Socialist Lawyer

Magazine of the Haldane Society of Socialist Lawyers **#79** June 2018 **£3**

Haldane Society of Socialist Lawyers

PO Box 64195, London WC1A 9FD
www.haldane.org

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

Socialist Lawyer

Editor: Nick Bano
Assistant editors: Russell Fraser & Tim Potter
Design: Smith+Bell (info@smithplusbell.com)
Print: Rap Spiderweb (www.rapspiderweb.co.uk)
Cover picture: Jess Hurd / reportdigital.co.uk
Online distributor: Pluto Journals (www.plutojournals.com)

MIX Paper from responsible sources FSC® C021423

ISSN:
Print 0954-3635
Online 2055-5369

Picture: Jess Hurd / reportdigital.co.uk

Number 79, June 2018

Hard to accept

In the last *Socialist Lawyer* we praised the higher education workers' recent industrial action. A strike that results in a total concession by management is a rare and wonderful thing. After the strike the UCU consulted its members, beginning with two simple but important questions: do you wish to accept or reject the employers' offer? If the offer is rejected are you prepared to take sustained industrial action?

Those two questions have haunted legal aid lawyers for a decade or more. Every year we've seen a fresh decline in pay and conditions, every year more and more people are failed by a crumbling justice system, but every year we seem to drag ourselves into work muttering the answers 'accept' and 'no'.

Needless to say, many Haldane members are instrumental in organising colleagues to take a stand against worsening standards. I doubt that many readers of this magazine voted to accept the pay cut that the government offered to criminal defence barristers a few weeks ago, but the result of the ballot was yet another disaster – another failure by legal professionals to take action in defence of the justice system.

In this edition we can take inspiration from the ongoing strike at the French national asylum court. Dr Jessica Hambly explains how lawyers are taking an effective and principled stand not just against the erosion of their own working conditions, but against damaging a justice system that appears to be far more humane and just than its UK counterparts. Also, Wendy Pettifer continues the 'people's history of legal aid' series with an account of how the original Manchester Law Centre was started. Her account of building a community advice centre from the ground up – together with the wonderful pamphlets that Wendy and her colleagues produced – shows what can be achieved despite the government's best efforts to defeat us.

We are also delighted to feature a fascinating piece by Patrick O'Connor QC on the politics of neoliberalism, which explores the bizarre and reactionary politics behind a book called Equality, written in 1979 by Thatcher's political guru Keith Joseph and a young barrister and commentator called Jonathan Sumption.

In the international sphere, Lucy Chapman gives a detailed account of the legality and human rights impact of the USA's long-standing embargo of Cuba. In April 2018 Jim Nichol went to Chios in Greece, on behalf of the Haldane Society, as part of an international delegation of lawyers to observe the trial of the Moria 35. The scandalous proceedings, which led to the depressingly predictable outcome of 32 convictions, that is recorded in his report should be a source of deep shame for the Greek authorities.

Laurène Veale describes the harmful effects of video-conferencing as a cheap stand-in for due process in England and Wales. Ripon Ray argues that recent reforms to council tax enforcement have led to a punitive replication of the Poll Tax scheme, and calls for community resistance. We are also very pleased to review a range of political and legal books, including a refreshingly forthright analysis of the bestselling *The Secret Barrister: Stories of the Law and How It's Broken* and a timely piece on *Ahed Tamimi. A Girl Who Fought Back*.

Nick Bano, editor,
socialistlawyer@haldane.org

Towards a Ministry of Labour: it could transform workers' lives

The Labour Party's manifesto for the 2017 general election contained many provisions for radical labour law reform. At the heart of these proposals was the plan to introduce a new Ministry of Labour. This is a recommendation that hit the spot, for rarely can the plan to create a new government department have met with such enthusiasm and expectation.

Although first proposed by the Institute of Employment Rights (IER) in 2013, and again in 2016, the one thing that unites the proposals for labour law reform that are emerging from various places throughout the labour movement is the consensus that we need such a department. The IER's ideas have been mimicked recently by several other think tanks.

There is of course nothing new in the proposal that we should have a new department to represent the interests of workers. A Ministry of Labour was first established by legislation in the UK in 1916 and continued in operation for much of the twentieth century, with a minister of cabinet rank during that time.

Assuming new responsibilities after the Second World War, the ministry underwent various iterations as the Ministry of Labour and National Service, then the Ministry of Labour again, then the Department of Employment and Productivity, and then simply the Department of Employment, before being abolished by the Thatcher government.

Picture: Jess Hurd / reportdigital.co.uk

McDonald's workers striking for £10 per hour, an end to zero hours contracts and union recognition. A Ministry of Labour would empower trade unions.

As a constitutional matter, the creation of a new department is now much more straightforward, with legal powers available to the Prime Minister under the Ministers of the Crown Act 1975. Indeed, it is a simple process that can be done by delegated legislation under the 1975 Act, avoiding the need in the modern era for a specific act of Parliament.

The major issues are thus political not legal, notably the personality of the person appointed as secretary of state, and the functions that would be transferred to the new department. To be effective a new ministry needs to be led by a strong minister and be at the centre of a wide range of activities, working closely with a number of other departments.

The purpose of the new minister will be to give voice to workers at the highest level of government. It is no longer acceptable that 31 million workers do not have a voice in government, when business has the huge behemoth of the Department of Business, Energy and Industrial Strategy (BEIS).

And it is no longer acceptable that the workers' interests should be represented by a junior minister in BEIS, with the minister's priorities determined by the business interests rather than the interests of workers and trade unions. The secretary of state for labour should have his or her own department and, once again, his or her own seat at the Cabinet table.

As a voice of workers in government, it is expected that there will be a transfer to the labour ministry of the various functions currently performed by a number of existing departments. These include most obviously BEIS (employment rights and trade union rights), as well as the Foreign & Commonwealth Office (international labour standards).

But it should also include the labour functions of the Home Office (dealing with migrant workers), the Department of Education (dealing with skills and training) and the DWP (occupational pensions). It would also involve a transfer of health and safety at work, as well as responsibility for public bodies such as ACAS.

Central to the work of a new ministry, however, must be the oversight of the expansion of the trade union role as a principal lever for social, economic and political transformation. It is hard to exaggerate the role or

April

14: A coroner's policy of refusing to prioritise cases based on the religious traditions of the deceased was found to be unlawful and discriminatory by the High Court. The policy, which inner-north London's chief coroner Mary Hassell had applied, particularly affected Muslim and Jewish groups.

'He wasn't a racist in the crude sense.' UKIP's Neil Hamilton defends Enoch Powell on the 50th anniversary of Powell's nasty racist "Rivers of Blood" speech.

May

6: Within days of being appointed after the Windrush scandal, the new Home Secretary Sajid Javid was criticised by the High Court in a claim brought by a wheelchair user who lacked mental capacity. When the claimant was released from detention the Home Office had provided accommodation in a building that had steps, and where nobody answered the door.

14: Casualties peaked during the six-week Great March of Return in Gaza: 59 or 60 Palestinians were shot dead and one Israeli soldier was slightly wounded. So far 123 Palestinians have died and 14,000 have been injured since 30th March 2018.

responsibility of the department in this respect, the aim being to embed the voice of organised labour throughout the economy.

This means the Ministry of Labour taking the lead (and being given the powers) to expand the coverage of sector-wide collective bargaining. Every worker must be protected by a collective agreement negotiated at sector level, to raise the coverage of collective agreements to something approaching its pre-Thatcher norm in excess of 80 per cent of the workforce.

But in addition to enhancing the integration of trade unions at sectoral level, the other principal role for the Ministry of Labour will be to enhance their penetration at company level, with a greatly simplified trade union recognition procedure to ensure that the workers' voice is heard from the cloakroom to the boardroom in every enterprise.

This of course is only the start. The Ministry of Labour will be a major instrument for radical change, not only in terms of trade union engagement and greatly enhanced working conditions but also in re-establishing collective bargaining as the principal form of workplace regulation. The aim should be more power, less law.

So the proposal is not just for a new government department with a catchy title. It is for a ministry with a mission to develop and implement the agenda for workers' rights, a ministry to empower trade unions and their members, and a ministry by whose labours the working lives and the prospects generally of the people of this country will be transformed.

Prof Keith Ewing, president, IER

'Think of the Black Death in the Middle Ages.' UKIP's (then) general secretary Paul Oakley after his party is nearly wiped out in the local elections.

Young Legal Aid Lawyers

This regular column is written by YLAL members. To join or support their work, please visit their website **www.younglegalaidlawyers.org**

Make sure the review team hears your voice

When the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) was passed the government pledged that its implementation would be followed by a full review of the impact of the reforms. Since then the issue of legal aid has been kicked into the long grass.

Consistently the quarterly legal aid statistics have shown that fewer and fewer people are accessing legal assistance under the legal aid scheme. It is easy to see why those of us working in the sector feel there is no doubt that things are at crisis point and that major improvements must be made quickly if the government wishes to continue to provide access to justice and uphold the Rule of Law in a manner which, is often referred to as 'the envy of the world'.

The review has felt long overdue. Now on our fifth Secretary of State post-LASPO it has hardly seemed that justice, and in particular Legal Aid, have been priorities of this government. In January 2017 Oliver Heald, then Minister for Legal Aid, announced that the review would commence, and would be ready to report in April 2018.

Of course here we are in July 2018 and that report is yet to be received. We have now been told that the consultation stage will close at the end of September and the team hope to be ready to report by the end of this year.

The review will look at the effectiveness of the reforms, as measured against the Objectives set out by the coalition government. The difficulty this brings is that within the four objectives the words ensuring access to justice are not mentioned at all.

YLAL have been deeply concerned by this omission and the resultant difficulty in ensuring the review team and the Ministry understand the reality of the enormous impact LASPO has had on the ability of those who require legal aid, and who would have qualified under the previous scheme, to now access justice.

Those of us working in legal aid know that the sector is at crisis point.

Picture: Jess Hurd / reportdigital.co.uk

The objectives mean that instead the review will look at whether LASPO has: discouraged 'unnecessary and adversarial litigation at public expense'; targeted 'legal aid at those who need it most'; made 'significant savings to the cost of the scheme'; and delivered 'better overall value for money for the taxpayer'. Due to the focus of these objectives, and their failure to consider the availability of true access to justice as being something a legal aid system should be measured by, the review may find that LASPO has been successful in its aims. The legal aid budget has been slashed, the numbers of new cases have been too, 'those who need it most' can be as narrowly defined as the government wishes; measured against the MoJ's objectives these factors can be played as successes.

Therefore it is our responses which must make clear the >>>

Young Legal Aid Lawyers

>>> reality of the situation, that these successes come at the cost of access to justice and this cannot be a price worth paying.

YLAL understands that many working in the areas of law which were traditionally publicly-funded are wary of this review, based on experience many believe the decisions are already made and the evidence provided will be made to fit the desired conclusions. The review team's failure to properly engage with many relevant bodies has also understandably increased the cynicism.

YLAL believes that despite the potential for this review to have unwanted results we should take the time to respond. We wrote to and met with Mathew Shelley and his team, we attended the LAPG conference to provide further detail of our experiences and we will be preparing a full written response by September 2018.

We encourage you to likewise provide all of the information that you reasonably can. Practitioners can provide a unique and vital view of the damage this Act has done, and will continue to do, to both our clients and our profession, if we are all committed to improving access to justice for the future we must ensure that this review team, and the government, are made to confront the devastating impact the LASPO reforms have had.

Siobhan Taylor-Ward
www.younglegalaidlawyers.org
@YLALawyers

After Ireland's historic vote on abortion (see right), protestors in Belfast demanded that it's time for women in Northern Ireland to have the same rights.

Lawyers aim for justice in Turkey

See you at the Mathematical Village in Izmir, Turkey! The last *Socialist Lawyer* international report anticipated that the next meeting (twice a year) of the Executive Committee of the European Lawyers for Democracy and Human Rights (ELDH, *www.eldh.eu/about*) would take place in Düsseldorf.

However, ELDH, along with the International Association of Democratic Lawyers (IADL) is a sponsor of the Second International Human Rights Academy of the Aegean (IHRAA) which will take place on Friday to Sunday, 2nd to 4th November 2018, in an idyllic setting. This is the Nesin Mathematical Village, in Şirince, in the mountains about one hour from Izmir in Turkey. The theme of the event will be "International Human Rights Regime in Crisis". The event is also organised by one of the two ELDH member associations in Turkey, Platform of Lawyers for Freedom (Özgürlükçü Hukukçular Platformu, ÖHP), and the Solidarity Academy of Izmir.

Bill Bowring, President of ELDH and joint International Secretary of Haldane, spoke at the first IHRAA in 2017, as did Fabio Marcelli of Haldane's sister organisation, the Italian Democratic Lawyers. Haldane's Carlos Orjuela also participated. Bill Bowring will also speak at the event in November, together with Turkish and international speakers, from Catalonia and elsewhere.

Our colleague Deman Güler of ÖHP has proposed that the next Executive Committee of ELDH should take place in Izmir immediately after the IHRAA. This invitation has been accepted with enthusiasm, and all Haldane members are invited to the IHRAA and to the EC in Izmir.

On 9th May 2018 ELDH General Secretary Thomas Schmidt, a German trade union lawyer, together with Elvan Olkun, ELDH EC member, and visited Selçuk Kozagaçli, the President of Haldane's other sister organisation in Turkey, Progressive Lawyers Association (Çağdaş Hukukçular Derneği) ÇHD, in Silivri prison camp. Selçuk has been in detention, in solitary confinement, since November 2017, as have more than 20 members of his Istanbul Peoples Law Office. Silivri is a huge prison campus with 11 prisons. Selçuk is detained in a special prison. In the same prison judges, prosecutors and officers and journalists are detained, mostly alleged Fethullah Gülen members. Selçuk is accused together with 19 other ÇHD lawyers of membership in a terrorist organisation (DCKP-C). There are other charges against him for: insulting or threatening

May

23: At their inaugural meeting, the group Behind the Gown publicly described the prevalence and seriousness of sexual harassment by barristers.

25: The Irish electorate voted to amend the constitution, removing the almost-absolute prohibition on abortion. More than 66 per cent of voters supported the amendment. A bill has passed the Oireachtas and awaits presidential approval.

Picture: Jess Hurd / reportdigital.co.uk

Kurdish activists protesting in London in May against the visit of Turkish President Tayyip Erdogan, who they accuse of being a war criminal.

officials; insulting the President; and removing the seal at his own office. ELDH will send observers to the trial which will start in December 2018.

The last international report focused on the Permanent Peoples' Tribunal (PPT) on Turkey and the Kurds, held on 15th-16th March 2018 at the Bourse de Travail in Paris. On 25th May 2018 the Presentation of the Verdict of the Judges of Permanent Peoples' Tribunal on Turkey and the Kurds took place at the European Parliament, Brussels, on 4th May 2018. The documents of the PPT and the Verdict of the international judges, a damning indictment of Turkey's criminal activities, can be downloaded at *www.eldh.eu/declarations/publication/presentation-of-the-verdict-of-the-judges-of-permanent-peoples-tribunal-on-turkey-and-the-kurds-301/*.

On 14th June 2018 ELDH issued a Statement, drafted by Thomas Schmidt and Bill Bowring, demanding the immediate release of Selçuk and the other ÇHD members from prison. This may be seen at *www.eldh.eu/declarations/publication/eldh-demands-the-immediate-release-of-chd-lawyers-from-prison-304/*.

ELDH will continue to send observers to a number of ongoing trials in Turkey. Rose Wallop and Stephen Knight of the Haldane EC have already acted as observers. Please contact Bill Bowring or Thomas Schmidt if you would like to undertake an observation mission. The ELD Guide to Trial Observation is at *www.eldh.eu/fileadmin/user_upload/ejdm/events/2017/ELDH_Guide_on_Trial_Observation_2013.pdf*.

On 9th to10th June 2018 Bill Bowring was invited to participate in a workshop in Ankara, organised by academics who have been dismissed and some prosecuted since the failed coup in July 2016, and entitled "Academic Freedom as a Human Right". This was part of a project "Coping With the State Of Emergency: Bringing the Human Rights Academy To Society" which is funded by the European Commission. This very good use of EU money is providing subsistence for about 40 academics who have been dismissed. Bill Bowring's presentation was entitled: "Higher Education in Danger: Turkey, Russia and England".

On 21st June 2018 Bill gave an interview to the Turkish progressive web channel T24. This can be viewed in Turkish at *http://t24.com.tr/haber/muhalefet-guclu-ve-oldukca-canli-fakat-otoriter-ve-muhafazakar-rejim-kendini-bu-direnisi-kirmaya-adamis,654953*. English version on request from Bill.

On the same day Bill represented ELDH and Haldane in Brussels at the Bureau of the IADL. This meeting was inspiring and heartening, with 15 countries, and six continents around the table. Member organisations from Algeria, Belgium, Brazil, Egypt, the UK, Greece, Italy, Japan, Kuwait, Palestine, Philippines, Portugal, South Africa, Togo, USA were represented by eight women and seven men. Carlos Orjuela participated by WhatsApp, and reported on the work of the Legal Centre Lesbos.

IADL continues to be brilliantly represented at the United Nations in Geneva, New York, and Vienna. The next Congress (every four years) of IADL will take place in Algiers, and preparations were discussed, along with solidarity work in the Philippines, Turkey, and Palestine – Raji Sourani of the Palestinian Centre for Human Rights in Gaza attended.

All Haldane members will be very welcome in Izmir – and in Algiers!

£724bn
Total wealth of the 1,000 richest people in Britain, (*SundayTimes* Rich List). They have **trebled** that wealth since 2009.

29: Andy Tsege, a British citizen and a political opponent of the Ethiopian government, was pardoned and released from death row. Tsege was abducted while transiting through Yemen in 2014. Despite direct requests from the heads of the Law Society and Bar Council in 2017, the Foreign Secretary Boris Johnson refused to call for Tsege's release.

50 people **died in police custody** or after contact with them in **2017** in England and Wales. **45** died in **2016** – a total of **1,654** have died since **1990**.

29: Stephen Yaxley-Lennon, aka Tommy Robinson, the founder of the far-right English Defence League, was jailed for 13 months for contempt of court, having previously received a warning and suspended sentence for similar conduct. Yaxley-Lennon pleaded guilty.

150 years on: rights for the workplaces

In the late 19th century UK workplaces were characterised by long hours, unsafe working practices and few, if any, employment rights. The relationship between worker and boss was based on the concept of master and servant, with local magistrates setting wage levels and workers facing criminal charges if they dared to 'conspire' to object.

During the industrial revolution the working relationship was 'updated' and the doctrine of freedom of contract was introduced. Freedom of contract, however, simply meant that whatever terms the worker was forced to agree would then be enforceable in law, no matter how unfair. When the second mate on a ship died 10 days before his arrival in Liverpool after a long voyage, the court (in *Cutter v Powell*) held that the 30 guineas payable on arrival was not recoverable by his grieving widow since the seaman had failed to complete his side of the contract!

Fast-forward 150 years and what do we see? Workers in the 21st century once again at the beck and call of the employer. Three million people are stuck on zero-hour contracts, agency work or so-called self-employment and around five million workers cannot enforce their rights with their 'parent' company because they are outsourced or working for a franchise. McDonalds staff and NHS hospital cleaners, for example,

It's time for change.

cannot hold their parent organisations to account because the workforce has been fragmented, franchised and fobbed-off with inadequate protections. In such a fractured labour market companies are getting away with murder – literally. In one firm, a delivery driver died after missing hospital appointments for his diabetes because he was too afraid to take a day off and lose the £150 his company charged for taking time out.

Technology may have moved on, with the mobile phone replacing the dock-side as the hiring point. But old-fashioned exploitation remains rife with workers once again being denied rights, security and fairness.

But it need not be this way. Employment patterns are based on the political, industrial and economic policy decisions made by governments. For far too long UK governments have prioritised free markets over fairness, arguing that regulation is bad for business and that managers should be left free of interference from the state or trade unions. That ideology has failed. It's time for change, and the Institute of Employment Rights has a plan to modernise workplace relations.

First, we need a Ministry of Labour to ensure that the UK's 33 million workers have a voice at the cabinet table and a say in an industrial strategy that determines the levels of investment, training and employment needed to help grow a strong, planned, productive economy.

