process whereby views and opinions shaped by the existing society result in legal judgments that reinforce and protect existing society. Precisely because it is a process, not a fixed set of rules, we can make gains ourselves – particularly when there are significant social forces demanding change. Under pressure from those voices, the law does move.

It is worth noting that Joanna Michaels' mother's claim under the Human Rights Act was allowed to proceed – and that Duwayne Brooks went on to win his claim under the Race Relations Act. And in a similar vein, the origins of the Race Relations Act lie in struggles of ordinary black people. In particular the Bristol Bus Boycott of 1963, which arose from the refusal of the Bristol Omnibus Company to employ black or Asian bus crews, as well as the Notting Hill riots and their aftermath. The riots were a response to an assault of a white woman married to a black man and the subsequent attack by some 300 to 400 white men on the homes of the West Indian community in Notting Hill. The subsequent complaints that the police had not taken their reports of racial attacks seriously were subsequently proved to be true: in 2002 files were released that revealed that senior police officers at the time had assured the Home Secretary, Rab Butler, that there was little or no racial motivation behind the disturbance, despite – with echoes of Hillsborough – testimony from individual police officers to the contrary.

But while we gain from one hand the other takes those victories away again. The Tories' pledge to repeal the Human Rights Act and their cuts to services that keep women safe, and legal aid for women trying to divorce violent men and get custody of their children has been dramatically slashed.

We have our work cut out. There have been victories, and there is an expansion of legal remedies for families bereaved by domestic violence, thanks to the Human Rights Act. But there is no room for complacency, even if the threat to repeal the Human Rights Act is lifted. Attacks on legal aid risk are making accountability through the Human Rights Act illusory. For now, those rights we have we must use – or lose. We must take nothing for granted; you get the justice system you fight for.

**Maria Stubbings** was strangled to death by her ex-partner, who was known by police to have a previous conviction for domestic homicide. Her killer hid her body in the downstairs toilet. For three days until she was found, her 15-year-old son was in the house with the killer and his mum's dead body. The IPCC found a lack of consideration of further action or risk assessment, a lack of urgency and identified a number of 'missed opportunities' for intervention and an inquest jury identified a list of failings that contributed to the death.

**Clare Wood** was sexually assaulted, strangled and set on fire by her ex-partner George Appleton. In the months before Clare's death, she contacted the police to report Appleton's abusive behaviour. On one occasion when she reported an incident of harassment the response to her call was delayed on 26 occasions due to a shortage of police patrols. The IPCC found flaws in the police's intelligence systems and individual failings by officers who demonstrated in some cases a shocking lack of understanding about the nature of domestic violence.

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# Wrongfully serving life sentences

## **Ciarán Mulholland** argues that two northern Irish men are victims of miscarriage of justice

The systemic flaws, exposed in the recent documentary series 'Making a Murderer', which gave rise to the controversial convictions of Steven Avery and Brendan Dassey in the United States have many similarities with the cases of Brendan McConville and John Paul Wootton. They – the 'Craigavon Two' – were convicted of the murder of Police Service of Northern Ireland (PSNI) Constable Steven Carroll in 2009.

Netflix's programme had a profound effect on the public. People globally debated and campaigned against the abuses of the Manitowoc County Sherriff's Department, their prosecutorial system and the state of Wisconsin in general. There has even been a petition to President Obama for a pardon.

Meanwhile there continues to be appeasement of a dreadful miscarriage of justice closer to home. The Craigavon case also featured fundamental abuses of police powers, the destruction of evidence, the use of an infamous 'Walter Mitty' witness, dubious informants, evidence tampering, the exploitation of public interest immunity orders, selective disclosure, the denial of a jury and the sabotage of an appeal.

### Background: Gerry Conlon

It is hard to believe that it is nearly two years since the passing of my fellow Belfast man, Gerry Conlon – one of the Guildford Four. Gerry, together with Paul Hill, Paddy Armstrong and Carole Richardson, was wrongfully arrested, assaulted, tortured and maliciously convicted for an IRA bomb attack in 1975. Injustices and police misconduct continued with the arrests and false convictions of Gerry's relatives, including his father Giuseppe, on the basis of fabricated evidence. They later came to be known as the Maguire Seven.

The Conlon family's story was portrayed in the film 'In the Name of the Father': another miscarriage of justice that served the film industry well.

Ten years after the film's release I met Gerry in Belfast, and we began to work together on the Justice for the Craigavon Two Campaign. I was intrigued by his experiences and encouraged by the strength and hope that Gerry shared with me. He was a very humble and modest man and often referred to himself as 'just a fella from the Falls [Road]'.

While that was certainly true in one sense it wasn't a true reflection of Gerry. He became an ambassador against injustices globally, and had the courage to stand up for what was right irrespective of the establishment's stance, and despite frequent retributions from tabloid newspapers. This was exemplified in his letters and pleas to the White House on their policy of torturing and interning of prisoners at Guantanamo Bay. He also campaigned passionately for the release of Moazzam Begg and other victims of the 'War on Terror'.

When I asked Gerry why he continued to dedicate his life to campaigns he told me that it was because lessons had not been learnt after his cases, and he found it hard to stand by while he knew innocent people were still being wrongfully convicted and imprisoned.

At 20 Gerry was incarcerated in an English prison miles away from his family, merely because he was an Irish man in London at a time in which racism towards the Irish was rife. The government wanted speedy convictions after the attacks and Gerry was a scapegoat.

