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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The view from the wasteland

Since the 2010-2015 government began its programme of austerity, contributors to this magazine (and many other lawyers and commentators) predicted the dire consequences that would flow from further cuts to legal aid and other state services. This edition of *Socialist Lawyer* – which was compiled as the Bach Commission released its final report – feels like it comes from a dystopian future that was carefully planned by the Cameron government.

The conclusion of the whole Bach Commission (which includes a retired Court of Appeal judge) is that the crisis in the justice system has become so profound that it can't be fixed by simply tinkering with legal aid regulations. Instead, a new statutory 'right to justice' is proposed. That, together with the way in which the Supreme Court chided the government in the *UNISON* case, is very telling of the way in which the Ministry of Justice has disassembled important constitutional mechanisms over the last few years. The government pig-headedly denied that the repeated warnings about its policies were accurate, but now that we are standing in the wasteland of access to justice perhaps it's time for ministers to relent.

As well as re-building access to justice, this edition focuses on migrants and refugees. In the midst of government chaos over the Brexit negotiations it is important not to lose sight of those for whom the EU's borders have already caused such devastating consequences. Maya Thomas-Davis and Wendy Pettifer both report on their contributions to supporting refugees, and Frances Webber outlines the Institute of Race Relations' work against the criminalisation of direct action and acts of solidarity with migrants. Amy Murtagh reviews the film *Inadmissible*, of which the Haldane Society will be organising a screening in the coming weeks.

We also report on a number of excellent Haldane events. The international conference on workers' rights after Brexit (held in London in November) was a great success, as was the society's fringe meeting at the Labour Party conference in September. The AGM lecture was a testament to Haldane vice-president Michael Seifert, who sadly passed away earlier this year. Michael Mansfield QC's lecture to the AGM grappled with what it means to be a socialist lawyer: a subject which, as Joseph Latimer and Franck Magennis point out in their articles, has perplexed Haldane members for many years.

David Watkinson, however, outdoes them both in terms of setting the historical context with his fascinating comparison between 18th-19th century barristers-cum-politicians Thomas Erskine and John Thelwall. And in terms of current legal issues this edition features an immigration lawyer on the Upper Tribunal's bullish treatment of a judge on appeal, Harry Perrin writes about the link between class and sentencing, and Irish socialist parliamentarian Paul Murphy TD describes the political prosecution of himself and others for protesting a government minister.

Seven years ago John Hendy QC told *Socialist Lawyer* that 'the notion of a left-wing barrister is an absurdity' (see p.10); this year John was given a prestigious lifetime achievement award in recognition of a career devoted to the promotion and protection of trade union and workers' rights. In 2018 absurdities like John – barristers, solicitors, legal workers and students – will have a great deal to do to ensure that justice is achieved in spite of the government's best efforts.

Nick Bano, editor

Providing legal support to refugees in Athens

In August 2017 I volunteered for two weeks with Refugee Legal Support (RLS) Athens, based in Khora Community Centre in the anarchist district of Exarchia in central Athens.

In 2015 when nearly a million migrants arrived on Greek shores the Greeks were enmeshed in the worst economic cuts in modern times. At a time when Greeks were facing the withdrawal of medical services, the slashing of pensions and struggling to feed their families, they were initially also expected to accommodate up to a million destitute and traumatised migrants, mainly from Syria.

Their response in 2015 puts northern Europeans to shame. People welcomed others into their homes and, with not a euro from the Greek or European state, opened many squats, mainly in and around Exarchia providing food, shelter, bedding and even educational and medical assistance. This subsequently shamed UNHCR into funding about 20,000 refugees in rented apartments in Athens, but, apart from the squats the remaining 42,000 in Greece today are housed in old army barracks and factories with about 14,000 of these being on the islands.

Greece received 803 million euros between 2015 and the summer of 2017 from the EU to support refugees. Conditions in the government-run centres were initially squalid and dangerous. Food queues lasted for hours and during the winter of 2015/16 people froze to death. On the mainland, conditions remain grim but have improved since the EU Turkey deal in April 2016 led to a huge drop in the number of arrivals.

The Khora Community Centre in Athens – light and warmth for refugees.

However the situation on the islands is still really bad and has led to protests and riots. Once an application for asylum is taken by the Greek Asylum Service (GAS) on an island, the migrant is prohibited by criminal sanction from accessing the mainland other than in a health emergency. Over 40 migrants in Lesvos are currently on trial for violence-related offences having peacefully protested against the conditions they are forced to endure.

The Khora Community Centre offers light and warmth to hundreds of refugees. It is an eight-storey rented building and every corner of those storeys is used, with literally hundreds of men, women and children refugees using its services every day. I heard an English lesson being given in the lift.

Greek and international volunteers provide healthy vegeterian Halal breakfasts and lunch in a relaxed open dining area. There is a language school for both adults and children and educational facilities as well as designated kids' and womens' spaces. In addition to legal advice, general refugee support on housing and finance is provided There's a carpentry and metal workshop on the ground floor and a computer lab with internet access. RLS Athens shares the fourth floor with a dentistry service, and clients occasionally either registered for the wrong service or needed both!

RLS Athens runs an efficient, well-structured service supported by the Immigration Law Practitioners' Association (ILPA) and Garden Court Chambers which provides initial advice and representation to refugees and to supplement the overstretched GAS.

Most asylum seekers in Greece want to go to Germany. Since April 2017 they have become increasingly frustrated by the long delays in transferring their claims, due to the implementation of a cap by Germany of 70 transfers a month. Many families have become so desparate that they send a child, often unaccompanied in very dangerous circumstances to

June

28: Six people have been charged with criminal offences over the 96 Hillsborough Disaster deaths and the alleged police cover-up that followed. Four former police officers, a lawyer advising South Yorkshire Police and the former secretary of Sheffield Wednesday face charges including manslaughter, misconduct in a public office, perverting the course of justice and breaches of health and safety laws.

July

7: A treaty to ban nuclear weapons was endorsed by 122 countries at the UN headquarters. Under the treaty, signatory states must agree not to develop, test, manufacture or possess nuclear weapons, threaten to use them, or allow any nuclear arms to be stationed on their territory. Every country bearing nuclear arms, including the UK, boycotted the negotiations.

'For many who work in it, the gig economy is a blessing.'
The *Daily Mail* presumes workers love job insecurity

18: In his annual report, the chief inspector of prisons announced that no Young Offender Institution or Secure Training Centre officially inspected in 2017 was safe to hold children and young people, following a "staggering" decline in standards and safety. His annual report stated that assaults and self-harm rates were running at double the level of six years ago.

Germany and then make 'Dublin 111 take charge' requests to join that child in Germany, even though they had already applied for asylum in Greece. Before I left Athens, Germany had already issued about 400 take back requests to Greece under the Dublin 111 procedure.

RLS Athens is able to pay a Greek co-ordinator and interpreters which means that appointments are kept; so that clear advice can be given on the merits of Dublin 111 take charge requests; on preparation for asylum interviews with GAS and many other related enquiries. While I was there I visited a domestic violence victim in a UNHCR-funded flat with a support volunteer and put her in touch with a Greek family lawyer. I also prepared two clients for their asylum interviews with GAS, visited the GAS offices with two other clients in Piraeaus. I encourage anyone with two weeks to spare to volunteer either with Khora or RLSAthens and to donate to either of these wonderful organisations.

These are dark times for migrants, with far right populist movements gaining votes in every European country. No longer front page news they still live in their thousands in oppressive and squalid conditions all over Europe, but particularly in the poorer Mediterranean states. Both at home and abroad we must use our skills and perseverance to ensure they are not forgotten.

Wendy Pettifer
Khora Community Centre: *www.khora-athens.org*
Refugee Legal Support Athens: *@RLSAthens*

26: The Supreme Court held that Employment Tribunal fees of up to £1,200 were inconsistent with access to justice and contrary to the Equality Act 2010, as they prevented workers from obtaining justice and disproportionately affected women. The Ministry of Justice said that it would take immediate steps to stop charging fees and make arrangements to refund those who paid.

Young Legal Aid Lawyers

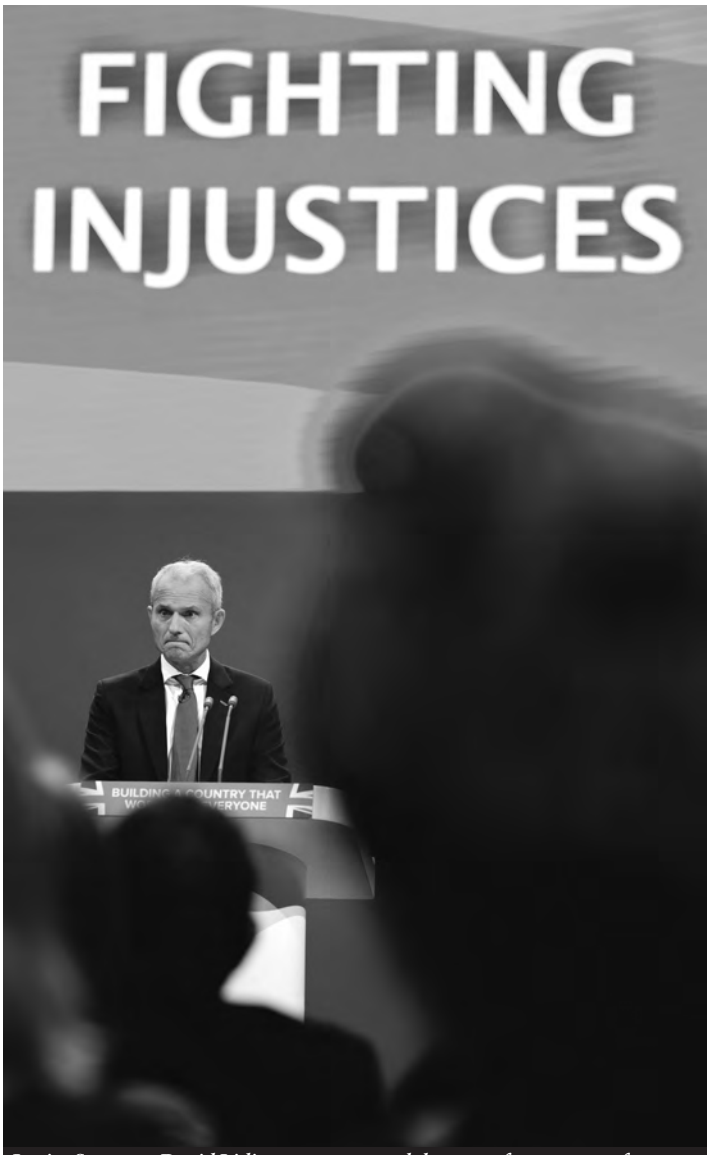
This regular column is written by YLAL members. If you are interested in joining or supporting their work, please visit their website **www.younglegalaidlawyers.org**

The cuts to legal aid have gone too far

The world of legal aid has been busy these past few months and finally things seem to be looking up for those of us who have been fighting against the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and its devastating effects on access to justice.

The Bach Commission reported on 22nd September 2017. This review of legal aid, commissioned two years ago by the Labour Party, made wide-ranging enquiries into the impact of the cuts made by LASPO. While the report falls short of calling for the complete reversal of all of LASPO's reforms, it is highly critical of the effects of LASPO and calls for the reinstatement of £400m of spending, per year, on legal aid. The report recommends that this money should be spent on specific areas of concern: widening the scope of early legal help; extending financial eligibility for civil legal aid; a limited widening of scope for civil legal representation; and a further pot of money set aside as a national fund for advice services.

The legal aid system as it was before 2012 was not perfect and reform was necessary. However, the stark financial figures – even without the personal accounts of real people denied access to justice – give an indication of the current system's dysfunctionality. Spending on the legal aid budget in 2005-06 was £2.6bn while in 2016-17 this stood at just £1.5bn. The number of legal aid providers has fallen dramatically across England and Wales with a 29 per cent drop in Wales, 28 per cent in the South-West, 27 per cent in the North-West and 24 per cent in Merseyside. Not only has this resulted in job losses for practitioners, but it also means that a skills shortage is developing with few opportunities for aspiring legal aid lawyers to train and gain the necessary experience. For clients it has led to considerably reduced choice or in the worst cases a total inability to access legal advice or representation, especially for those living in the now infamous advice deserts. The advice sector has also, as a result, seen its workload increase (without a corresponding increase in funding) as those no longer >>>



Picture: Jess Hurd / reportdigital.co.uk

Justice Secretary David Lidington announced that, over four years on from the start of LASPO, a review of the legal aid cuts will finally be carried out.

Young Legal Aid Lawyers

>>> eligible for or able to access legal aid turn to third sector agencies for support. For all three of these groups – practitioners, clients and the third sector – the proposals of the Bach Report are welcomed.

YLAL provided a detailed and robust response to the Bach commission's call out for submissions. We support the need for improvements to the system and we encourage the Labour Party to consider using the findings and recommendations as a starting point for their future manifesto pledges in respect of its legal aid policy. We also hope that other political parties will follow suit.

There is a growing consensus in the legal community that the cuts to legal aid have gone too far, harming the vulnerable and destroying the integrity of our legal system. When LASPO was passed the government committed to undertaking a "post-implementation review". For those of us who see on a daily basis the impact of the cuts, the review has been a long time coming. The justice secretary, David Lidington, announced this month that, over four years on from the commencement of LASPO, a review of the legal aid cuts will finally be carried out.

YLAL welcomes this much needed review. We hope that objective evidence of the devastation caused by the cuts will put pressure on the government to take the problem seriously and offer at least some improvement. Indeed, Lidington himself has acknowledged that one of the possible areas where we may see changes is in the area of early legal help, an area also highlighted by the Bach Commission.

Lidington commented: 'I'm perfectly willing to look at the argument that you could save money in the longer-term if you have some kind of triage legal advice upfront'. Campaigners, including YLAL, have been highlighting this issue of false economy for a long time and welcome the recognition that legal advice and intervention at an early stage in any matter is likely to prevent much greater costs being incurred in the future if issues are left unresolved.

We are told that the review will look in detail at the scope of legal aid for family, civil and criminal cases, the effectiveness of the exceptional case funding scheme, cuts to fees of practitioners and the evidence requirements for child abuse and domestic violence. The review is also set to consider whether the intended savings of £450 million per year have been achieved, as well as whether or not access to justice has been restricted by the cuts. The MoJ has stated that the review will be completed 'before the start of the summer recess 2018'.

The justice minister Dominic Raab stated that he '…will shortly be writing to interested groups to invite them to inform this important work.' We encourage Mr Raab and his colleagues to ensure they consult widely and, crucially, maintain an open mind. In order to have real clarity from this report the government needs to talk to the people who work within the system and can explain the way it is crumbling under current pressures. This, YLAL believes, is where we can play our part. Despite the pressure those working in the legal aid sector are under, we must all, whether we work in civil or criminal law or the third sector, ensure that our voices are heard during the review. Whether the government decides to respond in a way which improves the lives of the vulnerable remains to be seen, but it is essential that we do our bit and take the time to provide a realistic and detailed view of the system and the effects it has had upon lawyers and clients.

Siobhan Taylor-Ward, co-chair of YLAL

John Hendy QC introduces the European Conference in November.

August

1: The High Court ruled that Tony Blair should not be prosecuted for his role in the Iraq war. The court accepted that a crime of aggression has recently been incorporated into international law, but said that it does not apply retroactively. The Supreme Court in Jones had already established that there is no crime of aggression in domestic law.

'The human capacity for wishful thinking knows few bounds.'
Leggatt J dismisses the claim of a man who said he had been promised £15m, in a pub, by Sport Direct's Mike Ashley

Brexit and workers' rights conference a great success

The European Conference 'European Union, Brexit – the future of workers' rights' was a tremendous success. It was held on 11th November 2017, at the Diskus Centre at the headquarters of Unite the union, the largest trade union in the UK and Ireland, with 1.5 million members. There were speakers from eight countries – England, France, Germany, Ireland, Italy, Russia, Slovenia, and Switzerland – six of whom were women. There were over 80 participants, including 35 from the UK, and 15 from Germany.

The conference was originally proposed by Bill Bowring, as President of the European Lawyers for Democracy and Human Rights (ELDH) – www.eldh.eu/about/ – of which Haldane was a founder member in 1993. ELDH now has members in 20 countries, and it has member associations in 15 countries, the largest of which are in Turkey, currently banned, and their leaders imprisoned. ELDH founded the network European Lawyers for Workers (ELW) which is now its partner – http://elw-network.eu/ – uniting lawyers and legal academics committed to work for trade unions and workers across Europe.

Haldane agreed to sponsor the conference, and the organising team, which met regularly via Skype from June onwards, included Thomas Schmidt, the ELDH General Secretary, who is a trade union lawyer in Dusseldorf, and Marko Milenkovic from Serbia and Italy, as well as Wendy Pettifer, Kate Hodgson, and Bill Bowring from Haldane. All worked very hard to make the conference a success.