Second, we need every worker to be covered by a national agreement that provides a floor of rights below which no worker should be forced to work. So, whether you're a teacher or a cleaner, a driver or a care worker, you will be protected by a set of standards negotiated by unions and employers in your sector and enforceable by law.

Third, we need to strengthen and extend employment rights so that all workers are protected, and to strengthen our enforcement mechanisms so that the unorganised and vulnerable are not left at the mercy of employers.

As we look back at 150 years of trade unionism and forward to the election of a government that can truly claim to be the party of the working class, let's proudly embrace a radical strategy that will drag our current workplace practices out of the 1870s and into a modern world fit for the many, not the few.

Carolyn Jones, Institute of Employment Rights

Pictures: Jess Hurd / reportdigital.co.uk

Pro Palestine demonstrators protest outside

She fought

In December 2017 the name of Ahed Tamimi became known across the world, following an altercation with Israeli soldiers who had entered the curtilage of her home in the village of Nabi Salah, West Bank, occupied Palestinian Territory.

Subsequently arrested in a night raid on her home by the military, Ahed was charged and sentenced in a military court. The altercation, during which Ahed slapped one of the soldiers, was captured on film. A worldwide campaign developed demanding her release – an Amnesty petition that quickly gathered over 1.3 million signatures being just one example.

A new book, *Ahed Tamimi. A*

May

30: A survey found that a number of prominent lawyers and legal organisation believed that the Criminal Cases Review Commission is not fit for purpose.

34,361

The number of migrants and refugees known to have died trying to reach Europe since 1993.

June

7: The UK Supreme Court technically dismissed an appeal challenging the lawfulness of abortion laws in Northern Ireland but a majority of justices said that the existing law was incompatible with human rights law in cases of fatal foetal abnormality and sexual crime.

12: Members of the Criminal Bar Association narrowly voted to accept a deal proposed by the Ministry of Justice, by which advocates' fees would be calculated on a different basis but advocates would receive a real-terms pay cut.

Downing Street on the eve of Benjamin Netanyahu's visit to London on 6th June.

back – and inspires

Girl Who Fought Back, puts a personal but very public story in its historical context, and is the result of work by a group of activists who visited Nabi Salah in early 2018 having made respectful contact with Ahed's family.

It opens with a moving letter written to Ahed by her father Bassem Tamimi, while she was awaiting trial, on the occasion of her 17th birthday in January 2018.

It finishes with a chapter written by Ahed's aunt Manal Tamimi, who writes of the centrality of the role of women in the resistance to the Israeli occupation and the emergence of a new generation of young people such as Ahed, drawn into active non-violent resistance since the end of the second intifada in 2005.

Manal Tamimi conveys the militarism of that particular uprising by way of contrast with the first intifada (which started in 1987), by outlining the complexities and need of new strategies, by explaining the importance of international solidarity, and by describing a struggle named, defined and articulated only within Palestine.

The recent story of resistance in Nabi Saleh itself emerged from the seizing of a village spring by a neighbouring Israeli settlement in 2008. Owned by Ahed's father's uncle, the spring had been used to irrigate olive and fruit trees and children from the village would swim there. On its seizure it was guarded by armed settlers, who then destroyed the surrounding olive trees.

Weekly non-violent protests developed and continued, and Bassem Tamimi and Ahed's wider family played a key role. The protests were frequently met with tear gas grenades and rubber-coated steel bullets and the price has been high in terms of loss of life, injuries and arrest.

It was in this context, following the severe injuring of her young cousin by a soldier's bullet to his head, that Ahead slapped one of the soldiers who had entered the family's terrace.

The book is broken down into distinct chapters. It sets out the genesis of the writers' contact and involvement with Ahed's family and details the historical context. This provides useful information for those unfamiliar with a conflict that at times appears intractable from the point of view of Palestinian self-determination. A chronology is set out and multiple references signpost to other materials.

There is comprehensive coverage of the system of juvenile detention of Palestinian children in the context of military occupation and an explanation of relevant international law in a manner that will further the understanding of those committed to long-term advocacy and solidarity work.

Ahed Tamimi's case has arguably done more than any other to bring to wider attention the iniquitous disparity of treatment between Palestinian children who are dealt with under Israeli military law and the children of settlers living in the West Bank and annexed East Jerusalem who are dealt with under the Israeli civilian juvenile system.

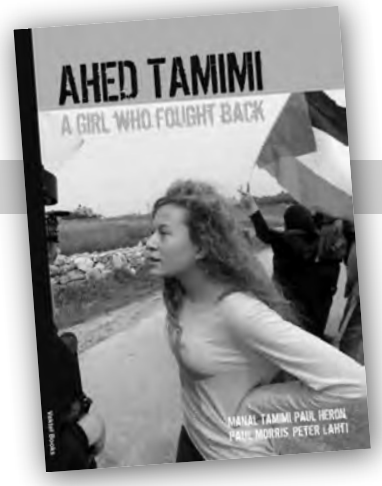
The book references the long-term work of organisations such as Defence of the Child International Palestine and Military Court Watch and indeed the stating and re-stating of the material facts of this one facet of the Israeli occupation is necessary.

The book is timely. It was written prior to Ahed's sentencing to eight months' imprisonment following a plea bargain and subsequent refusal of parole. And before the marches of return in Gaza where the value of Palestinian lives in the eyes of the Middle East's one so-called democracy has been lain bare before the world once more.

Already produced in several languages, monies raised from sales of the book will be donated to the Palestine Legal Defence Fund. It is a publication that will nurture the understanding of grassroots organisations – trade unions, social justice networks and so on. Whether those networks are in large urban centres, smaller towns or elsewhere, they are all part of the broadening international movements of solidarity committed to justice in Palestine.

John Hobson

Ahed Tamimi. A Girl Who Fought Back (Manal Tamimi, Paul Heron, Paul Morris & Peter Lahti, Vaktel Books, March 2018). See: www.ahedtamimibook.com



119 Palestinians in Gaza killed by Israeli forces since protests began in March against the seige. They demand a return to their land, seized 70 years ago.

13: the UK Supreme Court ruled against Pimlico Plumbers in a case brought by a worker who had challenged the company's decision that – despite stringent controls over his working condition (including a refusal to allow him to work fewer hours after suffering a heart attack) – he was self-employed.

15: Tory MP Christopher Chope single-handedly wrecked a private member's bill that would have made 'upskirting' a criminal offence. The government has since indicated that it will re-introduce it as a government bill.

Court on strike: French asylum reforms trigger months of action

Months of strike action has significantly impacted decision - making at the French national asylum court (Cour Nationale du Droit d'Asile, or 'CNDA').

Refugee lawyers and court workers engaged in simultaneous strikes, which peaked through February and March. Action was triggered by the French asylum law reforms currently passing through the final stages of the legislative process, and the rising tide of a 'logique comptable', or target culture, seen as impeding access to high quality and fair asylum procedures for asylum seekers and increasingly poor working conditions for court workers and lawyers.

The CNDA is the French administrative jurisdiction charged with hearing appeals against decisions by the OFPRA (French Office for the Protection of Refugees and Stateless Persons). Operating under the highest French administrative court (the Conseil d'Etat, or Council of State), it is a jurisdiction devoted uniquely to the determination of protection claims. The court registered nearly 54,000 appeals in 2017 (up from 39,986 in 2016), and delivered almost 48,000 decisions, 8,000 of which overturned the OFPRA rejection and accorded some form of protection. Already the French asylum appeals process is said to be one of the most 'efficient' in Europe, with an average waiting time from appeal registration to decision of just over five months. This is a system which, according to French academics specialising in asylum, already operates at an 'infernal speed'.

CNDA "en grève" – on strike.

Nonetheless, the 'Loi Collomb', named after Gerard Collomb, Macron's minister of the interior responsible for introducing the legislation, aims to speed up this process even further in its quest for 'une immigration maîtrisée et un droit d'asile effectif' (controlled immigration and an effective right to asylum). The reforms envisage tighter timelines, with a reduction in the time limit to apply for asylum (from the point of arrival) from 120 to 90 days, a reduction of the appeal period before the CNDA to 15 days instead of one month (this measure has since faced opposition in the Senate) and increasing the possibility for the use of accelerated procedures and non-suspensive appeals. Coming only a year after the last round of asylum legislation, the new reforms have been heavily resisted across the board by asylum workers, lawyers, activists, judges and others, and have prompted historic strikes at the court.


French national asylum court workers began

In February asylum lawyers and rapporteurs at the CNDA began their strike against attempts to further speed up and streamline asylum procedures in France. During February and March around 70 per cent cases were adjourned. By May, with a backlog of 9,000 applications outstanding, the court was said to be two-and-a-half months behind its average monthly processing rate.

Currently, regular (as opposed to 'accelerated') asylum appeals at the CNDA consist of an oral hearing before a judicial panel of three, comprising a president and two qualified persons nominated

June

20: A jury delivered a narrative verdict that the death of Rashan Charles was an accident. A retired chief inspector of the Metropolitan Police described the inquest as a 'farce'. The coroner was Mary Hassell (see 14th April on page 4).

598 The number of times British intelligence officers were involved in torture and rendition after 9/11, according to a report from parliament's Intelligence and Security Committee.

21: A magistrates' court sentenced a homeless man suffering from mental health difficulties to a 13-week custodial sentence for running the last 300 metres of the London Marathon. In a bizarre and apparently cruel sentencing exercise the Defendant was also excluded from Heathrow Airport, where he had been living, for three years.

'I will lie down with you in front of the bulldozers and stop the construction of that third runway.'
Boris Johnson, 2015.

strike action in February against atempts to speed up and streamline asylum procedures.

by the Conseil d'Etat and United Nations High Commissioner for Refugees (UNHCR) respectively. Each of the 19 courtrooms has 13 cases listed per day, with a hearing lasting on average 45 minutes. Most appellants are represented by a lawyer (83.7 per cent in 2017) and legal aid is granted to nearly everyone who requests it. However, in 2017, a third of all decisions were taken with no hearing at all, and a further quarter were taken after a hearing before a single judge. New reforms are likely to further increase the use of accelerated procedures, and this shift towards faster adjudication is seen as seriously impacting overall fairness and quality of asylum decisions.

While the lawyers' strike was mainly targeted at the substance of the 'Loi Collomb', for the striking rapporteurs the stakes also related directly to their working conditions. Rapporteurs are agents of the court tasked with preparing and presenting an independent report on each asylum claim, including elements of fact and law. They play a crucial role in the asylum appeal, not only in the presentation of the case but also in the deliberation and writing of the decision, although they do not have a 'deliberative voice'. There are 218 rapporteurs at the CNDA, 170 of whom are employed as contractors, with no secure status and limited prospects for career progression. Mostly young (with an average age of 30) and female, they are highly qualified, often with advanced degrees in politics or law. They are required to deal with 325 cases per year, which means studying, assessing, and writing detailed reports on 2-3 cases each day, in addition to presenting the cases in hearings and drafting decisions afterwards. This is a high-pressure job where the stakes are exceptionally high, and this is keenly felt by the rapporteurs. For them, some progress was made and they returned to work in March with a small salary increase and a new working group. However, bigger questions remain about their employment status and the pace of work.

> "The new reforms, heavily resisted across the board by asylum workers, lawyers, activists, judges and others, have prompted historic strikes at the court."

Some lawyers remain on strike (although only on limited days, generally Tuesdays), and ongoing transport strikes continue to impact travel to the CNDA. Clearly, aside from the reforms, there will be efforts to catch up with the outstanding caseload following the strikes. But it is imperative that quality is not compromised by time pressure or overworked, underpaid personnel. As lawyers and rapporteurs argue, the creep of the target culture at the CNDA is extremely worrying given the vulnerability of appellants, the complexity of asylum cases, and the potentially dire consequences of poor quality asylum decision-making. While speed itself is not an undesirable characteristic of asylum adjudication – people deserve to have their claim processed in a timely manner – this should not come at the expense of fair and well-reasoned decisions. The use of judicial panels, the role of the independent rapporteur, and the fact that most appellants have legal representation are laudable features of the French system which show serious commitment to fair assessment of protection claims. By resisting reforms that eat away at these features, strikers and other activists (including asylum judges themselves) stood up for the right to seek asylum in France, and demonstrated their refusal to support a descent into the global race to the bottom, which sees states gradually stripping back opportunities to seek refuge for people at risk of persecution and ill-treatment in their home country.

Jessica Hambly is currently based at the national asylum court in Paris

July

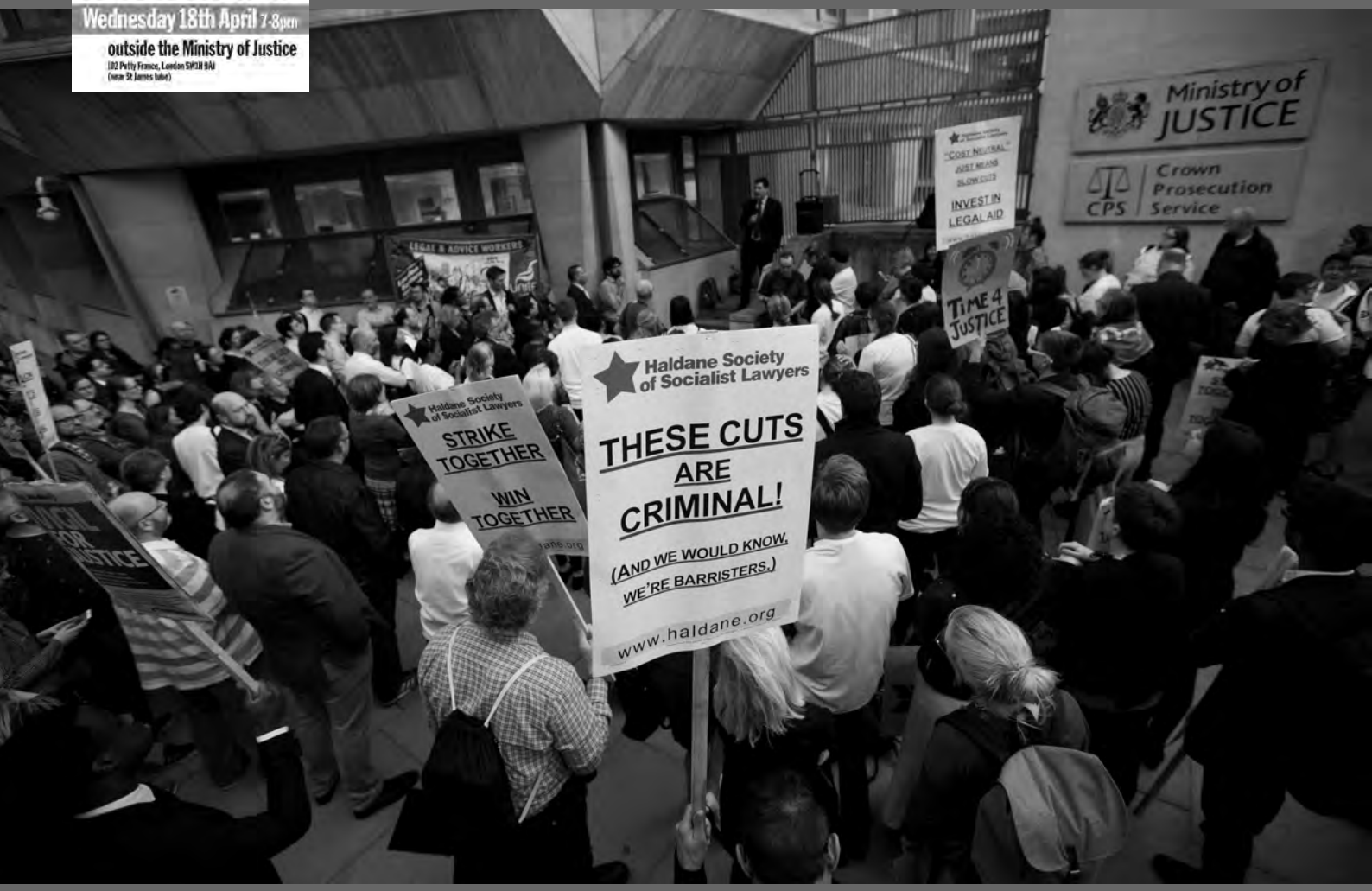
2: Left-wing candidate Andrés Manuel López Obrador ("AMLA") won the Mexican presidential election.

22: The Law Centres Network won a judicial review claim challenging the Ministry of Justice's tendering process for duty housing solicitors. The court ruled that the decision was irrational, and had been taken in breach of the Equality Act 2010.

29: A judge at Preston Crown Court lifted the stay on the prosecution of David Duckenfield – the officer in charge of policing at the Hillsborough disaster – which had been in place since 2000.

'You can't rely on a word he says.'
Unnamed Tory MP on Boris Johnson's absence from the vote on whether Heathrow's third runway should go ahead.

We'll stay vigilant



On 18th April 2018 the Haldane society took part in the Vigil for Justice. The Justice Alliance and Speak Up For Justice, representing trade unions, campaigners, lawyers' groups and individuals, had organised a large rally outside the Ministry for Justice in Central London. The crowd heard from lawyers, victims of miscarriages of justice, campaigners and union leaders about the impact of the government's policies: legal aid cuts, Universal Credit, privatisation, disclosure failings and overcrowded prisons have led to human suffering and countless personal disasters across the UK.

Pictures: Jess Hurd / reportdigital.co.uk


Speak up for
JUSTICE
justice alliance
Vigil for Justice
Wednesday 18th April 7-8pm
outside the Ministry of Justice
102 Petty France, London SW1H 9AJ
(near St James tube)


WE ARE
FOR JUSTICE


TO LET


INVEST IN
LEGAL AID
DEATH BY
1000 CUTS
I AM
THE SECRE
BARRISTE


SAVE
JUSTICE
DEMOCRACY
UNDER
THREAT
STOP
THE ROLLOUT
ohlson


SAVE JUSTICE
THESE CUTS ARE CRIMINAL!
Haldane Society of Socialist Lawyers


Ministry of JUSTICE
Crown Prosecution Service
TIME 4 JUSTICE
#NOT FAT CATS HOW MUCH DOES YOUR BRIEF GET PAID?
JUSTICE IS BROKEN
WE ARE
DEATH BY 1000 CUTS
#ACTION FOR JUSTICE
JUSTICE IS OPEN TO ALL..... LIKE THE RITZ
WE ARE FOR JUSTICE
DON'T JUST STAND THERE GAUKE-ING #THE LAW IS BROKEN

LEGAL AID PEOPLE'S HISTORY

"Law centres were key in opening the door to legal advice to working class and migrant communities."

Manchester's law centre: still here today

by **Wendy Pettifer**

The debate over the effective use of resources through casework and campaigning was as fierce when I started work at South Manchester Law Centre when it first opened in the long hot summer of 1976, as it is today. An incredible 40-plus years later I am still involved in legal aid, and still believe that law centres provide critical access to justice for the those who need it most in our now-divided society.

I gave up smoking weed and listening to Bob Marley in the long grass of Chorlton meadows in order to throw myself into the maelstrom of community politics as the law centre's community worker. I think our pioneering work in the 1970s did influence the state, and still can do so. There is nothing as inspiring as winning a key case against institutions with power and money, and improving the lot not only of the client but of a host of others.

Hopes were high in 1976. As part of a growing law centre movement, I saw the implementation of the Domestic Violence Act 1976 and the Homelessness Act 1977, which enshrined in legislation the right for women to avoid b[redacted] the homeless to obtain shelter.

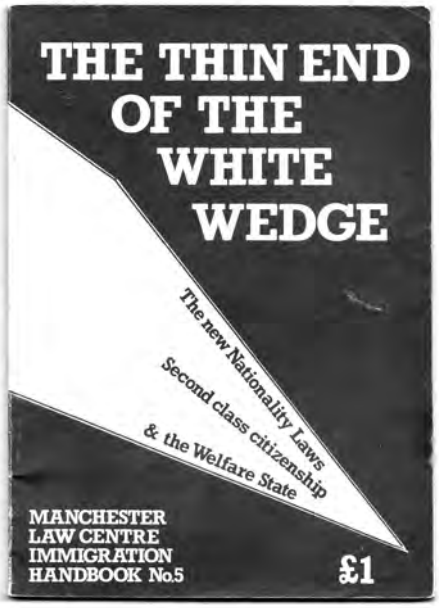
Law centres were key in opening the door to legal advice to working class and migrant communities. Although the Legal Aid Act of 1949 was the fifth pillar of the welfare state, nobody who needed free advice knew they were entitled to it. There were hardly any legal aid practices outside London. Demand for free advice exceeded supply within months of opening our shopfront advice sessions in Longsight and firms with legal aid contracts quickly sprang up. We referred many to them for on-going advice and legal representation.

