

# Socialist Lawyer



Magazine of the Haldane Society of Socialist Lawyers ■ Number 61 ● July 2012 £3



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**Deller**  
**artwork**  
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revolution

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Interview  
with Mark  
Serwotka

Paul Preston  
on Baltasar  
Garzón

Obituary: Lord  
Wedderburn,  
Zimbabwe and  
much more

# Socialist Lawyer

Number 61, July 2012

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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.

The list of the current executive, elected at the AGM in November 2011 is as follows:

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Cover picture: Jess Hurd (Report Digital).

**Spanish miners in Asturias, northern Spain salute as they march past Poso Maria Luisa coal mine, famous for struggles in the 1930s. The miners have been on strike since the Spanish government announced cuts to mining subsidies due to austerity cuts which will mean an end to mining.**

# Message from the Chair

## Standing up for human rights

Campbell  
&  
Coulson  
sharing  
a cell.

*Our exclusive back page artwork has been kindly donated by **Jeremy Deller**. Jeremy is an artist who won the Turner Prize in 2004. His work has included a film re-enacting the Battle of Orgreave which took place during the Miner's Strike in 1984. His artwork was recently exhibited at The Hayward Gallery in London at the show 'Joy in People'. His previous projects have included 'Acid Brass', a musical collaboration with the Williams Fairey Brass Band from Stockport, in a fusion of traditional colliery brass band music with acid house and Detroit techno.*

Since the last issue, The Haldane Society has organised one of its most successful conferences in its history: Defending Human Rights Defenders held jointly with Amnesty International and European Lawyers for Democracy and Human Rights. 150 people heard from human rights defenders from Belarus, Chechnya, Dagestan, Colombia, Palestine, the Philippines and Turkey. This issue contains a short report and pictures can be viewed on our website. A longer report will be available in the autumn.

Our comrades from overseas are an inspiration to us. Lawyers, trade unionists, journalists and even judges put their lives at risk by standing up for human rights. We were sad that Aleh Volchek, a lawyer in Belarus, was unable to join us because he had been detained a month before the conference and his passport had been confiscated. In the Philippines, the National Union of Peoples' Lawyers is challenging impunity by bringing a private prosecution against retired Army Maj. Gen. Jovito Palparan, accusing him of complicity in disappearances. The retired General is evading the court process. In Turkey, lawyers representing Kurdish or left-wing prisoners are frequently arrested. Perhaps the most striking observation was from the Palestinian comrades: since they came from East Jerusalem, Ramallah and Gaza, our invitation to visit London meant that the three of them could meet each other. In Palestine, Israel prevents travel between those areas. In Colombia, several leading members of the National Movement for the Victims of State Crimes (MOVICE) have been detained by the State, and, when they eventually face a trial, are at risk of false accusations.

We could only invite representatives from a few countries and are conscious that human rights defenders are at risk in many countries. In this issue, Brian Richardson describes political persecution in Zimbabwe: the prosecution of members of the Movement for Democratic Change.

The Haldane Society was pleased to provide a platform to bring some of those well-known and less well-known struggles together. We are committed to providing practical solidarity to our comrades, with calls for urgent action, statements in support and denunciations of repressive measures. We will work towards

holding future conferences and facilitating electronic networks and communication. The issue of impunity was a recurrent theme: how to hold governments, and corporations, responsible for their crimes by due process of law.

The passing of the Legal Aid Sentencing and Punishment of Offenders Act 2012, despite the record number of Government defeats in the House of Lords, means that the changes to legal aid come into force next April. The lobbying campaign against LASPO was one of the most impressive and effective I have ever seen and, crucially, turned the issue from lawyers' interests, as claimed by the Government, to an issue about welfare rights and access to justice.

How can we now stop the decimation of legal aid, the NHS, welfare benefits and the other pillars of the welfare state? Clever lawyering is one way forward. There are complex provisions in the Act permitting the Lord Chancellor to increase the scope of legal aid. But our interests, and those of the public, are identical to public-sector workers. Legal aid lawyers are effectively public-sector workers employed in the private sector. As the minimum salary for trainee solicitors is outrageously abolished, the profession will become more and more distant from the public we serve.

Mark Serwotka, General Secretary of the Public and Commercial Services Union (PCS), spoke with Christine Blower, General Secretary of the National Union of Teachers, and John Hendy QC at a meeting jointly organised with the Institute for Employment Rights. Mark is also interviewed in this magazine. He tells us that his members' fight to defend their pension rights is certainly an industrial dispute but it's also 'clearly a political dispute'. We will be joining the TUC and trade unions on their march for 'A future that works' on 20th October 2012. Watch out for The Haldane Society banner.

We are very sad to report the death of Lord Bill Wedderburn, pre-eminent labour and commercial lawyer of his generation and a committed Vice-President of The Haldane Society. His life will be remembered at a memorial service on Tuesday 3rd July 2012, 6pm at the London School of Economics and the Haldane Society will be in attendance. We send our condolences to his family and comrades.

**Liz Davies, chair, Haldane Society**  
lizdavies@riseup.net

## Defending human rights defenders

**A**ctivists, journalists and lawyers from seven countries came to London in February 2012 to participate in the Defending Human Rights Defenders conference.

The conference, jointly organised by The Haldane Society, Amnesty International and European Lawyers for Democracy and Human Rights, was held at Amnesty's Human Rights Action Centre on 24th February 2012. An audience of over 150 people heard from human rights defenders from Belarus, Chechnya, Dagestan, Colombia, Turkey, Palestine and the Philippines.

The Haldane Society has worked in solidarity with activists from across the globe since its

foundation nearly 80 years ago. The conference was organised over the concern that across the globe, human rights defenders face constant threats. In Colombia, for example, at least 14 human rights defenders and 51 trade unionists were killed in 2010 alone. In Turkey, lawyers representing Kurdish and other political prisoners are frequently arrested and made subject to criminal charges because of their work. Similarly, in Belarus, human rights defenders risk imprisonment for doing their work.

The Belarusian delegate had been detained the month before the conference in a freezing prison in Minsk for using offensive language. Criminalisation of human rights defenders seems

normal in a country where 600 people, including presidential candidates, their supporters, human rights defenders and journalists were arrested following protests in the aftermath of the Presidential elections in 2010.

The Human Rights defenders had an opportunity to share their experiences during a plenary

session chaired by Haldane's President, Michael Mansfield QC.

Four workshops were set up for people to share their experiences and knowledge in particular areas with the aim of building solidarity among the delegates.

The human rights defenders also had an opportunity to speak to Members of Parliament at an



Pictures: Rippon Ray

Over 150 people took part in the conference and heard speakers such as Haldane President Mike Mansfield QC.



### February

**6:** The Special Immigration Appeals Commission rules that Abu Qatada should be released on bail. Abu Qatada had spent six-and-a-half years in immigration detention. His bail conditions included a 22-hour curfew and a ban on communicating with a number of individuals.