A particular contribution from Kate Hodgson was her recommendation that the local Palestinian/Lebanese restaurant Hiba should provide lunches, including vegan and vegetarian options, and their delicious food added to the success of the

Pictures: Jess Hurd / reportdigital.co.uk

Rose Keeping from Unite the union addresses the conference.

day. In the evening, speakers and ELDH Executive Committee members were invited by ELDH for a splendid dinner in the Greek restaurant Life Goddess in Store Street.

Holding the conference at Unite the union was of immense symbolic importance, and this was made possible by Haldane vice-president John Hendy QC, who is the chair of the Institute of Employment Rights (IER) – www.ier.org.uk – a labour movement think-tank which is strongly supported by the TUC, Unite and Unison. In an invaluable contribution, IER was able to secure the booking of the Diskus Conference Centre free of charge. It was not necessary for Haldane to make any financial contribution.

The conference was therefore sponsored by Haldane, ELDH, Unite, and IER.

On the day of the conference Haldane Executive members Catherine Rose, Rose Wallop, Nick Bano, and the organising team mentioned above worked hard to ensure the conference got off to the best start. Haldane vice-chair Natalie Csengeri participated throughout the day and chaired one of the sessions.

The conference started with greetings from Rose Keeping, regional industrial officer of Unite, John Hendy QC as chair of IER, and Bill Bowring as President of ELDH and joint international secretary of Haldane.

The first session, chaired by Bill Bowring, was entitled 'The Future of Trade Union Rights, social rights (collective labour law, for a social Europe instead of a 'social pillar')'. The speakers were: Esther Lynch, from Ireland, confederal secretary of ETUC in Brussels with 'For a Pillar of enforceable and >>>

September

3: Sir James Munby, head of the High Court Family Division, warned that the nation would have blood on its hands if an NHS bed could not be found for a teenage girl who was at acute risk of taking her own life. The 17-year-old was due to be released from youth custody but there was no hospital place for her, which the judge described as 'an outrage'.

'We need to put the declarations about the Nazis in the proper proportion... Trump is the best US leader Israel has ever had... and we must not accept anyone harming him.' Ayoub Kara, Israel's communications minister tells the *Jerusalem Post* he's not going to criticise President Trump for saying there were some 'very fine people' marching with Nazis in Charlottesville.

8: David Lammy's review concluded that 'BAME individuals still face bias, including overt discrimination, in parts of the justice system'. The report found that young black people were nine times more likely to be in custody than their white peers. Lammy's recommendations included opening judges' rulings to scrutiny, introducing deferred prosecution schemes and allowing criminal records to be sealed.

50% of council tenants who receive the housing element of Universal Credit are at least a month behind on their rent. Fewer than 10 percent of council tenants on housing benefit are a month behind on their rent 24% of those on Universal Credit in June had to wait over six weeks for full payment.

Lorenzo Fassina (centre) from CGIL in Italy and Marthe Corpet, CGT inFrance.

>>> universal social rights'; John Hendy QC on 'The dilemma for trade union rights in Britain: caught between the EU and Free Trade Agreements'; Lorenzo Fassina, Rome, head of the legal office of the Italian General Confederation of Labour (CGIL) with 5.5 million members, the largest trade union in Europe on 'CGIL's strategy for defending and increasing individual and collective rights in Italy'; and Marthe Corpet, French General Confederation of Labour (CGT), with more than 700,000 members spoke on 'Trade union rights in France under attack – CGT strategy'.

John Hendy deserves warm thanks for attracting such a high-powered and representative range of trade union speakers for this first session, especially the high-level representatives of two of the largest and most militant trade union organisations in Europe.

The second session was entitled 'How to create more security for workers (concepts on national and European level for individual labour law for domestic and migrant workers)', and we heard from a leading member of our German sister organisation VDJ, Klaus Lörcher, a former ETUC legal advisor, on 'The role of the European Social Charter for the protection of (migrant) workers' rights, in particular after Brexit'; Dr Sanja Cukut Krilic, a researcher from Slovenia, on 'Insecurities and vulnerabilities of migrant and posted workers: the need for information provision'; and Sergey Saurin, of the Moscow Centre for Social and Labour Rights (CSLR) and Lawyers for Workers Rights (LWR) on 'The impact of European labour standards on Russian labour law and enforcement practice'.

ELDH is very proud to have as its members in Russia activist lawyers who work closely with the independent trade unions in Russia, especially the KTR, the Confederation of Workers of Russia, with some three million members. Sergey gave us a hard-hitting analysis of the problems of trade union organisation in Russia. Official statistics show only one or two strikes a year in Russia. In reality there are at least 400 labour disputes annually in Russia. It is practically impossible to go on strike legally in Russia, so workers and their unions (and their lawyers) use a variety of creative and ingenious strategies.

Sergey himself represented in September 2017 the women flight attendants of Aeroflot, whose union took a case to court for discrimination after the Russian carrier photographed and measured all flight attendants and took those women who were a Russian size 48 (a UK size 14) or larger, or who were in their 40s or older, off the much coveted – and better paid – long-haul international flights. For the first time a Russian court recognised that there had been discrimination.

Sergey also told us about the notorious Foreign Agents Law, which penalises civil society

September

18: Asylum seeker Samim Bigzad was flown to Afghanistan despite a High Court injunction ordering his deportation to be stayed. The injunction was granted whilst he was waiting for a connecting flight in Istanbul. The Home Secretary Amber Rudd ignored the injunction, which a High Court judge has described as "a *prima facie* case of contempt of court". Mr Bigzad has now returned to the UK and contempt of court proceedings have been issued against Amber Rudd.

October

2: Lady Hale is First Female President of UK Supreme Court. After becoming the first female justice of the Supreme Court 13 years ago, Brenda Hale has now been sworn in as its first female president. Only this year was she joined on the highest court's bench by its second female justice, Lady Black.

10: A High Court judge ruled that hundreds of victims of torture have been wrongly held in immigration detention centres, as a result of a policy which narrowly defined "torture" as violence carried out by official state agencies only. The policy ignored those tortured by non-governmental forces, whose pain and suffering would make them equally vulnerable to harm in detention.

Pictures: Jess Hurd / reportdigital.co.uk

Left to right: Bill Bowring, John Hendy and (from Ireland) Esther Lynch.

Pictures: Jess Hurd / reportdigital.co.uk

organisations which engage in political activity (which includes trade union activity of any kind) and which receive any sum of money, however small, from a foreign source. They are placed on a Register of Foreign Agents, must declare themselves as such. Frequent inspections and raids then take place, and heavy fines are imposed. One large independent trade union with members in several sectors, including migrant workers, now finds itself under investigation because the migrant workers pay subscriptions – and are foreigners.

The third session was entitled 'How to defend the rights of refugees and migrants. The impact of Brexit and EU policy'. The first speaker was Haldane vice-president Frances Webber, from the Institute of Race Relations on 'Brexit, refugees and the hostile environment', a forceful and rousing presentation. She was followed by Haldane executive member Maya Thomas-Davis, a young veteran of the Calais and Lesbos migrant camps, working with joint international secretary Carlos Orjuela's Lesbos Legal Centre, who spoke with controlled passion and emotion about the dreadful suffering of migrants in the EU. Finally the barrister and Haldane member Alison Harvey spoke on 'The trafficked and the new undocumented post Brexit.'

The final session was entitled 'European Democracy and human rights – between (Br)Exit and the rule of exception' and started with an exemplary analysis by Andreas Fisahn, Bielefeld University, a leading Marxist academic and VDJ activist on 'The lack of democracy and the future of the Union'. He was followed by Steve Peers of Essex University, and from our Swiss sister organisation DJS-JDS, Marco Inglese, University of Fribourg on 'The European Citizens' Initiative: an effective tool to boost democratic participation?'. Finally, the socialist pro-Brexit position was forcefully put by solicitor Julian Bild, of the Anti-trafficking and Labour Exploitation Unit (speaking in a personal capacity), who writes for the *Socialist Worker* newspaper, on 'The EU: A help or hindrance?'

Effective chairing meant that all sessions included 30 minutes or so of questions and discussion from the floor, with a wide range of points of view and a consensus that solidarity across European borders in defence of workers rights is urgent and necessary. This conference has made a significant contribution, and has shown how lawyers can provide vitally necessary assistance and support – while never seeking to present themselves as a vanguard.

On Sunday 12th November a meeting of the ELDH Executive took place at Birkbeck College, with representatives of organisations in the UK, Germany, Greece, Italy, Russia, Serbia, Switzerland, Turkey, and Ukraine around the table. High on the agenda was a call for the release of Selçuk Kozağaçli, head of our Turkish sister organisation, CHD. We also started planning the next big event, a major conference to celebrate 25 years of ELDH.

Bill Bowring, joint International Secretary, Haldane Society

17: The Child Poverty Action Group was granted permission to judicially review the two-child limit on child tax credits and universal credits, arguing the limit is discriminatory and breaches the right to private and family life under Article 8. One exception is where a mother can demonstrate that a further child was conceived as a result of rape, a requirement which has been labelled 'inhumane'.

'Better to have him inside the tent, pissing all over himself.'
Unnamed Tory MP who came out against sacking Boris Johnson

20: The UN demanded that China release three human rights activists from detention and pay them compensation within 6 months. Christian church leader Hu Shigen and lawyers Zhou Shifeng and Xie Yang were detained due to their work promoting human rights and had their rights violated, including being denied access to legal counsel and being held in 'incommunicado detention'.

The 'warmth of solidarity' – celebrating Michael Seifert

In the words of Haldane president Michael Mansfield QC, the late Michael Seifert's generosity, strength and conviction radiated the 'warmth of solidarity'. His clients were allies in a struggle waged on many fronts and the cases he litigated were by-products of the broader causes he fought for. Unions. Class struggle. Self-determination. His legacy reveals what it means to be a socialist lawyer.

Mansfield was speaking to the Haldane Society before its AGM on 16th November 2017.

The Seifert family has firm roots in internationalist left-wing politics, and Michael embodied such convictions in school, in court and on the street. Interestingly, while they were peers at the same school, Mansfield began his political life with the Young Conservatives (this wasn't the only laugh that was raised that evening, but it was perhaps the most surprising). He gravitated towards socialism through his engagement with real-life struggles, and figures like Seifert have been instrumental in his journey across the political spectrum.

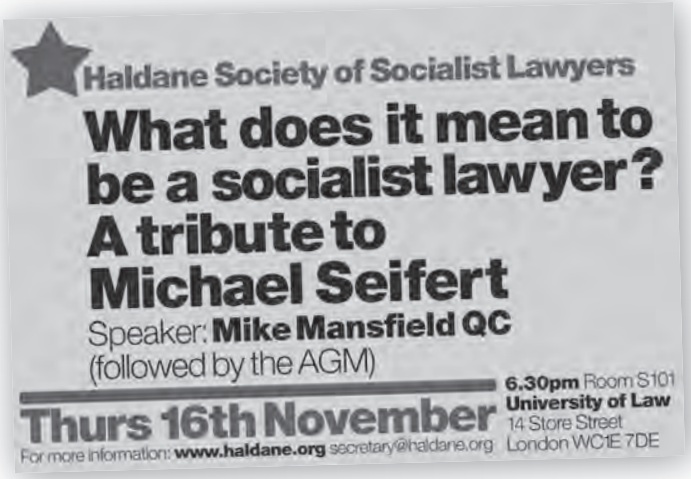
It was not only the cases that Seifert took on – financial gain often being irrelevant – but it was also how he conducted himself professionally. A classic example is when he represented Anna Mendelssohn of the Angry Brigade. He hosted her at his own home for the duration of that arduous trial: why wouldn't he? Anna was in need, and while strict professional ethics might disapprove of Seifert's hospitality, he was simply doing everything he could for his client.

In the end, Mendelssohn did serve a custodial sentence, but the jury told the judge to have mercy on a principled young woman concerned for the world. Seifert combined personal investment in the case with astute legal strategy. Identifying with the human basis of cases and the causes behind them – as Seifert did here so magnanimously – furnished the beginnings of Mansfield's socialism.

Does this contravene John Hendy QC's opinion that "the notion of a left-wing barrister is an absurdity"? Hendy said so in an interview with *Socialist Lawyer* in 2010 (no. 55), saying that it's what we do outside of the law that's important: after all, law is "enemy territory". The discussion on the 16th added nuance to this position. For socialists like Seifert, lawyering was not just a job: when the cases you litigate are products of the causes you support, the boundary between the court and the outside isn't easily maintained.

Mansfield gave a concise and personal insight into how some of defining struggles of the last 50 years have been knotted up in law and litigation. Two other notable lawyers of the left – John Platts-Mill and Jeremy Hutchinson – were discussed at length. Like Seifert, they pursued their convictions in the courtroom. An import knack of each seemed to be the ability to contextualise the case and communicate a 'sense of history'. Juries were won with dynamic strategies appealing to empathy, politics and reason. Reactionary judges were kept at bay through principled determination and graft.

Input from the audience ranged from heart lifting anecdotes about Seifert and the other lawyers



October

25: The Supreme Court ruled that a former Metropolitan police officer has the right to bring a disability discrimination claim in the Employment Tribunal against the internal misconduct panel that dismissed her without notice. Previously, such panels enjoyed judicial immunity. The judgment will affect other professionals, including judges, barristers and solicitors.

26: A crowdfunded case challenging the government's 'confidence and supply' agreement with the Democratic Unionist Party failed. The claim alleged that the £1bn deal breached the 1998 Good Friday agreement and the Bribery Act. The High Court found that the application was not properly arguable and refused permission for judicial review.

November

2: The charity Help Refugees failed to obtain permission to judicially review the government's cap on the number of unaccompanied child refugees given sanctuary in the UK, currently set at 480. It was hoped that under the Dubs scheme, the UK would agree to help 3,000 children fleeing conflict. So far, only 200 children have been housed.

2: The Secretary of State for Justice says that the government intends to allow 'up to 100 offenders' on short sentences to vote whilst they are out of prison on a temporary release license. The proposed change comes 12 years after the 2005 European Court of Human Rights ruling in the case of *Hirst*, that Britain's blanket ban on prisoners' voting is contrary to Article 3, Protocol 1 ECHR (the right to free elections).

Picture: Jess Hurd / reportdigital.co.uk

In September 2017, more than 100 people were arrested as they tried to prevent weapons companies from setting up their stands for the world's biggest arms fair, the biennial Defence and Security Equipment International (DSEI), at the ExCeL centre in Docklands, London.

mentioned, to raising awareness of the issues being tackled by Haldane members today, with a particular focus on direct action and material and emotional backing for mental health. There seemed to be definite support for the argument that Hendy had noted in 2010: legal activism shouldn't be our sole focus. What emerged was the conviction that the skills that a legal career fosters are vital tools in the socialist cause, but that our goals cannot be confined to courtrooms and statute.

Seifert's remarkable career wasn't the sole object of discussion that night – it was the foundation on which Mansfield and the audience explored why we work. The inequities we face are stark, the challenges are daunting and while the issues are global, the impact is intimate. Together with participation from the audience, Mansfield provided an inspiring portrait of one of the most important British socialists of the last century. In doing so, he provided vital historical context for the ongoing struggles we undertake today.

The lecture will shortly be available on the *Socialist Lawyer* YouTube channel.

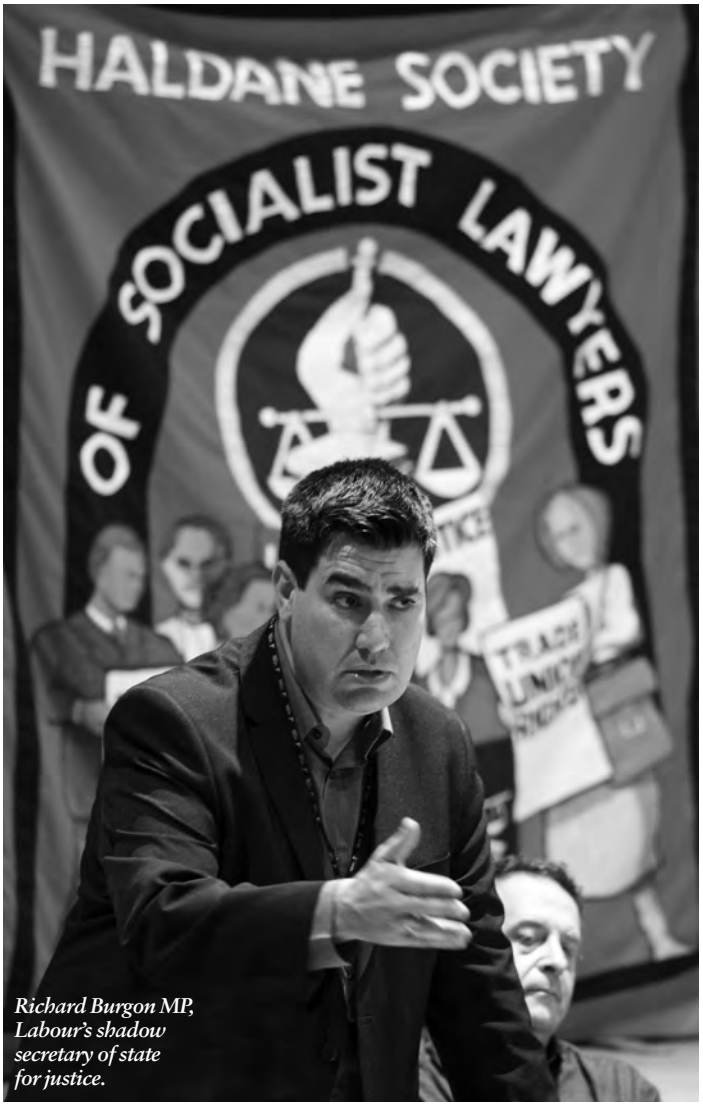
Joseph Latimer

7: The government withdrew its application to appeal against an April 2017 Court of Appeal ruling in favour of the Howard League for Penal Reform and the Prisoners' Advice Service on the topic of legal aid for prisoners. As a result, legal aid is set to be restored in three areas of prison law: pre-tariff reviews by the Parole Board, category A reviews and decisions placing inmates in close supervision centres.