While in prison he witnessed the same injustices forced upon his father. His father's health deteriorated and eventually he died in HMP Wormwood Scrubs. One can only imagine the helplessness and heartache that he must have felt. For 15 years he was deprived of his freedom, and was told by the trial judge 'if hanging were still an option you would have been executed'.

### The Craigavon Two

There are significant parallels between Gerry Conlon's miscarriage of justice and the case of Brendan McConville and John-Paul Wootton. The media had played a willing part in de-humanising them and refused to report on any alternative but their guilt. The political elite had created a culture in which raising concerns about controversial convictions was deemed an act of sympathy, and ultimately an attack on the victims.

Thankfully, many people in Ireland, the UK and further afield accepted that ignoring injustice is complicity in injustice itself. Communities began to mobilise and – in Gerry's case – a change in legal representation for Gerry catalysed his journey towards justice and liberty.

The momentum of Brendan and John-Paul's campaigns has increased in recent years. Many human rights activists and politicians, including Monsignor Raymond Murray, Michael Mansfield QC, Clare Daly TD and Mick Wallace TD, have supported them. There is still much more to be done.

In April 2016 Jerry Buting, one of the defence attorneys in 'Making a Murderer', was in Belfast to deliver a talk to the local Young Solicitors Association. This was a black-tie event attended by members of the legal profession and judiciary, who were keen to hear about the Avery case. It is disheartening that these same lawyers and civic leaders do not show the same enthusiasm or determination to

Picture: Jess Hurd / reportdigital.co.uk

hear about miscarriages of justice in their own jurisdiction.

On the evening of 9th March 2009 PSNI Constable Stephen Carroll was killed. He was attending a property in Lurgan, Co. Antrim, investigating a 999 call about a smashed window. The Continuity IRA later claimed responsibility for the killing.

An extensive PSNI Special Branch and MI5 investigation immediately followed. Within days an AK47 rifle was found and Brendan McConville and John-Paul Wootton (then a youth) were arrested. The events that secured convictions were inconceivable.

The prosecution's key witness, 'M' did not come forward until a year after the shooting, by which time both names had been widely broadcast in the media. 'M' contacted the police on a number of occasions while drunk or drinking, including on the first occasion he had contacted them in the middle of the night. He suffered from astigmatism and short-sightedness, and would have had difficulty identifying facial features at more than eight yards, but claimed to have seen McConville over sixteen yards away on a dark night. His partner, who was with him on the night, was unable to confirm his account. And when 'M' came forward, the police failed to carry out the mandatory identification Code D PACE protocols, thus denying McConville the protection of the code

*Gerry Conlon, speaking at a demonstration against the cuts in legal aid, London 2013.*

The prosecution expert conceded that, along with the DNA of McConville, there were mixed profiles of at least three other people on one piece of evidence (a coat), and possibly as many as eight. The prosecution expert also accepted that DNA could have been distributed on the coat as a result of McConville speaking over it or sneezing over it while in the car on another occasion, and that a residue discovered on the coat may be from a non-firearm source.

Shortly after the shooting police discovered a fire in the Drumbeg estate, next to the housing development where Carroll was shot. They found that items of clothing had been burned.

John-Paul Wootton's vehicle, which the prosecution said was used in some way in the shooting, was not parked close to the scene of the attack, but was in fact parked almost 250 metres away. A tracking device fitted to the vehicle by British Army intelligence showed that the vehicle went nowhere near the housing estate where the gun used in the shooting was later discovered. Data from the tracking device was mysteriously wiped while the device was in the hands of the army. No plausible explanation was ever given as to why this happened. When the vehicle was taken for forensic examination, army technical officers weren't asked to examine it for suspect devices (as is the normal protocol). Instead it was removed by a civilian pick-up company, raising suggestions that the army had already accessed the vehicle earlier that night, which could account for the need to wipe the data and possibly account for the residue on the coat.

It was claimed by the prosecution that Wootton might have dropped McConville off close to his home after the shooting as the vehicle passed close to McConville's home after it left the housing estate where it had been parked until ten minutes after the shooting. In reality there were only two directions available to Wootton for his journey to his own home, and both routes passed close to the home of McConville.

The prosecution sought, and were awarded, public interest immunity orders to prevent the disclosure or mention any evidence that could have assisted the defence.

The gun had a partial fingerprint on the internal spring mechanism of the magazine, which was checked against the fingerprints of McConville and Wootton. No matches were found.

There was no evidence that McConville or Wootton had participated in any events that to Carroll's death.

The presumption of innocence should apply to all, irrespective of the allegation, the aspirations and opinions of the defendant, or the political landscape. That is a cornerstone of justice. The prosecution must also present a case fairly and with integrity, regardless of the agendas of the police or security services. This does not appear to be the case in the trial and appeals of the Craigavon Two.

**The roots of injustice**

Today in the north of Ireland there is a dysfunctional peace; one that has witnessed increasing poverty and deprivation. Tory austerity has been fully implemented by the inefficient Stormont executive led by Sinn Féin and the Democratic Unionist Party. It is telling that more people have died by suicide since the signing of the Good Friday Agreement than were killed during 30 years of conflict in Ireland.

The primacy of the 'peace process' is seen as paramount. So much so that any voices of opposition are tarnished as 'dissidents' or slandered as being 'anti-peace process'. I believe this is why so many are afraid to raise concerns regarding the convictions of the Craigavon Two.

In any democracy, irrespective of whether there has been recent conflict, there needs to be a platform for dialogue and debate. A place where alternative opinions can be aired, heard, and respected without fear of being pigeonholed. A culture that frowns upon real transparency is nothing more than a Stasi-like state, and is surely one of the reasons behind these injustices: those who do not know history's mistakes are doomed to repeat them.