**7:** In California, a federal appeals court ruled that the State's prohibition on same-sex marriage was unconstitutional. The measure known as Proposition 8 was defeated 2-1 after the court upheld the decision of the court below that the ban was a violation of the civil rights of gay and lesbian people.

**13:** Lord Justice Moses launches the new Quality Assurance Scheme for criminal advocates. In a speech to the Middle Temple he said that it was not always a lawyer's job to please the judge, particularly if doing so may not be in their client's interest.

**17:** The High Court rules that the trebling of tuition fees this year was not a breach of human rights. The judges accepted some students would be deterred from applying to university. The court also criticised the Government's impact assessment of the measure on groups of minorities.

# On the picket line

## How to stop the Coalition's employment reforms

event hosted by Jeremy Corbyn MP in the House of Commons on 23rd February 2012. The purpose of the meeting was to discuss how British Parliamentarians can provide practical support and solidarity to activists who face persecution because of their commitment to defending human rights.

The Haldane Society is currently working on a proposal on how to take the conference and the ideas that came from it forward.

**Siobhan Lloyd**



**T**hroughout the past year The Haldane Society, along with many others, has been doing everything in our power to resist the Coalition's attacks on legal aid. Employment law has been an important if subsidiary part of this story. Even before the Legal Aid and Sentencing and Punishment of Offenders Act 2012 was passed there was no provision for representation at the Employment Tribunal to be funded by legal aid. With the Act, things get worse: legal help is removed from unfair dismissal and wages claims and remains only for discrimination claims.

However for the claimant-focussed employment solicitor contemplating the ruins of their career, LASPO is far from the worst culprit. April 2012 sees the extension of the qualifying period for unfair dismissal from one to two years, the removal of Tribunal panellists from unfair dismissal cases (now heard by a sole Judge) and the doubling of the amount of costs orders – a favourite threat of Respondent representatives to unrepresented Claimants, especially ones with a strong case.

The Coalition's plans for October 2012 remain subject to consultation. At the very least we can anticipate the weakening of

the employee's protections on transfer of employment to which the employer will now have a catch-all 'harmonisation' defence, the emasculation of the employer's duty to consult in collective redundancies, the phasing out of unfair dismissal and of redundancy payments for employers with fewer than 10 employees (with larger workplaces undoubtedly next in the Coalition's firing line), and, most troubling of all, fees of between £400 and £1,500 for Employment Tribunals to be paid solely by Claimants, not employers. This in a jurisdiction which has never required fees.

What, if anything, can be done? The primary task must be to encourage voters to complain in large numbers. The Haldane Society is playing its part, by touring trades' councils and trade union branches, speaking to the proposed changes, and attempting to rally the sort of public revulsion that is necessary to cause the Coalition to think again. Indeed if there are any trade unionists reading this who would like to invite us to speak at a meeting, we would be happy to do so. You can approach the Society via our Secretaries, [chrisloxton@yahoo.co.uk](mailto:chrisloxton@yahoo.co.uk) and [sophie.khan@yahoo.co.uk](mailto:sophie.khan@yahoo.co.uk).

It may be that some senior trade unionists are at last starting to

consider a collective response. If so, this is not before time. Not only are individual claimants in the Coalition's firing sights, so undoubtedly are the unions themselves.

Most trade unions have a legal budget, which has to cover more than just Tribunal claims, of around £10 per member per year. If it would take 150 members' contributions to cover the cost of just issuing a claim, let alone doing initial work on it, or still less representing the member at a full hearing, then we are reaching the point where unions might no longer be able to offer representation to their members.

For many years, unions have marketed themselves to potential members on the basis of benefits including protection, amounting to legal insurance, where a worker is dismissed. The Coalition's reforms will price unions out of the game.

One question we are often asked is whether any of these measures, particularly fees, could be challenged by judicial review? On the face of it yes. The fees are high and will have a discriminatory impact. Unions have co-funded judicial reviews before, as in 2003, over the Sexual Orientation Regulations. Time though is running out.

**David Renton**

*Unions in court: Video journalist Jason N. Parkinson (centre) pictured with NUJ and PCS supporters outside the Royal Courts of Justice in April this year, before the Dale Farm production order judicial review. The High Court appeal is challenging a previous Crown Court decision granting a police production order for unpublished footage over two days of the Dale Farm traveller eviction. The NUJ's London Photographers' Branch has organised a 'Not Fit' campaign.*



**23:** Ministry of Justice figures published reveal that nearly 1,000 people were sent to prison for an average of 14 months following the 2011 London riots. The length of sentence was four times the average of 3.7 months given for similar offences during 2010.

Picture: Jess Hurd / reportdigital.co.uk

## What are the legal issues faced by Occupy protests?

The last of Haldane's current series of human rights lectures took place on 14th March 2012, with a timely discussion of the legal issues facing the Occupy movement. Michael Paget of Garden Court Chambers spoke about the legal issues faced by protests of this sort. The use of occupations advances a political message and on the face of it is protected under ECHR Articles 10 and 11, rights to freedom of expression and of assembly. However, both rights are qualified rights, with the State retaining the right to curtail them under certain conditions as 'prescribed by law' and 'necessary in a democratic society'.

Domestic legislation, in particular the Highways Act 1980 section 130 and the Local Government Act 1972 section 222, gives local authorities wide ranging powers to ensure the highway is kept clear, including by bringing occupiers to court. It was these powers which allowed the complicated ownership of St Paul's churchyard to be ignored when the Corporation of the City of London brought proceedings against the Occupy camp in *City of London v Samede and others*. In *Samede*, it was held that the removal of the camp was necessary despite the occupation having been arranged to minimise the inconvenience to the users of the churchyard. Although the court held that the least intrusive

measure that would fulfil the relevant 'social need' should be adopted, it declined to investigate whether there were less intrusive measures than ordering the camp's removal.

In *Samede*, the City of London made clear that there would not be costs consequences; it was this measure which allowed the action to be fully defended. However, this has not been the universal experience of Occupy activists. In Sheffield, for example, where the Occupy camp was located adjacent to the cathedral, the Church demonstrated its intention to seek costs against defendants. Where costs are sought this poses an obstacle to the defence of a case. Without an individual prepared to stick their head above the parapet and act as a named defendant the case will effectively go undefended. Costs consequences therefore pose a barrier to the movement's ability to make its voice heard in a legal forum.

Paul Ridge of Bindmans LLP talked about the role of lawyers in protest cases. According to Paul, whereas the real work is done by the activists on the ground, our job as lawyers is to 'buy time' for the movement to get its point across. Ultimately, on the legal side of protest work, it is extremely difficult for us to win. Democracy Village stayed for four months in Parliament Square. The UBS occupation stayed for three-and-a-half months. Eventually both were evicted. This is the limit of our legal



Picture: Jess Hurd / reportdigital.co.uk

Police make arrests during the Occupy LSX eviction outside St. Pauls Cathedral on

victories, but nonetheless, we buy time to make a point.

