Socialist Lawyer

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Haldane Society of Socialist Lawyers

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

Socialist Lawyer

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January 2017: Thousands protested in Whitehall against Theresa May's state visit invitation to US President Donald Trump.

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The people versus the judges

"Those Despots long have trod us down.
And Judges are their engines;
Such wretched minions of a Crown
Demand the people's vengeance!"

from 'Why should we idly waste our prime?' by Robert Burns

Law and politics have drifted unusually close together in recent months as litigation has developed into a political event in its own right. The court battle over Article 50 – described by a newspaper as 'The judges versus the people' – is the most obvious example, and last year's Labour Party membership litigation is another.

For socialists, a sceptical attitude towards the judiciary is not uncommon. For lawyers practising in the magistrates' courts, immigration tribunals, employment tribunals and elsewhere, litigation can feel like a daily skirmish in a class war and – as Paul Heron notes in his article on the Jobstown protestors – there is a rich seam of academic critique that frames judges as part of a conservative elite.

Where does that leave us when we see the judiciary attacked in a bigoted and personal way? How does the radical left defend the people and processes that it's so used to disparaging? Should we stand outside the High Court with placards saying 'Defend the Eton 3'?

In a way it's similar to the Brexit vote itself: many socialists face a difficult reconciliation between supporting a system that exists to uphold capitalist interests and the need to protect immediate and important considerations. For the court case that meant ensuring that that Theresa May didn't have unfettered power to trigger Article 50, and in the referendum many of us placed the acute risk to migrants and workers' rights over the longer-term ambition of independence from a neoliberal institution.

This dilemma is compounded further when the courts rule in our favour – and leftwing causes have had an extraordinarily successful few months. In November a jury acquitted the Rotherham 12 – a group of Asian men charged with violent disorder for resisting fascism in their community (needless to say a number of Haldane comrades were involved in representing them). In October an employment tribunal poured scorn on the idea that Uber drivers weren't workers because they had a personal contract with their passenger (workers' rights for the 'post truth' and 'alternative facts' generation). Bike couriers with the radical IWGB union have had their worker status recognised, the Supreme Court has given vocal support to wheelchair users on buses, Southern Rail failed to win an anti-strike injunction and at long last the Hillsborough families have had the truth recognised.

This edition explores that balance between our victories and our scepticism. Rona Epstein explains her research into the hateful notion of imprisonment for council tax debt, Kate Hallam outlines the plight of environmental and human rights defenders, and Raj Chada explores the impact that decisions in protest cases have on free speech. Meanwhile, Pooven Moodley describes the struggle for women's land rights in Africa and Rebecca Omonira-Oyekanmi provides an inspiring interview with Navi Pillay. Daniel Newman and Thomas Smith investigate lawyers' status as workers who are increasingly subject to the Marxist concept of alienation.

We also feature the news, reviews and regular Haldane updates that remind members that they are not alone in bearing the Janus-faced label of 'socialist lawyer'.

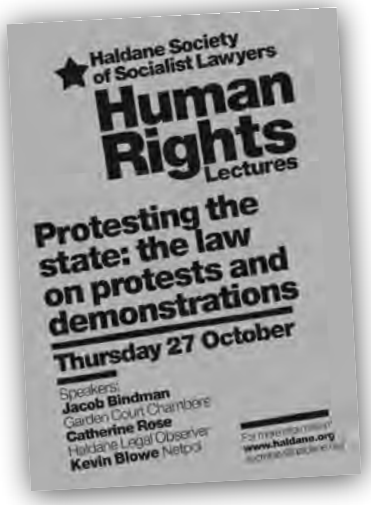
Nick Bano, editor

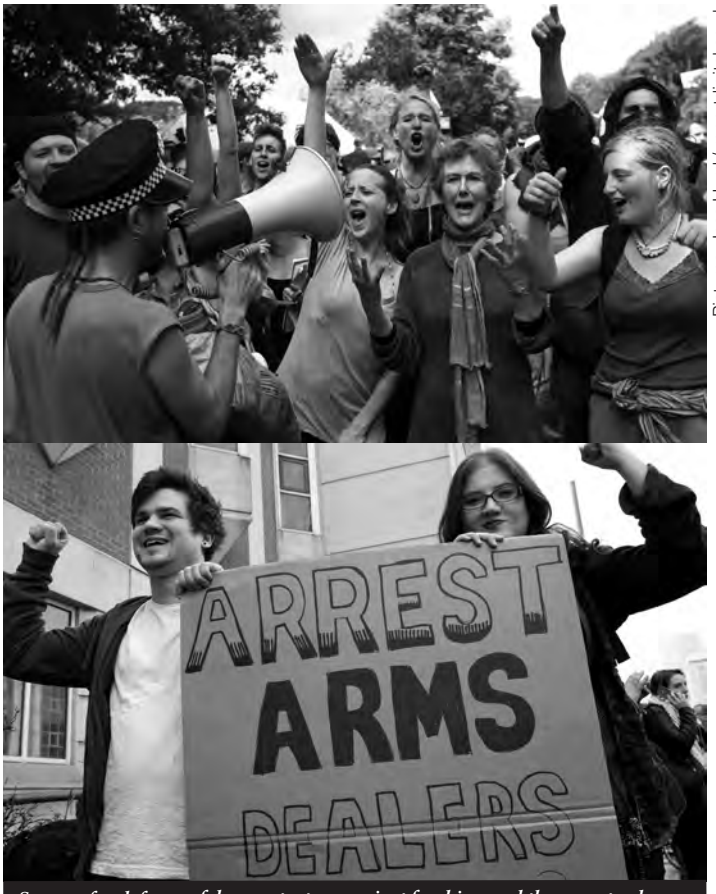
Demonstration on how the law works

Our annual human rights lecture series began at our new venue at BPP Holborn on 27th October 2016 with a fantastic discussion about protest law. We were joined by three speakers, who each offered an alternative experience of challenging policing at protests.

Jacob Bindman from Garden Court Chambers opened the lecture with an explanation of the legal defences open to protesters, providing us with a helpful map through the two defences most commonly used: necessity and prevention of crime. Bindman brought the law to life with a review of select protest law cases in which these defences have been used. One of the cited cases was from 2009, when a jury acquitted Greenpeace activists of criminal damage for painting a coal-fired power station. This was done on the basis of lawful excuse, as Greenpeace campaigners were acting to protect property around the world from the immediate impacts of climate change, caused in part by burning coal. The activists called witnesses including one of the world's leading climate change scientists, Zac Goldsmith and an Inuit. More recently, in 2016, eight activists were all acquitted by a district judge in the magistrates' court for staging a blockade at an arms fair in Docklands. The activists evidenced that they were shutting down the event on the basis that they were potentially preventing a greater crime from occurring.

Kevin Blowe from Netpol spoke next. Netpol is a network of activists and lawyers who are concerned with monitoring public order, protest and street policing in order to challenge and resist policing that is excessive, discriminatory or threatening to civil rights. Blowe discussed the main struggles we currently face, with the oppressive presence of police tactics and their reputation for violence to deter protestors from attending. In particular, the fracking protests across the country exposed first-time campaigners to disproportionate policing and high surveillance, which was the result of the full force of the state being combined with powerful corporate interests.





Pictures: Jess Hurd / reportdigital.co.uk

Success for defence of demonstrators against fracking and the arms trade.

Blowe described how recent criminal laws are being applied in a way that is different from their original intent, which allows policing to further prevent protest. For example, dispersal powers that were introduced to tackle anti-social behaviour and 'young people in town centres' are now being used to disperse protests. Blowe emphasised how crucial lawyers' work is in this area, and the importance of a human rights lawyer being a human rights campaigner, particularly during this period of draconian cuts to legal aid that make access to justice so much more difficult.

Finally, Haldane's legal observing co-ordinator Catherine Rose put all of the above into practice and explained how we tackle this as

October

21: South Africa announced that it will withdraw from the International Criminal Court, joining Burundi and the Gambia in leaving the ICC. Soon afterwards Russia withdrew its signature from the Rome Statute of the ICC.

28: Uber drivers won a landmark case, finding that they are workers and should be paid a national living wage. The decision by the Employment Tribunal has a significant impact on the growing 'gig economy' business model.

31: The first test appeals following the Supreme Court ruling in *R v Jogee* failed. The Court of Appeal did not overturn any of the convictions in the appeal.

November

14: UN Committee on the Rights of Persons with Disabilities condemned reforms to the UK government's welfare policy. The Committee found that the Welfare Re-form policy has resulted in systematic violations of human rights of disabled persons.

legal observers on the ground. Rose explained how a case arising from a protest is a balance of power between two sides: the police and the protesters. The police naturally have an organised structure, which allows them to easily gather evidence, whereas the lone activist does not. Legal observing is one way to try and right that balance. By gathering our own evidence, legal observers can put forward to the judge a more rounded impression of the day. This is achieved in part by taking contemporaneous notes. One of our legal observers recently provided a witness statement based on these notes in relation to the prosecution of an activist. The statement did not cover the incident itself, but the tactics of the police on that day: it provided some context about the police's behaviour just before the altercation that was the subject of the prosecution. Three days after the statement had been provided, the case was discontinued.

Other than gathering evidence, our legal observers are also there to provide basic information and support to protesters, which in turn helps to inform and empower everyone on the ground. Legal observers act as a deterrent to the police, which Rose has experienced herself when the police desisted with their course of action due to her presence during the interaction. If you want to join our legal observer team, please get in touch with Catherine Rose at legalobservers@haldane.org.

Emily Elliott

Picture: Jess Hurd / reportdigital.co.uk

The Orgreave Truth and Justice Campaign demonstrated at the Home Office in October, angry at the Home Secretary Amber Rudd's refusal to hold an inquiry into allegations of violent policing at the Orgreave coking plant during the miners strike on 18 June 1984.

Who said (to Ukip members)? 'Either you get on board or you disappear'. Answer (A) on page 11.

16: A study led by Labour MP David Lammy reported that people from minority ethnic backgrounds are more likely to be jailed than white people. The review is on-going and has broadened its scope to consider judicial ethnic diversity.

Who said? 'Ed Balls.... we're very proud of you! #Strictly won't be the same without you!' (B)

16: A jury delivers not guilty verdicts for a group of Asian men – known as the Rotherham 12 – who had been charged with violent disorder following a peaceful anti-racist protest against a Nazi march in their town in September, organised by Britain First. The defence successfully argued that the men acted in self-defence.

All for a day's work: free movement in the occupied West Bank?

As the sun rises, agricultural workers begin to gather in front of the padlocked metal gates of a rural checkpoint, some with tractors others with donkeys and carts. An elderly shepherd arrives with a flock of sheep and goats. The animals obey the whistles and calls of their master, who skilfully keeps them in the lengthening queue.

Eventually four soldiers arrive by jeep at a canopied desk some 30 to 40 metres away. Two more begin to tackle the heavy padlocks on the three sets of ill-fitting gates.

Five at a time, men and women proceed past rolls of razor wire and a trench to show the soldiers their papers. The shepherd and his flock pass the heavily armed guards, slowing to a graceful meander through the third set of gates.

The grinding infringement of the fundamental right of these men and women to access their land and livelihoods – indeed, the right to go out and complete a day's work – happens in this way every day.

Breaches of this right, which is enshrined in international humanitarian law, is widely embedded into everyday life across the occupied West Bank.

In 1949 an Armistice line – 'the Green Line' – demarcated Israel and the Palestinian territories; the latter have been occupied continuously by Israel since 1967.

In 2002 Israel began building the separation barrier. Controversially, its route deviates substantially from the Green Line, penetrating into the West Bank – at one stage to a planned extent of 22km, placing large swathes of fertile agricultural land, water resources and whole communities between the barrier and the Green Line.

Farmers and workers are separated from their land and employment, and have to comply with short opening times at the agricultural checkpoints along the barrier's 700km length. On many occasions the gates open late, and the decisions affecting passage can be inconsistent and arbitrary.

On one occasion young construction workers tell us they have been refused for 'looking too smart': they were suspected of crossing for purposes other than work. When asked why the soldiers said bluntly 'we are not in a good mood today'.

An elderly female agricultural labourer who harvests thyme is refused entry. She has a permit for the coming months but doesn't have the current one with her. She says loudly that she was allowed through the neighbouring checkpoint without any problem. A kindly man negotiates with the soldiers and she is eventually let through.

A few days later she passes back through the gate after her day in the fields, having waited for over an hour with many others as the darkness falls and the temperature drops. They are literally locked in, dependant on the arrival of the army for their journey home.

On the occasions when the soldiers don't arrive we call the humanitarian hotline and receive responses giving security explanations and sometimes outright dismissive sarcasm.

On another early morning we watch as an army convoy proceeds down the track to a gate and the farmers are ordered to clear the queue. The convoy passes through and the gates are locked behind them. The farmers re-assemble, explaining as they wait once again that the gates are regularly used for military access further into the occupied territory, easing the passage for the frequent night raids into remote villages and common in this area of the northern West Bank.

In 2004 the International Court of Justice issued an advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory (http://www.icj-cij.org/docket/files/131/1671.pdf). The court set out strong conclusions as to the

November

Who said? 'When Mexico sends its people, they're not sending the best. They're bringing drugs. They're bringing crime. They're rapists…' (C)

16: Nigel Farage promises to lead a march of 100,000 in support of Brexit on the day of the Supreme Court's hearing in December.

Who is fed up with the House of Lords? 'I keep being asked to go in and vote for things…' (D)

21: The Investigatory Powers Act was passed to legalise mass surveillance, which had been held to be unlawful by the Investigatory Powers Tribunal in October 2016. The Act gives the UK intelligence agencies and the police more surveillance powers than any other country in Western Europe or even the US.

illegality of the construction of the wall on occupied Palestinian land and called specifically for cessation of the wall's construction, the dismantling of those sections already built and of attendant legislative and regulatory systems. The court then set out the reparations and compensation by Israel required as a result of its unlawful actions. The United Nations Register of Damage was established, providing a mechanism to record individual claims of economic loss (http://www.unrod.org).

The Palestinian Authority set up local forums and mechanisms to build confidence in the process and ensure that scrutiny of detailed and comprehensive losses could be facilitated.

Furthermore, a category of general damages - that is, losses to local municipalities - was also set down, such that the collective losses to communities of recreational facilities and utility infrastructure can be submitted alongside private losses such as olive trees, greenhouses, produce and wages.

By June 2016 55,833 claims with 900,000 accompanying documents had been lodged with 22,536 reviewed and recorded on the register.

The register reflects just one element of the economic impact of an occupation that is nearly 50 years old. Each record is an experience of trying to exercise an age-old necessity and right. A right to labour on your own land and within your own community. All for a day's work.

John Hobson lived in the northern West Bank as part of the Ecumenical Accompaniment Project for Palestine and Israel (www.eappi.org).

Who said? 'You've got the Saudis, Iran, everybody, moving in, and puppeteering and playing proxy wars…' (E)

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**

Everyone's a critic now: time to review LASPO

On 6th December 2016 during justice questions in the House of Commons, the Lord Chancellor Liz Truss said the government "will shortly be announcing the timetable" for its promised review of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). At the time LASPO was passed the coalition government pledged to review the cuts to legal aid within three to five years of its implementation; that is, by April 2018 at the latest. Since LASPO reached its third anniversary YLAL has been calling on the government to honour that commitment. True to Truss's word, on 17 January 2017 we received the news we have been waiting for: the minister for legal aid, Sir Oliver Heald QC, announced at a meeting of the All Party Parliamentary Group on Legal Aid (co-ordinated by YLAL and the Legal Aid Practitioners Group) that the government will set the review in motion by submitting a post-legislative memorandum on LASPO to the justice select committee by May 2017. Heald accepted that "enough time has passed for the reforms to have bedded in for us to begin the review process", and said the full post-implementation review will provide the government with "a robust evidence-based picture of the current legal aid landscape and how it's changed since LASPO". It is shameful that the cuts to legal aid were made without any such evidence. As the select committee concluded in February 2015, the government 'gathered little evidence before implementation and did not make good use of the information it did have'. The review, when it begins, will be a vital juncture for YLAL and other access to justice campaigners. It is an opportunity for us to put on the government whatever pressure we can and try to persuade ministers to start to undo, or at least ameliorate, some of the harm caused by the savage cuts to legal aid. We will continue to work with allies like the Haldane Society to emphasise the importance of access to justice to politicians and the public. In recent months evidence of the damage done by LASPO has continued to mount: Amnesty International UK, the Trades Union Congress and the Bach Commission on Access to Justice all published reports towards the end of last year that were highly critical of the cuts. The TUC found that 'LASPO, reforms to court services and budget cuts have had a detrimental impact on access to justice, including on those most vulnerable in our society', and Amnesty concluded that 'in human rights terms, the cuts to legal aid constitute a retrogressive measure'. Observing that the cuts were 'primarily motivated by a desire to reduce spending on the justice system at a time of increased fiscal pressure, but were made with insufficient regard for the potential negative and profound impacts on the protection of human rights in the UK', Amnesty joined the chorus of voices calling on the government to immediately review the impact of LASPO on access to justice and the protection of human rights. **>>>**

Picture: Jess Hurd / reportdigital.co.uk

The review of LASPO will be a vital juncture for access to justice campaigners.

Young Legal Aid Lawyers

>>> In November, the Bach Commission on Access to Justice, chaired by Labour peer Lord Bach and instituted at the behest of Jeremy Corbyn, published its interim report on 'the crisis in the justice system in England & Wales'. The commission recognised that the state 'has a duty to provide a guarantee to all its citizens of access to justice', and proposed the introduction of a set of minimum standards – or as shadow lord chancellor Richard Burgon described it, a 'basic threshold' – for access to justice. A final report will be published this year, in which the commission will consider what form such minimum standards should take. It is somewhat disappointing, however, that the Commission already seems willing to restrain its ambitions by ruling out the repeal of LASPO: it contends that the solution to the entrenched problems it accurately identifies 'cannot simply be to reverse the LASPO cuts in their entirety and expand the legal aid budget indefinitely'. With respect, this appears to be something of a straw man: I am not aware that anyone has argued that the legal aid budget should be expanded indefinitely, and indeed prior to LASPO it had effectively been capped at around £2.1bn per annum since 2000/01. The budget has now been cut to £1.6bn, and as a consequence there are hundreds of thousands fewer cases funded by legal aid each year, primarily in social welfare and family law. We know that the human cost of the cuts is often hidden from public view, because it lies in the people turned away by law centres and legal aid firms because they are ineligible for publicly funded advice or because their legal problem is outside the scope of LASPO. We know that this means unlawful conduct by public authorities goes unpunished and miscarriages of justice go unseen. That is why we will persevere in making the case for effective access to justice to the Bach Commission, to the government and to anyone who will listen, in what could be a crucial year for the future of legal aid. If we are to convince the government to make concessions and enable greater access to justice for its citizens, now is the time.

