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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A broken system

'Abortion is a human right' was emblazoned on a placard held by a protester outside the US embassy in London following the US Supreme Court's ruling to repeal *Roe v Wade*. The removal of the constitutional right to an abortion cast a deep and darkening shadow over the lives of our sisters in the US. Voices on this side of the Atlantic have lamented the war on women's bodies, and yet women in the UK are also being criminalised for terminating their pregnancies. Molly Boydon's piece (page 12) looks at the current picture here in the UK, following actions pursued by the CPS under outdated, sexist, legislation telling of archaic misogyny.

In the face of this broken criminal justice system, summer also saw the Criminal Bar Association call mass strikes which are to remain indefinitely until the government meets their demands. Read about two perspectives of the strike on pages 18-25. Thanks to Yasmin Adib for her brilliant artwork capturing the pickets.

Beyond solidarity with the Bar's strike action – from Keith Ewing's astute analysis of the lawfulness of proposals to use agency workers as strike-breakers (pages 8-9), to Mel Strickland's (Stansted 15) battle to have her conviction quashed (page 26-27) – this edition of *SL* explores resistance in many forms. Art Badivuku's piece on criminalisation of solidarity with Palestine (pages 4-5) marks Haldane's commemoration of Nakba day; a day which will forever stand in history as the catastrophe leading to the displacement of thousands of Palestinians. Hearing from Mira Hammad, Badivuku charts the continuation of Nakba through the criminalisation of resistance, and both the Israeli and British systemic actions to silence dissent.

The Boycotts, Divestment and Sanctions Bill is perhaps the most chilling of 2022's legislative agenda in this regard. As Eli Machover's piece details, the so called 'boycott bill' preventing public bodies from implementing boycotts which do not align with British foreign policy joins a 'raft of recent legislation designed to drive a coach and horses through our civil liberties' (pages 5-6).

Haldane's 'Ecosocialist Eye', charting the climate crisis and forging a leftward way forward continues at page 11 while Charlie Coverman and Richard Harvey delve into the role of climate litigation. Harvey superbly builds the case for a 'movement lawyering' approach to strategic climate litigation at pages 28-34. And, as Honduras welcomes newly elected president Xiomara Castro, Kendra McSweeney draws parallels between the country's drug and climate policy (pages 38-39).

Both Uther Naysmith and Jerry Flynn offer socialist perspectives on land and housing at pages 16-17 and 35-37 respectively with insight into the inequitable distribution of land and power. We commemorate a 'true hero of social housing' following the death of Natt Matthews after a brave and short battle with cancer. Wendy Pettifer and Liz Davies QC provide colour on pages 6-7 to Natt's wonderful work and commitment to being a social welfare lawyer. The world is poorer without him.

Kate Flannery, Secretary of the Orgreave Truth and Justice Campaign reviews the BBC's *Sherwood* from a position of unique insight, noting both where it hits the spot and falls short in accurately portraying a village of miners traumatised by the history of the strikes. Nick Bano and Liz Davies QC review David Renton's *Against the Law; Why Justice Requires Fewer Laws and a Smaller State* and Leslie Thomas QC's *Do Right and Fear No One* respectively on pages 40-41 and 42-43.

Acts of resistance – small and large – are indelible marks in history. Thanks to all our contributors for sharing theirs.

Rachel Wall, Joint Editor

For podcasts of the latest Haldane meetings, including 'Dark Waters: The Truth About Zane'; supporting the barristers' action; and on Palestine, go to: **bit.ly/Haldane-Podcasts**

Socialist Lawyer PODCAST

Crime and punishment

Protesting to 'End Apartheid; Free Palestine' in London on Nakba Day in May.

In May 2022, Haldane commemorated Nakba Day by hosting a webinar exploring the ways in which socialists and lawyers can resist the criminalisation of solidarity with Palestinians in and beyond the courtroom.

The speakers included Mira Hammad of Garden Court North Chambers, a Palestinian barrister who has successfully represented direct action activists in domestic courts, Wesam Ahmed, of the Ramallah based human rights organisation Al-Haq, and Giovanni Fassina of the European Legal Support Centre (ELSC). The ELSC provides legal advice and support for Palestine activists across Europe and conducts strategic litigation to support the broader Palestine movement.

Nakba Day is recognised as a day of commemoration of the Palestinian 'Nakba' (Arabic for 'catastrophe') in 1948, in which the majority of Palestinians were displaced from historic Palestine, rendering them stateless overnight. It is a grim reminder of the ongoing Nakba that Haldane's commemoration should fall just a few days after the murder of the Palestinian journalist Shireen Abu Akleh at the hands of an IDF sniper in Jenin, where she had been reporting. Franck Magennis of the Haldane executive, who chaired the event, began the event with a tribute to Abu Akleh which was echoed by all our speakers. Mira Hammad spoke movingly of how Palestinians collectively felt that they had lost 'a friend' and underlined how Abu Akleh's killing was part of a systemic targeting of Palestinian journalists at the hands of the Israeli state.

In his introduction, Franck highlighted the appearance of the so-called anti-boycott bill in the Queens Speech earlier this year preventing public bodies from implementing boycotts which do not align with British foreign policy, specifically naming the movement for Boycotts, Divestments and Sanctions (BDS) against the Israeli state. Whilst calling for a broad campaign to fight the anti-boycott bill, Franck did remind attendees of positive developments. B'Tselem and Human Rights Watch recognising the Israeli regime as one that falls within the legal definition of apartheid shows that even in liberal circles this fact has become uncontroversial. Franck emphasised that critique of Israel must not be liberal, but material, and must include a robust critique of the state ideology, Zionism; a racist and colonial ideology.

'Where criminal charges are brought against activists, the activist's motivation for the direct action can make or break the defence.'

Mira Hammad highlighted the similarities in policy between the British and Israeli states in regard to protests and journalists, quoting an IDF spokesperson who referred to Shireen Abu Akleh as 'armed with cameras'. Mira spoke of how bystanders or protestors who were present at a direct action to document and share the protest on social media were often prosecuted on a joint enterprise basis alongside the activists themselves, despite not actively taking part, underlining a structural attempt from both the British and Israeli state at suppressing free speech. Mira explained how in cases of direct action where criminal charges are brought against activists, the activist's motivation for the direct action can make or break the defence. Most activists have personal stories and justifications for their actions, and these can be presented as part of their evidence to underline their motivation to participate in the action itself. This can be a powerful way to talk about Palestine in the courtroom and has seen significant success when deployed. Mira concluded with some thoughts on the Police, Crime, Sentencing and Courts Act and the proposed changes to the Human Rights Act, which she described as narrowing the scope

April

18 The Home Office has failed to transform its culture and become more compassionate after the Windrush inquiry according to a report that prompted warnings the scandal could be repeated. The report's author, Wendy Williams, was appointed to advise the Home Office on how to make changes.

76% **of applicants to the Windrush compensation programme who said they had not been treated respectfully by the Home Office**

97% **did not trust the Home Office to deliver on its commitments**

19 Police raid The London Action Resource Centre, an anarchist meeting space in east London. The Network for Police Monitoring said the raid, which one witness said had involved about 40 officers, was attempting to crack down on @XRebellionUK (Extinction Rebellion) and @JustStop_Oil.

880

Number of protesters arrested during 11 days of blockading fuel depots, according to organisers.

20 The government's policy towards care homes in England at the start of Covid was illegal, rules the High Court. The court said the policy not to isolate people discharged from hospitals to care homes in the first weeks of the pandemic without testing was 'irrational'.


Picture: © Jess Hurd

of the courts on a case law level for protest law. Protestors are now being sent to prison more freely. The more support seen for Palestine on the ground has led to more attempts by the state to shut it down. Mira emphasised that history tells us that in this dynamic, those protesting are going to win.

Giovanni Fassina described how on a European level, the victimisation of Palestine activists and the 'chilling effect' tends to happen on a case law or 'soft law' level, rather than through primary legislation. He cited specific examples in Germany and Austria of municipalities passing anti-BDS policies as 'motions' with the purpose of preventing public bodies from engaging with BDS, which had a devasting effect on any kind of cultural or political activity to do with Palestine. This included a cinema in Austria refusing to show a Palestinian movie because it was launched by BDS Austria, despite the film not being a form of BDS activism targeted by the motion, and the cinema not being a public body and so outside the scope of the motion in the first instance. Giovanni highlighted the importance of collective action by mobilising broad coalitions of sister organisations, and by conducting strategic litigation to protect the right to solidarity with Palestine. He highlighted the recent case of Dr Shahd Abusalama at Sheffield Hallam University, where activists, trade unionists and students all mobilised to protect her position after allegations of antisemitism were made against her. The campaign led to the allegations being dropped and Dr Abusalama securing a more secure contract at the University.

Wesam Ahmed introduced Al-Haq by explaining that the organisation's name itself translates to 'truth' in Arabic. Al-Haq's main purpose is one of documenting human rights abuses and applying them to an international law framework. This process has created a level of discomfort for the Israeli regime in their continuing colonisation of Palestine and has seen Al-Haq recently being designated a 'terrorist organisation' alongside six other Palestinian NGOs. Wesam explained that the situation in Palestine is a microcosm of all the injustices in the world, namely neoliberal imperialism, traditional colonialism, and consumer capitalism. Wesam spoke of how the economic impact of BDS is not the motivation for the Israeli state's attempts to criminalise BDS, but instead it is the triggering of intellectual curiosity by boycott activism on lay people every day. Wesam underlined that anti-BDS actions by the Israeli state were an attempt at preventing people from understanding what the reality of the situation in historic Palestine is.

The event closed with a short but lively Q&A session, as well as a performance from musicians live from the Alrowwad Center in Aida refugee camp, Bethlehem.

Art Badivuku

How can we protest at Israeli war crimes?

The state opening of Parliament and the delivery of the Queen's Speech in May 2022 set out the government's legislative agenda for the year ahead. Tucked away amid plans for banning hunting trophies and reforming England's planning system were measures to prevent the undermining of 'community cohesion'.

Behind this seemingly anodyne statement lies one of the Tories' most draconian plots to undermine peaceful protest and political resistance in the UK: the Boycotts, Divestment and Sanctions Bill.

This Bill follows a raft of recent legislation designed to drive a coach and horses through our civil liberties. Along with the Elections Act, which contains measures to deter young and poorer people from voting, the Police, Crime, Sentencing and Courts Act – which contains measures to prevent noisy protests – was written into the statute book in April 2022. As was the Nationality and Borders Act, which gives the Secretary of State for the Home Department powers to strip dual citizens of their British citizenship without notice, and – in contravention of the UK's international obligations – criminalises many of those seeking asylum, who now risk being removed to Rwanda.

Taking inspiration from similar laws introduced across American state legislatures, UK ministers are drawing up plans to stop public bodies from taking positions on international relations that diverge from those of the central government, effectively preventing boycotts against foreign countries. If enacted, it could have a devastating impact not just on its main target – Palestine advocacy – but also on climate activism, the arms trade, human rights activism and international solidarity with oppressed peoples struggling for justice everywhere.

The Conservatives' pledge to bring forward legislation to ban public bodies from supporting BDS was originally set out in the party's 2019 manifesto and later mentioned in the Queen's >>>

20 Emma Smart, a scientist, was arrested for taking part in a Extinction Rebellion action at the Department for Business, Energy and Industrial Strategy (BEIS) and held by police for more than 40 hours. She was kept in a windowless cell with the lights on 24 hours a day. She asked:

'How come I'm the one being persecuted with BEIS still issuing fossil fuel licences?'

20 Theresa May (advocate of the Hostile Environment) questions the 'legality, practicality and efficacy' of government plans to send asylum seekers to Rwanda. She warns the plans could lead to aan increase in trafficking of women and children.

96 The number of people who died at Grenfell (rather than the 72 who did), according to Lord Pickles, at the fire's inquiry. (96 died at Hillsborough in 1989). His clear disregard for what happened also included advising counsel to use his time 'wisely'.

25 A senior barrister who repeated discredited police allegations about the behaviour of Liverpool supporters has been cleaered by the Bar Standard Board.

>>> Speech in 2021. However, the government decided not to bring forward the legislation then, for reasons that remain unclear. Nevertheless, part of the government's anti-boycott agenda was passed in the last parliamentary session, thanks to the efforts of backbench Tory MP Robert Jenrick.

During his time as Secretary of State for Housing, Communities and Local Government Jenrick attempted to issue guidance to public service pension schemes to prevent them making investment decisions contrary to the UK's foreign and defence policy. This was ruled unlawful by the Supreme Court in April 2020 after the Palestine Solidarity Campaign challenged the guidance via judicial review.

However, since being sacked from his role last year, Jenrick has fought to overcome this ruling by changing the law itself. He did so by tabling an amendment to the Public Service Pensions and Judicial Offices Bill. This amendment was initially rejected by ministers on the grounds that the government would soon bring forth a comprehensive anti-boycott bill of its own. Yet when the Public Service Pensions Bill returned to the Commons in February 2022, Jenrick seized the opportunity to re-table his amendment. This time it garnered more than 25 co-signatories, helped by lobbying from the Conservative Friends of Israel (CFI), whose efforts were so successful that they managed to sway three opposition members and leading members of Labour Friends of Israel.

Despite co-signing Jenrick's amendment, however, these three Labour MPs – Margaret Hodge, Steve McCabe and recent Labour convert Christian Wakeford – ended up not voting for it. Instead, it seems their objective was to pressure the Labour leadership into whipping its MPs to abstain. Just 22 Labour backbenchers chose to break the whip and vote against the amendment.

The proposal has been justified on the grounds that it will bring about three 'main benefits' – the first two are concerned with ensuring public bodies do not diverge from the UK's foreign policy; the third mentions 'concerns' that boycott campaigns 'may legitimise and drive antisemitism'.

The first 'benefit' is troubling enough for anyone who considers disagreement and debate within and across public institutions to be a sign of a healthy democracy. Arguably even more offensive, however, is the second justification for the bill, which implicitly equates peaceful Palestine advocacy with racist attacks against Jews in the UK.

This baseless accusation isn't new. Rather, it's part of an ongoing effort to conflate criticism of Israel with antisemitism – and Zionism with Jewishness. In doing so, the government is instrumentalising British Jews' very real fears about the horrors of antisemitism to undermine both the struggle for a liberated Palestine and our basic civil liberties.

It is crucial for those of us who believe in the democratic right to protest to make our voices heard – particularly progressive Jews concerned about climate justice and Palestinian liberation, as well as those who refuse to stand by as the Tories attempt to use us as a

shield for its authoritarian agenda.

That is why I am proud to be part of a new campaign, Jews For Democracy, set up to join a wider coalition of civil society groups resisting the Bill. In May 2022 we sought to make our opposition visible by unfurling an 18-metre banner across Westminster Bridge which read: 'Jews in Solidarity with Palestinians: Defend democracy! Oppose the anti-boycott Bill!'

Where our so-called political leaders lack backbone or will, we must take a principled stance and help build pressure from below to disrupt the co-option of our fears of antisemitism for authoritarian ends.

The right to non-violent resistance should be universally protected – but from London to Jerusalem, it is being shrunk before our eyes.

For those of us who won't face a bullet to the head for demanding Israeli accountability, doing so for Palestinians is not a privilege – it's a duty.

Eli Machover
#JewsForDemocracy

Obituary Nathaniel Mathews 1967-2022

'His death leaves a big hole in my heart'

'A creative and brilliant lawyer'.

After a short, courageous battle with cancer Natt Mathews died too soon, aged 54. He only ever wanted to be a social welfare lawyer, and on his death was described as 'a true hero of social housing'.

He worked at Hackney Law Centre, mainly as senior solicitor, since 1994 supporting thousands of residents, to either keep or obtain social housing. Always at the cutting edge of legislation and casework, he was renowned as a tenacious advocate in both the County and High Court. When he was Duty Solicitor, Judges at Clerkenwell and Shoreditch County Court were confident that tenants would be well-represented. He always kept the

May

3 Deporting asylum seekers to Rwanda is unlikely to deter those in northern France hoping to cross the Channel in small boats, according to a survey, by Care4Calais, that found three-quarters said they would still try to make the journey.

3 Staff at a top London firm, Stephenson Harwood, have been told thet can work from home permanently, but they will have to take a 20 per cent pay cut. One of the top highest earning legal firms in the UK, it employs more than 1,100 people.

'They cannot cook properly, they can't cook a meal from scratch, they cannot budget.'
Tory MP Lee Anderson explains why people use food banks. Anderson claimed £4,100 in 2020-21 on travel and 'subsistence'.

10 MI5 asked police chiefs to collect information about the political activities of children as young as 14, a public inquiry into undercover policing heard. The request, circulated to chief constables throughout Britain in 1975, was approved by the head of the Security Service and a senior Whitehall official.

25 A culture of excessive drinking and partying in Downing Street during lockdown. Sue Gray's report sets out details of 15 events where officials spilled red wine on the walls of No10, vomited, got into a fight, used a karaoke machine and continued festivities until 4am.

Law Centre going during lean times when grants or Legal Aid were cut back.

His heavy workload meant he worked long hours, but he always had time to advise and support more junior lawyers, and never publicly expressed any anger or frustration. He was able to use the law to obtain justice for the most vulnerable on whom statutory services had turned their back. There was no end to his compassion. He was always modest and unassuming, even after winning landmark cases, such as *Haile* in the Supreme Court on the link between vulnerability and intentional homelessness; and Okoro in June 2020 in the Court of Appeal where he successfully argued that during Covid the suspension on all housing possession proceedings should include appeals.

He won many awards for his outstanding contribution to the legal profession, including, in 2006, LAG's 'Legal Aid Lawyer of the Year' in the Social Welfare category.

He also championed diversity in the legal profession mentoring hundreds of young lawyers and volunteers at the Law Centre, many of whom have gone on to have prestigious legal careers of their own.

In addition to his work, Natt was also a kind and caring life partner and stepfather, son and brother. He made time for anyone lucky enough to be in his life who needed his support.

His popular blog *Frontline Hackney – a Day in the Life of the Law* about 'what makes a third sector lawyer mad, sad and grateful to be human' was read by thousands.

I first met Natt 30 years ago when he was a trainee solicitor at Anthony Gold. I worked with him in many capacities: as a Management Committee Member of the Law Centre in the 1980s; as a supervisor of College of Law students on placement there in the 1990s; and finally as a solicitor in the Social Welfare team at Hackney Law Centre in the noughties. We have drunk together in the Chesham Arms, shared many a lunch in the Law Centre Garden discussing tactics on cases, fought attacks on Legal Aid and on the Law Centre funding together, run housing law training courses throughout Hackney, and during Lockdown read poetry and blogs together on Zoom. His death leaves a big hole in my heart.
Wendy Pettifer

I, and other members of the housing team at Garden Court Chambers, worked with Nathaniel for the whole of his time at Hackney Law Centre. He was always 100 per cent committed to his clients, worked immensely long hours and was a creative and brilliant lawyer.

One case that I remembered when I heard the sad news of his death had taken place on a Friday night. Our client, a young mother with her baby, was homeless and we were trying to get emergency accommodation for her from the council. It was pouring with rain, and she and the baby were sitting in the Law Centre's reception. All negotiation and representations had failed and we were applying, out of Court hours, for an urgent injunction from the High Court, in anticipation of issuing judicial review proceedings on the following Monday. I was at home, with guests enjoying themselves around my dinner table feeling sorry to have to leave them and wait for a High Court Judge to phone me. We eventually had the order about 9pm and I phoned Nathaniel with the good news. Full of a sense of self-sacrifice, I returned to my guests at the dinner table. When I spoke to Nathaniel on the Monday, he told me it had taken over an hour to persuade the Council that an order genuinely had been given and longer than that to identify the hostel to which the client could travel. He didn't volunteer, but when I casually asked what time he had got home, he had left the Law Centre at midnight for the night bus.

Just a year ago, Nathaniel and I were working on an argument that the Covid-19 pandemic was an emergency such as 'fire or flood', with each of us considering the Black Death, the Great Fire of London (which had been preceded by plague) and the Spanish flu epidemic of 1919. Each of us found our inner historian.

My housing law colleagues at Garden Court shared our memories of Nathaniel. One striking point was that Nathaniel always understood when, regrettably, counsel had to say that there was not an arguable point of law or defence, and so Court proceedings could not be brought, or could not be defended. He put every point that was possible to put on his client's behalf, he pushed us to research every point of law, and then charmingly accepted the negative advice, which he anticipated anyway. We would then find, some weeks or months later, when we asked what had happened to the client, that Nathaniel had managed to use his charm and expertise to get the client housed anyway, or keep her in her house. A truly skilled solicitor knows how to use the law, and practicalities, to get the best result for his client, and Nathaniel was really skilled.