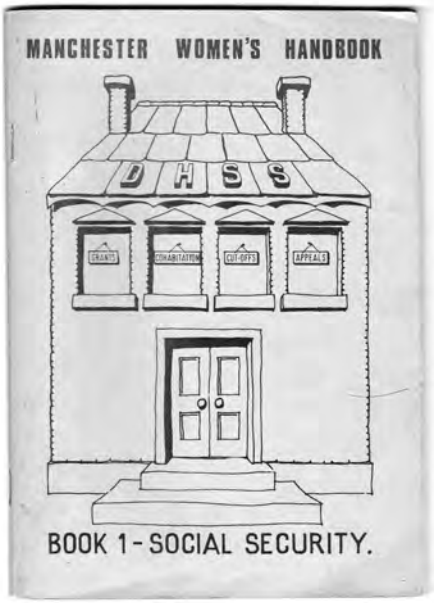
Together with community groups we developed publications telling people about their rights to adequate housing, to protection from violence, to choose their partner regardless of prejudice, to be re-united with their family members. These were snapped up by law centres around the country and ran into several reprints.

The Thin End Of The White Wedge, published in 1980, is a commentary on the government white paper that became the [redacted] foresight it sets out the consequences of that act in denying the Windrush generation UK citizenship by 'making less secure the immigration status of black people in (the UK) by making it far more difficult to acquire British citizenship – the status that will entitle someone to live in or return to the UK'.

We worked with local women's aid groups, with tenants' associations, and with migrant groups both on individual cases and in campaigns. We were one of the first centres to defeat a charge of assaulting two policemen, alleged against a local shopkeeper who had protested about an immigration raid. Helena Kennedy was our brilliant young barrister, travelling from London to interview the clients in their home.

The law centre supported the redoubtable and ultimately successful Anwar Ditta in her campaign to be re-united with her children whom she had left in Pakistan to work in the cotton mills of Rochdale. Staff were also involved in supporting Viraj Mendis, a Sri Lankan national who





the last centre standing in Manchester (the original South Manchester Law Centre) was forced to close. Only two others remained in the larger conurbation of Greater Manchester.

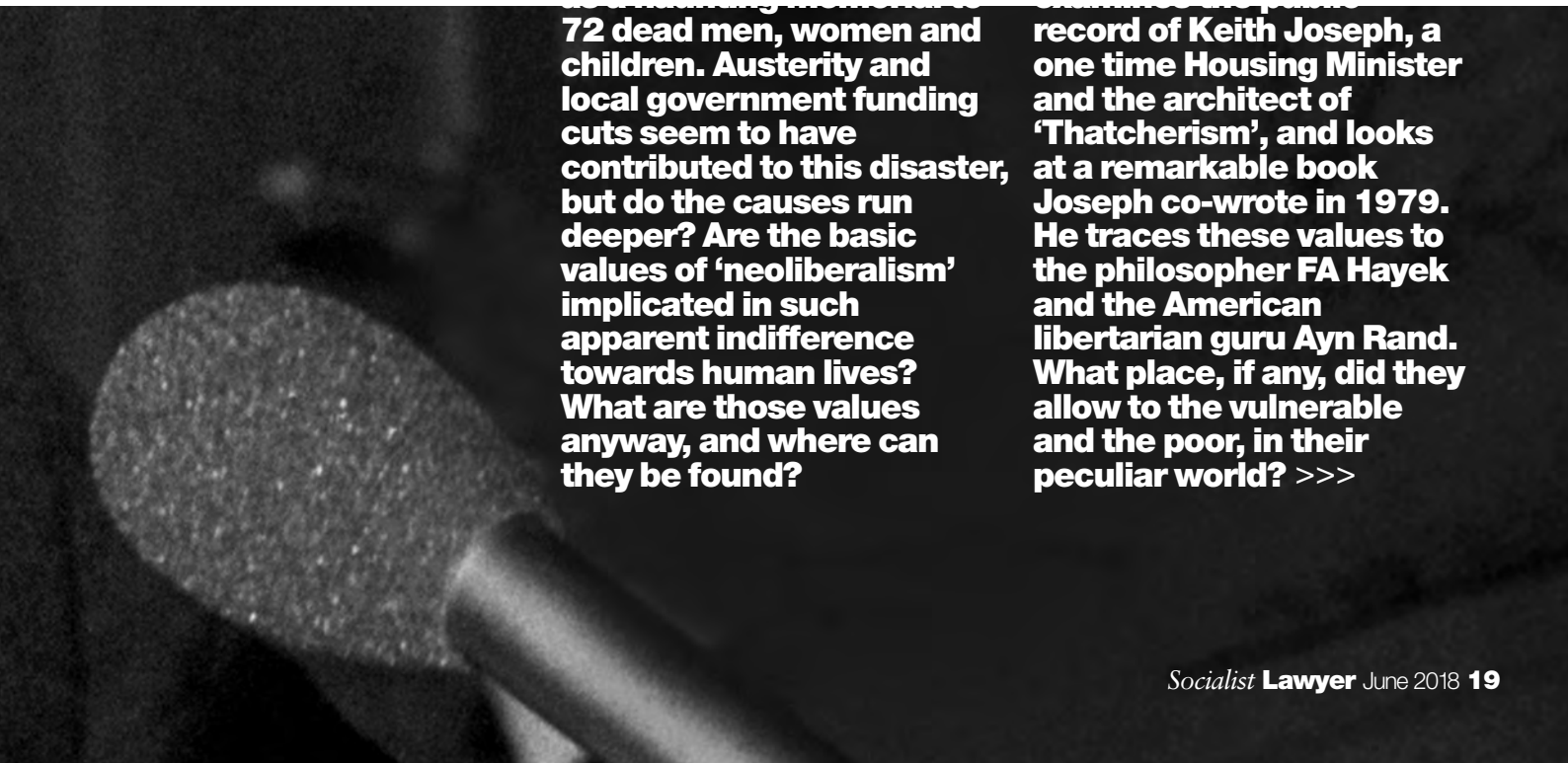
However, legal aid lawyers, community advice organisations and trade unions campaigned and fund raised and in August 2016 the new Greater Manchester Law Centre opened its doors. Sukhdeep Singh had been on the management committee of the centre since 1986 and takes a lead role in the new centre now. It has been a great success, advising thousands, and in 2018 it was nominated for a prestigious Legal Aid Practitioners' Group award in the Legal Aid Firm/Not for Profit category.

I am proud to have started my working life in a law centre. It gave me the confidence to take a law degree in my thirties while a single parent, and to go on to work in Winstanley Burgess, Wilsons and Hackney Law Centre: to obtain an MA and to work in Cairo and Calais for refugees. To do so many things in my life which, as the daughter of a fireman, were not easily available to me in the 1970s: to see that things can be changed, that individuals fighting together are never powerless, to hope that one day we will see a brave new world (though not one of Huxley's design).

The fantastic work of David Lammy, Diane Abbott and other MPs, the journalist Amelia Gentleman and many others in exposing the scandal of those entitled to UK citizenship now known as the Windrush generation shows how the May can be turned. The Tories have shifted from outright denial to humble apologies and offers of compensation within weeks. Too late for the hundreds of people who have been unlawfully deported, lost their homes due to deprivation of benefits, and possibly their lives due to denial of access to healthcare for which they paid taxes over decades.

The story of Manchester Law Centre – its development, its pioneering campaigning work, its closure and re-opening – shows us that we can still achieve change. We just have to keep together fighting and hoping.

Grenfell: Ideology and catastrophe



72 dead men, women and children. Austerity and local government funding cuts seem to have contributed to this disaster, but do the causes run deeper? Are the basic values of 'neoliberalism' implicated in such apparent indifference towards human lives? What are those values anyway, and where can they be found?

record of Keith Joseph, a one time Housing Minister and the architect of 'Thatcherism', and looks at a remarkable book Joseph co-wrote in 1979. He traces these values to the philosopher FA Hayek and the American libertarian guru Ayn Rand. What place, if any, did they allow to the vulnerable and the poor, in their peculiar world? >>>

>>> Social housing stands outside the free market, a bastion of 'needs-based' provision. In 1979, 42 per cent of people in the UK lived in council housing. The 'right to buy' programme under Margaret Thatcher in the Housing Act of 1980 sought to roll this back. Since then about 1.5 million homes have been sold under this scheme, so today the figure is less than eight per cent.

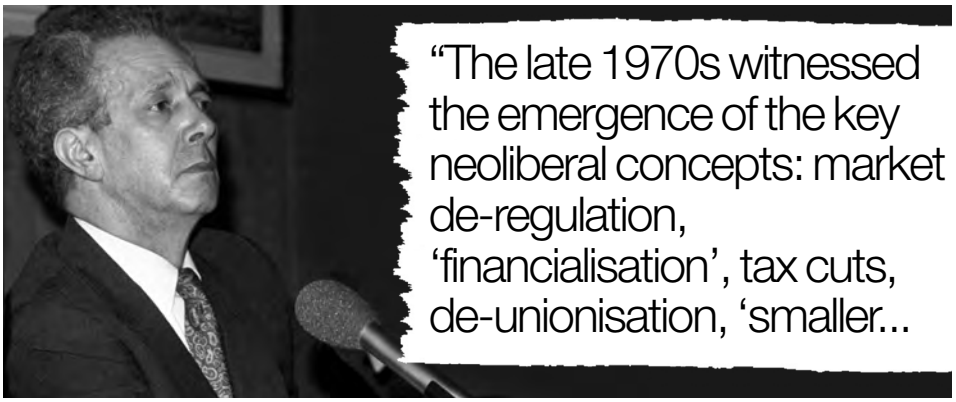
Even in the face of our profound housing crisis, many sincerely trust in the restricted role of the state and the efficiency of a 'free market' in 'housing'. That is not necessarily inconsistent with a benevolent view of the poor and the vulnerable. However, as early as 1979, the language of Kensington and Chelsea Council told a different story. The Conservative chair of the housing committee declared that "Middle income people are the life blood of our nation" and needed help against the encroachments of 'the subsidised poor'.

Such views provided the 'moral' ground for the 'homes for votes' scandal in the Tory flagship, Westminster Council. A secret 'Building Stable Communities' policy was implemented in 1987 whereby housing was designated for sale, in a corrupt attempt at social cleansing of the poorer electorate. The Conservative leader, Dame Shirley Porter, and five councillors eventually settled for paying a £12.3 million surcharge. The poor and vulnerable had been treated as pawns in a power game.

This episode of callous indifference, and even contempt, does not stand alone. Keith Joseph was the pioneering intellect behind 'Thatcherism' through the Centre for Policy Studies from 1974. In various Conservative governments, he held ministerial responsibility for housing, social services and education. His biographers, Denham and Garnett, support the common view that: '[...]Joseph's role in changing Britain's post- war consensus was as great (if not greater than) that of any other individual' and that his ideas 'still exert a powerful influence on British politics'.

He had been a likely successor to Edward Heath as Tory party leader in opposition. However on 19th October 1974, he disgraced himself in Edgbaston with a speech that was as revealing of his values as it was disastrous for his ambitions. He reflected on the 'moral' state of Britain:

The balance of our population, our human stock is threatened […] a high and rising proportion of children are being born to mothers least fitted to bring children into the world and bring them up […] who were first pregnant in adolescence in social classes four and five. […] Some are of low intelligence, most of low educational attainment. […] They are producing problem children, the future unmarried mothers, delinquents, denizens of our borstals, sub-normal educational establishments, prisons, hostels for drifters. Yet these mothers […] are now producing a third of all births […] Yet what shall we do? If we do nothing, the nation moves towards degeneration […] It is all the more serious when we think of the loss of people with talent and initiative through emigration as our semi-socialism deprives them of adequate opportunities, rewards and satisfactions".



"The late 1970s witnessed the emergence of the key neoliberal concepts: market de-regulation, 'financialisation', tax cuts, de-unionisation, 'smaller...

Disqualified from the crowning heights, he became Thatcher's 'closest political friend', in her words, at a pivotal time in the formation of 'Thatcherism'. Later, in the 1980s, official papers recorded Joseph as opposing Michael Heseltine's proposals for the re-generation of Liverpool, on the basis that there should be a 'managed rundown' of Merseyside. This was a man flirting with mass social cleansing, and basing himself in part on the elitist value he placed upon genetics and 'intelligence.' Not for nothing was Joseph known as the 'mad monk'.

Jonathan Sumption, who wrote most of the book Equality *with Keith Joseph.*

Equality

Joseph had made the grave mistake of openly articulating the social values of neoliberalism. He did so again and at length in a remarkable book called *Equality*. He collaborated with a successful barrister, Jonathan Sumption, now an influential justice of the UK Supreme Court. They introduce us to the philosophical basis for these values. This work deserves rescuing from its relative obscurity. It flaunts sentiments which are, as a rule, discreetly coded, but may still be highly influential.

This was 1979, a formative moment for neoliberal ideology. The authors declared that they were advancing 'apparently shocking and offensive propositions'. They unashamedly presented the 'moral' case for unbridled 'inequality' and elitism. They laid waste to any concept of social justice, and did not trouble themselves with compassion, or indeed sentiment of any kind.

The publishers' archives reveal that Sumption was responsible for writing most of *Equality*. Joseph persuaded them to postpone publication until after the 1979 election, for fear of the public reaction.

Halcrow records that Joseph, as Secretary of State for Industry from 1979, included *Equality* on a reading list for his senior civil servants. The legacy of this ideology is still felt today. The late 1970s witnessed the emergence of the key neoliberal concepts: market de-regulation, 'financialisation', tax cuts, de-unionisation, 'smaller government', rolling back the welfare state and the denial of 'civil society'. Margaret Thatcher and Ronald Reagan respectively came to power in 1979 and 1981.

Joseph and Sumption sought to propagate eternal verities about human nature and society, for the advancement of their ideology. They were generating the wave. A small selection of the authors' self-styled 'apparently shocking and offensive propositions' fairly reflects the contents:

'It is more comforting to think that one is poor because one belongs to the class whose lot is to be poor';

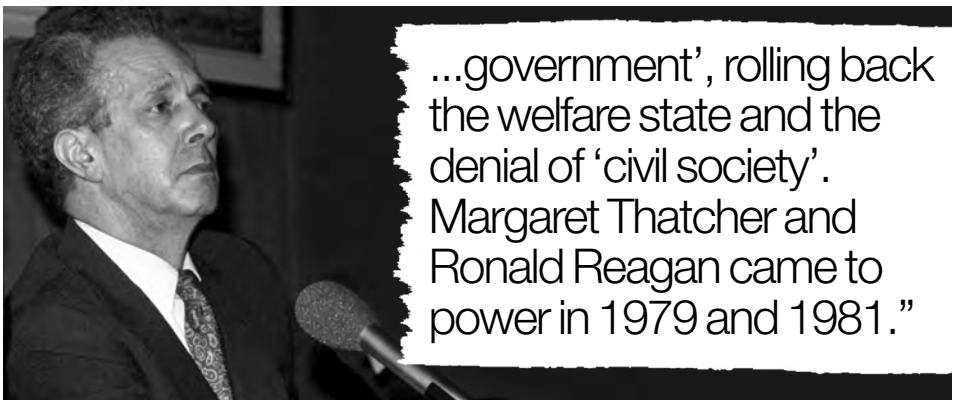
'It is because of the existence of envy that one does not drive Rolls-Royces through the slums of Naples';

'Redistribution is unwise. But it is also morally indefensible, misconceived in theory and repellent in practice';

'A family is poor if it cannot afford to eat. It is not poor if it cannot afford endless smokes […] By any absolute standard, there is very little poverty in Britain today';

'Politics" and 'scholarship' are fields 'in which human achievement would be the poorer for want of men of independent means';

'The level of a community's civilization is



...government', rolling back the welfare state and the denial of 'civil society'. Margaret Thatcher and Ronald Reagan came to power in 1979 and 1981."


Picture: Jess Hurd / reportdigital.co.uk

very much the level of civilization of its most discerning and original members [who] must enjoy incomes significantly higher than the average';

'A person is morally entitled to everything he can acquire from free agents by honest means';

'An unusually skilled businessman […] will require a far greater income in order to achieve personal fulfillment than will another who has not been so well favoured by nature and who will be more easily fulfilled';

'Self interest is indeed the first duty which a man owes to his community, so that he supports himself and does not depend on others […] It is not wealth but envy which is divisive'.

This is a brutal and arid view of human nature and society. Supposedly, we must live as 'free' autonomous individuals, pursuing our personal ambitions and material wealth, as in a 'cage fight' against our fellow man. The state is merely a distant referee to ensure that things do not get too out of hand. This is a 'moral' catechism for the unlimited acquisition and consumption of recent decades.

The authors' characterisations of poverty and the working class are reminiscent of the infamous 17th century Bernard Mandeville: 'Men who are to remain and end their days in a laborious, tiresome and painful station of life, the sooner they are put upon it, the more patiently they'll submit to it for ever after'. He opposed charity schools for the poor, and was of great interest to FA Hayek.

Joseph and Sumption asserted that: 'Men are so constituted that it is natural to them to pursue private rather than public ends. This is simply a matter of observation […] The raison d'etre of governments is the furtherance […] of human ambition by reconciling the competing interests of individuals'. Even the infamous phrase of Thatcher that 'there is no such thing as society' was tempered with a nod towards 'looking after our neighbour'. In *Equality* we find hardly a trace of humanity's higher values, such as compassion and self-sacrifice. In the entire book, just three sentences address the needs of some limited categories of the most vulnerable, in highly qualified terms.

Hegemony

'Thatcherism' as an ideology secured hegemony in familiar ways, by propagating the illusion that it was not a system of thought at all, but the 'natural order' of things, and thus beyond debate. Margaret Thatcher repeatedly deployed the phrase 'there is no alternative' ('TINA') in defence of her policies. Disturb this enchantment and political life becomes rather more troublesome and disputatious. Here the role of the public intellectual emerges, and especially the destructive 'brilliant minds' of a peculiarly English intellectual elite. Professor Martin Loughlin has memorably characterised Sumption's politics as the 'rhetoric of reaction': 'a distinctive English voice …..of a privileged elite who finds intellectual stimulation in dwelling on the evident deficiencies in the functioning of modern constitutional democracies, without offering any serious analysis or any practical remedy.' A climate of thinking is created and maintained whereby the parameters of debate are confined by deterrence.

Thus, Joseph and Sumption suggest: 'Statistical demonstrations [of wealth and income distribution] are an appeal to envy and an abuse of people's dissatisfactions and disappointments [and] likely to be unrewarding as well as irrelevant.' So, even to prepare factually for an informed debate about 'inequality', would be to commit four cardinal sins: and all of this in the name of a 'free society'.

The core thesis of Joseph and Sumption poses 'equality' against 'freedom'. The litmus test of a 'free society' is its 'inequality': i.e. the extent to which it fosters and protects the accumulation of private wealth. In 1706, Daniel Defoe set such sentiments to verse in 'Jure Divino: A Satyr', but the passage of three centuries seems to be of little matter. No other factor, such as social justice, enters the picture. Exploitation and discrimination are unrecognised, and thus tolerated.

Democracy does not feature as the central safeguard, or even as a characteristic, of this version of a 'free society'. 'It may be that the rich recognise that their interests are served by political stability and that political stability can only be had if the differences between rich >>>

>>> and poor are kept within bounds. If so, then redistribution is justified to the limited extent that it is necessary for the purpose of achieving that object. But its justification goes not one inch further'. So, the poor are to be controlled in the interests of the rich.

