Socialist Lawyer

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Haldane Society of Socialist Lawyers

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

Socialist Lawyer

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Societal change

We remain in the midst of a pandemic, but Haldane lawyers and comrades continue to campaign and raise issues on behalf of our clients and society at large from a socialist perspective. This edition of *Socialist Lawyer* reflects everything good about those working for socialist change and justice in our society. We are particularly proud of the issues that we highlight, including 'Cashing in on Covid' and 'Villains of the Pandemic'. Kate Bradley astutely looks at how the consumer credit economy has expanded since the years of Thatcherism and how to oppose it.

There is a focus in this edition on the Black Lives Matter movement and a powerful photo essay by our long-standing comrade and photographer, Jess Hurd, is presented without the need for words to accompany it. Clearly, the United Kingdom still has to face up to the realities of its racist imperial exploits, the consequences of which still impact various BAME communities and have manifested in the Windrush Scandal, the Grenfell fire and the hostile environment. Maya Thomas-Davis' interview with Omer Shatz considers the liability on the part of European Union and Member States officials and agents for crimes against humanity, committed with the objective of deterring migration in light of EU Migration Policies in the Central Mediterranean and Libya, and asks, 'Why do we frame this as a tragedy, as if it were a natural disaster?'

There is an interesting perspective offered by our 'From the Archives' section whereby Arlette Piercy reflects on how little has changed in terms of race relations and how far we have to go. Racism is of course an international problem and Bill Bowring reports on just some of the activities of the Society in that sphere. In this respect, we offer our condolences to the family of our comrade, Ebru Timtik, and honour her courage and sacrifice in persevering in a 238-day hunger strike and death fast, while mourning her death and deploring the Turkish state's many crimes against Ebru and her comrades. Ebru was sentenced to 13 years and six months in prison in March 2019 for membership of a proscribed organisation, having been arrested, tried and convicted along with 17 other lawyers known for defending opponents of the AKP government.

We now join colleagues in Turkey and across Europe in urging the release of the 16 lawyers who remain unlawfully imprisoned. We call on the British government and European Union to end their political and material support for the Turkish government, which facilitates this and other injustices. Patrick Wise-Walsh's article on political trials resonates and must be juxtaposed with this Kafkaesque reality in Turkey as we continue to await the outcome of the trial of Julian Assange in the UK.

The Executive Committee has scheduled an online conference for 24th October 2020 with the aim to bring lawyers, academics and activists together to forge a praxis for fighting the racist and classist immigration and asylum system, and tracing its connections to the fight for climate justice. Our intention is to share knowledge, to gather and cohere radical and progressive coalitions, and build momentum for change. We hope you can join us.

Declan Owens

Measures on domestic abuse must go further

As the coronavirus rate of infection rapidly rose in the UK, we were instructed to stay at home for our health and safety. The partial lockdown, announced on 23rd March 2020, offered a form of respite to some as study, work and even socialising entered the remote realm. However, for those living with their abuser, the opportunity for respite was replaced with heightened tensions, exacerbated fears and increased risk.

This was evidenced by the increased number of calls to domestic abuse charities and the police. Fiona Dwyer, CEO of Solace Women's Aid, reported a 49 per cent rise in calls to their London Advice Line in the week prior to lockdown. Similarly, researchers from the London School of Economics found that 45,000 calls were made to the Metropolitan police concerning domestic abuse in the 11 weeks beginning 23rd March. This indicates an 11 per cent increase on average compared with the same period in 2019. Their research also indicated that the majority of calls were made by third parties, suggesting increased concern among friends and neighbours to victims of domestic abuse over the lockdown period.

Given the increased threat of domestic abuse during the lockdown, the Government announced on 11th April that £2m would be made available to support online services and helplines. This, understandably, would enable them to keep existing services running and expand infrastructure to accommodate remote working. While the violence against women and girls (VAWG) sector welcomed this announcement, it nevertheless viewed the response as inadequate given the unique circumstances of the coronavirus pandemic. Public Interest Law Centre, together with charities including Southall Black Sisters, Solace Women's Aid, Step Up Migrant Women UK, and others called for ringfenced funding to be made available to increase the capacity and availability of refuges for women and children fleeing domestic abuse in their homes. These groups raised concern for the plight of Black, Asian and Minority Ethnic women (BAME) and migrant women given the Hostile Environment and No Recourse to Public Funds policies.

It must be noted that refuge provision in England presently falls below Council of Europe standards. They recommend that, at a minimum, one family place in a refuge per 10,000 head of population should be available. Data from the Women's Aid Routes to Support database shows that as of May 2019 there were 3,914 refuge spaces for women in England. This represents a shortfall of 30 per cent in comparison to the Council of Europe recommendation. VAWG organisations have called for more creative ways to accommodate women fleeing violence. The provision of accommodation for asylum seekers and rough sleepers since the lockdown was announced provides a model for supporting such women. According to further research by Women's Aid, three quarters of women reported that the pandemic made it harder for them to get away from their abusers, further reiterating the need for a properly coordinated crisis strategy.

'The pandemic made it even harder for women to get away from their abusers.

On 2nd May 2020, £76m of funding was announced by the Secretary of State for Housing, Communities and Local Government, Robert Jenrick, on behalf of his department alongside the Home Office and Ministry of Justice. The fund was designed to help vulnerable people, including children, victims of domestic violence and modern slavery, who may be 'trapped in a nightmare' during the lockdown restrictions. Charitable organisations were invited to apply for a piece of the pie but with varying deadlines and separate application processes. Funds have since been allocated but the initial deadline of 31st October 2020 to spend funds allocated was a cause of concern for many. Such a limited time frame does not provide specialist organisations providing services for BAME and refugee women with a sustainable solution to the challenging circumstances presented by the pandemic. This is particularly pressing given the real possibility of local lockdowns or a further national lockdown. Recently, the MoJ has extended their spending deadline until March 2021. The Home Office has also extended theirs, but only for emergencies with the expectation that funding should be ideally used by October.

In a recent poll, nearly one in three said they

Funding from central government to tackle domestic abuse and violence is to be welcomed. However, the measures must go further than that announced by the Housing Secretary and MoJ. Increasing capacity is paramount and greater effort and financial support must be available to ensure that BAME and migrant women do not fall through the cracks due to funding disparities or under-resourcing of specialist VAWG charities. No woman should be denied a safe refuge because of her immigration status, location or ethnicity.

Kitan Ososami

April

1: Myanmar journalist Nay Myo Lin faces a possible life sentence after publishing an interview with a group demanding greater autonomy for ethnic Rakhine people, but which has been classified as 'terrorist' by the government.

7: Cardinal George Pell (most senior Catholic priest guilty of historic child sexual abuse) is freed from prison in Australia and his convictions overturned after two years. To convict Pell the jury had to believe without doubt the complainant was reliable and honest. The High Court ruled there was not enough evidence to convict!

'Three hundred thousand, thirty four, nine hundred and seventy four thousand'

The number of Covid-19 tests carried out in the UK, according to Home Secretary Priti Patel

9: Department of Health officials at Stormont confirm abortions in the first 12 weeks of pregnancy will now be carried out in Northern Ireland, after threats of legal action from pro-choice groups after becoming legal last October 2019.

17: Public Interest Law Centre, Project 17 and Migrants Rights Network warn that migrant rough sleepers are still not receiving assistance despite government promises of shelter during the pandemic, and many fear being picked up by immigration enforcement teams.

Picture: Jess Hurd / reportdigital.co.uk

wanted to see major changes. Only six per cent were happy with the pre-virus status quo.

How can we shape the way the country is run?

The pandemic has changed the UK. Nearly two million claims for Universal Credit were made during lockdown, and millions more could become unemployed in the coming months.

That means people previously in secure jobs are newly experiencing the struggles faced by those reliant on the welfare state. The pandemic has also brought to light the deep inequalities engrained in our culture and workplaces: social care workers – now recognised as heroes – paid so little their wage can dip below the legal minimum; and BAME workers disproportionately losing their lives, partly due to the poor employment conditions they are more likely to face.

In all of these ways, this tragic crisis has exposed the perversity of neoliberal ideals that for decades have rewarded the wealthy and punished the poor. In a recent poll by YouGov, nearly one in three people said they wanted to see major changes to the way the economy works. Only six per cent were happy for the pre-pandemic status quo to continue.

The Institute of Employment Rights (IER), a think tank for the labour movement, has put forward a plan for a post-pandemic transformation. These proposals, submitted to the Labour Party's National Policy Forum, are based on those originally published in the IER's 2016 *Manifesto for Labour Law* and adopted by Labour's 2017 and 2019 election campaigns.

At the core of the IER's recommendations are mechanisms that more fairly distribute power, as well as wealth: the reinstatement of sectoral collective bargaining to give workers a voice in the workplace; and the return of a Ministry for Labour to ensure workers have a say in Parliament. This focus on democratising the economy has already proven successful in rescuing the country from economic recession – it was one of the main tools used to rebuild the economy after the Great Depression of the 1930s, not only in the UK but in the US and Europe.

Research has shown that sectoral collective bargaining is the most powerful way to raise wages. Workers on higher pay have more spending power, thus stimulating economic demand, and in turn creating jobs. Higher incomes also produce higher tax receipts, providing the funds to improve public services. It could be a key instrument in rebuilding economic strength and the employment rate after the pandemic, but it is not just a short-term fix: it can also help face the challenges to come.

Bargaining councils at the head of every industry would not only negotiate fair wages and conditions for existing staff, but also bring workers, employers and government together to plan strategically for the future. The transition to a green economy, the rise of automation, and the shape of a post-Brexit UK are all critical issues on which we should each be able to have our say. Building democracy into our workplaces provides the infrastructure needed to ensure workers can be involved from the ground up, rather than instructed from the top down.

'The people must have a say in how the economy is rebuilt'

It is not enough to give workers a voice: to be effective this new system will need to include mechanisms that ensure that voice is heard. The IER recommends this can be achieved through stronger trade union rights and a Workers Protection Agency with the power to enforce employment law.

Among the proposals for the reform of trade union rights are the repeal of the Trade Union Act 2016 and strengthening the ability of trade unions to represent their members through stronger rights to recognition and access to the workplace.

Meanwhile, a State-led Workers' Protection Agency should be established to inspect workplaces for compliance with a strengthened set of statutory employment laws. These laws, which will apply to all people in employment from day one on the job, include measures to regulate precarious work, such as compensation for shifts cancelled at short notice, a guaranteed wage for each working week, and a requirement for employers to provide flexible working conditions to all who request them, except where it would be unreasonable or impracticable.

Current and future governments will be forced to make huge changes to the way the country is run, the only question is what shape these changes might take. With public opinion now swaying against austerity, it is up to the left to offer viable alternatives.

Sarah Glenister (National Development Officer for the IER)

20: Former top civil servant Sir Philip Putnam launches constructive dismissal claim against Home Secretary Priti 'Vacant' Patel , saying he was forced from his job for exposing her bullying behaviour.

22: Assistant coroner for Cornwall calls on the Home Office and the College of Policing to institute 'a wholesale review of the effects of multiple Taser activations' after an inquest jury said their use played a part in the death of Marc Cole in Falmouth in 2017.

10%
Proportion of the 129 rape cases tried in military courts that resulted in a conviction, from 2014 to 2019

26: Civil liberties campaigners warn that people may be coerced into sharing data about their movements through the coronavirus contact-tracing app. Liberty warns that signing up could be a compulsory condition for returning to work and being allowed out of lockdown.

29: Centre for Women's Justice calls for MPs to include a new offence in the repeatedly delayed domestic abuse bill for a specific ban on 'non-fatal strangulation'.

Tasers: the 'less-lethal' force that heightens risk

It was a quiet day in Falmouth on 23rd May 2017 until police responded to reports of a man in Langton Road behaving erratically and waving a knife. The first officer at the scene arrived to find 30-year-old father of two, Marc Cole, in the street slashing at his own throat. After warnings, Marc was tasered three times.

Geraint Williams, the assistant coroner for Cornwall, said: 'He suffered a cardiac arrest at the scene and was rushed by ambulance to a local hospital where he was pronounced dead by medical staff'. A jury found that taser use had a 'more than trivial impact' on the cardiac arrest that killed Marc. The coroner commented: 'I am concerned, based upon the evidence that was led before the jury, that there is insufficient independent data as to the lethality of taser use and that, therefore the advice and training provided to police officers may be deficient or incomplete'.

Marc was the eighteenth person to die in the UK as a result of the use of a taser since 2006. In March 2020, the Home Office announced that police forces in England and Wales were being given £6.7m to purchase an additional 8,155 tasers.

Tasers, or Conductive Energy Devices (CEDs), are powerful electrical weapons that use nitrogen gas to fire sharp darts which can penetrate 5cm of clothing at up to seven metres. 50,000 volts of electricity is then conducted down the wires. The electrical current is designed to cause acute disruption to muscles in the body. These devices are often erroneously described as 'non-lethal', but the main taser manufacturer Axon Enterprise (based in Scottsdale, Arizona) recognises the taser as a 'less-lethal' weapon.

In July 2017 Eurie Martin, a 58-year-old sufferer of schizophrenia, was on his way to visit relatives. He had walked 12 miles in Deepstep, Georgia. He stopped to ask a homeowner for water and was refused. The police were called to check out 'a black man'. A Washington County Sheriff's deputy arrived and Eurie ignored him and kept walking. The deputy called for backup and when it arrived the officers' dashboard camera video recorded a deputy saying: 'Tase his ass'. A taser was fired and Eurie fell to the ground before removing the taser prong from his arm, and walking away. A third deputy then arrived and 'tased' Eurie in his back, causing him to fall again. The deputies surrounded Eurie and, using their body weight, held him down before shooting him 15 times with their tasers. Eurie could be heard on the camera recording, crying 'they killing me'. The autopsy recorded death by cardiac arrhythmia during police restraint.

The number of Met officers currently carrying tasers is 7,000. It is due to rise to 10,000 by 2022.

Reuters investigated the 1,081 deaths in the US until the end of 2018 in which tasers were used. 32 per cent of those who died were black, and 29 per cent were white. Carl Takei, a senior staff attorney at the American Civil Liberties Union said: 'Police violence is a leading cause of death for black people in America, in large part because over-policing of black and brown communities results in unnecessary police contacts and unnecessary use of force.'

It is not suggested that police officers don't at times face violent offenders. In the year 2018-2019 police officers in the UK were recorded as suffering 10,399 alleged assaults causing injuries. However, the concern about tasers and other 'less-lethal' weapons is that they can lead to an excessive reliance on force as a first response in circumstances where it is clearly not proportionate.

The continuing failure of the Home Office to commission independent research to investigate the risks of taser use and incorporate it into police training is essentially a policy of 'see no evil, hear no evil'. A taser is a substitute for a firearm and the circumstances in which it is an appropriate use of force should be in accordance with the use of a firearm. The blanket equipping of UK police officers with tasers has significantly heightened risk to the public. There is a strong argument that only specially trained officers should be equipped with tasers, and only after extensive specialist training akin to that received by specialist firearms officers.

The United States has seen an increased militarisation of policing. The equipment and weapons available to police are in many cases former military equipment. Arming police with military weapons leads inevitably to an increase in the disproportionate use of force and increased injuries or deaths amongst members of the public.

The UK has not travelled as far along this path, but the potential is there. It is vital that the judiciary and legal practitioners are vigilant in challenging the use of force by police to ensure that violence is not the primary instrument of social control.

Duncan Shipley Dalton

Protests demanding an investigation into the death of 12-year-old Somali girl Shukri Abdi who drowned in suspicious circumstances in 2019 took place in London (pictured here), Manchester and other cities on Saturday 27th June. #Justice4Shukri justice4shukri@gmail.com

May

2: Channel 4 Dispatches programme ('The Truth About Traveller Crime') is called 'dehumanising, unbalanced and unfair' and 'relied on weak and unsubstantiated data to falsely imply a cause and effect relationship between Traveller site locations and crime rates'.

4: US Secretary of State Mike Pompeo claims there is 'enormous evidence' that the coronavirus outbreak originated in a Chinese laboratory.

'I personally wonder whether we are a bit too wedded to the concept of trial by jury.'
Lord Faulks, former Tory justice minister

8: The parents of Harry Dunn lodged an official complaint against the CPS saying they been left 'totally in the dark' since their son died due to dangerous driving by a US diplomat's wife.

11: The factory behind the India gas leak which killed at least 12 people and hospitalised hundreds more, was operating illegally until at least the middle of 2019. LG Polymer (a South Korean multinational) had not received environmental clearance from the government.

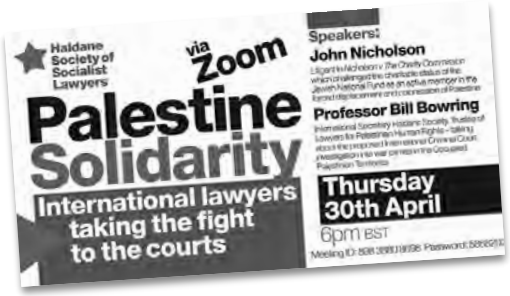
13: Former Sinn Féin leader Gerry Adams has his convictions for attempting to escape from prison in 1973 and 1974 quashed by the Supreme Court. Lord Kerr said 'the custody in which he was detained was not lawful'.

Picture: Jess Hurd / reportdigital.co.uk

Recognition of war crimes taking place in Gaza

'The Jewish National Fund (JNF) is a racist organisation which has existed for 100 years with the explicit aim of providing Jewish homes for Jewish people. What is wrong with providing homes for people? Only that the JNF does so by stealing the lands and homes from the Palestinians who live there, dispossessing them, displacing them and making it impossible even for them to return to visit their own family heritage. And the JNF is a registered charity in the UK (and many other countries), meaning that they get charitable tax relief and that we as taxpayers are contributing to the oppression of Palestinians.'

Recalling his unchallenged submissions in *Nicholson v Charity Commission for England and Wales* this is how John Nicholson, an officer of Manchester Palestine Solidarity Campaign, and also Chair of the Greater Manchester Law Centre, opened his contribution to Haldane's first Zoom meeting during the Covid-19 lockdown. John was the first of two speakers, the other being Professor Bill Bowring, Haldane's International Secretary, who led the discussion about the International Criminal Court's preliminary investigation into war crimes in the Occupied Palestinian Territories.



Preoccupation with the unfolding catastrophe of the pandemic, and the government's lamentable handling, means it has been all too difficult to retain a focus on the injustice being meted out by the Israeli state; Haldane's Zoom meeting which brought together lawyers, socialists and Palestine solidarity campaigners was a welcome tonic.

John talked about the campaign which is seeking to expose and challenge the operations of the JNF. It unsuccessfully sought adjudication in the Charity Tribunal over the legitimacy of including the JNF in the UK's register of charities. But it brought together Palestine Solidarity Campaigns from the North of England, activists from Jewish Voices for Labour, Oldham Peace and Justice Group, and Greater Manchester Unite the Union Community Branch. The campaign has since called for pressure to be applied to the Attorney General, as well as to the Chair of the Charity Commission herself. The struggle continues.

Bill outlined the submissions made to the ICC Prosecutor by the International Association of Democratic Lawyers (Haldane is a founding member) to the ICC, to which he contributed. As Netanyahu's government inches towards annexation of the West Bank, it is fiercely resisting the ICC's examination into war crimes committed in the Occupied Territories. Bill explained some of the implications of the recognition by the Office of the Prosecutor that: 'There is a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip'.