There are similarities across the UK. Civil liberties and defence lawyers are branded as 'ambulance chasers' and 'terrorist sympathisers'. All lawyers and human rights activists must rise above the parapet and make stands against injustices in all their forms: from the destruction of legal aid and the obliteration of the National Health Service to serious miscarriages of justice. A socialist lawyer must be the activist that their community needs to ensure legacies like Gerry Conlon's are not in vain.

The case of the Craigavon Two sets a very dangerous precedent. Weak circumstantial evidence, in combination with the mis-application of the doctrine of joint enterprise, led to a conviction. Is it not time to abolish the Diplock courts (juryless trials for certain offences in Northern Ireland) if we are to respect and uphold the rule of law?

Thankfully, after 30 years of people being convicted for others' crimes, there have been developments in the area of joint enterprise following the landmark decision in *R v Jogee* [2016] UKSC 8. In Brendan and John-Paul's case the Crown never attributed a role to either of them, and even accepted during the course of the appeal that their prosecution was flawed. It was never proven beyond a reasonable doubt that they had in fact murdered the PSNI officer, yet they were convicted and handed life sentences.

Like the Guildford Four, the Maguire Seven and the Birmingham Six, I strongly believe that the Craigavon Two are wrongfully serving life sentences and I encourage all those who have an interest in justice to study the facts of this case. It certainly has the elements for a great documentary or film – but at an incredible human cost.

It is appropriate to finish with the words of Martin Luther King: 'It is not possible to be in favour of justice for some people and not be in favour of justice for all people.'

Ciarán Mulholland is civil liberties lawyer working between Dublin and Belfast. This article is dedicated to the memory of Gerry Conlon.

# Ukraine's new labour cod

by **Vitaliy Dudin**

Ukrainians are living in a unique era. The 'Euromaidan' demonstrations in 2014 did not lead to any social reforms and did not overthrow any oligarchs except for former president Viktor Yanukovich. Neoliberalism continues despite its failure to improve standards of living. Millions are suffering under the neoliberal regime but there is no any political force strong enough to stand up to it.

**New Government – old politics**

In April 2016 the neoliberal government of Arseniy Yatsenyuk resigned. People saw this as a positive step because the government was tarnished by corruption, growing costs of living and a fall in real wages. But the new government under Volodymyr Groysman has continued with market reforms – privatisation, deregulation and recruiting public sector managers from the private sector. Of course it is hard to call the new government 'new' in a literal sense – some officials were transferred from the old one. For example, Pavlo Rozenko (the former minister of social policy, who supported pension reform and the new labour code) became the deputy prime minister; Arsen Avakov – the main patron of neo-Nazi 'Azov' – is still running the ministry of internal affairs; Pavlo Petrenko, who supported the so-called 'anti-communist law', has become minister of justice again. Volodymyr Groysman – the former chairman of the parliament and co-author of the draft labour code – was an old friend of president Petro Poroshenko. Effectively, 'change of government' is nothing more than a shuffling of oligarchs.

The government has a strong neo-liberal stance. The new minister of the economy Stepan Kubiv is an official co-author of the new labour code. He was a chairman of the National Bank of Ukraine during the high inflation in 2014 and was widely accused of conducting an improper refinancing of the banks. Alexander Danylyuk – the new minister of finance – is well-known for a scandal involving real estate in London. Of course, as with previous ministers of finance, he made promises to businesses to impose liberal reforms and to continue collaboration with the IMF.

However, there seems to be limited anger towards the new government, partly because of some of the new ministers are not widely known. There are, however, serious causes for concern.

**Does the IMF rule Ukraine?**

There is a complex relationship between the Ukrainian authorities and the IMF.

The government agrees with the IMF that 'structural adjustment policy' should continue until the economy has fully stabilised. But austerity policies have been ineffective: the economic growth forecasts have been postponed until next year. Salaries fell to the lowest in Europe (according to World Bank data the wage of an unqualified worker is about 119 USD per month). The Greek experience shows that freezing social standards simply reduces consumption and demand. But there is evidence that such policies were not intended to stabilise the economy, but to favour businesses. Oligarchs can compete with European producers in EU markets because of cheap Ukrainian labour; the government then tries to attract investors to Ukraine by using this advantage (but we see no interest from multinational corporations at all).

The Ukrainian cabinet is ready to push through pension reforms (the government is going to cancel simplified retirement for some categories of workers, including miners and railway workers). There are moves towards a mass privatisation of 'strategic' assets – railways, the energy sector etc. Under the slogan of decentralisation the government has tried to close local clinics and schools in regions.

The Ukrainian reforms go even further than those demanded by the IMF. For example, a higher tariff on gas. The national gas monopoly – Naftogaz of Ukraine – became profitable in 2015. The only thing that keeps gas prices stable is a system of subsidies for the poorest (it was a recommendation of IMF) but there have been attempts to cut those programmes and sell Naftogas into private hands.

There is some conflict between the IMF and Ukrainian oligarchs. There were calls for radical tax reform, but the IMF did not agree. Social security contributions have been cut twice in 2016 (it is now 22 per cent). There are moves from the parliament for more libertarian reforms: a draft law was signed by 140 deputies, who had argued that the ministry of finance it is a 'representative of committee of creditors'. There is also widespread support for reducing taxes on employers (which would increase the pension fund deficit).