Oliver Carter, co-chair of Young Legal Aid Lawyers

Picture: Jess Hurd / reportdigital.co.uk

Jeremy Corbyn: commissioner

Joint enterprise in the wake of the Jogee verdict

On 23rd November, as part of our human rights lecture series, we were joined by Jo Cecil of Garden Court Chambers and Gloria Morrison and Janet Cunliffe from JENGbA (Joint Enterprise Not Guilty by Association) to discuss 'Joint enterprise in the wake of Jogee'.

The case of *R v Jogee* [2016] UKSC 8 reversed the wrong direction that the law had taken in *Chan Wing-Siu v The Queen* [1985] AC 168. In *Chan Wing-Siu* the Privy Council had held that where A and B engaged in a common unlawful enterprise, if the possible commission of a crime by B was foreseen by A, then A would be guilty of the crime B committed. This would be the case even if A did not intend for the crime to be committed by B. By the case of *Powell and Daniels* [1999] 1 AC 1 this 'foresight test' for joint enterprise liability was firmly established in English law.

The effect of this foresight test was to reduce the *mens rea* element of murder for accessories to a level that could be considered lower than that required of principals: whereas a principal would have to intend to inflict serious harm, a person convicted under joint enterprise principals would only have to foresee a risk of serious harm being inflicted by another. In many cases it would be no defence for a defendant to say that they did not want the offence to be committed, or even to say that they asked a person not to commit it: if a person urged another not to commit an offence then they must have foreseen that an offence would be committed, and so must be guilty. This moved the law away from the 'fair labelling' of crimes, and led to people being found guilty where they could not understand that they had done anything wrong.

As a result of the demonstrable unfairness of this foresight test, many people have wrongly spent decades of their lives in prison. Indeed, as Gloria Morrison pointed out, many of the (mostly young) people convicted under these principles simply do not understand why they are being imprisoned. When those in prison cannot understand or accept the legitimacy of their sentence, they are unable to progress in prison as is expected of them. The law of joint enterprise created a demonstrably unfair system, and

November

25: The Bach Commission published an interim report finding that the cuts to legal aid created a two-tier justice system. Those without means are being left without advice and professional support.

18: Riots spread through HMP Birmingham, involving nearly half of all inmates. The prison was the first to be privatised in the UK and the riots occurred in the context of increasing unrest by Prison staff complaining of overcrowding and increased violence.

Who said? '"I will build a great wall – and nobody builds walls better than me, believe me – and I'll build them very inexpensively. I will build a great, great wall on our southern border, and I will make Mexico pay for that wall. Mark my words." ' (F)

December

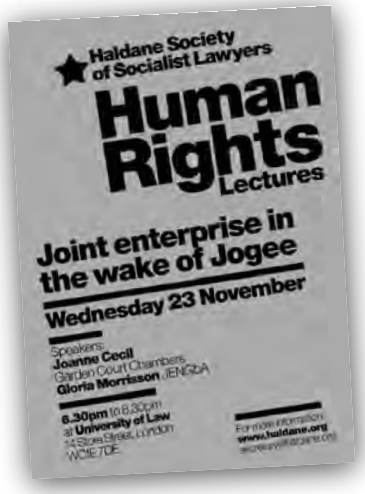
2: MPs vote to stop any further investigation into Tony Blair's war crimes in Iraq. Just five Labour MPs voted to hold Blair to account – and 158 voted to protect him. The motion had noted that the Chilcot report into the war had "provided substantial evidence of misleading information being presented by the then prime minister and others" in the run-up to war.

one that disproportionately punished young, male, and black defendants. Indeed, it was designed to do so: the police and CPS habitually used it to target groups of young ethnic minority men who they would accuse of being in gangs together. Often they were no more than friends or acquaintances living in the same area, but the power of joint enterprise as a tool for obtaining convictions lent itself to abuse by police forces keen to present themselves as tough on street crime.

JENGbA fought for years both to correct the injustice of joint enterprise law, and to provide support to those wrongly convicted. Their website lists the names and stories of hundreds of people languishing in prison, convicted of crimes they may have had only a passing connection to. JENGbA are powerful and apparently tireless campaigners, and were one of the interveners, along with Just for Kids Law, who made the *Jogee* appeal possible.

In *Jogee* the justices of the Supreme Court sat also as the Judicial Committee of the Privy Council on the linked Jamaican case of *Ruddock v The Queen*, allowing them to deal with the law as it applies to all jurisdictions that still have the Privy Council as their ultimate court of appeal. The justices held that the law had taken a wrong turn previously: 'The error was to equate foresight with intent to assist, as a matter of law; the correct approach is to treat it as evidence of intent.' The justification in a series of cases for the widening of the principle of joint enterprise liability had been policy based, principally the need to tackle gang violence. However, this justification was without any evidential basis. The justices made clear that: 'The introduction of the principle was based on an incomplete, and in some respects erroneous, reading of the previous case law, coupled with generalised and questionable policy arguments'.

As a result, the Supreme Court restated the law on joint enterprise as requiring that a secondary party must intend to assist or encourage the principal. It will no longer be enough for the secondary party merely to foresee that the principal might commit the offence. The correct rule, which will be applied in all future cases, is that whilst foresight might be evidence of an intention to assist or encourage in the commission of the offence (and indeed it may be important evidence), it is not decisive of the issue.



It is worth noting that the basic principles of joint enterprise liability remain unaffected by *Jogee*. A person will still be guilty where there is joint or shared intent. Further, ordinary principles of secondary liability include 'conditional intent', for example a member of the group who robs a bank may know that his accomplice has a gun and may intend for his accomplice to shoot anyone who resists them (but only if someone resists): he is still guilty of murder if his accomplice does meet with resistance and uses the gun to kill. Further, a person who intentionally encourages or assists the commission of a crime is as guilty as the person who physically commits it. These more uncontroversial principles remain unchallenged.

After the judgment in *Jogee* there was a great deal of celebration by the supporters of those convicted on wrongly-applied joint enterprise principles. However, Jo Cecil warned us that the effect of *Jogee* may not be wholly what was expected. The effect of putting the law right is not to render invalid all convictions which were arrived at over many years by faithfully applying the law as laid down in *Chan Wing-Siu* and in *Powell and English*. The courts have explicitly excluded the idea that the error would inevitably have been important on the facts of each case to the outcome of the trial or to the safety of the conviction, and the Supreme Court noted in *Jogee* that leave to appeal out of time will only be granted where 'substantial injustice' can be demonstrated by the conviction taking place on the law as wrongly applied. The effect of the subsequent linked appeals in the case of *R v Johnson and Others* [2016] EWCA Crim 1613, in which all appellants failed to overturn their convictions, has been to require appellants to show that their convictions would not inevitably have occurred anyway if the jury had been properly directed.

Jo noted that this reticence to overturn convictions in joint enterprise cases may be explained by a strong public policy issue in favour of finality, meaning that the courts would not want to unpick convictions. However, she suggests that the correct view of finality is that if a defendant has gone through a criminal trial and been convicted by a wrongly-directed jury, that person should be entitled to a retrial save in the most exceptional of cases. Such circumstances inevitably involve 'substantial injustice'. Only a retrial will allow a jury to consider joint enterprise properly, and for their guilt or innocence to be correctly determined.

It remains to be seen what proportion of those convicted under joint enterprise principles will see their convictions overturned. The processes of the Criminal Cases Review Commission are painfully slow, and the Court of Appeal already appears to be shutting down avenues of appeal. Nonetheless, *Jogee* represented meaningful progress in the law, which offers a ray of hope to hundreds of possibly wrongly convicted prisoners.

Stephen Knight

January

28: Thirty-eight children are challenging the Home Office's failure to meet its commitments to bring vulnerable accompanied refugee children to the UK under section 67 of the Immigration Act.

Who said? 'We are going to have an unbelievable, perhaps record-setting turnout for the inauguration, and there will be plenty of movie stars. All the dress shops are sold out in Washington. It's hard to find a great dress for this inauguration.' (G)

16: Two hundred judges won their claim against the Ministry of Justice in an Employment Tribunal. The Judges were challenging changes in pension on the basis of age, sex and race discrimination.

Who said? 'Disrespect invites disrespect. Violence incites violence. When the powerful use their position to bully others, we all lose.' (H)

Whitewashing justice: why is the system so prejudiced?

The Haldane Society AGM heard from celebrated champions of BAME rights Marcia Rigg and Leslie Thomas QC. The speakers discussed racial injustice and deaths in police custody.

On 21st August 2008 Marcia's brother, Sean Rigg, was arrested and restrained by Brixton police. He died very shortly afterwards. Within hours the police had released their version of events, alleging that Sean had assaulted a police officer before suddenly collapsing and dying at the hospital.

Marcia and her family flatly reject that explanation. 'The police had held three gold meetings before they even told the family that he had died', Marcia explained. 'In truth he died at least an hour before he was pronounced dead, on the floor in Brixton.'

'I want to tell you a bit more about Sean' Marcia continued 'and how difficult it is for the families to actually attain any kind of justice, let alone an unlawful killing verdict or a criminal trial'.

She explained in detail the issues that she and her family had faced when trying to get to the bottom of Sean's death. 'One of the biggest issues was the autopsy. They wanted to bury the body, in my opinion to bury the evidence. We wanted our own autopsy. It took five to six weeks for us to find a pathologist and conduct a second autopsy on Sean'.

When the family-instructed pathologist finally arrived Sean's heart and brain had been removed. 'The body was severely decayed because he hadn't been kept in the fridge' Marcia told the audience. 'I've heard similar accounts from other families who have been through the inquest process'.

Both speakers were critical of the Independent Police Complaints Commission (IPCC). Marcia related how IPCC investigators had treated the police officers present at her brother's death as witnesses rather than suspects. One of the officers didn't even give a statement.

In addition to Sean Rigg, Leslie Thomas QC has represented the families of Smiley Culture,

Anthony Granger and Arsema Dawit. He recently acted for the relatives of some of those involved in the Hillsborough disaster. Drawing on his unparalleled experience of the inquest process he addressed the audience on the themes he has identified over his decades of practice.

'You'll repeatedly hear the much-used phrase that "no one is above the law", and that "the law applies equally to all"', he said. 'The big question is whether the law is really colour-blind when it comes to the fair treatment of BAME people'.

Thomas reviewed the statistics, citing the 2015 annual report from the Institute of Race Relations. That report found that there had been 509 cases between 1991 and 2014 involving deaths in suspicious circumstances in which the police, prison authorities or immigration detention officers have been implicated. Not a single official has been successfully prosecuted.

'Between 2004 and 2016 there were a total of 27 deaths from police shootings. Eight of them were BAME people. That represents something like 30 per cent of black people being shot by the police in this country: BAME make up about 13 or 14 per cent of the UK population. There are some home truths. The criminal justice system makes it too hard for loved ones to get answers after deaths in police custody.'

Members of the Justice for Jermaine Baker ca

Chris Fold, whose family Mr Thomas represented at inquest, died on the cold floor of a police custody suite with several police officers standing around ignoring him. After his trousers had come down Fold was left naked from below the waist. 'Nobody had the common humanity just to cover the man up' Thomas said. 'They didn't

January

18: The High Court found that the magistrates' court acted unlawfully in sentencing a single mother to custody for failing to pay her council tax bill after she became unemployed. Approximately 100 people a year are imprisoned for failing to pay council tax debts

Women's marches against Trump
5.7 million (global estimate)
1 million (Washington DC)
750,000 (Los Angeles)
1,500 (Shipley, Yorkshire)
300 (Nairobi)

23: Two brothers who trafficked 18 men from Poland to work at Sports Direct received sentences of six years each. The trafficked men were forced to work for little pay and in poor working conditions.

25: The Supreme Court handed down a majority decision (8-3) that Parliament must vote before the government can trigger article 50 and begin the process for Brexit. However, the Government did not need to first obtain consent from the devolved assemblies in Scotland, Northern Ireland and Wales.

Picture: Jess Hurd / reportdigital.co.uk

mpaign on a 'Hands Up Don't Shoot' protest march in north London in 2016. How many more families will suffer from a death in custody?

even notice when he breathed his last breath.'

Thomas challenged his audience to consider the recurring themes that characterise deaths in state custody: 'if these themes exist it begs the question: are we aware of them? More importantly, are the police? Remember: most deaths in police custody take place within a system of dependency and control'.

The award-winning barrister warned that it was only through becoming conscious that society could avoid 'sleep-walking into further tragedies.'

He concluded by enumerating several themes observed from his practice. 'There's the theme of difficulty in breathing. The African man who has super-human strength and who feels no pain. Paradoxically, the black man is particularly prone to sudden and unexpected death syndrome. Alternatively, we are very good actors; even when we die we fake the illness so well that we actually succumb. We have unexplained injuries never covered in the police's original account. Those with mental health are mistreated. There is poor planning by state agencies, as well as poor intelligence and miscommunication. The deceased and his family are demonised. The state spies on the deceased's family, or better still their lawyers. And finally, there is collaboration amongst state agencies to get their story straight'.

Franck Magennis

February

28: Protests erupted in airports in the US and in the UK following an executive order by President Trump preventing persons from seven countries entering the US and putting a stay on all refugees. A federal judge granted a stay on deportations for people who had entered the USA with a valid visa and been de-tained.

Who said? 'Two Iraqis came here to this country [US], were radicalised, and they were the masterminds behind the Bowling Green massacre. Most people don't know that because it didn't get covered' (J)

David Turner-Samuels has died, aged 98. A Vice President of the Haldane Society, he was a barrister and QC for more than 50 years, working well into his 80s and was involved in many high-profile trials, including the Shrewsbury 24 and the1974 Birmingham pub bombings. A fuller appreciation will appear in our next issue.

6: Israeli Prime Minister Binyamin Netanyahu is greeted with protests, as 300 people joined a Palestine Solidarity Campaign protest outside Downing Street when Netanyahu held talks with Theresa May on closer trade relations. The Israeli state has announced plans to build 6,000 settler homes inside illegal settlements in the Palestinian West Bank and East Jerusalem.

Pictures: Jess Hurd / reportdigital.co.uk

Over a million people joined the Women's March on Washington during Donald Trump's first day as US President, while (right) thousands protested in London against the

Chaos reigns as Donald takes the reins

Among the extraordinary political events that have surrounded the inauguration and first few weeks of the new United States President, three legal stories illustrate Donald Trump's reckless approach to his use of power.

First, Trump immediately found himself on the receiving end of a legal claim when his racist and islamophobic travel ban was challenged in the courts. Tweeting his response, he outrageously sought to blame the judge and the court system 'if something happens' as a result of the suspension of the travel ban.

Second, he dismissed the acting United States Attorney General Sally Yates when she instructed Department of Justice officials not to defend the travel ban, because she was not 'convinced that the executive order is lawful'.

Third, he nominated Jeff Sessions for United States Attorney General, whom Coretta Scott King (the widow of Martin Luther King Jr.) had condemned in a 1986 letter opposing his nomination as a federal judge on the grounds that his appointment 'would irreparably damage the work of [Dr King], Al Turner, and countless others who risked their lives and freedom over the past twenty years to ensure equal participation in our democratic system'.

Combined with Trump's fraught history of litigation in his

February

8: Home secretary Amber Rudd announces that Britain would stop taking in children under section 67 of the Immigration Act 2016, known as the Dubs amendment after Labour peer Alf Dubs, whose campaigning saw the amendment adopted. 'It's a shameful closing down of the scheme to bring child refugees in. It's quite wrong and it leaves vulnerable children in danger.'

Who said? 'I'm sick to death of hearing about [Hillsborough]. It was a disaster and that's it, not some sort of cultural happening... milking a tragedy forever is sick.' (K)

13: US President Trump wants to overturn the landmark 1973 *Roe v Wade* case in which the American Supreme Court ruled that access to abortion was a constitutional right. Yet US states are still able to impose restrictions. Protests are called for on 8th March – International Women's Day – by the organisers of the huge Women's March protests in the US.

16: The UK's top judge speaks out about media attacks on the judiciary and the failure of politicians to stand up for judges after the Brexit court challenge in November. Lord Neuberger, the President of the Supreme Court, said some of the vitriol directed at the high court judges after they ruled against the government was 'undermining the rule of law'.

state visit invitation by Theresa May.

previous careers (exploiting students, tenants, the environment, the media, and virtually everything else, for profit), these events are telling of his attitude to the rule of law.

But much-needed comfort can be taken from the scenes of lawyers sitting on airport floors, volunteering their time and effort to help those detained under the travel ban. That kind of radical, practical lawyering will be needed more than ever over the next few years in order to resist this hateful, dangerous man.

Who said? Answers:
(A) Paul Nuttall; (B) David Cameron; (C) Donald Trump; (D) Andrew Lloyd Webber; (E) Boris Johnson; (F) Donald Trump; (G) Donald Trump; (H) Meryl Streep; (J) Kellyanne Conway; (K) Aaron Banks.

Solidarity with our Turkish comrades

On 13th November 2016 ÇHD (Haldane's sister organisation in Turkey) and ÖHP (which unites progressive Kurdish lawyers) were represented at the European Lawyers for Democracy and Human Rights' executive committee meeting in Lisbon by the young lawyer Fatma Demirer (ÖHD) and Selçuk Kozağaçli (president of CHD). Fatma was arrested when she set foot in Turkey after the meeting – and released after a few days.