The meeting coincided with two noteworthy cases, firstly, the ECtHR decision in *Baldassi v. France* (application no. 15271/16), which found that the prosecution by French authorities of members of Collectif Palestine 68, Boycott, Divestment, Sanctions, BDS, campaigners, for incitement to discrimination, was a violation of Article 10.

And secondly *R (Palestine Solidarity Campaign) v Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16, which successfully challenged government guidance prohibiting local authorities from using pension policies to pursue BDS.

The meeting was a testimony to the persistence and inventiveness that the movement in support of Palestinian rights has developed.

Mikhil Karnik

18: 96 per cent of lawyers surveyed for a study by Commons did not support the requirement that defendants declare their nationality at the start of court proceedings. Section 162 of the Policing and Crime Act 2017 was part of the government's 'hostile environment' plan.

24: Benjamin Netanyahu becomes the first sitting Israeli Prime Minister to fight criminal charges in court, accused of corruption.

'Unlike all those who have been prosecuted to date, Dominic Cummings' household actually did have Covid-19.'
Kirsty Brimelow QC

26: The Criminal Cases Review Commission announces it has asked the Court of Appeal to review the cases of Ricky Tomlinson and 13 other members of the Shrewsbury 24, striking building workers wrongly jailed in the 1970s.

28: Only 60 people have received Windrush compensation payments in the first year of the scheme. By the end of March 1,275 people had applied, many with financial problems due to the Home Office wrongly classifying them as 'illegal' due to the 'hostile environment' strategy, and many claims are delayed by the need for hard-to-find proof.

EU must stop helping Libya on migration and border management

EU cooperation with the Libyan coastguard continues to cause deaths in the Mediterranean and human rights abuses in Libya.

In late June, it was reported that a boat of people seeking refuge in Europe, including a woman who had given birth on the boat, was forcibly returned to Libya. Six people on the boat died. This story encapsulates the violent contradictions inherent in the EU's border policy and relationship with the Libyan coastguard – a boat of people fleeing a war torn country; the EU holding itself out as a leader in human rights; EU proclamations about how unsafe Libya is as a port; a coordinated EU-Libya response which ensures these people do not reach safety; deaths of some of those onboard; and potential consignment of the survivors to brutal detention conditions on return.

With the situation in Libya deteriorating further in 2020 due to commander Khalifa Haftar's assault on Tripoli, and the coronavirus pandemic, this cruel cycle has once again come into the public eye. On one hand, the EU holds itself out as a protector of human rights abuses and champion of democratic principles. Further, EU officials have publicly stated that the EU wants to improve conditions in Libya. It justifies attempts to prevent crossings from Libya on the grounds that those fleeing are victims of human trafficking, and are at risk of dying at sea.

However, since 2016, the EU, led by Italy, has increased its actions to prevent and return boats of migrants leaving Libya. This has included providing millions of euros to the Government of National Accord in Tripoli, for the provision of training, equipment, ships, salaries and strategic support to the Libyan coastguard. This coordination goes so far that the EU border agency Frontex provides planes to survey the crossings from Libya to the EU, reporting their sightings of boats so that Libyan coastguard vessels can intercept them before they reach Europe. The EU is pursuing a strategy of containing those seeking to flee conflict in Libya, whilst seeking to maintain deniability of complicity in the Libyan coastguard's actions. The conditions in Libyan detention centres which returned migrants will suffer are well documented, including reports of torture, unhygienic conditions, crowding, lack of food and water and forced labour. In April 2020, a list of NGOs including Medecins Sans Frontieres, Human Rights Watch and Amnesty International called for the EU to stop any cooperation with Libya on migration and border management.

'This story encapsulates the violent contradictions inherent in the EU's border policy and relationship with the Libyan coastguard'

This situation throws several painful conclusions about the EU into sharp and bloodstained relief. Firstly, it has prevented many of those seeking refuge in Europe from finding safety. Secondly, it has condemned many of those forcibly returned to Libya to brutal conditions which leave them at risk of the most serious of human rights abuses. Thirdly, its decisions to defund and even oppose genuine rescue operations has made the sea crossing less safe and so heightened the risk of deaths at sea. Finally, it has demonstrated to the world, starkly and shamefully, that the EU prioritises preventing those fleeing war and economic collapse from reaching Europe over saving lives and preventing human rights abuses.

Charlotte McLean

See interview with Omer Shatz, one of the international lawyers who has filed a communication to the International Criminal Court evidencing liability on the part of the European Union and member states for crimes against humanity, committed with the objective of deterring migration, pages 14-17.

Picture: Jess Hurd / reportdigital.co.uk

'The cries of George Floyd's ancestors continu

Black Lives

This is an edited version of a speech by **Max Boqwana** at the Council Meeting of the International Association of Democratic Lawyers on 21st June 2020

I guess being from South Africa and speaking on this subject, some may think I am too harsh and stark, I admit it may be so because I come from people that have known the bitter experience of slavery, colonialism and racism and the enduring legacies of these evil human behaviours. These have in the past and in the present been part of our

June

1: Unarmed autistic Palestinian man killed in Jerusalem by Israeli police (their term for the killing: 'neutralised'). Protestors held signs saying 'Palestinian lives matter' while online images showed old photos of police and army officers kneeling on the necks of arrested Palestinians.

10: Four members of National Action are jailed for being members of the far-right terrorist group, with sentences of between 18 months and five and a half years. Number of far-right terrorists currently in British jails reaches a record high of 44, up from 33 a year ago and nine in 2017

"It shouldn't have been done in that way, it was completely wrong to pull a statue down like that."
Keir Starmer on the fall of Edward Colston in Bristol, while Lord Peter Mandelson said:
'That's the law of the jungle'

14: Police Federation calls on the Home Secretary to impose an emergency ban on all protests in London. This is after far-right activists injured 23 officers and over 100 were arrested on 13th June.

15: Government commission on racial inequalities is being set up by No 10 adviser Munira Mirza, who questions the existence of institutionalised racism and condemned previous inquiries for fostering a 'culture of grievance'.

ue to haunt us...'

Matter: A response from Africa

daily living. I must state from the outset that amongst us women suffered most, as they carry the additional burden of gender oppression at the hands of my fellow men.

The current wave of Black Lives Matter protests throughout the World in the midst of a pandemic is a once in a lifetime crisis and a moment that none of us in the progressive movement must allow to go to waste. This moment gives us an opportunity to reflect on our individual and collective prejudices, the economic and structural impact of slavery and colonialism, the geo-political and various national economic arrangements that are based on exclusion and discrimination. It is clear that the current economic system based on over reliance on markets is a fallacy. Where do we locate the issue of Blackness, Slavery and Neo-Colonialism in our daily struggles?

The matter is extremely complex, and the death of George Floyd reminds us that collective amnesia is not only ineffective but regressive and dangerous.

Since the registration of the first group of slaves from Africa on 18th November 1619, the cries of George Floyd's ancestors continue to haunt us. How do we collectively respond to the heinous crime of uprooting people from their homelands to turn them into savages used to build the civilisation of the modern Western World?

The problem always has been the hesitancy of our responses to this genocide hence the matter remains unresolved. We hear the argument that we must speak up. We have heard many times the words and voices 'never again', so did we hear 'reconciliation'; we learnt much about forgiveness; we have made many resolutions in various forums, created numerous protocols; we have marched, demonstrated, protested, composed songs and shouted slogans. Those who have ears refuse to hear, those with eyes refuse to see and their conscience is dead.

What has in fact happened is that:

- Justice has become an illusion, and the very idea of justice becomes meaningless to many who are today suffocated by oppression, discrimination, and extreme poverty.
- Complete disregard of *Article 1 of the United Nations Declaration of Human Rights*, which calls for respect of human rights and fundamental freedoms for all. I suspect the ghost of Prime Minister Smuts, the Boer Leader from South Africa and Winston Churchill's great friend, one of the drafters of this section, would sustain his belief that Africans are not human, and they exist only for the pleasure of the White race.
- The lies of White supremacy have been entrenched in the past 400 years and have now almost become normal, documented not only in books, institutions, and monuments but in the very minds of many in the world.
- Africans in the Continent and in the Diaspora are portrayed as people with no history, savages who deserves no equal treatment, denied the very essence of humanity.

In the end the question arises, how long will it be that to be born Black continues to be a crime punishable by a death sentence?

What this moment presents us, is an opportunity to create a Movement, a Movement for Action and against hesitance.

What this moment presents us, is an opportunity to create a movement, a movement for Action and against hesitance. We must:

- Decode and deconstruct the education system that >>>

18: Foreign Secretary Dominic Raab views Black Lives Matter action of taking the knee as a 'symbol of subjugation and subordination' and thought that it came from the Game of Thrones TV show.

22: Amnesty report that Moroccan journalist Omar Radi was targeted by the Israeli hacking software firm NSO Group, days after unveiling a new policy committing to human rights.

'We would impose fines on families if they are not sending their children back'
Tory education secretary Gavin Williamson threatens parents who keep their children at home

30: Reported rapes have increased steadily over the past decade, however charges, prosecutions and convictions for rapes in cases brought by the CPS have fallen to their lowest levels in more than a decade.

30: Shadow Foreign Secreary Lisa Nandy confirms Labour Party supports a ban on Israeli imports made in West Bank settlements if annexation of parts of the occupied Palestinian territories goes ahead. Her proposal is condemned by the Board of Deputies of British Jews.

>>> endorses White supremacy by teaching lies; teaching that some European found America even though people, including Black people before the White man set foot always lived there; that Europeans built the first institutions of knowledge despite the truth that Africans built Al Karaouine University in 859 AD in Morocco and Al Azhar University in Egypt in 970 AD. Colonialism and the enslavement of Africans were in fact attacks on the progress of civilisation.

- Deconstruct the education of Black children the world over so as to instil a sense of pride, dignity and honour in that they are no children of a lesser God and they are not conquered but free, capable and able to compete equally if not more with anyone else in the world. That to be successful in any station of life must not be defined by closeness to Whiteness but by taking practical steps in the service of humanity,
- Declare once and for all that Slavery, Colonialism and Apartheid are a crimes against humanity that constitute a Holocaust, a position that must be followed by a process of reparations – individual, collective, and cultural – the dishonouring and removal from public eyes of the memorials of White supremacists.
- Design a criminal justice system that is sensitive to the collective pain inflicted on these descendants of slaves and those of African descent and be conscious that blackness represents humanity rather than criminality. This relates to how police deal with the suspects of crime, how the prosecution decides to prosecute, and how the judiciary dispenses justice without prejudice. Sensitivity training must be an essential aspect of the curriculum for those who are charged with dispensing justice.
- Declare poverty as the worst form of violence in order give urgent attention to the condition of Black people the world over and to take immediate steps to uplift Black people from the dehumanising conditions in which many live today.

'What this moment presents us, is an opportunity to create a movement...'

The fissures of the Black economic crisis and inequities arising therefrom are now exposed for all to see by the Coronavirus pandemic, as reflected by the disproportionate infections and deaths in Black communities. These cannot be denied even by those who argued consistently that we need to move on and forget about race. We cannot move on without acting to destroy the system that has condemned generations of Black people to the margins of political and economic life.

We are delighted that the American Bar Association has withdrawn its insensitive and rather provocative act of inviting the last Apartheid President, Mr De Klerk in to speak about rule of law, constitutionalism, and race-relations. This happened after a barrage of protest by formations of progressive lawyers at home, victims of Apartheid and the Commissioners of the Truth and Reconciliation Committee. This small act demonstrates that the issue of racism, redress and justice can no longer be ignored in favour of collective amnesia.

On 18th November 2019, we commemorated in Ghana and South Africa what we referred to as the Door of Return, as response to the Doors of No Return – those ports where, more than 400 years ago, Africans were bungled into the ships for sale as Slaves from Ouidah (Lagos), Elmina Castle (Ghana), the Goree Islands (Senegal) and the Cape Peninsula. This commemoration was an effort by Africans throughout the world to reflect practically on how to cooperate with each other in forging joint economic programs to address land-availability and use, investment and education opportunities for collective benefit.

Lastly, a Conference is being convened in Johannesburg, South Africa, in October 2021 as a follow up to Manchester Conference of 1945. The ambition is to prepare practical programs to respond to outstanding matters by reflecting on how far Africans have progressed in addressing issues dealt with at that Conference 75 years ago; being the Political, Economic and Spiritual advancement of Africans around the World. Clearly there is much more to be done.

It is the responsibility of this generation to recall William Du Bois' prophetic words in the Pan African Congress of 1900: 'The problem of the twentieth century is the problem of the colour line.' In recalling this then we need to commit all our citizens regardless of colour to work tirelessly to make the 21st century a century to bury the demon of the colour bar and its legacy.

I am glad that today, I am amongst comrades and friends [at IADL] with whom we have worked for a long time in affirming that slavery, colonialism, and racism are fundamentally repugnant. The BLM movement reminds us once more to join in friendship and solidarity in an even more difficult struggle to eradicate that terrible legacy of slavery, colonialism, and racism.

As we do so, we must always remember that the peoples of Palestine, Haiti and the Sahrawi Republic, who are condemned to live hellish lives and who look to us to give true meaning to the injunctions of the UN Charter on Human Rights. We are with them in their struggle against foreign domination; for them too victory is certain.

I am convinced that we can cure humanity of the disease of racism as the only disease without a cure is the spawn of a curse. Onwards!

July

6: Young black men in London were stopped and searched by police more than 20,000 times during the coronavirus lockdown between March and May 2020 (that's nearly a third of all young black males in the capital). Yet more than 80 per cent resulted in no further action.

6: The delayed public inquiry into Grenfell resumed today so that builders could finally face questioning over the fire which killed 72 people in June 2017. But many survivors, families and residents will not be allowed to attend hearings because of virus distancing rules.

'Kicking down doors is probably one of our favourite things.'
From the Twitter account of Homerton branch of the Metropolitan Police

17: A Metropolitan police officer has been suspended after a video appeared to show him briefly apply pressure with his knee to a suspect's neck during an arrest in London yesterday. Handcuffed and on the ground the man is heard to shout 'get off my neck.'

20: Uber minicab drivers in Amsterdam launch a legal bid to uncover secret computer algorithms used by the company to manage their work. It is a test case that could increase transparency for millions of gig economy workers across Europe.

Obituary

Bernard Marder (1925-2020)

We are extremely sad to announce the death of our wonderful dad, Bernard Marder. He was a man of principle, integrity, calmness, patience, culture and kindness.

Born in Cheetham, north Manchester, to Samuel (always known as Mouie) and Marie, he grew up in a traditional Jewish household, the first of two sons. Later the family moved a couple of miles north to Prestwich, and he attended Bury Grammar School. He had an enquiring mind and an increasingly wide range of interests. In his teens he became a humanist which he remained until the end, although always very definite about his Jewish identity. He did much of his National Service in Kenya, an experience which led to a lifelong interest in African affairs. This later involved him in helping South African refugees from apartheid to enter Britain. After National Service he read law at Manchester University, and then came down to read for the Bar in London in 1951. By this time he had firmly socialist political views. When in London he attended a meeting of Mapam, the left-wing Zionist party, where he met Sylvia Levy, a young London Jewish trainee solicitor. It was clear very early on that they were made for each other, and in only three weeks they were engaged. They married in June 1953 and were together for nearly seventy blissfully happy years.

Bernard was an active member of the Haldane Society, and became our Secretary in the late-1950s.

He was called to the Bar and became an active member of the Haldane Society of Socialist Lawyers, becoming its Secretary in the later 1950s. He remained a member for life. Bernard and Sylvia, together with Sylvia's mother, moved from Stoke Newington to Richmond in 1957, and Lucy and I arrived in the early 1960s. His reputation as a barrister continued to grow, and he had some notable legal victories against very experienced barristers. He specialised in planning law and travelled throughout England and Wales to inquiries. At one of these he successfully fought to protect Conwy Castle from further inappropriate road bridge construction, a case which reinforced his interest in early British architecture. In court his forensic and calm exposition of his case, and his masterful grasp of the law, were recognised when he became a QC in 1977. He then became a judge in 1983. At first he tried criminal cases, but he rose to be President of the Lands Tribunal; this gave him his own department and staff. One day, a South African judge came to the Tribunal seeking guidance in connection with the setting up of the proposed Lands Claims Court, whose task it would be to provide compensation in respect of land taken forcibly during the apartheid era – a large part of the Lands Tribunal's work concerned the assessment of compensation for lands compulsorily acquired. He was

On the CND march at Aldermaston in 1958, Bernard on the left, holding the banner, with Sylvia to his right.

delighted to be able to help and offered copies of all the Tribunal's forms and rules which he had recently overhauled. A little later, he heard from the South African judge; as Bernard and Sylvia were shortly to holiday in South Africa, he asked if all the judges could meet Bernard to seek further advice. Bernard and Sylvia altered their route to meet them in Johannesburg and spent two days with them, which he was delighted to be able to do. They were also invited to attend the hearing of an important case at the Constitutional Court, and were entertained to lunch by Justice Albie Sachs [leading ANC activist and chief architect of the post-apartheid constitution of 1996].

Bernard retired in 1998 but led an enormously active retirement. He was a totally devoted husband, father, grandfather and friend. He was proud of all who were close to him whatever they did. It is impossible to exaggerate what a huge privilege it has been to be his children, and how much we will miss this extraordinary and wonderful man.

Barnaby Marder

21: The long-delayed report by Parliament's Intelligence and Security Committee into possible Russian interference in UK politics found that the government failed to conduct any proper assessment of Kremlin attempts to interfere with the 2016 Brexit referendum.

22: Foreign Secretary Dominic Raab, under fire for failing to secure the extradition of Harry Dunn's alleged killer, Anne Sacoolas, announces the closing of a legal loophole on diplomatic immunity. But the family fights on for justice.

'I just wish her well, frankly'

Donald Trump sends his best wishes to Ghislaine Maxwell, who faces charges of playing a role in the sexual exploitation of children.

27: The Metropolitan Police have been using software that can be deployed to help identify whether different ethnic groups 'specialise' in particular types of crime. But the 'Origins' programme (produced by a firm co-run by Trevor Phillips) has been revealed to facilitate stereotyping and stigmatisation.

30: The Crown Prosecution Service says it has a new strategy to tackle tumbling rates of charging and prosecution for rape, following huge criticism that the CPS is failing victims of sexual assault. Part of the strategy will be to consult on pre-trial therapy guidance.

Hunger strike comrade dies in Turkish custody

The Executive Committee of the European Lawyers for Democracy and Human Rights (ELDH, www.eldh.eu/en) of which Haldane is a founder member, met for its monthly meeting online on Sunday 30th August 2020, with representatives of member associations in England, Germany, Russia, Switzerland and Turkey. Bill Bowring and Wendy Pettifer represented Haldane.

Overshadowing the meeting, and the main topic of discussion, was the tragic death of our comrade Ebru Tiktin on 27th August 2020.

Ebru was sentenced to 13 years and six months in prison last March for 'terrorism-related' offenses based on statements by a witness, who later stated that his testimony shouldn't be taken into account due to his mental condition. The court sentenced 18 ÇHD lawyers to a total of 159 years in prison.

Ebru Timtik died on hunger strike.

Ebru lost her life on the 238th day of her death fast, since 2nd January, demanding a fair trial. The People's Law Bureau (Istanbul), part of ELDH member ÇHD, Progressive Lawyers, announced her death on Twitter at 9.04pm. Half an hour previously, Ebru Timtik's heart stopped and doctors were doing cardiac massage. Ebru Tımtik and Aytaç Ünsal, another lawyer on a death fast together with her, were forcibly hospitalised on 30th July after the court refused to release them despite a Forensic Medicine Institution report stating that they were 'not in a state to stay in prison'. See: http://bianet.org/english/human-rights/229812-lawyer-ebru-timtik-dies-on-238th-day-of-death-fast.