Paul then went on to discuss new powers under the Police Reform and Social Responsibility Act 2011, which entered into force on 19th December 2011. The powers allow for the prohibition of the use of certain items, such as loud hailers, tents, and chairs, which might facilitate protest. Although the geographical scope of the powers is at present limited to Parliament Square and the adjoining pavements, the 2011 Act gives local authorities throughout the country the power to make bylaws to the same effect, potentially allowing for all Occupy style protests to be

prohibited. The only safeguard currently proposed against the abuse of such powers appears to be that, before the powers are used, specially trained police officers will carry out a 'proportionality review' to determine whether the exercise of the power would breach protesters' human rights.

The lecture heard finally from George Barda, one of the named defendants in the *Samede* case. George explained that the proposal by the Corporation not to seek costs was dependent on there only being one named defendant, and was made in order to prevent the issues which the Occupy camp existed to address

## March

**2:** Around 1,000 interpreters boycotted a privatised contract (with its cut-price employment terms) for translation services in English and Welsh courts by Applied Language Solutions. Since then the company has come in for further criticism for its employees not turning up to court and for providing inaccurate translations.

**5:** The House of Lords inflicts a series of defeats on Government plans to destroy the legal aid system. The Lords' fierce opposition to much of the bill was ultimately largely unsuccessful and the bill became law on 1st May 2012.

**6:** The Justice Secretary, Ken Clarke, admits he is unsettled by special advocates' criticism of the Government's Justice and Security green paper which proposes extending the use of secret evidence into all civil proceedings. Clarke appeared before the Joint Committee on Human Rights to defend the Government's proposals.

**14:** Congolese warlord Thomas Lubanga is found guilty of war crimes by the International Criminal Court. Lubanga conscripted, enlisted and used child soldiers during an ethnic conflict in Eastern Congo between 2002 and 2003.



28th February 2012

## 'Campaign Kazakhstan' backs opposition activists

**K**azakhstan is an authoritarian State, ruled by President Nursultan Nazarbayev and a small rich elite. The central Asian country lies in 162nd place out of 178 countries on the 'press freedom' ratings compiled by Reporters Without Borders. The organisation World Democracy Audit ranks Kazakhstan at number 83 out of 149 states on its corruption ratings and just 29th from the bottom in relation to democratic rights.

Nazarbayev and the ruling elite have looted the country's vast natural resources, such as oil, to grow obscenely rich and to buy international allies. The vast majority of the population lives in poverty. Those who speak out against the regime and organise mass resistance face harassment, imprisonment and violent attacks from the State, as do many human rights advocates and lawyers.

Thirty seven oil workers are currently involved in a show trial on trumped-up charges in connection with the events of 16th December 2011 when riot police shot dead scores of oil workers and their supporters during a protest in Zhanaozen city in western Kazakhstan. This took place during a long-running oil strike that has seen the workers' leaders and their families subject to brutal physical attack, including rape and murder.

from being fully represented in court. Consequently, as an additional defendant, George was at risk of being ordered to pay the Corporation's costs in the case.

George talked about how the original case timescale allowed no time for what Occupy would have wanted: to put neo-liberalism on trial, and to address the fact that any harm caused by the Occupy camp was tiny in comparison to the harm caused by capitalism. The addition of named defendants other than *Samede* allowed for some of these points to be raised in the court of public opinion even if they would never be adequately addressed in the Court of Appeal.

**Stephen Knight**

During the month of April 2012, Kazakhstan authorities refused, without giving any reason, to issue visas to members of an independent international commission of inquiry, led by Paul Murphy MEP, that intended to travel to Zhanaozen to investigate last December's shootings.

Recently the European Union passed a resolution condemning the Kazakhstan regime's track record on human and labour rights. Prior to country-wide peaceful opposition rallies on 28th April 2012, the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), the International Partnership for Human Rights (IPHR) and the Netherlands Helsinki Committee (NHC), expressed concern about plans by the Kazakhstan authorities to obstruct or prevent the protests. Subsequently the protesters were brutally attacked by riot police and organisers were summarily jailed.

Campaign Kazakhstan was established last year to give maximum support to opposition activists, including workers' leaders and human rights activists and lawyers and journalists. This means supporting the struggle for basic democratic rights, free speech, freedom of the media, freedom of public assembly and the right to establish trade unions and

political parties independent of the government.

Since 2010, the trade union movement, in particular the new trade union federation Zhanartu ('Renaissance' in English), has been at the forefront of opposition to the regime and the main defender and advocate for democracy and workers' rights.

Campaign Kazakhstan has been set up with the aim of co-ordinating world-wide condemnation of the regime and the international corporations and governments that collaborate with it. The Campaign seeks to win maximum support for victimised opponents of the regime. Prominent among them are Zhanartu leaders, Ainur Kurmanov and Esenbek Ukteshbayev, who have been forced into exile. Another prominent figure is lawyer and human rights' activist, Vadim Kuramshin. He has spent over ten years in brutal prisons, subjected to torture. Vadim Kuramshin is now on trial on trumped-up charges and facing up to 15 years in prison.

In Britain, Campaign Kazakhstan has the backing of leaders of the RMT and PCS trade unions, among others. The campaign urges lawyers and human rights activists and their organisations to add their names to the public list of sponsors and supporters of Campaign Kazakhstan and to send letters of protest about the denial of democratic rights in Kazakhstan.

For more information visit the website at: <http://campaignkazakhstan.org/>

**Paul Heron and Niall Mulholland**

**15:** The European Court of Human Rights rules that the use of kettling during the 2001 May Day protests was lawful. The court called the tactic the 'least intrusive and most effective' tactic available to the police at the time.

**21:** The Supreme Court gives its judgment in a case involving *The Times* newspaper which is seen as a restoration of the so-called Reynolds public interest defence. The newspaper published allegations of police corruption involving the extradition of Russian businessmen. Detective Sergeant Gary Flood had claimed the article libelled him.

**21:** A gay judge wins a residence case against decisions of the Chilean courts which in 2004 ordered that her three daughters should be removed from her custody ruling that her sexuality put their development 'at risk'. The Inter-American Court of Human Rights allowed her appeal and criticised the decision of the Chilean Supreme Court.

**27:** Campaigners call for urgent reform of the Criminal Cases Review Commission on the 15th anniversary of its formation. The campaigners released to *The Guardian* newspaper a list of 45 cases of individuals they say have plausible claims of innocence but whose applications to the CCRC have been refused.