All those needing help with housing in Hackney, and the whole of the housing law world, is poorer for his loss.
Liz Davies

26 Neil Basu, an assistant commissioner in the Met police and the National Police Chiefs Council's former head of counterterrorism, has called on police chiefs to admit that institutional racism blights policing, declaring 'we are guilty as charged', and blaming failures on police leaders.

26 The origins of the Windrush scandal lie in 30 years of racist immigration legislation designed to reduce the UK's non-white population, according to a leaked government report, commissioned by the Home Office. Officials have repeatedly tried to suppress its release.

'It's natural to feel a greater affinity for Ukraine's European Christians.'
Sunday Times columnist David Quinn

27 The government has said it will not implement legally required measures recommended by the Grenfell Inquiry that would have ensured that disabled people could evacuate from high-rise blocks of flats in emergencies more safely, saying such laws would costs too much.

31 Police and prosecutors have been told by the Information Commissioner's Office to stop mass collection of personal information from rape victims or face fines. Forms known in England and Wales as Stafford statements give officers consent to obtain highly sensitive third-party materials, including medical records.

Breaking strikes, UK laws and the judges

In responding to the rail dispute, the government has proposed to change the law prohibiting employers from using agency labour as strikebreakers.

The current law prohibiting agencies from supplying workers to perform 'duties normally performed by a worker who is taking part in a strike or other industrial action' is to be found in the Employment Agencies Regulations 2004 (SI 2004 No 3319), regulation 7, made under the Employment Agencies Act 1973. I am assuming that what the government has in mind is a revival of the proposal to allow agency-supplied strikebreakers that had been made by the Cameron government at the time of the Trade Union Act 2016. These plans were never implemented, and may have attracted some opposition from employers as well as trade unions, in the former case because of their impracticability, as well no doubt as a desire on the part of reputable agencies to avoid the controversy associated with strike breaking.

That apart, the government's reheating of an idea long past its sell by date raises three legal questions which ought to be explored. First, is the use of temporary labour as strikebreakers lawful under the UK's international legal obligations? Here there are several ratified treaties that are particularly relevant, of which the most important is ILO Convention 87. The International Labour Organization (ILO) is a United Nations agency and the latter treaty has been interpreted by the ILO Committee of Experts to include protection for the right to strike, the ILO Committee of Experts being recognised by the European Court of Human Rights (and others) as 'a point of reference and guidance for the interpretation' of ILO Conventions. The Committee's interpretation of these Conventions is thus generally regarded as authoritative; in its wide-ranging jurisprudence on the right to strike it has for some time taken the view that: 'provisions allowing employers to dismiss strikers or replace them temporarily or for an indeterminate period are a serious impediment to the exercise of the right to strike.'

The ILO Committee of Experts has already concluded that British law does not do enough to protect strikers from being replaced. This is because of the inadequate nature of our unfair dismissal law, which provides protection for those engaged in lawful industrial action for only the first 12 weeks of the dispute. During the 12-week period workers can be temporarily replaced if the replacements are recruited directly by the employer; and after the 12-week period has elapsed, the striking workers can be permanently replaced if depending on the circumstances unfair dismissal protection ceases to apply. Addressing this latter weakness of British law specifically, the Committee of Experts has said that protection against dismissal for only 12 weeks before being replaced is an obstacle to 'the effective exercise of [the right to strike], which constitutes an essential means for workers to promote and defend [their] interests'. The government's current proposals will compound the mischief.

'The ILO has already concluded that British law does not do enough to protect strikers from being replaced.'

The ILO Committee of Experts has already concluded that British law does not do enough to protect strikers from being replaced. This is because of the inadequate nature of our unfair dismissal law.

The second question is what are the consequences of legislation introduced in breach of international law? The trite

Sam Tarry MP (left) joins RMT and TSSA pickets at Euston station.

June

1 Priti Patel was warned by her own officials' equality impact assessment that lifting restrictions on police stop and search powers could damage community relations and lead to more people from ethnic minority backgrounds being targeted.

2 Only one in every 100 police complaints has resulted in misconduct proceedings. Home Office data showed 14,393 complaints against officers in England and Wales in the year to 1st April 2021. Of those, 92 per cent faced no action and only one per cent were referred to a formal process.

'Well of course I'm talking to Tony Blair, I'm talking to Gordon Brown...'
Sir Keir Starmer, leader of the Labour Party

8 A government plan to transform the system for electronically tagging offenders **wasted** £98m, says the National Audit Office. An upgrade of the tagging system used by HM Prison and Probation Service were abandoned after 11 years. Ministers still did not know if tagging helped to cut reoffending because of failings with the system and Capita.

15 Government plans to send asylum seekers to Rwanda were in chaos after a dramatic ruling by the European Court of Human Rights. Lawyers for one of the seven asylum seekers due to fly out made a successful emergency application after exhausting applications to UK courts.

Pictures: © Jess Hurd

constitutional law answer is that there are no domestic legal consequences unless the treaty has been incorporated by legislation into domestic law. ILO Convention 87 has not been incorporated in this way with the result that any breaches must be pursued in international law alone, and international law provides no meaningful remedy or sanction. However, since Brexit the position has changed. Non compliance with ILO conventions may also be a breach of the EU-UK Trade and Cooperation Agreement, by which the current government post-Brexit undertook to comply with various international treaties by which in turn it is already bound. The effect is that non compliance with these treaties is not only a breach of the treaties in question, but is unlawful on the additional ground that it is a breach of the agreement with the EU.

So, the EU-UK TCA provides by Article 387 that the parties must not reduce labour standards in relation to 'fundamental rights at work' (not defined, but almost certain to include freedom of association and the right to strike) in order to secure some competitive trading advantage. This is not likely to be the motivation of the government in relation to strike breaking agency workers and is therefore unlikely to be relevant. However, by Article 399(2) the parties are also committed to 'respecting, promoting and effectively implementing the internationally recognised core labour standards, as defined in the fundamental ILO Conventions'. These include ILO Convention 87. For reasons explained above, legislation such as the revocation of SI 2004 No 3319, regulation 7 to thereby allow agency supplied strikebreakers is probably a breach of ILO Convention 87 as interpreted by the ILO Committee of Experts. If so, it is also a breach of the EU-UK TCA.

The third question then is this: are there any additional legal consequences for breaching the TCA? One answer is that there are procedures in the treaty that allow for disputes to be initiated by either party and to be addressed by what is essentially a conciliation and mediation process which is likely to take years and is unlikely to produce a satisfactory outcome. In any event, it is unlikely that the European Commission would regard the revocation of regulation 7 to be sufficiently serious, though it is conceivable that it could form part of a bigger dossier to include multiple breaches of ILO Conventions (as well as the European Social Charter), of which the United Kingdom is a serial violator. However, another answer is that the European Union (Future Relationship) Act 2020, passed to give legal effect to the TCA, includes provisions whereby the government has agreed in some circumstances that the domestic courts should enforce the TCA.

> 'To do this lawfully may require primary legislation with delay and inconvenience to the parliamentary timetable it will entail.'

The key provision of the 2020 Act is section 29. In some circumstances this gives very wide powers to the domestic courts to 'modify' legislation in order to give effect to the TCA. Notably, this requirement does not apply where the legislation is passed after the 2020 Act was enacted. In the case of the strike-breaking agency workers, however, the government is planning to proceed not by primary legislation but by exercising powers under the pre-existing Employment Agencies Act 1973. It is at least arguable that these pre-existing powers are constrained by the 2020 Act, s29 so that they cannot be used in a way that will violate the TCA and the obligations thereunder. If this argument is correct, the government is constrained by its own hand from legislating to revoke regulation 7 by secondary legislation. To do so lawfully may require primary legislation – an Act of Parliament – with the delay and inconvenience to the parliamentary timetable that this will entail.

The EU-UK TCA provides by Article 387 that the parties must not reduce labour standards in relation to 'fundamental rights at work'.

All this of course depends on the judges, in whom confidence has taken a serious knock in recent months, most recently because of the embarrassment in the Rwanda debacle. The UK Supreme Court in particular has quickly developed a new Brexit-inspired orthodoxy based on notions of parliamentary sovereignty that diminish the significance of international treaties in British judicial reasoning. But this is different. The courts have been instructed by Parliament in the European Union (Future Relationship) Act 2020 to modify pre-existing legislation to give effect to the TCA. The anticipated revocation of regulation 7 by regulation under an Act of Parliament passed in 1973 provides an opportunity for the courts to do their duty and assert their independence, in the process leaving an authoritarian government with another bloody nose.

Keith Ewing

This article first appeared on the Institute of Employment Rights' (IER) website on 16th June 2022: www.ier.org.uk.

17 A Russian spy tried and failed to secure an internship at the International Criminal Court using the false identity of a Brazilian citizen that he had built up over a decade, according to Dutch intelligence.

18 Priti Patel approves the extradition of the WikiLeaks co-founder Julian Assange to the US. The case passed to the Home Secretary after the Supreme Court ruled there were no legal questions over assurances by US authorities as to how Assange would be treated.

'A serious party of government does not join picket lines.'
David Lammy, Shadow Secretary of State for Foreign, Commonwealth and Development Affairs of the United Kingdom...
...and Labour MP.

22 Only one in four applicants to the Windrush compensation scheme have received payments, four years after the government promised redress for those wrongly classified as illegal immigrants.

24 Successful High Court challenges to government policies and decisions by public bodies have fallen dramatically, prompting warnings that ministers' attacks on lawyers could be having an effect on judges.

A load of hot air? Net Zero and the role of climate litigation

Judgment in the case of *R (Friends of the Earth & ors) v Secretary of State for the Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin) was handed down on 18th July 2022, in the midst of what the Met Office called an 'unprecedented extreme heatwave'. Holgate J held that the Secretary of State ('SoS') had failed to comply with his statutory obligations under the Climate Change Act 2008 ('CCA 2008') ss 13 and 14 in relation to the Government's Net Zero Strategy ('NZS').

In response to the Paris Agreement 2015, the Government amended CCA 2008 s 1 to ensure that 'the net UK carbon account' for 2050 is at least 100 per cent lower than the baseline in 1990, in substitution for the 80 per cent reduction originally enacted. Section 4 established a framework to enable this 'Net-Zero Target' to be met: it required the SoS to set carbon budgets (an amount for the net UK carbon account) for successive five-year periods. Each carbon budget is set 'with a view to meeting' the Net-Zero Target. Section 13 imposes a continuing duty on the SoS to prepare 'proposals and policies' that he considers would enable the carbon budgets to be met. Section 14 requires the SoS to present a report of these proposals and policies to Parliament, detailing how they will meet the current and future budgetary periods. Following the setting of the sixth carbon budget (CB6), covering the period 2033 to 2037, the SoS laid the NZS before Parliament as a report in October 2021. The claimants' judicial review concerns the Government's strategy to meet CB6.

Picture: Jess Hurd

Are the courts willing to hold the government to account on climate issues?

Ground One: Section 13

The claimants argued that the SoS was wrong to conclude that the proposals and policies in the NZS would enable CB6 to be met. The quantified proposals were estimated to deliver around only 95 per cent of the required emissions reductions. This 5 per cent shortfall amounts to 75 million tonnes of greenhouse gases (equivalent to the total annual emissions from all UK car travel). They argued that, due to insufficient briefings, the SoS failed to take into account relevant considerations which were 'obviously material'. They were thus matters he had to consider under CCA 2008 s 13, namely: (i) the contribution which each quantifiable proposal or policy would make to meeting the carbon budgets; and (ii) in relation to his qualitative judgement, which proposals and policies would enable the shortfall to be met.

> 'The Secretary of State had failed to comply with his statutory obligations under the Climate Change Act.'

While Holgate J rejected the Claimants' argument that the obligation in s 13 had to be satisfied by quantitative analysis alone, he agreed with the rest of their case. The numerical information which SoS received was essentially that set out in the strategy, which looked at the cumulative effect of various policies on individual sectors but did not go any further into the policy-specific analysis which officials had carried out. Without this essential information on the contributions by individual policies to the 95 per cent assessment, the SoS could not rationally decide for himself how much weight to give to those matters to discharge his obligation under s 13.

Ground Two: Section 14

The claimants further argued that the SoS's report to Parliament under s 14 was inadequate as it failed to provide: (i) an explanation for his conclusion that the proposals and policies within the NZS will enable the carbon budgets to be met; and (ii) an estimate of the contribution each of those proposals and policies is expected to make to required emissions reductions.

Using similar reasoning to that found in Ground One, Holgate J agreed. He further emphasised the importance of transparency and accountability: 'Given the nature of the problems posed by climate change, the need for substantial changes across the country and the challenges involved, telling Parliament how the Secretary of State proposes to meet the carbon budgets does indeed require him to explain the thinking behind his proposals and how they will enable the carbon budgets to be met' [233].

Ground Three: Human Rights

Holgate J was less convinced by the human rights argument put forward by the claimants in the alternative: that the Human Rights

June

24 The US Supreme Court opens the door for almost all 'law-abiding' Americans to carry concealed and loaded handguns in public, after the conservative majority struck down a New York law that placed strict restrictions on firearms outside the home.

24 The Met police are to be reinvestigated by the police watchdog over the handling of the murders of four men by the serial killer Stephen Port, with the victims families saying a 'big question mark' remains over whether homophobia played a part in the flawed police inquiries.

9% Data for 149 domestic abuse reports from 2018, involving suspects from 15 police forces, revealed that 14 of these allegations, or 9 per cent, resulted in a criminal charge. This is a similar proportion to all domestic abuse cases from the period.

25 Liberty hailed a 'landmark victory' as two judges ruled that it is unlawful for MI5, MI6 and GCHQ to 'obtain individuals' communications data from telecom providers' without having 'prior independent authorisation' during criminal probes.

25 More cases of the Met police strip-searching have been referred by the force for independent investigation, with the Independent Office for Police Conduct (IOPC) saying it had been asked to examine eight cases. The cases took place between December 2019 and March 2022.

Act 1998 s 3 could be applied to give CCA 2008 ss 13 and 14 the effect for which the claimants contend. To construe them in that way would prevent a contravention of Convention rights, namely Articles 2 and 8, and Article 1 of Protocol 1. Holgate J rejected this argument, stating that it was 'too ambitious' and did not accord with established principles.

Take-aways

This judgment's significance is two-fold. First, it puts the Government on notice: courts are willing to hold them to account on climate issues. Given the pitiful environmental credentials of the new Prime Minister and her race to the bottom on climate policies, this offers some reassurance.

Second, it reveals that when litigating on climate issues, the Administrative Court is more amenable to arguments based on statutory interpretation than those that invoke convention rights. Holgate J took a particular liking to the reasoning of the Irish Supreme Court in *Friends of the Irish Environment CLG v Government of Ireland* [2020] IESC 49, but was reluctant to apply the principles set out in the Dutch case *State of the Netherlands v Urgenda* (Sup Ct Neth Dec 20, 2019) (Neth).

All eyes now turn to the Grand Chamber of the European Court of Human Rights who, later this year, will hear three climate cases: *KlimaSeniorinnen v Switzerland, Careme v France*, and *Agostinho & ors v Portugal*. The Court is expected to determine whether convention rights can be relied upon to demand climate action. This would be game-changing.

Charlie Coverman

Ecosocialism and the Rights of Nature

The Citizens Assembly on Biodiversity Loss in Ireland is presently considering evidence with a view to reporting to the Irish Government with their recommendations by the end of the year. The right to choose referendum resulted in the successful repeal of the 8th Amendment of the Irish Constitution. What innovations in Irish society could this Citizens Assembly produce?

Much of Ireland's biodiversity loss arises from the deforestation which occurred to feed the hungry desires of British colonialism and its ship building industry. Ecojustice Ireland is part of a legal team making submissions that the Rights of Nature should be recognised within the Irish Constitution in a similar manner to the evolution of Ecuador's Constitution. Further and/or in the alternative, we argue that there should be constitutional recognition of the human right to a safe, clean, healthy, and sustainable environment in line with the (non-binding) resolution of the UN's Human Rights Council in October 2021, which the Irish Government supported, along with the UN General Assembly Resolution in July 2022.

We have been particularly influenced by the ecosocialist underpinnings and the pluriversalist philosophy of the Zapitista movement in Mexico. The Zapatistas captured the Left's imagination with their courageous uprising in 1994 to demand justice and democracy for indigenous peasants in southern Mexico. They have since become known more for their peaceful mobilisations, dialogue with civil society, and creative structures of political, economic, and cultural autonomy.

The Zapatistas have a slogan: 'For everyone, everything. For us, nothing'.

http://www.fotomovimiento.org/

The Zapatista ideology is similar to libertarian socialism but they have rejected political classification. They align themselves with the wider anti-globalisation, anti-neoliberal social movement, seeking indigenous control over local resources, especially land. A Zapatista slogan is in harmony with the concept of mutual aid: 'For everyone, everything. For us, nothing'. Another key element of the Zapatistas' ideology is their aspiration to undertake politics in a new, participatory way, from the 'bottom up' instead of 'top down'.

As a consequence of the Zapatista insurgency in Chiapas, the indigenous peoples in Mexico were granted the constitutional right of self-determination, with the exception of not attempting to destroy Mexico's claim to state sovereignty. The incorporation of this right into the Mexican constitution was essential for the development of Mexican indigenous communities as well as for the Mexican democracy as a whole, because it encouraged the respect of indigenous traditions and practices within the country.

As another indigenous leader and trade unionist, Chico Mendes, articulated in relation to the environmental movement in Brazil, ecology without class struggle is just gardening. We hope that biodiversity loss in Ireland will be addressed with similar considerations in mind. Therefore, the interests of the Irish working classes and the Rights of Nature must be implemented, and it is interesting to consider the wider constitutional implications for reunification, especially when one considers the Constitution of the Plurinational Sate of Bolivia. Climate change knows no Irish man-made border, and biodiversity in Ireland will be best served by respecting the bioregional 'borders' such as the difference between the Atlantic Coast and the Irish Sea coast rather than the arbitrary border imposed by a colonial power.

Our submissions can be viewed via this link: *bit.ly/ENJI-CA-Sep22*

Declan Owens Haldane Co-chair and CEO of Ecojustice Ireland

July

1 Police forces in England and Wales are responding to reports of their officers committing domestic abuse in a way that is 'significantly harming the public interest', with only nine per cent of such allegations leading to criminal charges, a joint watchdog investigation has found.

1 Pride in London says uniformed officers should not march in the parade after calls from LGBTQ+ campaigners to bar them because of Scotland Yard's 'homophobic' handling of the investigation into the serial killer Stephen Port.

'Enjoy the sunshine.'
Deputy Prime Minister (as was) Dominic Raab MP on how to deal with 40 degree temperatures

2 Germany is considering the consequences of potentially becoming the world's largest market for legally sold cannabis, as its government presses ahead with plans to allow the controlled distribution of the drug among adults.

4 Ten young black men in Manchester are jailed after taking part in a group chat discussing revenge for their friend's murder. The men were jailed for between eight and 21 years for conspiracy to commit grievous bodily harm or murder. Four were found 'guilty by association'.

Cases show abortion still deemed criminal

Women in the UK are being prosecuted for ending their own pregnancies – it's an offensive waste of public time and money.

Two women in the UK are currently being prosecuted for ending their own pregnancies and face up to life in prison. The first is a 25-year-old mother of one who had her plea hearing at Oxford Crown Court on 15th July 2022. She was charged with administering poison with intent to procure a miscarriage and entered a plea of not guilty. The second woman appeared at North Staffordshire Magistrates Court on the 19th July 2022 and was charged with 'intentional destruction of a viable unborn child' after being reported for using abortion pills to end a pregnancy at 28 weeks, she also pled not-guilty. In the 21st century, in the shadow of the overturning of *Roe v Wade*, the public prosecution of these women is an unsettling and uncomfortable decision by the Crown Prosecution Service.

In a letter to the Director of Public Prosecutions, written by the British Pregnancy Advisory Service and signed by 66 organisations and individuals – including the Haldane Society of Socialist Lawyers – it was argued that these cases should be dropped and there should be no further investigations or prosecutions of those who are suspected of ending their own pregnancies.