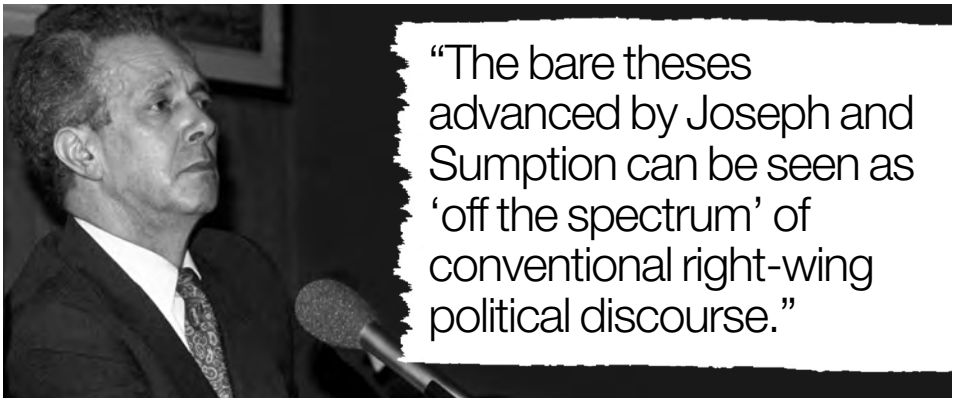
The authors find it inconvenient to explain: what degree of wealth would qualify; whether income or capital is the measure; how the rich would decide what they could 'afford' in the interests of stability; and at what point taxation becomes 'redistributive'. This passage closely reflects Friedrich Hayek, the liberal economist and philosopher, who inspired Thatcher. He supported, as a social safety net 'some provision for those threatened by the extremes of indigence or starvation […] be it only in the interest of those who require protection against acts of desperation on the part of the needy.' The rich are the sole arbiters of their own perceived self interest in 'political stability' and of any necessary re-distribution.

Here would be a 'free society' without any democratic role in the revenue raising power of the state. That is characterized as despotic 'coercion'. Hayek expressed consistent reservations about the value of democracy: hence his support, with Thatcher, for the Pinochet regime in Chile. Free choice in the market place is 'indispensable for individual freedom', but not at the ballot box.

In order to set up this manichean choice between 'freedom' and 'equality', each is curiously defined so as to be in direct opposition. This carefully crafted conflict is thus tautological, to fit the authors' purpose. 'Freedom' is defined so as to exclude any feature of 'inequality'. Even blindness is held not to affect the 'freedom' to read a book. Thus, for example, a man would be 'unfree', who is prevented by planning laws from constructing a summer house on his country estate: but truly 'free' if, from his wages, he cannot afford bread. No form or degree of 'exploitation', other than force or fraud, can taint these Elysian fields of 'freedom'.

A common device of the ideologue is to remove any middle ground that might blur the artificial choice: thus, say Joseph and Sumption: 'It follows irresistibly that egalitarians must choose between liberty and equality' and 'An egalitarian must either suppress or frustrate human ambition: there is no third alternative'. This approach set the scene for the neoliberal crusade against the perceived suffocating compromises of the post-war social democratic settlement in Europe.

Moderate Christian socialists such as RH Tawney and Archbishop William Temple are dismissed as failing to beware the slippery slope to inevitable doom. 'There can be no end to the egalitarian's constant advance against the grain of human nature […] and, while it continues, not only the freedom of the rich but freedom as such will be continually eroded' and 'the sterilising effect of egalitarian practice is not mitigated simply because the chosen method of sterilising individual ambition is redistributive taxation rather than educational propaganda or the direction of labour.'



"The bare theses advanced by Joseph and Sumption can be seen as 'off the spectrum' of conventional right-wing political discourse."

To conflate social democracy, and its re-distributive taxation policies, with totalitarianism, is a mere device lacking in integrity. Shorn of artifice, this work is an ideological polemic against the welfare state, and not a refutation of absolutist 'egalitarianism', which here serves as a facile straw man.

Friedrich Hayek, the economist and philosopher who inspired Thatcher.

Sources

It is perhaps not surprising that the bare theses advanced by Joseph and Sumption can be seen as 'off the spectrum' of conventional right-wing political discourse. They are indistinguishable from those of Ayn Rand, the cult figure of the US extreme right, whom many regarded as unhinged. She displayed their same strident 'moral fervour', and disdain for the values and life-styles of those outside a self-defined elite.

Rand directed the full range of her contempt at the concept of 'equality'. She suggested that altruists turn the word: '[…] into an anti-concept: they use it to mean, not political, but metaphysical equality - the equality of personal attributes and virtues, regardless of natural endowment or individual choice, performance or character […] the egalitarians […] seek to deprive men of their consequences- of the rewards, the benefits, the achievements created by personal attributes and virtues. It is not equality before the law that they seek, but inequality: the establishment of an inverted social pyramid, with a new aristocracy on top- the aristocracy of non- value'. She added: 'There is no such thing as a benevolent passion for equality and […] the claim to it is only a rationalisation to cover a passionate hatred of the good for being the good'.

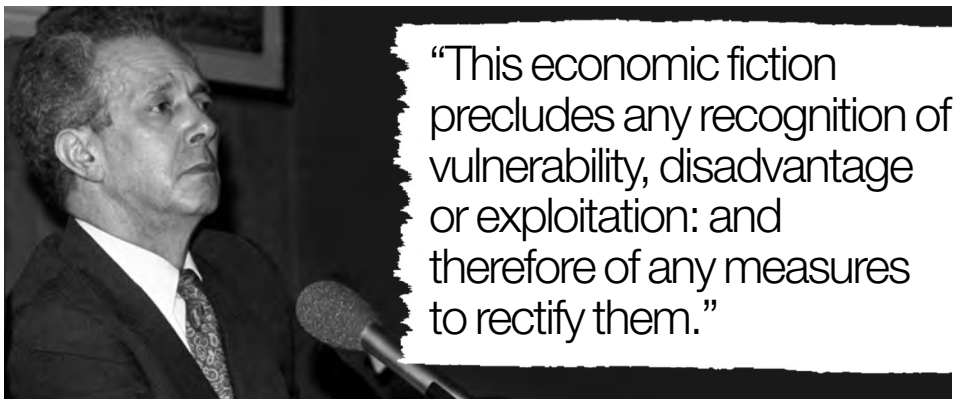
Even Rand's polemic against John Rawls' *Theory of Justice* is mirrored by Joseph and Sumption. They must have been heavily influenced by her, though without attribution. FA Hayek, whom they do cite, had certainly articulated much of their thinking. He is crudely recycled in 'Progress is born of the uncoordinated energies of countless individuals […] out of confusion, not out of homogeneity and social discipline'. This is Hayek's theory of 'spontaneous order', which manages to erase the beneficial role of any collectivity. We have here the key naïve concept behind today's so-called 'self-regulating' markets.

The nexus between this ideology and current practice was well put by Nicholas Shaxson, in his recent study of offshore financial centres and tax havens. He describes their beneficiaries as 'members of ancient continental aristocracies, fanatical supporters of American libertarian Ayn Rand, […] global criminals, […] Its bugbears are government, laws and taxes and its slogan "freedom"'.

Fictions

The core fiction of neoliberal economic theory is that of the free agent, who makes fully informed and rational decisions in the marketplace. There are many profound and insoluble problems with this fiction. In a 'de-regulated' economy, and in the name of 'free enterprise', the assumed transparency of information will not occur. So, we have suffered the Enron scandal of secretive 'off balance sheet' transactions, the wilful obscurity of CDOs and much consumer pricing. The Nobel prize winning economist and psychologist Daniel Kahneman and many others have assembled overwhelming evidence from many walks of life to show how illusory 'rational choice' can be.

Putting those and many other objections to



"This economic fiction precludes any recognition of vulnerability, disadvantage or exploitation: and therefore of any measures to rectify them."

Picture: Jess Hurd / reportdigital.co.uk

one side, if the core fiction holds good, then most aspects of social policy follow with cold logic. The poor and the vulnerable are losers in the 'cage fight': they have made the wrong choices. Morally they deserve their plight: "the poor are to blame".

The 'moral blame' of the disadvantaged is a familiar comfort for the privileged. Joseph himself, as Education Secretary in 1984, refused to channel money for the training of young women for science and engineering, saying, 'I do not believe that money is the problem: it is the attitude of parents and the girls themselves.' This is a potent trope. Sumption's most provocative recent comments attributed lack of judicial diversity to what he terms the 'perfectly legitimate lifestyle choice' of women lawyers, who are unwilling to endure the rigours of successful private practice in law.

More fully, this economic fiction precludes any recognition of vulnerability, disadvantage or exploitation: and therefore of any measures to rectify them. *Equality* makes this clear. 'Equality is not a fact but a political demand. The purpose of those who assert that men are born equal is to suggest that it is human institutions which make them unequal thereafter, institutions such as bad schools, overcrowded houses or ignorant and brutalised parents. [This] is fair enough up to a very limited point […] Equality of opportunity (it is said) is a fine thing […] but it can be achieved only by equalising standards of living, therefore in order to create true equality of opportunity one must prevent the ablest from achieving their full potential […] broadly speaking […] all the brave new experiments in manufacturing equality by educational manipulation [have produced] little or no effect. […] institutional factors have no appreciable effect upon achievement […] At no point in their lives are men equal in ability and capacity to exploit the opportunities which all equally enjoy. Nor at any point in their lives can they be made so'.

These are powerful elitist assumptions, with strong social policy consequences. They again betray the influence of Ayn Rand and her obsession with genetics. No acknowledgement can be made for the relevance of social disadvantage, let alone the desirability, or even possibility, of overcoming it. 'Equality of opportunity' is dismissed as a goal. No reference is made to conscious or unconscious gender or race discrimination. The ablest in society are equated with those enjoying the highest standard of living. 'Educational manipulation' is disparaged, which seems likely to refer to comprehensive education. More generally in *Equality*, it is futile to try to find any reference to the position of women at all, save for the 'derived wealth' of a woman living with a husband 'on his large income'. What space is therefore left for any social provision at all for the needy or vulnerable? There can be no room for social housing in this 'empathy free' zone.

Epitaph

Joseph and Sumption wrote: "the fact that bread is a necessity of life whereas books are not, may well be a very good reason for helping out on humanitarian grounds those who cannot afford it, but it cannot be a reason for saying that such people are not free".

The futility of such a concept of 'freedom' could not be better expressed. The lofty and callous conditional ('may well') is so telling. How 'free' were those who died in Grenfell Tower? What values did found the apparent indifference towards the risk to their lives? No doubt the bereaved and survivors will recognise the human implications of this ruinous ideology. By laying bare these heartless tenets, Joseph and Sumption rendered a considerable service to history.

Reflecting on his career, Joseph almost apologised: 'with our good intentions we have tried to improve life, but sometimes to our mortification, we have seen the unintended ill consequences of our good wishes, apparently make things worse'. He may have soothed his conscience a little: but the epitaph has yet to be written for the ideology which he propagated. Perhaps the grim and scorched Grenfell Tower does not need words to carry that message.

Patrick O'Connor QC is a barrister at Doughty Street Chambers. A fully-referenced version of this article is available on request (socialistlawyer@haldane.org)

Thank you

Picture by
Jess Hurd
www.reportdigital.co.uk

Video-conferencing in courts: a fair hearing or justice on the cheap?

by **Laurène Veale**

With the justice system crumbling after prolonged cuts, it might seem promising that the government has poured £1 billion in a programme to 'modernise the courtroom' by introducing 'virtual' courts (known by their less appealing name as video-links). But this investment is not an attempt to make courts more accessible and user-friendly. In fact, video-conferencing in courts may undermine access to justice and the right to a fair hearing.

Video-conferencing allows people to dial in to a court hearing without being physically present. It is used in both civil and criminal cases. In 2016-2017 137,495 cases were heard via video-conferencing, 10 per cent more than in 2015-2016. It is particularly useful for short hearings, saving time and expense for those having to attend courts, including the police (or staff from private government-contracted companies) who might otherwise spend a significant amount of time travelling and waiting. Video-conferencing is seen as a more efficient use of time and public resources. However, the technology that has been introduced is unreliable and inadequate – after all, its introduction was motivated by a drive to cut costs. A large part of the £1 billion was devoted not to the equipment itself but to consultancy companies for 'management strategy' (£30 million went to PwC consultants, among several other firms). Seven years after being introduced, video-conferencing offers sound and image quality that falls short of a Skype call. In January 2017 Sir James Munby, the president of the Family Division, wrote that 'the video links in too many family courts are a disgrace – prone to the link failing and with desperately poor sound and picture quality'. With insufficient facilities to meet demand parties must sometimes wait a long time before a hearing can start, and in many civil and probation hearings participation is only via telephone due to a lack of video facilities.

The unreliability of the equipment means that some hearings take place with patchy sound or image, or none at all, effectively denying a participant's right to attend their hearing. A monitoring exercise by the charity Bail for Immigration Detainees (BID) found that too few judges in immigration bail hearings started by asking the applicant whether they could see and hear well. In more than one third of the cases in which there were sound or image problems the hearing was conducted without the problem being fixed.

Technical issues are common in countries where video-conferencing is already a prevalent feature of the justice system, like Australia and the US. Dr Carolyn McKay of the University of Sydney has written about her experience sitting in on a bail hearing in an Australian prison: 'After some time, the judge turned to address the camera, facing the prisoner directly, silently mouthing words. The prisoner finally had the courage to say: "I can't hear", and it was then that the judge realised that he had the mute button activated'.

In the UK lawyers have expressed concern about how video-conferencing may degrade the relation with their client. Currently, if an advocate needs to talk to their client before the hearing, they are allocated a 15-minute slot. This is often too short to receive instructions and can lead to a rushed a conversation in a situation in which clear and effective communication is vital. Precious time can also be lost if the video-link fails to work and assistance is required to fix it. Concerns have also been raised about the location of both the client and the lawyer when using these video-links. No survey has been carried out in the UK but in Australia prisoners reported being uncomfortable talking to their legal adviser while in a prison or police station where parasite noises could disturb, where the walls were thin, or prison guards might overhear, particularly when the prisoner had to raise their voice due to inadequate microphones. Video-conferencing lacks the more neutral environment of a court and the privacy of its conference rooms.

Video-conferencing equipment can alienate a participant from a court hearing and can make the experience more stressful or incomprehensible. It affects the perception of all parties to the proceedings. Remote communication, particularly when the image is not of the highest definition, degrades the quality of interaction, blocking out important information such as body-language, facial expressions, tones of voice and a participant's degree of attention and involvement. It may also prevent a judge from detecting any special circumstances requirements that a defendant may have. The chair of the Magistrates' Association, Malcolm Richardson, has pointed out that 'court users tend, much more than the population as a whole, to suffer from difficulties with learning, communication and mental health that restrict their ability to engage with us face-to-face. The use of video-links risks exacerbating these challenges'.

It is essential to assess whether video-conferencing obstructs access to justice, particularly for vulnerable users who may find it more difficult to cope with an online process than a traditional courtroom. There are currently no guidelines as to how to

> "Remote communication, particularly when the image is not of the highest definition, degrades the quality of interaction, blocking out important information such as body-language, facial expressions, tones of voice and a participant's degree of attention and involvement."

determine whether video-conferencing is appropriate for someone with a disability or learning difficulties. Celia Clarke, BID's director, says that in immigration bail hearings clients may request to physically attend: 'It is supposed to be granted under "exceptional circumstances" – which are not defined – but as far as I am aware, never is'.

Equally concerning is the inadequate piloting of this technology before its introduction. In 2009 a company was contracted to run a pilot project in two magistrates' courts and 15 police stations in London and Kent for 12 months. Technical problems were immediately apparent: users reported common delays in the audio and image. The project's evaluation report states that use of video links affected the perception of those in court about the quality of the service being delivered and that 'some magistrates and district judges thought that the court had more difficulty in imposing its authority "remotely", and perceived that defendants took the process less seriously'.

Importantly, the pilot also found that defendants in video-conferencing cases were more likely to plead guilty, more likely to get a prison sentence and less likely to receive a community sentence, no matter the kind of offence. But these findings were mostly ignored; the pilot was considered a success and video-conferencing was rolled out across the country from 2011. Since then, there has been no attempt by the Ministry of Justice to assess the impact on court users and the administration of justice more generally.

Studies from other countries show that the use of video-conferencing can affect the outcome of a hearing. In the USA, an exceptionally broad study looking at over 500,000 asylum decisions found that its use 'roughly doubles to a statistically significant degree the likelihood that an applicant will be denied asylum'. The difference remains clear even when controlling for the fact that applicants are more likely to be unrepresented in virtual hearings.

This is unsurprising. Video-conferencing must affect the judge's perception of the applicant, making them appear more distant. That sense of distance undermines empathy. Slight sound delays and image distortions may also undermine the applicant's credibility. A testimony that should elicit an emotional reaction might appear less genuine, the American study found, leading to 'a subconscious skepticism in the Immigration Judge's mind' and 'a skewed perception of the testimony'. In Australia, studies have found that poor lighting, bad camera angles and patchy audio led to harsher outcomes of hearings and that video-conferencing has a 'dehumanising' effect.

In 2004 the Canadian government commissioned an evaluation of video-conferencing in its Immigration and Refugee Board's asylum hearings, with the aim of assessing fairness and efficiency. All lawyers interviewed during the evaluation said that the system made them less confident in the soundness of a court's decision. Most of them said their client expressed more distress and anxiety. A range of other factors were considered to be causes for concern. The conclusion of the evaluation was that a significant testing period was needed, coupled with an independent empirical study.

The UK government has made no similar attempt at understanding the impact. Nor has the question of the use of video-conferencing, as it pertains to the right to a fair hearing, been addressed by English and Welsh courts. In the US several appellate courts found that video-conferencing does not equate to physical presence in court and, although the case law mostly relates to criminal appeals, there is no reason why this principle does not apply to all hearings where the stakes could also be high (the European Court of Human Rights has held that, in assessing whether someone has a right to be physically present in a hearing, the tribunal must look at what is at stake for the party and whether their presence is needed to determine the facts). This reasoning suggests that the option of physical attendance should at the very least be given to bail and asylum applicants, and to those facing a custody in the criminal courts.

It seems that the aim to cut spending has taken precedent over the principles of access to justice and the right to a fair hearing. Without clear and up-to-date data it is impossible to know whether video-conferencing is undermining the effectiveness and fairness of the courts, but there are clear indicators that suggest so. Even the economic benefits of video-conferencing, which is the main motivation behind its introduction, are questionable: the government's 2009 pilot found that it was more expensive than traditional courts, even without taking account of the costs of secondary impacts such as rescheduled hearings, increased guilty pleas and harsher sentencing. A nationwide assessment is urgently needed before the government further extends the use of virtual courts.

Laurène Veale is a graduate law student (a fully-referenced version of this article is available on request)

THE SCANDALOUS 'TRIAL' OF THE MORIA 35

Picture: Refugee Accommodation and Solidarity Space City Plaza

by JIM NICHOL

In April 2018 I travelled to Chios in Greece to observe the trial of the 'Moria 35'. To say that I was appalled (a word I find myself using often in this case) at what I saw would be an understatement. Both the state of the evidence against the defendants and the court process itself were shocking.

Throughout the proceedings I had in the forefront of my mind that in order for there to be a fair trial each and every defendant must understand the proceedings, must be able to participate, and must be able to give instructions to their lawyer. Those are not extravagant demands, but the trial totally failed to meet them.

The 'Moria 35' are a group of black refugees and migrants who were charged with: arson with intent to endanger life (essentially setting fires in bins); destruction of property (a car); resisting arrest; and dangerous bodily harm and violent behaviour (a 'violent disorder'-type charge). Thirty of the 35 were refused bail and have been in various prisons since 18 July 2017.

I was part of a delegation of international legal observers. Three members of the >>>

>>> delegation have considerable experience (over decades) as defence lawyers or in public order trials (though the delegation did not have specific expertise in Greek criminal law).

The court's physical layout and facilities were totally inadequate. The defendants sat in seven rows – including four in the public gallery. They were given no lunch or exercise. They did not leave their seats for hours, except to go to the toilet (they were given water). There was no place available to consult with their lawyers. Any discussion, and there was very little, took place from where they were sitting in the full view and hearing of everyone in the court. The court was approximately 10 by 15 metres. It was full of defendants, police, lawyers, judiciary, interpreters, international observers, media and members of the public. There was a coming-and-going throughout the proceedings.

Swift retribution

The court heard from five prosecution witnesses, eight defence witnesses and the defendants themselves. That may sound substantial but the proceedings were staggeringly brief.

There were four days of hearings, of which I was present for three. The first day, Friday 20th April, was concerned with procedural and administrative matters only. The evidence was given on Monday 23rd, Thursday 26th and Friday 27th April: on the Monday the total hearing time was just short of three hours; on the Thursday it was four hours and 43 minutes; and on the Friday there were three more hours of evidence before submissions. The total time for evidence – against 35 defendants – was 11 hours and 36 minutes, much of which was taken up with translations and interruptions. My estimate is that nine hours of evidence was actually heard. The judge and jury took 53 minutes to retire.