Solidarity events are being organised, and Ebru's death may turn out to have the significance for Turkey that the death of Bobby Sands on hunger strike on 5th May 1981 had for Northern Ireland.

In late August, a significant example of solidarity was the 'call' of support for Ebru and Aytaç (see part of it, above right) published in three different newspapers in Turkey, with more than 1,850 signatures, 850 of which came from 41 countries.

YAŞAM İÇİN ÇAĞRI

Bizler, Av. Ebru Timtik ve Av. Aytaç Ünsal'ın da aralarında olduğu meslektaşlarımızın hedef alan ve 2011 yılından bu yana sistematik şekilde sürdürülen hak ihlallerine karşı sesimizi gören üstlenmiş avukatlarız.

Bu süreçte Türkiye'de adil yargılanma hakkı ve yargı bağımsızlığı yok edilirken, savunma hakkı ve savunmanlık mesleği de boyunduruk altına alınmak istendi. Ebru ve Aytaç'ın da aralarında bulunduğu avukatlar hukuk her yönden çiğnenerek mahkûm edildiler.

Bizler bu yargılamanın takipçisi ve tanığı avukatlar olarak, Ebru ve Aytaç'ın taleplerini tartışmasız şekilde destekliyor ve yükseltilmesi çağrısı duyuruyoruz.

Adil yargılanma hakkının tesisi ve hukuk güvencesi bizlerin de talebidir ve bu yolda mücadelemiz sürecektir.

Tartışmasızdır ki bu mücadelede, Ebru ve Aytaç'ın varlığına, aramızda ve yanımızda olmalarına ihtiyacımız var.

Bunun meslektaşlarımızca bilindiğini temenni ediyoruz.

Buradan başta Yargıtay olmak üzere yetkililere çağrıda bulunuyoruz: Meslektaşlarımızın sağlık durumları kritik aşamada olup, bir an önce tahliyelerin sağlanmasına geri dönüşü olmayan sonuçlar yaşanacaktır. Müvekkilleri Ebru ve Aytaç'ı kaybetmek istemiyoruz! Tahliyeleri sağlanırsa, onların yaşamları hakkında aldıkları bu kararı yeniden değerlendirmeleri konusunda ısrarcı olacağımızı taahhüt ediyoruz!

Yaşanan bu hukuksuzluğa son verin, biz meslektaşlarımızı yaşatalım!

Refugees support

ELDH now has a very active Refugees Subcommittee, and Wendy Pettifer reported on the application being made to the European Court of Human Rights, against Turkey, by our colleagues in the Legal Centre Lesvos, on behalf of an applicant from the Malatya Removal Center in Turkey, with the support of our member in Switzerland, the advocate in a feminist law firm, Annina Mullis. Wendy also reported on the rescue of 500 people from the ship, which has been paid for by Banksy, named 'Louise Michel' after the French revolutionary who actively participated in the Paris Commune. ELDH has been asked to sponsor another rescue ship, 'Sea Watch 4', which cooperates with the 'Louise Michel' and took on board all 200 refugees when the latter was no longer navigable. The ELDH Executive Committee has approved this demand.

Joint meeting

On Wednesday 2nd September 2020, 1800 – 2000 CET, starting at 1700 UK time, there was a joint online meeting of ELDH and our sister organisation the AED-EDL, European Democratic Lawyers. The fact that there are two parallel organisations is the result of events many years ago, and Bill Bowring, as President of ELDH, is keen to encourage closer cooperation. The topics of the meeting will be 1) how to make the cooperation between ELDH and AED stronger, 2) refugees, 3) gender, 4) solidarity with endangered lawyers, and 5) labour law. All Haldane Exec members have been invited to join the Zoom meeting.

Of particular interest to Haldane members is the fact that the French

August

11: Police lose landmark case over face recognition technology after the Court of Appeal ruled it breached privacy rights and broke equalities laws. Ed Bridges had argued that the capturing of thousands of faces by the South Wales force was indiscriminate and disproportionate.

12: A suicidal asylum seeker who crossed the Channel to the UK in a small boat says he was forced out of a detention centre to be put on a charter flight, even though a Judge had halted his removal hours earlier. He was injured by officers in the process.

'New immigration laws will send the left into meltdown'
Home Secretary Priti Patel on a Zoom meeting with Tory MPs

12: Doreen and Neville Lawrence denounced the decision by Scotland Yard to effectively end the active hunt for their son Stephen's murderers by downgrading the search for at least three white men, who were part of a gang that attacked him.

19: Labour says that Ofqual's exam results algorithm, which was ditched in favour of teacher-assessed grades, was unlawful and Ministers would have been aware of at least three breaches of the law, including equality legislation and the actual 2009 Act under which Ofqual was established.

Our view

by Russell Fraser

Widespread solidarity is vital to reimagining life after Covid

My five years as Haldane chair (2014-2019) coincided with a continuing period of strife for the criminal justice system. Austerity hit the Ministry of Justice's budget harder than most departments and saw widespread court closures and understaffing of those which remained. Criminal lawyers took unprecedented industrial action to stand up to Tory cuts, but our leaders appeared to lack the appetite for prolonged confrontation. When Coronavirus swept the Globe the backlog of cases awaiting determination was already a scandal – albeit one which rarely made news. For the duration of lockdown, the work of the criminal courts all but stopped. Many less complicated hearings have taken place by Skype and often at the expense of the defendant's real engagement and absent the normal standards of openness. Easing of the restrictions has had little impact while social distancing in the dilapidated court estate remains tricky.

Ministers suggested that the only way of dealing with the backlog was to scrap trial by jury for certain types of case.Thankfully, the profession has been united in rejecting the prospect. The 2017 Lammy Review into the 'treatment of, and outcomes for Black, Asian and Minority Ethnic individuals in the criminal justice system' found a litany of ways in which the system fails ethnic minorities. But the Tottenham MP and new shadow justice secretary concluded that the one feature which delivered equitable results was the jury. The prospect of replacing juries with any combination of judges and magistrates in the wake of the killing of George Floyd must be resisted.

'Inextricably linked with race'.

Floyd's death has ignited a conflagration that has illuminated the darkest recesses of our cities. In the weeks since Derek Chauvin murdered George Floyd a gallery of faces in the UK have come to represent continued structural racism here: Bianca Williams; Sayce Holmes-Lewis; Andrew and Huugo Boateng; and Dale Semper to name but a few. The call by Black Lives Matter to defund the police is a vital criticism of society's failure to imagine better means of addressing its ills. This failure of imagination was exemplified by Keir Starmer's dismissal of the idea as 'nonsense' at the very same time as the Minneapolis City Council voted to replace its police force with a community-led model.

Current conditions provide a potential catalyst for lasting change and escape from a crisis for which capitalism has no answer. The widespread solidarity which has accompanied the Black Lives Matter movement is vital to reimagining life after the virus. A Haldane committee member, Ife Thompson, has galvanised that solidarity by setting up Black Protest Legal Support recruiting over 200 lawyers and activists providing legal support to protestors. This solidarity must extend to the criminal justice system and the treatment of those who it engulfs. The consequences of the lack of investment in legal aid, probation services and social services are clear. So too is the effect of privatisation in the justice system with failing prisons and rehabilitation services. The spectre of high unemployment threatens to disenfranchise and alienate a generation of young people.

'The prospect of replacing juries with any combination of judges and magistrates... must be resisted.'

At the resumed Grenfell Tower Inquiry on 7th July Leslie Thomas QC, representing a number of families, drew the threads of these struggles together. He spoke of the 'parallel themes' between the fire, the murder of George Floyd and the number of deaths to Coronavirus of ethnic minority people. He told the chair of the inquiry that a 'majority of the Grenfell residents who died were people of colour. Grenfell is inextricably linked with race… The disaster happened in a pocket of one of the smallest yet richest boroughs in London. Yet the community affected was predominantly working-class'. He might well have added the cuts to legal aid of the last several years, removing recourse to the courts for so many working people. If we can grasp the moment and effectively maintain and strengthen the ties across those themes then justice and change will follow.

member of AED is the Syndicat des Avocats de France, SAF, Union of Advocates of France (http://lesaf.org/). Haldane representatives have already attended a meeting of SAF in Paris, and Florian Borg of SAF attended a Haldane Executive meeting in 2018. Created in 1974, SAF has a large and active membership, and struggles for a more democratic justice, of equal quality for all, close to the citizens and the guarantor of legal rights, and public and individual freedoms. SAF lawyers place the litigant at the heart of their thinking, they are committed to the freedoms, and to the defence of the professional interests, of lawyers.

The next meeting is on Sunday 27th September. All Haldane members are invited.
For more info, contact: **Bill Bowring**, International Secretary, international@haldane.org

Finucane: UK must act now

The Committee of Ministers of the Council of Europe has demanded 'concrete information' by 22nd October on how the UK government intends to comply with a Supreme Court ruling for a human rights-compliant inquiry into the murder of Belfast solicitor Pat Finucane. He was shot by loyalist paramilitaries in front of his young family at their home in 1989.

Last year Pat's son Michael renewed the calls for a full public inquiry iafter newly declassified documents revealed that the British government knew his father's life was in danger.

20: Two-thirds of minority-ethnic British people believe the police and criminal justice system are biased against them, says a new poll by Hope Not Hate. Eight of of 10 Black Britons and eight out of 10 Bangladeshi Britons fear 'police are biased against people of my background and ethnic group', with 65 per cent of all ethnic minorities agreeing.

22: Renters in England and Wales facing eviction after falling behind with payments during the pandemic are given just a one-month reprieve until 20th September. Around a quarter of a milion renters are thought to be in arrears.

'We are working to remove migrants with no right to remain... But... regulations are rigid and open to abuse... allowing activist lawyers to delay and disrupt returns'
Part of an anti-refugee video the Home Office was forced to delete from Twitter, saying it 'should not have been posted'. They refused to explain why it was posted in the first place.

28: The Windrush compensation scheme is failing to provide access to justice and is worsening people's trauma, say nine law firms in a plea to Home Secretary Priti Patel, and they highlight the decision not to grant legal aid to people applying for compensation.

‘Why do we frame this as a tragedy, as if it were a natural disaster?’

In June 2019, international lawyers Juan Branco and Omer Shatz filed a communication to the Office of the Prosecutor (OTP) of the International Criminal Court (ICC), titled ‘EU Migration Policies in the Central Mediterranean and Libya (2014-2019)’. The communication evidences liability on the part of European Union and Member States officials and agents for crimes against humanity, committed with the objective of deterring migration.

The means to this end, according to the communication, were twofold. First was killing by drowning. Since 2014 there have been more than 20,000 victims of the crime against humanity of murder, perpetrated through the transition from Operation Mare Nostrum to Triton, the criminalisation of NGOs, and the resultant end to effective search and rescue operations in the central Mediterranean, which consequently became a mass grave and the deadliest migratory route in the world. Second was mass interception and forcible transfer to Libya. Since 2016, there have been more than 50,000 victims of the crimes against humanity of deportation, imprisonment, enslavement, rape, torture, murder and other inhumane acts; perpetrated through the training and resourcing of the Libyan Coast Guard as executors of mass refoulement.

MAYA THOMAS-DAVIS spoke to Omer Shatz in June 2020 for *Socialist Lawyer.*

How did your work on this communication start?
Like everyone else, I was following the news, trying to understand the horrific visuals from the Mediterranean. I started with a question: why do we frame this as a tragedy, as if it were a natural disaster? At some point Forensic Architecture contacted me as they wanted to know the legal implications of their 2016 report ‘Death by rescue’, on drownings in the Central Mediterranean. Other lawyers had told them international waters are a no man’s land. I looked first at how to overcome this issue of jurisdiction, because it cannot be that what is unlawful for states to do under their own jurisdiction they can just do elsewhere and it is perfectly legal, right?

The only domain of law where you find individual jurisdiction is international criminal law, specifically the ICC. Given that European states are parties to the Rome Statute to the ICC, European individuals can be liable even in the absence of territorial jurisdiction if their actions and omissions comply with the subject matter jurisdiction (the crimes). This is really unique: even if you commit atrocity crimes on the moon, or in another galaxy, you can be tried at the Hague if you are a national of a state party to the Rome Statute.

I was not a specialist in international criminal law, so I consulted my friend Juan Branco. I was teaching at Sciences Po and we set up a legal clinic, I worked with my students and Juan, we drew on Forensic Architecture reports and collaborated with factual experts in Libya. We were cautious because we knew we would encounter a huge backlash to the idea that a ‘liberal democratic’ regime is responsible for atrocious crimes, let alone outside an armed conflict. We can accept the Brits committed war crimes in Iraq, or the Americans committed war crimes in Afghanistan. But in peace time it requires much more of the policy element of the state: it reflects a lot.

What stage is the case at now?
A few weeks ago, in the European Parliament, the Prosecutor was asked the same question. First, she said we are doing a detailed assessment. Second, she spoke about Libya – my interpretation is she sees it as part of the Libya investigation. Third, she said; ‘My jurisdiction is over individuals and this communication is against states’. With this, she expressed a legal opinion on something that she claimed is under ongoing examination. I could already see the way she will bail herself out: saying ‘you didn’t target the individual’.

I found this very insulting, first and foremost to the victims. Then to the elected politicians that deserve a serious answer to a serious question. Also to us. The communication mentions the most responsible actors so there are names. It is not the job of civil society to identify the suspects! We provide the evidence, the factual and legal narrative, the Prosecutor’s task is to break it down into cases and suspects. She has the power, responsibility, resources. She has been complaining about being persecuted and sanctioned by the US: if you’re persecuted by Western powers for doing your job, how would we be treated if we went against our own governments as simple citizens?

It was very disappointing, that comment. Legally it is a very solid case, it is a classic case of international criminal law – you have this very developed criminal enterprise and complex powers involved. My family was exterminated by I presume Polish and Lithuanians, through policies designed in Berlin, I mean, it is a very classic structure.

A 2017 communication to the ICC concerning Australian migration policy, which also involves externalising border violence, used the deterrence objectives of the policy as evidence of the contextual element of crimes against humanity in a similar manner to your communication. In February this year, the OTP, declining jurisdiction, found that although deterrence was central to the Australian policy, the unlawful aspects were not 'a deliberate, or purposefully designed, aspect of this policy'.

Between that position and the position you say the Prosecutor hinted at regarding your communication, is there anywhere left to go?

As you observe, in the Australian case the Prosecutor finds not enough state policy and in our communication only state policy. On the one hand, she can't reject us on the basis that the Australian communication was rejected, because the question of state or organisational policy is very elaborate in our communication. On the other hand, if she says it is about states not individuals... States are abstract entities! Of course there are individuals implicated.

The good news, regarding the Australian case, is that she accepted it is an attack and she accepted it is directed against a civilian population (migrants), neither of which is self evident. In our communication we argue that migrants are a group defined as such in order to facilitate the commission of crimes against it, in the broader political context of 2008 and the rise of the populist right.

The complex infrastructure of the European Union makes it hard enough to trace responsibility for decision-making as it is, let alone in the context of migration policies designed to outsource and externalise violence. How does your communication establish the different modes of liability for violence against migrants enacted through EU policy?

I must admit that in the beginning, in my mind, it was that there are bad guys over there in Libya, then there are Europeans providing material and strategic support. The point of departure was that Europeans can be liable for aiding and abetting but they are not the ones who committed the crimes. But now, three years later, having collected the evidence, I can tell you that it is the other way around. **>>>**

The images shown here are from Peruvian artist DANIELA ORTIZ's exhibition 'This Land Will Never Be Fertile For Having Given Birth to Colonisers' (Barcelona, La Virreina, 2019). Here she describes the motivations behind the artworks.

The ABC of Racist Europe (2017)
'The *ABC* is an alphabet for children in which each letter articulates concepts and ideas for a possible anti-racist and anti-colonial narrative. The ideological alphabet – a resource that, since the *ABC of War* (1955) by Bertolt Brecht, has been used as a replica against any form of totalitarianism – is used with a deliberately educational aim: that of relearning and not forgetting the foundations of xenophobia and the tools that can be used to fight it.'

Europe Will Kneel to Receive the Anti-Colonial Spirit (2019)
'This work departs from the secularism that characterises the Eurocentric left. Through a set of drawings in the form of stained glass, it proposes an imaginary link to anti-colonial movements of the Global South, including political spirituality movements such as the Latin American Liberation Theology and the Pedagogy of the Oppressed, which call for an alternative justice to the hegemonic one.' **>>>**

>>> Like every joint criminal enterprise, you have those that plan and design the policy, and those hired to implement it. The Libyan Coast Guard had no political will or technical competence to do what they are doing today, without the framework constructed by the EU. This includes the legal framework – the establishment through the International Maritime Organisation of the Libyan Search and Rescue Zone to create a facade of legitimacy.

The way the EU orchestrated this policy is a behaviour that I am familiar with in the context of organised crime cases. They are a mafia organisation, in the way they operate. They have some 'legitimate businesses': funding the UNHCR to give potatoes to the person with tuberculosis in the camp; funding the International Organisation for Migration to repatriate someone 'voluntarily' because they are in detention being violated so they sign the paper; funding NGOs to hold conferences on human rights violations. But through the back door, they are funding and equipping militias.

It is a very sophisticated and complex modus operandi, a power infrastructure that is hard to deconstruct, partly also due to the gaps between what we call the EU and the Member States. To capture responsibility, let alone individual responsibility, let alone the gravest crimes humanity has ever acknowledged, is really complicated work. In terms of state versus individual responsibility, the EU always enjoys impunity, because on the one hand the individuals are presumed to be precluded from responsibility as state agents, and on the other the EU itself is not accountable for anything because there is no tribunal for supranational entities.

With the ICC communication we succeeded in capturing both: the individual responsibility of state agents and officials involved in the policy making; and the EU as an organisation. In the Rome Statute the requirement for crimes against humanity is that the widespread or systematic attack directed against the civilian population must be pursuant to a state or organisational policy. Typically, by 'organisation' the drafters of the Rome Statute meant non-state armed groups. Through the jurisprudence of this term 'organisation', we managed to include EU migration policy as an 'organisational policy' within the meaning of the Rome Statute.

We knew before filing the communication and the Prosecutor's recent statement to the UN Security Council confirms that she is after the Libyan actors. Even though she says there are crimes against humanity within the meaning of the Rome Statute being committed against migrants in Libya, she is after the small fish, the implementers, the little smugglers, little warlords. This is totally at odds with the mandate of the ICC. There are two models, one is the Nuremberg model, prosecuting dozens of medium-low level suspects, and the other is the ICC with its mandate to go after the Eichmanns, the most responsible.

Besides the most responsible individuals already indicated in the communication, are you able to say with more precision, at this stage, which European Union officials and agents should face prosecution?

Far from denying the facts set out in the communication, many European officials boast about it. For them it is a success. Some acknowledge their responsibility for deaths in the Mediterranean but they say it was a mistake. If you killed your partner and the police knocked on your door and said; 'did you cause the death of your partner?', and you said; 'yes, but it was a mistake', as a minimum you would be escorted to the police station. Juncker said this, regarding the termination of Mare Nostrum and its replacement with Triton – it was a tragic mistake that cost human lives. Minniti, former Italian minister of the interior, said in an interview that it was a mistake to contract with the Libyan Coast Guard, they were never capable of doing search and rescue, Libya was never a safe port, it was all a huge mistake. This guy is an architect of the policy, an equivalent to Eichmann.