The background to this was the news that 370 associations – ÇHD and ÖHD among them – had been banned in Turkey for three months under the state of emergency. The offices of these organisations were sealed as was the People's Law Office, headed by Selçuk Kozağaçli. Lawyers who tried to prevent the sealing of their offices were taken into custody for a few hours. The activities of our Turkish member organisations were then totally banned on 22nd November 2016.

The failed coup d'état of 15th July 2016 served as a pretext for an unprecedented assault on the rule of law in Turkey, as well as on the progressive left and on the Kurds (who are nearly one quarter of Turkey's population). The coup attempt has been blamed on the Gülen movement (designated as a terrorist organisation by Turkey) led by Fethullah Gülen, a Turkish businessman and cleric who lives in Pennsylvania.

Both Haldane and CHD are also members of the International Association of Democratic Lawyers. In November 2016, IADL organised a conference in Lisbon on the 50th Anniversary of the United Nations Covenants on Human Rights, and the ELDH and the bureau of the IADL also met the following day. Haldane's joint international secretary Carlos Orjuela is a member of the IADL bureau and the ELDH executive.

Solidarity with our colleagues in Turkey was top of the agenda in both meetings. As CHD and ÖHD were banned in Turkey it was decided that ELDH and IADL would, with the help of our Turkish colleagues, and joined by our sister association European Association the European Democratic Lawyers (AED) and the Day of the Endangered Lawyer Foundation, organise a solidarity conference in Ankara, which took place on 13th-15th January and was attended by nearly 200 delegates from all over Turkey as well as internationally.

Co-organisers of the conference included, in their official capacity, the bar associations of Adana, Adıyaman, Ağrı, Ankara, Batman, Bingöl, Bitlis, Diyarbakır, Hakkari, Muş, Siirt, Şanlıurfa, Şırnak, Tunceli, and Van, as well as the Democratic Judges Associations and the Syndicat of Judges. Supporters included MEDEL (Magistrats Européens pour la Démocratie et les Libertés), New Judges Organisation of Germany, IDHAE (World Observatory for Defense Rights and Attacks Against Lawyers), the Padova Bar Association from Italy, and the Bar Associations of Antalya, Bursa, Gaziantep, Iğdır, Kars-Ardahan, and Mardin, and Lawyers and Human Rights Defenders Without Borders in Turkey, the Association of Forensic Science Experts, the Platform of Lawyers Against State of Emergency, and the Platform of Revolutionary Lawyers.

A joint press statement of the organisers concluded: 'We, as lawyers from many countries of the world, declare that we are concerned about this dangerous course. Our commitment to the rule of law tells us that this trend is not unique to Turkey, and we want to share our experiences as well. War, martial law, dictatorship, state of emergency are all legal guises of oppression and coercion. In short, all these can be described as the dark side of the moon, which was always there, even before they were declared. Today and here, we are bringing together the experiences of those who look at the dark side of the moon. But more importantly, we are building the knowledge of hope. Law is an area of struggle for rights and freedoms, not just for its subjects, but for all societies. With this consciousness, we inform the whole world that we will not remain silent in the face of what is going on in Turkey today and that we will make our stand against this darkness!'

The Final Declaration of the conference was based on discussions of 500 decisions, reports, records, action and application sheets and experiences that were reviewed by 179 lawyers, forensic and clinical psychology experts. Twenty-two declarations were presented, concluding: 'It is necessary to put an end to the State of Emergency... and to retrospectively remove all the legal regulations and administrative practices that widely violate the fundamental rights and freedoms'.

On 16th February 2017 Rose Wallop, a Haldane executive member, travelled to Istanbul as a delegate of IADL and ELDH to observe the trial of lawyer Barkın Timtik and 23 other people arrested on 20th December 2016. Barkın and the others are charged with terrorist propaganda and membership of a terrorist organisation on the basis of their attendance at the memorial of a man killed by Turkish special police. Barkın was there to see a client. She and the others were granted bail on 16th February.

Further solidarity work will be organised in Florence when the ELDH Executive next meets, on 13th May 2017, following a conference on 'The Progressive Development of Labour Law in Europe – regaining the initiative', sponsored by ELDH and European Lawyers for Workers (ELW). Speakers will include Haldane Vice-President John Hendy QC. See *http://elw-network.eu/european-labour-law-conference-12-13-may-2017-florence/*.

Bill Bowring, Joint International Secretary, Haldane Society and President, ELDH

Raj Chada
argues that the right to free speech needs to be refreshed

REFLECTIONS ON THE BLACK LIVES MATTER CASE

Picture: Jess Hurd / reportdigital.co.uk

Black Lives Matter UK took to the streets in the summer of 2016, with a series of direct actions. This London demonstration in Tower Hamlets stopped traffic on the same night as the Willesden protest on the M4 spur road.

My firm represented all nine clients in the Black Lives Matter case, which finished at Willesden magistrates' court on Thursday 19 January 2017. All of our clients were convicted of obstructing the highway under section 137(1) of the Highways Act 1980.

The case revolved around a protest that took place on 5 August 2016 – the fifth anniversary of the killing of Mark Duggan. The defendants had staged a protest on the M4 Spur Road, some by holding a banner and others by lying down on the road and 'locking on'.

The defence at the trial centred on whether the defendants' actions were reasonable – in particular when considering the right to free speech. In *Westminster City Council v Brian Haw* [2002] EWHC 2073 QB, the High Court established that the right to free speech is a significant factor when considering what is reasonable in obstruction cases. It has also been held that free speech is 'one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of man'.

It is easy to see why. It is only by allowing individuals to express themselves (particularly their political views) that we can inform ourselves as citizens, so we can debate and challenge each other and our democratic institutions.

Peaceful protest is public, it is open, and it is visible. It is designed to inform, to persuade and cajole. It may be a nuisance, and it may even be intended to be. It is often noisy and inconvenient. It is there to inform. As ever, the state is not a bystander. Instead the state has a positive duty to facilitate peaceful protest and, indeed, the European Court of Human Rights has held that the 'essence of democracy is its capacity to resolve problems through open debate'.

Yet when there is a lack of interest from the press, or ignorance and/or bias, critical issues are ignored. Our society gladly provides column inches for celebrity news or sports results but seemingly cannot find a place to discuss the issues that matter. And this issue matters very much indeed: as the slogan of the UK Black Lives Matter campaign recalls: 'this is a crisis'.

The mainstream media has failed; perhaps the human imperfections in all of us have meant that we have all failed – we have failed to keep ourselves informed, to ensure that there is an open debate about the issues that affect people of colour in the UK.

How many people in the UK are aware that:

- Black people are over represented by a factor of more than two for deaths in police custody since 1998.
- Black people are up to 37 times more likely to be stopped and searched than white people.
- Black people are three times more likely to be arrested than white people.
- Black people are 44 per cent more likely to be detained under the Mental Health Act than white people.
- Black people are three times more likely to be unemployed than white people.
- Black Caribbean pupils are almost four times more likely to be permanently excluded from school than the school population as a whole.
- There has been a 57 per cent increase in reported racist hate crimes since the Brexit vote.
- 3,034 people have drowned in the Mediterranean in 2016 alone.

Those are the facts that should be imprinted on all our minds and tattooed on politicians and policy makers until there is justice. It should be a national scandal but generally it hardly raises a whimper. By this action the Black Lives Matter campaigners sought to break through that ignorance and oversight.

We cannot belittle the subject matter at the heart of the defendants protest. Their action was aimed at raising public and political awareness of the treatment of black people in the UK. The group aimed to bring the debate into the mainstream in order to have a greater impact on government policy. We heard from some of the defendants about how other alternatives such as lobbying, petitioning and marching simply do not attract media attention and fail to reach the ears of the country's decision makers.

The group believed that, given the significance of the issues, there was no alternative but for peaceful direct action. And they succeeded. Conversation and mobilisation around these issues significantly increased in the wider community as a result of the publicity that their protest raised. It was not just the group's action but the issues themselves that became headline news.

The right to free speech is priceless yet it is of no value if you cannot be heard – if debate is confined to metaphorical ghettos.

The defendants in this case sought to exercise their rights to free speech not in a theoretical or abstract manner but in a practical way – in a way that seeks to implement what free speech is about. It is there to inform us and to challenge us. It was not lost on us that this trial was taking place two days after Martin Luther King day, and perhaps it is apt to quote him. 'Nothing in the world is more dangerous than sincere ignorance and conscientious stupidity.'

These defendants were at court to disseminate, to inform and to debate. It is only through actions like theirs that debate can take place. That might be a damning indictment of our democratic institutions and our press, but it is one that we all recognise.

Of course the action caused inconvenience, but consider the inconvenience and disruption caused to people trying to get home from work or to pick up children or even to get to an airport on 1st December 1955 when, in Montgomery, Alabama, Rosa Parks refused to obey a bus driver's order to give up her seat on a bus to a white passenger.

Parks' action of course resulted in her arrest for civil disobedience in violating Alabama's segregation laws and culminated in a successful lawsuit against the bus company – and ultimately a change in the law.

Of course we don't question whether Parks' decision was unreasonable because her decision to express herself helped to define the American civil rights movement and, without doubt, helped to bring about great change for the better.

But we can also have little doubt that Parks' actions that day, which delayed that bus journey for hours, would have been an inconvenience to many. Who knows how far back the traffic in Montgomery tailed that afternoon? Who knows how many children were left stranded outside of their schools waiting to be collected? Who knows how many passengers may have even missed their flights from Mongomery Regional Airport?

History has shown that Rosa Parks was not just reasonable, but was a hero of the civil rights movement.

We argued that the defendants' actions were reasonable. Ultimately, we lost. However, we maintain that for free speech to mean anything the speaker must be heard. The courts must consider how their decisions enable or disallow free speech. For our clients the focus has to remain on the issues facing people of colour in the UK.

Raj Chada is a partner at Hodge, Jones & Allen

Black people are

3x

more likely to be arrested than white people...

Black people are

37x

more likely to be stopped and searched than white people

‘Not even a Jungle to call home’

October 2017. Fires rage during the eviction of refugees in the Jungle camp, Calais, France. This boy hopes for a better future in a CAOMIE (Centre for unaccompanied children) somewhere in France.

The CRS were feared by all: in the last days of the camp they stole childrens' trainers from their feet. Now they guard a wall which cost the UK £2.3 million and which surrounds a desolate empty wasteland where there used to be hope and kindness for thousands of migrants.

Pictures: Jess Hurd/reportdigital.co.uk
Words: Wendy Pettifer

An Afghan boy who has lost his home doesn't know where he will go. If he's lucky, he'll have been transferred from a CAOMIE to the UK or to a French children's home. If not, he'll be destitute in France sleeping in a ditch or a wood, with not even a Jungle to call home.

"All my lessons in life were learnt when other women opened my eyes"

Rebecca Omonira-Oyekanmi talks to South African lawyer **Navi Pillay**, the former United Nations High Commissioner for Human Rights

A refusal to shrink from difficult confrontations is a recurring theme in Navi Pillay's career. During her six years as UN High Commissioner for Human Rights she took on the then Sri Lankan president Mahinda Rajapaksa for failing to investigate the deaths of over 100,000 people in the last weeks and months of the country's civil war, which ended in 2009 after 26 years. In response, the Sri Lankan government said that South African-born Pillay lacked objectivity because of her Tamil ancestry. An Indian diplomat told Pillay that her campaign to end caste discrimination was unfair because it humiliated India on a world stage. A Syrian ambassador called her a 'lunatic'. Some western countries (including the UK) complained when she pointed out their failures to uphold certain human rights. "They said I should be focusing on distant countries where thousands of people are killed" she said. "In other words, developing countries".

Pillay smiles when recounting these sotries – she is almost flippant. "It is true I have been called terrible names. Someone asked me to look at my pictures on Google images; many were superimposed with the face of Osama bin Laden. There are a lot of people who don't understand human rights".

Pillay's steadfastness in the face of detractors is unsurprising when you consider her background. Apartheid shaped her formative experiences and her early practice as a lawyer.

Navanethem Pillay was born in 1941 to a poor family in Durban, South Africa. Her grandfather was brought to South Africa from India to work in 'semi-slavery' on the country's sugar plantations. In South Africa Pillay experienced discrimination three times over: as a woman, as a South African of Indian heritage, and as someone from a working class background. She credits her parents for encouraging her to stay in school when friends from primary school "suddenly dropped out" because they were forced into arranged marriages. That Pillay went to secondary school and university was unusual for the time. "I got to university because my community, a poor community of Clairwood, was told by the school principal, 'We have a girl with potential and she should go to university.' The community of Clairwood collected funds to send her to University".

Once at university she would face different battles. In a recent interview with the *Diplomatic Courier* she said: "My own work as a human rights lawyer was shaped by what I had experienced under apartheid. I could not enter parks or beaches reserved for whites. I attended Natal University and, because the schedule was developed to help white students who were working in law firms, classes were in the early morning and in the night. I often did not have the money to take the bus home between classes, so I sat in the library and read the Nuremberg cases".

Pillay knew that pursing a legal career would be difficult. Aged 10 or 11, when she told a teacher that she wanted to be a lawyer, he replied: "You must have a wealthy father, you need a lot of money to study law". Pillay's father was a bus driver. It was crushing for young Pillay to hear, it suggested that social structures were immovable.

"Everything is interconnected, the way society is structured and what adults say to you. It is such a struggle for children to overcome these barriers," she says.

After graduating Pillay began applying for work. Most law firms were all white.

"Firstly they said, 'no we can't take you on because we cannot have a situation where a white secretary has to take instructions from a black person. So that is race.

"And class discrimination … they said, 'Well, what kind of business will you bring? Do you have a father who is in business?' But the most hurtful was, I was newly married and they said, 'What if you fall pregnant?'".

So she went it alone. Her male peers called her presumptuous. "A woman starting a >>>

>>> law firm? She's not going to last" they said. "But I had little choice."

Soon Pillay had built up expertise in domestic violence work and began to defend anti-apartheid activists, including her husband Gaby Pillay. The cases she fought would help secure rights for prisoners at Robben Island, including access to lawyers and a fair trial when accused of breaching prison regulations.

It was when fighting these cases and interrogating the prejudices within South African law that Pillay began to consider the role of international law in protecting the human rights of citizens within a particular country. In a 2006 interview with the Institute for War and Peace Reporting Pillay said that she "worried that the judges of that era – including herself – were unaware of international laws such as the Geneva conventions". She told the magazine: "I saw great injustices and immorality in South African law. There was little opportunity to get a fair trial when there were presumptions [of guilt] under apartheid laws. For example, if someone was charged with conspiracy the onus was on the accused to prove otherwise."

Throughout her career under apartheid Pillay fought injustice using the law even though it shackled her. Under the apartheid regime, due to the colour of her skin, she was banned from entering judges' chambers. The first chambers she entered were her own, she said, when Nelson Mandela appointed her to the Supreme Court in 1995. She became the first non-white female judge in South Africa.

"Throughout my life I found myself doing many things that were done for the first time" she says. In well-established democracies, she adds, little change happens. "But in South Africa we had an opportunity, a new democracy to make that change".

In 1996 a young lawyer named Lisa Priutt spent two months gathering evidence for the International Criminal Tribunal for Rwanda. Priutt was the ICTR gender consultant, a role created to improve the investigation of sexual assault, sexual mutilation and rape that took place during the Rwandan genocide in 1994. During her two-month investigation she uncovered harrowing details of rape suffered by hundreds of women, raped because they were of Tutsi ethnicity or Hutu ethnic women married to Tutsi men. Priutt discovered that those investigating the cases were often men and few were trained to deal with rape survivors.

A Human Rights Watch report written at the time noted similar problems and said that during its investigation (conducted by an all-women team) rape survivors said they felt uncomfortable recounting their experiences to men. The report, Shattered Lives', called for the cases of rape, sexual slavery and sexual mutilation to be prosecuted as crimes against humanity, genocide or war crimes. Priutt agreed and produced a memo to that effect. But the reaction from fellow UN staff members was muted. "Mostly I heard the 'boys-will-be-boys' mentality – a real resistance to seeing the widespread (sexual assaults) as part and parcel of the genocide" Priutt said in a recent interview. "It is sort of summed up by 'We had a genocide down here; we can't be concerned about some women who got raped'".

Navi Pillay made it her business to listen to people like Lisa Priutt and the researchers at Human Rights Watch. In 1996 she was elected to serve at the International Criminal Tribunal for Rwanda where she was the only female judge. At the time rape was recognised as a war crime, but had never been prosecuted except in the Military Tribunal for Japan. "Let's just give these women a sentence or two" Pillay remembers a member of the judgement writing team saying, which made it difficult to get sexual violence on the charge sheet. The thinking at the time was that rape simply wasn't as serious as the killing that had taken place.

One of the first cases to appear before the tribunal was Jean-Paul Akayesu, a former schoolteacher and mayor of the Tabu commune during the genocide. At least 2,000 Tutsi Rwandans were killed on his watch. His was a regime where torture and murder of

Navi (right), pictured with US Ambassador Betty E King and Jesse Jackson in March 2012 at the United Nations.

Picture: Flickr – United States Mission Geneva

Tutsi people was routine, and repeated sexual violence towards women widespread and systematic. However, rape as a weapon of genocide or crime against humanity was omitted from the original charges.

It was the witnesses, says Pillay, and the researchers gathering hundreds of testimonies who provided the ammunition to challenge the exclusion of sexual violence from the charge sheet. Pillay and her fellow judges asked for information on what had happened. Listening to the women, she says, meant adopting a clear definition of rape in international law for the first time. Akayesu's indictment was amended to include:

Crimes Against Humanity (Rape), Crimes Against Humanity (Other inhuman acts), Violations of Article 3 Common to the Geneva Conventions and of Article3 4(2)(e) of Additional Protocol II (Outrages upon personal dignity, in particular rape, degrading and humiliating treatment and indecent assault)'.

In 1998 Akayesu was found guilty of nine counts of genocide and crimes against humanity, including rape. "A conviction of rape as genocide" says Pillay, "much more serious. Nobody can go back on that". The case was a turning point. From then on the definition of sexual violence during conflict as a weapon, a way of destroying a particular group or community, was accepted, making it easier to include with other charges of crimes against humanity.