Some politicians who control large public entities are not interested in more transparent privatisation (the type promoted by the IMF): they are afraid of losing profits they have gained through corruption.

In addition, in 2015 Ukraine was obliged to pay the IMF the highest sum of money in the country's history.

Finally, during the last government there were no 'technocrats' in favour of the IMF, and ministers' advisers have remained the same under the new regime, such as, for example, Ivan Miklosh, the former minister of finance of Slovakia. His mission was to prepare a new tax code that favoured businesses. He says that Ukraine has a very high rate of taxation. According to the World Bank, the total tax rate in Ukraine is 52.2 per cent and – in his opinion – that explains why Ukraine is 83rd in its 'Doing Business' rankings. But some developed countries have similar tax rates. In Austria (21) the rate is about 51.7 per cent and wages are radically higher (1,764 USD). France (27) has an even more serious rate – 62.7 per cent and the

# e – neoliberalism in action

salaries are even higher (1,964 USD). Argentina has an absurd figure of 137.4 per cent and a pay rate of over 1,184 USD. It is strange that Ukraine is trying to follow the experience of Slovakia and Georgia, where neoliberal reforms failed. Georgia has a minimum wage four times lower than in Ukraine. Social standards in Slovakia are two times worse.

Surely it is naive to use official tax rates to analyse the level of freedom of entrepreneurs: Ukraine has a problem with tax avoidance – mainly though offshore profits. Undoubtedly the measures in this area have been made under pressure from Western partners.

So the IMF plays an ambiguous role in Ukraine: it pushes forward liberal reforms that damage social policies, while the ruling class thinks about the short-term benefits of those reforms. The current aim of neoliberals is to limit the country's social policies through low taxes and cheap labour. Ukrainians now earn the least and have shortest holidays among neighbour countries. The next stage is the adoption of the new labour code, replacing the one that was enacted in 1972.

## The new labour code

The new code was not demanded by the EU (as Ukrainian deputies had said in November 2014 when it passed the first reading) or by the IMF (as was the case in Russia). Only Ukrainian employers are interested in the document. The Yanukovich regime did not manage to enact it, so the post-revolution government is trying to finish his work. The government announced its aim to have a second reading in 2016.

Some argue that nobody complies with labour rights so it is hard to enforce them. The state had aggravated the problem through a moratorium on labour inspection on small and medium businesses. Of course it is hard to use any rights if you have no trade unions in workplaces.

Neoliberals say that the current legislation is too socialist for a poor economy. However, a significant proportion of Ukrainian labour laws were enacted after the breakup of the Soviet Union. Empowerment of workers was a realisation of the democratic aims of the constitution of the newly-independent Ukraine. So the repeal of the "old" code is not anti-communist – it is an anti-democratic act.

## The provisions of the new code

*1. Small businesses and an unstable economy.* The act introduces special regulations for small companies (up to 50 workers). Employers can give one month's redundancy notice, and can also change conditions of work with one month's notice. There is no guarantee that workers in small companies will be able to organise. Some experts predict discrimination and deterioration in workers' rights. This is especially dangerous because about 99 per cent of registered companies are 'small'. According to 'Doing Business', Ukraine ranks 30th in terms of starting businesses, so there is little need for stimulation and such businesses do not tend to make the economy any more productive or stable.

Employers will also be able to use fixed-term contracts, and it will be open to workers to 'request' fixed-term contracts whereas previously the employer would have to prove that it would be in the worker's interest. Within two months of the start of a contract an employer will be able to dismiss the worker for one instance of non-performance of duties. No doubt employers will take advantage of the new conditions of short-term employment relations. EU Directive 91/383/EEC recommends a prohibition on temporary workers for certain types of dangerous work. The new code allows the use of short-term contracts even in construction and mining.

*2. Abolishing the unions in big companies.* Trade unions are still operating in several industries. Some of those are state-owned, such as Pivdenmash in Dnipropetrovsk (Ukrainian railways). Others belong to oligarchs, such as ore mines in Kriviy Rih, and play a dominant role in export. Private owners are trying to neutralise unions. Some are acting illegally by scaring or beating activists; and a few (such as Arcelor Mittal) offer huge sums of money for voluntary dismissal. The new code is very helpful to business owners because it will allow dismissal without the union's permission for reasons such as truancy or 'non-performance of duties'. It will make it quicker and easier to harm unions. It will also be easier to force employees to work on holidays (today employers need the union's permission).

*3. Cheap and dependent work.* Some of the new code's provisions pose dangers to all workers. For example, employers will be able to carry out video surveillance and control internet access (which are currently prohibited). Bosses can impose additional duties on workers if they think a worker has free time during the eight-hour working day. Managers will be able to draw up their own local regulations.

The International Labour Organization has been very critical, but has not said that the new code must not be adopted. Therefore, only action from the working class can change the situation.

## Conclusions

The current proposals would damage much of what Ukraine values (an educated workforce, prosperous industries and natural resources). The abolition of social obligations will make businesses less responsible for their management. Workers can only protect their rights by making strong demands – fair taxation on businesses, nationalisation of strategic industries, protection of strikes and higher minimum wages. Workers' protests ('Pivdenmash') for wages, against closures of clinics and against the new labour code are encouraging. We need international support – but support that is independent of pressure from Russia or the IMF. Our government should realise that the welfare of the majority of people, rather than defending profits, should be the priority.