We presume the Prosecutor won't do her job, to start going to the archives in Brussels and to see who decided what, what was the chain of command. So in the past year since the submission, with my students, Juan and his office, that's what we have been doing. The communication we filed was about the external consequences of these policies and what we did this year was to research the internal aspect: all the EU agencies, all the member state agencies. We started by mapping the institutions – Frontex, DIGICOM, EEAS, all the agencies – who does what and how. It is really hard, it is completely untransparent.

The end game is to come up with a list of around 100 or more individual suspects, not only politicians – bureaucratic advisors, lawyers, everyone. We are going to file this list with the Prosecutor soon, saying; 'You wanted individuals? Here are the individuals.' We will do it publicly. I'm thinking about these 'True Crime' websites where you have those post-it notes with all these names.

This is why I think going after the individuals makes sense. Individuals go to bed at night and they say to their partner, or to their dog or whoever; 'I am a good person'. It is all personalised: just as the victims were or are all individuals, the perpetrators are also individuals. They can no longer hide behind states.

Given that the European Union is the main provider of political, technical and financial support to the ICC as an institution, do you consider it possible the Prosecutor will proceed with an investigation into liability on the part of EU officials and agents?

In terms of what I said earlier about the EU operating like a mafia, it is also about funding the only court which might hold you accountable. Africa hates her, the US sanctions her so that she can't even go to the UN in New York, the EU is her last and perhaps only friend. It is a question of politics and power, of institutional corruption. If you look at internal documents, reports and classified materials you see that the EU and the ICC share information regarding Libya and the Mediterranean. I have never heard of a prosecutor showing evidence to its potential suspects!

This is not only a case against the EU but to some extent also against the ICC. One of them – the EU or the ICC – must lose. I am afraid it will be the ICC, it will remain not an international but an African criminal court. It can't open an investigation into something not even in dispute? In terms of gravity, you never had 50,000 victims. So if I were her, I would at least investigate. The EU agents that orchestrate these migration policies of forcible transfer

to Libya will not step foot in Libya because it is not safe for them, yet it is a 'safe port' for dehumanised people. The Prosecutor says the same, she complains that in Libya she can't have boots on the ground, that there are security risks. By contrast, you have collaboration agreements with the EU, you can take the train to Paris or Brussels with no risk. Just investigate!

Law is always late, but this policy is something that is still happening as we speak. There is accountability, but there is also trying to stop this ongoing EU policy. The Prosecutor could do it; she could just go to them and say 'enough'. They would stop.

What do you hope for, in terms of outcomes?

Things that were previously unimaginable are happening, so I do leave room for the unlikely – to see the responsible individuals prosecuted. But presuming this won't be the case... I brought many cases to court in Israel knowing that I had zero chance but I wanted the cases to be adjudicated and rejected, turning the court complicit in the legitimisation and preservation of military occupation and an apartheid regime. There is value in this. It is important to know that we don't have an international criminal tribunal for atrocity crimes. Who invented this 'liberal international legal order'? Europe. If it is not applicable against Europe, then the African states who have denounced its bias are vindicated.

What makes a Greek coast guard intercept a boat, and leave pregnant women and children on floating life rafts? What makes a drone operator in Rome or Warsaw watch people drowning and either do nothing or call the mercenaries to return them to be abused? EU agencies tweet '#WorldRefugeeDay' while they orchestrate these policies. So there is value in framing it as it is: not as a tragedy, but an intentional policy; not as a human rights violation with this human rights business of conferences and papers, but as murder, crimes against humanity. Of course it is still very little – I am not trying to claim anyone is saving the world here – but it is something, right?

The communication can be accessed at: www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf

>>> **FRONTEX – Decoration (2016-2019) 'In the analysis of the border state in Europe, the migrant population is subjected to overexposure in the media, in ideological debate and in society at large, in stark contrast to the invisible operations of the institutions that persecute, detain and deport thousands of people every day. Frontex, the European Border and Coast Guard Agency, which is responsible for the migration system in the EU, is an example of a platform in which political interests, corporate lobbying and "humanitarian" profit-making come together. This project seeks to draw attention to the people responsible for exploiting borders for economic and violent purposes. It does so through a series of actions carried out on the images and iconography of these people, including the "assaulted" bust of Fabrice Leggeri, current director of Frontex, the life-size photograph of a meeting of Frontex members to reach agreements that are opaque to public opinion, and drawings of prominent members of the security industry. This work provides an iconoclastic response to the sacralisation of border powers and the lack of clarity in their discriminatory practices.'**

Picture: Jess Hurd / reportdigital.co.uk

Kevin Blowe and **Eveline Lubbers** have studied the behaviour of the police during the Covid-19 lockdown and all the evidence shows that they are contenders for

Villains of the pandemic

When the Network for Police Monitoring (Netpol) and the Undercover Research Group started the 'Policing The Corona State' diary back in March to document the policing of Britain's coronavirus state of emergency, neither of us really expected that, months later, we would still need to continue updating it.

Regularly checking the local and national media, press releases from campaigners and the latest statistics from the police has, however, helped us to achieve what we set out to, which was to provide a week-by-week snapshot of issues we had definitely anticipated: the arbitrary use of police powers. Looking back, the lockdown and the way it has been policed may arguably have helped to create the exact conditions both for Black Lives Matter protests in Britain and for the prospects of growing social unrest after restrictions are lifted.

From the beginning, it was apparent that the police intended to handle the pandemic as a public order rather than a public health crisis. Instead of focussing on information, support and solutions such as building networks of care to deal with a situation that was completely new to all of us, senior officers treated a frightened and anxious public, first and foremost, as suspects and potential criminals. It did not seem to matter that public opinion had dragged the government into introducing quarantine measures in the first place.

Even before the passing of public health regulations and the Coronavirus Act into law in late March, police officers had already begun to impose lockdown measures, stopping motorists from travelling and warning train travellers, 'we don't want to see you again tomorrow'. Derbyshire Police launched 'proactive' patrols that included cars equipped with loudhailers ordering people indoors and on 26th March, the day the new state of emergency formally began, it was widely criticised for using drones in the Peak District to shame people who had been outdoors.

Right from the start, we also saw the police establishing online portals enabling people to denounce their neighbours for alleged breaches of lockdown rules. Humberside, on day one, was the first. By early May, the National Police Chiefs' Council (NPCC) said that forces had received a staggering 194,000 such 'snitching' calls.

Once the lockdown was in place, there was complete confusion over how often people could take exercise, when they could travel, whether 'shopping for non-essential items' was illegal and what the difference was between government advice and the law. The inevitable result was arbitrary decisions and a flurry of fines: Lancashire Police issued 123 in the first few days.

The police had, however, dramatically misread the public mood and within a week, the introduction of NPCC guidelines was seen as a partial retreat from many police forces enthusiastically interpreting government advice on what was a 'reasonable excuse' for leaving home in whatever way they wanted. >>>

Picture: Jess Hurd / reportdigital.co.uk

>>> This did not, however, halt the inconsistent and unfair use of police powers. On 2nd April we reported the unlawful arrest of a Black woman who had refused to give her name when stopped by British Transport Police in Newcastle and who was tried and convicted – in her absence from the court – for an offence that applies only to people who are potentially infected. A 13-year-old child in Leeds had, by this stage, already been detained under the same unlawful interpretation of these powers. Over a month later, in our 15th-17th May diary entry, we reported on news that a Crown Prosecution Service review had found all prosecutions under the Coronavirus Act had been unlawful.

As Easter approached in mid-April, there was the first of another recurring aspect of the lockdown: the apocalyptic advanced warnings that the public were failing to listen to government advice, followed soon afterwards by ample evidence that the opposite was true.

Over the Easter Bank Holiday weekend, police chiefs were already complaining that they were seen by the public as the 'villains of the pandemic', just as they prepared to force hundreds of people to return home. This was the weekend a police van in south London was spotted driving around a largely empty park blaring out the instruction, 'no sunbathing… exercise only'. In Glasgow, a disabled woman returning home with very heavy groceries was threatened with a fine for sitting down to rest because she 'wasn't exercising'. More dramatically, Netpol shared a series of videos from an incident in Fallowfield in Manchester showing the violent arrest of a man who was delivering food to his mother.

By this stage, it had become obvious, as the French journal *Le Monde Diplomatique* noted in June in its assessment of Britain's quarantine measures , that in urban areas 'those who own their own homes… have generally been able to weather lockdown… but the greater number who lives in flats have struggled to maintain good mental health in compressed domestic spaces.'

Public parks and outdoor spaces suddenly became even more essential to our health and well-being, especially in cities like London where almost half of homes are either purpose-built flats or cramped house conversions. In July, the think-tank Resolution Foundation reported that younger age groups are more likely to live in a damp home, have no garden or to live in a derelict or congested neighbourhood than older generations. Black, Asian and ethnic minority children in England are more than twice as likely as white children to live in a home with no garden.

Only a few weeks into the lockdown was the point, however, when there was widespread frustration over the decision to close Brockwell Park, a 126-acre public space in south London, because of contested social distancing infractions. On 7th April, the Metropolitan Police Commissioner, Cressida Dick, gave a statement saying that people who refused to leave public spaces would be forced to. The same day, we reported on a large group of officers disrupting (and kicking) people practising yoga in London Fields in Hackney, on the basis that this was 'pretending to exercise'. Our diary has subsequently documented numerous other incidents of this kind. Yet again, however, it was public pressure and condemnation that forced authorities to reopen these public spaces within a matter of days.

That first month exposed for many how the role of the police is invariably less about solving crime and more about imposing whatever the government of the day decides is the prevailing social order. Senior officers were implementing the sweeping powers they had been given in the way that they thought ministers wanted them to, rather than on the basis of what the law actually says, let alone on common sense. At the same time, calls to check on situations likely to be genuine and serious risks of increasing the spread of infection, such as on building sites or in the garment industry in Leicester, were completely ignored.

It was increasingly apparent, too, that the rules were not applied fairly or equally. There was (and remains) enormous focus on Dominic Cummings, the Prime Minister's chief advisor, travelling from London to his parents' home in Durham while suspected of having the coronavirus. One scientific advisor to the government said at the time that it had 'trashed all the advice we have given on how to build trust and secure adherence to the measures necessary to control COVID-19'.

However, perhaps the moment that caused more widespread public damage for the police's credibility came a month earlier. This was at the high point of the rigorous and often arbitrary enforcement of social distancing and movement restrictions in parks and beauty spots around the country. There was universal condemnation of police officers gathering on Westminster Bridge to 'Clap For Carers' in flagrant disregard for these same rules. It was difficult to argue that this police behaviour was the result of a lack of supervision, when the Metropolitan Police Commissioner herself was present in person.

As the Cummings affair dominated the news, it was already clear too in May that police in some parts of the country were handing out up to 26 times more coronavirus lockdown fines than officers in others amid a 'postcode lottery' of enforcement. Another indicator of unfairness and inequality was the ethnicity breakdown of fines that were issued. In the 2nd-3rd May entry of our diary, we expressed concerns that the NPCC in reporting demographic data was

'Were senior officers aware of the growing resentment at this combination of disproportionate and confrontational policing?'

downplaying the disproportionate fining of people from Black and particularly Asian communities. In our 26th-27th May entry, we highlighted confirmation of this: Black, Asian and minority ethnic communities in England are 54 per cent more likely to be fined under coronavirus rules than white people, according to an analysis by Liberty. At the start of June, figures from the Metropolitan Police showed 48.6 per cent of fines were issued to Black or Asian Londoners.

With so much attention on the use of new emergency powers, it has been important to remember that much of every day policing remained business as usual. This included detaining people on fabricated charges: a viral video was widely circulated showing a Lancashire Police officer, later suspended, threatening to arrest a young man, saying 'who are they going to believe, me or you?'

Anecdotally, we were also hearing stories that under the cloak of the lockdown, the police were increasingly targeting young black men for drugs-related searches, often very aggressively. In mid-May this was confirmed by stop and search figures from the Metropolitan Police showing a surge in the use of these existing police powers during the lockdown, a rise of 22 per cent. Two-thirds of these stops were for drugs and the number of stops per 100,000 increased from 7.2 to 9.3 for Black people.

Were senior officers aware of the growing resentment at this combination of disproportionate and confrontational policing? As the first steps towards easing the lockdown started in May, there was widespread coverage given to police unions complaining about how the new rules meant the police's 'hands were tied' over issuing fines. They seemed to resent limits on the use of these powers, but what this also appeared to reflect was uncertainty among senior officers about what the government wanted or whether they retained public support. The one area where the Home Office was clear was in offering vocal political support for public order interventions against large gatherings – from raves to block parties and initially, anyone taking part in protests.

What nobody could have predicted, however, was the spread of global solidarity over the death of George Floyd in police custody in the US and how, even amidst fears of infection from the coronavirus, this captured the imagination in particular of young Black people in Britain who had never taken part in a protest before.

The reasons why Black Lives Matter protests took off will undoubtedly keep academics busy for years. However, it does seem reasonable to us to conclude that one key factor was the opportunity handed to British police forces – by the most sweeping restrictions on civil liberties for generations – to exacerbate unfair, disproportionate, often violent and invariably discriminatory policing.

Arguably more than many other recent protests, the demonstrations that started in London and Cardiff at the end of May were in many instances as much about protesters' own experiences as they were about one man's horrifying death thousands of miles away in Minnesota. Despite all the petty indignities we have documented in rural areas, it has been racist policing in cities that has come up time and time again in the diary entries we produced. After two months of police constantly harassing young people, especially from Black and other minority communities, on urban streets and in public spaces under rules that were often incomprehensible, many had simply had enough.

As Adam Elliott-Cooper of The Monitoring Group, discussing the huge Black Lives Matter protests all over Britain on 8th June, told *Sky News*: 'If Met police chiefs are so concerned about social distancing, then why were stop and searches at a nine-year high last month – spreading the virus for the sake of small quantities of cannabis?'

What seemed to reinforce the idea that, despite claiming to have listened to the demands of the Black Lives Matter movement, the police have learnt almost nothing from the three months of lockdown, was the use of tactics against protests that were excessive and unlawful, followed by racially stereotypical depictions of mainly Black protesters as 'violent thugs'.

We have documented how the same language is used repeatedly in the increasingly dire warnings that lockdown parties 'could provoke considerable unrest', culminating in the police clashing with residents in Brixton and Tottenham and with people arrested and officers injured. We have reported too on how, instead of de-escalation, the police have chosen to fuel the fear of a repeat of the London 2011 riots.

As early as 20th April, Chief Superintendent Paul Griffiths, president of the Police Superintendents' Association, was warning that police must prepare for a 'more volatile and agitated society' after the end of the lockdown. If this prediction becomes true, there is one conclusion that future researchers might draw from the dozens of diary entries we have written. The policing of the lockdown, driven by a reflex instinct to impose order as the government's public health strategy became increasingly chaotic, may have contributed directly to making an agitated society more likely.

Kevin Blowe is the coordinator of the Network for Police Monitoring (Netpol) and a member of the Haldane Society. Eveline Lubbers is a researcher for the Undercover Research Group.
http://policing-the-corona-state.blog/
#PolicingTheCoronaState

22%
rise in stop and search during lockdown

BLACK LIV

Pictures: Jess Hurd / reportdigital.co.uk

ES MATTER

blackprotestlaw.org

Founded by Haldane Executive Committee member Ife Thompson, Black Protest Legal Support comprises a network of like-minded lawyers, students and activists working to provide legal advice and support to any Black Lives Matter protesters. Their roster of trained volunteer legal observers attend marches to monitor the police and provide basic legal information to protesters. Meanwhile, their committee of barristers, solicitors and activists provide expert legal advice articles and legal news updates on their website. They also have a huge external network of brilliant barristers and solicitors who are willing to provide *pro bono* representation to protesters in need.

BLACK LIVES MATTER

Pictures: Jess Hurd / reportdigital.co.uk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Cashing in on

Pia Eberhardt on how lawyers are preparing to sue states over COVID-19 response measures

As governments took action to fight the Covid-19 pandemic and prevent economic collapse, big law firms were watching. Their concern is not to save lives. Instead the lawyers urge big business to challenge emergency measures in order to defend and pursue profits. In a parallel justice system called ISDS, states could face multi-million dollar lawsuits.

On 26th March 2020, Italy's coronavirus death toll passed 8,000 – then more than twice the number seen anywhere else in the world. Mortuaries reached their capacity and hospitals had long stopped accepting any non-emergency patients as doctors fought to save lives.

On the same day, lawyers from the Italian law firm ArbLit published an article entitled 'Could Covid-19 emergency measures give rise to investment claims? First reflections from Italy'. Instead of worrying about Italy's record coronavirus death toll, the lawyers pondered whether the Italian government's 'hastily drawn-up and ill-coordinated' measures to curb the spread of the virus and lessen its economic impact 'may well fall within the scope of [...] investment treaties [...] between Italy and other states, paving the way for damages claims brought by foreign investors against Italy'.

Globally, thousands of trade and investment agreements give sweeping powers to foreign investors, including the peculiar privilege to sue states, in an arbitration court system called ISDS (investor-state dispute settlement). In ISDS tribunals, companies can claim dizzying sums in compensation for government actions that they aver have damaged their investments, either directly through expropriation or indirectly through regulations of virtually any kind. The number of ISDS suits has skyrocketed in the last decade, and so has the amount of money involved.

Companies prefer ISDS to other legal mechanisms for a number of reasons. ISDS tribunals can award damages for

'Instead of worrying about the death toll, lawyers pondered whether the Italian government's measures to curb the spread of the virus [paved] the way for damages claims brought by foreign investors against Italy.'

Covid

Picture: www.istockphoto.com / PeskyMonkey

companies' lost expected future profits, which are not recoverable under most other legal regimes. There is an imbalance between investors' rights and other societal interests, in favour of the investors. ISDS tribunals are also much freer to interfere with democratic decision-making because of their power and access?.

In recent years, the ISDS regime has come under heavy criticism from legal scholars, trade unions, environmentalists and other civil society groups. They have lambasted it as a parallel justice system for the rich, which grants more favourable treatment to some of the wealthiest actors in society over domestic citizens. ISDS allows foreign investors – and foreign investors alone – to bypass courts and claim public money in compensation, which would not be available for them in domestic legal systems.

Now, in the midst of a crisis like no other, the legal industry is preparing the ground for costly ISDS suits against governments' attempts to address the health and economic impacts of the coronavirus pandemic. In their literature and at events, these law firms point their multinational clients to investment agreements as an effective tool to (in the words of law firm Quinn Emanuel) 'seek relief and/or compensation for any losses resulting from State measures'.

Experts are predicting a wave of ISDS actions, as a response to the Covid-19 pandemic. With legal costs for ISDS disputes averaging around US$5 million per party, and exceeding US$30 million in some cases, a boom in claims would mean big business for the law firms.

As the firm Ropes & Gray put it: 'Governments have responded to Covid-19 with a panoply of measures, including travel restrictions, limitations on business operations, and tax benefits. Notwithstanding their legitimacy, these measures can negatively impact businesses by reducing profitability, delaying operations or being excluded from government benefits [...] For companies with foreign investments, investment agreements could be a powerful tool to recover or prevent loss resulting from Covid-19 related government actions'.

The lawyers' enthusiasm is not based on fantasy. In the past 25 years over 1,000 known investor-state lawsuits have been filed. As a Reed Smith lawyer points out 'many of those disputes arose out of difficult societal circumstances such as the Argentine financial crisis in the early 2000s or the Arab Spring in the early 2010s'. Investors have won a significant amount of ISDS claims as arbitral tribunals ruled that it was illegal to interfere with prices of essential goods, restrict or tax the export of vital products, roll back incentives to investments – and the list goes on. 'These and other types of measures taken in response to the Covid-19 pandemic could *similarly* attract arbitration claims for State responsibility under investment treaties' argues the Reed Smith practitioner.