10: The Employment Appeal Tribunal upheld an earlier decision of the Employment Tribunal that Uber drivers are workers with rights to the minimum wage. Uber claims that its drivers are self-employed and says that it will appeal this decision.

'The prospect of a Corbyn government is enough to make the sensitive keep a bottle of whisky and revolver handy.'
Sir Bernard Ingham (Thatcher's right-hand man)

13: Defendants in criminal proceedings are now required to provide their nationality to courts, under a drive to deport individuals convicted of criminal offences. Those who fail to disclose face a prison sentence of up to one year. The new requirement was introduced under s.162 Policing and Crime Act 2017.



Richard Burgon MP, Labour's shadow secretary of state for justice.

THE SPIED ON SPEAK OUT

by **Hannah Webb**

Pictures by Jess Hurd/reportdigital.co.uk

On Monday 25th October 2017 at the Labour Party conference the Haldane Society held its now well-established fringe event. 250 people packed into the Brighthelm Centre for a panel discussion on the context and consequences of the Special Demonstration Squad (SDS) and the Undercover Policing Inquiry, which began in 2015 and is (although extremely slowly) underway. The Inquiry confirmed in July 2017 that Britain's political secret police have spied on more than 1,000 groups.

The panel consisted of those with direct experience of being spied upon: by corporate spies in the cases of activist and comedian Mark Thomas and blacklisted trade union activist Dave Smith; to police spies in the case of environmental activist (and now an organiser for Spies out of Lives) Helen Steel, whose partner of two years was an undercover policeman. We also heard from Shamik Dutta, a partner at Bhatt Murphy solicitors, who is representing nine core participants in the Undercover Policing Public Inquiry, and the event was introduced and chaired by Liz Davies, a vice-president of the Haldane Society. Richard Burgon MP, the shadow secretary of state for justice, also explained the important work that the Haldane Society has done in the past, from extensive legal support for miners during the miners' strike, to campaigning against legal aid cuts.

As Liz Davies noted, the talk came at a particularly prescient time in the course of the public inquiry. With Sir John Mitting QC having taken over from Lord Justice Pitchford as the inquiry's chair, progress remains extremely slow (which has been the case since the inquiry was set up the then-home secretary Theresa May). Police have made applications to be allowed to give evidence in secret, and maintain their 'neither confirm nor deny' policy. Progress has been so slow that in September 2017 Spies Out of Lives (a group of 13 women who had intimate relationships with men, not knowing that they were undercover officers) wrote an open letter requesting an urgent meeting with home secretary Amber Rudd in order to criticise the long delays and raise concerns about the inquiry's new chair, citing a 'significant shift towards greater secrecy' since he took over and questioning his ability to investigate

Chair Liz Davies – said the meeting came at a particularly prescient time.

'institutional sexism within the police and wider legal system' as he holds a membership to the men-only Garrick Club. One woman described it as having 'taken a disturbing turn', with officers being protected and the police holding 'all the cards'.

There is also the possible extension to the inquiry's remit. So far it has been limited to violations in England and Wales, but over the summer crowdfunded proceedings were initiated which sought to extend the inquiry to Scotland, where undercover policing has taken place (for example) during the G8 Summit at Gleneagles in 2005. Led by the Scottish activist Tilly Gifford, and represented by solicitor and Haldane executive committee member Paul Heron of the Public Interest Law Unit, the judicial review claim has recently succeeded at the permission stage.

Dave Smith (pictured left) spoke about blacklisting and surveillance by corporate spies, and their co-operation with the police. In 2009 the Consulting Association was raided by the Information Commissioner's Office, who found a list of secret files containing the names, addresses and national insurance numbers of construction workers, together with comments by managers and newspaper clippings. More than 30 companies in the construction industry – including Balfour Beatty, Kier, and McAlpine – had used the 'resource' to covertly vet potential workers, and to avoid hiring people with a history of trade union or campaign activity. In order to be seen as a troublemaker, and thus to be blacklisted (as Dave Smith was) a worker only needed to have raised health and safety concerns. Even though, as Mark Thomas >>>

Haldane's fringe meeting at Labour conference 2017

Shamik Dutta, a partner at Bhatt Murphy solicitors.

Environmental and Spies out of Lives activist Helen Steel.

Activist and comedian Mark Thomas .

"The biggest threat to democracy and the pursuit of social

>>> added later, the ICO found thousands of names, 90 per cent of the files were not seized but disappeared in suspicious circumstances.

Mark Thomas told the audience about the information collected on him as a result of his involvement with the Campaign Against Arms Trade (CAAT). He described how, having requested data about himself, he discovered detailed reports of his participation, including jokes made at small demonstrations. Later, an investigation detailing how CAAT had been infiltrated by BAE Systems spies published in *The Times* named his best friend and fellow activist, deeply involved in CAAT activism, as a likely BAE Systems spy: when CAAT tried to take legal action against BAE Systems, their lawyers gained access to the records. Mark also spoke about police surveillance of journalists, with six NUJ members on the domestic extremist register, and comically described police reports of him at protests, such as him 'looking happy, and carrying a large quantity of cress'.

Shamik Dutta spoke about the extraordinarily high level of surveillance that takes place, with the police retaining data simply to gather as much as possible in order to make (they believe) their jobs easier. A person doesn't need to have done anything wrong in order to be spied upon: in fact it is often those who have already suffered the most at the hands of the police (families of murder victims, families of those who have died in police custody, and other victims of police misconduct), whose privacy is violated. In 2013, Peter Francis, a former police spy turned whistleblower, outlined how his role shifted to a focus on anti-racist groups and black justice campaigns. He gathered evidence to smear the family of Stephen Lawrence and even Francis – an undercover police officer – began questioning the morality of such actions, which robbed groups of the chance to seek justice.

Shamik spoke about the importance of victim involvement in the inquiry. The earlier Ellison Review, which found that there had been, amongst other things, mass destruction of evidence by the Metropolitan Police, allowed no participation by victims. He posed three questions that need definitive answers: who spied? Why? And did it go beyond information gathering, to active attempts to subvert quests for justice? While some of the identities of former undercover officers (whose covert identities were the revived official records of dead children) have been revealed,

justice comes from the secret elements of the state."

the vast majority have not. Shamik outlined how, looking ahead to the public inquiry, we need to challenge the procedure of anonymity applications, and ensure that it is not a secret investigation. There has been a clear conflation between protest and spying, and the targeting has arisen from institutional racism.

Helen Steel, the final speaker, spoke about the role of undercover police as "apparatus that prevents change from happening", which goes far beyond surveillance and actively "influences the direction of campaign groups". Steel, an environmental and social justice activist, was deceived into a two-year relationship with a man she knew as John Barker, later revealed to be John Dimes. They had known each other for three years before the relationship began, as close personal friends, and subsequently lived together. She spoke of tactics that would force activists to get closer to police spies, such as lying about having dead parents, no siblings, and having lost all possessions. Similar stories to those of 'John Barker' were told by numerous other police spies. Again, like other police spies who had deceived activists into relationships, in the last six months of the relationship 'Barker' began to display erratic behaviour. Helen received letters from South Africa from him, saying that he needed to "sort his head out", which left her extremely worried for his wellbeing. Out of concern that he may be suicidal she began searching for him, finding that the man she had known seemed not to exist, and finding that his name as linked to a child who had died aged eight. The suspicion that her partner had been an undercover policeman, which grew over the years, was only confirmed in 2011, nineteen years after the relationship had ended, after she was told by another woman who had been in a relationship with an undercover officer. It cast all other relationships into doubt, which led to friends and family telling her she was paranoid, as they were unable to believe that something of this nature would not happen in the UK.

As many of the speakers noted, the biggest threat to democracy and the pursuit of social justice comes from the secret elements of the state. The state's violations of lives and organisations have forced those of us who seek to work for a world that supports the needs of everyone, rather than the wealthiest, to draw a difficult balance: we need to remain vigilant to the threat of undercover police, while not becoming immobilised by fear.

Protesting against Balfour

It was a Tory foreign secretary who first signed away the right of Palestinians to live in their own land.

The letter signed by Arthur Balfour 100 years ago was just three sentences long. But it signalled the beginning of the dispossession and murder of Palestinians that continues to this day. It is still celebrated by supporters of Israel.

Thousands joined Justice Now: Make it right for Palestine – a march and rally on the centenary of the Balfour Declaration in central London on 4th Noivember 2017. Organised by the Palestine Solidarity Campaign (PSC), Palestinian Forum in Britain (PFB), Friends of Al Aqsa (FOA), Stop the War Coalition (STW) and the Muslim Association of Britain (MAB), speakers included British filmmaker Ken Loach, Palestinian politician and activist Mustafa Barghouti, trade union leaders Sally Hunt and Mark Serwotka (pictured speaking, far right) and Labour Party leader Jeremy Corbyn via video link.

Pictures: Jess Hurd / reportdigital.co.uk

LESS
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by **Maya Thomas-Davis**

Since the EU-Turkey 'deal' came into force in March 2016, thousands of people fleeing all forms of violence have been trapped on the Greek islands at the outskirts of fortress Europe as a 'containment' measure. The deal means European states line the pockets of Erdogan's repressive authoritarian regime, turn a blind eye to the well-documented human rights violations (committed systematically against activists, lawyers, journalists, LGBTQI+ folk, Kurdish people, Syrians), breaches of *non-refoulement*, and the fact Turkey is not even a signatory to the 1968 Protocol to the Geneva Convention. They cite dodgy diplomatic assurances in order to designate Turkey a 'safe third country' and externalise European borders there. Meanwhile, the islands of Lesvos, Samos, Chios, Kos and Leros have been transformed into sites of indefinite confinement – where individuals seeking freedom, safety and dignity have instead been held in limbo for up to 20 months; enduring abjectly inhumane and degrading conditions in dangerously overcrowded 'hot-spot' facilities, under the constant threat of deportation.

Lesvos is the largest of these 'open-air prisons' in the eastern Aegean. With its northernmost tip only eight kilometres from the Turkish coast, hundreds of people still survive the perilous journey across the Mytilene strait to arrive at its shores on a daily basis. The 'hotspot' camp in Lesvos – Moria – is a former army base built to accommodate a maximum of 1,800 people. There are currently nearly four times that number – around 7,000 – crammed within the confines of its razor wire topped fences in conditions unfit for human habitation. This includes unaccompanied minors, pregnant women, disabled folk, the wounded, the elderly, people with serious mental illness, survivors of all forms of trauma. Around 4,000 people are currently sleeping in flimsy summer tents, or on the bare ground, as temperatures drop to single digits and below. At least five people perished in Moria last winter. Two people, including a five-year-old child, have died there in the past two months. A toxic combination of inadequate shelter, lack of access to healthcare, information or legal advice, unhygienic facilities, queues for hours for appalling food, restricted access to water, fascist attacks, institutional racism, and interminable waiting in fear have created a desperate situation that Medecins Sans Frontieres is calling a mental health emergency. There are regular suicide attempts and self-harm is endemic. Sexual exploitation of minors and adults is a reality. So is violence, particularly against women, girls and

LESVOS
CE FOR
ORIA 35

LGBTQI+ folk. Women sleep in adult diapers to avoid having to make a trip to the toilets in the night. Such conditions make UNHCR's insistent use of the word 'beneficiary' a sick joke. Moria was recently called a concentration camp by a Human Rights Watch worker. It is a living hell.

Article 7 of the Recast Reception Conditions Directive, part of the Common European Asylum System, authorises European member states to restrict the free movement of applicants for international protection within their territories only where 'the assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive'. Given the abysmal conditions in Lesvos, it is clear that other 'benefits' under the Directive, including 'material reception conditions [which] provide an adequate standard of living for applicants...guarantee their subsistence and protect their physical and mental health' are not 'guarant[eed]', to say the least. Even without examining the legality of the EU-Turkey agreement, or the 'safe third country' concept more broadly, geographical restrictions to Lesvos should be regarded unlawful. It compounds every systematic human rights violation already taking place.

In this context, the hundreds of peaceful protesters who gathered outside the European Asylum Support Office in Moria for the second day in a row on the morning of July 18th 2017, demanding free movement to the mainland, were simply asking that Greece and the European Union comply with their own laws. The protests were organised to take place while a week-long Amnesty conference examining the consequences of the EU-Turkey deal had brought some international attention to Lesvos, which has long since fallen out of the mainstream media spotlight. Community leaders spoke on local radio, participated in talks and workshops and reached out to authorities in the hope of negotiating a modest demand that those held on the island for over six months be permitted to leave. Protesters in the camp held hand-made banners denouncing conditions, and chanted "Liberté!" in the face of a growing police presence.

Greek state authorities responded to this peaceful exercise of the right to protest with repressive violence. Humanitarian actors were evicted from the camp, which was put on lockdown: trapping the majority of protesters outside and imprisoning a small group within, along with other residents resting in their isoboxes who had not participated in the demonstration. Police used quantities of >>>

>>> teargas that made it painful to breathe even at the distance of the hill overlooking the camp. Officers were filmed gathering rocks from the ground and throwing them at protesters, who attempted to resist: taking shelter between the rows of isoboxes and trying to extinguish tear gas canisters with UNHCR buckets filled with water.

By around 3pm everything appeared to be calm, and people were observed walking calmly around the camp again. Then, an hour later, armed riot police entered Moria. They targeted and violently raided the 'African section' of the camp: forcibly entering isoboxes, dragging people out, shooting teargas at close range, and brutally assaulting seemingly every individual they came into contact with, including a pregnant woman. From the hilltop overlooking the camp you could hear disturbing screams and shouts. You could see terrified people fleeing the 'African section' in every direction, only to be intercepted in the open space to the left of the isoboxes, or on the main pathway through the camp, and beaten to the ground by an officer soon joined by three or four more. For approximately 10 minutes, everywhere you looked groups of police officers in full riot gear were gathered around individuals already lying on the floor – some barefoot or in their underclothes – kicking and beating them with their boots and truncheons.

35 people were arrested in this violent, arbitrary raid. One of the arrestees had been beaten so brutally he was hospitalised for a week. In the days following the arrests, Amnesty International carried out interviews with arrestees and witnesses, and published a report demanding Greek authorities launch an investigation into the police's excessive use of force amounting to possible torture. The report indicates arrestees were subject to racist abuse and beaten again in police custody. When arrestees were brought to Mytilene court on Friday 21st and Saturday 22nd of July, many were still barefoot. Some were bleeding from injuries that had been left untreated in the days spent in prison, and doctors from Medicins Sans Frontieres came to court at the urgent request of the Legal Centre Lesbos (a grassroots organisation offering free legal aid to migrants) team to dress injuries including head wounds and provide pain relief. The defendants brought to court on Friday morning had not been given food.

Many of the 35 arrested in Moria were not even present at the morning's peaceful protest, let alone the clashes between a small number of protesters and riot police that ensued. 34 of the 35 men arrested are black. This led observers to conclude arrests were racially profiled and arbitrary: people were targeted solely because of their race and their location within the camp at the time of the police raid. Such a conclusion is only compounded by the apparent absence of individualized evidence against any of the 35, who were all charged with a catalogue of identical offences during preliminary hearings: arson, attempted assault, resisting arrest, rioting, damage to private property and disturbing the public peace. In light of the dawn police raids that took place in Moria camp the following Monday, 24th July, it seems clear that these arrests were part of a policy of collective punishment and intimidation: calculated to instil fear in the camp and prevent organising to expose the realities of structural violence and inhumanity European policies have spawned in Lesvos.

However, it is also clear that while the violence perpetrated by law enforcement officials, arbitrary raids and arrests, racist profiling, exaggerated criminal charges, punitive detention and lack of access to due process in this case are scandalous, these forms of state violence are by no means an aberration from the logic of borders and their enforcement. There has been a chillingly successful effort to cast people who cross borders irregularly as inherently criminal subjects

This ideological work precludes engagement with Europe's imperialist past and present exploits, which cause so much of the violent dispossession that force human movement. It also makes migrants inherently imprisonable (legitimising incarceration without charge in detention centres for periods longer than some criminal sentences) and inherently deportable to contexts of danger and death without any semblance of due process or effective remedy. Were you

Picture: Said Muhammed

surprised when you read that the fences of Moria camp – built to accommodate people seeking safety – are topped with razor wire?