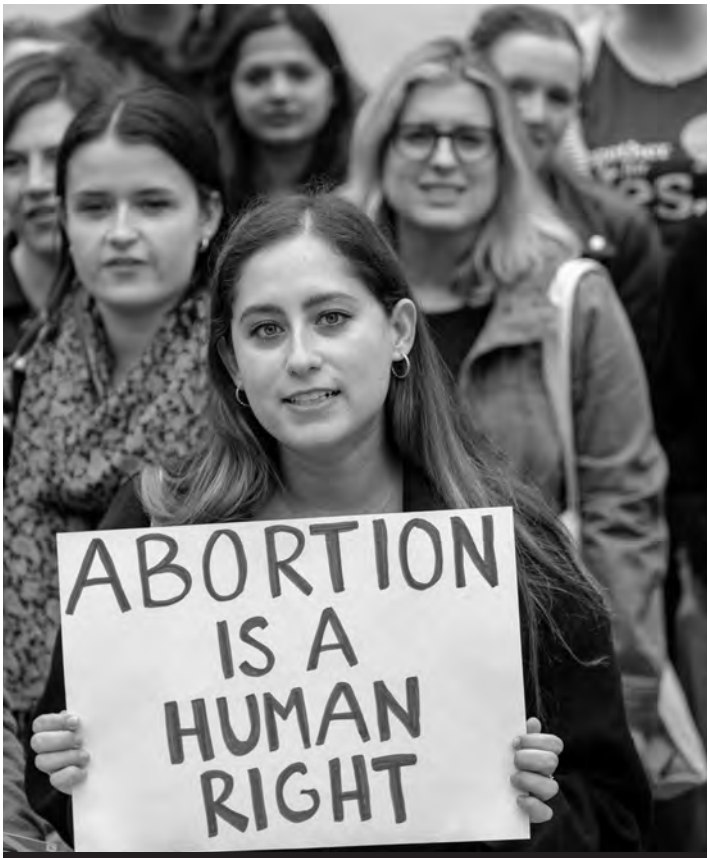
The current cases are being prosecuted under two pieces of legislation. The first under the 1861 Offence Against the Person Act, a Victorian piece of legislation passed 50 years before women had the vote, the second under the 1929 Infant Life (Preservation) Act.

While abortion in England and Wales is available, it remains part of the criminal law. The Abortion Act of 1967 determined that for an abortion to be legal, it must be certified by two registered medical practitioners, must take place at a hospital or premises approved by the Secretary of State for Health and Social Care (or at a woman's home prior to 10 weeks' gestation), and women must meet one of the grounds under which abortion is deemed permissible. There are a very small number of women who end a pregnancy outside of these parameters. They are often vulnerable women, in desperate situations, many with a complicated obstetric history or a history of mental health problems. However, rather than being provided with support in this moment, some of these women face a terrifying journey of criminalisation.

'The CPS is investing an undue amount of resource to criminalise some of the most vulnerable people in society.'

Whilst the number of women investigated and prosecuted for ending a pregnancy is small, it is arguable that the CPS is investing an undue amount of resource in criminalising some of the most vulnerable people in society.

Over the past eight years, at least 17 women have been investigated by police for ending their own pregnancies, though the actual number is likely to be higher. There are reports of a woman arrested in hospital in 2021 and kept in a police cell for 36 hours after a stillbirth at 24 weeks. In another case a 15-year-old girl was investigated by police after a stillbirth at 28 weeks, accused of illegal abortion, her phone and laptop confiscated during her GCSE exams, she reports being driven to self-harm by the year-long investigation – which concluded only when the coroner found that the pregnancy had ended as a result of natural causes.



Picture: Jess Hurd

Protesting for a woman's right to choose outside the American Embassy in London in May 2022 after the US Supreme Court ruling.

July

6 A firearms officer acted lawfully in shooting dead Jermaine Baker, an unarmed man who was trying to spring a prisoner from custody, an inquest has concluded, though it criticised the Met police for 24 failings.

7 The UK's top court has ruled that diplomats who exploit domestic workers in conditions of modern slavery cannot rely on diplomatic immunity to prevent compensation clams from the workers.

9 A court in Moscow has sentenced an opposition councillor, Alexei Gorinov, to seven years in jail for criticising Russia's invasion of Ukraine, the first prison sentence handed out under new laws that restrict criticism of the war.

There are now 177 billionaires in the UK with a total wealth of:

£710bn

Taxing their individual wealth over £10m at just 3 per cent would raise over £76bn. That would pay for NHS nurses to get a 15 per cent rise until 2098." (Thanks to Howard Beckett)

9 Sir Mark Rowley is to become the commissioner of the Met police, after winning the top job in British law enforcement by vowing to carry out 'urgent reforms' to lead the country's biggest force out of crisis.

The approach of police and prosecutors in the handling of these cases paints a disturbing picture of a service that is looking to 'catch out' women, lacks understanding of – and sensitivity to – the situations of these women, and fails to respond proportionately. Worryingly, the examples above mirror dangerously close to US cases from states such as Oklahoma, where women have been jailed for miscarrying a pregnancy. One in three pregnancies will end in miscarriage and it is common to miscarry a pregnancy whilst weighing up the decision of whether to continue a pregnancy. The risk of investigation and criminalisation because of unexpected pregnancy loss is terrifying and BPAS Chief Executive, Clare Murphy, is right to suggest that, 'these prosecutions may well deter women experiencing miscarriages and incomplete abortions from seeking treatment when needed.'

For many the decision to end a pregnancy is a simple and easy one taken in the first few weeks of pregnancy, for some, the decision of whether or not to continue a pregnancy is a hard one complicated by social factors, personal health struggles and difficult interpersonal relationships. Whatever the circumstance, it is never in the public interest to prosecute a woman who has ended her own pregnancy and the Crown Prosecution Service should move quickly to cease all current proceedings and commit to not bringing any future charges against women or girls who end a pregnancy or experience pregnancy loss.

Molly Boydon

Sue Coe: Abort the Court. 2022.Copyright © 2022 Sue Coe. Courtesy Galerie St. Etienne, NY.

Dobbs v. Jackson Women's Health Organization: 'a flawed and troubling precedent'

On 24th June 2022, the US Supreme Court overturned *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the 1973 and 1992 decisions that instituted a federal right to abortion. Denying the constitution confers any such right, the court has returned regulation back 'to the people and their elected representatives.' Only 16 states have laws actively protecting abortion.

The American Historical Association and Organization of American Historians noted that whilst the majority judgment refers to 'history' 67 times, their joint *amicus curiae* tracing the long history of women's rights to abortion in the US was disregarded. More importantly, over a million protestors hit the streets in over 350 towns and cities across the US.

Concurring with the majority opinion, Justice Thomas' judgement calls for the revision of the entire jurisprudence of 'substantive due process' which, among other things, has been used to protect Americans' rights to contraception, homosexuality and same-sex marriage.

11 Leaked documents reveal how Uber flouted laws, duped police, exploited violence against drivers and secretly lobbied governments during its rapid global expansion.

13 Hundreds of thousands of pounds are being spent on residents of housing estates, including family fundays with bouncy castles and pizza, by landlords determined to persuade social housing tenants to approve multi-million redevelopments. Activists want stricter rules to stop landlords gaining an unfair advantage.

20 Courts in England and Wales are to be granted new powers to dismiss law-suits employed by wealthy claimants to stifle free speech and protect the legal system from abuse, known as strategic lawsuits against public participation, or 'Slapps'.

23 The UK government is coming under growing pressure from European countries and human rights groups to explain why commitments to abortion and sexual health rights have been removed from an official statement on gender equality.

27 The privacy group Big Brother Watch has submitted a complaint to the Information Commissioner's Office, describing Southern Co-operative's use of facial recognition cameras as 'Orwellian' and unlawful.

Palermo, Naples, Northern Ireland – a busy summer!

Left to right: Bill Bowring, Louis Lemkow, Thomas Schmidt and Ceren Uysal.

Members of the Haldane Society of Socialist Lawyers are proud socialist internationalists.

Haldane is a founder member of both the International Association of Democratic Lawyers (IADL), founded in 1946, and of the European Lawyers for Democracy and Human Rights (ELDH), founded in 1993. Haldane's International Secretary, Bill Bowring, serves as Co-President of ELDH, which has members in 22 European countries. The ELDH Co-General Secretary is Thomas Schmidt, a trade union lawyer based in Duesseldorf. Haldane's Chair, Declan Owens, serves on the ELDH Executive along with Wendy Pettifer and Deepa Driver; and on the IADL Bureau, with Carlos Orjuela and Richard Harvey.

IADL has members in more than 30 countries in every continent except Australasia. Its incoming President and Secretary are Edre Olalia, from the Philippines, and Micol Savia from Italy.

I last reported for *SL* in early April 2022.

The ELDH Executive has continued to meet online every month, with representatives each time of several member associations including Haldane.

The International Fair Trial Day Conference and the Ebru Timtik Award Ceremony took place on 17th-18th June 2022, in Palermo, Italy, hosted by the Palermo Bar Association. In spite of technical and organisational problems this was an important event. There was good cooperation between the organisers. For the focus country next year proposals can be made within a month. ELDH was represented by Barbara Spinelli, the ELDH Co-President, our new member Ayse Bingöl, and Ceren Uysal, the ELDH Co-Secretary General, who did a great job preparing and organising.

A few days later, on 24th-25th June, ELDH and our sister European organisation, European Democratic Lawyers – EDL/AED (they do not have an association in the UK, but are strong in France, Netherlands and Belgium, we work in parallel in Germany, Greece, Turkey, et cetera) met in Naples, where I for one found the temperature of 37-38 degrees almost life-threatening.

> 'The venue in Naples was a former criminal psychiatric asylum, now a revolutionary social centre, occupied and run by migrants and their support networks.'

On 24th June there was a jointly organised conference titled 'Defending Refugees in Europe', held at a wonderfully appropriate venue, the "Ex OPG Occupato Je so' pazzo" (Neapolitan for 'I am crazy'), a former criminal psychiatric asylum. It is now a revolutionary social centre, occupied and run by migrants and their support networks.

They explain: 'The asylum was saved from abandonment and returned to its neighbourhood (and the city) in the form of an autonomous social centre.' *Je so' pazzo* is the name they have chosen, 'because in a world where normality is made of unemployment, precariousness, racial and gender discrimination and so forth, we want (…) to build an alternative way opposed to the grey and desperate world we see every day, and we want to do it from below. Call us crazy, but since normality is so tragic we certainly believe that all together we can revolutionise this city, this country and the whole world!'

There were speakers from several countries, including the very lively Yiota Masouridou, a Greek lawyer and the new Secretary General of AED, on 'The Hot-Spot System and Pushbacks'. I made a well-received presentation titled 'What can be done for refugees at the European Court of Human Rights, now in crisis?' I will share my speaking notes with anyone interested: *b.bowring@bbk.ac.uk*.

In a joint meeting with AED, ELDH was represented by the Co-General Secretaries of ELDH, Ceren Uysal (Turkey) and Thomas Schmidt (Germany) plus Louis Lemkow (Barcelona and Haldane) and me. Coincidentally the three men were wearing similar shirts, and with Ceren, whose 40th birthday we celebrated, we were photographed (above) as three ageing revolutionaries and their much younger revolutionary sister.

ELDH has organised an International Fact Finding Mission to Northern Ireland and will also participate at the mass conference on Ireland's Future 'Together We Can', on 1st October 2022 in Dublin. Several members of the delegation will participate at the

August

4 Kansas votes to protect abortion rights in the state's constitution, the first in the US to put abortion rights on the ballot paper since the *Roe v Wade* legal ruling. On a high turnout the no vote (to amend the state constitution) secured 59 per cent against 41 per cent of the anti-abortion movement.

5 The Home Office official figures show that, in 2021-22, £41.1m was paid in compensation, including £25.1m to 768 victims of the Windrush scandal and £12.7m to 572 people who were wrongfully detained in immigration centres.

8 The Children's Commissioner for England has denounced the Metropolitan police's record on child protection, after new data revealed that 650 children were strip-searched over a two-year period and the majority were found to be innocent of the suspicions against them.

Of children aged 10 to 17 strip-searched between 2018 and 2020

58% **were black**

23%

of all cases, an appropriate adult was not present

8 A report by the all-party parliamentary group for UN Women found that 71 per cent of women in Britain had experience some form of sexual harassment in a public space. In 95 per cent of cases the incident was not reported to the police.

conference. Declan Owens helped to prepare a list of organisations from Northern Ireland which have been contacted to collect evidence. There has been very positive feedback from them, and several constructive meetings took place during July and August. The first one took place on 29th July 2022. The following name of the Mission has been agreed: 'International Jurists Delegation on Human Rights in Ireland.' There are members of the delegation from several European countries, from the US and from South Africa.

The principal questions for the meetings with Northern Irish organisations are :

- What are the main problems with the implementation of the Good Friday Agreement in view of British government policies?
- What should happen in view of British government threats to the Northern Ireland protocol?

On 24th September 2022, Haldane's German sister organisation VDJ (Association of Democratic Lawyers) will celebrate its 50th year anniversary at the Literature House in Frankfurt am Main. I have written the first chapter for a book commemorating the 50th VDJ Anniversary, and will attend and speak, in terrible German (I did so for the VDJ's 30th anniversary). Afterwards, on the same day and in the same venue, the Hans Litten Prize will be awarded by VDJ to the Italian lawyer Simonetta Crisci. The laudatory speech will be given by the Italian lawyer Cesare Antetomaso. Gareth Peirce, one of the vice-presidents of the Haldane Society, was a previous recipient of the prize.

German lawyer Hans Litten.

Haldane members will want to know who Hans Litten was. He was a German lawyer who represented opponents of the Nazis at important political trials between 1929 and 1932, defending the rights of workers. During one trial in 1931, Litten subpoenaed Adolf Hitler to appear as a witness, and cross-examined him for three hours. Hitler was so rattled by the experience that thereafter he would not allow Litten's name to be mentioned in his presence. Litten was arrested on the night of the Reichstag fire in 1933 along with other progressive lawyers and leftists. He spent the rest of his life in German concentration camps, enduring interrogation and torture. After five years and a move to Dachau, where his treatment worsened and he was cut off from all outside communication, he committed suicide in February 1938.

ELDH will meet again on 11th September 2022, and all Haldane members are, as always, very welcome to attend.

- To contact our International Secretary **Bill Bowring** email: *international@haldane.*org or *b.bowring@bbk.ac.uk*

Monitor the police and defend dissent

The Network for Police Monitoring (Netpol) wants to hear from you about the impact of the Police, Crime, Sentencing and Courts Act.

As part of its Defend Dissent campaign, Netpol is planning to monitor the impact of the new legislation on our right to protest.

Over the next two years we want to identify how the legislation is used by different police forces and analyse emerging patterns of non-compliance with human rights obligations.

In particular, we're asking whether the police are imposing more restrictions on protest, and what justification they're using; how often the police are making arrests under the new powers; are these new powers discouraging people from protesting; and have the new powers led to an increase in surveillance of protesters?

If you've been subject or witnessed use of the new powers, please let us know via our online form: *https://eu.jotform.com/app/221913214512343*

Alongside this, we want to expose the most stupidest, most unnecessary and most disproportionate use of police powers with our 2022 *#BullShitArrests* campaign.

Under existing powers, many protest arrests were already bullshit, but the new Police Crime Sentencing and Courts Act has given the police uncertain new powers and the vagueness of the law increases the risk that they are used as a weapon against any protest causing 'inconvenience'. It is vital to publicly expose the decisions the police make that mean their powers are used against us unnecessarily and disproportionately.

So, we are calling for people to share their nominations for the worst of 2022 from now until nominations close on 2nd December. Share your experiences on social media with the hashtag *#BullshitArrests* and tag *@Netpol* on Twitter or *@NetpolCampaigns* on Insta, or use our online form above. (See the back cover of this issue of *Socialist Lawyer*).

Netpol https://netpol.org/

8 A leaked document indicates that Dominic Raab planned to curb judges' powers by making it harder to win legal challenges against the government in England and Wales, limiting ministers' accountability in judicial reviews brought by claimants about the way public bodies have taken decisions.

12 Andy Cooke, the Chief Inspector of Constabulary for England and Wales reports that a suspect is charged in just 6.6 per cent of robberies and 4.2 per cent of thefts. "Dire", he said.

Since privatisation in 1989 water companies have paid shareholders dividends of:

£72bn

For tipping raw sewage into rivers, Thames Water fined:

£20m

12 The first major US climate law finally passed legislation but the initial Democrats plan of a $3.5tn programme was whittled down to $490bn and plans to expand education, lower healthcare costs and tackle climate change were watered down.

22 The family of Deji Omishore condemned the 'excessive and unnecessary force' used when he was Tasered in west London in June 2022 and later died in hospital. His father, Alfred, said 'The Met are solely responsible for his untimely death'. The two officers involved still remain on active duty, not facing charges.

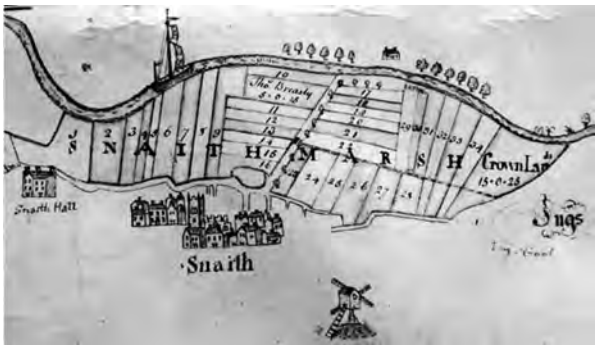
Space for Haldane members and supporters to air their views. Here, **Uther Naysmith** *writes on socialism and land ownership.*

The Lay of the Land: conceptualising the socialist ethic within land law

The issues that land law governs are at the heart of the socialist cause. As stated in the Labour Party's 1918 constitution, the cause of socialism is *'To secure for the workers by hand or by brain the full fruits of their industry and the most equitable distribution thereof that may be possible upon the basis of […] common ownership…'*. The theme of common ownership, the common wealth, common land and common rights goes back well before the writings of Marx and Engels, and has long been at the heart of the radical Enlightenment ideal. Thus, for instance, Rousseau declared: *'[Y]ou are lost, if you forget that the fruits of the earth belong equally to us all, and the earth itself to nobody!"*

Similarly, Thomas Paine wrote an extensive critique of the relationship between the ownership of land and the exercise of political power in his 1792 defence of republicanism, *Rights of Man*. These questions of ownership of land and natural resources, and the distribution of wealth, have commanded the attention of radical thinkers and activists throughout history. The core socialist question of the democratisation of political and economic power is fundamentally a question of property rights: who should hold certain rights over certain things? And, in terms of process, how can we best effect the transfer of these proprietary rights from one person or group of persons to a collective ideal?

Some forms of socialism are



A detail from an 1754 enclosure map.

founded on calls not for the socialisation of individual pieces of property – a specific corporation or stretch of land – by taking it out of the ownership of private individuals and placing it into the hands of an often equally aloof state. The pitfalls of such a top-down approach to public property are evident in the dubious success of nationalisation in post-war Britain. The 1945-1951 Labour government brought roughly 20 per cent of the British economy into public ownership, from railways and road haulage to coal mines and telecommunications. Yet, by the 1970s it was clear that these seemingly radical changes amounted to little more than the replacement of the corporate bureaucracy with a public bureaucracy. The mass-privatisations of the 1980s-onwards is testament to the ease with which politicians felt able to break up property that was intended to belong to the community at large. As the *Daily Herald* noted in a 1924 editorial:

"We do not believe that there is any fundamental distinction so long as the wage system exists, between the relationship of a private employer to his workers and the relationship of a Municipality or State to its workers."

The flaw in this statist model of public ownership lies in the fundamental fact that it failed completely to change the underlying philosophy of legal ownership and property rights. When industries or businesses were nationalised in the past, the state took the land or property as a custodian of the public. *We the people* as a community never held a real stake in this supposedly public property, and it is important that we find effective ways of achieving this. If we are to prevent the breaking up and selling off of national public institutions such as the National Health Service, we must create a legal conception of public property which vests the proprietary rights over public land and services in the community as a whole; a conception of ownership which says clearly to politicians that this property is not to be broken up and sold off because it belongs to all of us by right. In short, public property must be recognised as exactly that: civichold property which belongs to *all of us*, standing alongside freehold and leasehold as a discrete category of ownership.

A further example of the political potential of land law is the concept of

the lease. As the academic lawyer Michael Harwood asserts, the attitude towards leasehold implicit arguably even in today's land law texts sees the leasehold and tenancy *'as an adjunct to the freehold, a function of the management of the freehold estate, a monetary and contractual […] transaction, viewed – most significantly – from the perspective of the freeholder or the financier and entrepreneur...'*. This view of leasehold is made worse by an increasing '*contractualisation*' of the conception of leasehold. This conception is seen in Lord Bridge's characterisation of the relationship of landlord and tenant as a contractual one in *Hammersmith and Fulham LBC v Monk* [1992] 1 A.C. 478, and Lord Neuberger's assertion in *Berrisford v Mexfield Housing Co-operative* [2012] 1 A.C. 955 that leases should be interpreted in accordance with contractual principles.