States also face a potentially large number of claims from shareholders, as well as the companies themselves. To quote lawyers of arbitration boutique Volterra Fietta: 'The directors of companies should also inform their shareholders that the shareholders might have investor-State arbitration claims in their own right, separate from the company. As noted above, any entity in the corporate chain of ownership might have rights to investor-State arbitration claims'.

These cases have serious and wide-ranging consequences for the public at large. As states struggle with the pandemic, ISDS cases could impose more financial burdens on countries that are already under severe pressures. 'Recoverable damages (and corresponding exposure for governments) can be massive,' say lawyers at Sidley. **>>>**

Cashing in on Covid

>>> 'Where a company prevails in its investment treaty claims, it may be able to recover all the losses that flowed from the government measures that damaged the company. This may extend beyond the amounts initially invested (actual cost) to going concern value, including lost future profits'. Compensation for lost hypothetical future profits is one reason why ISDS awards can go into the tens of billions and can be much more lucrative than domestic court rulings.

The United Nations Conference on Trade and Development (UNCTAD) has therefore sounded alarm bells: 'State measures to limit the adverse [...] impact of the pandemic are manifold and vary from one country to another' UNCTAD wrote on 4th May 2020 and warned: 'Although these measures are taken for the protection of the public interest and to mitigate the negative impact of the pandemic [...] some of them could [...] expose governments to arbitration proceedings initiated by foreign investors'.

While no actual coronavirus-related ISDS cases are public knowledge yet, anecdotal evidence from specialised investment lawyers confirms they are considering numerous case scenarios. An analysis of recent legal briefings and webinars also reveals the wide range of government actions (put in place to respond to the coronavirus), that they are intending to bring up for future arbitrations. Here are eight particularly troubling scenarios, developed by some of the law firms in this field.

Scenario 1 – ISDS claims against clean water for hand-washing: Hand-washing is one of the basic protective measures against the spread of the coronavirus, but it requires access to clean water, which can be a challenge for poor households. Countries like El Salvador, Bolivia, Colombia, Honduras, Paraguay and Argentina have adopted measures that provide direct support to water service users. For example, El Salvador decided that Covid-19 plagued families will not have to pay water bills for several months. Argentina and Bolivia suspended water service disconnections due to lack of payment during the crisis.

World Bank officials have praised these measures, but corporate law firms are less pleased: 'Utility companies, many of which are foreign-owned with investor rights, have [...] seen their revenue streams eliminated' said Hogan Lovells in a client alert. The firm argued that, in water sectors with private investments, such responses to the health crisis 'may encourage foreign investors to seek recourse under protections found in investment treaties'.

Scenario 2 – challenging relief for overburdened public health systems: To relieve overrun public hospitals and in response to public outcry over half-empty private ones refusing to admit Covid-19 patients, Spain's Ministry of Health temporarily took control over private hospitals. Ireland, too, is using private hospitals as part of the public sector during the crisis.

But the threat of investment arbitrations looms large. According to Quinn Emanuel, 'investors in the healthcare industry could [...] have indirect expropriation claims if turning over control was involuntary'. The firm adds: 'If the State does not return control after the end of the outbreak or if the State's control left permanent harm to the investment, investors could also have a claim for indirect expropriation'. Investment treaties typically protect not only against direct expropriations but also against indirect ones.

Even if governments have provided cost-covering compensation or indemnities, this might not be enough.

'Specialised investment lawyers are considering numerous case scenarios. Legal briefings reveal a wide range of government actions put in place to respond to the coronavirus could be challenged in future arbitrations.'

Picture: Jess Hurd / reportdigital.co.uk

International investment law requires states to pay 'prompt, adequate and effective' compensation, independently of the public purpose of an expropriation. As 'national laws do not necessarily provide for the same compensation that would be due under foreign investment law', says an Alston & Bird lawyer, corporations could walk away with more money than they would ever receive in national or European court proceedings.

Scenario 3 – lawsuits against action for affordable drugs, tests and vaccines: The fate of millions of people rests on the discovery and mass production of low-priced medicines, vaccines and tests for Covid-19. To facilitate their development, production and supply states are trying to make it easier to bypass pharmaceutical and device patents, which can stand in the way. One key tool is compulsory licences allowing non- patent holders to produce and supply drugs. Israel has already issued such a license (for the import of an HIV drug, which could help coronavirus patients), Canada and Germany have made compulsory licensing easier and resolutions with the same goal have been passed in Chile and Ecuador.

Investment arbitration lawyers, however, consider 'governments [...] forcing producers to sell drugs at significantly discounted prices and/or taking the intellectual property for themselves and/or disseminating that intellectual property to third parties without permission' to be 'takings' by governments, which could lead to expropriation claims under investment treaties (Alston & Bird lawyer). An expert from law firm Hogan Lovells notes that 'imposing a cap on prices' for medical supplies, too, is identified as a target of coronavirus-related claims by foreign investors as they 'may dramatically decrease sales revenues even for in-demand products' (law firm Hogan Lovells).

Scenario 4 – investor attacks on restrictions for virus-spreading business activities: In April 2020, Peru's Congress temporarily suspended the collection of highway tolls. The aim of the bill was to contain the spread of the corona virus, protect the employees collecting the tolls from exposure and ease the transport of food and other essential goods.

Several investment law firms have referred to the measure arguing that 'a foreign investment that suffers losses due to restrictions on business operations could have a claim against the host government for its losses' (Ropes & Gray). 'Have the restrictions destroyed the value of the investment or prevented the company from controlling its foreign investment? [...] Are the restrictions proportionate to the risk?' asked Ropes & Gray in a client alert and adds that responses to such questions 'may indicate a violation of an investment agreement'.

In a webinar on 29 April 2020, an Alston & Bird lawyer also questioned the proportionality and necessity of Peru's action. He asserted that the government could have taken other, less harmful measures to protect public health such as introducing technological alternatives to in-person toll collection or paying the toll collectors for taking such risks. Asked about how countries should handle conflicting obligations towards the health of their citizens and foreign investors that same lawyer answered: 'It's gonna be very difficult for states [...] States will have to try to comply with both and be conscious to the fact that some tribunals will be unforgiving later on if their conduct runs afoul of their obligations under (an investment) treaty [...] I definitely think that some states will end up losing cases to investors – notwithstanding the way that it might come across as unfair'. >>>

Cashing in on Covid

>>> Scenario 5 – ISDS suits against rent reductions and suspended energy bills: As whole households fall ill with Covid-19 or lose income because of job losses, politicians are considering relief for the payment of rent and bills. 'I'm getting a lot of people who are pretty desperate and say they are not going to get beyond the next week', a concerned MP of the UK Labour party told journalists in March, calling on the government to suspend utility bills to 'halt some of the burdens'. In Spain, suppliers of water, gas and electricity have been banned from cutting supply if households cannot pay their bills. In France and other countries where some tenants can no longer pay pre-crisis rents, calls for mandatory rent reductions are becoming louder.

Investment lawyers are watching these debates with potential compensation claims by real estate and utility companies in mind. Referring to possible rent forgiveness in France and suspensions for energy bill payments in the UK Shearman and Sterling issued this criticism: 'While helping debtors, these measures would inevitably impact creditors by causing loss of income'. The law firm went on: 'Measures ostensibly taken to deal with a serious problem but otherwise disproportionately affecting certain businesses [...] may be inconsistent with international law [...] If suspension of payments to utility companies leads to bankruptcy, the question will arise whether the State considered appropriate financial assistance to address the suspension'.

In other words: states could lose ISDS cases over rent relief and suspended utility bills if tribunals find that the costs of these acts were 'disproportionately' shouldered by landlords and utilities registered overseas and the government did not do enough to support them.

Scenario 6 – disputes over debt relief: Several governments have adopted regulatory measures that aim to soften the economic blow of the Corona crisis on individuals, households and businesses so that they can keep their homes and livelihoods. Examples include suspensions on mortgage payments and creditor protections as well as moratoria on bankruptcy proceedings.

Such measures could 'give rise to indirect de facto expropriation claims' by creditors, who, during the measure, will have few powers to enforce their debts and payments against the affected debtors, argue lawyers of Italian law firm ArbLit. They add: 'the investor might also allege that its access-to-justice right has been breached by the moratorium on bankruptcy proceedings'. Drawing on 'past experience with the international disputes arising out (of) economic and financial crises', law firm Dechert, too, considers regulations such as suspended creditor protections as 'sufficiently harmful to financial sector investors so as to give rise to investment disputes'.

Scenario 7 – legal action against financial crises measures: As governments suspended much economic activity in an effort to slow the spread of the virus, the world economy has witnessed heavy losses and is facing a looming new debt crisis, particularly in the Global South. To respond to the financial meltdown economists and international institutions are advocating capital controls (to curtail the massive, destabilising outflow of money) as well as a massive relief and restructuring of public debt, amongst other measures.

But such emergency measures could be challenged in ISDS tribunals, according to law firm Dechert. The firm has compiled a long list of acts, which countries like Argentina

'What is the justification for a parallel justice system that treats the wealthiest economic actors more favourably than people who already suffer disproportionately from the pandemic?'

Picture: Jess Hurd / reportdigital.co.uk

and Greece have adopted in response to past crises and which have later on been challenged in ISDS proceedings: the restructuring or default of sovereign debt, prohibitions on transferring funds and other capital controls to stabilise the financial sector, bank bailouts and bail-ins etc. 'As seen from past investment disputes,' Dechert states, 'economic and financial crises are the most common cause of governmental actions adverse to investors in the banking and finance sector'.

Scenario 8 – tax justice on trial: Many countries have adopted tax relief measures to support citizens and businesses with the challenges caused by the pandemic. But at some point governments might raise taxes to handle the dramatic budget deficits caused by increased public spending and the economic fallout from the pandemic. In this situation, calls for greater tax justice are gaining traction. In the UK, the US and India, for example, experts have proposed taxes on wealth and the super-rich. Denmark and Poland have already banned companies registered in tax havens from accessing Covid-19 aid, a move that was welcomed by some tax justice campaigners.

Additional taxes and fairer tax deals, however, could come under fire in investment arbitrations. 'In the future, governments will likely be more aggressive in enforcing tax laws generally in order to fund economic stimulus packages related to Covid-19,' warns Ropes & Gray. The law firm raises a number of questions, which 'could indicate an investment agreement violation', for example: 'Are additional taxes being imposed that significantly reduce the value of the foreign investment?' and 'Did the government guarantee the investor a specific tax rate or tax treatment that has since been revoked?' Another of the firm's questions ('Are foreign investors or investments excluded from tax benefits or other economic relief?') raises the spectre of potential ISDS disputes over the 'discriminatory' Danish and Polish bans for Covid-19 grants to tax haven companies.

At a time when a global health crisis is compounded by a major economic crisis, the need to avoid ISDS claims has never been greater. This is why experts around the US economist Jeffrey Sachs have called for a permanent restriction on such challenges to government measures targeting the health, economic and social effects of the Covid-19 pandemic – and for an immediate moratorium on ISDS lawsuits more generally.

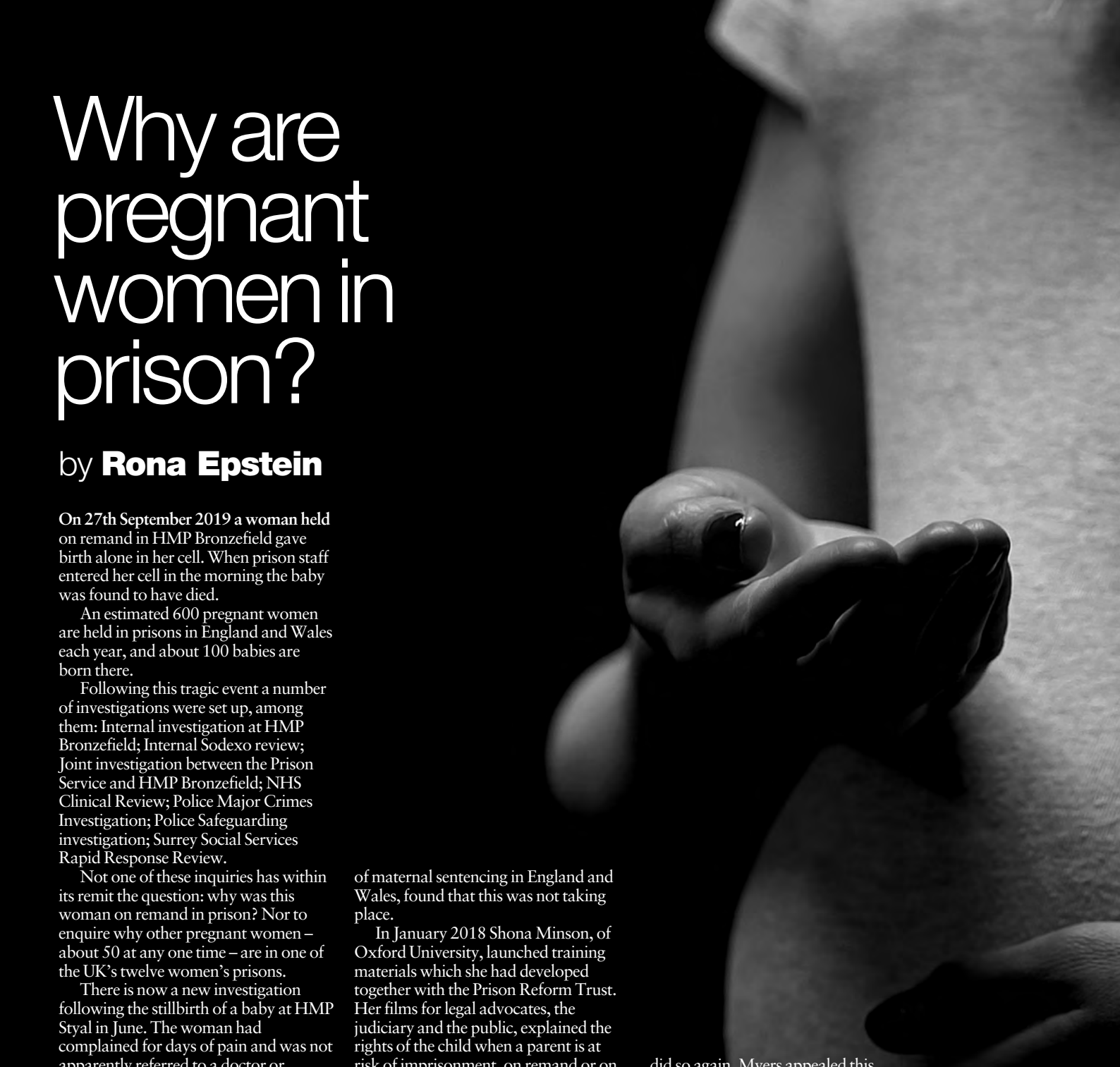
Another route out of being affected by these ISDS burdens is for countries to get out of existing ISDS deals. South Africa, Indonesia, India and many others have terminated some of their bilateral investment treaties. Just recently, 23 EU member states signed a treaty that will terminate some 130 bilateral treaties among them. There are also proposals for how ISDS could be ended globally, in a less piecemeal approach.

Ultimately, the current crisis raises serious questions about the legitimacy of ISDS: what is the justification for a parallel justice system that treats the wealthiest economic actors more favourably than those people who already suffer disproportionately from the pandemic? Why do the grievances of investors and their profit expectations deserve more protection than the obligation to ensure public health and an adequate standard of living to the broader population? These extraordinary times throw the unfairness and social harm of ISDS into sharp relief.

Pia Eberhardt is a researcher and campaigner with Corporate Europe Observatory (CEO). A longer version of this article can be found on CEO's website (www.corporateeurope.org).

Why are pregnant women in prison?

by **Rona Epstein**



On 27th September 2019 a woman held on remand in HMP Bronzefield gave birth alone in her cell. When prison staff entered her cell in the morning the baby was found to have died.

An estimated 600 pregnant women are held in prisons in England and Wales each year, and about 100 babies are born there.

Following this tragic event a number of investigations were set up, among them: Internal investigation at HMP Bronzefield; Internal Sodexo review; Joint investigation between the Prison Service and HMP Bronzefield; NHS Clinical Review; Police Major Crimes Investigation; Police Safeguarding investigation; Surrey Social Services Rapid Response Review.

Not one of these inquiries has within its remit the question: why was this woman on remand in prison? Nor to enquire why other pregnant women – about 50 at any one time – are in one of the UK's twelve women's prisons.

There is now a new investigation following the stillbirth of a baby at HMP Styal in June. The woman had complained for days of pain and was not apparently referred to a doctor or offered any medical care. This fits in with what we know from the research of Dr Miranda Davies et al who published a report entitled 'Locked out? Prisoners' use of hospital care' earlier this year.

Harsh sentencing practices

In 2012 I researched and wrote on the issue of the rights of the child (European Convention on Human Rights, Article 8) when a parent is at risk of incarceration. Those rights should be protected, as made clear in a landmark Court of Appeal case, *R (on the application of P and Q) v Secretary of State for the Home Department* [2001] EWCA Civ 1151. This case stated that at sentencing the court should conduct a balancing exercise, weighing the child's rights to parental care against the seriousness of the alleged or proven offence. My research, covering 75 cases of maternal sentencing in England and Wales, found that this was not taking place.

In January 2018 Shona Minson, of Oxford University, launched training materials which she had developed together with the Prison Reform Trust. Her films for legal advocates, the judiciary and the public, explained the rights of the child when a parent is at risk of imprisonment, on remand or on sentence and how these rights should be protected in the criminal courts. These materials were to be used in the training of magistrates and judges. This should have led to all sentencers balancing the right to parental care of any child potentially affected by a sentencing decision against the seriousness of the offence or alleged offence.

But has practice really changed? In a recent case, Natasha Myers, a mother of two children, age 14 and three, was sentenced to 18 months in prison. She had been accused of taking prohibited items into a prison on a visit to her partner. The judge appeared to take no account of the rights or welfare of her dependent children. He revoked the mother's bail part way through the hearing, and in court reprimanded the 14-year-old for showing emotion, threatening to send her to the cells if she did so again. Myers appealed this sentence. The Court of Appeal found in her favour and her conviction was set aside although she had already spent almost five months in prison (*Myers* [2018] EWCA Crim 2191).

Recall on licence: the return to prison

After serving any term in prison, even a very short sentence for a minor offence, offenders are supervised for one year by probation, under the provisions of the Transforming Rehabilitation Act 2014. If they breach their licence conditions they may be recalled to prison. Women on licence recall now make up 8 per cent of women in custody. The dominant factor for recall is failure to keep in touch with the supervising officer, rather than direct risk of re-offending. In a recent study by the Prison Reform Trust, of 24 women who had been recalled, three of these were pregnant at time of recall and

Picture: www.istockphoto.com / Motortion

one stated that failure to attend one appointment had been due to a hospital visit for a pregnancy scan. This woman stated she was recalled and separated from her daughter the day after she gave birth (Prison Reform Trust, 2018, *Broken Trust. The rising number of women recalled to prison*).

In prison on remand – bail decisions

Almost half of first receptions in the female prison estate are for unconvicted women: 15% of the women in prison are on remand.

Research

Since it has been found that very few women commit violent offences or present a serious risk to the public, we need to know why pregnant women are in prison. Our research, funded by the Oakdale Trust, sets out to answer this pressing question.