# NO NEW RUNWAYS!

**Melanie Strickland** of the Heathrow 13 was arrested, prosecuted and found guilty after occupying the airport

On 13th July 2015 myself and 12 others occupied part of Heathrow Airport under the banner of direct action network 'Plane Stupid'. We got onto one of the runways in the early hours with equipment to enable us to stay for as long as possible, and therefore to stop as many flights as possible. Our banners made clear that our action was about the role of aviation in accelerating climate chaos, and especially our opposition to a new runway at Heathrow (which had just been recommended by the Airports Commission – a quango chaired by Howard Davies).

We were charged with aggravated trespass and being in a restricted area of an aerodrome without permission. I knew that I wanted to fight the charges and to run a high-profile, principled defence focused on climate change and the millions of lives that it impacts. Campaigning court cases have always been a feature of successful movements – they can expose injustice to a mass audience, and keep issues in the public consciousness for a sustained period.

Our main defence was necessity. Our lawyers argued that we acted to stop death and injury by stopping flights that cause emissions and therefore climate change, which in turn is killing an estimated 300,000 people each year (as well as killing many other species), and impoverishing us all. Although it is almost banal to talk about climate change in this way, that is the reality. Those of us who took part in the action think about this every day, and about what we can do to stop it.

During our trial in January 2016 the court heard how each of us had spent at least 10 years campaigning on climate change and related issues. We all gave evidence in the dock, where we were asked mostly inane questions by the prosecution. We had all done the 'usual' things such as petitions, going on marches, writing to our MPs etc, but by almost every environmental measure things continue to get worse. That trend has been clear in our own experience, and has been clear since the birth of the modern environmental movement some 40 years ago. Each of the 'Heathrow 13' had reached the conclusion that is necessary to take direct action to challenge fossil fuel culture.

Heathrow Airport is the second-biggest single carbon emitter in the UK (after Drax power station), and if the new runway goes ahead it will be the biggest. As one of the world's largest airports it's also not an insignificant carbon emitter in global terms. It is virtually impossible for the government to meet the targets set out in the Climate Change Act 2008 (which are in themselves an inadequate response to the risks posed by increasing emissions) unless it rules out new runways and commits to reducing emissions from flights and other sources. And as


Professor Bows-Larkin, a climate and aviation expert at the Tyndall Centre, said in her report to the court: aviation cannot be decarbonised, and the only way to reduce emissions from flights is to reduce flights.

Many of us spoke about the impact of climate change in the Global South, and about the lives that are in imminent danger from a destabilised climate. The risks include flooding, drought and other extreme weather events, and land use changes that threaten people's ability to live. In response to this, we were asked to name a person whom we knew who was in imminent danger of death or serious injury from operations at Heathrow. We immediately responded that it not matter to us that we could not name our brothers and sisters in the Global South, in countries such as Bangladesh, the Maldives and other low-lying states whose lives are made increasingly precarious because of climate change, who are in imminent danger. It is enough to know that they are being harmed for us to be compelled to act. That was more or less irrelevant. The judge also refused to hear from people we wanted to call, such as local MP John McDonnell and other residents near Heathrow who wanted to address the court about their health and the general public health issues that Heathrow causes through its contribution to poor air quality, as well as the noise that leads to long-term health problems such as cardiovascular disease, stress and sleep disturbance.

We each found the court experience alienating, although as a lawyer I was able to give the others some tips about what to expect. While the judge was uninterested in what was, for us, the substantive issue – climate change and the fact that our government is not tackling this – we did manage to get across our points to the media. We also persuaded some of our more conservative supporters that direct action was necessary. When the prosecuting barrister asked me about the importance of obeying the rule of law in a democratic society, I said that protest beyond the law is essential to democracy, and that she (District Judge Wright) would not have been a judge but for the efforts of the suffragettes (who campaigned for equality, not merely the right to vote).

At the end of the trial the judge shocked us all by announcing that (in addition to finding us guilty) we should all expect immediate custodial sentences at the maximum level (three months for aggravated trespass) when we returned to court for our sentencing hearing. There were audible gasps from the public gallery, which was packed with our supporters, we heard someone shout 'this is a farce'. As we left the court we saw our friends in tears. I did not think that the judge had given us any indication of such a harsh sentence during the trial. >>>


**>>>** We spent the next four weeks in intense meetings, preparing ourselves psychologically for prison, sharing stories with other political activists who had been to prison, doing talks, interviews, meeting locals people who pledged to support us in prison, and planning the mitigation strategy for the sentencing hearing with our lawyers. We met regularly as a group to support each other. We were nicknamed the 'Heathrow 13' by the media and attracted a lot of broadly positive press, both in the mainstream and the grassroots media. We spent time speaking to our lawyers to ensure that the legal strategy did not undermine the campaign strategy.

In total three QCs agreed to act for us on a *pro bono* basis for the sentencing. Unfortunately, this element did not work so well since one of the lawyers did not seem to appreciate that our aim was not to get the most lenient sentence at any cost, but to construct a case for mitigation that was consistent with our principled defence and with the wider campaign. Ensuring that lawyers understand campaigns is a key learning point for me, since lawyers can damage the wider strategy. Unfortunately here we only realised we had engaged the wrong lawyer as we sat in the court wincing at the mitigation points being put to the judge but unable to do anything. This included a lawyer arguing that his or her client should not go to prison as it would prejudice his plans to travel to the US on business – this was both untrue (none of us have plans to go to the US!) and undermining in the context of a case about aviation.

Each of us got a six-week custodial sentence (suspended for 12 months); between £500 and £1,000 fines depending on income; and between 120 and 180 hours of community service depending on if we had previous convictions. Our lawyers told us that for an action like ours, this is punitive. The suspended sentence is 'activated' if we are convicted of any offence committed within 12 months of the sentencing.