## The salute that shook the world – and still inspires

**O**n 21st May 2012, the London RMT and the FBU unions held a meeting ‘Resistance – the best Olympic spirit’.

The main draw was John Carlos. John was the 200m bronze medalist at the 1968 Mexico Olympics. The black power salute that he and gold medalist Tommy Smith made when they received their medals rocked the world at the time and has been resounding ever since. It was a protest against racism, discrimination, poverty, oppression, police brutality and the denial of civil rights to black Americans.

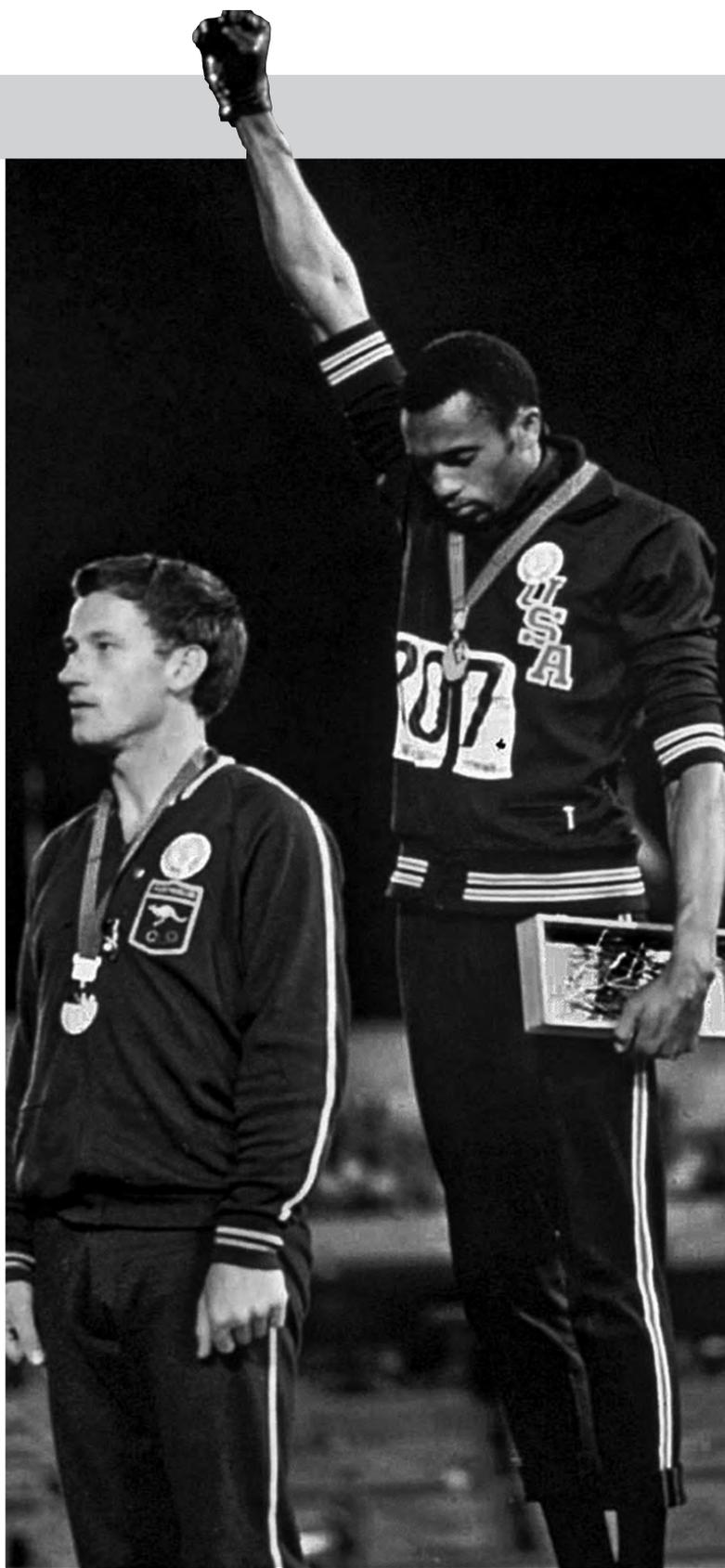
Nineteen sixty eight was a tumultuous year, with unrest in the USA, Ireland, France and Mexico. I can remember that during the summer we had two Czech students staying with us at home – refugees from the clampdown following the Prague Spring.

It was with great excitement that I went along to listen to John Carlos. I was not disappointed.

The hall at Friends House in Euston must hold anything from 800 to 1,000 and it was full well before the meeting began.

The meeting was chaired brilliantly by Hassan Mahamdallie. He began with a quote from the great slave rebel Frederick Douglass: ‘without struggle there is no progress’.

Doreen Lawrence spoke about her 19-year campaign for justice for her son Stephen Lawrence. Janet Alder spoke passionately and eloquently about the campaign to bring those police officers who killed her brother Christopher to justice after he died in a police cell. Sam and Marcia Rigg spoke about their brother Sean who died in Brixton also at the hands of the police.



Mexico 1968 Olympic Games: Tommy Smith (centre) and John Carlos (right)

### April

**3:** *The Guardian* newspaper wins a bid to obtain access to documents used to justify the extradition of two British men, Jeffrey Tesler and Wojciech Chodan to the USA. The Master of the Rolls and two appeal court judges ordered the release of the information stating that the courts should assist rather than impede the media when they sought documents used in criminal cases.

**4:** The Deputy Prime Minister, Nick Clegg, attempts to break with the Tories on the plans contained in the Coalition's Justice and Security green paper. Clegg called on civil liberties groups to oppose the plans. Clegg's statement came after one of his own MPs threatened a rebellion over the proposals.

**'It is not the official name of the shoe'** Nike spokesperson defending their 'Black and Tan' shoe. The Black and Tans were a notoriously brutal British army unit sent to suppress revolt in Ireland in 1920.  
**'The Black and Tan sneaker takes inspiration from the fine balancing act of a Stout on top of a pint of pale ale'** Nike advert

**10:** Five men, including Abu Hamza and Babar Ahmad, lose their appeal to the European Court of Human Rights in which they contended that their extraditions to the USA would violate their human rights. The court said the men's likely detention in a supermax prison would not be a breach of their Article 3 rights.



Fahad Ansari spoke about Babar Ahmed, who has now been in custody for over seven years. His continued detention without charge or trial is an affront to anything calling itself justice.

John Carlos started by remarking on the applause that had met his introduction as an Olympic medalist: 'My life is not about winning medals,' he said, 'it is about being a freedom fighter'. Tommy Smith, John Carlos and others tried to organise a boycott of the 1968 Olympic games but failed to get enough support from fellow athletes. John argued that doing something noble and worthwhile for fellow blacks suffering poverty and

discrimination back home was worth a lot more than fifteen minutes of fame on the track or in the field.

'I am not afraid to offend my oppressor,' he proclaimed.