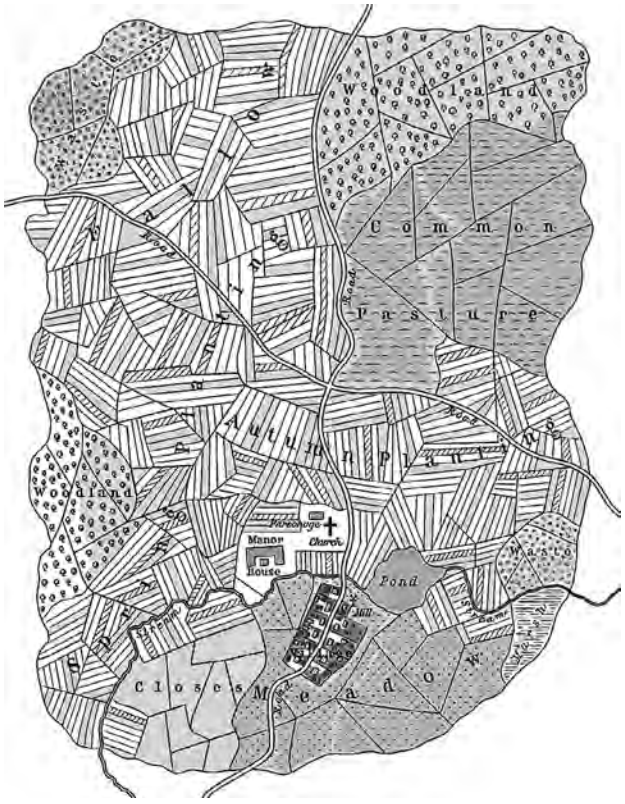
Professor Susan Bright asserts that this '*contractualisation*' of leasehold provides *'a welcome addition to the tenant's armoury against neglectful landlords.'* But, while the application of principles such as repudiation and frustration to leases potentially affords the tenant a greater level of protection, it is nonetheless based upon the feudal-bourgeois conception of the lease, and the assumptions of the socio-economic orthodoxy of England's landed classes. Further, the increasing contractualisation of leases during and since the 1990s extends the risk that courts will overemphasise the contractual paradigm of parties of equal bargaining power dealing at arms-length. The extent to which this paradigm can influence judicial thinking is shown by the defeat of Lord Denning's attempt to form a doctrine of contractual unequal bargaining power capable of vitiating contracts, based upon the notion that *'as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall'* (*Lloyds Bank Ltd v Bundy* [1975] Q.B. 326). Lord Denning's dictum was disapproved of by the House of Lords in *Alec Lobb Garages Ltd v Total Oil Ltd* [1985] 1 W.L.R. 173.

But, the courts' emphasis of contractual principles can be inappropriate in the land law context. As Lord Templeman recognised in *AG Securities Ltd v Vaughan 'in a state of housing shortage a person seeking residential accommodation may agree to anything to obtain shelter.'* Indeed, Lord Templeman specifically recognised the special context of tenancies:

'Landlords dislike the Rent Acts and wish to enjoy the benefits of letting property without the burden of the restrictions imposed by the Acts. […] Tenants on the other hand believe that the Acts are a necessary protection against the exploitation of people who do not own the freehold or long leases of their homes. […] The duty of the court is to enforce the Acts…'

Harwood notes that the now-repealed Rent Acts were a missed opportunity to reconceptualise land. Yet, Harwood asserts that such a reconceptualisation of land is still possible through interpretation of the existing '*rationalising*' 1925 property legislation. He asserts the need for a new concept of land as a whole *'as being concerned with occupational security and social obligations as much as dealings in the market place and the exclusive control of the "owner".'* In short, Harwood's discussion of leasehold as a proprietary, rather than contractual, relationship challenges us to reassess what land means to us as a society: the social purposes and functions of land, and our social relationships as expressed through our use of land. It is a challenge to the entire concept of land ownership, a demand for justification of the way in which ownership exists in the present law. The radical lawyer must take up this demand, and seek to develop a new land jurisprudence, based upon the philosophies and ideologies of land which best suit our modern social aspirations and convictions.

The beginnings of such a reconceptualisation may be seen in Lord Hoffman's speech in *Bruton v London Quadrant Housing Trust* [2000] 1 A.C. 406. Lord Hoffman held that the term lease or tenancy *'describes a relationship between two parties who are designated landlord and tenant,'* rather than a vesting of absolute proprietary rights. This conception allowed the House of Lords in that case to find that a contractual licensee can, without the authority of the freeholder, create a lease binding upon all persons not possessing better title than the licensee-lessor, namely the freeholder or those deriving title from the freeholder. The *Bruton* leaseholder thus holds a proprietary title akin to the relative title of an adverse possessor. If leasehold is conceptualised in this relative way, it allows us, as Harwood asserts, to shift the emphasis *'away from the estate in land as a marketable commodity [and] more towards a greater focus on land as a bundle of rights and (personal and social) obligations.'* If leasehold is seen as a bundle of mutual rights and obligations based upon the relationship of landlord and tenant as equals, rather than as a mere extension of the landlord's freehold, a much greater emphasis can be placed upon tenants' rights – not just in terms of regulations on landlords, but in terms of the tenant themselves having real rights in the land, worthy of protection by law, above or alongside the landlord's '*ownership*' of the property.

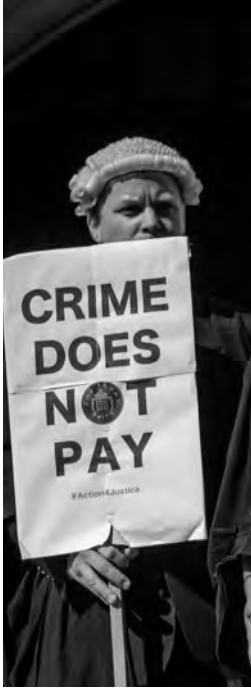


A conjectural map of a mediaeval English manor. The part allocated to 'common pasture' is shown top right.

It is in this way that land law lies at the heart of the radical lawyer's mission. Rather than a dry and technical subject full of arcane doctrines and politically irrelevant transactions like conveyancing, land law presents itself as an opportunity to socialist lawyers and politicians to challenge the way we see ownership itself; be it the ownership of swathes of countryside or farmland, of dwellings or of industries and services. A government could only pursue a meaningful socialist policy if it is willing to challenge our legal conception of what it means to hold an interest in land, and the ways in which it is possible to hold property as an individual or as a community. And whether these reforms may come to be embodied in legislation or precedent, it is the task of the radical lawyers and legal academics to lay out the jurisprudential basis on which such reforms could be conducted; to find an alternative way of thinking about the land beneath our boots and our social relations it fosters; to create a new concept of ownership.

Put forward your opinions related to law by emailing us at: socialistlawyer @haldane.org

Strike for justice



We might not dress or talk like other workers, but let's not forget who we are and who fights alongside us

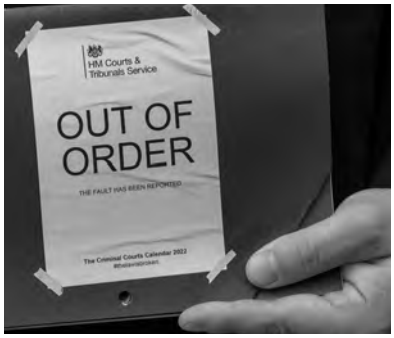
by **Ros Burgin**

Readers are likely to be familiar with the action currently being taken by criminal barristers and the crisis that brought it about. In a nutshell: the 28 per cent decline in average real incomes for barristers over the last two decades; the median pre-tax profit of £12,200 for full time criminal barristers in the first three years of the job; and the 27 per cent of barristers who had been in full practice criminal work leaving full practice from 2018-2020.

In June 2022, the Crown Court case backlog was around 60,000. Very simply, cuts in pay for legal aid defence barristers has been cut so far that there aren't enough barristers to keep the courts running. Those who remain are exhausted, overworked and underpaid.

The Criminal Bar Association demands a minimum and immediate 25 per cent increase in fees for defence barristers acting in Crown Court cases where the defendant is funded by legal aid. among other demands. Action has been escalating since April 2022, culminating in an all-out walkout in September 2022. At the time of writing, criminal barristers are refusing new cases, are refusing to cover for their colleagues, and are refusing to attend Crown Court cases where they are instructed as defence barristers for someone funded by legal aid.

This comes at a time when industrial action is everywhere you look. In the face of a cost-of-living crisis, a health service at breaking-point and 45 million people expected to be in fuel poverty by the new year, workers across industries are demanding fair wages and conditions, and we're prepared to withhold our labour to get it.



'This wave of industrial action indicates that workers are taking matters into their own hands'

Our headlines are swimming in trade union alphabet soup. Strike action has been announced by court staff in PCS, rail workers in ASLEF, RMT and TSSA, postal workers in CWU and local government workers in GMB. Academic workers in UCU, education workers in NEU, nurses in RCN and emergency service workers in FBU have all announced strike ballots – and the list goes on.

Many of these unions refer to a lack of leadership and trust in the government and the opposition to defend their interests. This wave of industrial action indicates that workers are taking matters into their own hands. I have heard more activists from 'Don't Pay UK' on the news talking about the energy crisis on the news than I have politicians. Labour Party MPs are forbidden from standing

Lucie Weberley QC, barrister at Garden Court and Secretary of the Criminal Bar Association, addresses the picket.

on our picket lines. The Communication Workers' Union's David Ward recently explained his union's involvement in the 'Enough is Enough' campaign and other wider strategies: 'One of the objectives is to make Labour sit up and notice, if they don't start saying the right things and defending working class people, then we're going to do it for them. We're going to step into that arena.'

Workers nationwide are using their power – their ability to withhold their labour and bring their industries to a standstill – to better their conditions and strive to survive the crisis facing us. Criminal barristers, through the Criminal Bar Association, are doing exactly this.

And yet, the reluctance to see ourselves as workers, and the desire to set ourselves apart as separate or different from other trades, is palpable. We are coy about using the word 'strike' and instead use 'day of action.' We're unsure whether to call our sombre gatherings 'pickets' or 'protests' or neither, and we certainly don't know what to do with ourselves when we are on them. There is an argument that our self-employed status makes this complicated, but that hurdle hasn't stopped Deliveroo riders and other gig economy workers from **>>>**

>>> unionising and calling strikes.

It goes further than terminology. A recurrent theme in discussions about our negotiations with government is that we need to be wary of opening the floodgates. Many have expressed fears that the government are loathe to agree a deal with us because that would signal weakness and mean pay rises for everyone. This has led to discussions of how we can make clear that our struggle is different, that our cause is for the greater good, for justice, for the good of the country.

The press laps up stories of barristers on less than the minimum wage. Personally, I have been inundated with invasive media requests wanting

'The industry we work in needs us, and because when we withhold our labour, it grinds to a halt.'

'The criminal bar is asking for less in investment than the government have gained in selling off the court estate in the last ten years.'

to know about my finances, my housing, my relationships and my mental health. I cannot be the only person torn between wanting to use this to our advantage whilst also feeling that we are somehow missing the point.

On the one hand, it is true that we are on less than the minimum wage, and it is true that this is scandalous. On the other hand, if we were on more than the minimum wage, we would still deserve a pay rise and we should still be able to fight for our conditions. Why? Because the industry we work in needs us, and because when we withhold our labour, it grinds to a halt. Just like railworkers, teachers, nurses and everyone else fighting for their conditions.

A principled response is possible. Awareness is spreading that the 'not everyone can have a pay rise' refrain is a myth. Fuel poverty is sweeping the country, whilst UK energy producers are raking in £170 billion excess profits in the next two years. RMT strikers are being told that their requests for pay are driving up inflation, whilst Abellio shareholders were paid a record £500m last year, and CEOs of the six biggest train companies also took home a combined salary of more than £5m in 2020. The government seem able to shell out for senior juniors or QCs to represent themselves or other public bodies, whilst those on the other side of judicial review, inquest or discrimination proceedings are lucky to receive legal aid, if they have any funding at all. The criminal bar is asking for less in investment than the government have gained in selling off the court estate in the last ten years. It is not a question of there being enough money, it is a question of distribution and of political choice.

The Criminal Bar Association have shown bold and honest leadership. These strikes are historic, democratic and powerful. We share this fight with our fellow workers. Whilst it is appropriate that our demands focus on our own interests, let us not forget who we are and where our strength lies: as workers and in our labour.

Rosalind Burgin is a barrister at Garden Court North and sits on the executive of Legal Sector Workers United

A critical juncture for the entire sector: reflections of a criminal solicitor

by **Jon Black**

Almost six years ago I sat in the committee rooms at Westminster next to Keir Starmer, newly elected to parliament and appointed chair of the All-Party Parliamentary Group (APPG) on legal aid. The Ministry of Justice (MoJ)were proceeding with the new duty solicitor contracts having cut solicitors' legal aid fees by 8.75 per cent and a further 8.75 per cent pending once the contracts were in place.

The contracts were abandoned as a result of a legal challenge by a number of providers. Seven years on many hundreds of solicitors' firms have left the market no longer willing to deal with high levels of regulatory administration, and reduced turnover as result of slow police investigations, court backlogs, Covid and the failure of the Government to act swiftly on the urgent findings of Sir Christopher Bellamy's criminal legal aid review.

Recently published data revealed that in 2017 the number of firms providing criminal legal aid contracts numbered just over 2,000; the figure now stands at less than one thousand. Even before Sir Christopher reported, the MoJ were perfectly aware that those remaining firms would be squeezed out of the market, the existing rates static since 1996 with no inflation related alignment; so, the consolidation is now happening as the market contracts. Many solicitors who remain in the market are following the Law Society's advice to its members to decline work that is so unprofitable that they are unable to discharge their professional responsibilities to the client without making a loss.

The Labour Party arguably engineered the assaults on >>>

>>> access to publicly funded legal services with Jack Straw's choice remarks in 2009 about the earnings of legal aid lawyers who ought not expect to enjoy greater remuneration than other public sector workers. The anti-lawyer rhetoric has worsened over the past 13 years and the perceived reluctance of the Labour Party to confront the crisis in our justice system almost appears calculated to prevent right wing politicians from accusing the leadership of protecting their North London liberal friends. We saw a taste of this language when, during justice questions, the then Justice secretary Dominic Raab accused Karl Turner MP of acting as the shop steward for the legal profession.

The majority of solicitors in the sector are in solidarity with our colleagues at the Bar, despite the MoJ's attempts to cause division, inviting solicitor advocates to step into the shoes of their instructed barristers; despite attempts by courts to force junior members of staff employed by law firms to address the court instead of the absent barrister; despite the impact that delayed cases will have on solicitors firms who don't receive payment until the end of the case and despite the resultant pressure on their ability to pay staff.

> 'The MoJ, the courts and the police have collectively made what ought to be challenging but rewarding work, a misery.'

Whilst barristers are self-employed, most solicitors work within firms, either as employers contracted to provide services or as employees. Although there is a desire from many to take industrial action or work to rule, the constant spectre of competitors who will not engage, who are willing to step in and do the work and make any action

Pictures: © Jess Hurd

negligible, has always remained. The only way solicitors can act is to decline to sign or cancel the desperately one-sided contracts that cause us to do the work at a rate that has not improved for 25 years. Many have handed their contracts back, which has created the access to justice crisis that exists now. The advice deserts that exists in areas such as Barnstable and Skegness, where the nearest on call solicitor is 90 minutes away, demonstrate the dire nature of the predicament as the MoJ reap their failure to deal with the emergency described by Sir Christopher Bellamy.

A right-wing libertarian government that claims to be tough on law and order believes that it can rely on larger entities. We are facing the real prospect of legal advice production lines where help is provided by advisers sitting in remote call centres, perhaps piloted in areas where there is no longer a supply of legal advice but extended to all regions for those prepared to provide high volume, low quality services.

I believe that if solicitors can do one thing for now, and as hard as it is to leave clients without representation, they should turn off phones at night. The fact that we have accepted this lifestyle as a norm has enabled our good will to be unwittingly abused by police officers who assume we work 24-hour shifts. It takes guts and a hardened heart, and many are showing that attitude by simply walking away from legal aid criminal defence work. Many fear that they will miss the only work they have known, but sadly those who have jumped have simply not looked back. The MoJ, the courts and the police have collectively made what ought to be challenging but rewarding work, a misery.

Jonathan Black is a founding partner and criminal defence specialist at BSB Solicitors and former president of London Criminal Courts Solicitors Association. All views are his own.


MINIMUM WAGE
IT'S CRIMINAL
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STRIKE
TOGETHER
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Laws of oppression

Mel Strickland, a member of the Stansted 15, reflects on the long road to having their convictions quashed, the impact of the process on her legal career, and her fears for the future of protest.

Against a background of rising intolerance and racism, in March 2017 I was part of a group that blocked a charter plane destined for Nigeria and Ghana, at Stansted Airport. We knew about some of the people due to be deported on the flight having read testimonials on the blog 'Detained Voices' (see SL #86). We took these testimonials with us on the action, along with the *Collective Expulsions* report by Corporate Watch which elucidates the myths justifying this racist policy and the ulterior motives behind it.

As a direct result of the action and the increased time it allowed for detainees to secure legal representation, or advance their legal case with existing lawyers, a number detainees have since won their applications on asylum, human rights, compassionate and other grounds. We know from a 2019 freedom of information response that more than 1 in 6 people due to be deported remained in the UK. Among those ordinary people included people who had lived in the UK for decades, parents of dependent children and trafficking survivors. Many more might also remain but for the fact that the Home Office deported as many as possible the day after the action. Fortunately, the Home Office could only charter a smaller plane.

Our group, which came to be known as the 'Stansted 15' found that the 'hostile environment' is also hostile to those who stand in the way of these brutal deportations. The Stansted 15 were convicted of endangering the safe operation of an aerodrome by means of a device, substance or weapon under section 1 Aviation and Maritime Security Act 1990 on

Human Rights day in 2018. Never before has such a charge been used against protesters at airports who stop flights or block runways. In this case someone decided to invite the Attorney General to consent to this prosecution. It has never been admitted – and the trial judge refused a defence application for disclosure of the Attorney General's reasoning – but it is reasonable to infer that the intention of bringing this charge was to increase the penalties available and thereby to deter such protests. Reasonable because unlike Aggravated Trespass, the standard offence in such cases, and the offence with which the Stansted 15 were originally charged and which carries a maximum sentence of three months; endangering an aerodrome carries a maximum sentence of life imprisonment.

During our trial, which lasted two and a half months, the prosecution were unable to identify a single threat to the airport or staff. They relied on theoretical risks, such as diverting police resources from the airport

Pictures: Jess Hurd

Rally in support of the Stansted 15 at their trial at Chelmsford Crown Court in March 2019.

terminal building, which they claimed increased the risk from a terrorist attack, had one occurred coincidentally at the same time. Other 'risks' included evidence from the pilot of the plane that he had been put momentarily in fear on seeing us because he couldn't rule out the possibility of 'nefarious' infiltrators. Another area of risk identified by the prosecution was the fact that during a 10-second chase of a defendant, an officer slipped and 'nearly fell over'. A video was shown in court of the running officer wobbling before regaining his balance. The judge instructed the jury to disregard all the evidence they heard from defendants regarding our motivations for taking action and the grave concerns we had about violence being inherent in the deportations process.

The Stansted 15 were successful in having their convictions quashed on appeal in January 2021. This of course, was long after each of us had completed community service. It is my view that we were convicted of a spurious grounds which the prosecution and judge had invented, based on a narrow and incorrect interpretation of legislation intended to criminalise serious acts of violence at airports. The Court of Appeal judgment stated that this prosecution should never have taken place. But it did and the fact of our conviction did send a chilling message throughout civil society: you can, as a peaceful individual protesting a contentious government policy, be convicted of a terrorism-related offence and be exposed to a life sentence as a consequence.

Despite widespread public support for the Stansted 15 – from Amnesty International, the UN Rapporteurs and Liberty (who intervened in our appeal) – I faced another Kafkaesque process from the Solicitors' Regulation Authority. I was subject to a three-year investigation by the SRA, which alleged variously that I had failed to act with integrity, failed to uphold public trust in the profession, failed to co-operate with the regulator, failed to disclose a previous magistrates' conviction in relation to a protest about climate change years earlier. Despite clear explanations for my conduct, the SRA's correspondence expressed the view that my conviction was unacceptable and evidence of serious wrongdoing justifying sanctions such as a fine and public shaming. (This is not what the rules say, but the SRA wasn't concerned with due process or providing evidence for its libellous comments against me). I was extremely lucky to have pro bono support and witness statements from people affected by our action, from organisations such as Haldane and the IADL, Amnesty and many others. I presented hundreds of pages of evidence to the SRA in support of my case. The most moving statement was from a person who said that it made her feel upset and unwanted as a foreigner, knowing that I would be punished for taking that action 'when any reasonable person' could see that defending the rights of vulnerable people was not wrong. In summer 2021, the SRA finally agreed that I had no case to answer and dropped all allegations. There was no apology; the no further action letter was itself as brusque as all their previous correspondence. I was furious. It still rankles!