Interpretation

The defendants came from Ivory Coast, Senegal, Mali, Ghana, Gambia, Cameroon, Dominican Republic, Sierra Leone, Haiti, Nigeria, Guinea and Iran. That meant that five interpreters were needed to translate from Greek to French, English, Spanish, Wolof and Farsi. With the exception of a small number of defendants, perhaps three or four, the (inadequate) translations were into a language which was not the first language of the defendant. In some cases, the defendant barely understood the language used in the translation.

While I do not criticise any of the individuals the interpretation was a complete and total disaster. None were professional interpreters, none had any training, and they were not told what was expected of them. The Farsi and Wolof interpreters were themselves refugees and the English interpreter, who was a local teacher, asked to be excused half-way through the trial because she said that she was not sufficiently competent. She was then replaced by a police officer in uniform who sat with the other interpreters, approximately two metres away from the defendants as they gave evidence. The following day the English-speaking police officer was replaced by another police officer in civilian clothing.

There was no contemporaneous interpretation of any evidence. This, the most serious defect in the whole of the proceedings, by itself renders the entire trial process unfair. With the exception of one defendant who had learned a few words of Greek no other defendant spoke the language.

"The international legal team of observers interviewed the five defendants who were on bail and each confirmed that they were unable to understand any of the proceedings. They were all anxious and distressed."

The international legal team of observers interviewed the five defendants who were on bail and each confirmed that they were unable to understand any of the proceedings. They were all anxious and distressed because of this. They confirmed that the 30 defendants in custody suffered the same anxiety and distress.

The only parts of the evidence that were interpreted were occasional comments, translated at the request of the presiding judge. These remarks were so short that they were of little or no value. I recorded 11 interventions during evidence where the presiding judge requested interpretation (it is possible that I have failed to record one or two of the judge's requests for interpretation but if I have they can only have but a negligible impact on the amount of interpretation).

The total cumulative time where interpretations were given was approximately 32 minutes. However, that is not to say that 32 minutes of evidential remarks were translated. It is necessary to deduct the time taken for the interpreters to confer as to what the presiding judge had asked of them. In addition, often, each interpretation had to be interpreted from one language to another then to another before being interpreted to the defendant. The result was that each interpretation to a defendant barely lasted more than 20 or 30 seconds.

All of the untrained interpreters were translating from Greek into a second language. At best, and without criticism, the interpreters' ability appeared to be school-level or further education-level proficiency. Neither of the Wolof or Farsi interpreters spoke Greek. As a result the judge's remarks in Greek were translated into English or French and then into Wolof or Farsi and then, usually, following some clarification, to the witness.

A situation arose long into the trial where it became apparent that defendant 11 (from

Mali) did not understand the Wolof interpretation. It was a different dialect. As a result, Defendant 5 intervened by translating over the heads of several defendants to his co-defendant. On one occasion the translation went from Greek to French to Wolof to Wolof dialect (by defendant interpreter), then back from Wolof dialect to French to Greek.

None of the evidence given by the defendants was translated.

Technology

On the morning of Monday 23rd April 2018 the court audio equipment did not work properly. It was very difficult for everyone present to hear the proceedings.

Then, on Thursday 26th April 2018, photographs and a video were shown on behalf of the defendants. The single screen was small, possibly 17 inches (43 cm), with the images much smaller than the screen. The screen was positioned at an angle that allowed the judges, jury, lawyers and interpreters to see but only a small number of the defendants. I estimate that approximately 10 or 12 defendants would be able to see the screen.

The defendants' evidence

The evidence of 35 defendants lasted for approximately three hours and 40 minutes. This is an average of approximately six-and-a-half minutes per defendant. However, the actual evidence was much shorter. The total time included the time that it took for each defendant to get to the witness stand. It also included translation, with all of the difficulties described above, together with examination by the defence lawyers, the prosecutor and the judge. This left little time for each defendant to actually speak. I estimate that the average time that each defendant spoke was three or four minutes at a maximum.

The presiding judge controlled the proceedings. It was abundantly clear from the outset that she intended to restrict the evidence of each defendant. The questioning frequently commenced with the judge asking the defendant what he had to say to the court. When the defendant replied by attempting to explain where he was on that morning (the alleged offences were committed between approximately 12.00 and 16.00) he was quickly prevented from doing so, and in an overwhelming number of cases the Judge President asked the defendant: what time were you on the camp? Did you see stones being thrown or fires being lit? Where were you when you were arrested?

The defendants were then told to step down from the witness stand. Some defendants protested that they had more to say, but did not stay at the witness stand for more than seconds. On other occasions the judge asked the defendant if they wished to say more – again, any that did spoke for seconds.

Throughout the proceedings the presiding judge appeared to make very few notes of the proceedings. With respect to the defendants' evidence I did not observe her making any. In my opinion the whole process of the defendants' evidence was clearly in breach of a their right to a fair trial.

The prosecutor

The three judges and four jurors sat raised on a bench in the form of an arc. The prosecutor sat at the end of the arc and was not separated from the others. This does not give the appearance of impartiality. On three occasions the prosecutor raised her voice at defendants or defence witnesses. This was totally inappropriate and may well have had the effect of intimidating the witness.

The evidence

The observers' delegation did not have access to the court file. We understood that some statements or testimonies contained within the file formed part of the evidence.

At the end of the evidence the prosecutor submitted that there was insufficient evidence to convict on charges 1, 2 and 3. It appeared to me and to other members of the delegation that the oral evidence, in respect of these charges, was extremely weak. It raised the question as to whether the prosecution reviewed, or adequately reviewed, the file which may have led to the discontinuance of these three charges including the most serious: arson with intent to endanger life. Such a discontinuance was particularly important for those defendants in prison. A renewed bail application on their behalf on the basis of one charge only may well have been successful.

With respect to the fourth charge of dangerous bodily harm and violent behaviour, 32 defendants were convicted.

It is my opinion, and I believe that of my colleagues, that based on the evidence given in court no reasonable tribunal could safely convict on the fourth charge. This charge relied on identification and participation, but the identification evidence appeared to depend on two police officers. One police officer told the court that he could recognise 16 defendants as having participated. We find this highly improbable, particularly when taking into account the prosecution evidence that the perpetrators of the offence were the subject of repeated tear gas attacks and had their faces covered.

Referring to the protesters one police officer said that "they all looked much the same".

The arrests appear to have taken place after the protest and the confrontation between the police and refugees had subsided. The arrests were accompanied by police violence and a number of defendants, not fewer than eight, were injured (two of them seriously so).

In my opinion it is likely that once the order to arrest was given, the police arrested those defendants who lived nearby on the basis that "they were all throwing stones or rocks".

Race

This is a matter that concerned the international delegation greatly. The evidence was that several hundred refugees participated in the protest and confrontation. They came from all races and belonged to many nationalities. However, the only protesters arrested were black.

In her final speech the prosecutor was well aware of this issue and referred to it directly. She said that only recently the police had arrested Greek citizens for public order offences. For 'Greek citizens' the prosecutor intended that we read 'white'.

I do not accept that explanation. There was evidence of racist remarks from the police during arrest such as "black dog" and "this is not Africa".

Conclusion

This trial was seriously flawed. It is difficult to imagine a greater sham or a more transparent illusion of a fair trial. It was bizarre and frightening blend of Franz Kafka and the Tower of Babel. Those four days in April should be a source of deep shame to the Greek authorities.

Jim Nichol is a UK-based lawyer who has worked and campaigned against miscarriages of justice

LAST TANGO IN HAVANA?

One step forward, two steps back: Cuba, the US embargo and human rights

by LUCY CHAPMAN

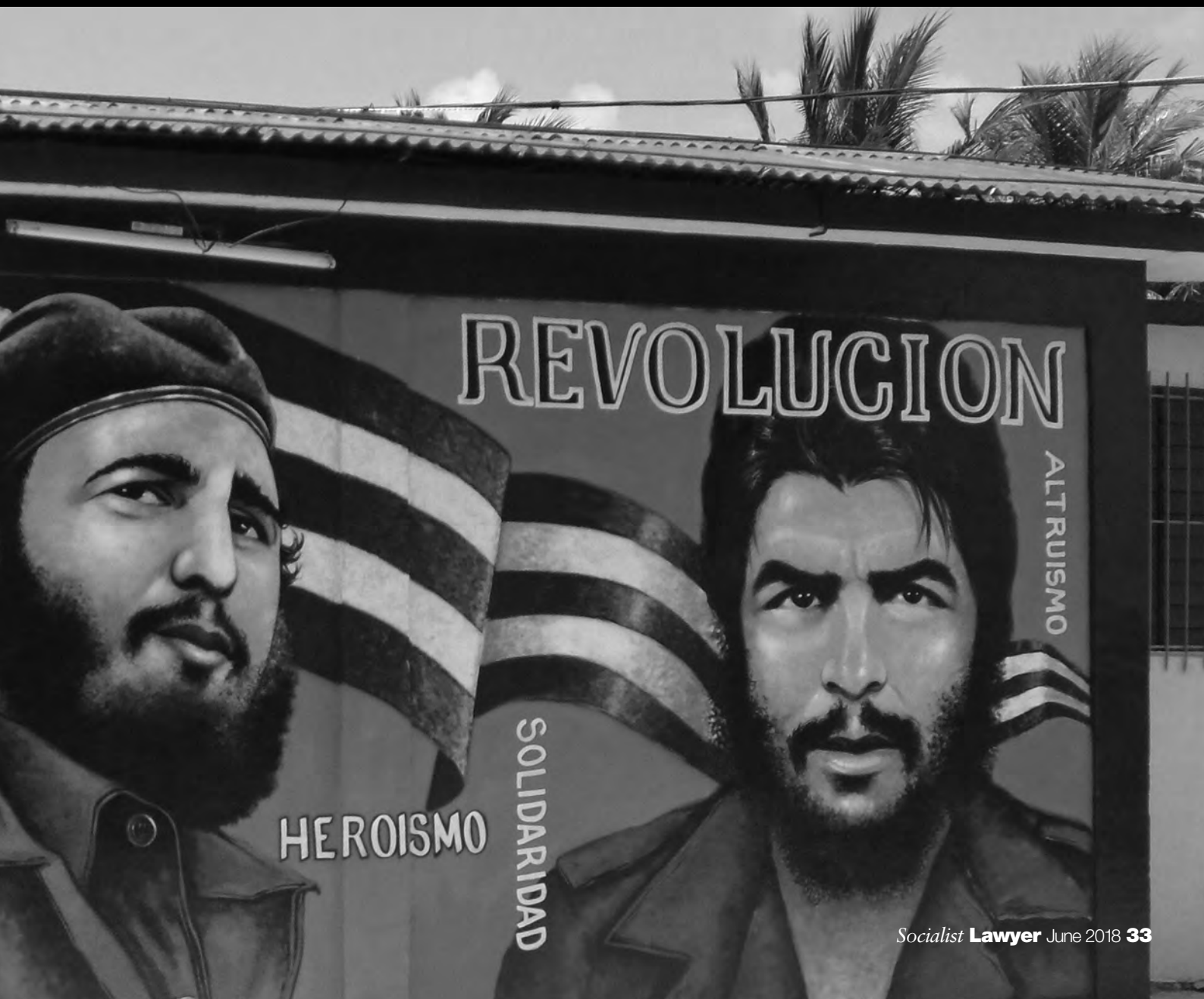
For the past 60 years the United States has attempted to control Cuba – its economy and right to self-determination – through the embargo, unique legislation with extraterritorial reach, which breaks international law and is much maligned by commentators. Although unsuccessful at its primary aim, to destabilise the Cuban government, these blockade measures breach the fundamental human rights of the island's inhabitants, and, often against domestic legislation of other states, bind Cuban nationals abroad, US citizens, and those wishing to provide aid to or trade with Cuba the world over, including in the UK. Alongside economic sanctions, there is a propaganda element, enshrined in statute, which ensures that the history and motivation behind the blockade, and Cuba itself, is misunderstood. Though the Obama administration took first steps towards normalisation of relations, the reality was little changed, and now, under Trump, conditions are set to reverse further. Contextualising the blockade, this piece illustrates the extraordinary measures the US has gone to since the blockade's inception, its distinctive scope, and the effects it has in modern times, stating the case for the need for increased international pressure so Cuba can reinstate the rights of its citizens, and, as a state, continue to develop, unencumbered.

Background and legal basis

'The Embargo on Cuba is the most comprehensive set of American sanctions ever imposed on a country'. The series of sanctions, with global reach, is known as being 'the worst in the world', with dire effect on the lives of ordinary Cubans and extraterritorial consequences for companies and individuals the world over, including within the European Union and Britain. The total cost of estimated damages to Cuba by the blockade in its 60 year history amounts to $822 280 000 000. In the period June 2016-17 alone, damages from the blockade are estimated to cost Cuba $4 305 400 000. In real terms, this is equivalent to double the amount needed annually in order to develop its economy. The US is effectively keeping a developing foreign nation in a financial stranglehold.

US justification for the blockade is Cuba's human rights record and non-democratic government, yet the US has normalised relations with China, Vietnam and other past 'enemies of the state' without question. The true motivation behind the imposition and continuation of the US blockade on Cuba can be found in countless governmental documents now in the public domain, which illustrate that destabilising the Cuban government through systematic destruction of the island's inhabitants' human rights was the primary agenda on the blockade's inception. Commentary from diverse sources, both US domestic and international bodies, including Amnesty International, the United Nations and the American Association for World Health, have noted the damage caused by the blockade on the basic human rights of ordinary Cubans.

Fundamental rights breached are Article 25 of the Universal Declaration of Human Rights, the right to food and medicine, Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, plus the right to self determination, covered by the United Nations Charter and other international agreements. >>>



>>> Cuban authorities view the blockade as, 'a massive, flagrant and systematic violation of the human rights of all Cubans (which) qualifies as an act of genocide under the Convention on the Prevention and Punishment of the Crime of Genocide of 1948…also an obstacle to international cooperation'. This claim that the blockade equates to genocide comes from two sources. The first, stated in Article II of the Convention, defines genocide as acts:

[C]ommitted with intent to destroy, in whole or in part, a national, ethical, racial or religious group…causing serious bodily or mental harm to members…deliberately inflicting...conditions of life calculated to bring about its physical destruction is whole or in part.

The second is an internal US governmental communication detailing the aim of the economic sanctions, three months before the first was introduced:

The majority of Cubans support Castro. There is no effective political opposition…The only foreseeable means of alienating internal support is through disenchantment and disaffection based on economic dissatisfaction and hardship…every possible means should be undertaken promptly to weaken the economic life of Cuba…a line of action which…makes the greatest inroads in denying money and supplies to Cuba, to decrease monetary and real wages, to bring about hunger, desperation and overthrow of government.

In *The Economic War Against Cuba*, Salim Lamrani explains the blockade in the context of international and US law. It has long gone against international law to apply blockade measures outside of times of war, to adversaries. This dates back to The London Naval Conference 1908-1909, a principle further endorsed by the United States in 1916, 'The United States does not recognise the right of any foreign power to impose barriers to the exercise of the commercial rights of any non-interested nations, by using the blockage when there is no time of war'. Cuba has never officially been at war with the United States.

In 1962, Executive Order 3447 cleared the way for the total embargo on trade with Cuba. Inclusive of medicines and food, against international law. The Fourth Convention for the Protection for Civilian Persons in Times of War, Geneva 1949, ratified by the US, among other states, provides that parties permit. '[F]ree passage of medical and hospital stores…intended only for civilians or another.. (party), even if the latter is its adversary…of all consignments of essential foodstuffs, clothing and tonics'.

Despite the clear US government direction, even the US Supreme Court recognised the right of Cuba to nationalise its assets according to international law, and the beneficial interest of all world players to uphold the doctrine of self determination of sovereign states, in *Banco Nacional de Cuba v Sabbatino*, 23rd March, 1964:

However offensive to the public policy of this country and its constituent States an expropriation of this kind may be, we conclude that both the national interest and progress toward the goal of establishing the rule of law among nations are best served by maintaining intact the act of state doctrine in this realm of its application.

Within seven months, this decision was effectively quashed by legislators with the Foreign Assistance Act 1964 Hickenlooper Amendment, despite concerns of conflict with international law and the Charter of The Organization of American States, Article 19;

No state..has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State…(prohibiting) not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

And 20;

No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind.

"People have two jobs to survive, state and supplementary work, and are incredibly aware of the effects of the blockade and how it impacts on pay."

Despite opposition, the blockade continued to grow. At its inception, the legal basis was an antiquated provision to be used specifically in times of war and national emergency, the Trading with the Enemy Act 1917 (TWEA), built on over time with subsequent legislation. Section 5 (b) gives the US government power to apply economic sanctions and 'prohibit trade with the enemy or allies of the enemy'. The International Economic Powers Act 1977 limited presidential ability to enforce further sanctions reserved for national emergencies, yet the TWEA remained in force against Cuba, despite never having been the subject of a US national emergency.

Due to the TWEA, the US was able to introduce other related laws, such as the Cuban Asset Control Regulations 1963 (CACR), which gave the blockade an extraterritorial jurisdiction;

US nationals or persons under US jurisdiction are prohibited from carrying out financial transactions with Cuba; Cuban assets were frozen and importing goods of Cuban origin into the US was banned, along with other restrictions. Cuba is the only country against which this legislation is enforced.

This disallowed any person or company, in or out of the US, from trading with Cuba using the dollar. Cuban assets in the US were frozen and all 'financial and commercial transactions…(unless) approved by a license,' banned.

Since the beginning of the blockade nearly 60 years ago, various US laws have followed, enacted to restrict and regulate the activities of Cuba, aid and service provision to Cuba, trade with Cuba and Cuban trade with other nations. During the cold war, the Foreign Assistance Act 1961 introduced a complete trade embargo and prohibited assistance to Cuba and its government, including banning the use of international aid payments from the US,

distributed by international bodies, to be used for any Cuban projects. Kennedy's Presidential Proclamation 3447 stated the 'total embargo on trade' was under the remit of the Foreign Assistance Act, s 620 (a).

Following the CACR 1963, The Export Administration Act, 1979, introduced the 'Commodity Control List,' controlling exports from various countries, including Cuba, for national security reasons. The same year, the Export Administration Regulations (EAR), blocked 'exports and reexports' to Cuba, placing items and activities under US control.

Post Cold War, sanctions continued and developed an unmistakably policy driven flavour, with bills being pushed through congress by anti-Cuban individuals. The Cuban Democracy Act, 1992 (CDA, or Torricelli Act), furthered the extraterritorial remit, banning third country ancillaries of US companies from dealing with Cuba or Cuban persons. Foreign ships docked in Cuba cannot 'enter US territory for 180 days...(without a) license' issued by the US Treasury. The Cuban Liberty and Democratic Solidarity Act 1996 (CLDSA or Helms-Burton Act), 'codified the provisions of the blockade,' preventing foreign third parties, businesses or persons from trading with nationalised US holdings, by threat of legal action. For the first time, legislation pledged US governmental support to anti-Cuban groups, financially or otherwise, in essence, legislating propaganda. Renewed annually, the CLDSA restricts 'presidential prerogatives for suspending this policy'.

Further rights were curtailed consequently. Cuba's intellectual property rights were denied recognition in the US by the Emergency Appropriations Act for the 1999 Fiscal Year, s 211. In practice, this means Cuban products cannot be trademarked in the US, such as Havana Club rum, permitted by the US Patent Office to be produced and marketed in the US by Bacardi, instead of the Havana Club associated with Havana, Cuba, distributed elsewhere. US citizens' rights to travel to Cuba for 'tourism,' was banned by the Trade Sanctions Reform and Export Enhancement Act, 2000. Although the act 'authorised the export of agricultural products to Cuba,' this was only if cash payment was made 'in advance without any US financing'. The view of what constitutes this has been strict.