The racially profiled Moria 35 arrests also took place in a context where discrimination on the basis of nationality is official policy. In Lesvos and other Greek 'hotspot' islands, applicants for international protection arriving from countries with asylum recognition rates of below 25 percent are categorised as 'economic profile', 'undesirable aliens' as opposed to 'refugee profile' applicants (those are the explicit words of a police circular describing the pilot project). On this basis people are held in closed detention for the duration of a 'fast-track' border procedure. Individuals subject to this fast-track process reportedly undergo their asylum interviews in handcuffs. The policy clearly constitutes arbitrary deprivation of liberty, precludes due process and effective remedy, and is in flagrant violation of the prohibition of discrimination on the basis of race or nationality under Article 3 of the Refugee Convention. Yet, in many ways, it is the logical conclusion of the 'victim or criminal' binary produced by toxic narratives on migration. 28 countries of origin are considered 'economic profile' under the policy, including many of the West African nations defendants in the Moria 35 case originate from.

In his concurring opinion in the ECtHR case *Hirsi Jamaa v Italy* – which found that Italy's pushback of migrant boats to Libya violated international human rights law – Judge Pinto de Albuquerque observed that the 'ultimate question...is how Europe should recognise that refugees have "the right to have rights", to quote Hannah Arendt'. The mechanisms by which brutal European 'deterrence' policies systematically strip thousands of human beings of such a 'right to have rights' is acutely apparent in the Moria 35 case. Long before the 35 defendants were brutally assaulted and arbitrarily arrested by police, they had already been denied the substantive right to seek asylum, to freedom from discrimination on the basis of nationality, the right to freedom from cruel, inhuman or degrading treatment. The right to have rights was precisely what the women and men from many different countries who gathered outside the European Asylum Support Office on Tuesday 18th July were calling for: insisting, collectively, on human dignity in the face of an inhumane divide and rule system.

But systemic injustices perpetrated against thousands of people imprisoned out of sight on the geographical margins of Europe, in restricted access camps beyond the scrutiny of local populations or media, are easily made invisible. Racist violence against refugees at the hands of law enforcement officials is frequently met with impunity. Then there is the fact that Greece has one of the longest pre-trial detention times in Europe: despite many having serious mental and physical health conditions which should preclude incarceration, 30 of the defendants in this case have already been in prisons in Athens and Chios for five months. And the stakes could not be higher for each of the 35 defendants. Not only do the criminal charges against them carry disproportionately heavy sentences if convicted – up to 10 years in prison – but conviction is also likely to signify exclusion from the right to international protection. This would mean deportation back to places these individuals risked everything to flee.

Without sustained political pressure and international oversight what hope of any semblance of justice can there be in the Moria 35 case, which set the claims of Greek state police forces against those of foreign migrants already cast as inherently criminal? They will face the case against them in an unknown language, under an unknown legal framework. For this reason, Legal Centre Lesbos is building a solidarity campaign alongside coordinating the criminal defence team of Greek lawyers who will represent the Moria 35 at trial. Please support the campaign however you can. Raise awareness, donate, act as a trial observer.

More information is available at www.justgiving.com/fundraising/justice-for-the-moria-35

Maya Thomas-Davis is a member of the Haldane executive committee. She is part of the Legal Centre Lesvos team and is training as a barrister.

Inset: Matt Wrack of the FBU and firefighters joined the Justice for Grenfell silent walk through Kensington and Chelsea in November 2017.

Pictures: Jess Hurd / reportdigital.co.uk

Were Grenfell Tower residents denied access to justice?

by **Eimear McCartan** and **Sam Blewitt**

On Wednesday 14th June, a housing block engulfed in flames and blackened by charred bricks became a flaming beacon for social injustice. One of the many questions in need of urgent address is whether the current law denied the residents of Grenfell Tower proper access to justice.

Legal aid cuts

In April 2013, the legal aid budget was cut significantly leaving 650,000 people no longer able to access the justice system. In an attempt by the Minister of Justice to shave £350 million from the budget, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 was introduced implementing significant funding cuts. Most relevantly, public funding for housing was turned off, which meant that legal aid would only be available for matters of housing law under 'exceptional circumstances'.

Reports have emerged that residents of the tower on two separate occasions raised concerns about the safety of the building, but were unable to access legal aid and subsequently the representation that they needed. The problem was rooted in the fact that a legal aid claim will only arise when a property is in 'disrepair'. The installation of unsafe cladding materials and a lack of fire extinguishers would not fall within this scope under the new reform. Without legal aid, the residents simply could not afford the proper representation they required.

Lack of pre-emptive options

It also must be asked whether current housing law provides tenants with access to adequate remedies, whether or not they have access to legal aid. The law should equip tenants with the ability to compel their landlord to take action when they feel the standards of health and safety, including in relation to fire safety, become unacceptable.

It is however questionable whether the current legal avenues open to tenants allowing them to take pre-emptive action, are sufficient. A brief exploration of some of the existing legal paths, demonstrates the lack of viable options. These include:

- An action for disrepair under the Landlord and Tenant Act 1985, allowing tenants to take action against their landlord for housing disrepair. As mentioned above, for Grenfell Tower residents, it is questionable whether the issue of fire safety and cladding of the building would have fallen into the definition of disrepair under the Act;
- A claim for negligence against the landlord; such a cause of action will arise only after the event, and would therefore be ineffective in preventing the tragedy witnessed at Grenfell Tower as the damage would have already been done;
- A claim for statutory nuisance under the Environment Protection Act 1990. Under this Act, the local authority must serve an abatement notice on any premises qualifying as a 'statutory nuisance', setting out a time by which the nuisance should be remedied. However, this cause of action would again have been ineffective for the Grenfell Tower residents, as in their case, the local authority was the landlord, and therefore cannot take action against themselves. The only option potentially open to the residents was a private prosecution, which would have been costly, and for which legal aid would not have been available;
- Via the Housing Health and Safety Rating System 2004, which imposes a duty on local authorities to investigate complaints in relation to potential hazards within properties. The difficulty with this option for local authority tenants is that it is not effective against local authority landlords, with tenants left with no ability to enforce for themselves other than through the expensive avenue of judicial review.

Repercussions for Manchester

Reactions of grief and anger have been voiced by not only the affected community, but also by the wider community as residents in similarly constructed housing all around Britain justifiably raise concerns about their safety.

Lucy Powell, Labour's MP for Manchester Central expressed concerns about housing safety in Manchester and has called for tighter safety regulations in an interview with the *Manchester Evening News*. She amongst others, have raised concerns that all high-rise buildings should be reviewed, and not just council flats. 'We shouldn't just be focusing on former council blocks, because in Manchester - particularly in the city centre – we have had a huge increase in the number of high rise blocks,' she said.

However, steps have already been taken in Greater Manchester to assuage the community's unrest. Mayor of Manchester Andy Burnham has set up a scheme headed by Paul Dennett (Mayor of Salford) in which every high-rise building above six storeys will be reviewed, providing residents reassurance about fire safety standards.

On 23rd June, the Mayor of Salford also announced that cladding used on nine different high-rise blocks in Salford that were a similar material to the ones used to insulate Grenfell Tower would be removed.

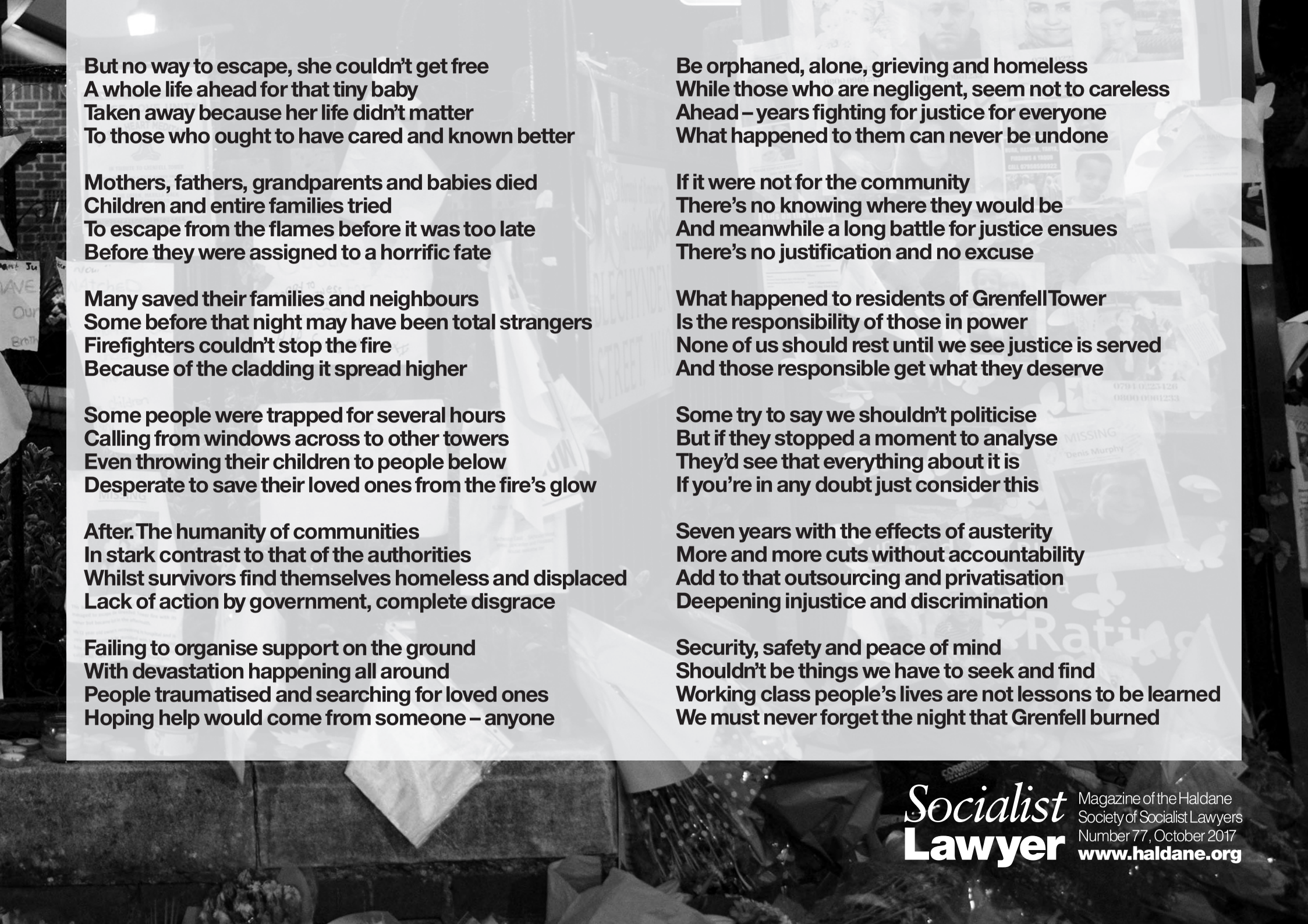
Looking at the law

In spite of this positive action, the fact remains that for residents of high rise blocks in Manchester, and throughout the United Kingdom, the Grenfell Tower tragedy has flagged many worrying issues.

One such issue is the urgent need to look very closely at possible reform of the law, which in its current state demonstrably leaves gaping holes in which tenants are left with little or no ability to bring their landlords to account before, and not after, a tragic event.

It is vital that the law helps tenants to feel safe in their own homes; in its current state, the lack of proper access to justice leaves them vulnerable.

Eimear McCartan is a solicitor working in both private practice and in-house and Sam Blewitt is a law student at Manchester Metropolitan University, both are volunteers at the Greater Manchester Law Centre. Contact GMLC at development@gmlaw.org.uk, 0161 769 2244, www.gmlaw.org.uk



But no way to escape, she couldn't get free
A whole life ahead for that tiny baby
Taken away because her life didn't matter
To those who ought to have cared and known better

Mothers, fathers, grandparents and babies died
Children and entire families tried
To escape from the flames before it was too late
Before they were assigned to a horrific fate

Many saved their families and neighbours
Some before that night may have been total strangers
Firefighters couldn't stop the fire
Because of the cladding it spread higher

Some people were trapped for several hours
Calling from windows across to other towers
Even throwing their children to people below
Desperate to save their loved ones from the fire's glow

After. The humanity of communities
In stark contrast to that of the authorities
Whilst survivors find themselves homeless and displaced
Lack of action by government, complete disgrace

Failing to organise support on the ground
With devastation happening all around
People traumatised and searching for loved ones
Hoping help would come from someone – anyone

Be orphaned, alone, grieving and homeless
While those who are negligent, seem not to careless
Ahead – years fighting for justice for everyone
What happened to them can never be undone

If it were not for the community
There's no knowing where they would be
And meanwhile a long battle for justice ensues
There's no justification and no excuse

What happened to residents of GrenfellTower
Is the responsibility of those in power
None of us should rest until we see justice is served
And those responsible get what they deserve

Some try to say we shouldn't politicise
But if they stopped a moment to analyse
They'd see that everything about it is
If you're in any doubt just consider this

Seven years with the effects of austerity
More and more cuts without accountability
Add to that outsourcing and privatisation
Deepening injustice and discrimination

Security, safety and peace of mind
Shouldn't be things we have to seek and find
Working class people's lives are not lessons to be learned
We must never forget the night that Grenfell burned

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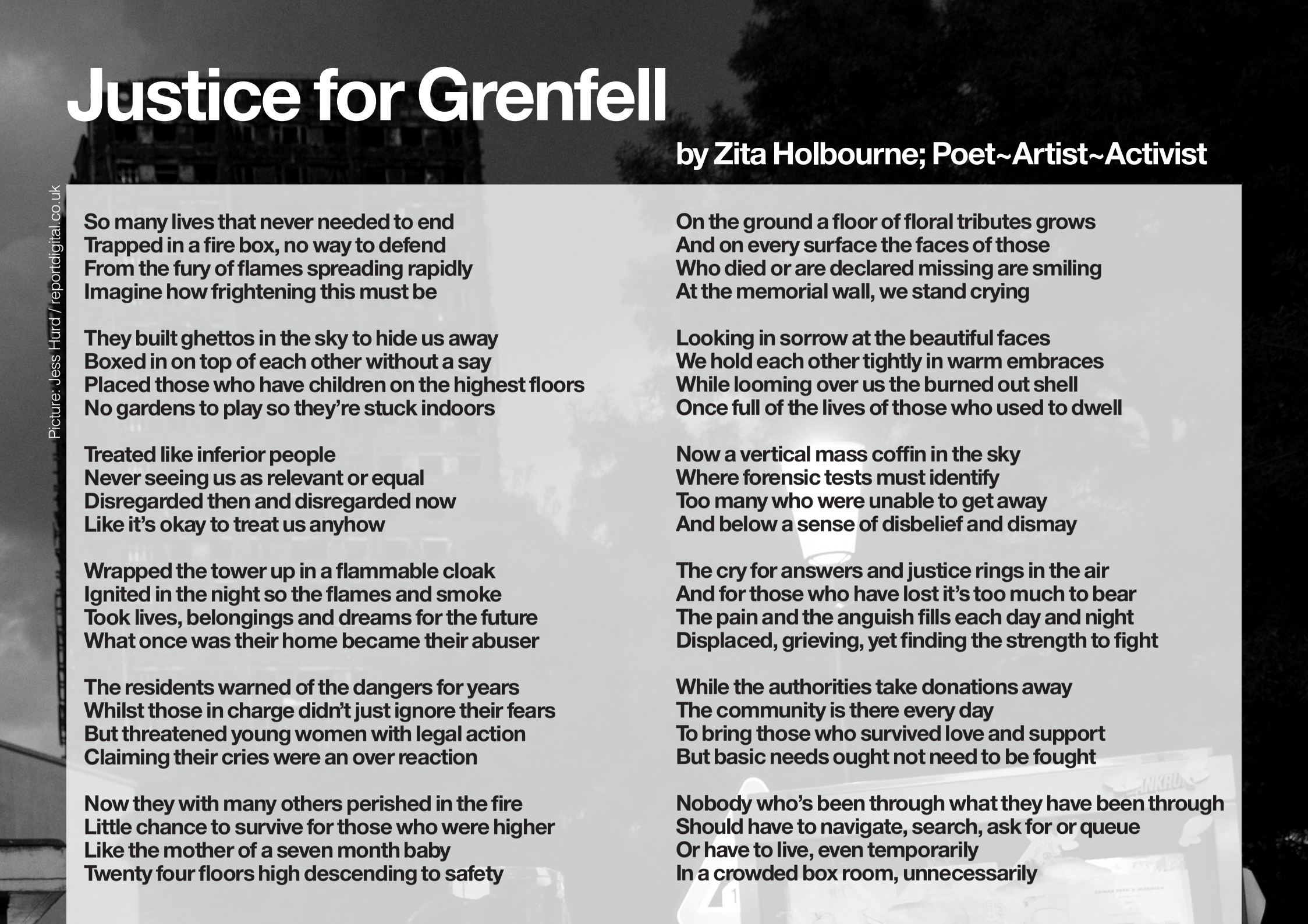
www.haldane.org

Justice for Grenfell

by Zita Holbourne; Poet~Artist~Activist



Picture: Jess Hurd / reportdigital.co.uk

So many lives that never needed to end
Trapped in a fire box, no way to defend
From the fury of flames spreading rapidly
Imagine how frightening this must be

They built ghettos in the sky to hide us away
Boxed in on top of each other without a say
Placed those who have children on the highest floors
No gardens to play so they're stuck indoors

Treated like inferior people
Never seeing us as relevant or equal
Disregarded then and disregarded now
Like it's okay to treat us anyhow

Wrapped the tower up in a flammable cloak
Ignited in the night so the flames and smoke
Took lives, belongings and dreams for the future
What once was their home became their abuser

The residents warned of the dangers for years
Whilst those in charge didn't just ignore their fears
But threatened young women with legal action
Claiming their cries were an over reaction

Now they with many others perished in the fire
Little chance to survive for those who were higher
Like the mother of a seven month baby
Twenty four floors high descending to safety

On the ground a floor of floral tributes grows
And on every surface the faces of those
Who died or are declared missing are smiling
At the memorial wall, we stand crying

Looking in sorrow at the beautiful faces
We hold each other tightly in warm embraces
While looming over us the burned out shell
Once full of the lives of those who used to dwell

Now a vertical mass coffin in the sky
Where forensic tests must identify
Too many who were unable to get away
And below a sense of disbelief and dismay

The cry for answers and justice rings in the air
And for those who have lost it's too much to bear
The pain and the anguish fills each day and night
Displaced, grieving, yet finding the strength to fight

While the authorities take donations away
The community is there every day
To bring those who survived love and support
But basic needs ought not need to be fought

Nobody who's been through what they have been through
Should have to navigate, search, ask for or queue
Or have to live, even temporarily
In a crowded box room, unnecessarily

Stop criminalising humanitarian aid!