Matt Wrack, the General Secretary of the Fire Brigades Union, which had sponsored the meeting, declared, 'You cannot separate sport and politics'. He spoke powerfully about the tradition of struggle in Britain and especially in east London where the 2012 Olympics are being held against a backdrop of militarisation and erosion of civil rights. We can look to past victories in Cable Street and Brick Lane, he said, and we must never

simply sit back and let things happen to us.

Unjum Mirza of the RMT observed that the Olympic torch was introduced by the Nazis for the 1936 Games. Finally, the socialist sports writer Dave Zirin, who co-authored *The John Carlos Story*, looked to Greece, the birthplace of the Olympics and said, 'Greece has now given us a new torch – the anti-austerity torch.'

Throughout, the meeting was enthusiastic and involved, with regular standing ovations and shouts of encouragement and anger when speakers referred to another injustice.

**Nick Wrack**

## The Rendition Project

**O**n 21st May 2012, two academics in participation with the legal non-governmental organisation (NGO) Reprieve launched the website 'The Rendition Project'.

Dr Ruth Blakeley and Dr Sam Raphael have created a resource aimed at bringing together and analysing the extensive amount of data that exists on rendition and secret detention. This followed a collaborative research project funded by the UK's Economic and Social Research Council.

A database is being developed of all known victims of rendition and secret detention in the 'War on Terror' and its aftermath, as well as the facilities in which these individuals have been held. Also being compiled is the largest publicly available database of flight records for those aircraft

associated with rendition. The duo highlight how they are indebted to Reprieve, who have provided access to large amounts of data, as well as guidance and advice on public source materials.

The website is to feature:

- A comprehensive timeline of key events;
- Detailed profiles and analysis of detention facilities used by the US and its partners, integrating all public data on their construction, location and operation;
- Detainee profiles, which will bring together available evidence on their detention, movement and treatment in the system;
- The world's largest public access database of flights by CIA aircraft connected to rendition, fully searchable, and based upon the compilation of all public source information about the renditions programme;

• Profiles on the aircraft used to move detainees from site to site, and the companies which were often involved in operating these aircraft;

• Access to the key primary documents made available by those researchers that have worked to uncover the renditions programme, including prisoner lists, flight logs, and land purchase agreements. Many of these have become available through the use of Freedom of Information legislation;

• An extensive library of governmental and intergovernmental reports and inquiries in relation to rendition and secret detention, as well as major investigative reports by NGOs and others working in the field.

**For more info go to: [www.therenditionproject.org.uk](http://www.therenditionproject.org.uk)**

**12:** George Zimmerman, the neighbourhood watch volunteer who killed the unarmed black teenager Trayvon Martin in Florida, is charged with second-degree murder. It took prosecutors 44 days to act after Zimmerman initially claimed immunity under the state's 'stand your ground' self-defence law.

**19:** Ministers and officials of the Council of Europe meet in Brighton where Ken Clarke seeks to persuade his fellow members of the need for radical reform of the European Court of Human Rights. The meeting culminated in the draft Brighton Declaration.

**26:** Charles Taylor, the former president of Liberia, is found guilty of aiding and abetting war crimes in Sierra Leone. The Special Court for Sierra Leone found Taylor provided support for rebel groups during war in the neighbouring West African state.

**30:** Tomás Borge Martínez, the last surviving founder of the Sandinista guerrilla movement that overthrew Nicaragua's rightwing dictatorship in 1979, dies aged 81. Borge joined Carlos Fonseca Amador and others in 1961 to found the National Sandinista Liberation Front.



Pictures: Ripon Ray



NUT General Secretary Christine Blower and chair John Hendy QC

PCS General Secretary Mark Serwotka

## Union leaders call for effective opposition to cuts and austerity

For the third consecutive year The Haldane Society and the Institute of Employment Rights staged a discussion with figures of the labour movement, chaired once again by Haldane vice president and IER chair, John Hendy QC, on 15th May 2012.

This year John was joined in conversation with Christine Blower of the National Union of Teachers (NUT) and Mark Serwotka of the Public and Commercial Services Union (PCS). The three speakers conducted a state-of-nation type analysis of the challenges facing trade unions as the effects of first of the Government's doctrinaire cuts (around 80 per cent of cuts are still to come) begin to emerge.

Christine Blower saw the

Government's plans for education as a natural extension of those initiated by Labour. The types of measures we are witnessing the Coalition imposing on schools: fragmentation of schools; threatening localised pay; and the loss of centralised roles such as educational psychologists were all driven by the belief in the power of the market. Blower believed it was now the challenge for unions to become more central to community and family life. One reform she wished of the Labour party was that it would reintroduce Clause IV. A forlorn hope perhaps.

Mark Serwotka also conceded that the scale of austerity meant unions would have to adapt. To be relevant to the community, trade unionism would have to not only

continue to oppose low pay and job losses but represent wider concerns in people's lives. Serwotka rejected the suggestion that all political parties were the same but said that while each remained part of the neo-liberal



IER's Carolyn Jones

consensus then no effective opposition would exist in the country. It is that absence of a true opposition that Serwotka says the unions must address and occupy.

Serwotka believes that the tactics needed to face down austerity should be dictated by the confrontation with which one is presented. The PCS will shortly ballot its membership on whether it should in certain circumstances stand candidates in political elections. He is fortified by the notion that if some independent candidates were to stand on platforms such as opposing privatisation of public services or welfare support cuts it could resonate with sections of the public.

'Debate is healthy' and something he welcomes, Serwotka told the audience. With signs that the people of Greece and France are rejecting Government-enforced austerity there may be cause to believe that the argument that there is an alternative may yet win out.

**Russell Fraser**

## May

**25:** Brazil's President Dilma Rousseff partially vetoes a controversial land law which came to be known as the Forest Code that would have hampered her Government's attempts to protect the Amazon rainforest. Environmental groups such as Greenpeace had urged President Rousseff to completely veto the bill.

**28:** The Special Immigration Appeals Commission denies bail to the Jordanian cleric Abu Qatada. The court said that releasing him on bail during the Olympic games would place an unmanageable burden on the police and security services.

**28:** At the Leveson Inquiry, Tony Blair's evidence is interrupted when protestor David Lawley-Wakelin bursts in shouting: 'This man should be arrested for war crimes.'

**30:** Julian Assange loses his Supreme Court appeal against his extradition to Sweden. However, the court granted his lawyers 14 days in which to submit further arguments after his QC, Dinah Rose, expressed concern that some of the judges had decided the case with reference to the Vienna Convention on a point not argued before the court. The court decided not to reopen the appeal.

## 'Ecocide' – will this be the fifth international crime against peace?

In September 2011 an independent jury at the Supreme Court in London found two Chief Executive Officers guilty of committing 'ecocide', an International Crime Against Peace, in a mock trial.

Bannerman and Tench were found guilty of damage and destruction in Athabasca in the tar sands in Canada. A restorative justice process was available prior to the sentencing. It provided an opportunity for victims' representatives to meet with the CEOs and identify solutions. Tench refused to participate. He received a four-year prison sentence. Bannerman took part and agreed to set up working groups, investigate alternative energy sources and the future of tar sands. His sentencing was suspended pending the outcome of agreed targets.