We had mixed feelings with the sentences that were passed. Some of us really did not want to go to prison but others recognised that it could lead to a big escalation for the climate justice movement. The lesson of history is that movements can mushroom when people go to prison for taking principled action. For some of us a suspended sentence was the worst outcome as it has a restrictive effect on our activism. It's one thing going to prison when you have lots of supporters and the issues are getting attention, but going to prison at a later date when fewer people are aware is a different matter.

I have no regrets about the action and everything that followed it. I learnt an incredible amount and we have built connections that will strengthen the movement for climate justice. The show of solidarity we received was incredible – groups all over the UK and across the world posted messages of support. Some 300 people attended the solidarity sentencing demo in February – including some Haldane members. We've made links with groups fighting airport expansion in Nantes (France), Atenco (Mexico), Vienna (Austria) and in Istanbul (Turkey). In May 2016 communities in Atenco remembered their comrades who were brutally killed by Mexican police whilst resisting forced displacement to make way for a new airport. This oppression is ongoing and has included intimidation, sexual violence and torture.

Another issue we hadn't thought about before was the oppressive nature of prison. On the eve of our sentencing I joined a demonstration for justice for Sarah Reed outside Holloway women's prison. Sarah was a black woman, and a mum, my age, who had died in Holloway just a month before. The treatment that Sarah received in prison was horrific, especially given her mental health. Prisons are an inhumane response to the social problems created by capitalism and the imbalances of economic power.

Through our campaign we put climate change back into the public discourse, specifically in the context of aviation policy. We made more visible the links with land struggles in the Global South. We inspired new generations of activists to get involved in collective action. We helped to educate people about the fact that airport expansion is not necessary to cater for the one return flight a year for an annual holiday. Demand for airport expansion is coming from a minority of rich, frequent leisure flyers –15 per cent of people take 70 per cent of all flights in the UK, and they have a high income.

Airport expansion is not inevitable, Heathrow Airport has lobbied for a new runway for decades but they have never managed it. The last Labour government wanted to build a new runway at Heathrow and to expand other UK airports, but the plans were defeated. Struggles can be won when people organise and unite.

Thank you to all the people that supported us at court, who posted solidarity messages and donated to our crowdfunder for our costs. Your solidarity made us feel strong and powerful at a time when the legal apparatus of the state wanted to make an example of us and isolate us. When you have such support, ordinary people can do extraordinary things.

Melanie Strickland is a solicitor and climate change campaigner. She is one of the 'Heathrow 13'.


Picture: Jess Hurd / reportdigital.co.uk

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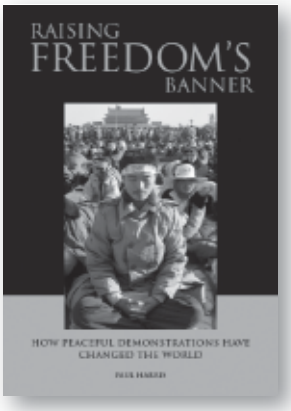



# A riotous read – policing protestors

**Raising Freedom's Banner: How Peaceful Demonstrations have Changed the World**, Paul Harris SC (Aristotle Lane, Oxford, 2015, URN 978-0-9933583-0-2) £12

Paul Harris SC spoke about themes in his book at its launch at Doughty Street Chambers in January 2016. Few people are so well-placed to examine at large the right of public assembly: Harris is a practising barrister in England and Wales, and senior counsel in Hong Kong. In 1991, together with a small group of other barristers, he founded the Bar Human Rights Committee of England and Wales, and those of us at Doughty Street Chambers who defend protesters charged with criminal offences have much for which to thank him.

The book presents criminal practitioners – prosecutors, defenders and judges – with a clear taxonomy of the law of protest and public order offences. It is a practical text, addressing questions of political theory and practical policing. It uses historical and modern accounts of protesters to explore the fundamental questions that English courts and the European Court of Human Rights are tasked with deciding. Those courts decide those questions, of course, when called upon to do so in individual cases, and the result of those decisions is that protesters may or may not be criminalised and punished.

What is the nature and ambit of the fundamental right to protest? What are permissible limitations on that right? How should individuals who feel excluded from mainstream politics or present political intent meaningfully show that? How should they protest against policies, groups or regimes such that their protest is effective and influential, while lawful?