Though Pillay is widely praised for her role in bringing about this change, she places the credit solely with the women who came forward to testify.

"All my lessons in life were learnt when other women opened my eyes". Pillay first learned this as a "super confident" young lawyer working on her early cases in 1960s South Africa. "I was very hard on the women who came to me in tears" she said. "They explained their domestic violence, how they were being treated at home, arranged marriages, a whole range of issues. At first I was really impatient and thought they were weak because they were shedding tears. Look at me, I got over many things".

But the women continued to come to her and Pillay began to listen, realising that domestic abuse was widespread and went beyond individual cases. Using whatever means she could, Pillay campaigned to raise awareness. She went public with the most shocking cases (at a time where such publicity was frowned upon), where justice had been elusive. "I was the first to put on TV my client who had been beaten up very badly. She came to me because he wasn't paying child support. She had these huge gashes across her face. The husband had slashed her and when her six-year-old daughter picked up a tissue to wipe the blood off her face, the father said to the daughter, 'just leave her alone, let her die'".

These experiences and conversations with women informed Pillay's work in the final days of apartheid. When negotiations for a constitutional democracy began in the 1990s Pillay was part of the Women's National Coalition and contributed to the gender equality provision. She co-founded Equality Now, an international women's rights organisation. Before that, in 1986, Pillay co-founded one of the first domestic violence NGOs in South Africa, Advice Desk for the Abused. The group's work initially focused on the gaps in the law where the protection of abused women was concerned. The NGO has since lobbied for better implementation of South Africa's Domestic Violence Act through education and training for enforcement officials and for more work on confronting the societal problems that lead to male violence against women, and the recognition of less obvious abuse such as controlling and coercive behaviour. All of which echoes Pillay's own thinking on the importance of public education alongside legal change.

"How did I make the switch from being a judge who thinks he or she is almighty and tell people what to do?"

"How did I make the switch from being a judge who thinks he or she is almighty and tell people what to do?" Pillays says with a wry smile. "I had to become an advocate and I think it took me two years to learn. The first thing I did was to look at this mandate and realised this is a very special mandate. This mandate given to the United Nations High Commissioner for Human Rights is to promote and protect all rights of all people all over the world. I looked at the mandate and did the maximum I could".

Pillay held the mandate for six years and during that time challenged international blindness to crimes against humanity in places like Gaza, Sri Lanka and Syria. She took up the causes that had never been on the UN's human rights agenda: the caste system, for example, and gender equality for trans people and other non-binary genders, forcing her colleagues to "learn the words LGBTQI". She raised issues around economic and social rights.

But Pillay realised that in order to get things done she would need to challenge the way that international human rights worked as well as tackling the issues. At the top of the list was navigating the unwieldy UN mechanisms for monitoring and managing international human rights, and convincing non-human rights departments to think about human rights. "When I first became high commissioner for human rights I started attending the treaty bodies, addressed them and you know what they said to me? This is the first time a high commissioner had attended" she says.

The problem was, Pillay says, that groups within the UN acted in silos. She wanted to encourage human rights thinking at all levels of the UN. Colleagues told her to restrict the criticisms to Geneva (in other words: that's not our problem) so internally she pushed for the secretary general to adopt a human rights action plan that meant that human rights is everybody's business".

The idea was, Pillay says, "to get the UN divisions after 60-plus years to accept that human rights is one of the three pillars, together with peace and security, and development, of the UN, and that human rights is everyone's responsibility, whether you are working on development or political affairs. It meant that the UN no longer followed the policy, when there was a problem, of seeing how fast they could get out. It meant staying and protecting people."

Change will always come from the ground: from the collective actions of civil society and by listening to the victims of human rights abuses. That is the recurring theme of Pillay's reflections. Once the legal structures are in place to challenge human rights abuses and protect rights, the hard work of implementation begins. This involves an array of actors, and judges and lawyers aren't necessarily at the forefront of that action. There are times when a judge's role in interpreting the law collides with the protection of the human rights of a particular group. "This is what my doctoral thesis was about: the political role of judges who imposed apartheid legislation when it was declared a crime against humanity. They still imposed it".

But the existence of international treaties and standards, the expertise of special rapporteurs and their research, the work of civil society and academics can all be bought to bear on judgments, and influence the lens judges that look through when making decisions. "There are one or two on every bench who are ready to do that. Those are the people we zero in on, to help them".

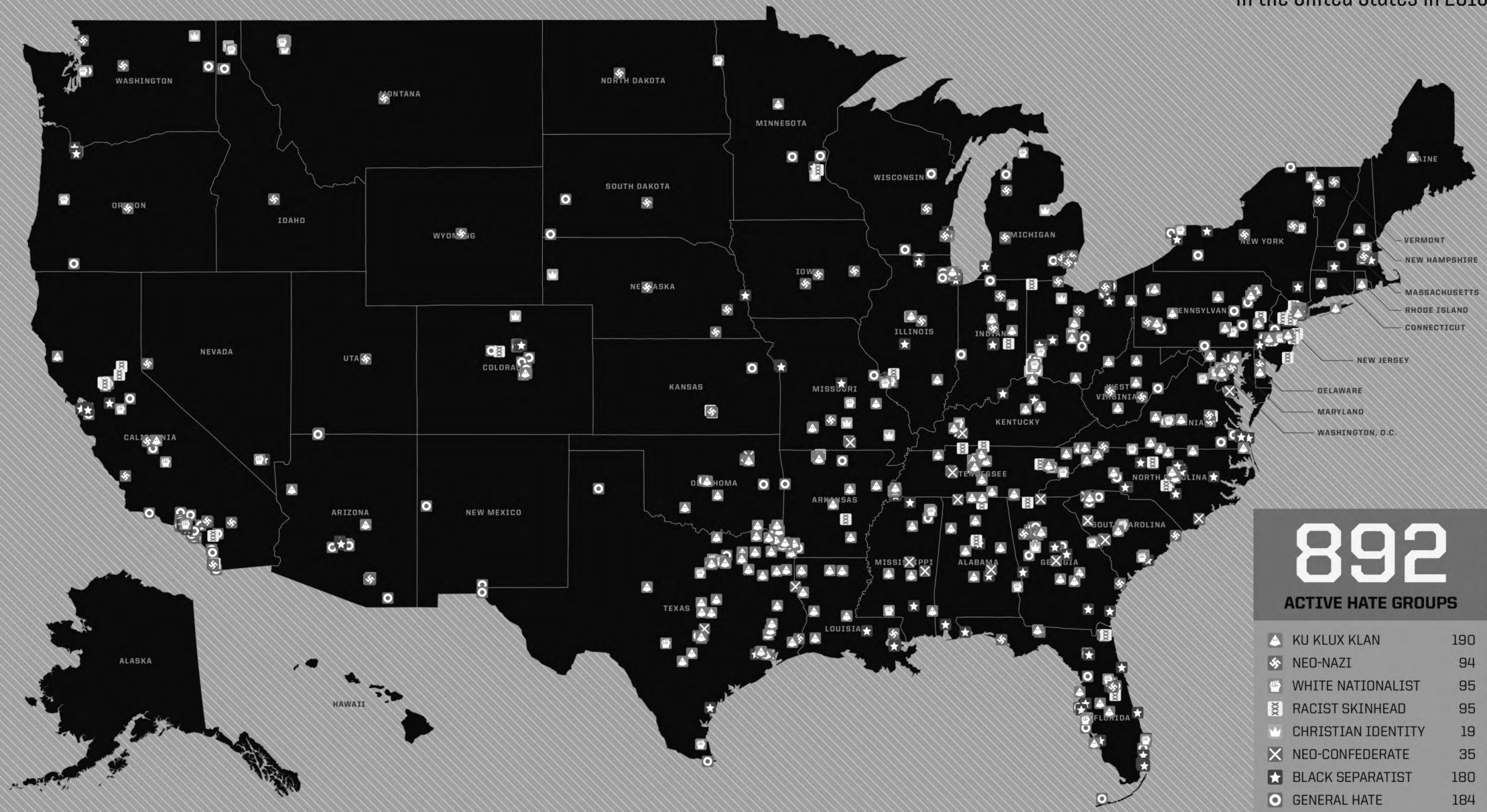
This was after all how she was able to challenge the law on sexual violence in conflict, by listening to the testimony of rape survivors and drawing on the work of experts.

"I got a great deal of help from academics on creating this new jurisprudence, the gender jurisprudence. I felt in my heart that we have to render justice. That is what we are there for, to render justice and so if a woman complains about a brutal rape, we have to pay attention".

Rebecca Omonira-Oyekanmi is a freelance journalist and writer. This interview first appeared in Lacuna magazine (lacuna.org.uk).

ACTIVE HATE GROUPS

in the United States in 2015



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Intelligence Report

SPLC
Southern Poverty
Law Center

FOR SPECIFIC DETAILS ABOUT HATE GROUPS IN YOUR STATE, GO TO SPLCENTER.ORG/HATEMAP

Spotlight on the

SPLC Southern Poverty Law Center

The Southern Poverty Law Center (SPLC) has its headquarters in Montgomery, Alabama, a city which for many is a byword for the American civil rights movement. It is of national, and, with the events of 2016, increasingly international relevance.

Five of the Center's achievements in 2016:

1

Published its 'Hate Map' showing the names and locations of 'hate groups' in the US: organisations with beliefs or practices that attack or malign an entire class of people (typically for their immutable characteristics). There were 892 such organisations at the last count; anti-LGBT, anti-Muslim, Neo-Nazi, black separatist and other groupings, including 68 in California, 84 in Texas, and 58 in Florida.

The SPLC website explains the crucial work they do. Readers are encouraged to join as members in solidarity and support the issues on which SPLC works affect us all. www. splcenter.org/hatemap

2

Acted for the plaintiffs in a class action lawsuit against the Alabama Department of Corrections, the state's prison system, in one of the largest lawsuits ever filed against a US public body. Alabama's prisons are among the most crowded in the country. The gross inadequacy of the healthcare provisions, contracted out to private, for-profit companies, is central to the plaintiffs' case. The lawsuit is ongoing.

3

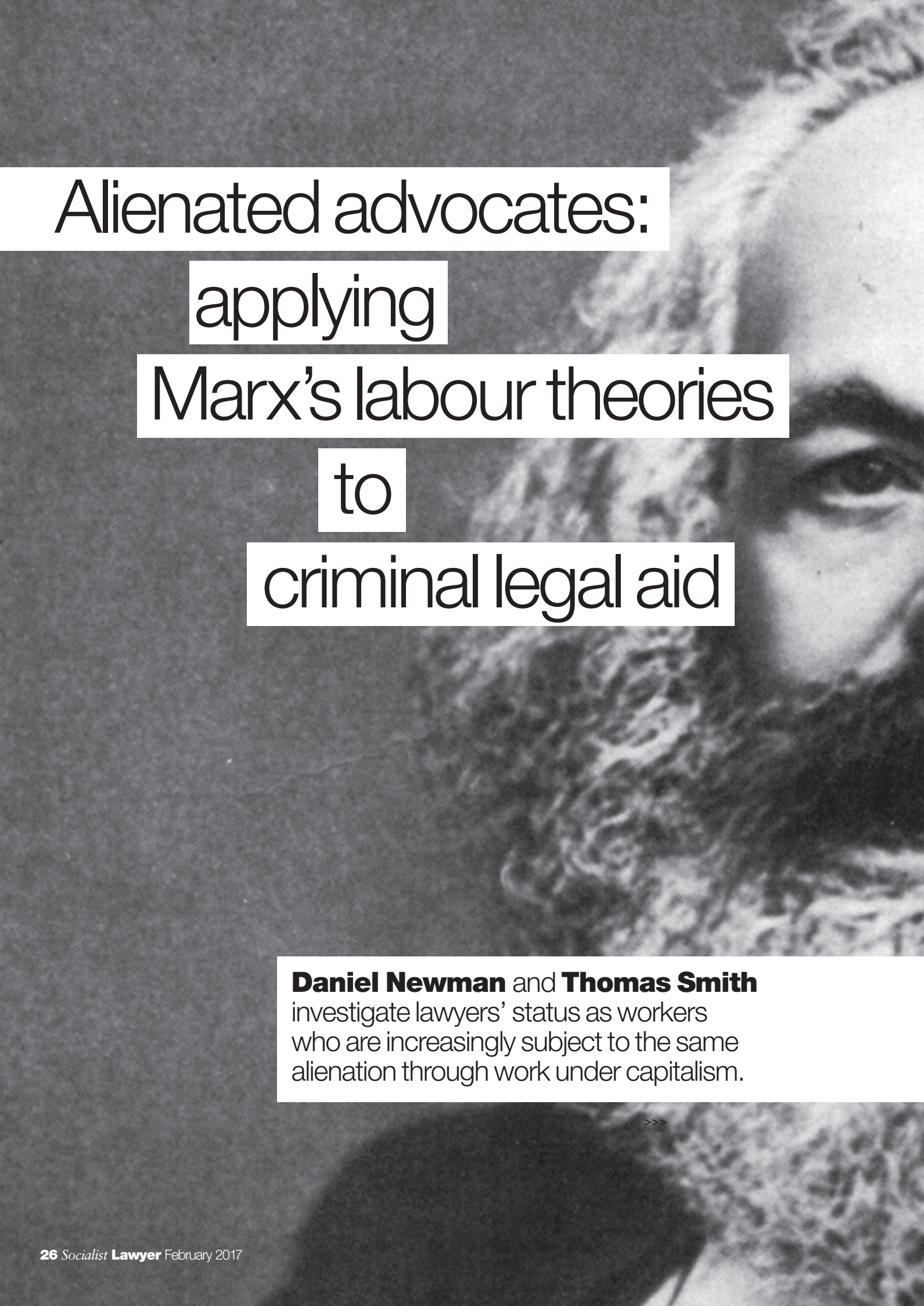
Collated and analysed the impact on pupils and teachers in America's public schools of the rhetoric and result of the presidential election. Pupils became bolder in their use of discriminatory slurs during the presidential campaign. Some simply used the candidates' names as taunts. Many teachers reported avoiding talking about the election, where previously it would have been a valuable opportunity to discuss citizenship.

4

Monitored hate incidents since Trump's election. SPLC invited victims of harassment or intimidation to report the incidents, and verified them where possible. In the first six days after the election vandalism involving swastikas was reported particularly frequently (35 instances), and 99 incidents were reported as having taken place in schools. Two days after the election a high school teacher found a note signed 'America!' stating that her Muslim headscarf 'isn't allowed anymore'. Although incidents reduced in number over the following month, 37 per cent of all incidents directly referenced Trump, his campaign slogans, or his remarks around sexual assault. Within these 'Trump-related' incidents, anti-woman incidents saw by far the greatest share, followed by anti-immigrant, anti-black, anti-LGBT and anti-Muslim.

5

Publicised the discriminatory stances of individuals whom Trump proposed appointing to high office, including prospective chief strategist Stephen Bannon whose news outlet Breitbart has propagated anti-immigrant, anti-Muslim stories, and prospective attorney general Jeff Sessions, whose nomination for a federal judgeship has been rejected by the Senate Judiciary Committee in the past, with key witnesses testifying to his racially offensive remarks.



Alienated advocates: applying Marx's labour theories to criminal legal aid

Daniel Newman and **Thomas Smith** investigate lawyers' status as workers who are increasingly subject to the same alienation through work under capitalism.

>>>

Marx and Marxist theorists have written extensively on the issues of labour, working conditions, and the prospects for people to cultivate satisfying lives under contemporary capitalism. Returning to early – humanistic – Marx allows us to use alienation as a key organising principle to help us understand the experience of workers under capitalism. The theory states that our social forms of life are organised in a way that not only causes inequality and material poverty, but also prevents us from living a fulfilled life.

Marx considered work to be a fundamental social aspect of personal individuality. Our ability to transform the world around us through labour helps us to realise our ultimate humanity. However, the liberatory potential of work is curbed by capitalism, leading to alienation. This idea of alienation refers to a feeling of detached otherness, where people see themselves as somehow foreign to the world around them and distanced from the society in which they live and from the work they do.

The context of alienation: austerity justice

The hallmark of legitimate criminal justice is the ability to distinguish the 'guilty' from the 'innocent' in an accurate and fair manner. The adversarial system presupposes that the prosecution and defence have roughly equal resources and expertise. In order to achieve that equality of arms defence lawyers should actively and positively defend their clients, systematically exposing weaknesses in the prosecution case through investigation and advocacy. It is not the role of the defence lawyer to assist the prosecution in convicting their client: access to justice requires a lawyer who places the client's interests first.

However, there are now arguably two barriers to client-centred representation: procedure and funding.

Criminal procedure has been subject to significant alteration, extension and replacement over the last two decades, creating a more conflicted profile for defence lawyers. For example, the 'inferences' provisions of section 34 of the Criminal Justice and Public Order Act 1994 and the expansion of defence duties of disclosure under section 5 of the Criminal Procedure and Investigations Act 1996.

More recently, the Criminal Procedure Rules imposed various 'case management' duties on all parties in the case; dealing with a case 'efficiently and expeditiously', identifying the 'real issues' at an early stage in the case, and providing information about witnesses, written evidence and points of law. All these procedural requirements run counter to 'zealous advocate' instincts, posing a significant challenge to the traditional primacy of client interests in the defence lawyer's ethical universe.

Funding, or the lack of it, is equally influential. The protracted battle between the government and defence lawyers over criminal legal aid fees needs no explanation here.