The European authorities have consistently treated migrants and refugees as a threat to public order rather than people in need of help, says **Frances Webber**

For the past six months I have been working with colleagues at the Institute of Race Relations on a project on the criminalisation of solidarity with migrants and refugees. In November our report, *Humanitarianism: the unacceptable face of solidarity*, was published. (It's available online at irr.org.uk.) Our research is based on information obtained from advocacy organisations and refugee support groups across Europe, and for the report we put together a sample of 26 case studies involving prosecutions of 45 individual humanitarian actors in nine European countries under anti-smuggling or immigration laws since September 2015.

It is shocking that laws designed for use against organised criminals are being misused across Europe to criminalise humanitarian actors who seek to protect life at Europe's sea and land borders – but this is what we found. Volunteers conducting search and rescue missions have been investigated and even prosecuted. Off the coast of Lesbos, volunteers with search and rescue NGOs were arrested in January 2016 and await trial on charges of smuggling. In June 2017 a rescue boat, the IUVENTA, was impounded in Sicily, where prosecutors are investigating NGOs on suspicion of collusion with smugglers – on the basis of allegations which appear to have come from far-right groups.

In the camps at the border bottlenecks of Calais, Ventimiglia and Como, authorities have often failed to provide anything to the migrants and refugees stuck in limbo, instead seeking to evacuate them, treating them as a threat to public order rather than people in need of help. Conditions are frequently squalid and sometimes life-threatening. In Calais, where the riot police tear-gas children and destroy their sleeping bags, the mayor attempted (unsuccessfully) to ban the distribution of food and clean water, and volunteers making distributions or providing showers are continually harassed. In Ventimiglia and Como, volunteers have been subjected to banning orders requiring them to leave the area, for providing food and solidarity actions with refugees.

In Denmark, Norway, Italy, Greece, France, Sweden, Switzerland, Germany and the UK, those moved by compassion to give lifts across borders to enable people to reach family members or receive protection in another EU country have been arrested, prosecuted, fined and sometimes given suspended sentences of imprisonment.

The legal framework

The Anti-Smuggling Protocol to the UN's Convention on Transnational Organised Crime of 2000 defined migrant smuggling so that it refers only to actions for profit. But the EU declined to follow that definition in its 2002 Facilitators Package, which required member states to prosecute those assisting unlawful entry, transit or stay in their territory. There is an exemption from prosecution for humanitarian actions, but it is discretionary, not mandatory, and few member states have adopted it. This has led to a patchwork of laws and legal regimes across Europe, with acts that are legal in one country criminalised in the next. Even within one country, different interpretations of the law have resulted in inconsistent patterns of prosecution and conviction. So in France, where humanitarian assistance is exempted by law from prosecution for assisting unlawful stay, a Lille court ruled that a local bylaw banning distribution of food and water to destitute migrants in Calais >>>

Jaffe from Afghanistan, pictured as fires raged during the eviction of refugees in the Jungle camp in Calais in France in 2016. He was then just 13-years-old.

Picture: Jess Hurd / reportdigital.co.uk

>>> was unlawful and breached the prohibition on inhuman and degrading treatment in the European Convention on Human Rights (a decision upheld by the Conseil d'Etat, France's highest administrative court) – but another court in Nice convicted volunteers for providing shelter and care to migrants. The lack of clarity and consistency in the legal framework has allowed the prosecution of humanitarian actors across Europe.

The political framework

As the EU and member states have rushed to close their borders against the most profound humanitarian crisis since the second world war, making exclusion of undocumented migrants and refugees the absolute priority, human rights obligations and responsibility for rescuing migrants at sea and keeping the undocumented alive were largely left to NGOs. The EU de-prioritised search and rescue in favour of destroying the migrant boats and the criminal smuggling gangs – as if they were the drivers of migration. As the political agenda in many European states is increasingly driven by a far-right, anti-migrant, anti-refugee programme, those helping migrants and refugees, instead of being recognised as humanitarian actors, are seen as guilty by association, guilty of being a 'pull factor', encouraging more of the world's poor and desperate to come to Europe. While an army of crowd-funded or self-funded volunteers, civil society groups and individuals has stepped up to fill the gap in state provision, launching rescue boats, giving lifts and setting up kitchens and showers, the EU and member states are seeking to ensure that human solidarity ends at the gates to Europe through a divisive, nativist political culture.

This shrinks the space for humanitarian action, as NGOs and individuals who want to volunteer are forced to consider whether they are prepared to risk a criminal conviction.

The use of criminal law to punish and deter those seeking to uphold standards of decency is in stark conflict with international human rights obligations such as the duty to rescue those in distress at sea, and the preservation of human dignity and physical integrity. In chronological terms, there is a clear link between prosecutions and the EU's downgrading of the humanitarian mission in the Mediterranean.

Laying wreaths at the Cenotaph in Whitehall, London, on rememberance day. Each wreath represented the 17 migrants who have died each day in 2017. Organised by Lesbians and Gays Support the Migrants.

Boosting the far-right agenda

The EU-Turkey agreement drastically cut the number of boats crossing the eastern Mediterranean from Turkey to Greece, forcing them to take the much longer, more dangerous route across the central Mediterranean from Libya to Italy. That, and the replacement of Italy's search and rescue mission Mare Nostrum by EU naval missions whose main objective was the destruction of smugglers' boats (which led to rubber dinghies replacing wooden boats) meant that rescue was needed earlier in the voyage, closer to the Libyan coast. NGOs' ships have rescued hundreds of thousands from drowning. But in December 2016, Frontex head Fabrice Leggeri told the *Financial Times* that search and rescue NGOs were colluding with smugglers, this message was adopted by various EU politicians. The repeated slurs against Search and Rescue (SAR) NGOs and the attempts to bully and delegitimise the SAR missions in the Mediterranean have boosted the agenda of far-right provocateurs and extremist politicians, and led directly to the far-right Génération Identitaire's high-profile 'Defend Europe' campaign, involving a ship sent to disrupt rescue missions. It has encouraged physical as well as verbal attacks on pro-refugee politicians.

Defend the humanitarian exemption

In March 2017, the European Commission published its evaluation of the Facilitators Package, concluding that there was no need to amend the law so as to ensure that humanitarian actors were not criminalised, despite many calls for a mandatory humanitarian exemption. Our report rejects that complacent analysis, and adds its voice to those demanding such an exemption. We have written to the Commission to present our evidence and to repeat the demand for explicit protection from prosecution for humanitarian aid, to bring the legal – and hopefully, the political – framework into line with international human rights and with ordinary common standards of decency.

Frances Webber is vice-chair of the Institute of Race Relations and a vice-president of the Haldane Society

JOBSTOWN IS OFFICIALLY

The Jobstown protesters in Ireland were found 'not guilty' of false imprisonment in June. Irish member of parliament and socialist **Paul Murphy TD** was one of those charged.

Silence descended as the packed court room waited for the verdict. "Not Guilty" – the court erupted in joy. Eleven more not guilties came thick and fast as each and every charge against the six remaining defendants was rejected unanimously by the jury.

On 29th June 2017, the attempt by the state to criminalise a sit-down protest and slow march which delayed the then Deputy Prime Minister, Joan Burton, for two and a half hours as false imprisonment failed dramatically. After less than an hour of deliberation after a nine week trial, all of the charges of false imprisonment were thrown out. The court case exposed the existence of a conspiracy to commit perjury inside the police in an attempt to procure prosecutions and to get convictions.

Slightly more than three months later, the enforced silence of the criminal courts was shattered once more with chants of 'What do we want? A public inquiry!' This was when the prosecution, a few days before the trial of the second (of three) group of defendants, came to court to drop all remaining charges against adult Jobstown protesters.

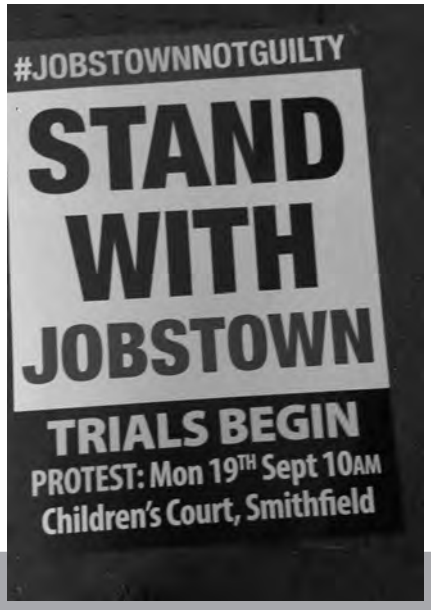
It seems very likely that the decision to drop the charges was made because having seen their case so thoroughly discredited in front of a jury in the first adult trial, they knew the same would likely happen again. Therefore, they decided to cut their losses by abandoning the prosecutions before the trial. It was a sign of how thoroughly the state's attempt to criminalise protest had been defeated and exposed.

The result is a tremendous vindication of the campaign waged by defendants and supporters. By raising public awareness and mobilising people with events like a packed Rally for Justice in Liberty Hall, the director of public prosecutions was pushed back on the attempt to exclude from the jury those who commented on social media or elsewhere about water charges. In the context of a mass movement against water charges, this was a blatant attempt to exclude the defendants' peers from the jury.

International support with resolutions and support from trade unionists and activists worldwide kept the morale of defendants up and helped to resource the campaign. This was matched by the exceptional performance of the defendants' legal teams inside the courts. Together, this meant that a working class jury was able to see through the lies.

Abuse or protest?

The chief witness for the prosecution was Joan Burton, who was then leader of the Labour Party and Deputy Prime Minister. Her cross-examination became a thorough exposure of the betrayal of the Labour Party of almost every election promise it had made, which was the cause of the anti-water charges and anti-austerity protest directed against her on 15th November 2014. The litany of betrayals of the Labour Party of working class communities like Jobstown was scrutinised – and the first exhibit entered into the case was an infamous Tesco-inspired advert for the Labour Party taken out in the run up to the 2011 General Election, with the headline 'Every Little Hurts'. The advert listed six austerity measures, including water charges, which Fine Gael might implement if allowed to rule alone, hence the need to vote for Labour. Of course, every single one of these promises was broken.



The attempt of Joan Burton to say that she didn't hear any political chants, only abuse, created laughter in the court when she was confronted with video after video of clear political chants –'No way, we won't pay', 'Joanie in your ivory tower – this is called people power!' Her incredible claims were part of a very conscious attempt to portray a working class protest as an angry mob. Her refusal to answer direct questions repeatedly forced an intervention by the judge to say that she had to answer the questions. They resulted in her being on the stand for almost a week, leaving undoubtedly a very negative impression on the jury.

Biased investigation

It was when we got to the police evidence that the prosecution case unravelled at speed. The biased nature of the investigation was clear from early on. It emerged in cross-examination that at the first case conference of police on the Saturday of the protest, Job No. 4 was >>>

>>> created – which was to call door to door to interview those who may have witnessed or participated in the protests, but weren't suspects. On the following Monday, in a second case conference chaired by Chief Superintendent Orla McPartlin, this job was dropped. The result was that while over 180 statements were taken from police witnesses, no statements were taken from any protesters who weren't suspects. This was illustrative that the investigation was not focused on uncovering the truth about the protest, it was about finding evidence to convict protesters.

Video evidence contradicts police witnesses

A superintendent, an inspector and a sergeant all claimed in court that, on the occasion of a vote on the Fortunestown Road on what course of action to take with the protest, Paul Murphy asked the protesters in relation to Joan Burton, 'Will we keep her here all night?'

However a video was introduced by the defence, which showed categorically that Paul Murphy did not say that, nor did anyone else. Instead, the video showed Solidarity councillor Mick Murphy urging the protest to avoid any conflict with the police and to march to the Tallaght Bypass in front of the police jeep which contained Ms Burton. It then showed Paul Murphy and Mick Murphy voting to march to the bypass. It showed multiple police standing around while this took place – yet none of them admitted to seeing this.

Another police officer was exposed as having fabricated his statement when he said that Paul Murphy was on a megaphone in the ground of St Thomas' Church, Jobstown directing people where to stand, implying that he was instructing them to surround an Avensis car, the first police car into which they put Joan Burton.

He said in his written statement and in the District Court case that in the church grounds, Paul Murphy was on the megaphone and 'directing protesters where to stand.' The importance of this is that Paul Murphy was getting people to stand where they could see the Avensis and have people ready to surround the car when Joan Burton was brought out from St Thomas' Church and put into it. This would strengthen the alleged false imprisonment case.

The video evidence shown in court proved this to be fabricated. It was obviously designed for the purpose of framing Paul Murphy with responsibility for orchestrating and organising the protest at which Joan Burton was supposedly falsely imprisoned when it is blatantly obvious that the protest was unorganised and somewhat chaotic as a result.

The most dramatic moment came in court, when the most senior police officer at the protest took the stand. In his written statement, Superintendent Daniel Flavin accused Paul Murphy of formenting violence. He backed away from this position in evidence and cross examination.

His statement made a week after the Jobstown protest: 'Mr Paul Murphy TD addressed the crowd of protesters now numbering several hundred through a megaphone. He was chanting and as a consequence of what he was saying the protesters became more animated and aggressive. Missiles began to be thrown at Gardai [police]. I observed sticks, stones and eggs hitting Gardai and the Garda jeep.'

In his direct evidence to the court, Superintendent Flavin backed away from his claim that Paul Murphy caused violence. In relation to this, Sean Guerin, Senior Counsel for Paul Murphy, asked the Superintendent: 'I take it that you will understand readily Superintendent, that the priority for this jury is finding the truth of what happened that day, and that's why you came to court, and you refreshed your memory with your statement so that you could tell them the truth.'

'So why did you not tell them that the violence was the consequence of what Paul Murphy was saying to the crowd?'

Flavin: 'I suppose in one respect if - - it's trying to be fair to him…'

Guerin: 'This is not the first time in this case that a prosecution witness has come to court and failed to make an allegation in their evidence which is contained in their statement concerning Paul Murphy. You may not know that because you weren't in court. I take it you would accept and understand that what you said in your statement about the violence being a consequence of Mr Murphy's address to the crowd, you would understand that the legal significance of that is that Mr

Murphy would bear responsibility for what the crowd did at his urging. You understand that, don't you?'

Flavin: 'Yes, Judge, yes.'

Guerin: 'Yes. So ...that part of your statement would have the consequence in law of extending Mr Murphy's criminal responsibility for what happened on the day to the actions of other people; isn't that correct?'

'Superintendent Flavin, when you made a statement alleging that Mr Paul Murphy was the instigator and the fomenter of violence, an allegation which you were not willing to come to court and repeat until it was put to you by the defence, were you attempting to pervert the course of justice?'

Guerin: 'Were you trying to get a charge preferred against him by the DPP in circumstances where you feared that if he were not tied to the violence, a charge might not be preferred?

Flavin: 'Absolutely not, Judge.'

Guerin: 'And if the ladies and gentlemen of the jury come to the view that what you did by making a serious allegation, which would have the legal consequence of making Mr Murphy responsible for the violence of others, which you were reluctant tomake on oath, was part of a pattern evident also in the behaviour of other gardaí, is that because you were in fact part of a conspiracy to pervert the course of justice?'

Media response

While working class people across the country were delighted with the verdict, the reaction of sections of the mainstream media could not be more different . The so-called paper of record, the *Irish Times* couldn't bring itself to have a front page story about the fact that the defendants were found not guilty. Instead, they led with a story about the fact that I sent tweets with the #JobstownNotGuilty hashtag! Their editorial featured, not a call for a public inquiry into what appears to have been an orchestrated conspiracy inside the police to stitch us up for false imprisonment, but a comment that those who used social media to comment on the trial have placed 'jury trials under strain'!