This investigation consumed vast amounts of my time, prevented me from securing alternative employment, caused me ongoing

'There was no apology, the no further action letter was brusque. I was furious. It still rankles!'

stress, especially after having just been cleared of the Stansted case itself. But rather than file another complaint to the SRA, I decided to give myself a break, spend more time with loved ones and try to concentrate on being physically and mentally fit. Self-care is a political act, as they say.

When I reflect on what happened to the Stansted 15 in light of the Policing, Crime, Sentencing and Courts Act, I feel worried. Things are getting worse, and they were bad to start with. But increasingly repressive legislation for protest is something many other movements have had to cope with in the past. When the legislation was going through Parliament Clive Lewis MP said 'this Bill is being used as a cover for authoritarianism… The cumulative effect would be an effective ban on the right to protest, and the protection of those in power from public criticism and accountability' and I fear he is right.

The government stated in its policy paper on the legislation that measures are needed to tackle 'disproportionate' and 'disruptive' protest which cost the police a lot of money, such as the mass protests by Black Lives Matter and Extinction Rebellion. In the face of systemic racism and ecological breakdown, these protests are a sign that people still have spirit and courage to resist the lies of this culture and fight for a better world. I expect that in the future many more people will go to prison for protest. I don't think that fossil fuel culture will end without escalating action against it – the forces that are invested in fossil fuels will not act to save humanity and the other Earthlings. If our collective future is to be preserved, it will be because of the actions of ordinary people. I think the fossil free struggle has to be proactively anti-racist, because the ascendance of fossil fuel culture occurred in tandem with colonialist expansion, and, as the UN has predicted, it is likely that many more millions of people will become enslaved as ecological crises worsen. I would like to be part of a movement to develop a stronger mutual aid culture to cope in these dark times.

THE CLIMATE MOVEMENT NEEDS MOVEMENT LAWYERING:

CALL THE FOSSIL FUEL INDUSTRY TO ACCOUNT FOR

‘Human-induced climate change and the war on Ukraine have the same roots: fossil fuels and our dependence on them’. Svitlana Krakovska, Ukrainian climate scientist, February 2022.

‘Simply put, when will leaders lead?’ Mia Amor Mottley, Barbados PM, asked Glasgow’s Climate COP: ‘What must we say to our people living on the frontline in the Caribbean, in Africa, in Latin America, in the Pacific, when both ambition and, regrettably, some of the needed faces at Glasgow are not present? What excuse should we give for the failure?’

MAKING A KILLING

Picture: © Ole Berg-Rusten / NTB

by Richard Harvey

On the frontline of the climate justice movement, I believe we need movement lawyers. Developed countries agreed in Paris to take the lead by undertaking absolute economy-wide reduction targets and to support developing countries in building clean, climate-resilient futures. Their poor record since 2015 has now led Pacific Island and Caribbean States to seek an Advisory Opinion from the International Court of Justice on States' responsibilities for rights threatened by climate change. A global alliance, led by Pacific Islands Students Fighting Climate Change and World Youth for Climate Justice is backed by Greenpeace, Amnesty International, Oxfam and others in calling on the UN General Assembly to refer the issue to the world's highest court.

Faced with the eco-crisis, Black, Indigenous and Peoples of Colour, who bear the consequences of climate change but not the responsibility, have been demanding climate justice for decades. Few environmental organisations in the Global North have stepped up. Movement lawyers and their clients experience murderous attacks in Colombia, Mexico, Brazil and the Philippines. Those who experience climate change first and worst need us to place their needs and visions of justice at the centre of our practice. That is the key to strategic climate litigation.

Corporate greed is driving up energy prices, sea levels and global temperatures. Oceans are raped for depleted fish stocks and deep-sea minerals, while natural wonders of the Amazon, Congo and South East Asia are devastated in the headlong race to species extinction in the name of profit. Meanwhile, military expenditure increases as war, famine and pandemics threaten us all. The primary goal of movement lawyering is to shift power from oppressor to oppressed. Among other things, this means changing mindsets and changing the conversation.

Fossil Capitalism and War Profiteering

Oil is the lifeblood of war and, on 24th February 2002, the Fossil Fuel industry shifted gears, accelerating the impacts of war profiteering on all our lives. The Law Society says Putin's invasion of Ukraine is 'a direct threat to the rule of law' and the International Bar Association calls it: 'a watershed moment that indisputably violates international law.'

Rising fuel prices mean super-profits for Shell, BP, ExxonMobil, Total, and the rest. When people called for a windfall profits tax, BP hit back: 'Generally, a windfall tax on UK oil and gas producers would not encourage investment in producing the UK's gas resources.' Not a whisper about investing in renewables. That's where the movement must change the conversation.

Over a third of Russia's state budget comes from oil and fossil gas. While calling repeatedly for greater 'energy security,' the EU *increased* Russian gas imports from 41 per cent in 2019 to 45 per cent in 2021. When Russia invaded the Crimea in 2014, the EU and US assured us that American gas would 'rescue Europe' from dependence on Russian imports. Today, the American Petroleum Industry urges Biden 'to ensure long-term American energy leadership and security'. The US is the world's largest LNG exporter and their tankers are ploughing the Atlantic to wean Europe off Russian fuel dependence and replace it with dependence on American fuel.

Price-gouging us to extinction

The OED defines profiteering as: 'making excessive profits by selling or providing necessities, esp. in time of war.' In the Napoleonic Wars, the First and Second World Wars, profiteering was outlawed and today Friends of the Earth (US) accuses the fossil fuel industry of conducting 'a master class in war profiteering … Oil companies drove us into a climate crisis and are now price gouging us to extinction.'

Taxing windfall profits does nothing to protect consumers from excessive energy prices. Sanctions have not stemmed the billions flowing into Putin's war chest. British, Norwegian and Dutch dockers and environmental activists have blocked Russian tankers more effectively than governments. In June 2022, *Fortune* recorded: 'Oil prices have risen around 60 per cent this year alone and gas is being traded at a 13-year high,' while 'countries worldwide have also been buying Russian oil at record rates to capitalise on the price gap between Russian crude and world prices.'

The UN Secretary-General says: 'We seem trapped in a world where fossil fuel producers and financiers have humanity by the throat. For decades, the fossil fuel industry has invested heavily in pseudoscience and public relations – with a false narrative to minimise their responsibility for climate change and undermine ambitious climate policies … Nothing could be more clear or present than the danger of fossil fuel expansion. Even in the short-term, fossil fuels don't make political or economic sense.'

Politicians offer no credible programme to wean the world from war profiteering and fossil fuel dependence. Instead, they measure economic success by the speed at which they can destroy the planet's sustainability. António Guterres said recently: 'when we destroy a forest, we are creating GDP. When we overfish, we are creating GDP. GDP is not a way to measure richness in the present situation in the world.' Yes, these statements are from the UN Secretary-General, not Greenpeace.

Greenpeace, ClientEarth, Our Children's Trust, Friends of the Earth and others are part of a new movement demanding climate justice, changing the conversation for a global recognition of the human right to a clean, healthy and sustainable environment for present and future generations. Confronting tankers full of Russian oil and publishing cutting-edge scientific reports are just some ways of speaking the people's truth to dishonest power. Another way is by bringing strategic law suits on behalf of communities threatened by state inaction in the face of the climate crisis.

Picture: © Axel Heimken / Greenpeace

The People v Arctic Oil

War means profit and Norway stands to rack up almost $170 billion additional oil and gas revenues this year. Their European Climate Pact ambassador is (almost) embarrassed: 'My kids are going to ask me, 'Dad, what did Norway do during the Ukraine war?' I don't want to tell them that we made a killing.' But that is exactly what Norway is determined to do and keep on doing.

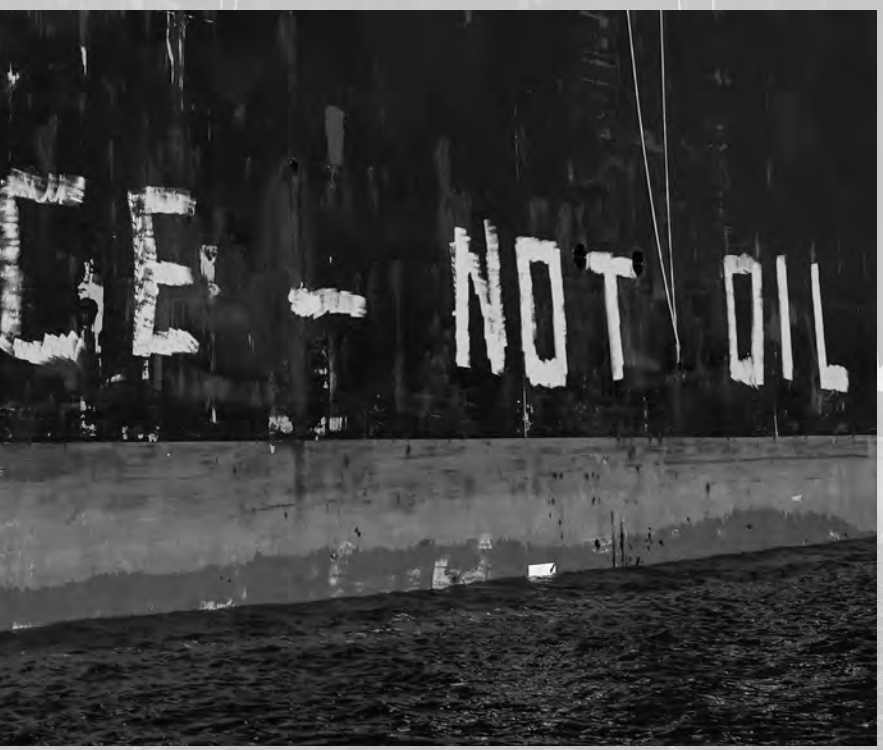
In 2016, Greenpeace Nordic and Nature & Youth took Norway's Ministry of Petroleum & Energy to court for licensing new drilling in the fragile Arctic. They cited the European Convention Article 2 (right to life) and Article 8 (right to family life), together with Norway's Constitution, Article 112, guaranteeing the rights of present and future generations to a sustainable environment.

Norway's government owns 67 per cent of its national petroleum corporation and in 2016 licensed it to drill for fossil fuels that, according to the International Energy Authority's 'Net Zero by 2050' Report, must never be burned. Norway's licences hold the rising generation hostage to paying for stranded assets. Professor David Boyd, UN Special Rapporteur on Human Rights and the Environment, conducted an official visit to Norway in 2019. His report described the 'Norwegian Paradox' of a state using its fossil fuel wealth to subsidise re-afforestation in the Global South while planning to increase greenhouse gas emissions worldwide for decades to come: 'Norway should prohibit further exploration for fossil fuels' was his conclusion.

Norway exports 95 per cent of its fossil fuels but its Supreme Court declined, by an 11-4 majority, to rule on whether environmental impact assessments must include *all* emissions from the outset, including those from exports. They held instead that those assessments could be deferred until after the fossil companies completed exploration and applied for extraction licenses.

In 2021, six young climate activists joined with Greenpeace Nordic and Nature & Youth to take the fight to the European Court of Human Rights ('ECtHR'), arguing that Norway's decision violates Convention Articles 2 and 8 and also Article 14 because it discriminates unlawfully against the indigenous Saami population's culture, land and resources, as well as against the youth whose generation will bear the unequal burden of climate change impacts.

Six years from its inception, this case asks the ECtHR to address the effects of fossil fuel extraction on the climate crisis. In its latest paradox, the Norwegian Government seeks to justify exploration licences it granted in 2016, by reference to Russia's invasion of Ukraine today, as though a then-unforeseeable war could provide rational grounds in 2022 to explore for undiscovered oil and gas that cannot be marketed until 2030, thereby increasing emissions for the decades to come.



'Norway is using its fossil fuel wealth to subsidise re-afforestation in the global south while planning to increase greenhouse gas emissions worldwide.'

Strasbourg: Next Stop for Climate Justice

Three climate crisis cases are now pending before the Grand Chamber of the ECtHR. In addition to the right to life and right to family life, the Grand Chamber will examine Article 3 (protection from inhuman and degrading treatment), Article 6 (right to a fair hearing), Article 13 (right to an effective remedy) and Article 14 (protection from discriminatory treatment). Important procedural questions will be reviewed, including exhaustion of domestic remedies, standing for environmental associations to bring cases on behalf of affected members, and individuals' rights to apply in relation to climate change impacts that affect others, as well as themselves.

The 17-Judge Grand Chamber usually only hears cases that 'raise serious questions affecting the interpretation of the Convention' (Article 43). These cases include: Portuguese youth (*Agostinho Duarte v Portugal and others* (39371/20)); Swiss Climate Senior Women (*KlimaSeniorinnen Verein Schweiz vs Switzerland* (53600/20)); and claims brought by officials against the national government (*Carême v France* (7189/21)). At the time of writing, it remains to be seen whether *Greenpeace Nordic and others v. Norway* (34068/21) will join them in the Grand Chamber.

Portuguese Youth vs. 33 Member States of the Council of Europe.

Global Legal Action Network ('GLAN') brought their case in 2020 against 33 Member States of the Council of Europe, on behalf of six youth-applicants. They seek a decision to force European governments to take urgent collective action to halt the climate crisis. They argue that European countries must adopt immediate and much deeper cuts to emissions *within* their borders and also tackle their contributions to emissions released overseas, including their exports of fossil fuels. In the words of Youth4climatejustice: 'We believe the time is now for a clear signal from the European Court to judges in Europe and beyond to clarify the human rights obligations of states and corporations in the context of climate change.'

No case has ever been brought simultaneously against so many states. Moreover, the ECtHR usually rejects if applicants fail to exhaust their domestic remedies first. But is any adequate remedy available to Portuguese Youth in the domestic courts? They say it's impracticable for a group of children and young adults to bring cases in thirty-three different countries and pursue them all the way to their highest courts. Besides, the domestic remedies currently available are simply inadequate. Judges in domestic courts usually lack the authority to order their governments to do more. They often justify their refusal by saying the European Convention doesn't include environmental rights. Notwithstanding even the ground-breaking *Urgenda* decision against the Dutch Government, Youth4climatejustice say the climate emergency requires courts to go further: 'We seek a ruling from the ECtHR that States are required by the Convention to adopt emissions cuts that are *collectively* >>>

>>> consistent with the 1.5°C target. A decision of this kind would then greatly enhance the prospect of domestic courts in Europe forcing their Governments to take such measures.'

Swiss Climate Seniors (KlimaSeniorinnen) vs. Switzerland

Since 1864, average annual temperatures in Switzerland have risen by around 2.1°C (as of 2019). 2003, 2015, 2018 and 2019 were Switzerland's four warmest summers. The 2003 heatwave resulted in almost 1,000 additional deaths in Switzerland and roughly 800 additional heat-related deaths in the summer of 2015.

The scientific evidence confirms that heat-related deaths are much more frequent in older persons, especially women. In the 2003 heatwave, 80 per cent of additional deaths occurred in persons over 75. With increased mortality risk for all age groups, the summer of 2015 saw the greatest rise in mortality risk for 75- to 84-year-olds. In August 2018, out of 177 heat-related deaths, 159 occurred in women (18 in men). Out of these 177 deaths, 152 occurred in people aged 75 or older. Older women with respiratory diseases are affected even more significantly.

The Swiss Climate Seniors formed an association to seek protection for elderly women from climate change. Their average age is 73 (650 of more than 2000 members are over 75). In 2016 they petitioned the Swiss courts for an order compelling their government to reduce greenhouse gas emissions by at least 25 per cent by 2020 to meet the 'well-below-2°C-target' of the Paris Agreement.

Despite overwhelming scientific evidence, the Swiss judges ruled that the petitioners were not 'sufficiently affected' to enable them to assert 'an interest worthy of protecting' and it was not yet possible to say the 2°C target will not be met. Matters of this kind, said the Court, should not be dealt with by lawsuits, but rather through political and democratic channels. By implication, the courts were saying: 'Go away and come back when global warming passes the tipping point.'

In their application to the ECtHR, the KlimaSeniorinnen argue that Switzerland's failure to take action to prevent climate change impacts violates their right to life and to respect for private and family life (Articles 2 and 8). They have also been denied fair hearings and access to an effective remedy (Articles 6 and 13). Four, aged between 78 and 89, have filed individual applications related to their health problems aggravated by heatwaves, which undermine their quality of life and exposing them to risk of premature death.

They also submit that environmental organisations should be granted representative standing to protect their members. The Court generally dismisses applications brought in the public interest (so-called '*actiones populares*') but the KlimaSeniorinnen argue that the complexity, novelty, and cost of climate litigation require the Court to revise its approach and improve access to justice.

The Grand Chamber's ruling is likely to set the course for its approach to all climate cases with important repercussions in domestic courts and human rights bodies worldwide.

Carême vs France

Damien Carême was mayor of Grande-Synthe, a suburb of Dunkirk, from March 2001 to July 2019. In November 2018, as mayor of Grande-Synthe and in his own name, M. Carême requested that the French President, Prime Minister and Minister for Ecological Transition and Solidarity should: (i) comply with the State's Paris Agreement undertakings and take appropriate steps to reverse the rise in greenhouse gases produced on French territory; (ii) make it compulsory to prioritise climate-related considerations and prohibit any measures that might increase greenhouse gases; and (iii) take immediate steps to ensure France's adaptation to climate change.

He received no response, so, in January 2019, M. Carême and the Grande-Synthe municipal council petitioned France's top administrative court, the *Conseil d'État*. Although the *Conseil d'État* held that M. Carême lacked personal standing to bring proceedings, ultimately, in July 2021, in what Greenpeace France hailed as 'a clear ultimatum issued in the face of the government's inaction over climate change,' it ordered the Government to act *within nine months* to attain its Paris Agreement target of a 40 per cent reduction in emissions by 2030.

In January 2021, M. Carême, now a Member of the European Parliament, applied to the ECtHR in his personal capacity submitting that the France's failure to take all appropriate measures to comply with its maximum emissions targets constitutes a violation of its obligation to guarantee the right to life and the right to a normal private and family life. He submits that he is already directly affected by the increased risk that his home is likely to be flooded by 2030, meaning he is unable to plan his life peacefully there.

The government says the ECtHR should dismiss his claim because he lacks standing and the *Conseil d'État*'s order in favour of the municipality disposes of the matter finally. M. Carême will presumably be asking the ECtHR to require the French Government to prove that it has actually complied with the Conseil d'État's order and will, by 2030, have reduced its emissions by 40 per cent.

CORPORATE RESPONSIBILITY

It is reasonable to ask what difference it makes to bring a case against the government of a small country? After all, the Oil Majors have bigger economies than most individual countries. Even if we get some good rulings from the ECtHR, or if the ICJ comes down with a powerful Advisory Opinion on human rights responsibilities of States, how do we hold Big Oil to account?

Report of the Philippines Commission of Human Rights

In May 2022, six time zones ahead of Strasbourg, the Philippines Commission of Human Rights published the final report of their six-year inquiry into the responsibility of Carbon Major corporations for the impacts of Climate Change.

In November 2013, the Philippines was ravaged by one of the most powerful tropical cyclones ever recorded. Typhoon Haiyan claimed the lives of thousands and affected millions of others. Also in 2013, the Climate Accountability Institute published Dr. Richard Heede's ground-breaking scientific analysis of the responsibilities of Carbon Majors like ExxonMobil, Shell, BP, Chevron and Total for causing anthropogenic greenhouse gas emissions in the industrial age. Since 2013, Heede has updated his findings on how investor-owned fossil fuel producers have continued to exacerbate extreme weather events.

In 2016, grassroots Philippine organisations petitioned their Commission on Human Rights to investigate human rights violations resulting from the Carbon Majors' contribution to climate change. The Commission conducted fact-finding missions throughout the Philippines, preserving the individual testimonies of survivors, climate scientists and legal experts. They held consultations near the Carbon Majors'

'Matters of this kind, said the Court, should not be dealt with by lawsuits, but rather through political and democratic channels. By implication, the courts were saying: "Go away and come back when global warming passes the tipping point".'