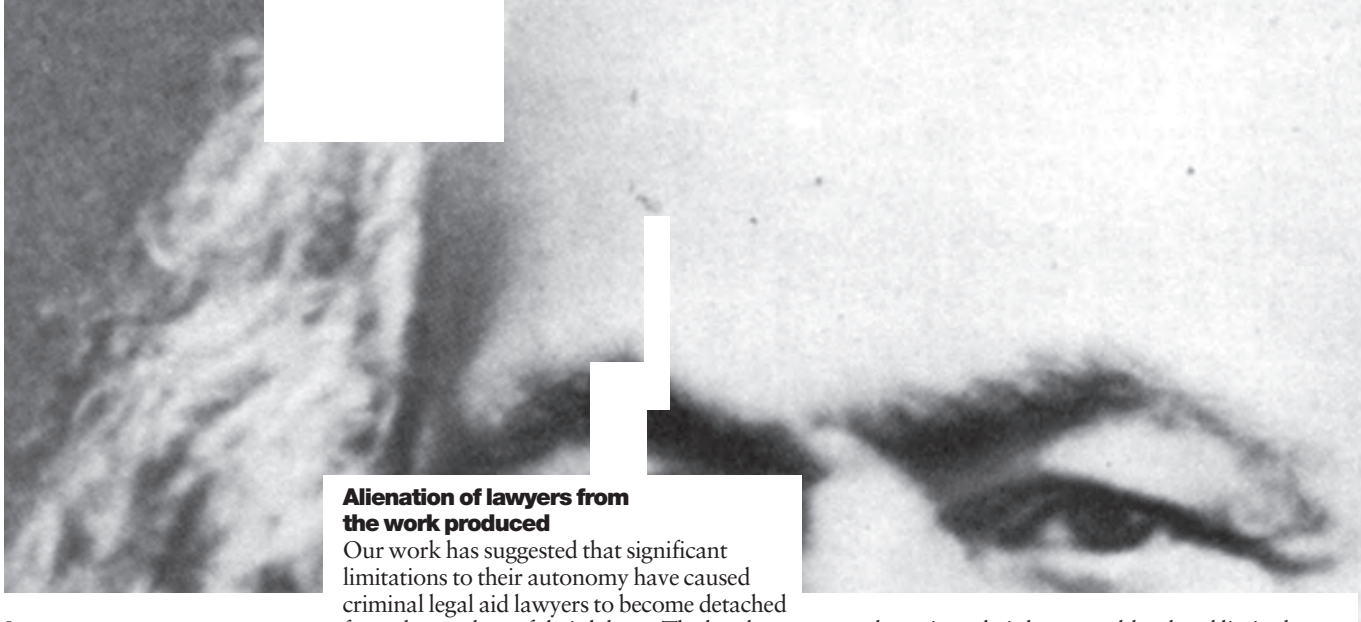
Lawyers as proletariat

In applying the Marxist theory of alienation to our research on criminal legal aid, we considered lawyers as workers who share common cause with more obvious members of Marx's proletariat. While this is a jarring idea to many, it is arguable that Marx's shifting definitions of the place of the intelligentsia – to which lawyers might normally be considered to belong – in his class system allows such an interpretation. For example, the intelligentsia are referred to as both the 'paid wage-labourers' of the bourgeoisie (arguably linking them to the proletariat) and the 'the ideological representatives and spokesmen' of the capitalists.

Alternatively, leading 20th century Marxist Antonio Gramsci proposed the theory of 'organic intellectuals' – a cadre of pre-capitalist intellectuals who stood above classes. The rise of capitalism saw organic intellectuals emerge as representatives of one class or another, either by choice or selection; they acted as translators – the 'tongue of the class' – who would express their will.

Criminal defence lawyers fit into this model well: they represent the specific interests of clients who are generally drawn from the proletariat, and also represent the class more broadly. They are, we would argue, translators of the needs of lay persons and the demands of complex legal institutions, and mediate the interactions between the class and the institution. They may also be subject to at least some of the pressures of alienation experienced by the traditional proletariat. For example, changes in criminal defence work have diminished the status of lawyers, leading to deprofessionalisation.

In the era of Marx there was no concept of legal aid. In contrast, modern criminal defence lawyers are becoming 'proletarianised'; where they once subsisted on abundant private wealth, they now struggle as wage labourers, dependent on the ever-shrinking legal aid budget. Defence work is increasingly passed down the chain of experience and qualification (for example, paralegals and accredited representatives) and most legal aid firms are either financially insecure or, in some cases, unviable. Equally, the recent conflict between defence lawyers and the government over fees echoes the tense Marxist dynamic of workers and owners, in which one strives for higher wages whilst the other seeks to lower costs. If the proletariat is the class that does not own the means of production and must sell its labour, then most legally aided criminal defence lawyers can be arguably identified as proletarian. >>>



Alienation of lawyers from the work produced

Our work has suggested that significant limitations to their autonomy have caused criminal legal aid lawyers to become detached from the product of their labour. The burdens of procedure and restrictive funding have affected defence lawyer behaviour to the extent that the balance of power is effectively tilted in favour of agents of the state (the police, prosecution and the court). Defence lawyers tend to collect case files from prosecutors on arrival at court, often discussing the content with them, which can allow their perception of a case to be framed within a prosecutorial narrative rather than that of the defendant. Opportunities to discuss cases with clients prior to initial hearings are often limited.

Reliance on such relationships is in part due to the practical pressures of time, resources and procedural culture. While hostility is not necessarily desirable, overly-close relationships suggest that some defence lawyers may now find more common cause with the prosecution than with their own clients, who will be, consciously or not, categorised as beneath or apart from the legal class. The worrying implication is that the prosecution case (reliant on unchallenged and often incomplete police information) may be afforded undue legitimacy by the defence lawyer.

Defence lawyers are expected to cooperate with the prosecution and the court; instead of traditional adversarialism this prioritises a more passive and compliant role, sympathetic to the prosecution worldview and regarding their clients through a guilty plea lens. There is now significant pressure on defendants – and by extension, their lawyers – to enter a plea of some form as early as possible (or at the very least to indentify the 'real issues'), regardless of important influencing factors such as the completeness of disclosure. While this is not necessarily a surprising attitude for the courts to adopt given their large workload and limited resources, however, it is troubling to think that defence lawyers may have also been drawn into this mode of thinking about cases.

In this sense, defence lawyers have lost control of their work; the service they offer has become compromised, with important decisions taken by others or at least heavily influenced by the expectations of modern procedural culture. Financial considerations are also relevant; the swift disposal of a case via a guilty plea can often be the most economical, which is an essential consideration for defence lawyers in the highly uncertain legal aid market.

In combination, the pressures of procedural requirements, the cooperative culture, and the looming shadow of financial necessity mean a lesser role for the client in shaping their case, with their views increasingly irrelevant, in comparison to greater needs of the system within which defence lawyers must operate.

Alienation of lawyers from the act of production

Alienation from the work they produce has also gradually alienated defence lawyers from the act of producing. Our work has suggested that the defence role has become increasingly mechanical and routinised, with familiar processes and patterns of behaviour. The drive for guilty pleas and the internalisation of systemic crime control messages (that convicting the guilty is paramount) pressurises and encourages defence lawyers to view clients through this lens and to process them accordingly. For example, lawyers can categorise clients and cases into ideal-type offences and offenders such as a 'routine theft', 'regular druggie' or 'Gypsy fighting family'.

>>> **Marx's alienation**

Marx identified four types of alienation that workers experience under capitalism.

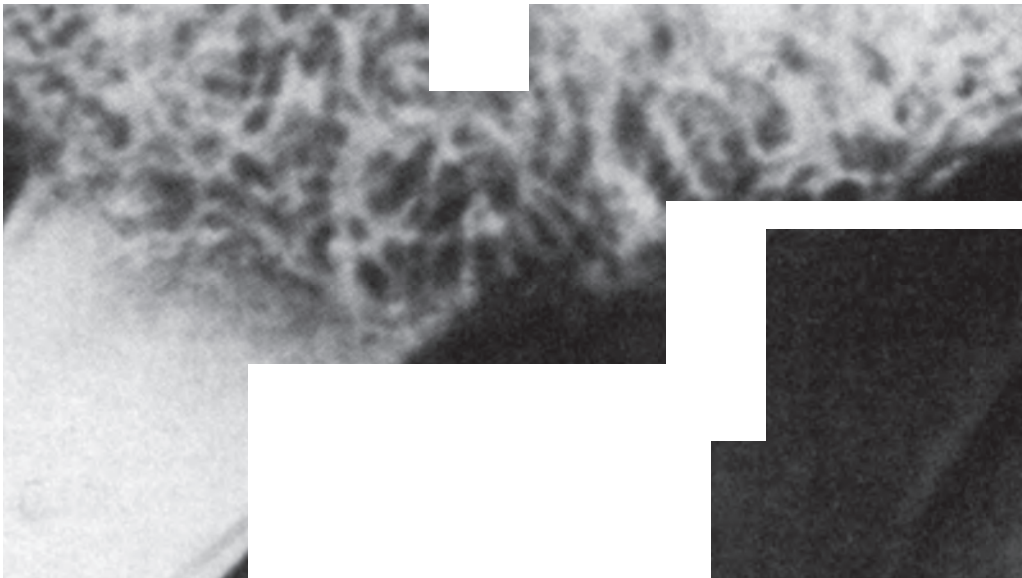
First, the alienation of the worker from the work produced: that is, from the product of their labour. Workers cannot determine the design of a product or the nature of a service and have no control over how it is produced, as capitalists appropriate all aspects of the workers' labour power.

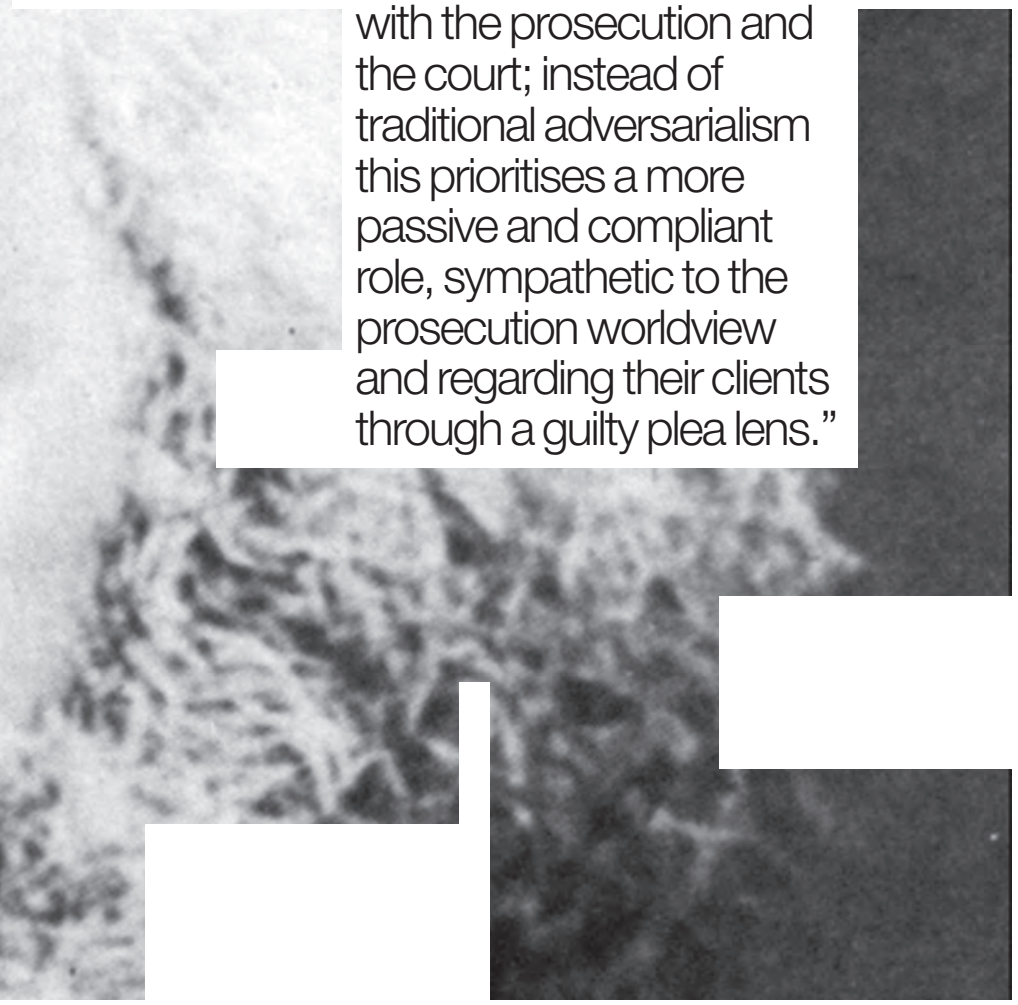
This feeds into the second form of alienation: from the act of production. Without autonomy, the pattern of work becomes monotonous, unstimulating and unsatisfying, characterised by repetition and triviality. Labour becomes a degrading exchange value; an activity performed solely for wages, rather than facilitating self-discovery and fulfilment.

And that contributes to the third form of alienation: from the species being, whereby workers are alienated from themselves as producers. For Marx, humans are distinct from animals through their ability to exercise conscious intention; to go beyond self-sustaining activity by considering the consequences of their actions and to work with purpose towards a valuable end goal; however, this is repressed under capitalism, stunting worker development.

Those three forms of alienation lead to the fourth: alienation from other workers. Work is reduced to a base economic practice and workers become a product to be traded based on financial judgments. This commodification cheapens the act of work; any value as collective effort targeted at improving society is lost, alienating workers from their common cause with each other and imbuing them with individualistic and divisive mind-sets, encouraging conflict.

Applying Marx in this manner may assist in understanding and addressing the impact of neoliberal market forces on defence lawyers and their role in facilitating access to justice. This application is new and provides a strong narrative to underpin the empirical research we have conducted into criminal legal aid lawyers. All four types of alienation were encountered in the observations and interviews that have informed our research, demonstrating how neoliberal ideology and austerity have created barriers to zealous advocacy and affected the lawyer-client relationship.





"Defence lawyers are expected to cooperate with the prosecution and the court; instead of traditional adversarialism this prioritises a more passive and compliant role, sympathetic to the prosecution worldview and regarding their clients through a guilty plea lens."

Diverse clients can be homogenised, treated in a standardised manner, and processed in large quantities. There is little time to listen to and understand individual client needs (which will often be complex), and assure them of the total support and protection of the lawyer. These tasks are as pertinent to a positive client experience as the final result of the case. Ultimately, the system reduces clients to objects on a production line, alienating lawyers from the act of working; this challenges the client's ability to meaningfully understand the notion of justice or effectively or substantively access it via their lawyer.

Alienation of lawyers from the species being

The explicit and implicit denigration of this area of practice has reinforced the impression that it lacks social value. Defence lawyers are not valued as they should be, thus alienating them from their species being. Traditionally, the legal profession has a high social status; moreover, legal aid lawyers consider their work to be virtuous and important, driven by noble motivations like supporting the underdog and protecting the vulnerable. They have what has been labelled a 'social agenda', seeing practice as more than simply a job: as a vocation or calling.

Rather than pride, many of the lawyers we have talked to felt devalued by the reality of the work. After years of training and development of expertise, underpinned by a belief in the societal utility of their work, these lawyers felt a lack of professional prestige and status.

They felt characterised as the poor cousins of lawyers in better-remunerated branches of the profession, lumbered with socially undesirable clients who brought down their reputation further. Offering neither self-respect nor wider valorisation, defence lawyers are drawn into a vicious circle – a deskilled role leads to increased alienation and to lower quality service, lending credence to the impression that the role lacks social good and deserves low pay – perpetuating the cycle.

Alienation of lawyers from other workers

Defence lawyers can justifiably criticise governments for devaluing their work and the general public for misunderstanding their importance, but our research has provided evidence that lawyers also resent their clients, exemplifying alienation from other workers. Clients keep defence lawyers in business, yet in our research clients were castigated for taking up lawyers' time, criticised for asking questions, and dismissed as whinging when confused.

Rather than a fellow citizen to help and support – a core part of the idealistic vision of criminal defence – some lawyers might see their clients as 'things' to work on, obstacles to swift resolution of cases and the receipt of a wage. Defence lawyers have been encouraged to internalise the culture of efficiency and economy, with the primary goal to process the client; just one of several names on a list, part of a workload to be managed.

The human element of the lawyer-client relationship is reduced or lost altogether; the endpoint of the process of alienation sees defence lawyers detached from their humanity, losing sight of any common cause they might share with the clients who they represent.

Conclusion

The value of treating lawyers as workers in a Marxian analysis is that it allows us to understand the pressures they face (and the pressures on the access to justice that they represent and enable) from the wider politico-economic system. The criminal justice system in England and Wales today is best understood as austerity justice. The cuts, outsourcing and efficiency drives of successive government policy in justice spending – as in all aspects of the welfare state – are increasingly downgrading the system, reducing its functions and acting to absolve the state of its responsibility to serve the citizens who rely on it.

Austerity justice, though, should not be understood to have begun with the Coalition and would not be overcome by current Conservative claims to scale back David Cameron's austerity programme or abandon the economic targets of George Osborne. Austerity, rather, represents the more pervasive impact of an anti-state neoliberal ideology that has been prominent in Britain since Thatcher and will be seen to continue for as long as public service provision such as access to justice is starved of resources, risking vulnerable citizens in the name of fiscal probity.

Dr Daniel Newman is a law lecturer at Cardiff University. Dr Thomas Smith is a law lecturer at the University of the West of England.

From one summit to another:

Pooven Moodley joins African women fighting for land rights

2016 was the African Union's 'African year of human rights with a particular focus on the rights of women'. That, coupled with the Millennium Development Goals' transition into Sustainable Development Goals, meant that a campaign for land rights (that are the basis of a food-secure continent) is very timely. In addition, in October 2015 the AU's special technical committee on agriculture, water and environment had recommended that member states allocate at least 30 per cent of land to women and improve land rights of women through legislative and other mechanisms in order to give practical effect to the AU Declaration on Land, that commits all African states to ensuring equitable access to land for all land users and strengthen women's land rights. Women across the continent are now calling loudly for women's rights to use, control, own, and inherit land.

With that in mind, 29 women from across Africa climbed Mount Kilimanjaro in October 2016 to make their voices heard. The idea was to get out of meeting rooms to the highest point of Africa and to get the African Union to take notice of their demands. In an act of self-mobilisation by women, 400 women from different countries converged in Arusha to push the issue of women's struggle for access and control of land in Africa up the agenda. A young artist from Sierra Leone produced a song that energised women as they travelled to Kilimanjaro (https://soundcloud.com/dinahf/women2 kilimanjaro-song). The women were accompanied by climbers from across the globe while others did solidarity climbs and actions on over 40 countries.