Bannerman and Tench are fictitious individuals. The International Crime of ecocide is not currently a law. The mock trial was a serious attempt to test how an International Crime of ecocide would work in practice.

Ecocide is defined as: 'The extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished.'

In 2010, the barrister Polly Higgins put forward a paper to the

UN Law Commission proposing that ecocide be the Fifth International Crime Against Peace. The paper argues that ecocide is a crime against peace because the possible consequences of damage, destruction and/or loss to ecosystems increases the risk of conflict, leads to breaches against nature and humanity; and reduces the health and quality of life of inhabitants of a given territory as a result of pollution, disasters, and unnatural climate change. A law of ecocide would impose an international duty of care, to protect the earth and its inhabitants, on governments, corporations and individuals: anyone with superior responsibility in a public or private capacity over a given territory. Under a law of ecocide, strict liability would apply; intention would not exist.

A law of ecocide aims to be pre-emptive, preventative and post-operative. It is pre-emptive because it creates a duty of care nationally and internationally, ensuring consequences of actions are considered in advance and alternative ways of working identified. This would involve creating new means of accessing resources, more jobs, making sustainable cities, reducing food scarcity and prioritising the ocean and its inhabitants from disasters. Preventative measures would help avoid dangerous industrial activity, pollution and damage to

the environment. Ecocide is post-operative as fines, imprisonment and restoration processes can be applied. These criminal sanctions would aim to amend harm caused thus changing the focus from imprisonment to restorative justice processes. They would replace the current defunct system of mass fines which corporations can factor into their business and profits. It would make governments accountable for what is taking place in their States and elsewhere.

A small amendment to the Rome Statute would make ecocide an International Crime Against Peace. Under the Rome Statute the duty of care would be on States to take action first and if they were unable or unwilling to, then the International Criminal Court (ICC) could intervene. Individuals could apply directly to the ICC if States refused to act. Ecocide would become law if adopted by one member State and agreed by 80 signatories to the Rome Statute resulting in all 120 States being bound.

As we went to press, world leaders, corporations, NGOs and many others were gearing up to attend the Rio+20 Earth Summit. Activists were campaigning to have ecocide included on the Earth Summit agenda. The Earth Summit was due to focus on long term global sustainable development within the key areas of environmental protection, and

economic and social development. Priority areas highlighted within these include energy, food security, decent jobs, sustainable cities, agriculture, water, oceans and disaster readiness.

Conflicts, pollution and disasters against nature and humanity are occurring on a regular basis. According to Tar Sands Watch, three billion barrels of oil a day is produced in Alberta, Canada and the production process has destroyed ecosystems, caused trees to be stripped away and toxic chemicals to leak into water, with sulphur dioxide and nitrogen polluting the air. It reports that there has been an increase in autoimmune diseases including cancer. Gerald Amos, indigenous leader from the Haisla First Nation in British Columbia stated that indigenous people are affected by the tar sands industry, that five rivers are now extinct, they are unable to eat fish and foods contain benzene while companies dodge responsibility and forests are destroyed. Gerald stated 'we are all in this together and all have responsibilities'.

For further information on ecocide see [www.eradicatingecocide.com](http://www.eradicatingecocide.com). For the Rio+Summit go to: [www.uncsd2012.org/rio20/about.html](http://www.uncsd2012.org/rio20/about.html).

To sign the petition go to: [www.avaaz.org/en/petition/NOW\\_IS\\_OUR\\_CHANCE\\_TO\\_END\\_ECOCIDE/?cmfScdb](http://www.avaaz.org/en/petition/NOW_IS_OUR_CHANCE_TO_END_ECOCIDE/?cmfScdb)

**Rebecca Harvey**

**30:** The former Liberian president, Charles Taylor, is sentenced to 50 years in prison for the assisting the commission of war crimes during the civil war in Sierra Leone. The Special Court for Sierra Leone had earlier found Taylor guilty of 11 counts of aiding and abetting war crimes and crimes against humanity when supporting rebels in return for 'blood diamonds'.

**'Crush the working class, crush the scum, the yobs...'** Margaret Thatcher – according to a Russian pirate version of the film *The Iron Lady!*

**30:** David Cameron's former director of communications, Andy Coulson, is arrested and charged with perjury. The former editor of the *News of the World* is alleged to have lied to the court during the perjury trial of former Scottish socialist politician Tommy Sheridan.

**'I just thought it was so unfair'** Former Labour Home Secretary Jacqui Smith on the MPs' expenses scandal.

## Video shows state collusion with violent Israeli settlers

**O**n 21st May 2012, *The Guardian* posted a shocking video that had been released by Israeli human rights group B'Tselem. The video shows Israeli settlers from the settlement of Yitzhar shooting at a group of Palestinian protesters in the West Bank village of Asira al-Qibliya while police and soldiers stand by. One of the settlers is seen crouching while aiming and then firing his pistol at the group of Palestinians. Two other settlers are seen firing assault rifles. Fathi Asayira, a 24-year-old Palestinian, is hit in the face and is seen in the video collapsed on the floor. He is taken to hospital with facial injuries following the shooting.

A shocking attack, but not surprising or unusual, as I know that the people of Asira have been experiencing violence and harassment from both the Yitzhar settlement and from the Israeli army since at least the year 2000. I know the village of Asira al-Qibliya from my time working with the Women's Centre for Legal Aid and Counselling (WCLAC) in Ramallah. We got to

know some of the women in the village very well and visited regularly.

Colleagues and I from WCLAC met Khadra for the first time in June 2009 in her home on the hillside just down from where the Jewish settlement of Yitzhar is located. She told us about the frequent attacks from Yitzhar settlers. She lives on the outskirts of the village and we could just see the settlement over the brow of the hill and also the Israeli military tent which is just 300 metres away from her house. She told us that she thought that there were 10 soldiers living in the tent but that they never did anything to stop the settlers from attacking the village.

Her family was one of the families that had been given video cameras by B'Tselem to record what happened when they were attacked by settlers.

A year later Khadra contacted us, devastated to tell us that her 16-year-old son Mohammed had been arrested by the Israeli army and that they didn't know where he had been taken. On 10th June 2010 the family had been woken up at 2am by somebody shouting



*The video shows Israel settlers from Yitzhar shooting at Palestinian protesters while*

in Hebrew – 'army, army'. Mohammad's hands were tied with plastic ties, he was blindfolded and taken away on his own by Israeli soldiers. Khadra later found out that Mohammad and his friend, Fadi, were accused of starting a fire which had spread up the hillside from the village and threatened the settlement of Yizhar. Mohammed was held for 22 days in Israeli interrogation and detention centres including six days in solitary confinement. He told his mother later how the interrogator had banged at the

table violently to scare him, shouted at him and threatened to electrocute him if he didn't confess. He said he was terrified but still did not confess to something he did not do. Then on 1st July 2010, without prior notice, Israeli soldiers dropped the two boys off at a checkpoint far from their home at 8.30pm and told them to 'go home.'