Picture: © Nicoletta Zariffi / Greenpeace

headquarters in the US and UK; and established a Climate Change Observatory as a public resource for Filipinos to measure their government's compliance with International Treaty obligations to protect the environment.

The Commission's May 2022 findings and recommendations include that:

- Carbon Majors have been engaging in 'wilful obfuscation of climate science, which has prejudiced the right of the public to make informed decisions about their products, and concealing that their products posed significant harms to the environment and the climate system.' Their products contributed to 21.4 per cent of global emissions;
- They had early knowledge of their products' adverse impacts on the environment and climate system, at the latest by 1965;
- These corporations may be held to account by their shareholders for continuing to invest in oil exploration for largely speculative purposes, and for obfuscating climate science and delaying, derailing, or obstructing the transition to clean energy.

'Sadder still,' the Commission concludes: 'these obstructionist efforts are driven, not by ignorance, but by greed. Fossil fuel enterprises continue to fund the electoral campaigns of politicians, with the intention of slowing down the global movement towards clean, renewable energy … [They] have the corporate responsibility to undertake human rights due diligence and provide remediation. Business enterprises, including their value chains … within the jurisdiction of the Philippines, may be compelled to undertake human rights due diligence and held accountable for failure to remediate human rights abuses arising from their business operations.'

The Commission recommends that all carbon-intensive corporations should:

1. Publicly disclose the results of their due diligence investigations and climate and human rights impact assessments, and the corresponding measures taken in response;
2. Desist from all activities that undermine the findings of climate science;
3. Cease further exploration of new oil fields, keep fossil fuel reserves in the ground, and lead the just transition to clean energy;
4. Contribute to a Green Climate Fund to implement mitigation and adaptation measures; and
5. Continually engage with experts, CSOs, and other stakeholders to assess and improve corporate climate response.

The Philippines Commission is the first human rights body to assert its authority to investigate multinational fossil fuel companies. Its comprehensive hearings and painstaking thoroughness have resulted in the most reliable attributions of corporate legal accountability for human rights impacts triggered by climate-crisis events in the Philippines and elsewhere. These findings are certain to figure in future Carbon Major lawsuits worldwide.

Face Personal Liability: ClientEarth's Notice to Shell Board Members

In a 'first of its kind' legal action, on 15th March 2022, ClientEarth served notice on 13 directors of Shell that they face personal liability for mismanaging climate risk. ClientEarth argues: 'the Board's failure to properly manage climate risk to Shell means that it is breaching its legal duties. The Board has failed to adopt and implement a climate strategy that truly aligns with the Paris Agreement goal to keep global temperature rises to below 1.5°C by 2050. We believe the Board is breaching its duties under sections 172 and 174 of the UK Companies Act, which legally requires it to act in a way that promotes the company's success, and to exercise reasonable care, skill and diligence.'

ClientEarth purchased shares in Shell and brought a 'derivative action' 'to compel Shell's Board to act in the best long-term interests of the company by strengthening Shell's climate plans. Its current strategy and insufficient targets put the enduring commercial success of the company and employees' jobs at risk, and is no good for people or the planet.'

In a derivative action, shareholders challenge alleged breaches of duty by the Board, effectively seeking to step into the company's shoes, to pursue the Board for committing wrongs against the company. In 2021, a Dutch court had ordered Shell to reduce its overall emissions – including those from the fossil fuel products it sells – by net 45 per cent by the end of 2030. However, Shell's Board has appealed, asserting the order is unreasonable and incompatible with its business.

Shell claims that its strategy is consistent with the 1.5°C temperature goal of the Paris Agreement, and its target is to become a net zero emission business by 2050. But its interim targets don't add up. Research indicates that, far from a 45 per cent reduction, Shell's strategy would in fact result in a 4 per cent increase in net emissions by 2030, and the company is unlikely to meet its asserted targets.

Challenging the Greenwashing of Europe

The fossil fuel industry dominates our economies and our culture as insidiously as the Marlboro man evoked the >>>

>>> American dream. Sponsoring museum exhibitions, music festivals and sports teams and events, Big Oil creates a benevolent image as cover for dirty business. A number of strategically targeted legal challenges are being brought to attack that cover.

European Citizens Initiative ('ECI'). In October 2021, Greenpeace and more than 20 other EU-based Civil Society Organisations launched their ECI to counter the industry's toxic influence and require the European Parliament to introduce a directive to ban fossil fuel advertising and sponsorships, in the same way as tobacco ads were banned almost 20 years ago.

The Next Tobacco: Tobacco advertising was outlawed in the EU in 2004 as a threat to our health and now is the time to call out the fossil fuel industry. As Sharon Eubanks, who led the US lawsuit against Big Tobacco says: 'Big Oil is Next.' The objective of the European Citizens Initiative is to garner one million signatures across the European Union to ban all advertising and sponsorship by companies selling fossil goods and services.

Fossil Gas and Nuclear Energy: The European Parliament voted in July 2022 to permit investments in gas and nuclear energy to be classed as 'sustainable', rejecting appeals from prominent Ukrainians and climate activists that this amounts to fuelling Putin's war. Legal challenges will be filed but meanwhile, says Bas Eickhout, vice-president of the European Parliament's environment committee: the EU is 'sending a disastrous signal to investors and the rest of the world … the EU will have unreliable and greenwashed conditions for green investments in the energy sector'.

'Total Greenwashing': In 2021, Total, the French Carbon Major announced it was 'reinventing itself' as TotalEnergies. In March 2022, Greenpeace France, *Les Amis de la Terre*, and *Notre Affaire à Tous*, supported by ClientEarth, took the rebranded company to court in Paris to protect the public against misleading environmental claims on the alleged virtues of fossil gas and biofuels. Petitioners say Total is promoting false Net Zero claims to consumers in violation of the EU's Unfair Marketing Practices Directive. TotalEnergies tells consumers that its fossil gas and biofuels are 'comparable to renewables.' The petitioners ask the court to rule that the advertisements violate consumer law and to order Total to stop misleading advertising.

A wave of Europe-wide greenwashing claims is threatening to engulf Big Oil and its business modal: in the Netherlands against Shell, Landrover and the Dutch national airline KLM, and in the UK against BP. The industry buys social acceptance by sponsoring sports, cultural and educational institutions. But community pressure is powerful. Britain's Royal Shakespeare Company and National Portrait Gallery recently rejected BP sponsorships and the British Museum is facing calls to sever its BP ties too.

Strategic Leadership comes from Communities, Youth and Elders

Lawsuits cannot change entrenched mindsets unless they are 'people-powered' – motivated by the demands of communities. Mainstream Western environmental organisations continue to be led by white, Global North activists and scholars but these are not the 'leaders' in the struggle for climate justice, much of which is most intense and life-threatening in the Global South.

As we go to press, Greenpeace UK and the Runnymede Trust are publishing their report: *Confronting injustice: Racism and the Environmental Emergency*. As Dr Halima Begum, CEO of Runnymede says: 'it confirms to the world a fact that should be glaringly obvious: the environmental emergency is rooted in systemic racism.' It starts from the premise: 'Black people, Indigenous Peoples and people of colour across the globe bear the brunt of an environmental emergency that, for the most part, they did not create. Yet their struggles have repeatedly been ignored by those in positions of power.' See: *www.greenpeace.org.uk/wp-content/uploads/2022/07/Confronting-Injustice-Report_2022.pdf*

'A movement lawyering approach to strategic climate litigation creates the possibility of meaningful social change and gives impacted communities a renewed sense of agency and personal dignity.'

Picture: © Jess Hurd

Governments have talked for years about a managed transition away from fossil fuels. After decades of subverting climate science, fossil fuel moguls now pretend they behaved with integrity, while maintaining there is still no need to deviate from business-as-usual. The war against Ukraine convinced politicians and the Carbon Majors we can manage without fossil fuels, but only if they come from Russia. Instead of changing, they continue to 'make a killing' by war profiteering.

Leadership today comes from the indigenous communities and land defenders who are resisting murderous attacks in Colombia, Mexico, Brazil and the Philippines. It comes from peoples of small island states whose entire nations are threatened by the rising and acidified oceans; from women climate elders threatened with premature death; and from the world's youth who are inheriting the costly and deadly climate legacy.

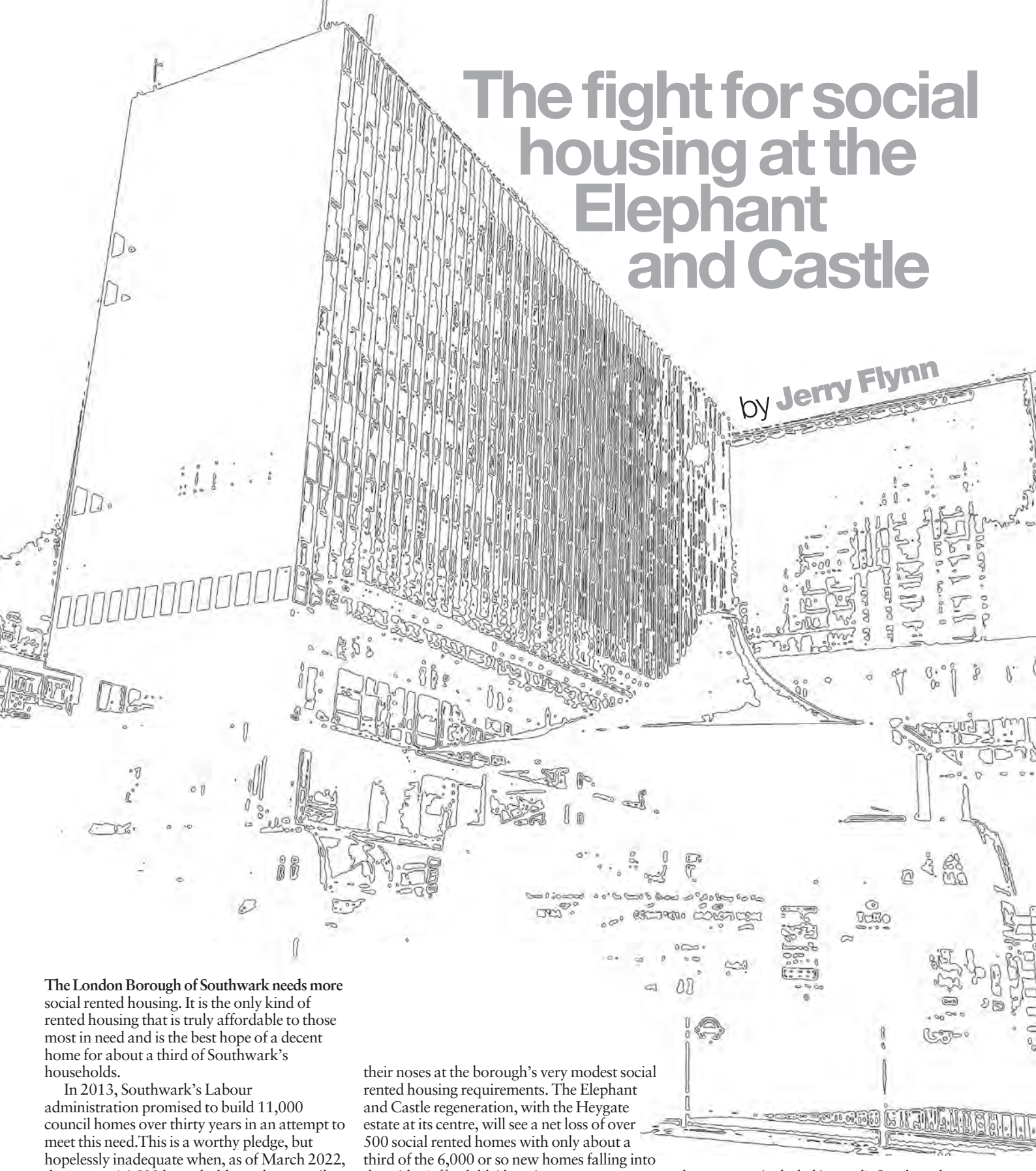
What do Rules of War and the Rule of Law mean to the rising generation and their grandparents? What confidence can they have in a political solution to the Climate Crisis? Those who attended the March 2022 webinar, *Youth Activism's Role in Pushing Climate Action Forward*, run by the NYU Center for Human Rights and Global Justice heard 19-year-old Chilean-Mexican Xiye Bastida, of the indigenous Otomi Toltec Nation, speak calmly in measured tones about the Glasgow COP: 'These COPs are older than all of us,' she said. 'They're just a PR exercise. They have the power. They have the money. If they intended to do anything they would have done it by now. They've done nothing. We can't wait for them. My hope comes from my community.'

Community power is the key. Lawsuits without the power of popular movements will not change the status quo. But a movement lawyering approach to strategic climate litigation creates the possibility of meaningful social change and gives impacted communities a renewed sense of agency and personal dignity. This can create a platform to assert power and make our demands for justice unstoppable. We must start with 'what do people want' rather than 'what is possible under the law.' That's how we push the limits of the law.

Richard Harvey is a Haldane Society Vice-President, a barrister at Garden Court Chambers and an in-house legal counsel at Greenpeace International. This article updates a presentation at a UCL Centre for Law and the Environment conference, 'Climate Change and the Rule of Law', on 31st March and 1st April 2022. A fully-referenced version is available by emailing *socialistlawyer@haldane.org*. The opinions expressed here are those of the author alone.

The fight for social housing at the Elephant and Castle

by Jerry Flynn



The London Borough of Southwark needs more social rented housing. It is the only kind of rented housing that is truly affordable to those most in need and is the best hope of a decent home for about a third of Southwark's households.

In 2013, Southwark's Labour administration promised to build 11,000 council homes over thirty years in an attempt to meet this need.This is a worthy pledge, but hopelessly inadequate when, as of March 2022, there were 16,500 households on the council housing waiting list. We need more of these homes, and now, not in 2043.

The council housing pledge also pales when measured against Southwark's wholesale demolition of council estates.Two of these, the Heygate and Aylesbury, will together cost the borough nearly 4,000 social rented homes.

The private housing developments that have dominated house building in Southwark for two decades have made the problem worse. Private developers have routinely thumbed their noses at the borough's very modest social rented housing requirements. The Elephant and Castle regeneration, with the Heygate estate at its centre, will see a net loss of over 500 social rented homes with only about a third of the 6,000 or so new homes falling into the wider 'affordable' housing category.

The redevelopment of the Elephant's other key regeneration site, the much derided (but also much-loved) shopping centre is typical of developer power and arrogance. In 2016, the owner, Delancey, proposed demolishing and replacing the centre with a retail, leisure and residential redevelopment. Thirty-five per cent of the homes in Delancey's proposal would be affordable housing, but without a single real social rented home in nearly a thousand new units (a meagre 33 'social rent equivalent' homes were included instead). Southwark Council meekly accepted that this was the 'maximum reasonable amount of affordable housing' that could be provided, as it had done many times before and Delancey's planning application looked set for approval.

Fortunately, a vigorous local 'Up the Elephant' campaign showed more backbone and Delancey secured planning permission only after making small but important concessions. This included providing 116 social rented homes and some relocation >>>

>>> space and funds for the many independent traders its redevelopment would displace.

Nonetheless, the scheme remained a bad one and we made a claim for judicial review to quash the planning permission. Unfortunately, this failed, in both the High Court (*Flynn v Southwark LBC* [2019] EWHC 3575 (Admin)) and the Court of Appeal (*R (Flynn) v Southwark LBC* [2021] EWCA Civ 827), despite the sterling efforts of the team behind the challenge (David Wolfe QC and Sarah Sackman of Matrix Chambers and Francis Taylor Building respectively, and Paul Heron of the Public Interest Law Centre).

The legal challenge against Southwark (with Delancey joining as an interested party) demonstrated that the Courts did not share our perspective on property development and planning.

As housing campaigners, we were warned that the question to be considered was whether the planning permission was lawful, not whether it was 'good' or 'bad', and we were prepared for the challenge to fail. But we also believed that the planning process was a moderately democratic one, where locally elected councillors sitting on the planning committee have the final decision on what gets built, within the parameters of planning policy and the law. Our case turned on what that 'final decision' was, how it was arrived at and whether it was put into proper effect.

Our main ground was that the planning committee had been misled about how the social housing part of the development would be funded. Delancey claimed it had a grant from the Mayor of London's Affordable Homes Programme, while also committing to building the social housing without this grant. Given this commitment, we argued that, if a grant was indeed in place, this gave scope for more socially rented housing. Both the High Court and Court of Appeal found to the contrary: the planning committee had not been misled and there was no scope for increasing affordable housing. Both Courts agreed with Delancey that the scheme was insufficiently viable (i.e. profitable), even with the Mayor's grant (a familiar argument, routinely used by developers to fend off demands for affordable housing).

Delancey promised the planning committee that it would give Southwark 'land and a sum of money' in the event that Southwark might have to build the 116 social rented homes itself (a prudent fall-back option). A second ground turned on the meaning of this phrase. The meaning seemed perfectly plain to us; if Southwark had to build the homes it would first get the land and then it would get enough money to build the homes. The Courts saw things differently. We had not taken into account the value of the land and, despite the fact that an early version of the s106 (Town and Country Planning Act 1990) agreement specified a £46.6m figure for the 'sum of money', the Courts held that no one could imagine such a figure would be paid. It would instead be up to Southwark to realise the value of the land, or otherwise find the money to build the homes. Indeed, it was possible that Southwark might have to pay something to Delancey, if the land value was so high it outstripped construction costs.

The root of this part of the decision lay with another of the Court's findings; that the long and detailed planning committee report only amounted to guidance and did not form part of the decision we were challenging. The Court found that the planning committee had passed a resolution (the 'instrument of delegation') allowing council officers wide discretion in how the committee's decision should be put into practical effect. If the committee had wanted to specify the sum of money to be paid by Delancey this should have been done in the resolution to approve, as the 'instrument of delegation'.

The Courts' finding on a third ground was probably the most telling. Both the High Court and the Court of Appeal held that there is no real difference between social rent, which grants assured lifetime tenancies, and 'social rent equivalent', which only grants assured *shorthold* tenancies of three years. Southwark's adopted policy required social rent, and while Delancey conceded this for the 116 social housing units, they insisted any increase beyond this through improved viability would only be as 'social rent equivalents'. The Courts thought that the significant point here was the tenant-only break clauses within the term, not that the tenancy itself only lasted three years. An undertaking by Delancey that the tenancies would be renewed automatically satisfied the Courts that this was good enough to make any difference between social rent and social rent equivalence a matter of 'nuance'.

We would acknowledge that the Courts gave careful step-by-step reasoning for each of their findings, laying out the facts behind them and their legal bases. But we are also left with the strong feeling that the trajectory of the Courts' reasoning was strongly influenced by sympathy for the practical problems of delivering a large, complicated development, thus favouring the planning authority and developer. The benefit of every doubt went to Southwark and Delancey in each of the Court's findings – the committee could not have secured more social housing, 'land' became the 'value of land', a three-year tenancy was as good as a lifetime tenure – always to the disadvantage of those who need social rented housing. We were naturally disappointed by this outcome, but not disheartened. The legal challenge was an important part of our campaign, but not the whole campaign. The practical improvements from Delancey's concessions would not have been gained if we had not demonstrated a willingness to overturn the whole scheme. We have also shown that a determined, broad-based local campaign can win concessions, even if not outright victory.

The Elephant and Castle in April 2021.

'Love the elephant, hate gentrification' banner outside the High Court.

Elephant demolition, October 2021.

Delancey's digitally created vision of the future.

'The benefit of every doubt went to Southwark and Delancey in each of the court's findings.'

Delancey moved quickly after the Court's decision in May 2021 and the shopping centre was completely demolished by the following October. The completion date for the whole two-site scheme is an optimistic 2030, but for the moment there is just a very large hole in the ground.

Meanwhile, displaced traders, nearly all of whom are from black and ethnic minority backgrounds, are doing the best they can to re-establish their businesses. Around two dozen secured premises on Castle Square, a temporary trading facility that was wrested from Delancey. Even though it is in a relatively favourable spot, on the edge of the new Elephant Park residential development, many are struggling. Footfall has always been critical for good trade and the enclosed design of the facility does not generate the passing trade small retailers depend upon.

About a dozen traders were also relocated to the Elephant Arcade, in a former garage space at the bottom of a council block. While the two traders whose premises are visible from the street are doing reasonably well, all the others are tucked away, out of sight, and trade has suffered accordingly.

These might count themselves as the lucky ones. Many traders did not get anywhere to move to and had to be content with modest cash payments instead. A relocation fund of £634,700, with a further £200,00 supplied by Southwark was never going to go very far; by Southwark's own estimate in 2018 there were over 130 small independent businesses at the Elephant. Many of these businesses simply moved on, without recompense, but worn out by a regeneration process which treated them as an obstacle, rather than as viable small businesses, providing jobs and supporting families.