Our continent is not short of policies and frameworks that proffer security of tenure and access to natural resources for women. The Declaration on Land is one example: it gives force to the AU Framework and Guideline for Land Policies in Africa (F&G), and was adopted by African heads of states in 2009. It theoretically commits governments to ensuring equitable access to land for all land users and strengthening women's land rights. When implemented, the guidelines require governments to: review their land rights and develop comprehensive land policies; ensure that policies provide for improving access to land and strengthening rights of women; ensuring that women are in leadership positions in land

climbing Kilimanjaro for women's land rights

institutions; decentralising in order to increase access to institutions that govern land; and making use of the F&G to guide their national land policy process. The F&G also provide directions on how to address challenges facing women to access land.

Many countries have stuck to this commitment and developed land policies in conformity with the F&G. From Mozambique to Ethiopia, from Sierra Leone to Kenya, many countries have new land policies. It is therefore not for lack of policies that women in Africa are still not enjoying their land rights, it is the low levels of implementation of African Union decisions and national level policies that is a central part of the problem.

The gathering of 400 women in Arusha resulted in a charter of urgent demands. The women need leaders to take decisive action to tackle issues impeding their exercising of land rights: the implementation of laws, policies, frameworks, social and cultural barriers, land investments, and threats to women human rights defenders.

The political leaders and government officials present in Arusha spoke in support the rural women's demands. The chairperson of the African Union Commission committed the AU to enforcing these demands, but so many commitments have been made in the past. Ongoing advocacy is paramount if these demands are to be met. And indeed, the women in Arusha showed signs that their advocacy will continue.

The charter focuses on land policies, land investments, and social and cultural practices that deny women their land rights, and demands respect and protection for women's human and land rights defenders. Government representatives from Kenya, Burundi, and Tanzania also attended, and the four AU representatives present requested that the women work with them for presentations at the UN in 2017. The AU representation also told the Assembly that they will march up Kilimanjaro with the women once the AU targets are met. The presence of officials from the Land Policy Initiative (LPI) of the African Union, Africa Development Bank and UNECA in Arusha was a good indication of the interest and the weight that the AUC gives to women's land rights. The LPI is a good vehicle to take this agenda to the rest of the continent, being mandated to implement the AU's commitments on land and particularly the 2015 AU resolution that 30 per cent of registered land rights must be in the names of women by 2030.

'Ongoing advocacy is paramount if these demands are to be met.'

The heroic efforts of the 29 women climbers were recognised and celebrated with song and dance by their fellow women, who met them on their descent. Similarly, there was jubilation in various countries as the rural women's caravans made their return journeys home. From Mozambique, Uganda, Tanzania, Liberia, Kenya, Nigeria and many other countries, celebratory receptions for the women made headlines. The Kilimanjaro initiative was in some ways meant to be a culmination of campaigning across over 20 countries but it has provided the energy and momentum for the next phase of the struggle for women's access to land and other productive assets and the right to dignity. The results of the campaigning and policy work and the promulgation of the charter in Arusha has taken the Land campaign to the next level.

At the African Union summit in January 2017 the women continued to sing the Kilimanjaro song. The song echoed during the 29th Gender is My Agenda Campaign (GIMAC) pre-summit consultative meeting. The GIMAC event, which followed the theme of this year's AU summit 'harnessing the demographic dividend through investment in youth" and on gender mainstreaming in the African Union Commission (AUC) was held in the Addis Ababa, 22nd – 23rd January 2017.

Beyond gracing the summit with their chants, the women from villages of Africa used the meeting effectively as a platform to further voice their concerns and present some of their solutions. They explained how their concerns, including those in the charter of demands they presented to the AUC chairperson in October 2016, cut across issues related to the wellbeing and advancement of the communities, nations and the continent as a whole.

HE Dr Nkosazana Clarice Dlamini Zuma, the chairperson of the African Union Commission whom participants addressed as 'Mama Zuma' throughout the meeting, >>>

>>> endorsed the demands and recommendations of the rural women. She waved the emblem of the Kilimanjaro women's Initiative and sang the praises of the women from the continent. At the end of the meeting Mama Zuma joined the rural women and danced with them. This was a strong show of the solidarity of the AU, and its intention to support the struggle of the women as they push for access and control of land in Africa. Governments need to work for the people, not for powerful corporate interests. Governments are acquiescing in large-scale land grabbing by multi-national companies and by states, while women struggle for small pieces of land.

The AU summit session 'intersectionality of climate change, gender and livelihood, on the realization of women's rights' presented practical challenges and experiences that depicted gender issues as cutting across climate change, livelihood issues, reproductive health, young women's empowerment and entrepreneurship, governance, peace and security, education and health. The women-led discussions portrayed problems and practical solutions. This was not the usual practice of middlemen representing women's issues. At the end of the session the participants, hundreds of representatives of African civil society organizations and African women and youth leaders, stood up in solidarity and respect as the women moved back to their seats, singing and dancing. The women noted lack of access to and control over land as their biggest problem. They highlighted the

'The rural women's movements and small-scale farmers groups are starting to shake up the continent…'

discriminatory cultures and beliefs that inhibit women and girls' land inheritance, together with governance problems that fail to issue or implement laws ensuring gender equality. There are also financial problems that force women to use rudimentary agricultural methods and tools that yield minimal produce and earnings and women often lack control and decision-making roles. The women also raised issues of safe food, as opposed to investment in genetically modified produce. The women recommended strengthening the implementation of the AU's land policies, securing women's land tenure rights, better rural financing, banning harmful traditional practices inhibiting women's rights, and ensuring 50 per cent representation of women in national, regional and continental decision making.

There are several inspirational African women that are driving this agenda forward. GIMAC honoured ActionAid international board chairwoman Ms Nyaradzayi Gumbonzvanda, who is recognised for her unique contributions to girls' and women's rights and empowerment. Ms Nyaradzayi, a human rights lawyer and activist, has been the AUC goodwill ambassador for ending child marriage. .

This campaign has been driven by the energy of the rural women with the strong support of organisations including ActionAid, International Land Coalition (ILC), Kenya Land Alliance (KLA), Oxfam, Institute for Poverty, Land and Agrarian Studies (PLAAS), Tanzania Gender Networking programme (TGNP), Uganda Land Alliance (ULA), Women in Law and Development in Africa (WiLDAF), Zambia Land Alliance (ZLA), and others. The rural women's movements and small-scale farmers groups are starting to shake up the continent with the march to Arusha, the Kilimanjaro climb and an increasing level of energy to take this struggle forward more collectively. The Kilimanjaro Rural Women's Assembly was a great success and a celebration of life and collective thinking about how to fuel this struggle across the continent.

I climbed Kilimanjaro in solidarity with these women's struggle. It was an amazing and enriching journey. My fellow climbers were extraordinary and their success in the physical feat was an inspiring reflection of the progress that they make possible. The solidarity of the women from across Africa and the world further fuelled oru determination. The Kilimanjaro song will continue to get louder until it is heard by everyone in every part of Africa. *A luta continua!*

Pooven Moodley is head of campaigns at ActionAid International

Rona Epstein asks: why are local authorities sending people to prison?

Punishing the poor: the scandal of imprisonment for council tax debt

About 100 people are imprisoned each year because they owe council tax. They serve their time and are very seldom able to challenge the magistrates' decision to impose custody. In the rare instances when a challenge via judicial review is mounted the High Court almost always quashes the decision to imprison as unlawful. Imprisonment is very costly to the public, extremely damaging to individuals and families and does nothing to pay the debt due to the council concerned.

The law

Under Regulation 47 of the Local Government Finance Act 1992 and Schedule 2 and Schedule 4 of the Local Government Finance Act 1992 and the Council Tax (Administration and Enforcement) Regulations 1992 (SI.1992/613) local authorities may apply to the magistrates' court for a warrant committing a debtor to prison for up to three months. However, the court must make inquiries as to the debtor's means and may only commit to prison if it is satisfied that failure to pay is due to 'wilful refusal or culpable neglect'.

The Act provides that if council tax is not paid as required a magistrates' court may make a liability order against a debtor, which can be enforced by deductions from income support (a jobseeker's allowance or pension state credit).

There is also provision for a magistrates' court to remit the amount outstanding rather than issue a warrant, or to fix a term of imprisonment in default of payment.

The poll tax legacy

Much of the litigation in this area arises from the poll tax introduced by the Thatcher government. The riots and refusals to pay are, of course, well known. There were almost 3,000 imprisonments: 1,426 imprisonments in 1993 and 1,361 in 1994. However, the cases that define the current regime did not tend to arise from those who refused payment as a principled protest at the policy, most of whom either worked or claimed benefits against which local authorities could enforce the debts.

Instead, research I have carried out since the 1990s shows that it was generally the disabled, the very ill and elderly, and the otherwise vulnerable who were sent to prison. There were also people who effectively had no money: people to whom the Department for Social Security had refused jobseekers' allowance because they had voluntarily resigned (although, in reality, these were often vulnerable people who had been forced out of workplaces through bullying); and women whose partners earned but who had no income themselves. Many of these people survived in an informal economy of family and community support.

Given their situations many of the poll tax litigants did not bring cases through the usual channel of instructing a lawyer – and, indeed, legal advice to debtors at risk of imprisonment was not provided as a matter of standard practice in the magistrates' courts hearing tax default cases until the European Court of Human Rights ruled that the absence of legal advice was incompatible with Article 6 (the Stephen Benham case). Instead the claimants were noticed by others within the prison system, who were shocked by their situations and referred them to specialised lawyers who were able to obtain legal aid for these cases and acted on their behalf. The oldest person to be committed was 80, the oldest to actually go to prison was 72 and 13 of the debtors were under 21. There are two notable examples: one person never entered the prison gates because the driver of the prison van contacted solicitors and followed their advice to redirect the van so that the debtor could instruct them to make an emergency bail application; another person (a war veteran who was living in a care home after he became malnourished) came to lawyers' attention after the other inmates organised a letter to the local press.

Case law

The authorities on poll tax imprisonment apply equally to imprisonment for council tax as the statutory provisions are essentially the same.

First, there is no power to send the debtor to prison as a punishment. The powers of the magistrates are coercive not punitive, intended to be exercised only when the debtor has the means to clear the debt. Thus, the sole purpose of issuing a warrant of commitment is to compel the debtor to pay where he has the means to do so. In *R v Leicester Justices ex parte Deary* Brooke J said: 'The court has now repeatedly made clear that the purpose of the powers of the court under Regulation 41 are not the powers of >>>

"It was generally the disabled, the very ill and elderly, and the otherwise vulnerable who were sent to prison..."

"Melanie Woolcock, a single mother in poor health, was serving a sentence for council tax default and wrote to Women in Prison asking for advice. They contacted me and I referred the case to the Centre for Criminal Appeals and made an immediate and successful bail application. Following a High Court hearing, on 18 January 2017 a court ruled that Melanie's committal to prison for 81 days was unlawful."

>>> punishment for past misdeeds, but powers to ensure future payment of past liabilities'.

Neither can the court impose imprisonment as a deterrent to other tax defaulters. In *R v Leeds Magistrates ex parte Meikleham*, Dyson J stated: 'It is clearly established that the purpose of imprisonment is to extract payment by coercion and not to punish ... In my judgment there is no power in the magistrates to pass a sentence of imprisonment pursuant to Regulation 41(3) as a deterrent. They would not even have been able to pass a deterrent sentence had this been a criminal case. That is the effect of the Criminal Justice Act 1991. In my judgment, it is *a fortiori* in a case concerned with civil obligations.'

Debtors must not be imprisoned if there is an alternative: 'It is established that it is wrong in law to pass a sentence of imprisonment when an alternative to imprisonment is available'.

Deduction from state benefit must be considered as an alternative to imprisonment: 'I am quite satisfied that they [the justices] failed to have regard to the purpose of the legislation by failing to consider the alternative of deducting the applicant's arrears from his income support. The failure to consider that alternative was, in my view, an unlawful fetter of their discretion.' And deductions from benefit should be ordered even if the debtor refuses to cooperate. In *R v Hull Justices ex parte Johnson* Schiemann J stated: 'That procedure [to order deductions from social security payments] does not require the co-operation of the debtor apart from an ability of the authority to be able to specify the name and address of the debtor, the name and place of the court which made the liability order, the date when the liability order was made, the total amount of the arrears specified in the liability order and the total amount which the authority wishes to be deducted from income support'.

The court also has the power to remit the debt. In *R v North and East Hertfordshire Magistrates' Court ex p Dawn Jones* Potts J held that in tax default cases there was an appropriate comparison with fines cases, and in particular *R v Ealing Justices ex p Cloves* (CO/1610/89) where the court said: 'If the defendant cannot pay the fine within a reasonable time, it is an indication that the fine is too high.' Potts J held that a decision requiring a defaulter to pay off her outstanding community charge over a period of 10 years at £1 per week showed that the sum ordered to be repaid was, in the circumstances, too high. The justices should have considered how long it would be right and equitable to require the debtor to repay the arrears and they had failed to do so. Payment under liability orders had to have effect over a reasonable period; otherwise the arrears should be remitted.

The *Aldous* case

On 14 January 2011 the Dartford magistrates committed Amanda Aldous to prison for 90 days for failure to pay council tax arrears amounting to approximately £7,000 for the period 2003 to 2009. She is the mother of five children and had been the victim of domestic violence. Her youngest child was aged 15 at the time and had been diagnosed with autism and other associated conditions.

She served 74 days of her sentence. She had not been in custody before and this was the first time she had been separated from her autistic son. The effects on her son were serious and long-lasting; the entire family found the experience traumatic. On 29 March she was granted bail. At the High Court the decision of the magistrates to commit her to prison was declared unlawful and was duly quashed. The court found the decision of the magistrates to sentence Mrs Aldous to imprisonment was unlawful on five grounds.

1. The magistrates, in making the enquiry required by regulation 47, must treat each liability order, each year of liability, separately. In this case there was no separate enquiry by the magistrates for each of the separate years of liability. Following an earlier case, that would be fatal to the decision.

2. In respect of each amount there should be an inquiry as to means. In this case, the enquiry was so hopelessly inadequate that it failed to meet the requirements of the regulations; it could not properly be called an enquiry.

3. Regulation 47 stipulates that the court must make an enquiry as to whether the failure to pay is due to wilful refusal or culpable neglect. In making their decision the magistrates should have taken into account Mrs Aldous' offer to pay £20 per week towards discharging her liability. In

Melanie Woolcock. She served 40 days of her prison term.

failing to give proper weight to that factor the magistrates erred.

4. The purpose of imprisonment under regulation 47 is coercive. There had been no attempt to persuade Mrs Aldous to make the payment in any other way, and there appears to have been no consideration of what period would be appropriate to the purpose of persuading Mrs Aldous to pay. There were other ways in which the local authority might have been able to obtain payment, for example, by attachment to the earnings of her husband.

5. The effect of imprisonment on the children must be considered. In this regard the court held that although the existence of children cannot absolve a person who should 'properly' be sent to prison, a sentencing court needs to bear in mind what the effect on the children will be; if there are children and if the court does not have the information it needs in order to assess the effect of the parent's imprisonment on them, then it must make enquiries so that it is properly informed. Those enquiries were not made in this case.

A recent case

In March 2016 I wrote a short article that was published in the magazine produced by the charity Women in Prison (www.womeninprison.org.uk/). The magazine is sent to all women's prisons. Melanie Woolcock, a single mother, in poor health who was serving a sentence of 81 days for council tax default read the article in October 2016 and wrote to Women in Prison asking for advice. Women in Prison contacted me and I referred the case to the Centre for Criminal Appeals. Working with the Centre for Criminal Appeals, solicitors Sam Genen of Ahmed Rahman Carr and Clementine Harrison and barrister Rose Grogan made an immediate and successful bail application. Following a High Court hearing, on 18 January 2017 Lewis J ruled that Ms Woolcock's committal to prison for 81 days was unlawful.

The judgment made it clear that the magistrates had failed to assess Ms Woolcock's financial means and had no basis for concluding her failure to pay was because of 'culpable neglect'. Ms Woolcock of Porthcawl, Wales had been unemployed after working part-time in addition to caring for her school-age child and helping with the care of an elderly neighbour when she fell behind on her council tax payments. She was arrested by bailiffs on 8 August 2016 despite making a payment towards her outstanding debt days earlier. She served 40 days of her prison term.

The Centre is now preparing to intervene in a judicial review of the legality of the current system by which people are committed to prison for non-payment of council tax. Such a challenge would focus on whether the present system violates Article 6 of the European Convention of Human Rights, the right to a fair trial.

Conclusion

Imprisonment for council tax default is generally unlawful because imprisonment is a last resort and other methods should be tried first: the courts can either order attachment from benefits if the debtor is unemployed or from wages/salary if the debtor has a job, and from any savings account if the debtor has neither job nor benefit but has assets, so there is always an alternative. But despite the clear principles established in the legislation, the poll tax cases and *Aldous*, it is vulnerable people such as Amanda Aldous and Melanie Woolcock who are most likely to be sent to prison.

Such errors of law on the part of the magistrates and those who advise them can have devastating consequences for vulnerable families. As the courts have made clear on many occasions, imprisonment for non-payment of a civil debt should only be used as a last resort. A worrying feature of both cases discussed in this article is the apparent ignorance of the magistrates and their legal advisers.

It is tragic that we continue to see the most vulnerable suffering as a result of council tax imprisonment. Owing money is not a crime, and imposing any form of punishment is not permitted by law. Given the travesties that the magistrates' courts continue to produce it is difficult to see how the present system complies with Article 6. It is hoped that the High Court challenge will put an end to this draconian practice – that must be the legacy of all of those who have suffered such injustice.

Rona Epstein is a research assistant at Coventry Law School, Coventry University. She welcomes contact by email and would welcome correspondence on this topic: R.Epstein@coventry.ac.uk. A fully-referenced version of this article is available upon request (socialistlawyer@haldane.org)

"Such errors of law on the part of magistrates can have devastating consequences."