Modern effects of the blockade

May 2017, I am staying at the rural Julio Antonio Mella Camp 40 kilometres outside of Havana, with an international delegation. Working alongside local farmers, the other delegates and I experience the cumbersome way needed to get things done. There is little to no machinery for this type of agricultural work, a result of trade restrictions, meaning machinery needs to be imported at great expense from geographically distant places such as East Asia. An increase in the population moving towards cities means fewer hands to work the ground and tend to crops. Farmers use oxen and mule to plough fields instead of tractors, the unpredictable water supply prevents washing after work some days (especially unlucky after a session cutting off the dead bark from the banana tree crop, the sap from these causes a chemical reaction, burning the skin). The last three years Cuba has suffered a drought which has been especially damaging for food production, meaning water has needed to be rationed. Since my visit, Hurricane Urma, though adding some much needed density to the country's reservoirs, has caused extensive damage. Despite Cuba's impressive storm prevention methods, already stretched resources have been spread even thinner; the hurricane damaging and destroying 'homes, crops, airports, schools, hospitals, water storage and power stations', affecting around 159 thousand homes, with communities suffering from flooding, high winds and lack of necessities.

People are eager to talk about life here. Although a common factor of discontent amongst Cubans is pay from their government jobs, which is incredibly poor, there is an infectious irrepressibleness in general, and a spirit of making do and resilience is truly alive. People have two jobs to survive, state and supplementary work, and are incredibly aware of the effects of the blockade and how it impacts on pay, which they articulated well. Outside of the cities especially, Cubans regard the Americans with interest, for many this maybe the first physical interaction they have had with them, knowing them only from pop culture. But people are friendly, welcoming. There isn't animosity for the people themselves, only the government.

In Artemisa, I visit a café with US delegate Ian McShea, a carpenter and community organiser from Phildelphia. The only customers, we begin talking to the proprietor, gradually joined by two waitresses and both chefs, who had been eavesdropping curiously. They excitedly talk about Cuban life, how shortages make life difficult and obtaining goods for the shop is problematic due to cost, telling us their hopes for the future, that Raul Castro would improve things, that he often mentions wages. As McShea recalls, they clearly explain how the blockade affects things, like imports, taking 'most of the money that would be used to pay workers… (so the) government pays less to workers to keep the cost of other things low'.

Erick, a 25 year old Informático (IT technician), has two degrees from the University of Havana. He says he has been lucky to get a professional job, hard to come by with so many graduates in the market. All education is free in Cuba, the quality highly respected worldwide, despite common problems such as lack of materials: pencils, pens, paper, plus more specialist items, for example items needed for medical and engineering studies. The blockade restricts material aid as well as trade, with imports of anything being expensive as they must be shipped from trade partners at a great distance. Although his job is good, Erick only gets paid the equivalent of US $20 a month. To survive, he also raises chickens and lives at home with his family. He enthusiastically tells me his ancestors could be traced back a long way, all of them Cuban as far as he knew, saying his parents and grandparents were big supporters of the revolution and loved their country, as did he, but with the level of pay as it is, he is facing the fact he might have to leave. Getting the money together to travel is another matter, it is going to take him years. >>>

>>> After reading much of the criticism levelled at Castro, Cuba and Cuban life in the press, I was surprised not to meet people with particularly negative things to say about the government. That is not to say these people do not exist, but I did not encounter them. Some of the younger people in cities, I was told, resented the lack of material goods in particular, wanting to move with the times, own fashionable clothes, have access to newer technology, but people I spoke to understood why these things were not forthcoming. Having experienced internet access, Cuban style, these concerns are not just material. At the camp, there was a small computer room open at set hours for us to use, with dial up internet access. All the sites I wanted were freely available, despite press rumours, but the machines themselves got cut off due to weather and power failures frequently. Many of the mobile network providers will not serve Cuba due to the blockade, like mine. In Havana itself, internet access involves either paying extortionate rates at tourist hotels, prices which would cost two week's wages for a Cuban, or sampling the options available for locals. These comprise buying a distinctly unofficial looking piece of paper with a code on from someone's shop-cum-kitchen window to use on your phone, or, as I chose, joining the crowd sitting on the pavement in an alleyway, on their laptops and smart phones, after paying a ten year old to share his mobile data.

The first US delegate I met was Jaimee Swift, a Journalist, Educator and Political Science PhD candidate at Howard University, researching 'Social Movements, Black Politics, Afro-Descendant Women's Political Mobilization in the African Diaspora, and Race and Gender in the Americas'. Thinking back to the brigade, compared with now, she points out that there was never a seismic change in relations with Cuba, despite outward appearances;

I realise that the US relationship with Cuba has not changed, even when I was there. The financial and economic embargo was not lifted. Countless Cubans are still living in poverty. Many Cubans are using tools, vehicles, and items that were given to them from the USSR in the 1960s and 1970s.

Swift, McShea and other delegates visited a hospital in Cienfuegos, and spoke to the staff. Cuban medicine is another well respected area, free for all citizens. Cuban doctors regularly travel abroad to assist in emergencies and train others, renowned for their skill, domestic success rates are 'comparable to highly developed nations'. One of the barriers here is lack of equipment and pharmaceuticals that are only available from the US or through companies the US has banned trading with. In the last year Cuba has spent an estimated $1,066,600 sending patients abroad for treatment due to the refusal of the US to supply lifesaving and groundbreaking technologies. Several bodies have recognised the extreme detrimental effect of the blockade in Cuba on health and nutrition, including Oxfam, Amnesty International, and the American Association for World Health, little broadcast in the US. Chomsky notes, 'a detailed study by the AAWH concluded that the embargo had severe health effects, and only Cuba's remarkable health care system had prevented a "humanitarian catastrophe"; this has received virtually no mention in the US'.

Extraterritorially, the blockade has far reaching consequences, affecting other trade partners. For example, this year, two companies that previously traded with Cuba, one providing antibiotics, the other prosthetic limbs, ceased due to measures imposed by the US government. Both were being supplied by European companies. In the case of the antibiotics, from a Spanish supplier, the original manufacturer of the pharmaceuticals stated, 'since Cuba was subject to the OFAC sanctions, the company could not supply any product, whether directly or indirectly'. The

"Trump's particular brand of mock philosophical sabre-rattling against Cuba and all it stands for was ushered in as a key part of his presidential campaign."

Cuban medical field has had to be innovative, creating new pharmaceuticals with what they have, recently inventing the world's first skin cancer treatment, which given the climate, is excellent news for Cubans. Unfortunately for the rest of the world, the blockade works both ways. What Cuba can export is also limited, which in turn limits their impact on global medicine. Things are incredibly difficult despite the innovations achieved in the medical field, cutting edge technology often being denied.

It is astonishing Cuba has managed to rebuild its infrastructure to this point, since the harrowing *Período Especial*. After the collapse of the Soviet Union in 1989, Cuba's greatest financial supporter and trade partner, responsible for 85 per cent of exports, basic necessities such as detergent, food, fuel, clothing and medicine disappeared almost overnight, resulting in famine and strict rationing, explained by Luis A Perez Jnr in *Cuba: Between Reform and Revolution*. Rations often lasted only two weeks of a month, feeding blackmarket trade. Sugar, the main crop, dropped production by half by the mid nineties. Lack of animal feed meant at some points, eggs, milk and meat vanished. Factories stopped producing due to lack of parts so the transport network depleted, isolating rural communities. Housing deteriorated. Fuel shortages meant blackouts and inability to preserve food in refrigerators from the heat. Bicycles replaced cars; animals, farming machinery. Many with disabilities went without treatment, 300 medicines no longer available. At one point, there were nine abortions for every 10 births. Compounding these horrendous events, a 1993 storm left 150,000 homeless, causing $1 billion of damage. Throughout this period the blockade remained and intensified, little wonder Cuba regards it as attempted genocide.

2nd May 2017, Havana. As a guest at The International Solidarity Conference at the Palacio de las Convenciones, where the Cuban Parliament meets, it was clear the idea the world had been given that the embargo was finally over and

US/Cuban relations had been repaired was not the case. Various dignitaries spoke including Ana Teresita Gonzales Fraga, the Cuban Vice Minister for Foreign Affairs. The majority of restrictions remained. Russia and far off countries being main trade partners, with trade with the US for the most part still forbidden, including 'indirect' trade with other countries, items destined for the Cuban market, or of Cuban origin. Relationship wise, Guantanamo Bay remained illegally occupied against the wishes of Cuba by their powerful neighbour.

From rhetoric to reality

Under the guise of his honest buffoon image (which perhaps could be viewed as a hopeless caricature of American imperialism, were he not in charge of a world super power), Trump's particular brand of mock philosophical sabre-rattling against Cuba and all it stands for was ushered in as a key part of his presidential campaign. What many assumed to be mere political theatre to appease elements of a hard line right wing electorate, or those with deeply rose tinted glasses pining for the glory days of Reagan or the second coming of Nixon, was also aimed at a small but vocal minority of Cuban ex-pats in Miami, represented at Senate level in the form of Marco Rubio.

Rubio's Republican-American dream story, his family escaping the tyranny of Castro post revolution, proud Cubans forced to leave their beloved homeland by 'a thug', having to work their fingers to the bone for poverty wages in the USA until they achieved success, spurred on his popularity no end; apparently undamaged by the *Washington Post* uncovering the fact this was false (the Rubios left Cuba for the US some two years before the 1959 revolution, like so many immigrants across the worl,d looking to improve their chances). The Miami contingent of 'exiles' actually include many who chose to leave during the Periodo Especial, unsurprisingly bitter at revolutionary Cuba, especially once rich landowners or heirs under the US bankrolled Bastista regime. Others, who left due to hardship and blame Castro, seem to ignore the contribution US blockade had on exacerbating the situation, apportioning blame solely to the Cuban government. Emigrants from during the Batista period are not popular with the Miami lobby, yet the truth behind Rubio's origins has not dented his rise, he is responsible for drafting some of Trump's anti-Cuban legislation.

Obama's limited reforms to the scope of the embargo assisted Cuban-Americans who left for economic reasons, as opposed to political. Enabling Cuban citizens to be sent up to $2000 a month and lowering travel restrictions by allowing certain religious and educational groups to visit Cuba meant the community could retain ties with home. However, political change in South Florida has been slow, mostly due to voter apathy of the younger community and the older generation sticking together politically as part of the Anti-Cuba lobby, reported by *The Economist*, who spoke to a café owner who organised Cuba policy discussions in Miami in 2007, discussing the fear of 'speaking out' against the embargo, 'I know people who've dissented and lost their jobs or had to close their shops… Ten…years ago I would have been bombed'.

It is uncertain how this timid progress towards relationship building between the migrants and those who remain will go, a return to this violent past, or continued liberalisation. Polls suggest progress is positive, yet last year's raucous Miami celebrations in the streets of Little Havana after the death of Fidel, which featured many of Trump's 'Make America Great Again' baseball caps and blow up effigies of the president himself, were the polar opposite of the reaction across the water. When I visited some six months after, there was graffiti everywhere, and the moment a chant started at gatherings it was always responded to, with the refrain painted on the walls, 'Yo Soy Fidel!' ('I Am Fidel' – a reference to the spirit of the revolution and the leader living on through the people). It is difficult to assess in reality how many of the emigrant community actually want closer links with the island but do not speak out, drowned out by Trump's rhetoric and vocal Cuban-American representatives such as Rubio.

The real benefit for Obama adapting restrictions however, was economic. Trade routes with Cuba meant for the first time Cuban companies and the state would be able to start investing in US imports, buying from a neighbour being preferable to going through a far-off third party, at great time and expense. Cuban tourism, often run by US companies, hit a high. Financial services, which under the embargo have some of the tightest controls, were forecast as an area of growth, with very few banking options on the island and large potential for investment. For these reasons, the pro-blockade, anti-Cuban Trump rhetoric was seen by many observers as purely that, hot air to appease the fringe electorate, whilst continuing to deal with Cuba quietly on the side. Unfortunately, this has not proved accurate. Since Trump U-turned on Obama's reform policies, US companies who had already committed to invest in Cuba will be left high and dry; the cost of continuing and furthering a policy in place a quarter of a century since the end of the Cold War with purely ideological aims, seemingly outweighing the benefit to commerce and the fortunes of those businesses already financially committed to trading with Cuban companies or investing in growth areas.

As Hurricane Urma hit Cuba's shores, leaving a trail of destruction and casualties across the Caribbean as well as Florida, President Trump was more concerned with cementing the repeal of the small steps made by the Obama administration, signing the extension of the Trading with the Enemy Act for another year, ready to hit Cuba with a fresh series of restraints.

The extra territorial nature of the blockade

The unique way the blockade operates is what makes it so powerful. Instead of purely binding US companies and individuals from trading with Cuba, an embargo, limiting or ceasing business and relations with another state, it goes much further, infringing on the rights of other states and individuals to have relationships with Cuba, aiming to >>>

>>> stop the flow of resources totally, a blockade. Not only is this against international law, UN Resolution 2625 describes the 'inalienable right' of states over their respective political, economic, social and cultural affairs, without intervention or coercion from others, but questions the sovereignty of foreign states, undermining their own rule of law.

The blockade extends to bind US and Cuban citizens abroad, international trade partners and financial service providers, both directly and indirectly. Often, use of an intermediary is not recognised, as in the case of the antibiotics mentioned earlier. The sale of anything containing Cuban materials in the US is not permitted, so foreign car manufacturers, for example, must prove to the US Treasury Office there is not any Cuban nickel present in their automobiles. The same would apply to any foreign confectioners using Cuban sugar in their products.

A period of especially strict liability was brought in by the CACR 2004, making US citizens sampling Cuban cigars or rum liable for penalties of ten years' imprisonment and a million dollar fine. When asked if US citizens could buy Cuban products, such as tobacco and alcohol, from countries other than Cuba, the Treasury Office responded:

The answer is no. The regulations prohibit persons subject to the jurisdiction of the United States from purchasing, transporting, importing, or otherwise dealing in or engaging in any transactions with respect to any merchandise outside the United States if such merchandise (1) is of Cuban origin; or (2) is or has been located in or transported from or through Cuba; or (3) is made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba. Thus, in the case of cigars, the prohibition extends to cigars manufactured in Cuba and sold in a third country from tobacco grown in Cuba.

Until the 2016 reforms, the announcement made on 15th March 2016 by the US Treasury Department, it was not legally possible to trade in US dollars or provide international payments in the currency, which impacted heavily on banks and financial services who wanted to process payments from or to Cuba. Even with reforms in place, the former restrictions were still being enforced by several US governmental bodies, particularly OFAC (Office of Foreign Assets Control), and the Departments of the Treasury and Commerce. This caused reluctance to trade with Cuba, as there were still reprisals from the US government. These have been either in the form of large financial penalties, or by being 'black listed', banned from trading in the US market at all (the Caribbean arm of ING, NCB found this out to their misfortune when prevented from engaging in 'any business relations with any US company or citizen' in 2006), something most cannot afford.

In fact, the amount businesses were fined for dealing directly or indirectly with Cuba in the period 2016-17 increased. Monetary transfers involving non-US financial institutions continued to be fined under blockade measures. Purchase of goods or services in non-US territories it was claimed were somehow related to Cuba, were cancelled at cost. Many examples are noted in Cuba's report to the UN, such as the French bank BNP Paribas, in Belgium, refusing to process a Euro transfer from the Cuban embassy in Spain to European Forax Services, claiming 'international restrictions of operations on behalf of Cuba', likewise HSBC Bank Canada refusing to accept a transaction for Dutch Reuven International, addressed to the Cuban Consulate in Toronto, because it was related to Cuba.

The Helms-Burton Act 1996 has faced opposition from the European Union due to its extraterritorial claims to bind EU citizens and businesses, preventing them from trading with Cuba by threatening and enforcing sanctions, plus the legislation's contempt for international law (especially what was the Agreement on Tariffs and Trades, now within the World Trade Organisation). These bully boy tactics demand the rest of the world play ball on the pitch of US interests, with the goal being total implication of American policy objectives. Unfortunately, despite the illegality of such provisions and frequent non-compliance with domestic discrimination legislation of other states, companies and individuals kowtow to these demands out of trepidation that the US will take them to task with its sanctions, causing potentially irreparable financial damage. As demonstrated, this fear is all too real; it has happened to others. Some must feel they are performing a balancing act, on one hand the demands of the US, proffering the keys to the world's largest market, ready and willing to snatch them away for daring to disobey, and on the other, the requirements of domestic legislation.

"In 2017 the UK's Open University refused to accept applications from Cuban nationals, based on 'international economic sanctions and embargoes'."

Companies behaving in a manner contrary to national discrimination legislation include those in the UK. Governments, as well as companies, are not readily willing to confront the elephant in the room, preferring to adopt an attitude of quiet deference. Only recently, 2017 in Britain, the Open University refused to accept applications from Cuban nationals, by reason of the US blockade, stating it would not enrol students on policy grounds, based on 'international economic sanctions and embargoes'. The OU later stated it considered itself;

[W]ithin the jurisdiction of US regulation with regard to economic embargoes…the OU has…employees who hold US citizenship (and are therefore subject to US regulation in this regard wherever they are in the world)…the OU has significant links with the US (notably using US financial systems). The OU is taking necessary precautions…Those steps include not trading with those countries impacted by…US 'comprehensive' sanctions and embargoes.

Despite this being against the Equality Act 2010, discrimination on grounds of nationality, included under the protected characteristic of race; and the Protection of Trading Interests Legislation 1996, which stipulates the UK

government should prosecute companies who accept the US blockade over domestic law and implement such measures, Lord Nash, on behalf of the government, commented, 'There are no UK or EU sanctions against Cuba. However, we understand that private organisations such as the Open University have to make decisions about their exposure to sanctions on the basis of commercial considerations, their own legal advice and appropriate risk assessments'. This suggests the government is allowing a British institution to base its admissions policy on US law. Contrastingly, the British government website states, 'The UK Protection of Trading Interests Act makes it illegal for UK based companies to comply with extraterritorial legislation and there is provision for fines to be levied against offending companies and individuals. In parallel, an EU Blocking Statute also makes it illegal to comply'.

There has been a condemning response from across the political spectrum. Due to a campaign organised by the Cuba Solidarity Campaign (CSC), the OU eventually changed the policy, after being threatened with legal action. This is not the first occasion something like this has happened in Britain, the Hilton group in 2007 banned Cuban citizens from staying in their hotels, justifying themselves by reason of 'threat of fines from the US Treasury Department's Office of Foreign Assets Control'. After a boycott by trade unions and others, they too changed their policy.

Propaganda embargo

Part of what makes the blockade so impenetrable is propaganda, enshrined in statute by the Helms-Burton Act, although a key element since the blockade's inception. Originally, the embargo was publicly justified to claim back nationalised assets, although the Cuban government made compensation provisions post nationalisation that were accepted by all countries, minus the US. As Lamrani notes, various UN resolutions, and American laws themselves, have validated the sovereign right of states to organise themselves as they wish without the interference of others. The UN Charter of Economic Rights and Duties of States, 1974, specifies in the case of nationalisation 'appropriate compensation' should be provided for appropriated property, and where there is a dispute, it should be handled by the 'law of the nationalising state'. Several compensation agreement claims were resolved in Cuba post nationalisation; France in 1967, the UK in 1978, Canada in 1980, and Spain in 1988, successful despite political differences during the Cold War.

Classified papers, annotated from a secret tape made by Kennedy in the run up to the Cuban Missile Crisis, were made publicly available in the 1990s, showing the lengths to which the US government was willing to go in order to bring about regime change in Cuba. Several academics, including George I Dominguez, Noam Chomsky and Raymond Garthoff, the latter having internal US government experience, have written about this time and the provocative, violent measures the US applied aiming to destabilise Cuba, including state sponsored terrorism, killing many Cuban civilians. As Dominguez points out, at only one point, in over a thousand pages of annotation, does a government official even vaguely seem to note the morality of these actions, albeit only as a reputation damaging factor, referring to them as, 'haphazard and kill(ing) innocents…this might mean a bad press in some friendly countries'. The documents record the motive for these recommended measures, 'our ultimate objective… remains the overthrow of the Castro regime and its replacement by one sharing the aims of the Free world', actions included 'using selected Cuban exiles to sabotage key Cuban installations in such a manner that the action can plausibly be attributed to Cubans in Cuba'. In 1961 the Mexican ambassador, responding to Kennedy's request to join forces against their allegedly dangerous neighbour, commented "if we publicly declare that Cuba is a threat to our security, forty million Mexicans will die laughing'.

In *Hegemony or Survival: America's Quest For Global Dominance*, Chomsky describes the extent of CIA task force activities and sponsored terrorism focused on Cuba until the late nineties. He mentions attempts at legal proceedings by Cuba, before the UN and the US Justice Department. Despite being in the public domain, much is not common knowledge due to media bias. Cuba did not repudiate with violence, but attempted to follow appropriate international legal and diplomatic channels, in 1960 bringing evidence to the UN, to be assured by the US Ambassador that the US 'has no aggressive purpose against Cuba,' merely a few months after the Bay of Pigs invasion.