'The legal challenge was an important part of, but not the whole campaign. The struggle continues.'

The struggle though, continues. Latin Elephant, a local charity and advocate for all local traders, and the Southwark Law Centre are working with traders to get some improvements to the trading conditions and to persuade Southwark Council that it needs to take a more robust approach to developers, if it is to fulfil its pledge that 'nobody will be left behind' in the regeneration of the Elephant. The traders who do remain have also demonstrated a good deal of resilience in the face of all the challenges of the Covid years and are determined to ensure that there is a place for them in the new Elephant and Castle.

Our campaign will continue, because the regeneration of the Elephant is far from finished. In particular, we will support the many traders who did not get relocated and who are now negotiating for new market space at the Elephant.

The Courts' decision raises the serious question of who is going to pay for the socially rented housing that our campaign's hard work has secured. Whatever the Courts may have decided, we are pretty sure that the planning committee did not have in mind that Southwark, rather than Delancey, should meet this cost, in the order of £46.6m. We will be surprised if Delancey does not seek to benefit from the Courts' advantageous interpretation.

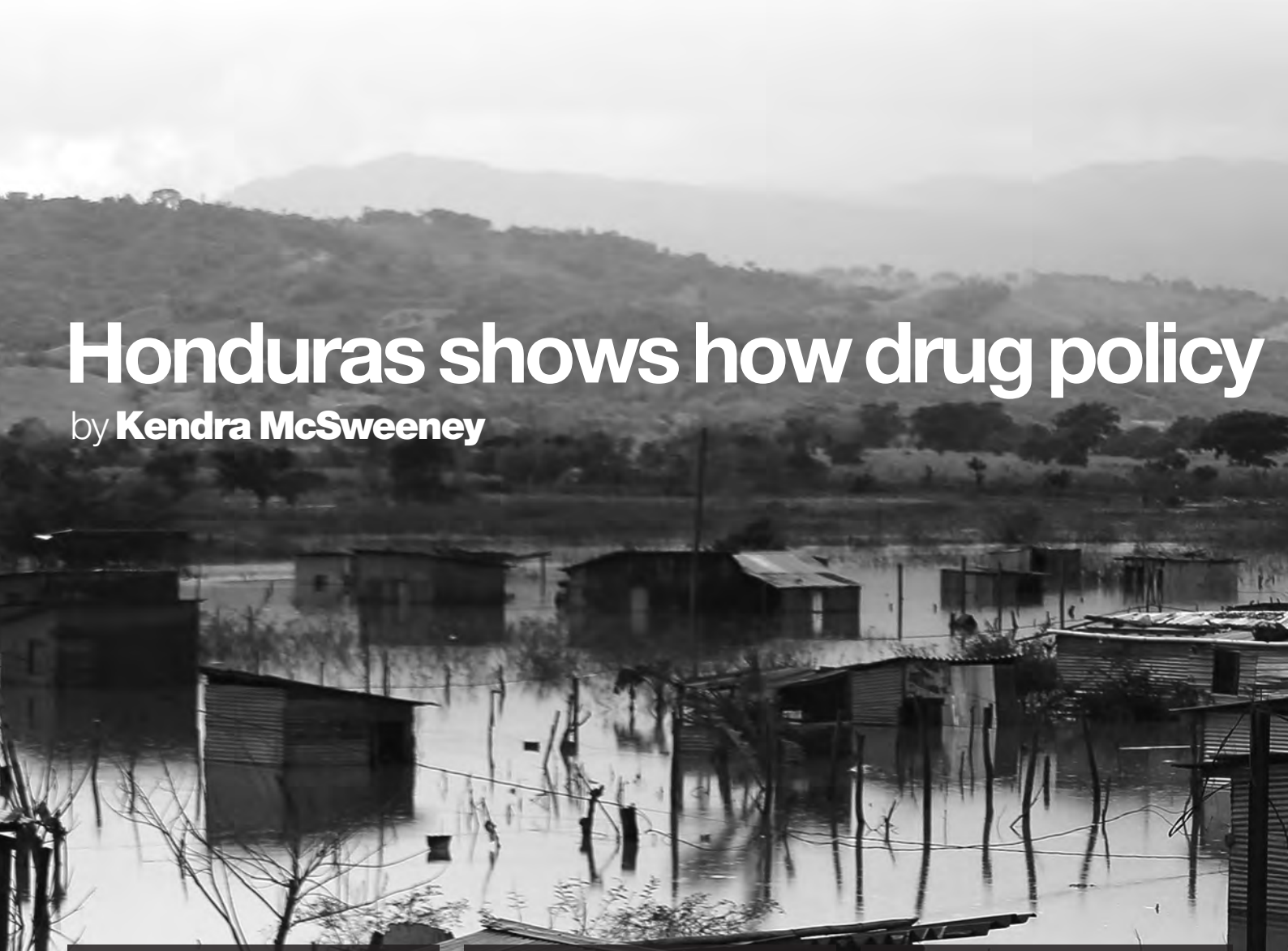
More generally, the Courts' decision demonstrates that not everything a planning committee thinks it might be approving gets into the finalised agreement – at least not in the way that it should. If a planning committee wants to be certain that any particular measure or amendment is adopted and effected in a given way, it must be specified in the 'resolution to approve'. This is a lesson both for campaigners and councillors who sit on planning committees.

Jerry Flynn is a member of the 35% Campaign and Up the Elephant

Our demo at the shopping centre.

Honduras shows how drug policy

by **Kendra McSweeney**



In late March this year, I got word via WhatsApp that six old friends were in the custody of Mexican immigration authorities. All are indigenous Tawahka from eastern Honduras' remote Moskitia region.

A month before, with only backpacks, they joined a larger group of migrants leaving from San Pedro Sula. Four days later, they had crossed from Guatemala into Mexico, where it took them a week to traverse the southern state of Chiapas. La migra picked them up somewhere north of Mexico City on 28th March 2022. From there, they were deported back to Honduras, joining the 17,266 other Hondurans returned from Mexico in the first four months of 2022. Now, they are hoping to leave as soon as possible to start their next attempt to get to the United States.

Here in the US, we are accustomed to hearing about the plight of Central American migrants. But the fact that indigenous Hondurans are joining that exodus might come as a surprise. Especially now: the latest news from Honduras would suggest a new era of hope, not despair. After all, the country seems poised to finally curtail the impunity, extortion, violence, corruption, elite-led extractivism, and environmental devastation that have flourished under the previous 12 years of US-backed 'narco-dictatorship.'

New president Xiomara Castro – her Libre party strongly backed by indigenous peoples and workers – came to power on a platform dedicated to defending human rights and citizen security, fighting corruption and drug trafficking, and mitigating the devastating effects of climate change on this hurricane-battered country. Since her inauguration in January, she has moved swiftly on all fronts. Her predecessor and his former chief of police have both been extradited to the US on drug-trafficking charges. Her administration has banned new open-pit mines. At her invitation, the UN is moving quickly to establish an anti-corruption commission. Environmental defenders are being freed from arbitrary detention. And her new Forestry minister announced immediate action to enforce protection of the country's watersheds and forests. Priority attention is focused on protected areas and indigenous territories in the Moskitia, where the country's astronomical rates of deforestation, much driven by drug-traffickers' actions, have been concentrated.

'News suggests a new era of hope, but indigenous peoples' lifeways and lands are hanging by a thread.'

For the many Hondurans who have long struggled to defend their rights to ancestral lands, to protect forests, and to mitigate climate change, these developments are inspiring. The focus on the Moskitia is particularly welcome. This is an area whose biological and cultural diversity are both extraordinary and co-dependent, and have offered crucial lessons on climate-adaptive living and governance.

But currently, indigenous peoples' lifeways and lands in the Moskitia region are hanging by a thread. For the past decade, massively enriched by profits from routing northbound cocaine through this key transshipment hub, traffickers and their elite cronies have turned massive expanses of rainforest into cattle ranches, and put previous indigenous commons under oil palm plantations. Traffickers claim, buy up, and convert rural land to control smuggling territory, launder money, and create a lucrative – if illegal – land market. They can do this because they wield what anthropologist Marcos Mendoza terms 'narco-power'. This is the power to bribe officials so effectively as to be above the law, and to control populations with extreme violence – or the threat of it – which

November 2023: hurricane Eta caused extensive floods, landslides and massive damages in central American countries including Honduras.

Picture: Delmer Membreño / Flickr / EU 2020

is also climate policy

undermines the coalitions and governance norms that formerly protected indigenous lands and conservation spaces.

In response to President Castro's widely welcomed initiative to return lands to indigenous communities and protect and restoring the Moskitia's remaining forestlands, the narco-landowners are up in arms, doubling down on their control of the land. They have started training rootless indigenous youth in the art of *sicariato* – how to become hit men. They have sent death threats to any indigenous resident who might denounce them to the authorities, and have put out word that they will not tolerate any indigenous resident who attempts to re-occupy a former homestead.

In over a decade of enduring life with narcos, indigenous residents have reported that they have never felt more threatened. One indigenous man who championed the new initiatives was shot in the stomach in a botched hit; he was spirited out of the region on a makeshift stretcher. Other leaders with reputations for speaking out in defence of indigenous territories and biosphere reserves have gone underground in Tegucigalpa, the capital. Another has sought refuge in Mexico. Regular indigenous family men – inheritors of vital collective ecological knowledge about sustainable farming and forest use – are giving up. Some have gone to find work picking coffee near the El Salvadoran border. Others, like my friends captured in Mexico, have headed north. They just do not see a future in their homeland.

This is why drug policy is also climate policy.

The global drug prohibition regime does two basic things. First, it ensures that all those who make, move, or simply take drugs are seen as criminals. Second, it keeps prices and profits high, which serves to massively enrich the middlemen who move drugs – whether they are known as 'narcos', 'cartels', 'transnational criminal organisations,' 'mafia' or some other name. And those rich criminals will always protect that profitability by exercising their narco-power. That means corrupting as many politicians, judges, mayors, police, and port and border authorities as they can; it means controlling as many trade routes as they can; and it means investing their profits in as many diverse sectors as as they can, including highly profitable land and agribusiness. And it also means defending those investments from any 'threat' – such as any state-led governance initiative to restore and protect forestlands.

'Powerful criminal actors are created and emboldened by the international system of drug prohibition.'

As long as cocaine and other drugs keep being produced in one part of the world and bought in another, there will always be middle-men in transit countries like Honduras that will get immensely rich from merely moving them along. And as long as drugs keep moving through Honduras, President Castro – leading the second-poorest country in the hemisphere that is struggling with crushing external debt – will likely remain limited in her ability to tackle narco-power. She may aspire to prioritise climate mitigation, and should be celebrated for doing so. But her administration's ability to actually act on that commitment will remain profoundly handicapped while there are such powerful criminal actors who are created and emboldened by the international system of drug prohibition.

This is not just happening in Central America, or just in Latin America. These same dynamics are repeated world-wide, wherever drugs are grown and move through borderlands, and in countries that already struggle with governance issues, from the opium landscapes of southwestern Myanmar, the cocaine hubs of Guinea-Bissau, to the multi-commodity smuggling sites of eastern Panama. All are sites where modes of narco-power currently dominate the governance of landscapes. And yet they are also the very landscapes with the greatest potential for planetary carbon sequestration, and thus where effective, transparent land management is most needed.

Indeed, the latest Intergovernmental Panel On Climate Change (IPCC) Report calls for 'accelerated action' to 'safeguard and strengthen nature' and to 'restore degraded ecosystems.' The report stresses that the implementation of adaptation and mitigation options 'depends upon the capacity and effectiveness of governance and decision-making processes.' In other words, effective climate action requires governance contexts where the rule of law is functioning, where states have legitimacy and authority, and where criminal actors – whose number one revenue stream is drugs – do not ultimately determine the fate of land, resources, and biodiversity.

As long as global drug policy is dominated by drug prohibition, there will be powerful criminal actors at every scale – from rural villages to the highest halls of power – who will undermine the sound and sustainable management of the land and resources that are so essential to our planetary future.

Kendra McSweeney is a professor in the Department of Geography at the Ohio State University; the author of *The Impact of Drug Policy on the Environment* and her work can be found at: https://geography.osu.edu/people/mcsweeney.14

Laws: better fewer, but better

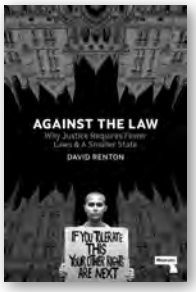
Picture: ©Jess Hurd

As the government passes more legislation to grab powers from Parliament, **Nick Bano** looks at the case for less laws and a smaller state

'Dear Mister President' (Grandpa Simpson types a letter out loud) 'There are too many states nowadays. Please eliminate three. I am not a crackpot'.

David Renton is certainly not a crackpot. He is an eminent left-wing lawyer and author. But, like Grandpa Simpson, he immediately recognises how unusual the theme of his latest book must sound. In *Against The Law* the argument runs that there are too many laws nowadays. But instead of being a right-libertarian diatribe, the point of the book is to raise consciousness on the left. To point out how the sheer weight of statute books is the product of the dominant political forces of our age, and how the consequences harm us all.

There is a tendency in left publishing these days to produce quick-turnaround books, which tend to have a good-but-predictable essay for a first chapter, and filler for the rest. More often than not, the substance is captured from social media discussions, like a modern-day enclosure of whatever little commons remains to us. In that context, this book immediately stands out. The argument is compelling, original, well presented, and – crucially – worth discussing. The points of disagreement below are meant in that spirit: in the delight of engaging in a worthwhile debate.



Against the Law: Why Justice Requires Fewer Laws and a Smaller State
by David Renton, published by Repeater, July 2022.

Un-making the law

The book is an argument for the 'de-juridification' of our lives. What distinguishes the key argument from a right-libertarian one is Renton's position that the ideal of de-juridification is a post-capitalist one ('[t]he withering away of the state, and the reduction of the law in particular, become sustainable ambitions only when capital and the state have suffered a significant defeat'), rather than a call to de-regulate within the framework of a continuing capitalist state.

But to get to that point, Renton has to justify why the excessive amount of law is unwelcome in the first place. He does so by giving an account of the rise of the law under the political dominance of neoliberalism and populism (drawing, provocatively, a bright line between those two phases of history). He calls for a system that is simpler than the laws that have sprung up under those regimes, and also for a total retreat from the state in some areas.

We are shown why the neoliberal promise to shrink the state was never fulfilled. Re-making the world – tearing down the post-war social democratic settlement – meant implementing a proliferation of foundational new laws. We saw the disempowering of the trade unions and the complex regulation of social provision to the working class, which involved making many new laws. The immiserated masses then had to be controlled with new measures aimed at enforcing discipline in other aspects of life. But there was no countervailing repeal of the old laws. They were left to burn out in their own time. Each new measure was added to the previous one, instead of replacing it. A highly complex system grew more complex each year.

'Vast, empty acts of Parliament have created frightening new powers for ministers to make new laws.'

There are some crucial points about the changing nature of power structures. Even as a practising lawyer, the sheer scale of the transfer of power from Parliament to the executive had passed me by. Vast, empty acts of Parliament, by-products of Brexit and Covid, created frightening new powers for ministers to make new laws.

This speaks to a serious failure of the Labour Party – both under Corbyn and Starmer – to properly oppose the executive's power grab. Both leaders were hamstrung, of course. Starmer's legislative role would have been Quixotic – given the massive hard-right Parliamentary majority – even without the pandemic. Corbyn was understandably cautious about making too much of a fuss about anything that smacked of an anti-Brexit attitude, given the impossible balance within his own party and (as Renton points out) the sheer power of the 'Get Brexit Done' sloganeering. But it is remarkable that the remaking of the British state was so achieved so *lawfully*, and that elements of it passed through Parliament even with a minority government and a left-wing opposition leader.

Fighting back against Tory legislation. Relying on the law is disempowering and self-defeating.

As far as Brexit goes, the book (surprisingly) does not look very closely at key argument of the Lexiteers: the neoliberal nature of the EU itself. The book cites examples such as the Private Finance Initiative as emblematic aspects of New Labour neoliberalism, but it skips over the idea that New Labour was really a product of the EU. The Maastricht Treaty's public borrowing restrictions and state debt rules had both led to the under-investment that New Labour had made it its mission to reverse, and ensured that Blair and Brown could only do so by neoliberal methods. So, while the Brexit passages do important work in de-mythologising the EU as an overbearing *petty* rule-maker, they are ungenerous to the sincere left critique of the EU as a prime mover of neoliberal state policies. I can understand the need not to ruffle feathers (I drive most people I know into howls of rage by being an EU agonistic), but this will disappoint some readers.

The final third of the book deals with the 'withering away' of the state in a post-capitalist society. Many readers, though, will be more interested in how the de-juridification argument works in the here and now. Renton squares this circle quite neatly by asking: does the shrinking of the law under current conditions help to progress society towards the end-point?

Law as politics

The book collects a number of strands of thought, but probably the most useful and timely aspect is its lesson against the use of litigation as a replacement for politics. This is something I have been concerned about myself (see *SL*87, p.15), but Renton puts it much more persuasively than I have managed to. For today's social movements, he complains, 'victory must take the form of an increase in rights, and recast unwanted behaviour not as unfair or destructive but as illegal'.

He makes this argument to point out and discourage the current tendency of political movements' appealing to the law, using the examples of the 2003 movement against the illegal war in Iraq, the Occupy London protesters' uncomplaining participation in eviction litigation, and Gina Miller's Brexit litigation. But the doyen of law-as-politics practitioners is Jolyon Maugham QC's Good Law Project ('GLP'), who managed to prove the book's point just as it was being prepared for publication.

In a high-profile case concerning the appointment of Dido Harding to a senior NHS role, the GLP managed to establish that it did not have sufficient standing to bring its preferred type of claim. But this didn't stop GLP from chalking the case up as a win (because a separate claimant did have standing, and succeeded in-part). At the same time, Matt Hancock's spokesperson said he was 'delighted the department [of health] has won yet another court case against the discredited Good Law Project', adding that the judgment 'highlight[ed] the fact that this group continues to waste the court's time'. This sort of score-draw in litigation is unedifying, distracting, and not particularly useful at the best of times.

'The most useful and timely aspect is its lesson against the use of litigation as a replacement for politics.'

The problem with legal challenges against the state, Renton explains, is that you are throwing yourself against the very people who decide what is lawful and what is not. Laws can be changed in response to victories. And the more 'we' win, the more tempting it is for the Government to slip the leash (see, for example, the Government's plans to weaken judicial review remedies). And the courts themselves are alert to the danger of the increase in political lawyering: in a recent welfare benefits challenge, the Supreme Court made some fairly spurious slurs against the Child Poverty Action Group's public interest work, which seems to have been a shot across the bows.

Relying on the law is also disempowering and self-defeating. 'Juridification' Renton explains 'teaches the participants in social movements that change must come through the work of others. It is the task of lawyers fighting courtroom battles, rather than of the people themselves'. This point about the centring of lawyers is crucial, and we must all be on our guard.

A theory of populism

Renton traces the roots of 'post-neoliberal' populist lawmaking to two Weimar-era thinkers: Max Weber and Carl Schmitt. He draws a parallel between the post-2016 transfer of power from UK Parliament to the executive (legitimised through referenda) with the populism that Weber and Schmitt had studied in the twentieth century. This is an interesting springboard for a study of modern populism, and it is striking (for example) that it was exactly 101 years after Weber gave a morose speech about the tendency of social democratic parties to be taken over by lawyers that Starmer stood for the Labour leadership election.

But I happened to come across something by the Frankfurt School legal scholar Franz L. Neumann (a >>>

'As lawyers, we are willing participants in this ballooning system of case law and judgments.'


Picture: ©Jess Hurd

>>> contemporary of Weber and Schmitt as theorists of the emerging German state) just as I was reading *Against The Law*, which made me think twice about Renton's method.

Neumann points out a fundamental difference between German and British lawmaking. In the pre-Weimar tradition, the German bourgeoisie was content for the state to simply guarantee their economic freedoms, and they gently encouraged a minimalist set of laws which should 'not attempt to do more than the merest "fencing in"'. They took no active interest in how laws actually came into existence. But the English tradition, Neumann pointed out, has always been for the dominant class to get right into the guts of lawmaking. The British bourgeoisie has historically guaranteed its interests 'genetically, that is, through participation in the making of laws'.

Neumann says that it was the transition to a more modern, more capitalist form of state in the Weimar era, in which class interests were suddenly important and needed to be represented in politics, that caused the German bourgeoisie to abandon their indifference to the origins of laws. In this new form state, it was this new and active inclusion of class interests in lawmaking that had coincided with the rise of populism as well as the growth of the executive. So, the historical parallels may not be exact: it might be argued that rise of executive power in Germany owed as much to the increased participation of the bourgeoisie in lawmaking (which had always been the case in Britain) as it did to populism.