In October 2016 the *Irish Times* reported that trial dates have been set for 19 defendants in a protest case involving 'false imprisonment.' What makes this particular decision a major concern for human rights defenders, socialists and trade unionists is that the accused are campaigners against water charges in Dublin.

Jobstown: a study in protest, politics and prosecution, by **Paul Heron**

How did a community protest organised at short notice become charges of false imprisonment?

The 19 defendants were part of a group of campaigners who surrounded the car of Joan Burton, the then-leader of the Labour Party in Ireland, in November 2014. Angry at the imposition of water charges, working class people from Jobstown, south Dublin, had gathered to show their opposition. For many – barely making ends meet and following the imposition of job and wage cuts, and austerity at the behest of the EU, IMF and ECB – enough was enough.

Effectively a minister remained in a car for two hours while working class people protested at the further imposition of austerity, and she was hit by a water balloon as she was (eventually) escorted to a Garda (police) car. How did a community protest organised at short notice become charges of false imprisonment? Through the combination a developing anti-austerity movement in working class areas, together with a growing panic from the Irish establishment, which uses the law against its opponents.

It is important to understand the economic and political processes that have been at the core of this decision to prosecute protesters in such a draconian fashion.

The IMF, ECB and EU – the empire strikes back

The EU is a neoliberal project. Following the crash in 2008 the EU, IMF and ECB (the Troika) wasted no time in imposing austerity across the continent. Portugal and Spain have been brought to heel – resulting in mass evictions, job cuts and historically high youth unemployment. In Greece the state has been forced into a fire sale of assets. The leftist rhetoric of a Syriza government made no difference.

Ireland did not escape, but by 2011 it had a new coalition government comprised of Fine Gael and the Labour Party. The Labour Party in particular campaigned on a programme of opposing cuts and austerity, and of protecting the vulnerable. These promises did not last.

Water charges were forced on Ireland by the Troika as part of the economic bailout from 2008.The new coalition government had a choice: impose the charges on an economically squeezed populace, or fight the agreement made by the previous administration. The new government capitulated, introducing the charges and welfare cuts.

Building a non-payment campaign

The building of the movement for non-payment/boycott of water charges was not straightforward. The Anti-Austerity Alliance (AAA), along with many working class people, saw a boycott/non-payment campaign as central to defeating the charges. Indeed, the word on housing estates, in workplaces and streets among working class people was that they couldn't even afford to pay the charge whether a mass non-payment campaign was organised or not.However, the Right2Water unions and Sinn Féin took a different position. Other forces like People Before Profit, left independents and some community groups, while nominally supporting non-payment, did little to organise it or challenge the Right2Water leadership on their weaker position on the issue.

The debates provoked by the AAA within the Right2Water movement, as well as the initiatives under the banner of We Won't Pay and others in the Non-Payment Network, led to those campaigners being singled out for attack by prominent officials among the Right2Water campaign and Sinn Féin representatives. >>>

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Proof of the pudding is in the eating

In October 2014, a Fine Gael TD vacated the seat in the Dublin South West constituency. Sinn Fein was odds on to win the by-election given the rising tide against austerity that was building in general, and the water charges in particular. But the election returned Paul Murphy, a socialist AAA candidate.

Non-payment was one of the crucial issues of the campaign. With Sinn Fein's candidate not committing to the strategy, the people of south-west Dublin returned a Marxist to the Irish parliament, showing their preference for mass non-payment.

Paul Murphy became a vocal opponent of the government's austerity policies in parliament, and outside was an advocate of mass non-payment. Needless to say he made a number of enemies.

From 2014 the campaign of mass non-payment was built. Mass demonstrations continued across the country. It was a major factor in the 2016 general election: the Labour Party was punished for their ongoing stance on the water charges, and so were their governmental partners Fine Gael. Socialists from the AAA-PBP alliance increased their seats from three to six, nearly eclipsing the now pro-austerity Labour Party.

The new coalition government of Fine Gael and Fianna Fail immediately suspended the imposition of the water charges and established a commission to look at the issue. That vindicated the non-payment strategy.

In early February 2015 the Garda organised dawn arrests, including a 15-year-old boy.

Jobstown – not guilty

In November 2014 the then-deputy prime minister Joan Burton visited Jobstown – a working class community to the south west of Dublin. It had been hit hard by the austerity programme of the coalition. The water charges were the straw that broke the camel's back.

Understandably, news of the presence that day of the leader of the Labour Party – which had broken its anti-austerity vows – spread quickly. As she finished a visit to a community centre she was challenged by constituents to justify her policies and, in particular, the water charges. Not used to being questioned she escaped to her ministerial car. Once there she was surrounded by campaigners. Paul Murphy, the newly elected TD, arrived a little later, and with local AAA councillors took part in a sit-down protest around the car. The deputy prime minister remained there for approximately two hours before being escorted and driven away by Garda. A water balloon hit her on the shoulder.

Paul Murphy TD told *The Guardian*: "The protest has been peaceful. Yes, she has been delayed here for a number of hours but I think this protest has sent a very clear message to her, a message that the government has ignored to date, that people don't want to pay these water charges […] there are a lot of people who simply cannot afford to pay".

A peaceful protest, inconveniencing a minister, had made its point. There were no arrests on the day.

In early February 2015 the Garda organised dawn arrests, including a 15 year-old boy. By August 2015, charges were announced, including false imprisonment, violent disorder and criminal damage. The state had signalled its intention. There is little doubt that these charges are an attack on civil liberties and the right to protest.

Socialist lawyers understand that neither the state nor the law are neutral. As Ralph Miliband made clear in his seminal work 'The State and Capitalist Society':

'Judicial elites, like other elites of the state system, are mainly drawn from the upper and middle layers of society[…] Moreover, the conservative bias which their class situation is thus likely to create is here strongly reinforced by the fact that judges are[…] also recruited from the legal profession[…]

'Moreover, governments[…] are most likely to favour men of precisely such conservative dispositions[…] [Thus, in] interpreting and making law, judges cannot fail to be deeply affected by their view of the world'.

The state will use its powers to influence the legal process particularly when it comes to punishing those who dare to protest. Ireland is no exception.

(Right) TD Paul Murphy, a socialist anti-austerity candidate who won his seat in a bye-election in the Dublin South West constituency.

False imprisonment my arse

The state has set out its stall. Tactically it has decided to bring these cases in stages. After all, having all 20 people heard together would be an unedifying spectacle. The first stage was to convict a 17-year-old of false imprisonment (although the sentence was a community discharge).

In relation to the remaining 19 defendants, three separate trials are planned. In the first batch Paul Murphy TD, three other AAA councillors and four others campaigners will face a charge of false imprisonment. The trial is due to start on the 24th April 2017. The second trial of six campaigners is due on 2nd October 2017 and the third and final trial is five other campaigners who are charged with violent disorder. The defendants deny all the charges.

In sending his support Ricky Tomlinson (a trade unionist jailed in 1972 on trumped up charges) stated that: "it is an absolute insult to find that a politician trapped in the comfort of a car is deemed to be in prison – as Jim Royle would say "imprisonment my arse!"'

Political trials

The conviction of the 17-year-old was a wake-up call. The political and legal establishment appear to be deadly serious in using the Jobstown trials to criminalise protest.

The water charges movement delivered a humiliating blow to the establishment and this has had far-reaching consequences, both for the politicians and for the workers, who gained the confidence to fight for better pay and conditions.

The 2016 elections were a resounding rejection of the Fine Gael and Fianna Fáil monopoly. In order to salvage themselves the traditional foes have entered a coalition. The Labour Party was annihilated. The climbdown on forcing water charges illustrates that the parties of the establishment are weak.

The Jobstown trials have to be seen in the context of this crisis. It is an establishment lashing out at the entire water charges movement. It cannot accept people power.

An attack on civil and political rights

It is clear that these trials are not just an attack on the most vocal proponents of mass non-payment: they are an attempt by the state to strengthen its hand against future protest movements. If a sit-down protest is deemed to be false imprisonment it could have far reaching legal and political consequences for the democratic right to protest and picket.

Given the history of the anti-austerity movement in Ireland since 2008 it is also a politically motivated attack – against the most radical and effective wing of the water charges movement, against those who advocated a mass non-payment and boycottof the charges, namely the Anti-Austerity Alliance. For instance, should Paul Murphy TD be given a sentence above six months he is stripped from his seat, which would reduce the socialist bloc in parliament.

At its heart it is an attempt to stop the growing support for an anti-capitalist alternative that challenges the interests of the one per cent and stands for an independent anti-capitalist voice for working class people.

In 1940 Winston Churchill and members of the royal family toured the East End of London. The Blitz had devastated homes and factories. Thousands of working class Londoners where left homeless, and hundreds of others had been killed in the carnage. The Communist Party had previously demanded that the Tube stations be opened so that East Enders could take refuge – but that was refused. On reaching Stepney, Churchill had hoped to tour the damaged housing and no doubt use it as an opportunity to grandstand – he was met with a ferocious response. On hearing that Churchill was in the area working class men and women gathered to boo him as he arrived.This soon escalated to rubbish, stones and bricks being thrown at him. He was soon on the run. Weeks later the Tube stations were open.

Fast-forward to 2014. Joan Burton leader of the Labour Party in Ireland was met with a protest of working class people in Jobstown, south Dublin. Their anger was directed against her – as the minister responsible for social inclusion – for the introduction of water charges. Communities battered by years of austerity had had enough. Her car was surrounded for two hours, her shoulder was hit by a water balloon and she left the area with the help of the Gardai. As a result 19 people now face charges of false imprisonment.

When did the establishment become so fragile?

Environmental defenders: m

Kate Hallam on how people fighting large-scale developments which threaten communities and the environment are being attacked.

The murder of Berta Cáceres in March last year sent shock waves through the human and environmental rights community and received a level of media coverage rarely afforded to environmental defenders. As leader of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), she and her indigenous Lenca community had been fighting a successful campaign against the region's largest hydropower project for more than a decade. A joint project between Honduran Desarrollos Energéticos SA (DESA) and Chinese state-owned Sinohydro, construction of the Agua Zarca Dam on the Gualcarque River began without conulting the affected communities. In response they filed complaints with the government, lodged appeals against funders, brought cases to the Inter-American Human Rights Commission and organised large-scale protests, including a road blockade that prevented developers from accessing the site for over a year.

By the time she was shot dead at her home in the middle of the night, Berta had withstood years of intimidation and had received more than 30 death threats. She had spoken publicly about her fear of being killed and was well aware of her place on the army's assassination list, an allegation that has since been corroborated by ex-military personnel. She had also won worldwide recognition for her work, including the prestigious Goldman Environmental prize. Her friend and fellow activist Gustavo Castro Soto witnessed her murder and was shot and injured in the attack.

Two months after her murder, and in the face of widespread criticism, the police finally made four arrests. Two had direct links to Agua Zarca and DESA, both of whom had been reported to the authorities for making death threats against her. The other two were current and ex-soldiers from the Honduran army. Six months later a group of international lawyers launched an independent inquiry into her murder, amid

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Picture: Goldman Environmental Prize

urdered, missing and at risk

serious concerns over the official investigation. Since her death two other COPINH activists, Nelson García and Lesbia Janeth Urquía, have been killed and two others, Tomás Gómez Membreño and Alexander García, have survived assassination attempts.

However horrifying this story is, it is certainly not unique. According to Global Witness, 185 environmental and human rights defenders (EHRDs) were killed in 2015, more than three a week, and up 59 per cent on the previous year. Forty-two of these deaths were linked to the mining and extractives industry, 20 to agribusiness, 15 to hydropower and 15 to logging. Nearly 40 per cent of the victims were indigenous people.

Latin America remains the most dangerous region, with 50 killings recorded in Brazil, 26 in Colombia, 12 in Peru, 12 in Nicaragua, 10 in Guatemala and four in Mexico. In Asia, 33 were recorded in the Philippines, three in Indonesia, and two each in Thailand, Cambodia and Myanmar. Elsewhere, the Democratic Republic of Congo saw 11, India six and Pakistan two. The latest figures from Frontline Defenders show that almost half of the 281 HRDs killed in 2016 were working on environmental, land and indigenous rights issues.

Like so many others, Berta was murdered because she was fighting to protect the rights of her community and the environment upon which they depend, against the exploitation and devastation caused by large-scale, state sanctioned 'development' projects, which displace communities, destroy livelihoods, harm the environment and contribute to global warming.

One of the most contentious issues is hydropower, which, while promoted as 'green', in fact causes irrevocable damage to bio-diversity, ecosystems, climate and the communities who rely on free flowing rivers for their survival. In the Amazon, the £15 billion Belo Monte dam on the Xingu >>>

>>> River will soon be the world's fourth largest, destroying 1,500 square kilometres of rainforest and forcibly displacing 20,000 indigenous people. Hundreds more are planned for the region, including the pristine area of Tapajós. 10,000 miles away communities in Thailand, Cambodia, Laos and Vietnam are facing nothing short of a trans-boundary water crisis, as a result of hundreds of dams planned for the region. Among these are 11 mega-dams on the mainstream Mekong, which an estimated 60 million people depend on for food security and livelihoods.

Killing is also just one of many tactics used to silence defenders and scare others away. The special rapporteur on HRDs described it recently as "the tip of the iceberg". Defenders also face the threat of physical attack, sexual harassment, kidnap, forced disappearance, arrest, arbitrary detention, travel bans, exile, raids and searches, asset freezing, licence revocation, forced closure, illegal surveillance, cyberattacks, criminalisation and judicial harassment. They are also routinely stigmatised, demonised and made the subject of smear campaigns.

In Brazil, the leader of the Movement of Persons Affected by Dams, Nilce de Souza Magalhães, was tortured and then murdered in January 2016 for campaigning to project her community's river, and after denouncing human rights violations at the Jirau hydro-electric protect. In Colombia, November saw the murder and attempted murder of four land and environmental rights activists in just one weekend. Erley Monroy, Director of the Farmers' Association Losada-Guayabero, was gunned down in Caquetá province and later died of his injuries. The following day, his comrade Hugo Cuéllar survived being shot five times on the way back from his funeral. In nearby Meta province the president of the El Platanillo Neighbours' Association Didier Losada was shot and killed in front of his family, while Danilo Bolaños Díaz from the Association of Farm Workers in Nariño survived an assassination attempt unharmed.

In Guatemala Angelica Choc and her family survived a gun attack on their home in September, during the criminal trial of the 2009 murder of her husband Adolfo Ich and while preparations were underway for groundbreaking lawsuits in Canada against mining company HudBay Minerals, for human rights abuses committed at its Fenix mining project, including his murder. In Peru serious concerns remain over the safety of another Goldman Prize winner, Máxima Acuña de Chaupe, who has endured physical attacks, threats and intimidation for her campaign against the 'Conga' gold mine in Cajamarca, owned by a subsidiary of US-based Newmont Mining. In Ecuador Acción Ecológica is facing closure following its support of the indigenous Shuar community in their fight against a Chinese-run copper mine in the Cordillera del Condor region.

In the Philippines 22 activists from the indigenous Lumad community in Mindanao have been killed for protecting their lands against mining and agribusiness. Michelle Campos then risked her own life by publically documenting the execution of her father and grandfather by paramilitaries in the national press. In Cambodia anti-logging activist Phorn Sopheak narrowly escaped death when she was attacked with a machete while on patrol in Prey Lang forest in April. Fears as well as hopes currently surround the country's new environmental code, which will place 40 per cent of the country's land under the ministry of environment's control. In Vietnam protests over the release of toxic waste into the sea by a Taiwanese-owned steel company were met with violent suppression and more than 500 arrests. In Laos, the 2012 disappearance of leading environmental activist Sombath Somphone continues to have a deeply chilling effect on a country renowned for its lack of political space, all but silencing any opposition to the many destructive projects already underway.

In the Democratic Republic of Congo deforestation, poaching and now government-granted land concessions for oil exploration threaten Virunga National Park, Africa's oldest and most bio-diverse. 150 rangers have been killed there in the past decade, while environmental activists Bantu Lukambo and Josue Kambusa Mukur have received death threats, have been arrested and are forced into hiding. In South Africa a leading campaigner against the Australian-owned Xolobeni mineral sands mine, Sikhosiphi Rhadebe, was shot dead

> "According to Global Witness, 185 environmental and human rights defenders (EHRDs) were killed in 2015, ... up 59 per cent on the previous year. Forty-two of these deaths were linked to the mining and extractives industry, 20 to agribusiness, 15 to hydropower and 15 to logging. Nearly 40 per cent of the victims were indigenous people."

Picture: Goldman Environmental Prize

A subsistence farmer in Peru's northern highlands, Máxima Acuña stood up for her right to peacefully live off her own property, a plot of land sought by Newmont and Buenaventura Mining to develop the Conga gold and copper mine.

in March at his home in front of his son.

In the global North environmental activists are also taking huge personal risks. The inspiring earth protectors of Standing Rock, who are fighting the construction of the Dakota Access Pipeline across their land, have seen their peaceful protests descend into violence, arrest and criminalisation. Fossil free and anti-fracking campaigners on both sides of the Atlantic have also faced similar threats.

What unites all of these heroic struggles is, of course, what lies at the rotten core of them all: rampant, unfettered capitalism, facilitated by powerful collaborations between big business and governments that allow dirty energy projects, natural resource exploitation and environmental degradation to continue unabated on an enormous scale. This is despite international commitments such as the Paris Agreement on Climate Change and the 2030 Agenda for Sustainable Development. The special rapporteur on HRDs has quite rightly described the situation as 'neo-colonial' and based on the 'commodification and financialisation of the environment'.

Fighting these mega-projects is a truly courageous endeavour, as it forces communities into direct conflict with a complex global network of actors, including private companies and international corporations, banks and investors, international financial institutions and state-owned enterprises. Hiding beneath are often US and increasingly Chinese interests, however establishing exactly who is ultimately responsible for these projects can be very difficult. Holding them to account is, of course, even harder.

Erley Monroy, a farmer, was gunned down in Caquetá province in Colombia during one weekend which saw the murder and attempted murder of four land and environmental rights activists.