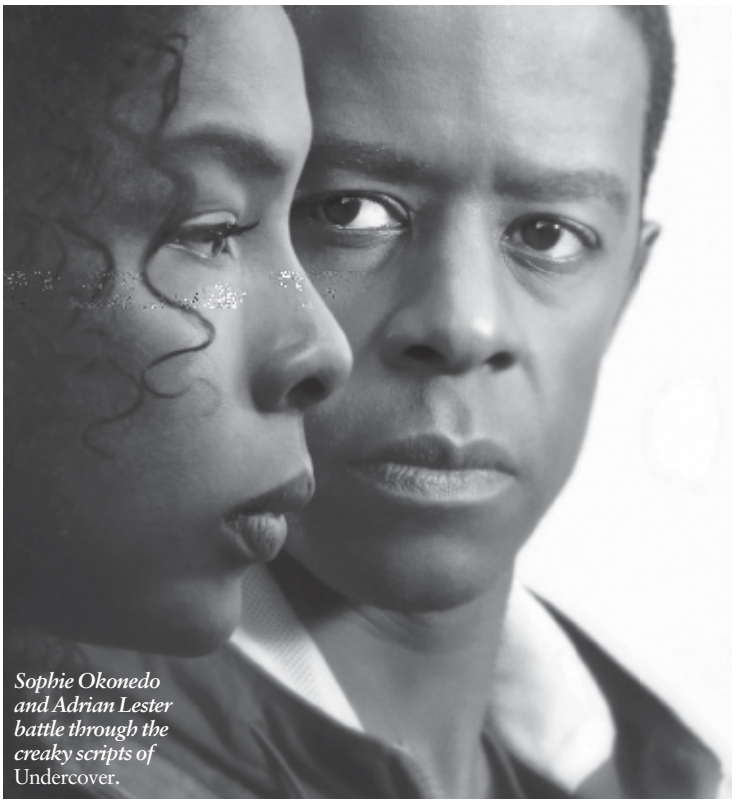
With these contemporaneous questions in mind, lawyers and others alike will revel in the early historical detail that Harris supplies about the right to protest, starting with Runnymede. It began with the right of subjects to petition their king, a right secured with the signing of the Magna Carta. What latitude, though, did the subjects of Stuart kings have with which to petition their king? The answer rather depended on what was most politically convenient to those in power. Whether you were a petitioner or a traitor depended on how tolerable or intolerable your protest proved to be.

Trial by a jury of one's peers was a counterbalance to politicised prosecutions. Harris records that the Riot Act of 1715 was intended to secure convictions, followed by hangings, of 'riotous persons' who had gathered in a group of twelve and refused to disperse within an hour of having been so directed. The 1715 Act also indemnified those who injured or killed alleged rioters in the course of dispersal. This legal protection for those who suppressed protestors was intended to quash acts of rebellion. Parliamentary debates raged as to whether the Riot Act heralded a new era of delegated royal prerogative for magistrates and the military to suppress dissent. Others argued it did no such thing, but simply recognised the right of every subject to quell a riot. Royal prerogative or not, it hardly mattered. More than stopping rebellion, the effect was to silence and chill the constitutional right of protest that had been secured for peaceable protesters.

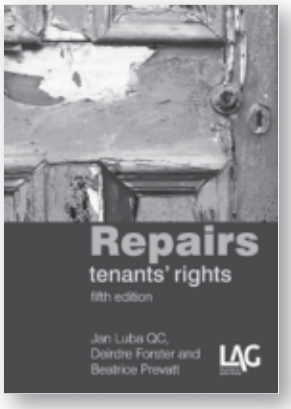
A strong focus in the book is the sanctioning by the courts – domestic and European – of police tactics to contain protesters where inadvertent passers-by have been deprived of their liberty for several hours. In *Austin and Others v. the United Kingdom* (application nos. 39692/09, 40713/09 and 41008/09), a majority of the Grand Chamber of the ECtHR held there had been 'no violation of Article 5 (right to liberty and security) of the European Convention on Human Rights'. The case concerned complaints by a demonstrator and several passers-by that they were not allowed to leave a police cordon for almost seven hours during a protest against globalisation in London. In the modern language of police containment, those persons had been 'kettled'. Public and criminal lawyers generally find this decision disappointing. The Strasbourg court seems to have had insufficient regard to the claim underpinning the fundamental right of liberty. Liberty lost the day because the Court too readily moved to limit that right in favour of generally-stated interests of the community. Police had started to disperse the crowd, but did not continue to try to do that with an eye to facilitating the release from the cordon of those who wished to leave – including the inadvertent passers-by.

Overall, the book is a refreshingly critical take on what can often seem to reasonable lawyers to be the undue deference given to police over protesters.

**Abigail Bright**



*Sophie Okonedo and Adrian Lester battle through the creaky scripts of* Undercover.




# Complete refurbish

**Repairs – tenants' rights (5th edition)**, Jan Luba QC, Deirdre Forster & Beatrice Prevatt, Legal Action Group ISBN 978 908407 69 6

The latest edition of this established text provides extensive and detailed advice for practitioners navigating the highways and byways of a specialised, and at times, difficult area of housing practice – be that legally, or in terms of effective tactical approaches when seeking to secure the best outcome for those living in poor housing conditions.

At the outset, the authors provide an excellent contextual overview of developments in housing law and practice as they pertain to housing disrepair and reference key statistics such as those concerning the number of non-decent dwellings found within the expanding private rented sector and where the most serious problems are more prevalent than in social sector dwellings.

Familiar questions in practice are dealt with, and explanations given, about why a problem may or may not be actionable by a tenant and useful diagrams/technical information will inform those new to the area and grappling with sometimes unfamiliar terminology.

There is a comprehensive chapter dealing with particular problems such as condensation and other types of dampness, carbon monoxide, insects and vermin, with references to other key resources where specialised input is required.

The authors set out the sources for the funding of claims, given the erosion of public funding save for cases where there is a serious risk of harm presented by disrepair, or where possession proceedings for rent arrears may be defended by way of counterclaim post-LASPO.

There is also important coverage of recent statutory provisions precluding 'retaliatory' moves to evict when a tenant raises matters of disrepair in certain circumstances.

Other sections deal with the actions that may be taken by local authorities to secure improvements in living conditions, citing research that the strictest of compliance with statutory powers has often paralleled the involvement of advice centres responding to matters raised within communities.

As the updated and expanded chapter dealing with awards for damages further indicates, the authors' approach is ever practical, drawing in the grassroots experiences of housing practitioners and thereby nurturing a wider collective understanding of what might reasonably be secured in compensation, through negotiation or at trial.