But in a way I think this rift between German and British traditions helps to advance Renton's argument. The proliferation of laws that the book identifies is almost certainly due, in part, to the active role that the British bourgeoisie has long played in developing statute and common law. It has guaranteed its class interests, against the interests of the working class, through its representation in Parliament and its advancement of litigation (for a totemic example, consider the case law concerning anti-strike injunctions). Renton is a very astute historian of fascism and you can see why he looks to the early 20th century to find the pattern of populism, but perhaps this method does not quite account for the uniqueness of British lawmaking. Perhaps what we are really seeing is the simple rebranding of bourgeois state managers as representatives of the interests of the disaffected.

There is a rich (sometimes even tedious and omnipresent) body of literature about the peculiarities of British capitalism. Other writers might have chosen this, rather Weber and Schmitt, as the starting point for understanding post-neoliberal populism in the UK. But in Renton's defence this is a book about the law, so it is a perfectly sensible idea to ground the argument in state theory rather than the more sociological and economic debate about Britain's extraordinary development.

'It is important to remember Marx was explicitly opposed to notions of moralism and to appeals to rights.'

And, unlike the over-theorised question of neoliberalism, these debates are new. The scholarship surrounding populism is unsettled and interesting, and this is a very valuable contribution – particularly given the author's expertise as a historian of fascism.

Marx and the law

In the final third, the book comes on to look at Marx. Drawing on *Capital* and some of the less-cited works, Renton's interpretation is that the state emerged to balance (although not necessarily evenly) the conflict between capitalists and workers. It is not an interpretation we share, and I have always been more struck by Marx's account of how the Factory Acts came into being: anxious capitalists approached the state to ask for working time regulations because, if left to their own devices, they would simply kill the working class through the intensity of competition. The state exists for the reproduction of the conditions for capitalism, and any benefits to workers are incidental means of propping those conditions up. But this is a neat distinction.

Renton outlines the key debates about law, justice and Marxism, and it is important to remind ourselves that Marx was explicitly opposed to notions of moralism and to appeals to rights. Such standpoints are rooted in notions of private property, and do not correct for different people having different needs. Ross Wolfe's article *Marxism Contra Justice*, which is free online, is a useful distillation of these debates, and complements the book well.

The final chapter is a challenge to environmental champions, as an analogue for politics everywhere. Do we build up an edifice of laws to protect the planet, or do we reject that as reformism and work towards a post-capitalist alternative? For Renton, we should prioritise not an increase in our legal rights, but greater social power outside the law, although it is interesting to reflect on how these aims often go hand-in-hand. In housing, for example, which Renton often uses as a case study, the making and reproduction of social movements could be achieved so much more easily if we had better legal rights regarding safe, secure and affordable homes.

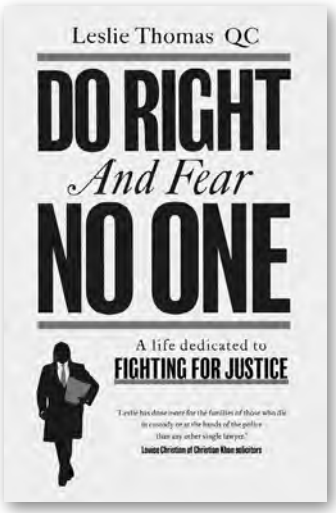
As a coda to the book, it is worth thinking about the idea that the common law is inherently dialectical, and makes Renton's call for de-juridification almost impossible. Case law must grow year on year as it talks to itself, and as litigants interact with the existing decisions. Uber drivers are an excellent example. The elaborate contractual relationships that Uber invented was designed to deal with (more accurately, to escape) the previous decisions of the courts, who had been drawn up to answer similar questions under slightly different conditions. And it is the same with property guardians. In both examples, judicial decisions that had been designed to deal with the social problems of concrete haulers or hostel users in the 1960s had to be reconciled with the modern phenomena of anti-squatting profiteering and app-led cab hiring. Each decision adds complexity, refinement and weight.

French economist Phillipe Ashkenazy claims that fewer lawyers exist in France than in England and Wales as a result of the Napoleonic tradition of a codified system of laws. The common law system is much more complex, and more people need lawyers as a result. There may well be some truth in that. In almost every case concerning the Public Sector Equality Duty, for example, the judgment complains that – despite only having existed for 10 years – there is a vast body of case law, and the judgment itself inherently adds yet another. As lawyers, we are willing participants in this ballooning system, and Renton wishes – for everyone's sake – that it would stop.

Nick Bano is a lawyer specialising in housing and accommodation-related issues

No-holds-barred account

Do Right and Fear No One, by Leslie Thomas QC, Simon & Schuster, 2022



Leslie Thomas QC's professional website profile at Garden Court Chambers contains what you might expect for a well-known QC, he is an expert in police law and Article 2 inquests, he is an amazing advocate et cetera. Leslie's autobiography is much more revealing. He tells us how he got to his current success, but also, crucially, explains why his work for bereaved families and victims of police shootings or assaults matters.

Full disclosure: Leslie and I are both members of Garden Court Chambers, I have known him for over 25 years, and succeeded him as one of the Joint Heads of Garden Court Chambers.

What distinguishes Leslie from the normal successful QC is that he has spent his professional life standing up against state racism. More than any other barrister, he is the person who has represented black men, principally men, killed by the police, prisons or other institutions, or beaten up, or unlawfully arrested and imprisoned or who killed themselves in very mysterious circumstances. The roll-call of his famous cases is lengthy: Sean Rigg (who died on the floor of Brixton police station), Azelle Rodney (shot by the police), Christopher Alder (died on the police of Hull police station), Mark Duggan (shot by the police), the Hillsborough families, families of those killed in the Birmingham pub bombings, the Bereaved Survivors and Residents of Grenfell Tower and more. Leslie's account of these cases reads like a thriller, and it's sobering to remember they were real.

Leslie is the lawyer in the inquest, or the inquiry, or the Court claim, who puts the bereaved family's questions and their case. He's looked police officers in the eye and said "Sergeant you are a liar…. You grossly failed in your duty of care" –when the police left Sean Rigg dying alone in the back of a police van, with him finally to die on the concrete floor of Brixton police station. Leslie's job is to obtain clarity so that families know how and why the deaths happened. Clarity is the first step in a family's search for justice.

Sometimes clarity reveals that institutions are not to blame. At other times, institutions are exposed as employing racist bad apples, systematic failures and even institutional racism. That's why clarity matters.

What also matters to the clients, most of whom are black, is when their representative personally understands racism. Leslie is uncompromising in his account of growing up black in West and South London, of losing friends or girlfriends due to racism, of certain pubs or clubs being danger zones. He describes being asked what island he came from and whether he liked cricket when he was a pupil, dining in Inner Temple Hall. And the common experience of black lawyers: when Court officials assume you are the defendant. Leslie speaks for so many when he writes: 'the racism wasn't always explicit, but I could always sense when a judge was against me because of the colour of my skin.'

> 'Leslie's account of his cases reads like a thriller, and it's sobering to remember they were real.'

So being subject to racism is part of Leslie's lived experience. Good lawyers don't have to have the same lived experiences as their clients, but where they do, it helps to promote trust.

Everyone contemplating a career in the law should read this book. Leslie is brutally honest about the vicissitudes of life at the bar: mistakes he made early on, a work commitment that impacted on his personal life, and (by the nature of his practice) unwanted media attention, as well as the highs of winning high-profile cases. But the book is about far more than one lawyer's career. It is a no-holds-barred account of all the key inquiries into police institutional racism and should be read by campaigners, journalists and anyone with a hunger for justice.

Liz Davies QC

Recalling a period of inmate solidarity

British prisons are in a perpetual state of crisis. Report after report has found chronic overcrowding, endemic violence and abysmal living conditions, compounded since 2020 by the pandemic, which prison authorities have used as a convenient pretext to confine people to their cells for over twenty-three hours a day, in breach of the UN's Nelson Mandela rules. Deaths in prisons are at historically high levels, with on average over one person dying daily last year, as are rates of self-harm, mental ill health and drug addiction.

The government response has been predictably expansionist, with the headline-grabbing figure of 20,000 extra prison places announced in the government's *Autumn 2021 Spending Review*. More policing and more prisons is the default, a callous and thoughtless response to social problems thrown up by inequality and poverty in our society. The direction of travel appears to be a US-style regime of mass incarceration, with similar levels of racial disproportionality.

A series of documentaries screened this year by the abolitionist group Prisoner Solidarity Network (PSN), in collaboration with the radical archiving project MayDay Rooms, take us back to an earlier period – the late 1980s and early 1990s – when treatment of prisoners was no less appalling but prison organising and solidarity provided some hope that conditions could be improved, the sympathy of the wider public elicited, and the 'common sense' of carceral politics undermined.

Not seen since their original broadcast, the documentaries were commissioned by Channel 4. The production team was given a generous budget and free rein to visit prisons across the country and to speak to prisoners and former prisoners about their experiences. It is a grim irony that the British media landscape is set to be further impoverished with the planned privatisation of Channel 4 announced earlier this year.

The first, *Voices of Long Lartin* (1989), documents an extraordinary and possibly unique historical moment: a prisoners' forum organised by prisoners themselves to air their grievances and raise wider issues about the prison system. John Bowden, a PSN member and one of the long-term prisoners responsible for initiating the forum, tells me that it was the achievement of a long cycle of struggle in maximum-security prisons through the seventies and eighties, which 'fundamentally changed the balance of power between prisoners and guards and empowered us prisoners considerably'. This found

'The forum at Long Lartin was achieved through a long cycle of struggle in maximum security prisons in the 1970s and '80s.'

expression in the 'organisation of prison unions, representative councils, and regular protests in the form of work strikes, peaceful protests and other actions'.

One of the most politically active and recalcitrant prisoners, Bowden himself was prevented from attending after being transferred – or 'ghosted', as prisoners call it – to another prison. During the forum we see prisoners – and the occasional independent-minded screw – discuss long-standing issues such as lack of accountability and transparency, meagre post-release support, low wages, and institutionalised violence. They also confront Long Lartin governor Joe Whitty about the general lack of trust between prisoners and prison authorities. Yet one suspects that the scope of the forum was subject to limits imposed by the prison authorities. Although outside speakers were invited, they were decidedly reformist in persuasion – the absence of radical and abolitionist groups is notable. And at one point we see Whitty making a surreptitious throat-slitting gesture, signalling the premature end of the morning session of the forum to fit around the prison's work schedule.

According to Bowden, Whitty agreed to the forum without seeking permission from the prison authorities or the Home Office (the department responsible for prisons and probation until the creation of the Ministry of Justice in 2007) and was pressured to leave the job soon after. Whitty, who died in 2013, comes across as an earnest but cautious reformer. From a poor working class Irish Catholic background, he undoubtedly had a greater understanding of and sympathy for those he governed than most in his position, and he did not hesitate to describe the prison system as a 'disaster'.

But Bowden believes that Whitty was 'caught in a serious personal dilemma' as governor 'because he essentially believed that prisoners should be treated humanely but worked for a system that believed otherwise'. After Long Lartin, Whitty took over the young offenders prison in Feltham, where he

A still from the documentary The Ghost Train, *part of the* World in Action *TV series.*

encountered the extreme harm done to young people in the system – and, certainly not for the first time, the Home Office's stubborn resistance to making improvements. This was his last job in the prison service, but he went on, according to a *Guardian* obituary, to work for a private company running prisons and for Heathrow immigration detention centre. For his entire career, then, he remained committed to carceral solutions, despite being consistently critical of their flaws. Like many reformers, he was committed above all to saving, not dismantling, them.

The other two documentaries were broadcast as part of Channel 4's investigative *World In Action* series in 1991 – a year after the longest ever period of unrest in British prisons, which began with the uprising at Strangeways Prison (now HMP Manchester) before spreading to twenty-five other institutions. The *Woolf Report*, commissioned by the government in the aftermath and published also in 1991, was important less for any path-breaking radicalism – as David Scott has argued, its fundamental purpose was to 'restore the authority, legitimacy and stability of the prison service' – than for its adherence to liberal ideas about rehabilitation and humane treatment. Bowden says that Strangeways was 'an extremely brutal jail where the guards had absolute power over prisoners' and had 'a positively empowering effect on prisoners and deeply frightened the prison authorities'.

The Ghost Train shows how little had immediately changed after Strangeways. Widespread use of segregation and long-term solitary confinement persisted – and that is still the case today. According to Bowden, 'solitary confinement remains a weapon of control in the prison system and there now exist Close Supervision Centres (CSCs) in maximum-security jails where "difficult prisoners" are held in solitary confinement for years'. Last year, the UN special rapporteur on torture concluded that CSCs – which currently hold over fifty people, approximately 40 per cent of them from minority backgrounds – are 'neither legitimate nor lawful' and 'may amount to torture'.

The final documentary looks at the extreme violence inflicted on prisoners by prison officers in *The Hate Factories*, the name given to those institutions where brutality was most routine and went unpunished. Victims describe the Home Office's attempts to hush them up with small *ex-gratia* payments, thereby avoiding admission of liability and preventing cases being heard in court. Secrecy clauses were also attached to prevent negative publicity. Bowden, who still maintains contact with prisoners two years after his own release, says that such violence remains 'the main method of control in prisons', especially against those who challenge authority. 'If prisoners dare to question or fight back against how they're treated', he explains, 'then they're physically and mentally brutalised. Prisons essentially are

'The extreme violence inflicted on prisoners in the Hate Factories remains "the main method of control" in prisons today.'

weapons of state violence and their true purpose is to break and destroy prisoners.'

It is difficult to feel optimistic about prison struggles today. There are many barriers to prisoner organising. The current near total lockdown of prisons under the guise of health and safety measures is one. Another, in Bowden's view, is 'the fundamental change in prisoner culture over the last fifteen years from solidarity and unity to a sort of Americanisation in the form of prisoner gangs, which the system has encouraged'. There are no easy solutions to this. Those of us on the outside have a role to play, of course – becoming active in prison abolitionist groups like PSN, Community Action on Prison Expansion (CAPE) and Anti-Carceral Solidarity, for example, or making clear the connections between the prison system and our struggles against other forms of state violence and neglect. Bowden also reminds us that 'in all places of brutal repression resistance is possible, and within prisons that seed of resistance and revolt is always nourished'.

Joseph Maggs

For info on the Prisoner Solidarity Network, go to: https://prisonersolidarity.wixsite.com/psnldn/home – to see the films on YouTube go to: https://bit.ly/LongLartin1989 https://bit.ly/HateFactories1991 https://bit.ly/GhostTrain1991

A fiction that reveals truths

Sherwood, TV & DVD, 2022, BBC

Rarely do we get decent, intelligent, political, British television drama, fictional but loosely based on fact, with all the compelling ingredients of suspicion, crime, death and suspense. When we do, we remember them well. *Our Friends In The North*, *A Very British Coup*, *State of Play* and *Edge of Darkness* are great examples, but they all seem like such a long time ago. So when James Graham's *Sherwood* six-part series was aired in June 2022 I hoped it could be everything I wanted it to be. In many ways I wasn't disappointed, despite it sometimes falling short. The drama, inspired by horrific and heartbreaking events that took place in Ashfield, Nottinghamshire in 2004 but set in 2014, has a complicated plot and storyline that many writers dare not or would not touch.

With an array of talented actors that most production companies could only dream about, it was brilliantly directed with attention to location and a great atmospheric and symbolic use of music throughout the drama and during the credits. The writer has done a great job to produce a thoughtful and fictional adaptation of brutal killings and a divided community.

Sherwood is cleverly constructed around connections and references relating to Nottinghamshire, the forest, Robin Hood and bows and arrows. When the series starts and ends with television footage from the 1984/5 miners' strike you know it is going to engender strong emotions. *Sherwood* portrays a close knit mining community and the relationships built in a village where most people there are connected to the pit and coal industry. Despite some extreme differences and views held amongst the villages population, the occupants sometimes mix in the same social circles with all the inevitable hostilities and antagonism that this is bound to create even thirty years after the great miners' strike of 1984/5.

With flashbacks to the strike, the drama does not shy away from depicting harrowing scenes of anger and violence from the past and the present and rightly portrays the Metropolitan Police as an unwanted, destructive and damaging intrusion in the area. The programme does, however, drastically tone down the Police's behaviour during the strikes. It implies that well-meaning, naïve, and even kind, officers are typical, acknowledging to others that they are, and have been used by the state, yet could also have a successful career in a state-controlled body.

The majority of miners in the village portrayed in the drama and in real life did not go out on strike when the overwhelming majority of miners in Britain did. They chose instead to cross picket lines and undermine the mass industrial action against the Tory government's plan for pit closures. With full police protection they witnessed fellow workers being attacked and brutalised by the police because they were fighting for all their jobs, their industry and community. Despite being strike breakers who demand the right of the individual to choose rather than respecting the decisions and actions of collectivism, the strike breakers still portrayed themselves as victims and were offended for being called what they are, 'scabs'.

The killings, suspicion and devastation are clearly not the only enthralling aspects of this series. There are many highlights including the clever use of the lawyers depicted in the drama. There is a solicitor employed to deal with a number of claims for wrongful arrests during the strike. He maintains in a discussion with two senior investigating police, that the claims have gathered momentum since the campaign around Orgreave. The writer has clearly done his homework when he gives the solicitor the voice to emphasise that there were 11,000 miners arrested during the strike and that even though some charges were dropped, there were ongoing issues relating to smears, lies, blacklisting and spycops. The police try to defend this action as police operatives only doing what was requested of them by their superiors, implying that these kinds of activities by the security services were historical and had ceased once the government's 'Special Demonstration Squad' had been disbanded. The Solicitor emphasises the damage caused to people by their own government using spycops to penetrate so-called radical groups and trade unions for many years to unlawfully snoop on individuals, purely because of their politics. Spycops were deployed to destabilise the National Union of Mineworkers (NUM) by infiltrating local communities, which is reflected in the storyline of strong suspicion that a spycop lives in the village.

> 'Graham has done his homework, so we hear of 11,000 miners arrested in the strike and the use of smears, lies, blacklisting and spycops.'

Later in the drama we hear what effectively becomes a brief speech by a retired solicitor who states she now works *pro bono* for the Orgreave Truth and Justice Campaign and sometimes works for and represents the NUM. She talks about the current NUM involvement as a core participant in the Undercover Policing Inquiry. When the police she is in discussion with try to dismiss undercover policing as usual policing practice she explains that organised crime is not the same as political groups that the government doesn't like and that political policing is used against non-violent members of the public who have had every aspect of their lives infiltrated and documented.

She talks about the state-sanctioned misogyny and rape by spycops of women political activists and the spycops' subsequent anonymity. She is exasperated by the many horrific state actions being denied instead of dealt with and learned from. When she highlights the release of the Tory cabinet papers from the strike under the 30-year rule she refers to the infamous 'Ridley Plan' and how the Tories wanted the strike in a nationalised industry in order to break away from collectivism to deregulated market forces and change the country forever. Her emphasis on justice relating to Hillsborough, phone hacking and Stephen Lawrence is an opportunity to encourage people to carry on campaigning.

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There are, however, some aspects of the drama that are not plausible. Although it is set in 2014 there are references relating to later years. It is also questionable as to whether scabs would fundraise for strikers and their families and that they would spend time socialising together. The depiction of the local police as gullible public servants who acknowledge that it is in the interests of the state to divide communities to wield power does not ring true. Neither does portraying spycops as guilt-ridden individuals in perpetual torment, as if their devastating actions are historical and as a consequence of them being young and naive. The police and spycops are members of dangerous and powerful state-controlled organisations. Spycops are assigned dead children's names, initiate destructive and abusive activities, blame political campaigners for their actions and then leave the people whose lives they have destroyed and move on.

Sherwood depicts many aspects of working class life: poverty, solidarity, community, stoicism, sarcasm, humour, compassion, resilience. It is a clever and refreshing drama that has encouraged analysis and conversations. It has been a great opportunity like some political and entertaining films such as *Brassed Off*, *Pride* and *Made in Dagenham* that although are factually inaccurate at times with a generous use of dramatic license, have alerted many people to subjects they either knew nothing about or had a different view on. *Sherwood* is well worth watching and it would be wonderful if we could have more and regular dramas of this calibre. It is credited to the loving memory of Keith 'Froggy' Frogson, former miner and NUM activist.

Kate Flannery

Kate is Secretary of the Orgreave Truth and Justice Campaign

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