Birth Companions is a charity specialising in the support of pregnant women and new mothers facing multiple challenges in prison and in the community. With the help of their Lived Experience Team we have compiled an online questionnaire asking women who have been pregnant in prison about the decisions which led to their imprisonment and about their experiences in prison.

We are at an early stage of this study. To date, we have received eight completed questionnaires, and with one reported case, we have carried out preliminary analysis of nine women. Here we report on *Assia B* ([2016] EWCA Crim 1477, an appeal against a Crown Court decision, and Elise, who was sentenced by a Magistrates Court Both were sent to prison when 36 weeks pregnant.

Assia B

Assia B, from Algeria, used a false passport to obtain employment. She was arrested, charged and remanded in custody for one month, then released on bail subject to an electronically monitored curfew. By the time of her trial in the Crown Court in September 2016 her circumstances had changed. She had married a naturalised British citizen and she was pregnant, due to give birth a month after the hearing date. The court was told of her health difficulties, including asthma and a pulmonary embolism. After she had spent two weeks in prison her case came before the Court of Appeal. Her health difficulties continued during her time in prison.

A pre-appeal report revealed that the stress of imprisonment was having a negative effect on 'this vulnerable young woman' and recommended that there were exceptional circumstances that would justify a suspended sentence – this was an isolated offence and there was nothing in Assia B's attitude, lifestyle or circumstances to indicate a risk of further offences. The Court of Appeal ruled that, in view of the pregnancy and health difficulties, it was right to suspend the sentence of imprisonment. The Court of Appeal quashed the sentence of immediate imprisonment, substituting a suspended sentence of six months' imprisonment suspended for two years.

The Crown Court had an opportunity to suspend the sentence or pass a lighter sentence, given that the defendant was pregnant, vulnerable and suffering from ill health; however, they chose to do neither.

'Elise'

Elise has serious mental health problems, she is bi-polar and suffers from severe depression. In 2012 she was 36 weeks pregnant when magistrates sentenced her to four weeks in prison for theft. From the sentence, we can assume that the theft was a minor offence, yet the magistrates ordered that a woman only four weeks away from giving birth, should go to prison. Elise served two weeks and gave birth after release. She reported difficulties in prison: 'My waters broke and they wouldn't listen'.

Both these cases show that the courts may order the imprisonment of heavily pregnant women for non-violent offences where the women present no risk to the public, and when alternative measures such as a suspended sentence or community order would appear to be available.

Your collaboration

We very much value the views and experiences of those working in this field, we hope for dialogue on this topic. We are looking for respondents to our online questionnaire (we offer a £20 shopping voucher as a thank-you to anyone who takes part); we would be grateful for advice as to how to reach women who have been pregnant in prison to invite them to participate in this research. Please contact us.

Rona Epstein is an Honorary Research Fellow at Coventry Law School and can be emailed at *R.Epstein@coventry.ac.uk*.
A fully referenced version of this article is available upon request.

The coronavirus credit crunch: how can we

Kate Bradley looks at how the consumer credit economy has expanded since the years of Thatcherism and how to oppose it.

With additions and edits by **Sebastian Cooke**

It has already become a cliché to say that the coronavirus pandemic poses an unprecedented challenge to the legal and financial sectors – and indeed, to the whole economy as we know it. The coming months threaten a near-inevitable worldwide financial crash, hot on the heels of the world economic crisis just over a decade ago. Any faltering 'economic recovery' we have experienced in the UK since 2008 cannot be divorced from the phenomenon of spiralling consumer debt, and this spiral looks set to worsen as coronavirus' financial consequences start to play out. We will see people lose their jobs in even greater numbers, default on their mortgages and unsecured debts, and lose their homes. Simultaneously, we will see the government and banks try to facilitate and push consumers towards more borrowing. Stoking borrowing is the neoliberal default setting, but as this economic slump kicks in, it will be magnified by the desire to privatise the cost of this crisis.

Legacies of Thatcher

To understand how we got here, we have to tell a ghost story: the story of Margaret Thatcher. Between 1979 and 1990, Thatcher oversaw the decimation of British manufacturing and primary industries, and followed it up with a programme of deregulation of the

avert the debt crisis?

Picture: Jess Hurd / reportdigital.co.uk

finance markets to refocus the UK economy around consumer credit.

In a pincer movement, large numbers of working class people were made unemployed at the same time the 'sub-prime lending market' opened up. Restrictions on lenders were relaxed to enable poorer people to borrow to buy a house, or to obtain unsecured credit at high interest rates, whilst home-ownership was presented by the government as personal advancement – a sign of 'going up in the world'. In reality, it was mostly consumer debt that was 'going up'.

Thirty years on, we have financial deregulation to thank for a huge number of the great woes of our time. The artificial inflation of house prices created by the use of borrowing to fund house purchases means that many mortgages can now run for as long as 40 years, making home ownership far less of an improvement on renting than it was presented to be, since the risk of repossession during financial difficulty remains throughout a borrower's life. Many at the 'bottom' of the market are unable to buy unless they obtain credit from one of the many cowboy sub-prime lenders, whose punitive and borderline criminal practices (such as paying commissions to brokers to get customers who should have gone elsewhere) have been proven in several landmark court cases (for example *Hurstanger v Wilson 2007*). By capturing a market share in poorer communities like never before, mortgage lending markets across the world have become the basis of the current stage of global capitalism, as former UN Special Rapporteur Raquel Rolnik describes in painstaking depth in her 2019 book, *Urban Warfare: Housing Under the Empire of Finance*.

Another consequence of financial deregulation has been the boom in 'payday lending'. Payday lenders allow people to take out small loans, often less than £100, then charge astronomically high interest on a daily basis, with the idea that the loan will be paid back a few days or weeks later on 'pay day'. **>>>**

>>> Since the 1990s, payday lenders have increased their profits exponentially, and the Consumer Finance Association (of which several of the major payday lending companies are members) describe short-term high-cost credit as 'a modern credit revolution'.

The shift has certainly been radical, driving low-income borrowers into debt cycles that are incredibly traumatic and materially detrimental. In my line of work challenging lenders over irresponsible lending, I have seen individuals with as many as 40 payday loans taken out over a period of less than a year. Eventually, robbing Peter to pay Paul has to end – and it usually ends with court hearings, County Court judgments (CCJs), a plummeting credit rating, and some heavy-handed knocks on the door.

Following the 2008 financial crash, which was itself a consequence of the irresponsible lending of the sub-prime mortgage markets in the US and elsewhere, the consumer credit market has grown extremely quickly, masking the fall in real-terms wages since the recession. According to statistics from the Money Charity, household debt of all types (including mortgages) has risen between January 2008 and March 2020 by £280 billion, leaving every adult with an average of £27,581 in debt. The real consequences of this can be measured: 318 people a day were declared insolvent or bankrupt in England and Wales in October to December 2019, equivalent to one person every four minutes and 32 seconds. In the same period, 14 properties were repossessed every day.

> '"Financial deregulation" shouldn't be read as value neutral. It has brought the hounds to the door of millions of working class people.'

Though an innocuous-sounding phrase, 'financial deregulation' should not be read as value neutral. It has brought the hounds to the door of millions of working class people.

A revolution? If only.

Consumer debt and coronavirus: a crisis waiting to happen

According to the Office for Budget Responsibility's March 2020 forecast, household debt of all types is due to rise from £2.068 trillion in 2019-20 to £2.425 trillion in 2023-24. This forecast predates Covid-19.

Since total consumer debt was already on a rapid upward trajectory before coronavirus, this pandemic seems set to trigger a tsunami of defaults, repossessions, or near misses financed by the next wave of ill-advised lending. The finance industry is nervous about the risks to its profits posed by the pandemic – after all, several big lenders have already gone bust during this crisis, including the high street stalwart rent-to-own provider BrightHouse, and several payday lenders. Forgive me if I don't weep.

The Financial Conduct Authority (FCA), in an attempt to regulate this maelstrom of debt, has published guidelines that instruct lenders to offer 'forbearance measures' to consumers who are struggling with their debts, including interest freezes and payment holidays. However useful this is, the onus is on the debtor to approach their creditors, and many less scrupulous lenders are simply not listening, or creating obstructive processes to reduce the number of people applying for forbearance. Also, the schemes are only proposed for a short period of a few months, after which, pending an extension, the Wild West of debt collection can begin again in earnest.

In June, the Treasury announced a £38 million package of financial support to debt advice providers helping people affected by coronavirus, paid for in part by an increased 'Debt Advice Levy' on consumer credit providers. Although helpful, this once again falls short of radical action, leaving debt advisers (many of which are profit-making companies) to provide palliative care to the victims of an industry that has been allowed to create its own crises for decades.

Businesses of all sectors have also found themselves caught in debt traps since 2008, leading to a great number of zombie companies in the UK. Zombie companies are businesses which continue to trade but have very high levels of debt relative to their profits, meaning they survive purely because of access to cheap credit (a sad inversion of the predatory rates that individual consumers face). This means they are able to handle interest payments but have no scope to ever free themselves from the principal borrowed.

KPMG analysts suggested in 2019 that eight per cent of UK-listed companies could meet this definition of a zombie company. As the government's coronavirus economic response involved offering billions of pounds of loans funnelled through the financial sector to struggling businesses, this means the scheme may save businesses from oblivion but trap them in an undead existence for the rest of time. In turn, this traps workers in low-paid jobs where it is harder to fight for pay rises. The debt cycle continues.

You cannot fight debt with debt

To solve these problems, we need nothing short of a complete re-ordering of the economic system. We need to go further than the centre-left neoliberal economists and policy-makers, including many of those at the FCA and in big banks, whose only answer to spiralling debt is greater regulation to provide 'responsible' credit for poor borrowers. Instead, we should be working on reorienting away from a consumer credit-based economy, reducing poverty and the need for credit by fighting for higher wages, more spending on communities, investing in sustainable employment and housing, and reducing wealth inequality in any way we can. These are realistic reformist goals to add to the 'greater regulation' angle pushed by progressive neoliberals.

In the legal sector following the pandemic, we will be on the front lines defending against wrongful repossessions, CCJs and 'section 8' (rent arrears) evictions, challenging unenforceable debts and irresponsible lending, and providing support and advice. Knowledge of the Consumer Credit Act 1974 can help to stymie the poor practices of debt purchasers, and open up routes to compensation and debt write-offs for consumers – the field in which my firm specialises. If you want to read more, the website DebtCamel provides a lot of legal advice for free, and currently has an excellent section on coronavirus.

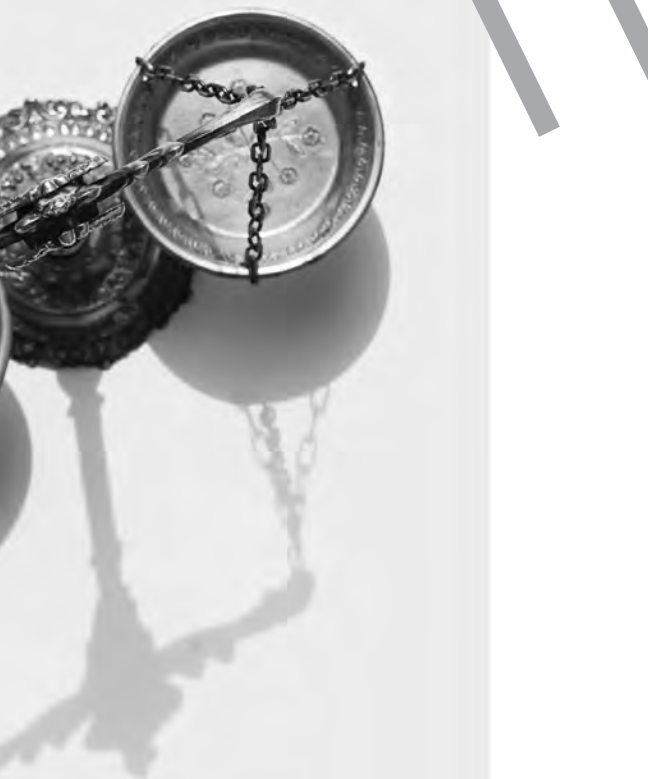
There are, of course, more radical ways to challenge debt. Activist groups using collective and direct action to resist debt collection and enforcement would add value to the information-sharing forums online that show people how to challenge or avoid their debts. Last year, a co-operative project called Bank Job bought up and *blew up* £1.2 million in payday loan debt after buying it for a fraction of its face value on the debt purchasing market. This echoes David Graeber's descriptions in *Debt: The First 5000 Years* of radical uprisings against debts, where debtors would smash up the records of their debts during rebellions and revolutions. Could a similar feat now be achieved at the press of a button in Canary Wharf?

Kate Bradley is a paralegal for the specialist consumer credit law firm Consumer Rights Solicitors in Manchester. Sebastian Cooke is based in Bristol. Both are members of rs21.

Picture: Jess Hurd / reportdigital.co.uk

Picture: www.istockphoto.com / pepifoto

The TRIAL



Patrick Wise-Walsh on 'the continuation of politics by other means', through political trials from Huey Newton to the Shrewsbury 24. >>>

‘Different attitudes to the trial process have emerged. Some seek

>>> **Left activists have often recognised** the importance of the high profile ‘political’ trial. Some activists have themselves provoked arrest and trial. More often, the state has been the prime mover and activists have found themselves facing serious charges, fashioned by forces determined to prevent agitation.

Different attitudes to the trial process have emerged. Some seek to win technical legal victories, others to subvert the proceedings. In a time of growing direct action, it is inevitable that we will see more political trials. Perhaps the case against those who consigned the statue of Edward Colston to the dustbin of history will soon begin: politicians from every major party have called for such charges to be brought.

Activists must consider the lessons of those who have gone before them. What emerges most strongly is the need to decide on a political strategy in good time, and to reflect on the role of the trial in communicating political messages and raising consciousness.

An instinctive suspicion of the law

As members of the Haldane Society are well aware, the left has long been critical of the law and its workings. While the state retains a monopoly on the use of violence, it also claims a monopoly on justice and its processes.

The law’s most visible operationalisation is through contested, adversarial trials. Any alert observer soon gets a sense of their oppressive nature: from the penal architecture of the English courtroom, with its unnecessary dock and elevated bench; its refusal to consider extrinsic factors and motivations underpinning ‘crime’; the mystification of the legal process itself, by way of the alienating formal dress of its professional participants and the court’s insistence on impenetrable, mandarin language.

Beating the state at its own game

Some activists have engaged with the trial process and sought to win by exploiting advantages within the legal rules and established procedures. These technical legal victories have two benefits. On the one hand, they inflict short-term defeats on the state and other

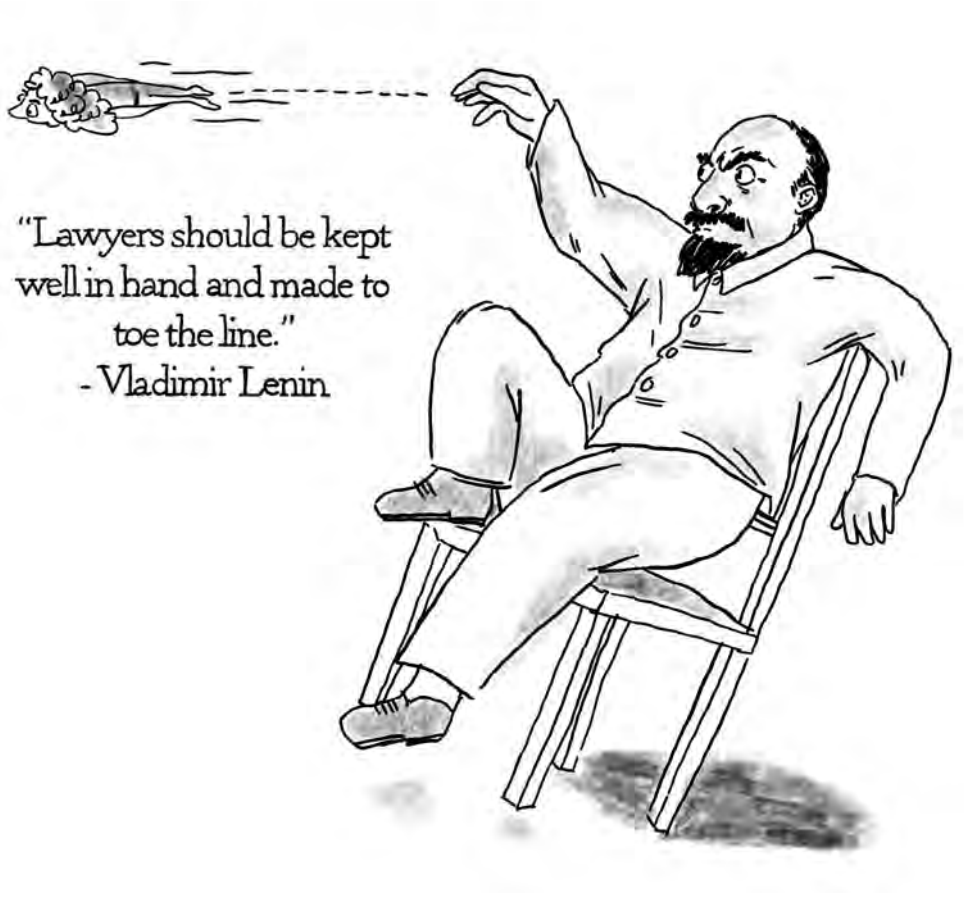
Shrewsbury 24

entrenched interests by embarrassing them with high-profile losses. On the other, such victories protect the activist from criminal sanctions, and ensure that she can return to the struggle.

Suspicion of the law can also extend to suspicion of lawyers. Lenin, in a 1905 letter to comrades in prison awaiting trial in Moscow, had the following to say: “Lawyers should be kept well in hand and made to toe the line […] Only clever lawyers should be engaged; we do not need others”. However, he recognised the potential value in lawyers winning narrow legal arguments by revealing points of procedural unfairness and through exposing fundamental weaknesses in the evidence offered, to the detriment of the state.

During various trade union trials in England in the 1970s and 1980s, militant workers as criminal defendants sometimes opted for this form of legalistic defence. The trial of the ‘Shrewsbury 24’ (in which John Platts-Mills, the Haldane Society’s former president, acted) saw striking workers in the building trade charged with conspiracy to interfere with the lawful employment of building workers and affray.

Building sites could be death-traps, with hundreds of workers being killed or seriously injured in accidents each year. Wages and legal protections were pathetic. These were the causes that the picketing workers organised around. The charges the defendants faced were bad in law and the evidence offered at trial was “contradictory” (John Platts-Mills, *Muck, Silk and Socialism*, 2001, p.535). Counsel for the defendants sought to undermine the strength of the evidence through rigorous cross-examination, especially that given by the police of a criminal ‘conspiracy’ among picketing workers. However, the



striking workers were still convicted (and the Court of Appeal declined to grant their appeals; nor would Roy Jenkins, the incoming Labour Home Secretary, issue pardons).

The legalistic approach adopted by trial counsel contrasted with the passionate 'dock speeches' of the two lead defendants (previously a right granted to defendants, since abolished), which explored the wider anti-trade union policies of the government and emphasised the punitive way the defendants had been treated by the police and the courts.

The trial as political spectacle

The proceedings in the courtroom, by their contradictory and oppressive character, may also be subverted by political activists who expose the absurd nature of such trials.