Atrocities continued through the decades, including the Cubana flight bombing in the seventies and a Havana hotel machine gun attack in 1997. Convicted perpetrators believed they would have immunity due to their service to the CIA and US government against Cuba, like Orlando Bosch, 'responsible for thirty... acts of terrorism' yet presidentially pardoned in 1989 despite the Justice Department's opinion, 'it would be prejudicial to the public interest for the United States to provide a safe haven for Bosch…the security of this nation is affected by its ability to urge credibly other nations to refuse aid and shelter to terrorists'. Even perpetrators going on record about extreme operations in Cuba are not widely reported. Eduardo Arecena, of exile group Omega 7, implanted germs in Cuba to begin 'chemical war' to discover this was not for use against a Soviet enemy but 'against our own people'.

In 1999, several groups brought a case in Cuba seeking damages of $181 billion for the 3,478 deaths and 2,099 injured by US violent tactics since the beginning of the embargo, identifying various aggressions aimed at the island, spanning 'backing armed rebel groups within Cuba and the Bay of Pigs Invasion…to subversion attempts from the US base in Guantanamo and the planting of epidemics on the island'. The US ignored this with no comment.

After the perceived Soviet 'threat' ended in 1991, and contrary to US intelligence officially recognising that Cuba posed no threat in 1998, the blockade continued and grew, unhindered. Helms-Burton gave a legal framework for the

>>> previous, somewhat surreptitious, intentions of the US towards Cuba. Before any normalisation of relations between the countries, the legislation requires that Cuba implement changes far beyond the remit of what one sovereign state can ask of another under international law, namely giving up its right to self-determination, replacing the current constitutional order with a 'democratic' model, to be judged fit for purpose by the US, and to replace its economic system with that of the capitalist free market. Aside from this, it states the US will contribute financially, and support in other ways, anti-Cuban groups, enshrining the propaganda embargo in statute.

At the International Solidarity Conference, 2nd May 2017, Fernando Gonzáles Llort, President of ICAP (Institute Cubano de Amistad de los Pueblos), a member of the notorious Miami Five, tells us, 'when we hear in the media that the US Government is improving its relations with Cuba, it does not mean the blockade has been eliminated, the blockade against the Cuban people continues'. The Miami Five (Gerardo Hernández, Ramón Labañino, Fernando González, Antonio Guerrero and René González) know all too well the effect of the US propaganda embargo, first imprisoned in 1998, before being sentenced to life imprisonment in 2001, amidst severe concerns internationally over the fairness and impartiality of the trial, lack of evidence, and the treatment of the men. As Professor Paster, former Presidential National Security Adviser for Latin America, observed, 'holding a trial for five Cuban intelligence agents in Miami is about as fair as a trial for an Israeli intelligence agent in Tehran. You'd need a lot more than a good lawyer to be taken seriously'. In addition to the location, factors which the UN Working Group on Arbitrary Detention found amounted to an unfair trial included extensive solitary confinement without access to lawyers, and the manner the US Government, prosecuting, denoted all evidence 'classified,' including evidence provided by the men themselves, resulting in the inability to view their own submitted evidence.

"Holding a trial for five Cuban intelligence agents in Miami is about as fair as a trial for an Israeli agent in Tehran. You'd need a lot more than a good lawyer to be taken seriously."

In 2014, Rene Gonzalez Sehwerert was invited to give evidence at an International Commission of Inquiry in London. The commissioners were concerned by the trial proceedings and expressed doubt over the Five's guilt, calling for presidential pardons and release of those imprisoned, noting this would 'contribute substantially to the normalisation of relations between the United States of America and Cuba and to represent a meaningful stride towards world justice'.

González's visa to enter the UK was denied under paragraph 320 (2) of the immigration rules, despite an exception which could reasonably have applied in the circumstances, the UK being the only European country he was denied entry to. Following this, he was invited by several parliamentarians to discuss his case and the human rights abuses of the Five, whilst the others remained incarcerated. After a legal battle, the Court of Appeal heard the case on 20th October 2015. It was argued there were grounds for a necessary exception, and that Article 10 of the European Convention on Human Rights, freedom of expression, had been breached. Although not relied on in the hearing, documents acquired under a US freedom of information request, to support a claim of political motivation, proved the US government was 'in violation of its own laws, secretly paying anti-Castro journalists during the trial of The Five tens of thousands of dollars, while they were regularly pronouncing the Five guilty before and during their trial – in, print, radio and televised press – and in violation of an Order of the trial judge'.

The British Government were found to have 'disproportionately interfered' with the rights of the MPs who had made the invitation, González was permitted to come to the UK. However, on application after another parliamentary invitation, his case was judged to be 'complicated'. It was only after another application for judicial review, on grounds this 'was "frustrating" the Court of Appeal decision…violating the Court Order of the Court of Appeal' that the visa was finally granted, the night before the hearing, tellingly, 'in exchange for withdrawing the appeal'.

Propaganda and media bias continue to this day, outside the US as well as within. On the BBC's *Andrew Marr Show*, 27th November 2016, the presenter alleged that Cuba was, 'machine gunning people in boats, including children, when they are trying to leave the country', later repeated by the *Daily Express* newspaper. The BBC refused to account for the source of the comments to Luis Santamaria, reporting this, who believes 'disinformation' campaigns are a blockade tactic, and 'continuous anti-Cuba propaganda emanating from the mainstream media only supports and fuels… passive resistance against US aggression'. According to Santamaria, unsubstantiated remarks are freely found in the US propagated by right wing groups, often promoted by Otto Reich, of the Office of Public Diplomacy for Latin America, a man accused of assisting Orlando Bosch, the CIA operative responsible for planning the Cubana bombing. This can hardly be an unbiased authority, yet there appears to be no accountability for these kind of comments, so they, unchallenged, grow roots.

US Cuban relations – where from here?

Support to end the blockade has been shown time and again in UN resolution votes over the last quarter of a century, and in polls of US citizens themselves. For the 26th occasion, at 2017's UN summit a motion was tabled titled 'Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba'. After the US historically abstaining in 2016 for the first time in 25 years, with President Obama and Senator Kelly both admitting the blockade was obsolete and had not achieved its goals, a group of senators, led by Patrick Leahy, wrote to

Trump to request another abstention. Polls carried out in 2016 by CBS and *The New York Times* affirm the majority of the US public are in favour of ending the blockade on Cuba and normalising relations, even some of the traditionally hard line Miami group have changed their minds, whether or not they agree with the Cuban governmental administration, wanting to keep links with family and friends still on the island. According to the Caribbean Community (CARICOM) representative during discussions of the 2017 UN resolution, the blockade is viewed as 'not just as a punitive act against Cuba, but as an impediment to our shared regional development,' declaring 73% of American Citizens and 63% of Cubans living in America support an end to the blockade. Despite this national feeling and international pressure, with all of the other 193 states voting, as usual, to end the blockade, the USA and Israel were the only two countries to vote against, a return to form, erasing the memorable and hopeful moment the year before.

When I asked American delegates on the brigade for their opinions, reflections on the feeling in the US now, they did not seem fazed by this turn in events. Swift told me;

Now, under Trump, the only difference is that he has denied access for US citizens to travel to Cuba – that is it. Although I cannot travel legally to Cuba now, my American privilege to travel should not outweigh the fact that countless Cubans are suffering from the financial and economic blockade and have been for decades. Until the US officially lifts the economic and financial embargo, which is a crime against humanity, US-Cuban relations will always be contentious; even in wake of Trump's antipathetic travel policies to Cuba.

McShea was not surprised either:

As soon as he (Trump) was elected I knew what it meant for Cubans, Cuba, and myself. Cubans.. simply said that with Trump in power they'll just expect the usual. They are resilient and know that regardless of who's president of the US that they will strive. Banning travel to Cuba will make is so much harder for estadounidenses *(Americans) to build solidarity.*

The Cuban foreign minister, Bruno Eduardo Rodriguez Parrilla, commented to the UN, 'President Trump does not have the least moral authority to question Cuba. He is heading a Government of millionaires destined to implement savage measures against lower income families, poor people, minorities and immigrants,' also denouncing in his speech the country's 'lack of guarantees in education and health, the assassination of African Americans by law enforcement and the brutal measures threatening the children of illegal aliens who grew up in the United States'. This sentiment is echoed by McShea, who went on to say:

A notion in the US is that Cubans just don't understand their own oppression. Cubans believe that Americans need to come and experience Cuba before we make that wild generalisation… Estadounidenses *could learn so much from Cubans, about ourselves... About a history that we don't really know about, or care enough to know about.*

Conclusion

Cuba is a developing country with many issues, the system is not perfect, but for others across the globe it is an example of what can be done with limited resources and against great odds. The system is so very different from our neoliberal Western models of democracy that it is often viewed with suspicion, scorn or fundamentally misunderstood, helped by well placed, codified propaganda. Here, I am not arguing there are not any improvements to be made, but why should we throw stones from our glass houses? The UK, one of the richest countries in the world, with people too poor to eat having to resort to food banks. Ours, a country where record numbers of disabled people have committed suicide due to invasive, degrading treatment at the hands of those meant to protect them. Ours, a country curtailing workers' rights way of zero hour contracts and anti-trade union legislation, ignoring ILO conventions. Ours, a country recently found responsible for systematic discrimination and preventing those on low or middle incomes the right to justice.

And the USA? The list is endless. The discriminatory 'three strikes' jail system and police brutality, with immunity, against black citizens. The illegal raids in the homes of immigrants threatening deportation. The lack of free healthcare killing citizens who can't afford to pay. Yet it is the USA claiming Cuba must be punished for alleged human rights violations and a socialist agenda, despite its own record, despite continuing to trade with states like China. It is USA depriving Cuban citizens of basic human rights through their blockade. It is the USA preventing their small neighbour from developing their state, denying their attempts to move forward by a refusal to trade lifesaving technologies, food and basic necessities, calling into question the sovereignty of foreign states by preventing those who attempt to transact with, invest in or provide material aid or services to Cuba, or its citizens overseas.

Much like the late Fidel, Cuba has survived assault upon assault of oppressive, discriminatory, targeted US legislation designed to force regime change by making daily life intolerable. These measures have not only prevented trade with the US, the rich neighbour, but inhibited Cuba's right to trade with other nations including those in Europe, by the extra territorial nature of the blockade which uses bully boy tactics, the threat of legal jeopardy and financial penalties, to control the world stage, compromising the human rights of Cuba's citizens, particularly damaging health, sanitation and food. Until the world takes a stand against the intimidating spectre of the ultimate super power, the situation looks set to continue and even worsen. The small, timid steps made to pave the way for future relationship change by the Obama government have been swept aside like so many footprints in the sand, vaguely disguised under the mantle of first world principle.

Whatever the future may hold, one thing is certain. Cuba will persevere. 'No matter what difficulties we have faced in Cuba – the blockade, invasion, US interference, the Special Period – we have overcome them. So we are ready'.

A fully-referenced version of this article is available on request (socialistlawyer@haldane.org)

The return of the Poll Tax?

asks **Ripon Ray**

'I have not been able to pay my council tax for the last four years. Bailiffs have lied to me to get money from me. I still can't afford it'.

This is what Joanna Robinson told the *Money Matters* show on East London Radio in March 2018. During the period 2016-17, bailiffs were used by councils nearly 1.5 million times in order to attempt recovery of council tax arrears. People like Joanna are summoned to court for being too poor to pay. Not only do they accrue court costs, but they are subjected to the ignominy and anxiety having to face enforcement agents. Given the horror stories of bailiffs knocking on debtors' doors under the new Council Tax Reduction Scheme (CTRS), there is a serious question as to whether the new scheme is a Poll Tax rehash.

I was too young to remember what the Poll Tax was when it was first introduced in the late 1980s. My parents never spoke about it. In my work I started to notice, from 2013 onwards, that more debtors were seeking advice primarily regarding council tax arrears. Councils say they need to charge residents more; they blame the government's austerity measures for their budget shortfalls and therefore increased charges.

The Community Charge was introduced by Margaret Thatcher's government in the late 1980s. It was a fixed tax per adult with reference to the electoral register – hence the term 'Poll Tax'. There were differences in the amounts charged by councils throughout the country. In Westminster, according to *The Guardian*:

'The Duke of Westminster, who used to pay £10,255 in rates has just learned his new poll tax: £417. His housekeeper and resident chauffeur face precisely the same bill'.

With few exceptions, such as those with severe mental impairment, members of religious communities and those sleeping rough, everyone had to pay. Even those receiving income support still had to pay 20 per cent. According to the government's own survey 2.8 million people did not pay Poll Tax in 1991-2.

To recover such a mountain of unpaid debts councils throughout the country tried to recover sums from workers' salaries, and some of those on benefits had money deducted at source. However, in most instances, local councils were not able to recover sums from benefits since what was owed was often too large to be recovered within the relevant financial year. Once liability orders had been obtained from the magistrates' court councils would pass the debts to private bailiffs for recovery.

According to local law centres in Bristol, bailiffs delivered over 4,000 notices in May 1991 for non-payment; only half a dozen of them were recovered. By July 1991, when the tax had been in place for more than two years in Scotland, bailiffs had carried out over 41,100 visits but they hadn't managed to sell even one person's goods. According to the *Hackney Gazette* debt collectors themselves incurred cash flow problems because they needed to employ more people to recover arrears but received less money from the borough:

'Rayner Farrar & Co […] had 15,000 liability orders […]. Four out of five of all those liability orders weren't collectable because the Poll Tax register is in such a terrible mess […] We desperately need accurate financial information. It is not financially viable for us to act for Hackney Council any longer, we'll go bust if we continue'.

"Thatcher's 1980s Community Charge was a fixed tax per adult with reference to the electoral register – hence the term 'Poll Tax'."

The Labour Party did organise a campaign ('Stop It!') in response to outcries. Its priority, however, was to win the national election and to replace the Tory government in Parliament. Labour-run authorities were not going to resolve the immediate concerns of poorer residents and campaigners.

The Anti-Poll Tax Union was a national campaign set up in 1987 to organise protests or non-payment of Poll Tax. Concern was growing across the country. Initially there were five or six activists organising in small areas but within months they had built a membership of over 200. Many of them organised door–to-door campaigns, protests outside local council buildings and had 'No Poll Tax Zone' signs in local shops and houses. In other areas there were informal groups of individuals who came together to agitate against the Poll Tax.

Regarding the now widespread use of bailiffs, different tactics emerged in Scotland, England and Wales. In Scotland, the focus was on getting hundreds of people outside homes to physically stop the bailiffs. In England and Wales the main focus, as part the Anti- Poll Tax Union's strategy, was to make sure that people knew their rights. In the law centres in Bristol they distributed leaflets and contacted all the local radio stations to inform and unite residents.

The pivotal moment in the Poll Tax movement was the national demonstration on 31st March 1990, which took place in Trafalgar Square (pictured above). Initially it started as a peaceful march but by the end of the day 341

people had been arrested and thousands injured. Although the government claimed that the violence was pre-planned, many argued that violence was provoked by only a small number of protesters and by the violence of the police themselves.

Due to the unpopularity of the tax nationally, it was replaced in 1993 and many would argue it brought down Thatcher's government. Subsequently, residents in receipt of minimum state benefits received full council tax support. and council tax was charged based on the size of their property (like previous rates system) along with other exemptions to ease the burden on those deemed too poor to pay.

Two decades later, under new welfare reform introduced by the Tory government, the overwhelming majority of local authorities (whichever party has a majority) expect a minimum contribution from residents, whatever their circumstances. Sound familiar?

Under a Freedom of Information request, Child Poverty Action Group (CPAG) and Zacchaeus Trust 2000 obtained data on the impact of the introduction of the new CTRS in local communities around London. Their findings were published in *Still Too Poor To Pay* in 2016. It appears that the overwhelming majority of councils in London were charging poorer residents. Over 318,000 court summonses had been issued to London's poorest households since April 2013 after they had fallen into arrears. Almost 250,000 low-income Londoners were charged over £27 million in court costs. The figures are set to increase from April 2018 since many councils, facing further cuts to budgets, have been passing on the burden by increasing charges to the poorest people.

Nationally the data is even more shocking – more than 2.3 million cases were passed to private bailiffs in 2016-17 by 252 local authorities, according to the report published by Money Advice Trust: *Stop the Knock*. Over 50 per cent of the recovery sums sought was for council tax arrears. Just as in the Poll Tax period, many councils are unable to recover the council tax through benefit reductions. After a liability order has been obtained the amount of the debt often cannot be claimed from benefits within the relevant financial year, given what can legally be deducted from weekly benefit. Inevitably this paves the way for councils to use private bailiffs.

In light of such shocking statistics, different councils have taken different steps to address hardship in the community. A handful of councils (such as Tower Hamlets and Camden) have given full council tax reduction to their poorer residents, while other councils have carried on demanding money through the courts and bailiff enforcement action. Hammersmith & Fulham has instigated an ethical enforcement approach and will end the use of bailiffs for council tax arrears collection from 1st April 2018: 'Heavy handed debt collection in the public sector is counter-productive: court action, bailiffs and lawyers call cost money, and can create high levels of stress and anxiety in families that find themselves in debt' said Cllr Max Schmidt, cabinet member for finance.

"Local authorities expect a minimum council tax contribution from residents, whatever their circumstances. Sound familiar?"

What can we do? In Hackney many Labour Party ward members put forward motions to the Labour Party when the council began a consultation in November 2017, proposing to increase minimum council tax contribution from 15 per cent to 20 per cent. The overwhelming majority Labour Party members voted against the rise. Local trade unions, tenants and residents' associations and advice charities also opposed the council's proposal. Regardless of this resistance, the council decided to increase the contribution by 3.8 per cent on the grounds that central government had cut at least 10 per cent of the council funding each year since 2013.

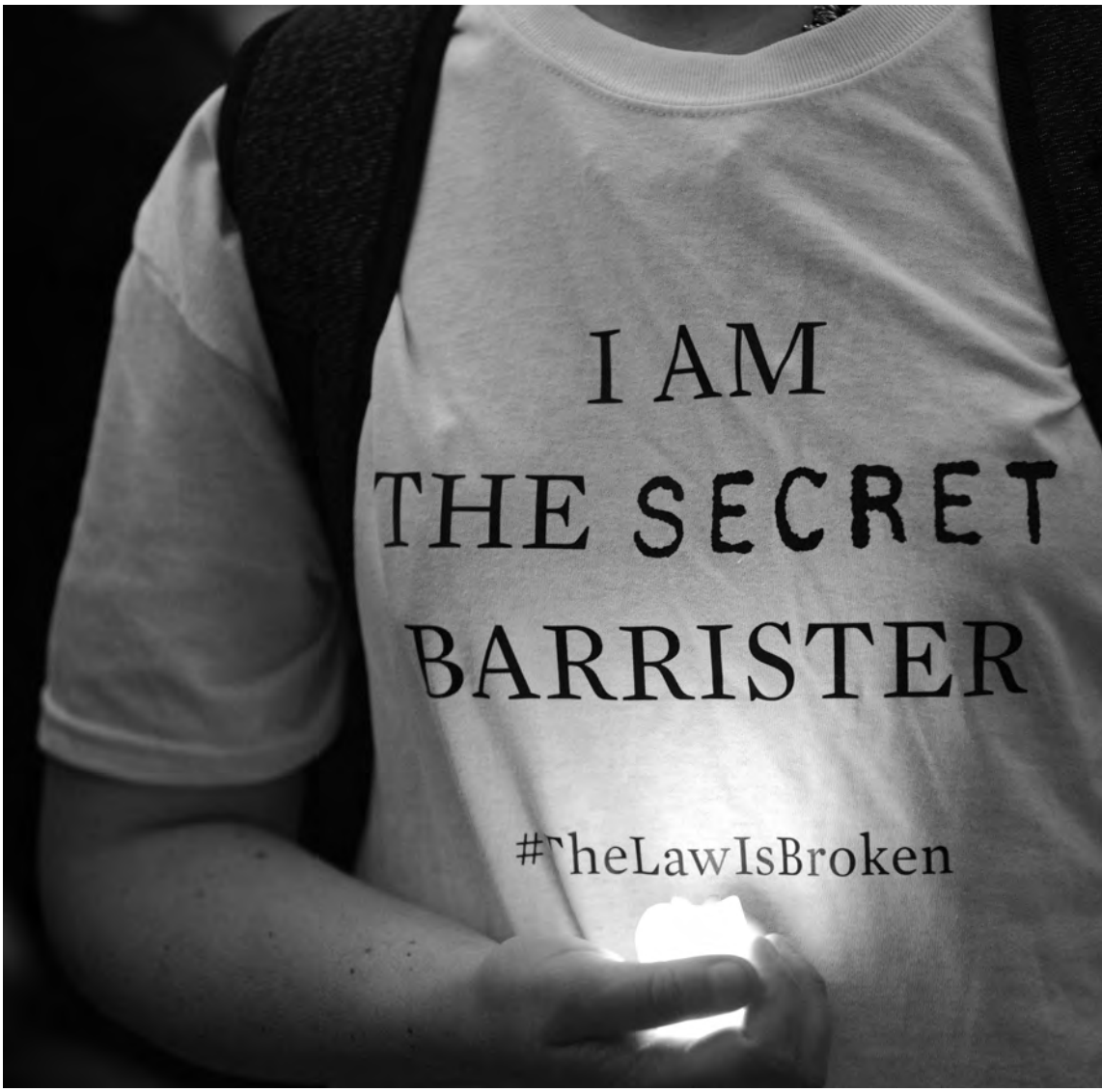
Regardless of the political make-up of local councils, there has been a trend to charge those least able to pay council tax. If they are to pay, many are either using credit cards or getting loans from pay day lenders with all the attendant financial risks. Further evidence of financial difficulty is indicated by the rise of people using food banks. The Trussell Trust Foodbank Network distributed just over 1,100,000 emergency three day food supply packages to people in crisis 2015-16. Between 1st April 2016 and 31st March 2017 distribution had risen to near 1,200,000 emergency packages.