Mohammed is one of just 700 Palestinian children who are arrested, interrogated, prosecuted and detained in the Israeli military court system each year. Children



## June

**8:** The Government confirms that forced marriage will be outlawed in England and Wales. The Prime Minister said he was persuaded to act after listening to victims. However some rights groups expressed concern that it may discourage victims from coming forward.

**'An unfortunate logistics planning problem'** Molly Prince, boss of workfare firm Close Protection UK, on the job seekers her firm left to sleep under a bridge.

**12:** Ministers pledge to push through legislation to give same-sex couples the right to marry. However, the move faced opposition from Tory backbenchers and the Church of England. The Home Office has had over 100,000 responses to its consultation.

**'I recall the drink, I don't recall the dinner'**  
**'I can't remember'**  
**'I don't recall'**  
**'I don't think so'**

Prime Minister David Cameron in another display of selective memory during the Leveson inquiry.

# Young Legal Aid Lawyers

This regular column is written by YLAL members. If you are interested in joining or supporting their work, please visit their website [www.younglegalaidlawyers.org](http://www.younglegalaidlawyers.org)

## Goodbye to minimum salary?

It was the winter of 1795 when Samuel Whitbread, scion of the great brewing family, first tried to introduce legislation to allow Magistrates to enforce a minimum wage wherever they felt it was needed. It was not to be. In the House of Commons, Whitbread's attempts at social reform were comprehensively demolished by the Prime Minister, William Pitt. Relying on the economic teachings of Adam Smith, Pitt the Younger decried Whitbread's Bill as an unwise and futile interference in the laws of supply and demand.

Introducing the National Minimum Wage Bill to the House of Commons 200 years later in 1997, Margaret Beckett declared that the legislation would end once and for all 'the scandal of poverty pay'. The Bill was passed and Whitbread's vision finally came to fruition.

Against this historical background the proposal of the Solicitors Regulation Authority (SRA) to abolish the minimum salary for trainee solicitors (£18,590 in Central London and £16,650 elsewhere) seemed all the more astonishing. If given effect the proposal would have paved the way for trainees to be paid as apprentices at £2.60 an hour.

In May 2012, following consultation, the SRA opted instead for a slightly watered down and more politically palatable alternative of 'partial deregulation': from September 2014 firms need not pay trainees more than the national minimum wage. The opaque policy statement accompanying the announcement expressed the view that 'setting a minimum salary level for trainees above the national minimum wage main rate for employees was not in the public interest'.

The change is not as drastic as was feared but it is still misguided. The timing of the decision is poor. Many legal

aid firms and Law Centres are already struggling to keep the lights on. As the cuts contained in the Legal Aid, Sentencing and Punishment of Offenders Bill take effect, their situations will become more precarious. The likelihood is that it is these firms who will opt to pay trainees at the minimum wage. The result is that those who do the most socially valuable work will receive the least reward. For many aspiring solicitors, legal aid work will simply be out of the question. It seems ironic that trainee legal aid solicitors may be one of the few sectors of the population still eligible for legal aid.

Scrapping the minimum salary would constitute a huge step backward for the legal profession. The SRA's figures show that women and black and ethnic minority trainees are the most likely to be paid the minimum salary. The inference can be drawn that it will be these individuals who will be hardest hit by the change. The legal profession is by no means as diverse as it should be but it has come a long way in the last 40 years. In her book *Eve Was Framed*, Baroness Kennedy described how, qualifying as a lawyer in the 1970s, she was ritually humiliated by 'blustering

public school boys'. It would be a damaging prospect if the profession were to slip back toward those days.

It is vitally important that the legal profession is representative of society as a whole. Working in the Magistrates' Court I frequently come across young people who struggle to relate to and understand their lawyers who, all too often, come from very different backgrounds from themselves.

Ask these same young people whether they would consider incurring upwards of £40,000 in university tuition fees followed by £13,000 on the Legal Practice Course only to be paid the same as they could get now, working in McDonalds and they would probably laugh in disbelief. And so, for them, another door closes.

The SRA argue that in reducing the minimum salary to the level of the national minimum wage, more training contracts will be offered. There may be an element of truth in the SRA's argument, but it misses the point. The fundamental question should be what kind of society do we want to live in? Is it one where the legal profession is closed off to anyone who is not from an affluent background?

It is telling that even as the country slides back into recession and unemployment hovers stubbornly above eight per cent, neither the Conservative Party nor its allied think-tanks have suggested that the abandonment of wage regulation would be an acceptable way to boost employment.

As a regulatory body the SRA is charged with protecting and promoting the public interest and with encouraging an independent, strong, diverse and effective legal profession. It is both surprising and disappointing that the SRA believes that the removal of the current minimum salary could in any way be compatible with these responsibilities.

● **Connor Johnston** is the Co-chairperson of Young Legal Aid Lawyers



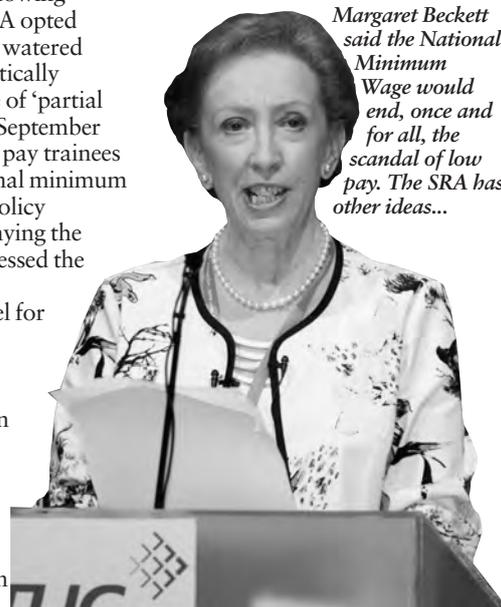
police and soldiers stand by.

are interrogated in the absence of a lawyer and family member, and the interrogations are not audio-visually recorded as an independent oversight. Reports of ill-treatment, and in some cases torture, are common, and the overwhelming majority of children confess.

Khadra, her family and her neighbours deserve to live in peace and they deserve an end to the violence and harassment which will only end with an end to the occupation.

**Hannah Rought-Brooks**

**27:** Sir Nicholas Bratza, the British President of the European Court of Human Rights warns senior politicians against using 'emotion and exaggeration' to criticise the court. In an article in *The Independent*, Bratza responded to increasing hostility from Tory frontbenchers.



Margaret Beckett said the National Minimum Wage would end, once and for all, the scandal of low pay. The SRA has other ideas...