Other media outlets attempted to redo the trial, forgetting that a jury had seen everything there was to see about the protest over nine weeks and had unaminously decided we were not guilty. On multiple interviews, defendants were asked whether we regretted the verbal abuse that Joan Burton had been subjected to. On one, 'Well, do you regret it?' I answered back simply. 'Because just like the presenter, I like the vast majority of people present at the protest, wasn't engaged in any abuse and wasn't responsible for any abuse.'

The need for the #JobstownNotGuilty social media campaign is ironically proved by all of this biased reporting. The reporting from the court were generally reasonably accurate on RTE, but almost always biased and one-sided against the defendants in the *Irish Times* and in other outlets. Our social media reports were needed to give people outside the court the real story about what happened. The notion that it was aimed at influencing the jury is demeaning to a jury who sat through the evidence for nine weeks. In reality, it's a distraction designed to take away from the real story here – the vindication of the defendants.

Campaign for Justice continues

All the defendants have been overwhelmed by the messages of support and relief from people across the country and even around the world. For many, this has opened their eyes to blatant political policing and the potential for a gross miscarriage of justice.

This is far from over for us. We want answers about where the decisions were made inside the police to fabricate evidence and tell identical untruths in the witness box. The only way we'll get that is with an independent public inquiry.

A perverse situation currently exists where the only person convicted of false imprisonment is someone who was 15 on the day. He was convicted on the same evidence that was discredited in front of a jury. Unfortunately, his was a judge-only court. His appeal is due to start in early December.

Paul Murphy is the Solidarity-PBP Teachta Dála for Dublin South-West

Harry Perrin asks: Do judges sentence people differently depending on their class? Or their wealth?

They shouldn't, and it's hard to prove either way, because it's never explicit in sentencing remarks. There are recent indications, however, in a few cases, which are troubling.

Lavinia Woodward is an aspiring surgeon at an Oxford college, who attacked her then-boyfriend with a bread knife and a glass in a drug-fuelled row. In September 2017 she received a 10-month prison sentence, but this was suspended. She was not sent to jail.

This in itself is not necessarily concerning. I am no apologist for custodial sentences, especially where other courses of action – rehabilitation, restorative justice – are appropriate. What is concerning is that the judge's rationale – at least as he articulated it in a pre-sentence hearing in May – seems to indicate that Ms Woodward's standing in society lies behind his sentencing decisions: "if this was a one-off, a complete one-off, to prevent this extraordinary able young lady from not following her long-held desire to enter the profession she wishes to would be a sentence which would be too severe".

I am comfortable with judges avoiding sentences that are 'too severe'. It is the reference to this offender's academic ability and intended career path that is troubling. One wonders whether a judge would have made these remarks – and taken the same attitude to sentencing – in respect of a nurse, a shop assistant, a care worker. Would he have referred to an offender from a different social class as a 'young lady'?

The judge in *R v Woodward* stuck much more closely to the sentencing guidelines (which govern the sentences judges may hand down and the factors they may take into consideration in sentencing) in his remarks in September. This is perhaps understandable given the press attention that followed his remarks from the previous hearing. Was this just a 'patch-up job' on the stable door though, when the horse had bolted in May?

Other cases raise similar questions. There's a 2015 English case involving a retired civil servant, guilty of possessing thousands of prohibited images, many falling into the most serious categories of children being abused. In mitigation, his defence counsel told the judge that his client "is likely to find prison a pretty difficult place". The defendant received a suspended sentence.

There's the American case of Robert H. Richards IV, heir to the fortune of the du Pont family. In 2009 he was convicted of raping his three-year-old daughter. He didn't go to prison, however. He got a suspended sentence. Under the heading 'Mitigators' on the sentence order, signed by the judge, is written: 'Defendant will not fare well' in prison.

Criminologist Michael Levi has described how "white-collar criminals have a special sensitivity to imprisonment". Perhaps the indecent image addict and the child rapist who would not fare well in prison, and the drug-fuelled violence of an aspiring surgeon, are evidence of that. This notion is clear in counsels' mitigating remarks for former BBC radio presenters Tony and Julie Wadsworth, who were given custodial sentences in June 2017 for indecent assault and encouraging children into sexual activity. Counsel for Mrs Wadsworth noted her "tragic fall from grace", while counsel for Mr Wadsworth said the hardest thing for him about a prison sentence would be being separated from his wife: "His radio life and being with his wife was his life – all of that has come crashing down".

The supposition is that the well-off, the middle-class, the aspirational, have more to lose than others. Prison will have a graver effect on them. Former deputy prison governor Rachel Rogers called out the tabloids for propagating this view in relation to the sentencing of politician Chris Huhne and economist Vicky Pryce. Both received custodial sentences for perverting the course of justice after the latter had claimed she had been driving their vehicle – and so accepted penalty points for speeding – whereas in fact the former, her then-husband, had been driving. Rogers wrote:

'Much speculation has centred on whether the experience of imprisonment is, as the tabloids would have us believe, more painful for middle-class people. […] I firmly believe that imprisonment is less frightening and less damaging for people such as Huhne and Pryce than it is for someone of lesser status, lesser means, lesser power'.

The irony of the argument, made in mitigation, that well-off offenders 'will not fare well in prison' is that being well-off may actually equip offenders to fare better in prison.

Alex Cavendish, a specialist in prison issues and himself a former prisoner, has written about the problems that inmates face through running up debts with other prisoners, particularly experiencing a greater risk of sexual assault. Offenders who are better off

‘Will not fare well in prison’

– a get out of jail free card for the rich?

would be less likely to become mired in the world of prison debt, and less open to abuse.

Prisoners with little money are also less likely to have secure housing than the well-off. On their release they will experience a greater risk of homelessness (with, perhaps, a resulting return to crime), and will suffer considerable anxiety relating to the loss of their home while serving their sentence.

Cavendish highlights the lack of dignity that the very poorest prisoners experience. Poorer people, he said, have ‘no real family support’ while in prison ‘and so just receive the £3.50 per week statutory minimum. They literally have nothing. They’re the ones you see rummaging through dustbins. When they are released, all they receive is the £46 statutory release grant.’ There can be a ‘revolving door’ of custodial sentences for prisoners, says Cavendish, often for prolific petty theft.

Levi cites authorities to indicate that this view amongst judges – this belief that white-collar offenders have a ‘special sensitivity’ to imprisonment (whether consciously held or not) – is mistaken. In any event, it is plainly unjust.

Flags – symbols – are provided by defence counsel in mitigation all the time: ‘will not fare well in prison’, ‘retired’, Oxford University, the professions. Flags that indicate class and means. Justice should be blind of course – but counsel are clearly aware of the a benefit in raising these points.

The Sentencing Guidelines even make provision for these ‘flags’, most pointedly in the mitigating factor of previous good character. This is most noxiously invoked as mitigation for offenders who have secretly committed crimes over a long period of time – say sexual grooming – whilst fooling those around them into thinking they were decent members of society. The guideline’s note does caution: “Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor” but it is difficult to define ‘facilitate the offence’. If one has had a lengthy career of covert offending but overt good deeds, one may still get credit for the good deeds if they did not directly ‘facilitate the offence’.

In many cases, this will simply be giving offenders credit for the quality of their ‘cover story’. They fooled everyone into believing they were not the sort of person to commit these crimes by being community leaders, religious leaders, school teachers, trustees; and they continue to enjoy credit for the strategies they have used to fool people even once they have been caught. Alex Renton, who has written about sexual abuse carried out by boarding school teachers over entire careers, described this phenomenon as the ‘vanity of the exculpatory act’. It serves the offenders well even as they are being charged and sentenced.

Counsel raise these flags – flags given currency by the Sentencing Guidelines – in mitigation with a view to persuading judges not to send their clients to prison. Crudely, the message is this: my client is a decent person like you and me, your honour; we are not the sort of people who go to prison and neither are they. Levi says: ‘a form of unconscious social bias resulting from the greater identification of judges with the social world of the ‘respectable offender’ – particularly professional persons like themselves – than that of the burglar or ‘organised criminal’ as commonly construed’.

‘There are these get-out-of-jail-free cards people will play,’ says Cavendish, and ‘by and large, there is class-based sentencing’. Flags like ‘Will not fare well’ can operate as get-out-of-jail-free cards. The problem is, they may only be available to those who need them the least.

Harry Perrin is a solicitor and an ambassador for the charity Enough Abuse UK. An earlier version of this article appeared on The Justice Gap (www.thejusticegap.com) in June 2017. This article is published here with kind permission.


Thelwall

Comparing John Thelwall and Thomas Radical networks and

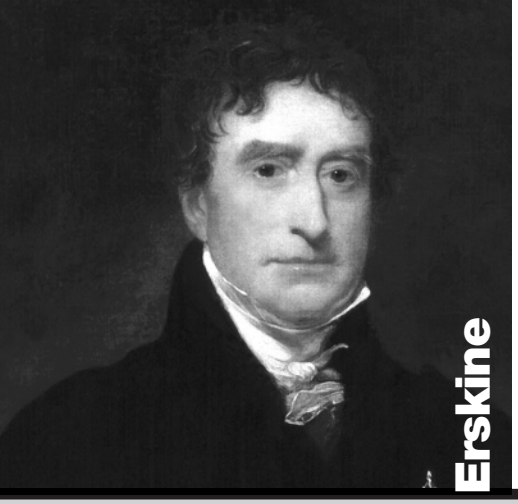
by David Watkinson

Introduction

Many years ago when I was attending classes for the finals of my professional exams in order to qualify as a barrister, my class was addressed by Lord Denning. It was from him that I first heard of Thomas Erskine. In emphasising to us the importance of the integrity and independence of the Bar as a vital part of the fabric of the UK legal system and constitution, he quoted from a speech of Erskine's. It was made in 1792, in defence of Thomas Paine on a charge of seditious libel for writing *The Rights of Man*:

'I will forever…assert the dignity, independence and integrity of the English bar, without which impartial justice, the most valuable part of the English constitution, can have no existence. From the moment that any advocate can be permitted to say that he will or will not stand between the Crown and the subject arraigned in Court where he daily sits to practice, from that moment the liberties of England are at an end. If the advocate refuses to defend from what he may think of the charge or of the defense, he assumes the character of the judge; nay he assumes it before the hour of judgement; and ….puts the heavy influence of perhaps a mistaken opinion into the scale against the accused, in whose favour the benevolent principle of English law makes all presumptions, and which commands the very judge to be his counsel'.

Erskine had come under pressure from political and legal figures not to represent Paine. But he did so. An immediate result was that he lost his position as attorney general to the Prince of Wales. However, from that statement, it is said, dates the 'cab-rank rule' by which all barristers are bound and which has been recently re-formulated in the 2017 Code of Conduct.



Erskine: cultures of reform 1780-1820

Erskine's statue stands in the library of Lincoln's Inn to this day.

John Thelwall came into contact with Erskine but once, but the occasion was momentous. It was Thelwall's trial for treason between 1st December and 5th December 1794. Bear in mind that the usual punishment, if convicted on such a charge, was still hanging, drawing and quartering, although for aristocrats this was generally commuted to beheading.

Thelwall himself had begun legal training with a Temple solicitor, when young, at the urging of an uncle, but he found himself unfit for the job. On one occasion he felt unable to serve a writ which he knew would cause hardship upon a poor family. He and the solicitor parted company shortly before his training ended. He may well have made a success of a legal career. Thelwall was clearly eloquent. In his defence speech, which was undelivered but later published, Thelwall, in my view, explained the law of treason and how the prosecution had sought to distort it much more clearly that Erskine did. But it was not to be. Thelwall trod a different path, indeed paths, to Erskine.

The two men came from different backgrounds. Erskine was Scottish aristocracy, but the third son of the 10th Earl of Buchan and so not an heir. His income he had to find for himself initially by the traditional routes of navy and army, although his ancestry opened doors and procured introductions. Thelwall was born into the middle classes of trading stock. His father was a silk mercer whose early death (when Thelwall was eight) saw his son earning a living in the family shop and then apprenticed to a tailor and to a solicitor in succession before beginning to earn his living as a literary journalist and a lecturer notably, at first, in medicine. >>>

THOMAS ERSKINE

Born 10th January

1750

Represented Thomas Paine (charged with seditious libel for writing The Rights of Man)

1792

Accepts brief from the Society for the Suppression of Vice to prosecute the publisher of Paine's Age of Reason

>>>

Eloquence

Both Thelwall and Erskine were known and admired for their speeches. But they were for different purposes and different audiences. Erskine's skill was in addressing a jury, Thelwall's in addressing an open air crowd, a lecture hall or a class room.

Erskine was noted for the quality of his conversation. Boswell recalls Johnson and he meeting Erskine, then aged 22 and in the army (1772) at dinner and described him as 'A young officer in the regimentals of the Scots Royals who talked with vivacity, fluency and precision so uncommon that attracted particular attention'. Six years later Erskine rose as a young advocate in his first case to address Lord Mansfield, Chief Justice of the King's Bench. He was the last of five advocates for the defence. The case concerned a sea captain (Baillie) who had attempted to reveal corruption in the administration of the Greenwich Hospital for retired and disabled sailors. The directors (placemen of the Earl of Sandwich, who profited from the hospital himself) had retaliated with an application to prosecute him for criminal libel. Erskine's speech was incisive and clear:

'The peroration was made in quiet and solemn tones when every look was fixed upon him, where every syllable he uttered was eagerly caught up, where breathing was almost suspended, and as often as he paused, if a flake of snow had fallen, it would have been heard to fall'.

His speeches, however, had certain characteristics that would not be permitted today. He included descriptions of matters which had not been given in evidence, he assured the jury of his own opinion that the defendant was innocent and he played for the jury's sympathy by pointing out how exhausted he was but he was still carrying on. For example at the conclusion of his speech in Thelwall's trial he stated:

'Gentleman, when I came into this place, so far from thinking I should be capable to take up so much of your time, I did not even suppose that I should be able to stand before you. For weeks past I have been exhausted with fatigue, incurred in the discharge of my professional duty, and from the agitation of my mind, deprived of all repose…I have felt only that overpowering anxiety, from the task devolved upon me of defending the life of a British subject, and on a question, too, connected with the protection of the Constitution, and the most sacred rights of Britons! An anxiety which every man who breathes the air of England, ought, in such circumstances, to feel'.

Unfortunately, as he became successful, his party conversation became more 'me' centred. This can be a characteristic of barristers! Byron attended "a goodly company of lords, ladies and wits" which included Erskine and recorded:-

'There was Erskine, good but intolerable. He jested, he talked, he did everything admirably – but then he would be applauded for the same thing twice over … -and then the TRIAL BY JURY! I almost wished it abolished, for I sat next to him at dinner. As I had read his published speeches there was no occasion to repeat them to me'.

The circumstances of Thelwall's speeches required a different style. He could be addressing an open-air audience of thousands or a classroom of 20. Descriptions come from different sources. Thomas Amyot, a follower of William Godwin, describes attending a lecture where;

'(Thelwall) raves like a mad Methodist Parson: the most ranting actor in the most ranting character never made so much noise as Citizen Thelwall…If it had not been for the feebleness of his person, I should almost have been led to suspect he was going to beat his audience out of doors'.

A kinder reporter from the *Manchester Times* wrote:

'As an extemporaneous speaker, his powers are extremely remarkable. His words are happily chosen and happily placed. They express his precise meaning, neither more nor less and his figurative illustrations, in which he frequently indulges…seem to be inspired by genius…he seems to have deeply studied what he professes to teach…he takes full possession of the minds of his audience. Their smiles or tears are at his command'.

There is reason to suppose that Isaac D'Israeli based the character of Citizen Rant in his *Sketches of the Times* titled 'Vaurien' (1797) on Thelwall. At one stage:

'Rant acknowledges that his words are without substance on the printed page "but approach my tribune, hear my screams of indignation, my whispers of discovery, the foaming vengeance of my mouth, the thundering resolution of my arm and the audible contempt of my foot. I assure you, citizens, a living line of animation runs along the room'.

Erskine's biographer Stryker describes Thelwall as an orator thus:

'Thelwall had a superlative appreciation of himself. Among his numerous vocations had been that of teaching elocution, and there was in all England no one who exceeded his particular powers of declamation. He thought well of his own qualification as a mob orator. "He used to say" says Crabb Robinson, "that if he were at the gallows with liberty

Defends Thelwall, tried for treason, and wins his acquittal

1794

Becomes Lord Chancellor in the 'ministry of all talents' and chooses Trial by Jury as his motto

1806

Speaks in support of Habeus Corpus and later for the Anti-Slavery Bill

Dies 17th November, age 73

1823

to address the people for half an hour, he was sure he could excite them to a rescue"'.

Fortunately, perhaps, this test of Thelwall's eloquence was never required.