This subversive approach found its apotheosis in the trial of the 'Chicago 8' (sometimes called the 'Chicago 7', due to Bobby Seale's indictment being severed part-way through his trial, following the

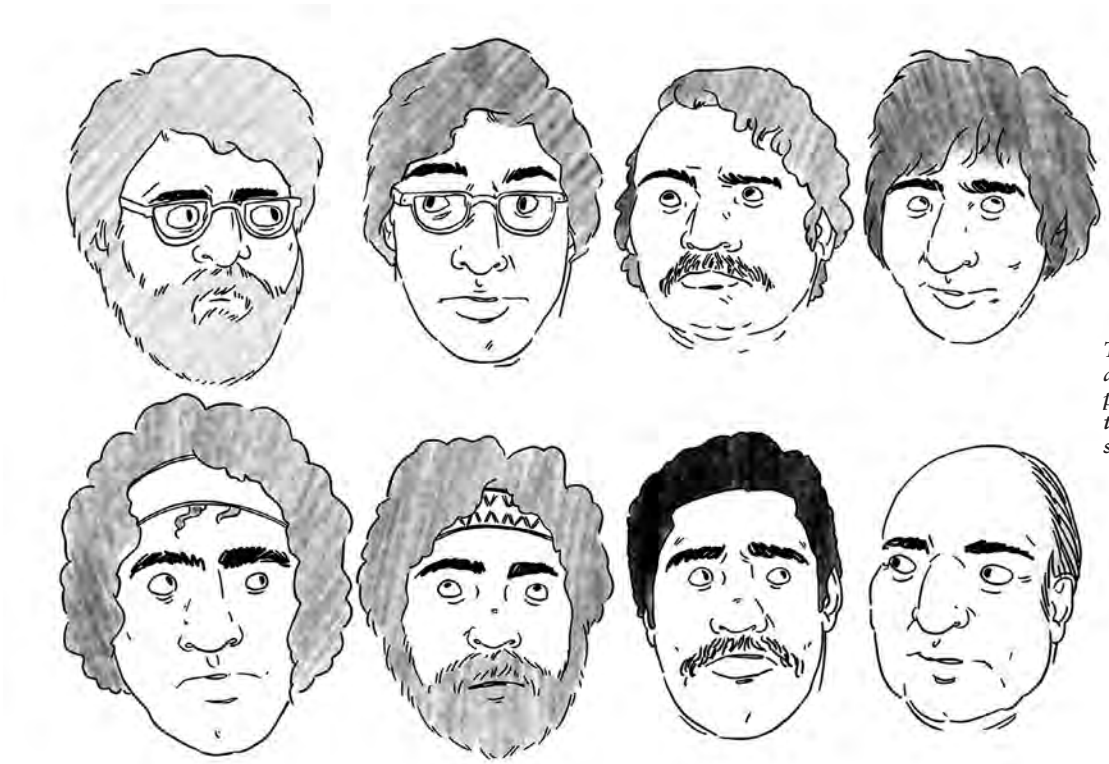

Chicago 8

disgraceful decision of the court to physically gag and bind him for asserting his constitutional right to an attorney of his choosing), which took place following civil unrest at the Democratic Party convention in Chicago in 1968. In scenes reminiscent of the present day, riot police beat unarmed, peaceful protestors engaged in marches and minor 'civil disobedience', reserving the most violent treatment for those engaged in demonstrating for the civil rights of black citizens.

Using a 'dragnet' tactic, the American state put on trial a cross-section of political activists. Anti-war protestors rejecting the unlawful slaughter in Vietnam, anti-capitalist demonstrators, and the co-founder of the Black Panther Party, Bobby Seale, were all selected for prosecution. They were charged with conspiracy to cross state lines to incite a riot, with teaching the making of incendiary devices and of impeding law enforcement officers in their lawful duties.

Abbie Hoffman and Jerry Rubin, activists calling themselves 'Yippies', ran rings around the court through their effortless refusal to respect what amounted to a naked attack on their politics. Through the sharpness of their wit, argument and presentation they appealed to massed forces outside the courtroom by creating a spectacle that gained a global audience. Black armbands were worn in memory of the dead in Vietnam, to the infuriation of the court. The defendants cheered supportive evidence and booed witnesses. At times, the court became a carnival.

Judge Hoffman, presiding, was authoritarian, parochial and lacking in culture and was the perfect foil for their radicalism. His suburban response to >>>



The Chicago 8 were a cross-section of political activists targeted by the US state in 1968.

Illustrations: Daria Schmunk

>>> disorder was to threaten and to punish. All of the defendants – along with their attorneys – ended the trial with years of custody for contempt of court, all later overturned by the appellate court.

As revealed in the transcript, the trial at times took on ludicrous dimensions. Abbie Hoffman, under cross examination:
“*Court*: And I don’t like being laughed at by the witness…
Hoffman: I know that laughing is a crime. I already –
Court: I direct you not to laugh at an observation by the Court…”

Allen Ginsberg, the Beat Poet, giving evidence of the peaceful nature of the demonstrations, recited incantations from the witness box before the prosecution leapt up to object. When asked by defence attorneys to continue, Ginsberg replied, “I’m afraid I’ll be in contempt if I continue to ‘om’.” On another occasion, Hoffman and Rubin attended court wearing black judicial robes. Having been ordered to remove the robes by the judge, they trampled on them in protest at judicial conduct. Hoffman unfurled the flag of the National Liberation Front, America’s antagonists in the Vietnam War, across the defence table and struggled with officers as they removed it.

By the end of the trial, the oppressive nature of the prosecutions had been laid bare to an international audience. The absurdist spectacle cultivated by the defendants within the courtroom exposed the injustice of the anti-protest laws, drew attention to their implicated political causes and further radicalised the main actors.

Politics via alternative means

The political trial, in arguably its highest form, envisions the court as a stage for radical struggle and a continuation of politics by other means.

The trial of Huey P. Newton, co-founder of the Black Panthers, exemplifies this approach. Objectively, the trial was about relatively narrow legal issues: had Newton intentionally shot two police officers, killing one and, if so, did he have a defence in law? A conviction would open the path to the death penalty. Newton was determined to break free of formal legal restrictions, to speak powerfully to the community outside of the courtroom and to pursue a transformative agenda through his resistance to the prosecution.

A clear political strategy was adopted. Newton aimed “to use the trial as a political forum to prove that having to fight for my life was the logical and inevitable outcome of our efforts to lift the oppressor’s burden […] Why not use the courtroom and the media to educate our people? To us, the key point in the trial was police brutality, but we hoped to do more than articulate that. We also wanted to show that the other kinds of violence poor people suffer – unemployment, poor housing, inferior education, lack of public facilities, the inequity of the draft – were part of the same fabric. If we could organise people against police brutality, as we had begun to do, we might move them toward eliminating related forms of oppression…the goal of the trial was not primarily to save my life, but to organise the people and advance their struggle”.

Newton gave evidence in his own defence. In his written account, he describes his approach: “I looked forward to it. For six weeks I had sat […] in the courtroom and listened to Jensen claim that I had murdered Frey in cold blood […] I wanted to set the record straight and prove to the jury that I was innocent. I also was determined to let him know what it meant to be a Black man in America and why it had been necessary to form an organization like the Black Panther Party”.

It was a supreme effort of advocacy for Newton: “Sometimes, while I was explaining Black history and the aims of the Black Panther Party to the court, I forgot that I was on trial for my life. The subjects were so real and important to me that I would get lost in what I was saying”. These words demonstrate his capacity for engaging with the trial, not on the prosecution’s terms, but on his own.

The radicalising effects of the resistance shown by political defendants can also transform the lawyers involved. William Kunstler was never as articulate as when he closed the defence in the Chicago trial, adopting the explicitly political approach of his clients in appealing to struggles beyond the courtroom:

“These are rough problems, terrible problems, and as has been said by everybody in this country, they are so enormous that they stagger the imagination. But they don’t go away by destroying their critics. They don’t vanish by sending men to jail. They never did and they never will […] You can crucify Jesus, you can poison a Socrates, you can hang John Brown or Nathan Hale, you can kill a Che Guevara, you can jail a Eugene Debs or a Bobby Seal. You can assassinate John F. Kennedy or a Martin Luther King, but the problem remains […] I think if this case does nothing else, perhaps it will bring into focus that again we are in that moment of history when a courtroom becomes the proving ground of whether we do live free and whether we do die free.”

Conclusion

Zenon Bankowsky and Geoff Mungham, writing in the 1970s, proposed a method of politicising trials that remains relevant today. “Questions are raised concerning the problems of living in a capitalist society. These actions then can politicise the trial in so far as by breaking its consensus, they raise the questions of men’s real interests […] In trying to break the ordered image of the trial they force the existence of this society to be considered as a political question […] The objective must be such that the society as a whole can be questioned and questions of men’s real interests raised.”

Left activists must do everything possible, by considering past examples and planning for the future, to prepare the ground for forthcoming political trials. They must decide on the correct approach to agitate for change and build political consciousness and they must actively demystify the law’s processes. However, the obstacles are considerable. Activists must consider the very real possibility of conviction and custody. It will take a lot of thought to consider the design of the right political strategy, along with great struggle against the privilege and power of the court – and by extension against the privilege and power of the state – to bring the strategy to fruition.

Patrick Wise-Walsh is a pupil barrister and Member for Education for the Legal Sector Workers United, part of United Voices of the World

existence of this society to be considered as a political question.'

Lynn Adler writes: 'I took this photo in 1969 at a Black Panther Rally in San Francisco, focussing on demands for the release of Huey Newton, who had been sentenced to prison for up to 15 years for the murder of a policeman.'

Picture: Lynn Adler / www.lynnadlerphotography.com/

From the archives

Thirty years ago: 1990

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Arlette Piercy

Framed by the FBI: Political Prisoners in the US

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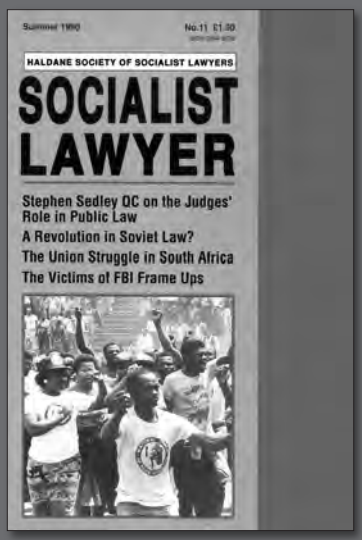


Issue number 11 (Summer 1990) included an article by Arlette Piercy on political prisoners in the United States which we reprint here. First, Arlette looks back to the 1980s and working with Huey P. Newton and the Black Panther Party.

Huey P Newton said over 50 years ago that 'the killing of young black men by the police must be stopped by any means necessary'. That sentiment is still alive and kicking. I was as pleased as I was surprised to see it adorning the front of urban fashion label Trapstar's charity t-shirt drop for the Black Lives Matter movement in June.

Huey himself was murdered on the streets of west Oakland in 1989 whilst trying to buy crack cocaine. (I did wonder whether Trapstar knew that when putting him up there with the above quotation!)

When *Socialist Lawyer* contacted me this summer to request an addendum to an article I wrote about American political prisoners for the same publication 30 years ago, my first response was one of surprise at the fact that 30 years have passed since I worked in the states with Huey.

Surprise was quickly followed by deep shock and profound sadness at how little has changed in these 30 years. The death of George Floyd and its aftermath puts those three decades into sharp focus. The partial subject of my article all those years ago was Geronimo Pratt who was eventually freed from San Quentin prison after being wrongly incarcerated therein for over 20 years. Somewhat bizarrely he went on to live in a house from which you could see the prison. Fred Hampton, the Chicago Panther leader, said 'you can jail a revolutionary, but you can't jail a revolution'. Sadly, Fred was himself shot and killed in a bungled raid by the FBI on his Chicago apartment in December 1969, at the age of 21.

I have been thinking a lot about Huey Newton and the Black Panther Party in recent weeks and months. How would they have seen these events? What would Huey have done? Where would he stand on all of this? What would he be saying?

In the late 1980s, not long before his death, I worked with him on an extremely ambitious RICO (Racketeering in Corrupt Organisations) action against the FBI because of their counter-intelligence programme against the Black Panther Party. This action was as naive as it was ambitious but as a 22-year-old law graduate it seemed like a fantastic idea at the time. It never got into court, largely as Huey himself was murdered the following year.

During that time, I came to know Huey well and his approach to events in 2020 would doubtless be something akin to the way he was described by Bobby Seale at the start of the latter's autobiography, *Seize the time*.

'Huey P Newton, Minister of Défense of the Black Panther Party, the baddest motherfucker ever to set foot in history. Huey P Newton, the brother, black man, negro, a descendant of slaves, who stood up in the heart of the ghetto, at night, in alleys, confronted by racist pigs with guns and said: "My name is Huey P Newton. I am the Minister of Defence of the Black Panther Party. I am standing on my constitutional rights. I am not going to allow you to brutalise me. I am going to stop you from brutalising my people. You got your gun pig, I got mine. If you shoot at me, I'm shooting back.'

That said I have absolutely no doubt whatsoever that the non-violent, diverse, worldwide and, above all, young movement which has sprung up in the last months since George Floyd's murder would have had his total support. As Huey said, 'the revolution has always been in the hands of the young.'

Arlette Piercy is a criminal defence barrister and political activist.

Freedom Now, the US campaign for amnesty and human rights for political prisoners, estimates that there are nearly 100 political prisoners in the US. Although they employ broad criteria for assessment a number of cases are cause for grave concern. Amnesty International has grasped the nettle and produced several critical reports highlighting both individual cases and the wider issue of politically motivated criminal convictions. Yet for diplomatic reasons the world has been happy to accept the US government's claim that it holds no political prisoners.

Freedom Now aims to destroy that claim and expose the US government to international scrutiny. Launched last year at the UN in Geneva, it is an umbrella organisation which has brought together numerous smaller campaigns. A tribunal of 10 international jurists was convened on 27th-29th April this year at New York University to hear evidence concerning individual cases as well as assessing the wider repression of certain political groups. Their findings will be published as a report with a view to presentation at international human rights forums.

Typically, the US's political prisoners are activists on the political left. Black people are most often 'targeted', in particular members of radical organisations calling for freedom and social justice for various minorities in the US, including the American Indian Movement, the Puerto Rican Independence Movement and the now dissolved Black Panther Party.

'Neutralising' the Radicals

In the early 1960s at the instigation of J Edgar Hoover, the FBI began its infamous counter intelligence programme COINTELPRO against domestic political organisations. Its stated aim was to: 'expose, disrupt, misdirect or otherwise neutralise such groups'.

This programme was carried out by resort to two types of counter-intelligence activity. Firstly, the US government repressed the activities of groups it saw as threatening, employing classic tactics such as infiltrating groups with informers, using agent provocateurs, planting agitators at demonstrations and putting out disinformation purporting to be representative of these groups' politics.

'It is immaterial whether facts exist to substantiate the charge.' (FBI memo)

Secondly, and perhaps more importantly, the FBI sought the long term removal of radical political leaders. FBI officials said a principal way to neutralise individuals was to show they were violating federal, state or local statutes (House Report to the Committee on the Judiciary, FBI Domestic Intelligence Operations Report). One main way in which this was accomplished was by fabricating and suppressing evidence in order to tie radical political leaders up in the courts and in prison. Wholesale abuse of the legal process began with FBI agents being encouraged to lie. One FBI memo stated that: 'It is immaterial whether facts exist to substantiate the charge. If facts are present, it aids in the success of the proposal (ie to "neutralise" individuals throughout the courts) but disruption of their organisations can be accompanied without facts to back it up'.[1]

A Major Target

The late Huey P Newton, co-founder of the Black Panther Party, was a major target of COINTELPRO. Up until his death in August 1989, a total of 42 different prosecutions had been brought against him including three trials on one murder charge. Despite this he was only ever convicted of illegal possession of a handgun. The FBI is alleged to have had over a million documents on Newton alone.

A number of the US's current political prisoners are direct victims of COINTELPRO, as documents released under the Freedom of Information Act have shown. More recently the FBI has resumed this lapsed programme in spirit if not in name. The victim is still the radical left; the strategy continues to be one of 'legalistic' smoke screens.

A 'Key Black Extremist'

Geronimo Pratt, a black man, became leader of the Black Panther Party after his return from Vietnam as a much decorated war hero in 1968. He became a target for COINTELPRO and was singled out as a 'key black extremist.'[2]

Shortly after a 1970 FBI memo announced plans to 'neutralise' him, Pratt was arrested in connection with a two year old murder case in which a woman had been robbed and killed in a tennis court in Santa Monica, California.[3] It later emerged that Pratt was in Oakland, several hundred miles away on the day of the crime, but the FBI inexplicably 'lost' their wire taps of Panther HQ in Oakland which would have corroborated his alibi. At his trial in 1972, Pratt and his defence counsel were unaware that he had been targeted by the FBI. The chief prosecution witness was Julius Butler, a former BPP member who testified that Pratt had confessed to the murder. It has since been shown by documents released under the Freedom of Information Act that Butler was an FBI informant, a fact he denied during the trial.

After Pratt's conviction further evidence of FBI misconduct came to light. They had planted three informants in the defence team and had thus received advance notice of strategy and witness'testimony. Moreover, they had suppressed the identification by the dead woman's husband – an eyewitness to the crime – of another man as one of the killers.

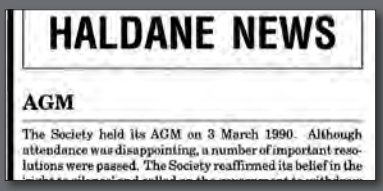
Pratt was convicted and sentenced to life imprisonment. He has spent the last 20 years in top security prisons, including five years in solitary confinement, and was only released into the general prison population after winning a civil rights action. Despite his excellent record as a peacemaker in racial disputes, a committed anti-drugs advocate and a leader of Vietnam veterans organisations he has been denied parole nine times.

Appeals against his conviction have been dismissed by all the courts who have so far reviewed his case. Amnesty International has expressed concern that Pratt was denied a fair trial because of his political activities and has called for a full re-trial.

A Willingness To Fabricate

Leonard Peltier is probably the most well known of America's political prisoners. He was targeted for prosecution because of his leading role in the American Indian Movement. In 1977 he was convicted of first degree murder for his alleged participation in the killings of two FBI agents on the Pine Ridge Indian Reservation in South Dakota in 1975. Peltier was extradited to the >>>

Also in the 1990 issue of *Socialist Lawyer*:



HALDANE NEWS

AGM

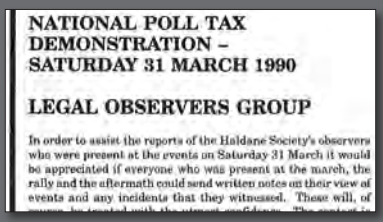
The Society held its AGM on 3 March 1990. Although attendance was disappointing, a number of important resolutions were passed. The Society reaffirmed its belief in the

Although the 1990 AGM of the Haldane Society attendance 'was disappointing, a number of important resolutions were passed', and a proposal to change the name of the Society was lost. Anyone remember what the suggested name was?

Executive Committee

The executive committee for the coming year comprises: Bill Bowring (chair), Keir Starmer (secretary), Kate Markus (vice chair), Robin Oppenheim (treasurer), Heather Williams, John Wadham, Katy Armstrong-Myers, Debbie Tripley, Sally Hatfield, Steve Cragg, Tony Metzer, Damian Brown, Clare Wade, David Geer and Piers Montyn.

You might recognise the name of the secretary of the Haldane Society in 1990...