The situation for poorer people and communities is getting worse. Sadly, local council policy is very similar to what it was during the Poll Tax years and compounds the impact of Tory austerity policies. It is imperative that we organise our communities again and defeat the new Poll Tax regume. Otherwise millions of people like Joanna will continue to suffer.

Ripon Ray is a money and debt advisor

Legal aid back on the agenda, but...

The Secret Barrister: Stories of the Law and How It's Broken (Macmillan, March 2018)



It has been hard to miss the phenomenon that is Secret Barrister (henceforth 'SB'). Anonymous Twitter sensation of indeterminate gender (henceforth 'she') turned bestselling author, the masked advocate made her name correcting the many falsehoods perpetuated by the often legally illiterate mainstream media.

The book is an account of life at the criminal bar, with some reflection on the administration of criminal justice in Britain. Most importantly, SB makes the case for increasing the public budget for criminal legal aid. Its publication coincides with volatile times. The Criminal Bar Association ('CBA') recently voted to accept the government's offer of slightly increased funding for the Advocates' Graduated Fee Scheme ('AGFS'). As SB herself put it recently on Twitter, 'this is the beginning, not the end, of the fight'. A more timely book is difficult to imagine.

It's good form when criticising another's work to start with sincere praise. In the case of SB's book, that sincerity is not difficult to muster. The product of diligent research, readable, straddling the divide between lay and professional audience, there's swearing, there's anecdotes galore, and there's insight. SB goes as far as to criticise the rate (one per day!) at which Tony Blair's Labour government created criminal offences. All in the context of an extended plea against austerity. What's not to love?

I have a few constructive criticisms.

"The bar has always been associated with elitism and narcissism. This book is no exception. It is liberal paternalism at its best."

The author all but ignores material inequality. She barely describes, let alone comments on, the top-heavy structure of the criminal bar. That structure sees criminal QC millionaires working side-by-side with juniors unable to make rent. Failing to conceptualise that problem as a distributional failure, as opposed to one of mere budgetary oversight, is bad economics at best, and a tacit apology for wealth inequality at worst.

The bar has always been associated with elitism and narcissism. This book is no exception. It is liberal paternalism at its best: apparent sympathy with one's benighted, impoverished clients, but always founded on the unreconstructed superiority of *noblesse oblige*. From SB you can expect not the warmth of solidarity and equality, but the cold wit of an elitist revelling in her own social and economic power.

Barristers benefit from immense social capital, much of it excessive and unjustified. Our labour is intellectual as opposed to manual, our skillset highly transferable. That doesn't justify the appalling level of fees paid to junior criminal advocates. But an emphasis on a barrister's relative power in society provides an important corrective to SB's narrative.

I'm reminded of a conversation I once had with a fellow barrister. He complained that the woman who cleaned his flat made more money than he did. I'll leave you to unpack the many elitist assumptions behind such a comment, and suggest only that


Picture: Jess Hurd / reportdigital.co.uk

SB's book drips with a similar – if slightly more well disguised – classism.

Perhaps the biggest failure of SB's economics concerns the supply of skilled labour. The BPTC now costs north of £18,000, yet the old adage still obtains: for-profit law schools will offer a place to anyone with a 2:2 and a pulse. Thousands compete for less than five hundred pupillages. A market saturated with barristers without practising certificates creates competition driving down remuneration. This is the predictable consequence of such a deregulated system. SB doesn't touch the issue.

There's something deeply troubling about SB's whole approach. As anyone who has ever found herself on the wrong side of SB on Twitter will know, the gloves are well and truly off. Cross this barrister at your peril, as fools will not be suffered gladly. She is a prize fighter, a self-appointed guardian of the liberal centre. And damn it if she isn't good.

I couldn't find SB's final position on the vote over accepting or rejecting the government's derisory offer to the CBA. The epitome of centrist reasonableness, I suspect that's because SB isn't one to nail her political colours to the mast.

And yet her approach to restoring criminal legal aid is both predictable and justified. It seeks a coalition spanning a broad spectrum of political views. That's appropriate given the potential of criminal legal aid cuts to arouse radical responses in unlikely quarters, including former Conservative MP and barrister Jerry Hayes, who has been a loud voice calling for industrial action at the bar. If you want the likes of him in your tent, banging on about inequality might be thought self-defeating.

But discuss inequality we must. It won't do simply to restore the criminal legal aid budget without tackling the systemic, planned inequality of the bar. It won't do to ignore difficult questions about the marginal allocation of labour power in the legal sector. Too many crimes? Yes. Too many prisoners? Certainly. Too many barristers? Maybe.

A good read (and popular – the book has been in the *Sunday Times* bestseller list for thirteen weeks and counting), SB has succeeded in putting criminal legal aid back on the public agenda. But her approach leaves much to criticise. Socialist lawyers may wish to pause and consider the limits of our support for such a centrist, elitist agenda. Praise where it's due, then, but highly critical praise indeed.

Pink O'Barrister
(@MarxBanister)

A guide to how badly the system is failing

Guilty Until Proven Innocent
by Jon Robins (May 2018)
www.bitebackpublishing.com/books/guilty-until-proven-innocent

In the preface to *Guilty Until Proven Innocent* a scene is set. The police are raiding your house at 5am and you are taken away in handcuffs, in front of your neighbours, for a crime that you did not commit. It is easy to discount such goings-on as fantastical, more likely to happen on the silver screen than to you or one of your loved ones. However, as the book shows, it would be short-sighted and even arrogant to reach make that assumption when so many innocent people spend years and decades in prisons for crimes that they did not commit.

Guilty Until Proven Innocent provides invaluable insight into a justice system that was once held up as an example to the world but is now creaking and shuddering under the weight of a decade of austerity. It shows an appeals system that is wholly inadequate and toothless in its ability to overturn the decisions of a jury in a criminal trial.

Through a series of case studies, Robins paints a bleak and often dystopian picture of the British justice system. The book looks at the case of Eddie Gilfoyle, who spent 18 years in prison, having been convicted of the murder of his wife. Now, more than twenty years later, Gilfoyle's legal team and family are still fighting for the disclosure of crucial evidence from the original investigation that the police neglected to provide. So deficient was the police investigation and so scant the evidence against Gilfoyle that the affair has been dubbed a police cover-up. Eddie Gilfoyle has still been unable to persuade the courts to reassess the safety of his conviction for the murder of his wife.

Unfortunately, police mishaps and disclosure failures are thematic in Robins' book. In 2017 the Crown Prosecution Inspectorate found that the police's disclosure was 'poor' in over 40 per cent of the cases it reviewed.

One of the things that strikes you when reading *Guilty Until Proven Innocent* is how the inadequacies that Robins outlines are entrenched into every single stage of the process. Initial trials are marred by police tunnel vision: an exercise in verification bias that sees officers undermining the most basic principles of rational investigation when they feel that they 'have their man'. Once a person is convicted by a jury it is notoriously difficult to have this conviction overturned. The miscarriage of justice watchdog, the Criminal Cases Review Commission, is a microcosm for the justice system as a whole. It is chronically underfunded to the point that it is essentially powerless to carry out the sole job for which it was set up. In 2016 the CCRC referred only 0.77 per cent of the cases it received back to the Court of Appeal. This could be >>>

>>> attributable to a lack of resources, an antiquated system of grounds for appeal, or an unwillingness to question the wisdom of the Court of Appeal. Either way, the watchdog consistently finds itself unable to provide any adequate assistance to miscarriage of justice victims.

The Court of Appeal, too, has consistently either failed to understand miscarriages of justice or been unwilling to act on them. It seems as though the appellate court is still wedded to an archaic view on miscarriages of justice – an approach it has been trotting out since before the cases of the Guildford Four and Birmingham Six.

> "This is an incredibly important piece of work... It is difficult not to be perturbed when seeing just how badly the system is continually failing."

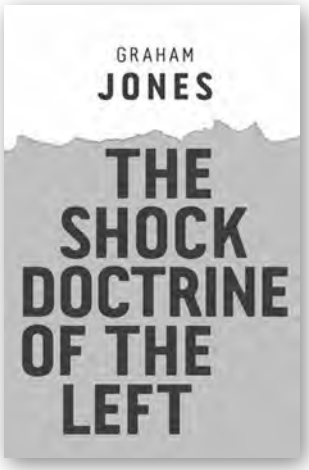
If, by some miracle, a defendant does get their conviction quashed, they are treated by the state at best with apathy and at worst with outright derision. These people have spent many years in prison in circumstances where the court itself has accepted that they should not have. But they are given less support than long-standing prisoners who have been released after serving their sentences served: when a conviction is quashed, wrongly convicted people often walk out of the courtroom with no money and no plan for the future. For many this is when their sentence starts. Mental health problems and substance abuse are rife amongst victims of miscarriages of justice.

Overall, this is an incredibly important piece of work, in an area that does seem to get a lot of press attention. It is difficult not to be perturbed when seeing just how badly the system is continually failing. Robins has highlighted the many shortcomings in almost every aspect of the justice system, now the question is how to fix it.

Oliver Subhedar

Metaphors to understand complexity

The Shock Doctrine of the Left by Graham Jones (Polity Press, 2018)



The whole practice of law is sometimes maddening. Whether it be immigration, defending possession proceedings, or keeping teenagers out of prison, it sometimes feels like we're administering a broken system rather than changing it. It was to combat that sense of complicity that some comrades and I founded the Materialist Lawyers' Group.

Our group aims to achieve a praxis – or unity of theory and practice – for socialist lawyers. I allowed that aim to shape my approach to reviewing this new work of left-wing theory: Graham Jones' recently released *The Shock Doctrine of the Left*.

Naomi Klein's *Shock Doctrine* (Random House, 2007) brilliantly explained how the neoliberal right consciously profits from crisis, using the chaos generated by natural and human-made disasters to effect irreversible political changes. Here, Jones explicitly and ambitiously attempts to adapt that strategy for socialist ends.

The book is situated within the paradigm of complex adaptive system theory. To make that body of thought more accessible to a wider audience, he develops an extensive biological metaphor, comparing society and the economy to the functioning of the human body. A series of productive analogies results: statistics are 'eyes' helping the nation

Fiction with a warning on subjugation

Before She Sleeps by Bina Shah (Delphinium Books, 2018)

Shah is a beautiful writer who writes with passion and deep experience about the lives of Pakistani women. Her last book, *A Season for Martyrs*, dealt with the fallout of the assassination of Benazir Bhutto from the angle of journalists in Pakistan (she also a political commentator and journalist) with a very clear narrative which made me keen to read her other novels.

Before She Sleeps is allegorical, and comparisons with *The Handmaid's Tale* are inevitable, but it is much more than that. Set in a futuristic 'West Asia' it presents a potential of a future for women in a society where they have long been second-class citizens to the point where their very existence, and so the existence of the species, is endangered.

Set in the Green City, a lush, ultra-controlled micro-climate, civilisation is struggling to recover from a series of catastrophic events. War, nuclear winter, and a deadly form of viral cervical cancer has led to the Gender Emergency, and the wiping out of all but a tiny minority of surviving women, valued as never before: as controlled and subjugated as ever, though purportedly prized and treasured.

It is the lot of the surviving women to marry polygamously, and bear as many children as possible in order to repopulate a world where women and girls are a scarce commodity. Always regulated by the governing Perpetuation Bureau, marriage is not a choice but is forced on women, with multiple spouses chosen by the Bureau, and the women become no more that incubators with no future but constant pregnancy and birth. Any resistance is met with the severest punishment – elimination.

Girls are under the stifling control of their parents, and school for them is limited to all they need to make them ideal wives and mothers, with the emphasis on good child rearing and obedience. Meanwhile, their male equivalents fly their kites by remote control, and enjoy life much as many do in South Asia today, without rules. There are clear parallels of some elements of contemporary society: forced marriage, extremes of control, poor education, no control over reproductive rights, large families, a life in the home while their men inhabit 'society'. It is the men who are the carriers of the virus, who infect the women,

state 'see'; police are 'white blood cells' combatting 'infection'; and 'DNA' is a mechanism by which social organisms 'reproduce'. It's at once playful and useful, intuitive and insightful.

In addition to embodied metaphors, *The Shock Doctrine of the Left* borrows heavily from Eric Olin Wright's 'four logics' of social change: smashing, taming, healing and building. It is difficult to understate the strategic and tactical implications of this insight.

Consider some of the most intractable divisions on the left. Should socialists support Brexit as an attempt to 'smash' the oppressive and neoliberal institutions of Fortress Europe? Or should we focus on the need to 'heal' those migrants most threatened by post-Brexit racism? Should we 'tame' the state by seizing it, as both communists and social democrats advocate? Or should we 'build' alternatives outside of the state as anarchists and libertarian communists have tended to suggest?

A more conscious theory of the nature, and even the need, for this division of labour between the four logics allows for greater understanding, and even effective cooperation, between groups and individuals answering to and operating under different logics. It provides a common language for leftists to coordinate their actions across vastly different institutional, demographic, and geographical contexts.

> "Jones provides a useful language, increasing the mutual intelligibility of legal and non-legal activity."

I read the book through the lens of an explicit question: how might these embodied metaphors apply to lawyers operating in the UK today? My search for an answer to that question was helped by several explicit mentions of law.

In developing his DNA analogy, Jones says: 'On larger scales, law and regulation function as a coding of the nation state, allowing it to be formally reproduced through its constant enactment by state institutions'. As lawyers, this raises questions about our individual complicity in reproducing the British state's peculiar imperial, racist and materially unequal 'coding'.

Analogy is inseparable from the legal method. Cases are applied or distinguished on the basis of similarity and difference. English case law is replete with physical and visual metaphorical imagery: floodgates, substance, weight, balancing exercises. Jones' use and development of the embodied metaphor provides a useful language increasing the mutual intelligibility of legal and non-legal activity.

A strategy calling for the tactical exploitation of chaos would always leave itself open to the charge of accelerationism ('[…] the idea that either the prevailing system of capitalism, or certain technosocial processes that have historically characterised it, should be expanded, repurposed, or accelerated in order to generate radical social change' per Wikipedia). Jones is explicit about preparing and planning for crisis, going as far as to state the need for the left to, 'create our own chaos'. To those most threatened by chaos (migrants, workers, women, those with disabilities) Jones' theory might seem callous or even irresponsible.

But the strategy is rendered more complex, if not redeemed, by its emphasis on care and the logics of healing, building and taming. By that emphasis, Jones presents a sophisticated view of how to reconcile the presence of violence within the system with the need to overcome and control it.

Clear-sighted discussion is generally a good thing. The left often shies away from theorising about finance and violence in particular. To fully assume their position as the heir to the neoliberal order, left movements will need to address both. Violence (or 'smashing') and the chaos it produces is part of human reality. We might seek to diminish it, sublimate it within law, sanitise it, export it, and even reduce it. But it remains inescapably embedded in the political process.

The Shock Doctrine of the Left is a book not aimed at lawyers. That, of course, is exactly why lawyers should read it. Law is but one part of a complex system, the 'body' of society. Bold, provocative, and insightful, the book will be of interest to those lawyers searching for greater understanding of how to overcome their complicity in the capitalist organism.

Franck Magennis, for the Materialist Lawyers' Group

---

and it is their historical behaviour and decisions that ultimately kill women. There is a direct link here to femicide and male preference and this book is as much about a warning of a future that may result if gender segregation, and female subjugation remain unchallenged. Recent reports of grossly distorted gender ratio India and other Asian countries should be sounding alarms all over the world.

There is an alternative life for the women of Green City if they are brave enough to escape to it: that of the Panah. Ironically the first BME women's refuge I ever worked with was called Panah, and it resonated deeply for me. Shah's Panah is a similar safe haven for rebel women, forced underground to avoid the life they cannot bare to live. They survive by covertly offering what men most need and what men, by their own treatment of women, have destroyed: intimacy; the partnership and companionship with a woman that is not about reproduction or even sex, and in which is based on mutual respect and equality. With echoes of honour killing, discovery of these illicit relationships is punishable by 'elimination' both for the women and the men they are caught with. They, at least, live life on their own terms, even if the rebel life is not freedom. As one protagonist puts it: 'I don't want to be the sandpaper that smoothes off a man's hard edges, but it better than being an entire nations incubator'.

Shah's description of girls' inability to resist seeing what they can get away with, whilst dreading the inevitable future that awaits them, the ending of their childhood with marriage and with bodies swollen with babies has been described by hundreds of South Asian women living in the UK today to those of us who will listen. Her description of the exultant escape by the few to Panah, giving way to the reality of their new lives as women outside society will be painfully familiar to the escapees of forced marriage and honour violence in hiding in our towns and cities, always fearing exposure and inevitable punishment. As one of clients described her life after her escape, 'Its not exactly a happy ending, but it's a different ending, and one I have chosen, and one that allows me to live life on my terms. For that I am grateful.'

In many ways this is a hard read, made easy by the lovely prose, but it is also a salient warning about what could happen in a society where women are not afforded the respect and equality that we all deserve. This is not limited to the lot of the women of South Asia, and we need look no further than recent events in Ireland to see the impact of subjugation of women around the world.

This year the UK marks 100 years of women in law, and 100 years of (some) women getting the vote. It has take us centuries to get to where we are today, but we can never take it for granted, and we must never forget the women for whom our choices are still a distant dream – even those who live amongst us, such as the survivors in the two recent forced marriage convictions. We all have responsibility.

Cris McCurley, head of the International Family Law team at Ben Hoare Bell LLP, and specialises in working with BME women and children

Never miss an issue.

Join now to receive this magazine three times a year – dated February, June and October

Join the **Haldane Society of Socialist Lawyers** www.haldane.org/join

☐ **I would like to join/renew my membership of the Haldane Society**

Rate (tick which one applies):

☐ Students/pupils/unwaged/trade union branches/trades councils: **£20/year or £1.67/month**
☐ Practising barristers/solicitors/other employed: **£50/year or £4.17/month**
☐ Senior lawyers (15 years post-qualification): **£80/year or £6.67/month**
☐ Trade unions/libraries/commercial organisations: **£100/year or £8.34/month**

Name (CAPS).....

Address .....

.....

.....

.....

Postcode.....

Email .....

Standing**Order**

Please cancel all previous standing orders to the Haldane Society of Socialist Lawyers

Please transfer from my account no: .....

Name of Bank .....Sort code ☐☐/☐☐/☐☐

Address (of branch).....

To the credit of: Haldane Society of Socialist Lawyers, Account No 29214008, National Girobank, Bootle, Merseyside G1R 0AA (sorting code 72 00 05)
The sum of £..... now and thereafter on the same date each month/year (delete as applicable) until cancelled by me in writing

Signed..... Date .....