*Repairs –tenants' rights* was first published in 1986 and remains the key text for those working in the field 30 years on. It is an invaluable resource and one that will continue to educate and inform those working in a key area of social welfare law.

**John Hobson**

# Wasted opportunity

**Undercover**, BBC TV, eight-part drama, shown Sundays 9pm

There is a great drama just waiting to be written and produced about the undercover police officers who infiltrated activist groups and kept their identities secret while having intimate relationships with the women involved. But this isn't it.

A shame, because it has an impressive pair of lead black actors – a first for Sunday night telly in the UK? Sophie Okonedo stars as Maya, a criminal law barrister 'big' on human rights and Adrian Lester plays Nick, her partner of 20 years, who was an undercover Detective Sergeant with the Metropolitan Police, which he's kept secret from her.

His handlers want to reactivate him when Maya works herself all the way up to becoming the Director of Public Prosecutions (yeah, I know) and intends to use her position to delve deeper into the death of a black activist in a police station in 1996 which led to Nick targeting Maya in the first place.

Now that would be more than enough of a storyline. Undercover police officers routinely did form sexual relationships with campaigners and really did steal the identities of dead children to create their new identities.

But, wait for it, Maya is also representing a prisoner on death row in the US Supreme Court. And (spoiler alert) all the strands are linked to a government minister-level cover-up.

So here we have big topics crying out for a hearing. But the end result is a mish-mash of overly-dramatic and sensationalised plot-lines, many of which fall apart at the seams. Don't get me started on Maya's endless flights to and from the States or her epilepsy...

Nick's cover story is that he's a crime novelist. Not an easy job to pretend to be unless you can produce the goods, but there's no evidence he publishes anything in 20 years.

The real cops in the Met's undercover unit, the Special Demonstration Squad, which was created in 1968 to spy on trade unions, left-wing organisations and campaign groups, planned their back stories and knew how they would extricate themselves. By 1996, SDS officers were required to be married in order to have something to return to. It is implausible that Nick would have been in a position to marry Maya in real life, as he would already have had a wife, and possibly children.

Indeed the writer, Peter Moffatt, met two of the women who sued the police after discovering they had been deceived into forming long-term relationships with undercover officers, to hear their stories as research for the drama.

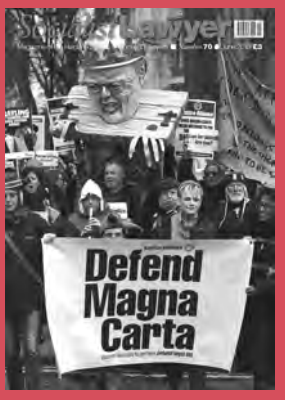
The women explained to Moffatt that his storyline about an officer deceiving his lover (then wife) for 20 years, was, in their experience, unrealistic. There was no precedent of such officers having families with their targets then sustaining a happy marriage for two decades under the guise of their state-sponsored identity. Their true stories, they said, were sufficiently dramatic without requiring elaboration. The writer ignored them.

In real life, this controversy has enveloped police since 2010 when Mark Kennedy, the undercover spy who infiltrated environmental groups for seven years, was unmasked by activists. After a series of other revelations, the Home Secretary, Theresa May, last year ordered a public inquiry headed by a senior judge, Lord Justice Pitchford and will include the testimony of Doreen and Neville Lawrence who themselves were targeted by undercover cops.

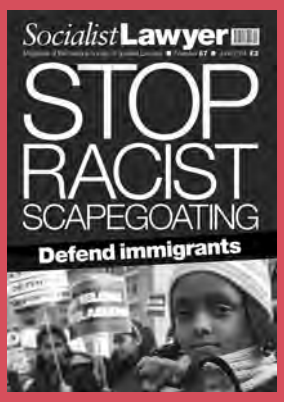
The true stories from Pitchford are likely to be more revealing and illuminating than this TV drama.

**Nina Kennedy**







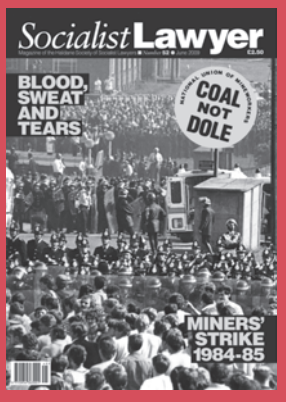






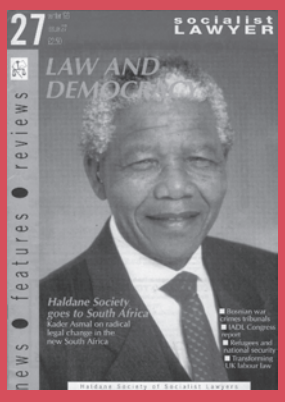




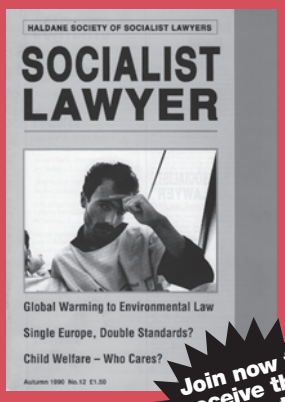



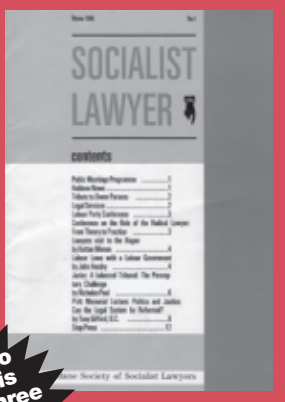






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