NATIONAL POLL TAX DEMONSTRATION – SATURDAY 31 MARCH 1990

LEGAL OBSERVERS GROUP

In order to assist the reports of the Haldane Society's observers who were present at the events on Saturday 31 March it would be appreciated if everyone who was present at the march, the rally and the aftermath could send written notes on their view of events and any incidents that they witnessed. These will, of

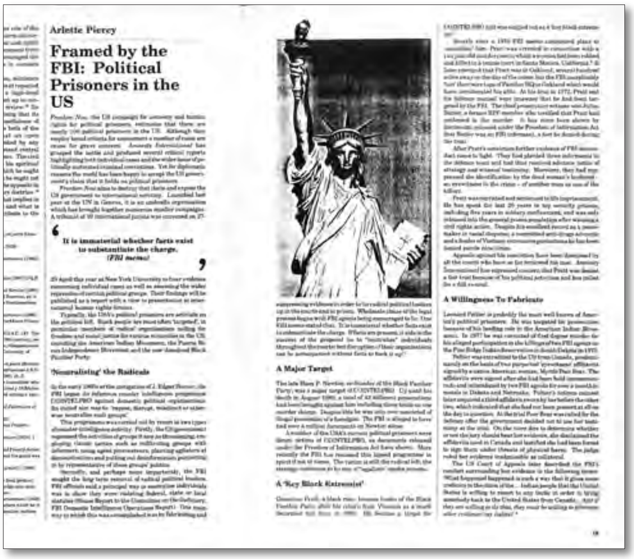
On the 'noticeboard' on page 24, there was a note about the Poll Tax riot in Trafalgar Square in 1990 (which put paid to Thatcher!) – 'In order to assist the reports of the Haldane Society's observers who were present at the events on Saturday 31st March it would be appreciated if everyone who was present at the march, the rally and the aftermath could send written notes on their view of events and any incidents that they witnessed...'

Revolutionary Developments in Soviet Law

Bill Bowring (still highly active today) wrote on 'Revolutionary Developments in Soviet Law'. 'This article is impossible to write. Events are moving at breakneck speed, not just in Lithuania; the entire Soviet legal system, statute law and procedure, is undergoing complete replacement surgery.'

From the archives

Thirty years ago: 1990



Arlette Piercy

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'Neutralising' the Radicals

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A 'Key Black Extremist'

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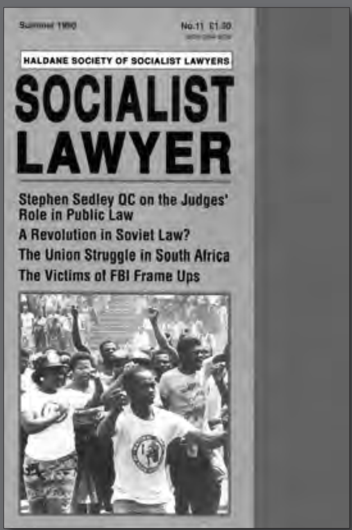
Psychological Torture



To read this and all the past editions of *Socialist Lawyer* go to *www.haldane.org/socialist-lawyer*

If you have a print copy of any of the following issues, please can we borrow it so we can scan the pages and make it available online? They are numbers 22, 23, 25, 28 and 32. Please email us at: *socialistlawyer@haldane.org*

>>> US from Canada, predominantly on the basis of two purported 'eyewitness' affidavits signed by a native American woman, Myrtle Poor Bear. The affidavits were signed after she had been held incommunicado and intimidated by two FBI agents for over a month in motels in Dakota and Nebraska. Peltier's defence counsel later acquired a third affidavit sworn by her before the other two, which indicated that she had not been present at all on the day in question. At the trial Poor Bear was called for the defence after the government decided not to use her testimony at the trial. On the viore dire to determine whether or not the jury should hear her evidence, she disclaimed the affidavits used in Canada and testified she had been forced to sign them under threats of physical harm. The judge ruled her evidence inadmissible as collateral.

The US Court of Appeals later described the FBI's conduct surrounding her evidence in the following terms: 'What happened happened is such a way that it gives some credence to the claim of the ... Indian people that the United States is willing to resort to any tactic in order to bring somebody back to the United States from Canada... And if they are willing to do that, they must be *willing to fabricate other evidence* [my italics]'.[4]

At the trial three other important witnesses testified during cross-examination that the FBI had threatened, intimidated or physically abused them when they were questioned about the murders. The State then produced special agent Fred Coward to testify that he had identified Peltier at a half mile distance, through a two times seven power telescopic sight, running away from the scene of the crime. The supposed 'identification', it was later revealed, took place looking into the sun on a hot June day when the mirage factor was high. Expert tests carried out for the defence showed recognition even of a close acquaintance (and Coward had never seen Peltier before) to be virtually impossible under these conditions. The trial judge declined an invitation to undergo a similar test and refused to allow the jury to do so.

The all white jury returned a guilty verdict and the judge imposed two consecutive life sentences. Peltier, with no previous felony convictions, was sent directly to the federal super-maximum security prison at Marion, Illinois. Marion has been condemned by Amnesty for violating international standards for the treatment of prisoners. The men at Marion are under permanent lockdown and are sometimes chained to their beds for days at a time.

The US Court of Appeals dismissed Peltier's appeal, a surprising decision in view of the soundings from the Appeals bench cited earlier. The presiding judge was William Webster who had already accepted a new job as director of the FBI.

The defence tried again in 1985 when further documents obtained from the Bureau's own files showed that the prosecution had suppressed exculpatory evidence at the time of the original trial. This included evidence that the gun alleged to have belonged to Peltier could not have been used in the killings. Amnesty International suggested that this new evidence cast doubt on the fairness of the trial. Predictably however, the motion was denied.

Psychological Torture

Obviously in an article of this length only the most outstanding political abuses of the criminal justice system could be discussed. Other victims include Alejandrina Torres, an activist in the Puerto Rican Independence Move ment, convicted in 1983 and sentenced to 38 years for conspiracy to overthrow the US government. The case of Susan Rosenberg exhibits two aspects common to all political cases; a very long sentence and oppressive conditions in detention. Convicted on counts of possession of weapons, explosives and a false ID, Rosenberg, deeply involved in movements for Puerto Rican Independence, black liberation and women's liberation, was sentenced to 58 years imprisonment, the longest ever given on these charges. Two years of her sentence were spent at the Lexington Control Unit, which was closed down in 1988 by a Federal judge after international outrage over psychological torture methods employed there, including sensory deprivation. The aim of *Freedom Now* and the April conference at New York University is to bring pressure to bear on the US government to stop bogus imprisonment and mistreatment of political activists.

1. *Agents of Repression*, Ward Churchill and Jim Vander Wall, page 287.
2. *Amnesty International: The Case of Elmer 'Geronimo' Pratt*. AI Index: AMR 51/27/88, May 1988.
3. *Amnesty International: Proposal for a Commission of Inquiry into the effects of Domestic Intelligence Activities on Criminal Trials in the United States of America*. AI Index AMR 51/05/81. page 21.
4. *US v L Peltier* Crim No 77 – 3003 Ross J page 73264.

Reviews

Love Lines by Wendy Pettifer, with illustrations by Jeff Stewart. 47 pages, the book is available for £6 including postage from *Lovelines.net* or via Wendy on *Twitter @WendyPettifer*. All proceeds from the book will be donated to two charities: Hackney Law Centre and the Hackney Migrants Centre.

Wendy Pettifer is well known to members of the Haldane Society as a stalwart member of the Executive Committee. She has also recently helped to establish an active Refugees Subcommittee of the ELDH (see the international report in the news section of this issue, page 12).

Wendy is an active member of the Hackney Labour Party, a socialist internationalist, and best known as a Legal Aid solicitor who fights for Migrants Rights. She believes that anything is possible. And she is a cancer survivor.

She has 25 years experience as a Legal Aid Lawyer working across the private and voluntary sector on housing and destitution cases for migrants. She has worked in Cairo, Calais and Athens with refugees on asylum applications and Dublin III transfers.

Wendy is also a poet, and I encourage all Haldane members to acquire a copy of this moving and important volume.

In her introduction, Wendy tells us that her poems speak directly about emotions: love, fear, lust and empathy. She started writing poetry aged 13, but only now has the opportunity to publish. Her book has five sections: Hackney; Calais; Cancer; Travel and, with 12 poems, Personal. Which is a fair summary. Each section has its own short prose introduction, and there are splendid strong illustrations by Jeff Stewart on the cover and throughout the book.

The very first poem celebrates a walk with her grandson Nye in London Fields: a celebration of London, England and its ley lines, her grandson – and this special 'ancient changing space'. The second poem records the closure of Shoreditch County Court in 2006; and the third is a hymn to Hackney – 'So I'll stay here and keep the faith/ Of all I know in this safe place.' 'Calais' is a poetic engagement with her work as a volunteer lawyer from May to September 2016 at the 'Jungle', an experience which was terrifying and inspiring. Two poems in 'Cancer' are her response to her experience of bowel cancer in 2019: thankfully she is in remission.

'Travel' starts with her passion for France – Wendy is one of a handful of Haldane members who speak French – starting in 1969, and when she was 17 she got a scholarship to the Institut Francais in London. She has travelled all over the world, and three poems convey her love for 'that feeling of stepping onto strange land…'

Finally, 'Personal' starts with her childhood in Lincolnshire, where her dad was a fireman and her mum a housewife. There are poems to her partner Nick on his birthday, a poem about getting laid, a must-read poem 'My Tongue In Your Cheek' – 'Lake of need in an ocean of lust/ unravelling the cobwebs, disturbing your dust'. The most moving poem of all is 'Our Gentle Gardener' which she read at her father's funeral. 'The tender tendrils in the garden of my father / Bind our hearts together to soften this last loss.'

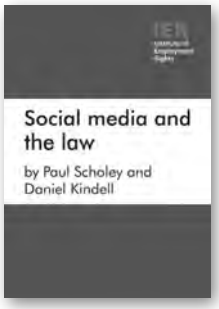
Bill Bowring

IN MY KARAVAN

In my Karavan I keep tisanes to tempt the tired and troubled
Teddy bears for lost children, plasters for scratches
A table; Calais kitchen dinners

Ghostly teenagers rest in my Karavan: talking,
Smoking shisha hoping for a better life
Trying to forget that when night comes
They will lacerate their hands on lorries
That riot police will burn their eyes with teargas,
Break their bones with truncheons
As they did mine.

In my Karavan I am many things.
Brother, father, never lover,
Strong man, weak man, angry Syrian
I lock the door
No lights to finish the day
And think of my family and my home.
Modest women, soft starlight, roasted almonds
And know who I really am.
In my Karavan I keep my mind



Social media and the law by Paul Scholey and Daniel Kindell, Institute of Employment Rights, March 2020, available from: www.ier.org.uk/product/social-media-and-law/

Picture: Jess Hurd / reportdigital.co.uk

One to 'like'. Workers striking against the imposition of worse terms and conditions by Tower Hamlets Labour council.

This booklet concerns the unprecedented change in communications that have been brought about for employees. It places a particular emphasis on workplace relationships and the difficulties that employees can find themselves in as a result of their interaction with social media. The authors note astutely that 'what used to be an ephemeral "word after work in the pub" has become a remark now set in stone and capable of being copied, pasted, and transmitted to hundreds of thousands of others with a short series of key presses or mouse clicks'. Rather than suggesting that employment law principles have been in any way revolutionised by social media, it is more a case of '*plus ça change*', ie 'the more things change, the more they stay the same'. The authors posit that in reality social media offers a raft of opportunities for employees to fall foul of new policies, and therefore face the same employment law challenges as ever, in an arena that is often favorable to employers.

The authors reiterate throughout that the laws of unfair dismissal, discrimination and harassment apply to social media in a relatively common sense way. The authors also draw on numerous examples of case law in various arenas including the Employment Tribunal and the civil courts.

It is reinforced that employers' reputations reign supreme, and will often trump arguments of unreasonableness, indirect discrimination on the basis of political belief, and freedom of expression arguments. In *Game Retail Limited v Laws*, which is described by the authors as 'perhaps the first case of a tweet coming before the Employment Appeal Tribunal', it was held that offensive tweets from an individual's personal account, but which may be followed by individual branches and customers of the employer, could result in a fair misconduct dismissal.

'Employers' reputations reign supreme, and will often trump arguments of unreasonableness, indirect discrimination on the basis of political belief, and freedom of expression arguments.'

The fact that the tweets were not critical of the employer was immaterial, and it was sufficient in this case the tweets themselves were offensive. In the case of *Forbes v LHR Airport Limited* on the other hand, the EAT established that whether something is done in the course of employment is a question of fact for the Tribunal in each case having regard to all the circumstances. This was a case which concerned an image of a well-known children's toy with racist connotations, being circulated on a personal Facebook group, and it was held not to be in the course of employment.

The case of *Gibbins v British Council*, which saw an employee dismissed for republican comments surrounding an offensively captioned photograph of a young Prince George on Facebook. The employee did not make the original offensive comments but went on to expound her republican views in the comments section. The Tribunal found that this was not discrimination on the basis of philosophical belief as she has not been dismissed for her beliefs but for her association with the original caption by engaging in the discussion. The Tribunal found that the Claimant had 'associated herself' with 'a distasteful and personal attack on a small child'. The Respondent also had a strict policy on reputation that included specific guidance on the online sphere, and their patrons were senior royals.

On the subject of an individual's association with posts made by others, there is a discussion of the case of *Blue v Food Standards Agency*. Here an individual 'liked' and commented on an offensive, potentially intimidatory post made by another. The case gave rise to consideration of the use of the Facebook 'like' button, which was seen as an 'ambiguous indicator' by the Tribunal, and not necessarily an endorsement. The authors conclude that this may now be less ambiguous in that 'the simple "like" has been

'The right to freedom of expression is usually superseded by third-party rights, such as reputation. This is the general line taken by courts and Tribunals, however the authors note that there have been exceptions.'

superseded by Facebook's "reactions" which can include a like but also "sad" or "heart" or "wow"'.

In respect of social media policies, which are increasingly common amongst employers, the authors highlight that it is important for staff to be aware of any such policy, to have been adequately briefed on them and for it to be sufficiently clear for it to then be relied on in disciplinary hearings. Ignorance of a social media policy was deemed 'powerful mitigation' in the case of *Lake v Amey Service Ltd*, for example, where it was found that the employer had not properly briefed employees about its social media policy.

Articles 8 (the right to private and family life) and 10 (freedom of expression) of the European Convention on Human Rights are the main areas that employees can rely on in disputes over social media use. However the authors argue that the right to privacy is usually lost because the nature of the media concerned is public, or at least capable of public distribution. Similarly, the right to freedom of expression is usually superseded by third-party rights, such as reputation. This is the general line taken by courts and tribunals, however the authors note that there have been exceptions, such as the case of *Smith v Trafford Housing*. In this case, an employee's religion-inspired comments against gay marriage resulted in his demotion. The High Court found that these posts were personal and did not appear to be related to work, and were also a 'moderate expression' of his viewpoint. The Judge in this instance concluded the following: 'The frank but lawful expression of religious and political views may frequently cause a degree of upset, and even offence, to those with deeply held contrary views…This is a necessary price to be paid for freedom of speech'. The authors suggest that the salvation for Mr Smith was both the moderation used in his expletive-free language, and that it concerned an area of ongoing tension between equality protections, ie sexual orientation versus religious belief. The latter is a battleground that extends beyond the social media arena, and affects equalities law more broadly.

The case of *LUFC v Williams* concerned individuals' historic internet activity. Here, the High Court found that inappropriate emails sent five years previously, unearthed only after dismissal when uncovered by a IT Expert, still amounted to a repudiatory breach of contract. Accordingly the employer was able to rely on them and take steps in relation to them despite no knowledge of them at the time. Similarly the EAT held in the case of *British Waterways Board v Smith* that dismissal for historical posts was within the band of reasonable responses. The authors suggest that whilst this may be troubling, historical online behaviour can come back to haunt employees.

Overall this publication is a useful, relevant and often fascinating, primer for a fast moving area of the law. It contains lively discussion throughout and will make interesting reading for all individuals, not just lawyers.

The authors also provide a handy checklist of tips for those representing individuals in cases related to social media usage. If you have any interest in how social media usage is being handled in the courts and tribunals then this publication is definitely worth your attention.

Liam Welch

The Haldane Feminist Lawyers Reading Group 2020

The Haldane Feminist Lawyers, a sub-group of the Haldane Society of Socialist Lawyers, was established in 2013. We seek to offer women and allies a forum for a critical, socialist and intersectional perspective in the fight for gender equality and to end all forms of oppression more generally.

One element of this is through a welcoming reading group, which is organised by all, democratically. After hours, hidden away in the Temple, lawyers, students and activists alike pour glasses of wine (and other, non-alcoholic options), finding themselves in a space where ideas, even on incredibly difficult and polarising subjects, can be explored.

The book picked for the start to the year was Hannah Arendt's *Eichmann in Jerusalem: A Report on the Banality of Evil.*

Hannah Arendt reported on Adolph Eichmann's trial in an Israeli court in 1961 for the *New York Times*. Eichmann was an SS-Obersturmbannführer, whose role as one of the major organisers of Hitler's Final Solution to the Jewish Question was to facilitate the transportation of Jews across Europe to ghettos and extermination camps in eastern Europe.

Arendt herself was a Jew who fled Germany to escape Hitler's regime. In our sessions, we got to see Eichmann through Arendt's eyes: as an unintelligent, career-obsessed man whose stated lack of hatred for the Jews shocked her.


Hannah Arendt.

In our discussions, we explored what Arendt meant by the 'banality of evil' of those individuals participating in institutions which together led to some of the most otiose crimes against humanity, which contrast sharply where their individual actions are approached as 'just doing one's job.' It was on this basis that Eichmann protested his innocence, stating as paraphrased by Arendt that: '[h]e did his 'duty'... he not only obeyed 'orders', he also obeyed the 'law''. Ultimately, however, Eichmann was convicted of 15 counts of crimes against humanity, crimes against the Jewish people and membership in the Gestapo, the SD and the SS; for these crimes, he was sentenced to death by hanging.

Debates were had over our bi-weekly sessions. Was Arendt tricked by Eichmann's presentation during his trial? Were her comments regarding the Judenräte – the Jewish community leaders organised and forced by Nazis in occupied countries to provide details of their communities and assist in their deportation – and conclusions as to how they made Eichmann's job easier blaming the victims? Regardless of these >>>

Eichman at his 'show trial'?

>>> difficult topics, all agreed that the machinations of how the Third Reich was able to convince other nations to hand over their Jewish populations, completely burrowing into seized states like parasitoid wasps and testing the limits of what each state would abide, was deeply unsettling. One assumes that the Third Reich arose via sheer force, but in fact the weakness of many institutions in European States gave all pause for thought, even in the 21st century. These grim considerations were however syncopated by acts of resistance, for instance by Belgian railway workers, who '…could not even be trusted to leave deportation trains alone', leaving doors unlocked and even arranging ambushes to enable Jews to escape.

Further discussions naturally settled (in a room with many lawyers) on the law itself and the nature of justice. Although Arendt noted that it was ironic that the Israeli state seized Eichmann illegally for trial, it was clear to all including Eichmann that his death sentence had been passed on him before the trial began. We discussed whether this was a 'show trial' and then the merits and drawbacks of such trials. In terms of a utilitarian perspective, ideas were explored as to the benefits of people being tried according to the 'rule of law' versus other forms of retribution and punishment.

As socially distanced chat gave way to online sessions as the months progressed during the Covid-19 pandemic, the group was able to open up to those not based in London, which is something that is hoped will continue in some form in future.

● If you are interested in joining the Haldane Feminist Lawyers, or attending our critical reading groups, please join our Facebook group or contact us at Haldane.org.

Join online now

haldane.org/join

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