Principles

Erskine was a Whig in politics. His friends and colleagues included the reformers Charles James Fox and Richard Brinsley Sheridan. Curiously, though it was before his cab-rank declaration, he declined to accept the brief to defend Warren Hastings when impeached for corruption during his tenure as governor-general of India on the grounds that it was a Whig prosecution (Fox and Sheridan were among the impeachers). More consistently (to a lawyer), having defended Tom Paine and his publisher over *The Rights of Man*, he accepted the brief from the Society for the Suppression of Vice to prosecute the publisher of Paine's *Age of Reason*. After conviction Erskine urged Christian leniency to the Society over the matter of sentence. When the Society refused, Erskine returned the brief.

Essentially Erskine stood for freedom of speech and of the press and parliamentary reform. Particularly he regarded trial by jury as a fundamental part of the constitution. When he became lord chancellor in the short-lived Ministry of All the Talents in 1806, he chose 'Trial by Jury' as his motto. Consistently with these principles, he spoke in Parliament in support of habeas corpus and against the Seditious Meetings Bill (1795) and later for the Anti-Slave Trade Bill (1807). His litigation career ended when government returned to the Tories in 1807 because of the then-rule that the lord chancellor was not permitted to return to the Bar but was instead supported on a state pension. From then on he became an occasional though significant speaker in debates in the House of Lords until his death in 1823.

> "Erskine stood for freedom of speech and of the press and parliamentary reform. He regarded trial by jury as a fundamental part of the constitution."

Erskine's biographers are somewhat condescending about Thelwall although the importance of his trial was recognised. For example "Thelwall, who undoubtedly had a well-endowed intellect and was a true Jacobin, was full of self-conceit" and:

"the thirty-year-old James [?] Thelwall was in his way as much of an eccentric as his senior [and defendant in the preceding trial] John Horne Tooke….at the age of eighteen he became articled to a solicitor. But here again his taste for poetry and philosophy made the dull circumlocutions of the legal documents and perusal of dry lawbooks impossible and he began to earn a dubious and desultory livelihood by writing for the periodicals, varying these pursuits by speaking at Coachmakers Hall."

What did it mean-to be a Jacobin? Thelwall applied the term to himself but only 'because it is fixed upon us as a stigma by our enemies". One commentator described him as a "literal Jacobin" as he held a "burning sans-culotte desire for social equality". However the description of the constitutional reformists as Jacobins probably has more to do with their use of the term 'citizen', toasts to the French republic, opposition to the wars with revolutionary France and in adopting the 'liberty cap' as headgear than with any espousal of violent revolution as a means of change. That was not the case although that became the allegation, it may be surmised, encouraged by those features.

Thelwall clearly stood for parliamentary reform, universal suffrage, reduction of inequality between men and women and against slavery. Parliamentary reform was to be achieved by creating a mass movement, through propaganda and meetings leading to a National Convention of the people which would petition Parliament and the King for such, as lawfully permitted by the Bill of Rights 1689. These principles Thelwall continued to pursue and agitate for throughout his life, including after his trial and publishing his newspaper *The Champion* from his Lincolns Inn Fields address in the early 1800s. He died at the age of 70 in 1834 while on a lecture tour in Bath. He had lived long enough to see his work partly completed with the Great Reform Act 1832. In contrast to Erskine, in my view, his political thought went deeper and his political action continued longer.

Scope

There is a marked contrast the breadth of their respective activities. Erskine was first and foremost a trial lawyer, his addresses intended to sway a judge and jury. To a parliamentary audience, however, his style was less suited. His experience has been summarised thus:

'The bewitching effect on juries of his speeches in court was lacking and it became clear that he did not have the same powers of persuasion when addressing fellow MPs. Perhaps it is not surprising since jurors are expected to start with >>>

JOHN THELWALL

Born 27th July
1764

Tried for treason. Defended by Erskine, acquitted
1794

Writing includes The Natural and Constitutional Right of Britons to Annual Parliaments, Universal Suffrage, and Freedom of Popular Association

Continues to lecture on political reform

>>> *open and attentive minds whereas MPs are a promiscuous audience more impatient of argument and anxious to express their already held views'.*

It would be wrong to say Erskine as a parliamentarian and later lord chancellor was a failure – he made significant interventions on major occasions, for example the trial of Queen Caroline, and, as a judge, was noted for the courtesy with which he presided over trials. However he did not stand out as he did at the bar or add to the development of the law.

Thelwall, however, was a polymath. As well as his work for political reform he has made his name as a pioneer in the area of speech therapy, as a writer and as a teacher, as a teacher of elocution and public speaking, as a lecturer in science and anatomy as well as history and classics, and as a poet (numbering Wordsworth and Coleridge amongst his companions), novelist and playwright (albeit with a heavy political content). His *The Daughter of Adoption* dealt, for example, with the slave revolt in Haiti amongst other issues. Small wonder that he described his school or institute as "for the Cure of Impediments of Speech, Instruction of Foreigners, Cultivation of Oratory, English Composition and Polite Literature and the Preparation of Youth for the More Liberal Departments of Active Life". At least in part, that speech therapy developed as a specialised subject is down to Thelwall.

Thelwall's Trial

There were striking differences between procedure in the 18th century and today. First, the defendant was not permitted to give evidence in his own defence. Indeed, that was not so until 1898. Even then defence advocates were doubtful as to whether that was a good idea. The reason for the rule was that otherwise the principle that it was for the prosecution to prove its case and not for the defendant to prove his innocence would be undermined. However, when the rule was changed, some (Marshall Hall KC amongst them) were concerned that it would lead, in effect, to the defendant virtually being compelled to give evidence, contrary to the principle. This has become even more so since the judge has been expressly permitted to direct a jury that it can draw an inference adverse to the defendant from the defendant's failure to give evidence. In the 18th century the result of the rule was that the defendant had to rely on the eloquence of his advocate (if he had one) and subtle (or not so) introduction of evidence in his speech.

Second, by contrast the defendant was permitted to cross-examine prosecution witnesses (though it appears he could not ask leading questions). Thelwall took advantage of that as had John Horne Tooke in the preceding trial, and Tooke had even made short speeches along the way. It was probably because of that and his own view of his ability that Thelwall sent Erskine a note at the beginning of the trial stating 'I'll be hanged if I don't plead my own cause"" to which Erskine replied 'You'll be hanged if you do'. No more was heard of that issue.

Thirdly, it was 18th century practice for the defence to make an extensive speech outlining the case and evidence in support before calling any evidence. Although in theory both prosecution and defence have two speeches to open and close their cases, the defence, if there is an opening at all, nowadays usually confines what is said to the barest outline. To do otherwise the advocate would have to be very confident that the evidence he has opened is the evidence that will be given. Generally the advocate will prefer to make his main speech the one after the evidence so that it can match the evidence and also so that any explanation of the law can match the facts.

Erskine, however, in Thewall's trial, as he had in the two previous trials of Hardy and Tooke, chose to make the main speech himself and before the defence evidence was called. The closing speech for the defendant was to be given by his junior, Vicary Gibbs. Although we have no explanation from Erskine why he did so, I suspect it was because he judged that was the course required for the proper presentation of the case. In this, he showed an important characteristic of the best advocates: he knew when to vary the usual procedure to meet the circumstances of the particular case. The prosecution case had become one in which a question of law was prominent. Their witnesses had utterly failed to establish that there had been any plot of armed insurrection against the King or that Thelwall himself had called for violent overthrow of the monarch or constitution. It would be a serious misfortune if the defence's own witnesses resurrected those accusations – and none of them did. The next issue then became one of law: which interpretation of the Treason Act was correct? The jury had heard the prosecution explain its case. Erskine wanted to take the first opportunity to explain his interpretation to the jury. If they accepted the prosecution's case then Thelwall could be doomed. I suspect Erskine wanted it out of their minds as soon as he could, and he wanted to cast it out himself.

The issue was this. The Treason Act (1351) provided that a series of acts were high treason – including levying war against the King. All such acts required not only the intention to do so but also that the intention was acted on. On: treason, however, did not, that of 'compassing and imagining the

Lectures in science, anatomy, history and the classics. Writes poetry, plays and novels

Temporary withdrawal from politics	*Becomes elocution and speech therapist*	*Buys the journal The Champion through which he calls for parliamentary reform*	*Dies 17th February, age 70*
1798	1800	1818	1834

King's death' (for obvious reason). What was required, however, was both the intention and an 'overt act' which evidenced the intention. In the 17th century Sir Matthew Hale, both a judge and jurist, described an 'overt' act as 'any act' that 'must induce' the death of the King. The prosecution at Thelwall's trial argued that the constitution of Great Britain comprised both King and Parliament. By setting in train a process to alter the Constitution the defendants were carrying out acts which could lead to the King's death. Thelwall characterised and answered this as follows:

'If it be true that to seek to alter or ameliorate the laws and constitution of your country is high treason, because the people may possibly become unreasonable in their demands, and the government may possibly oppose their wishes, and a contest may possibly ensue, in which the King may possibly be deposed or slain, then farewell at once to any boasted exercise of reason! Farewell to political improvement!'

In his summing–up, the Lord Chief Justice directed the jury that the prosecution must prove that the 'purpose and intent' of assembling the National Convention was to 'subvert the Constitution and depose the King' and that Thelwall himself had that intention. However he did not expressly rule on the prosecutor's legal argument.

To be fair to the prosecutors and the judge what was in their minds, I suspect, was what had happened in France. In 1789 the National Convention imposed sweeping reforms of the French constitution and the system of land tenure by the aristocracy. In time there had been breakdown of authority, the execution of the king and the Reign of Terror. Horrified by this, the British government had set about the suppression of those it conceived to be home-grown Jacobins.

Fourthly, it was the prosecution who addressed the jury last before the judge's summing up (until 1836 when that order was reversed). This is an even greater encouragement to the defence to make its second speech the main speech. That this was the procedure made Erskine's decision to make the main speech before the defence evidence was called even bolder.

Finally, as a retired advocate I cannot resist commenting on the length of sittings. Twelve hours was not uncommon (9am to 9pm). I guess this was influenced by a practice that treason trials should be completed in a day. This was so at least up to the trial of Lord George Gordon arising out of the 'Gordon Riots' in 1780 in which Erskine had also appeared for the defence. Poor Vicary Gibbs was compelled by the judge to give his speech for the defence immediately after the conclusion of his examination of the defence witnesses at 7pm despite his plea that "he had not had a moment's time to consider the evidence".

In case you are all in suspense after a withdrawal of 1 hour 50 minutes, the jury returned a not guilty verdict. A crowd, loudly cheering, escorted Erskine and Thelwall to their respective homes, unyoking their horses from their coaches and members of the crowd drawing the coaches thither, where moving speeches were made. History does not relate whether the horses were ever returned!

What would have happened today when government again faces a serious security situation and a polarised community? I would like to think it would not react by seeking to distort established law. I would expect the prosecution to rely more upon witnesses from the law enforcement agencies and on intercepted information. I expect Thelwall would give evidence in his own defence. I suspect the judge would make rulings or rule on the prosecution's case as to the scope of treason. But I would like to think that the result would be as it was in 1794.

> "Thelwall clearly stood for parliamentary reform, universal suffrage and reduction of inequality between men and women and against slavery."

Conclusion

Hostettler sums up the result like this: *'The government finally had to scrap 800 warrants of arrest which had been prepared for immediate use following the anticipated convictions. Erskine and the juries, who came under his spell, thus prevented the government from using the doctrine of constructive treason to fetter freedom of speech …Lord Brougham [contemporary lord chancellor] was to say that if the people still enjoyed the possibility of free discussion about their rulers and their Constitution without dying the death of a traitor it was due to this great man'.*

And credit should also go to Thelwall whose determination in the cause of reform and courage in facing up to the risks of doing so also led to those results. In their different ways these were two great men and we owe them a great deal.

David Watkinson is a retired barrister and a vice-president of the Haldane Society. A fully-referenced version of this article is available on request. It is an adaptation of a paper delivered at the Second International John Thelwall Conference in Derby on 21st-23rd July 2017. From 1813-1821 Thelwall lived and worked at 57 Lincoln's Inn Fields, now part of Garden Court Chambers.

Who judges the judges?

The Upper Tribunal's unfair treatment of a first tier tribunal judge involved in immigration and asylum cases raises serious questions about procedure

It's hardly contentious to say that judges should apply the law fairly and objectively. It is, however, controversial to suggest that judges' ability to apply the law objectively is necessarily limited. Such a position was highlighted recently by Lady Hale who, quoting from Erica Rackley (a renowned academic writing on issues of judicial diversity), said: 'once we accept that who the judge is matters, then it matters who our judges are'.

It is reassuring to hide behind the idea that the law can be objectively and logically applied to the facts and that judges' beliefs and experiences don't come into it. But unless we accept that it matters who our judges are, the idea of applying the law fairly is lost and it is lost both procedurally and in terms of the outcome of a case.

Fairness (and compassion) were certainly lacking when Upper Tribunal Judges (UTJs) Ockleton, O'Connor and Smith of the Immigration and Asylum Chamber joined thirteen cases together [AA/06906/2014] with the aim of determining whether or not a first tier tribunal judge (FTTJ) was fit for purpose. The UTJs found that he fell wholly below the standard expected of a judge. Perhaps there are more important injustices that an appellate court's treatment of a particular judge, but the way this judge was treated obviously raises wider questions about how judges who are deemed incompetent should be dealt with, and also about whether or not people are treated fairly, with respect and compassion in our justice system. Beyond this, the tribunal may also have to contend with the perception that its actions were in some sense discriminatory.

There is no way to sugar-coat this determination. It is comprehensive in its conclusions and unyielding to the end. Not only is the FTTJ criticised for consistently not giving reasons, he is castigated for his inability to identify law and facts. They find nothing positive in the FTTJ's approach; the UTJs remark that a standard paragraph from the his judgments is 'not inaccurate', yet they can't help but write it off as 'odd' and having been inserted into his determinations to be used as an 'excuse'.

Judges are appealed frequently and sometimes they are criticised in the strongest of terms. There is nothing inherently unusual about that and of course there is collective interest in ensuring that judges are competent. But I have never seen thirteen cases joined together as a means of evaluating competence rather than to determine whether or not the decisions of the lower court were lawful. The UTJs justify their critique of the FTTJ's body of work at paragraph four: 'If, therefore, it should be that a review of a judge's decisions leads to the conclusion that there is something lacking in the skill or competence that he brings to his task, it is right that we should say so. A suspicion that might arise from examining only one case, as is normally the position on appeal, may be either confirmed or wholly dispelled by examining a group of cases'. Alarmingly the final sentence suggests that a judgment such as this is justified where there is a suspicion that a judge is not competent. While it is certainly the case that there would need to be a review of more than one judgment to determine competence it is not inevitable that this has to be done by joining multiple cases together to be heard before the tribunal in an appeal context. >>>

>>> I do not know what other kinds of interventions or complaints there may or may not have been, but weren't there any other options available? For example, the government's judiciary website outlines the principles of accountability and a procedure that could be engaged and replicated in the Immigration and Asylum Chamber:

Where the Court of Appeal criticises a trial judge, the judgment is always sent to the judge concerned, and where there is any reason for concern about the conduct of the judge it is sent to another more senior judge, in the case of High Court Judges the head of that judge's Division, and in the case of circuit judges to the Presiding Judge of that circuit. From time to time, if the Court of Appeal raises particular concerns, judges may be given advice and guidance, or training, or different workloads or types of workload by the responsible senior judiciary. In cases where the judge's conduct is seriously impugned, the relevant Head of Division or Presiding Judge will refer the matter to the Lord Chief Justice and Lord Chancellor.

This case would only have required selected senior judges to consider the FTTJ's recent cases to be able to take a view on competence. The Tribunal could also consider setting up some kind of system whereby representatives could flag up issues confidentially. There are other options for addressing serious issues when judges or advocates fall below the standards expected of them.

Plenty of other judges are criticised by the UT and Court of Appeal for their understanding of the law. To take a different example where judges are found to have willingly cherry picked evidence in ways that suited their predetermined views of cases questions about the judges' ability to be objective would surely be of concern. The competence of a judge in those circumstances would be called into question and yet no immigration judge found to have behaved like this has been treated like the FTTJ in AA.

The UTJs were careful to state that their decision as to the FTTJ's ability was not because he is blind. Their position is that it cannot be discriminatory to expect a person who is blind to learn and apply the law. Who would disagree with the idea they set out that a disability doesn't inevitably prevent you from being able to carry out your job? But nonetheless wider questions need to be asked about why this judge was so treated in this way in such a public manner. Maybe the case was so unusual it called for an unprecedented response but, as outlined above, plenty of judges have had serious findings made against them but no wholesale public examination of their competence ensued. The UT needs to question why a FTTJ who is blind was a candidate for such an unusual extensive critique and the perception that may have created. The UT should consider what procedures need to be in place to deal with recurrent issues of competence.

It seems that in this case it did matter who the judges were. Maybe a different panel of judges would have declined to join these cases together in the first place, maybe they would have considered the impact of failing to apply reporting restrictions and considered whether the decision to proceed in this way was in fact discriminatory or would appear to be. It isn't that the outcome of the cases or the critique of the judge would necessarily have been any different on a case-by-case basis but the method could have been more compassionate. And in the justice system that is a quality that is overlooked and underrated. But these qualities are also important to maintaining a robust justice system where justice is not only done but seen to be done.