This overwhelming power imbalance causes communities to be excluded and ignored. They often only learn about a project after it is already underway, and without adequate environmental or social impact assessments. They are then faced with a 'cooperate now or get nothing later' ultimatum, pressured by the promises of better homes, schools, jobs, sanitation and electricity, which are rarely fully delivered. In reality the loss of land and livelihoods, inadequate compensation, food insecurity, serious illness, community breakdown and severe poverty is the norm. Impacts can be particularly acute when affected communities live in rural isolated areas, where language, literacy and land ownership issues are common and access to government and legal services is limited. In this context, indigenous communities, minority groups and women are particularly vulnerable.

Environmental defenders also suffer from a severe lack of adequate protections. The UN Declaration of HRDs (1999) recognises the legitimacy of environmental defenders and underlines the obligation on states to protect them from abuse. The UN Guidelines on Business and Human Rights reiterates this duty, as well as placing an obligation on businesses to respect human rights and emphasising the need for victims to have access to an effective remedy.

However, in reality these non-binding international commitments do little to protect communities on the frontline. Indeed, state interests in large-scale development projects often mean that those who are responsible for protecting defenders are in fact the perpetrators of gross human rights violations. While ultimately in bed with big business, they also routinely fail to investigate abuses or hold perpetrators to account. This complicity and acquiescence has created a culture of impunity that now permeates throughout the world and further shrinks the space in which defenders can work. In many countries this is further compounded by weak domestic laws in relation to environmental protection and human rights, corruption and a justice system that is neither strong not independent.

Despite all of this, communities and grassroots defenders around the world continue to fight for their rights and the future of our planet. For this, their strength and determination must be admired and their struggles celebrated and supported. As lawyers, activists, environmentalists and socialists we must all play our part in the fight for clean energy, equal and sustainable development and the rights of these brave and distinguished defenders, before it is too late.

Kate Hallam is a member of the Haldane Society and has been working on human and environmental rights issues in South East Asia for the past year.

Something of an understatement

Film: *I, Daniel Blake*, October 2016 (UK), 15, 1h 40min. Director: Ken Loach. Screenplay: Paul Laverty.

Ken Loach's Palme d'Or winning new film is an exposé of the current welfare benefits system in the UK. It tells a desperately sad story that's designed to highlight the Kafkaesque brutality of relying on the Department for Work and Pensions for a living. It's beautifully presented: the writing and delivery have an understated, natural (almost mumbled) tone. It doesn't deal in outrage and hyperbole but delivers its message through a plain and frank recitation of the facts. It has an absurdist feel, which communicates the characters' frustrations very effectively.

It is Daniel (Dave Johns) and Katie's (Hayley Squires) shared story of navigating the welfare benefits system in Newcastle for the first time. The capriciousness of the Jobcentre has left them both with nothing, and they grow close as they rely on each other to get by.

But if it's designed to shock the viewer into understanding the realities of the benefits system it is too understated. The DWP's malice – as my work in advice centres and food banks, and my friends' and fellow campaigners' experiences have shown me – produces worse situations than Daniel and Katie's.

Daniel, for all the desperation of his situation, is relatively privileged. The protagonist is a British, childless man with considerable skills. And while the circumstances shown in the film are dreadful they are the result of DWP maladministration. Perhaps a more important subject would be families whose lives are in ruins not because of a temporary blip, but because of deliberate government policies – such the benefits cap, bedroom tax, 'no recourse to public funds' or the hateful 'right to rent' – which are designed to create enduring and unsolvable hardship.

One jarring moment for lawyers is when Daniel's tribunal representative tells him that he's bound to win his appeal against the DWP – but perhaps poetic licence should trump professional ethics here.

At an organising meeting shortly after the film's release I heard comrades complaining that it didn't have any suggestions for action: it left the viewer disheartened rather than resolute. That, for me, wasn't a difficulty. The film isn't supposed to be a manifesto for resistance, and in any event the story is packed with practical solidarity and hints of direct action (perhaps the most moving part of all was the shared joy and hopefulness of the community as they watch Daniel deface the Jobcentre wall). The point of the film is that humiliation is overcome through support.

Public debate around the film's release focused on whether the plot was realistic or overly provocative. It was neither, and it's astonishing and sad that MPs and commentators have so little understanding of contemporary Britain.

Andrew Barry

Dave Johns as Daniel in Ken Loach's film – in which 'humiliation is overcome through support'.

Sing-alongs and solidarity

Play: Dare Devil Rides to Jarama by Neil Gore, Townsend Productions.

Dare Devil Rides To Jarama is a play set in an unsettlingly familiar context. Following a period of financial depression and in a climate of rising xenophobia and nationalism, the struggle by ordinary Spanish women and men against the fascists inspired an incredible wave of practical solidarity that spread far from Spain itself. As many as 35,000 people from 53 countries volunteered to go and fight, making up military units known as the International Brigades. It was a revolution for women, who became the industrial force in Spain and who were fully engaged in the struggle (although there is only one woman in this play and she is the invisible love interest.

This is the story of two friends who joined up, and died together in 1937 at the battle of Jarama. Two thirds of the British Battalion died along with them, in a place that came to be known as 'suicide hill.'

Given the story arc it was surprising (after some beautiful introductory oboe) to be handed Unite the Union branded rattles before sitting down; it was still more so when, two minutes in, the protagonist Clem Beckett (played by David Haywood) straddles a cardboard cut-out motorbike and leads the audience cheerily in singing 'Forward Young Workers!' with about as many theatrical winks as anyone could fit into a first half. Clem is a young worker, enthusiastically wedded to communist ideals and competitive biking. When the factory boss lays everyone off,we boo and wave our rattles. When Clem unionises his fellow riders, we cheer (and wave our rattles). It's fun.

A good deal of the play is spent at home in Manchester with Clem, who also does most of the narration. He tells us about the **>>>**

The real life Clem Beckett, professional speedway rider and active Communist in the 1930s, who died in Spain.

Reviews

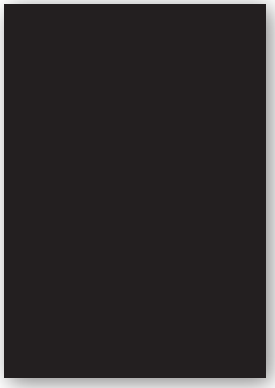
>>> rise of fascism and, while he's at it, Communist Party meetings, riding the wall of death, the Kinder Scout trespass, being in Germany with a broken leg, how he got the invisible girlfriend, and the British Workers' Sports Federation's delegation to the Soviet Union. On stage with him is Neil Gore, who rushes around engagingly, playing everyone from Oswald Mosley to the German doctor, and at one point, a rambling enthusiast in a wooly hat covered in heather. The songs keep coming, and they're well done thanks to the musical direction of John Kirkpatrick, who is a big deal on the folk scene.

By the time the action moves to Spain, well over half-way through, it is a welcome change. Clem has just met poet and writer Christopher Cauldwell, who has volunteered to drive an ambulance. We are not told much about Cauldwell's background but Neil Gore makes him humane and likeable and we do get to hear his poems. After a bumpy start their friendship across the class divide flourishes and they're soon talking politics and singing songs in their Spanish encampment. Their guns are antique and unreliable. We watch as they get bored awaiting news and orders. When they are finally sent to battle the action is convincing. The final scenes do the job – we know the two friends are going to die, but while there's no shock, there is sadness.

A 'brave and admirably wacky' play about a true story from the Spanish Civil War.

Gore and Townsend have done brave, admirably wacky things with this production, supported by Unite, Unison, NASUWT and the International Brigade Memorial Trust among others. They had a point to make but they did so with heart; the play avoids becoming an on-stage lecture. It is good to hear the tale of international solidarity and sacrifice retold – its themes are bitingly relevant.

Elizabeth Forrester



DPP: this will tell you all you need to know

Book: Defending Possession Proceedings by Luba, Madge, McConnell, Gallagher and Madge-Wyld, October 2016, LAG.

The eighth edition of *Defending Possession Proceedings* (or 'DPP' to the thousands of us who hurriedly rely on it for the court 'duty adviser' scheme) is the most useful and important book for anyone involved in the increasingly complex task of trying to stop courts from evicting people.

The majority of the book is still devoted to the same great project: a structured analysis of the different rights and circumstances of occupation, and the respective arguments that can be raised to stop courts from bringing them to an end. As one might expect, much of this has simply been updated to cover the considerable developments since 2010. For example the current section 21 regime is clearly set out over 50 pages (with a further four pages of flow-charts). The predominantly new chapters on public law, human rights and the Equality Act 2010 are worth a leisurely read.

Perhaps most importantly, the book is still easy to use quickly. Roughly 160 pages – nearly 15 per cent of the book itself – are devoted to navigating (contents, index, table of statutes and legislation etc). Specific, unfamiliar points are easily accessed, whether at court in a panic or in the comfort of your own night bus home. Of all the law books I use, it's probably the best at getting the information I need quickly and reliably.

A sizeable portion of the book is concerned with practicalities. The appendices helpfully reproduce CPR 55 with practice directions, the key protocols, the prescribed forms for statutory notices and a number of helpful practical checklists. There are also chapters on procedure and tactics, benefits for residential occupiers and legal aid funding.

There are only two things I would change . First, the treatment of the Equality Act 2010, helpful as far as it goes, focuses on disability discrimination – no doubt because this comes up most frequently in possession claims. Nevertheless, a treatment of the other protected characteristics would have been worthwhile. This is particularly true given that the 'right to rent' provisions in the Immigration Act 2016 (which received assent in May 2016) is, by all accounts, set to cause havoc for anyone who tries to rent a home without a British passport. Although these provisions are unlikely to involve claims under CPR 55 in most cases, a number of people may face eviction because of nationality or perceived nationality.

Second, only 10 pages go to trespassers. This is partly because most claims against trespassers are hopelessly indefensible: a fact that does not take long to explain. Nevertheless, given the successes of the Occupy movement, the government's sustained assault on social housing and the vast numbers of empty homes, perhaps people with no 'legal right to occupy' deserve a bit more help from some of the greatest minds in the field.

Even those two criticisms only knock off half a star, and this book is still the best thing going in housing practice. I'm fully confident that the pristine new volumes that LAG has recently sent out will soon turn into the bruised, dog-eared and much-loved editions that we're so used to seeing in courts and offices.

Michael Sprack

The 'Len' behind the politics?

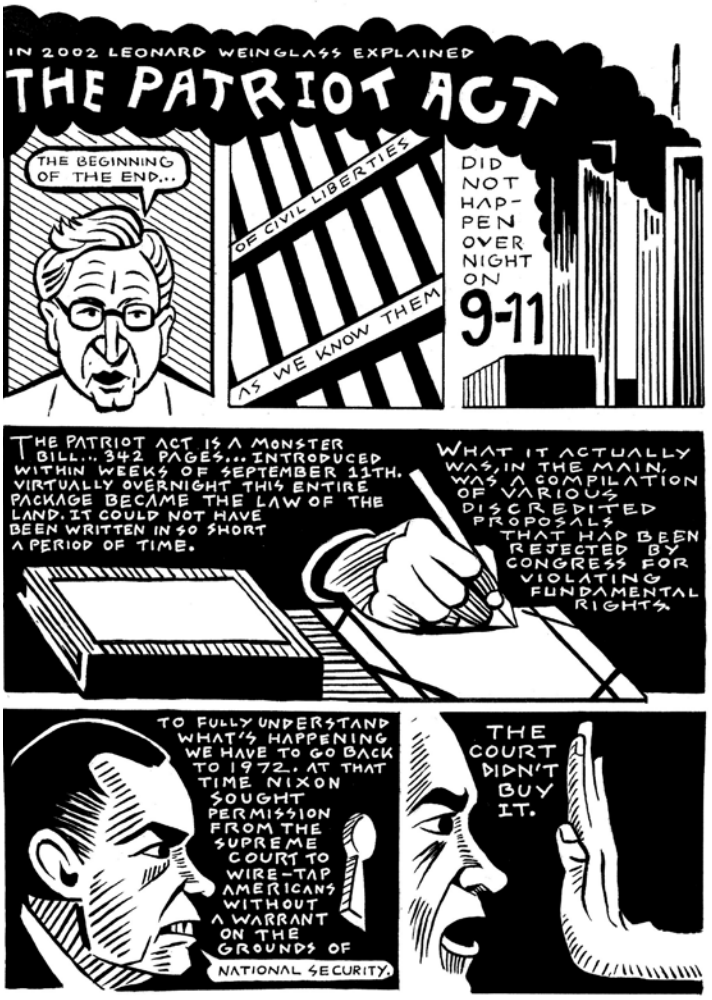
Len: A Lawyer in History: A Graphic Biography of Radical Attorney Leonard Weinglass, by Seth Tobocman, published by AK Press.

Leonard Weinglass was a lawyer of a type rarely seen, who have a disproportionate impact on both the law and social struggle. He was an anti-capitalist, an anti-racist, and a supporter of American counter-culture in the late twentieth century. *Len: A Lawyer in History* explores his life through a series of his best-known cases, and the issues on which he campaigned.

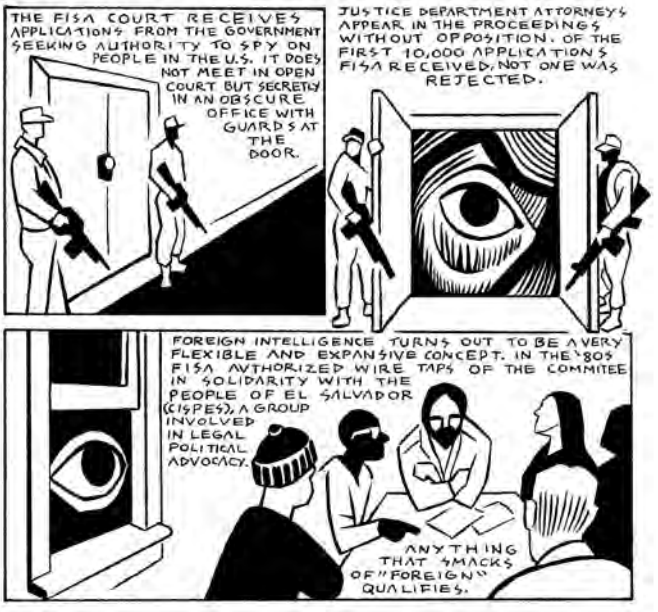
Unusually for the books reviewed in these columns, it takes the form of a graphic novel, as well as a biography and a history of social movements. Strikingly drawn, with high contrast black and white images giving way to emotive pencil drawings in the most poignant sections, the book manages to make what could otherwise have been a dry biography come to life. Characters feel more real, events more urgent, as the action unfolds before the reader's eyes.

On seeing the title of this book, 'Len', you could be forgiven for thinking that the story would impart some knowledge of what its subject was like as a person. However, despite the familiar way in which he is referred to, we never find out much about him as a person. The book makes clear that 'In a field dominated by egomaniacs, Weinglass was known for his humility', but this is almost taken to an extreme in its erasure of his personal life. After his childhood we hear almost nothing about this aspect of him, other than being rejected by one woman to whom he proposed marriage, until a scene on his deathbed. At this stage we are told that he was seen there by his ex-wife and 'a number of other women, former lovers, who came out there as his friends', a scene illustrated by a queue of women. Although it is plain that he was much-loved by his clients, and maintained meaningful relationships with some throughout his later years, the non-lawyer parts of him that would make him a rounded person are missing from this account of an unambiguously great attorney.

As a result of this treatment of its lead character, rather than being a biography as such, Len is used almost as a background to provide an engaging account of American radical and socialist struggles from the 1960s to the present. The stories themselves are educational and should serve as a standard by which every socialist lawyer can measure



Two extracts from this 'entertaining' graphic novel.

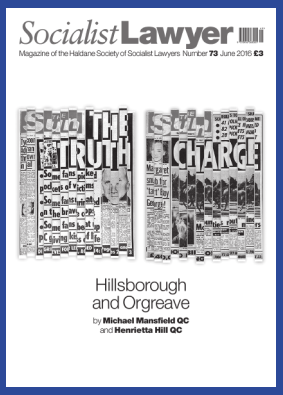


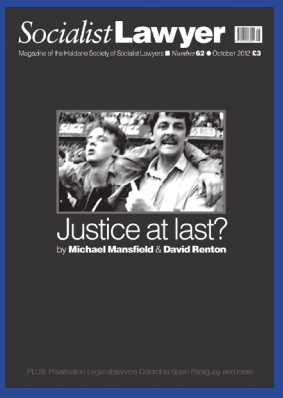
themselves. During his lengthy career Len represented a number of high-profile political clients: the Chicago Seven, who were victims of a political prosecution following police abuse outside the 1968 Democratic Convention in Chicago; Daniel Ellsberg, who was prosecuted for his role in leaking the Pentagon Papers; and the Cuban Five, intelligence agents prosecuted in a politically motivated trial for infiltrating terrorist groups in Miami. He also represented a number of lesser-known clients, many of whom were deeply involved in struggles for social change. The novel helpfully focuses not only on the legal cases themselves but on the social and cultural issues behind them. This has the effect of showing the true value of the work of Weinglass not simply as an attorney, but as a defender of those involved in important social struggles.

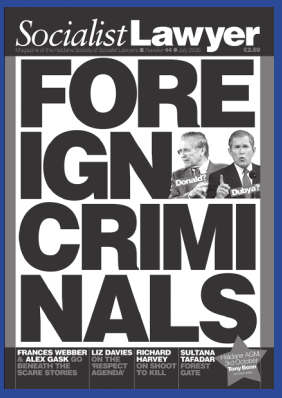
Some readers may be concerned by some of the political tone of the work. The assertion that 'The government cannot legally shut down WikiLeaks, so they have hounded WikiLeaks' founder, Julian Assange with sexual charges instead', the fact that we never learn the names of any of the important women in his life, and a fairly soft treatment of the regime in Cuba stick out in particular. However, we come to know so little about Len himself that we could never really tell whether he would sympathise with these issues, find them objectionable, or simply not care. The novel ends up perhaps leaving open more questions about who Len was as a person, the details of his beliefs, and what truly motivated him over the years, than it answers.

Nonetheless, it is an entertaining work which provides a degree of inspiration for our work as socialist lawyers, something which is always welcome.

Stephen Knight







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