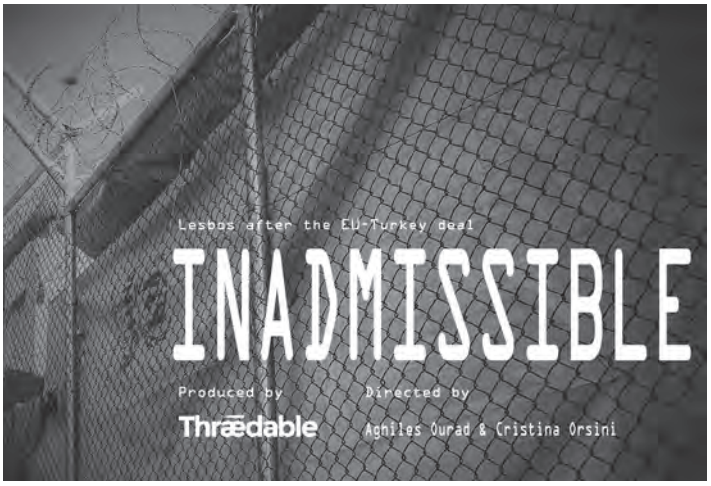
That who your judge is matters is a sentiment that immediately resonates with immigration practitioners. Our appellants often come to the tribunal at times in their lives when the stakes couldn't be higher. It matters who our judges are and their experiences matter because they colour their perspectives and this impacts not only the final decision a judge makes but on every decision that is taken, including how proceedings are conducted. Procedures need to be put in place and training given so the experience of the FTTJ in AA is not repeated and so a judicial culture where caustic commentary is acceptable is not fostered. If compassion, justice and fairness cannot be extended to other judges there is little hope for appellants in such an environment.

Picture: Jess Hurd / reportdigital.co.uk

Author: This article was written by an immigration lawyer who has asked to remain anonymous.

'This is Europe?'

Inadmissible. Directors: Aghiles Ourad and Cristina Orsini. www.youtube.com/watch?v=MEwPlafpbuw



Social enterprise Thraedable aims to raise funds for social projects that have substantial and long-term positive impacts and to raise awareness about little-told or misreported social issues.

In 2016 Thraedable's directors, Aghiles Ourad and Cristina Orsini, formed a partnership with the Lesbos Legal Centre. The centre provides vital legal advice to refugees stranded on the Greek island. As a result of this partnership, Ourad and Orsini have created this brief but compelling documentary which provides an insight into the daily existence of those who have sought safety in Europe, but instead have found themselves trapped in a living nightmare. A choice between a painfully long wait for their asylum claim to be processed in Greece, or possibly being returned to an uncertain fate in Turkey.

One would be forgiven for thinking that the seemingly endless flow of refugees that crossed the Agaean sea and inundated the Greek islands in 2015 and 2016 has now ceased. At that time we were surrounded by harrowing images of men, women and children flailing in freezing waters, or drowned on beaches after attempting the treacherous night crossing from Turkey to Greece. These images moved the world and compelled volunteers from all over Europe and other parts of the world to travel to the island to provide aid. Greece's fragile infrastructure groaned under the strain of the influx, and Europe watched chaotic scenes of refugees desperately trying to make their way overland to less hostile lands, or to join family members.

It couldn't go on. Suddenly, the Balkan route into Europe was sealed off in March 2016 and a deal was struck with Turkey. Ankara agreed to stop refugees from making the sea crossing and accept returns from Greece, in exchange for three billion euros in aid.

This stripped-down documentary captures the deathly vacuum that was created for those who arrived on Lesbos with hopes of moving on to mainland Europe, but found themselves at once trapped in a seemingly endless, inhuman processing mechanism.

'Benjamin' was rescued from the sea by the British Navy. 'That was the last time I feel care. That was the last time I feel love. That was the last time I feel humanity.' From there Benjamin was taken to Moria camp, a 'reception and identification centre' where he was registered. He was then offered the 'choice' of remaining in Greece to apply for asylum there, or returning to Turkey. Benjamin opted to remain in Greece and his processing began.

The conditions in the camps that are described in the film are incredibly grim. There is no need for me to describe the state of a block of 20 toilets shared between 4,000 people. But perhaps even more than the physical conditions, the film manages to evoke the suffocating boredom and hopelessness of being stranded in a camp with a ceaseless, monotonous routine, no variation in diet, nothing at all to do but queue, and wait. Benjamin laments that this is deliberate so that the refugees will give up and return to Turkey. 'It kills life. You will be living by day, but you are dead. You have no dream to achieve anything because you are just living survival.'

A number of refugees are interviewed during the film, and they give poignant, at times poetic accounts of their experiences. They describe the feeling of dread and hopelessness that is brought about by being confined indefinitely to the island, without access to information, not knowing what will come next. 'People are in Moria not knowing the crime they commit, or how long they will be there'. The oppressive atmosphere is palpable, and it is easy to imagine the impact this has on the mental health of those stuck on Lesbos. A volunteer counsellor is interviewed and describes her experiences of working with children as young as ten years old who have completely lost hope, to the point where they wish to die rather than remain in the limbo that they have been plunged into.

Many refugees on Moria can move around the island (although they cannot leave the island and travel to the mainland whilst they are being processed), but this is thrown into contrast as the filmmakers interview people detained in the closed part of the camp through thick wire fencing. We learn of the blatant discrimination which leads those of certain nationalities, such as Algerians, to be immediately and arbitrarily detained in prison conditions upon arrival.

At the time the film was made, there was a 12 month wait to go through the complex asylum procedure. Applicants would also be assessed as to whether they could be safely returned to Turkey, regardless of the validity of their asylum claim in Greece.

The filmmakers interview refugees who speak of their fear of the uncertain fate facing those who are sent back to Turkey – detention, violence, enslavement of children in workhouses and possible *refoulement* to the countries they are fleeing. There is no monitoring of these conditions by the EU or access to Turkey's camps, and during the course of the film there is a shadow cast by those we see featured in the film but who we later learn lost contact with when they were returned to Turkey.

There is a tight-lipped indifference by the Greek authorities and the EU at the possible fate of the refugees both stranded in the asylum procedure and those being returned to Turkey, but the documentary introduces us to the lifeline being thrown to those on the island. The volunteers at the Lesbos Legal Centre are working to provide information and advice on the asylum procedure to the refugees, to report on the conditions in the camps, waiting times and the discrimination and abuse being faced daily.

The filmmakers interview the volunteers of the centre about their experiences and we are heartened by their reassuring presence, doggedly exposing the injustices taking place. However, there is no happy ending. Even the grounding humanity of the volunteers sadly does not overcome our shame as Europeans at our response to the crisis and the terrible disappointment of the refugees as they realise that this – 'this is Europe?'

Amy Murtagh

Haldane Society's joint International Secretary Carlos Orjuela was instrumental in establishing the Lesbos Legal Centre. You can learn more about their work and support the work of the legal centre by donating via their website: *www.legalcentrelesbos.org*

First-hand portrayal gives hope

Threads by Kate Evans, Verso. £8.50 (usual price £16.99) – "50% off ALL our books! Ends 1st January" – www.versobooks.com/books/2458-threads

Threads is an evocative graphic book about the migrant camps in the Calais Jungle and Grand Synthe near Dunkirk in France.

The title links the historic lacemaking industry of Calais to the stories of migrants. Kate Evans' book is a first-hand account of her visits to both camps in early 2016 and includes the destruction of the South Jungle camp by French CRS troops when 3,000 occupants were evicted. Tragically both camps, homes to the hopes of thousands of those fleeing war and persecution, have now been razed to the ground and the occupants rendered destitute.

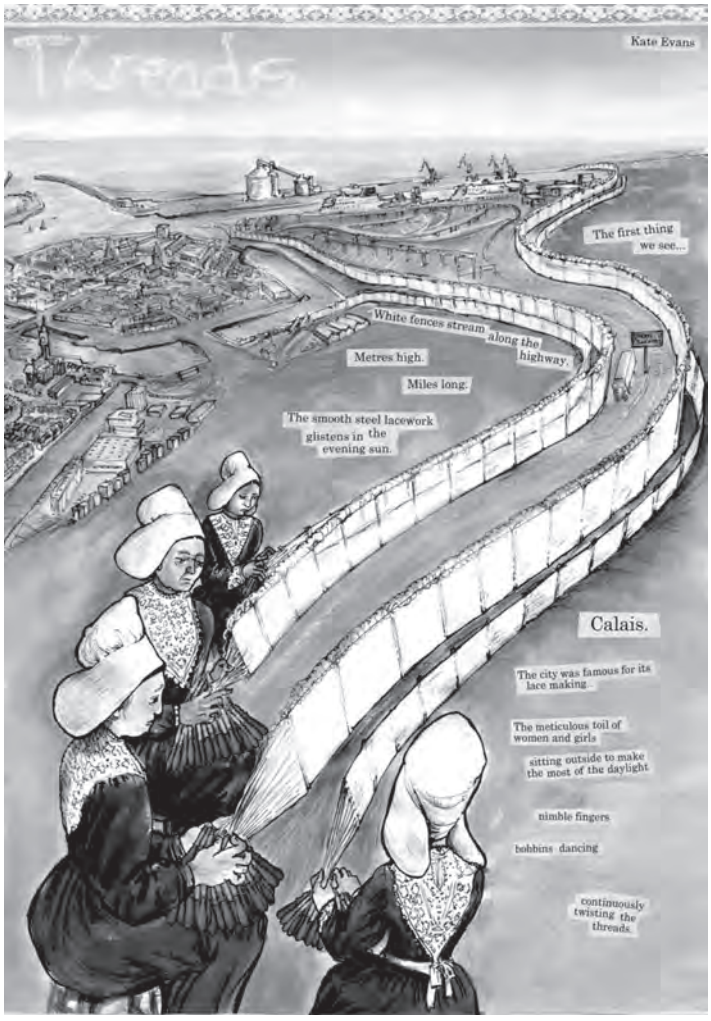
She chronicles her heartbreaking encounters with Evser, a little girl who has to deal with eviction, destitution and settling into a new camp in Grande Synthe, the brutality with which a child stowaway is treated by UK Border Police at the port, and many broken dreams.

Her brilliant illustrations show both the warmth and incredible acts of human kindness in the camp by occupants and volunteers; the violence that breaks out when the CRS start teargassing; the deaths whilst trying to stowaway in lorries; and the howling North Sea wind and freezing rain that breaks down the resilience of the occupants.

She shows her own distress at the inhumanity she witnesses and her joy at the tenderness she discovers. The story is intersected with facts about the causes of migration: Western intervention in wars, the funding of the arms trade, historical imperialism and ends with Calaisien lace being transformed into bricks for the wall around the Jungle built after its destruction in October 2016.

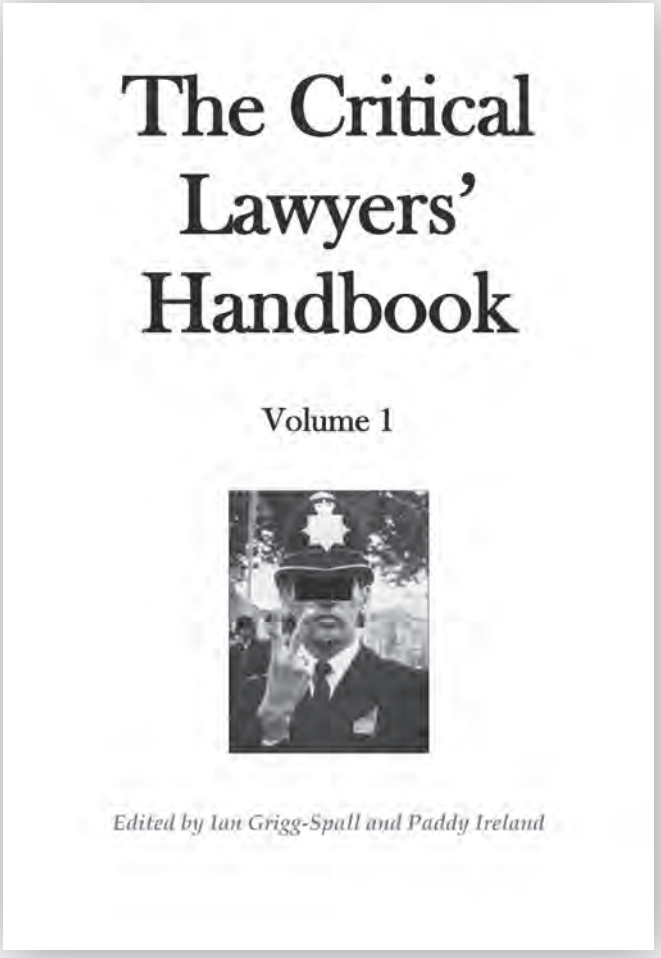
But her book is also full of hope and optimism of the ability of human beings to triumph over adversity. *Threads* is an excellent read, full of colourful portrayals of real people.

Wendy Pettifer



Guiding light still glows 26 years on

The Critical Lawyers' Handbook, Pluto Press, 1992, edited by Ian Grigg-Spall and Paddy Ireland



The Critical Lawyers' Handbook (*CLH*) wants you to criticise law in order to better understand it. This collection of concise essays invites you to ask if law is really all you'd hoped for as a system for mediating socio-economic conflict. Of interest primarily to those who already count themselves socialist lawyers, the book straddles a central tension between academia and legal practice. It is bloody brilliant.

Written in 1992 and with 26 essays and supplementary resources, the *Critical Lawyers' Handbook* reads like a who's who of the legal left. The book's many authors carried the torch for Marxist and socialist politics in an era profoundly hostile to those ideas.

Duncan Kennedy's classic 'Legal Education as Training for Hierarchy' jumps out from the contents page, and remains as fresh and indispensable to aspiring lawyers as when it first appeared. A humorous postmodern offering on legal pedagogy from Costas Douzinas and Ronnie Warrington shares space with Bill Bowring's more deliberately practical analysis of international law's role in the struggle for Palestinian liberation.

The *CLH* doesn't try to be a practitioners' text: it is at once too playful and too political for that. Michael Mansfield's contribution is perhaps the most deliberately radical, outlining practical, tightly-defined suggestions on how to bring a critical perspective to practice at the bar. Defending this politicisation, many of the *CLH*'s contributors stress that law cannot be politically neutral.

This fabled neutrality poses a problem for socialist lawyers. 'If you don't like the statute,' judges seem to say, 'take it up with Parliament.' The liberal constitution rests on this separation of powers, and on the hermetic exclusion of what is axiomatically 'political' from the legal realm. In response, the *CLH* offers a theory of the legitimating function of law-as-process, thereby provoking productive consideration of what alternative systems of legitimation, current and prospective, might look like.

At one point Joanne Conaghan and Wade Marshall offer the disarmingly simple definition of 'a system' as that which 'does some things consistently'. By that definition they invite us to question whether law is a coherent system at all. Yet the component essays that make up the book's own 'system' themselves generate inconsistencies: of approach, of intent, of tone. Those looking for an overarching unity of purpose in the *CLH* won't find it.

Where law proclaims, and depends on, the universality of its claims to truth and justice, the political left embodied in this collection embraces the chaotic variety of a living, breathing humanity. Like the Haldane Society itself, who famously refused to eject members with radical Marxist politics, so the *CLH* delights in the diversity of its contributor's experiences and ideologies.

Politically wise, at times the book also shows its age. Moulded in a profoundly different historical moment to our own, a pessimism colours many of its pages. At its worst, it strays into that most politically debilitating of theoretical approaches: critique for critique's sake. That pessimism – that sense of being the outsider left to criticise an unstoppable neoliberal project – was surely a product of the political context: the collapse of 'actually existing socialism' on the international stage, coupled with Tory rule here.

These days we have much more to hope for. Social-democrats have broken through on the world scene, and a buoyant, if fragile, Corbynism expands the scope of political possibility in the domestic sphere. The book provides a long-term perspective on both what has changed and what has stayed the same on the legal left.

What stayed the same? There's still a lot of theory. Still an economic base and a legal superstructure, and still attempts to chart the relationship between the two. Still, socialist lawyers cultivate what's collective, social and emancipatory about law, even though we still entertain the possibility that less – or even no – law is the preferable utopian project.

What's changed is the power of the left to effect change. The administrators of a decaying neoliberal paradigm tighten borders, restrict vital public services, and deploy racism and xenophobia to sow division among workers and the poor. And as the *CLH* sets out to document from a variety of perspectives, law has always been one of the tools used to carry out these divisive policies. What separates 1992 from today is the re-emergence of a left that has the courage to implement an alternative vision for society.

Criticism of political reality necessarily precedes socio-economic change. Dialogue aimed at understanding our problems precedes us acting together to solve them. The *CLH* succeeds in its aim in teaching us how to criticise and discuss legal reality. But criticism exists in tension with the power to imagine and construct. For all the valuable efforts of critical lawyers, a time may be coming that will require us to revisit our choice of equipment. The time may come for us to draft and embrace an 'Imaginative Lawyers' Handbook'.

Whatever path we choose in these interesting times, what is certain is that any socialist lawyer will benefit from revisiting this book.

Franck Magennis

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