# Greece: towards the creditors' constitution?

The battle against austerity is starkest in Greece. **Jeremy Smith** looks at how the Eurozone's ruling elite intend to bleed the Greek people dry.

**Despite the close win for pro-bailout** parties in Greece's second General Election in June, the results of this and the election in May clearly demonstrates the revulsion of the majority of Greek people against the humiliating manner in which they have been treated by the troika of the European Central Bank, European Commission and IMF.

Take the Eurogroup's (of Eurozone Finance Ministers) statement of 21st February 2012 on 'support' to Greece, which had more than a whiff of colonialism and hubris about it:

'We therefore invite the Commission', it says, 'to significantly strengthen its Task Force for Greece, in particular through an enhanced and permanent presence on the ground in Greece, in order to bolster its capacity to provide and coordinate technical assistance.'

There is not even expressed the usual pretence about the occupying Task Force being invited in by the Government.

Its high water mark of external interference was the following:

'Finally, the Eurogroup in this context welcomes the intention of the Greek authorities to introduce over the next two months in the Greek legal framework a provision ensuring that priority is granted to

debt servicing payments. This provision will be introduced in the Greek constitution as soon as possible.'

This is truly startling and worrying stuff. It is one thing for creditors to seek to insist on practical conditions attached to a loan or bailout (though best not to make them so onerous as to lead to widespread revolt). It is quite another matter to interfere directly in the constitutional set-up of a sovereign State, to impose a duty to pay creditors to take precedence over all other human and citizen concerns, needs and rights.

Article 2.1 of the Greek Constitution currently provides, for example, that 'respect and protection of the value of the human being constitute the primary obligations of the State.' Can this survive? Or will it be revised to state that 'protection of creditors constitutes the primary obligation of the State'?

The last sentence above from the Eurogroup Statement makes no pretence that the new constitutional provision, to place creditors' rights above human rights, is the Greek Government's 'intention' – it is a bald assertion of an overriding imperial imperative.

Fortunately for Greek democracy, 'as soon as possible' is not very soon. There is time to



regroup and say no. The Greek Constitution, which came into force in 1975 – after the ousting of the right-wing military dictatorship – and last amended in 2008, has some very important protections built into it.

First, as to sovereignty. The troika's first stumbling block is Article 1:

'1. The form of government of Greece is that of a parliamentary republic.

2. Popular sovereignty is the foundation of government.

3. All powers derive from the People and exist for the People and the Nation; they shall be exercised as specified by the Constitution.'

And beware all who would seek to undermine this popular sovereignty. Article 120 provides a fierce rampart against 'usurpation' of the Constitution:

'3. Usurpation, *in any way whatsoever*, of popular sovereignty and of powers deriving therefrom shall be prosecuted upon restoration of the lawful authority; the limitation from which punishment for the crime is barred shall begin as of the restoration of lawful authority.' (My emphasis).

Greeks may even, in some cases, resist 'by all possible means':

'4. Observance of the constitution is entrusted to the patriotism of the Greeks who shall have the right and the duty to resist by all possible means against anyone who attempts the violent abolition of the Constitution.'

In addition, the Constitution wisely contains provisions which make impetuous revisions impossible, even, or especially, those resulting from powerful external pressures. They are set out in Article 110.

First, revision of the Constitution is not permitted before the lapse of five years from the completion of a previous revision. This means no revision is permitted before 28th May 2013.

Second, the process and voting has to be spread over the lifetime of two Parliaments.

Third, it requires support from majorities (including at one point a super-majority) of the total number of Members of Parliament.

In outline, the process is this: any proposal for a revision must be put forward by at least 50 MPs, and then get the support of a majority of the total number of MPs, voting twice with at least one month between.

Then, it is for the next parliament to decide on the amendment. If the proposal was put forward by the last parliament with a majority of three-fifths of the total number of MPs, then a simple majority of the new parliament will suffice. If it had the support of a majority of MPs in the last parliament, but less than three-fifths, then the constitutional amendment requires a three-fifths majority of the membership of the new parliament.

So there is still a very long way to go before the Creditors' Constitution becomes a reality in Greece. The technocratic government of Mr Papademos did not try to introduce the amendment, and the prospects of the next Government, whenever installed, doing so seem more than a little remote – especially since it could not take effect until the Parliament after that so decides.

This is not just a story for Greece. What is being tried there can be tried anywhere. The new European Treaty to outlaw Keynesianism, officially known as the Treaty on Stability, Coordination and Governance, already 'constitutionalises' conservative economic and fiscal policy by requiring States to transpose the 'Balanced Budget Rule' into national legal systems through 'binding and permanent provisions, preferably constitutional' which are subject to the jurisdiction of the European Court of Justice.

It is in our common interest, as Europeans, to resist these attempts to override our democratic constitutional traditions by making protection of the rights of bankers and creditors the supreme obligation of our States.

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Jeremy Smith is a barrister and Co-Director of PRIME (Policy Research in Macroeconomics, [www.primeeconomics.org](http://www.primeeconomics.org))

# Another door shut?



The government has axed the independent appeal panel on school exclusions.

**Maryam Masalha** asks: has another door shut for children seeking justice?

**The independent appeal panel, the body which currently hears challenges to school exclusions, is being axed.** Provisions in the Education Act 2011 will see the appeal panel replaced with a 'review panel,' affecting the majority of schools in England. The move simultaneously strips the panel of its power to reinstate pupils whom it finds to have been wrongly excluded from school, and is a further blow to a process which already shows worrying patterns of inequality.

At present, black children are statistically three times as likely to be excluded from school as white children. Children in care – many of them black – are eight times as likely to face exclusion. Children with special educational needs are also at much greater risk. The disproportionately high rate of exclusion among black pupils in schools, coupled with current political fervour for academies, shown to exclude twice as many pupils as State-funded schools, raise serious concerns about the UK education system. Curtailing the

powers of the independent appeal panel, a channel through which young people can argue their case, will only worsen a system which is already reaching crisis point.

Independent appeal panels are currently made up of a panel of three to five members of the public who hear exclusion cases and have the power to reinstate pupils if they feel that the head teacher's original decision was flawed. The new review panels will have much more limited powers, and will only be able to:

(a) uphold the decision of the responsible body,

(b) recommend that the responsible body reconsiders the matter, or

(c) if it considers that the decision of the responsible body was flawed when considered in the light of the principles applicable on an application for judicial review, quash the decision of the responsible body and direct the responsible body to reconsider the matter.'

The panel will no longer be able to direct reinstatement. At most, it can order the decision-making body to 'reconsider the matter,' but only where there has been a breach of judicial review principles.

This immediately raises two problems. First, it is likely that the process of reconsideration will simply provide an opportunity for schools to vindicate themselves, rather than genuinely re-evaluate the situation and reinstate a pupil where a poor decision was originally made. Second, the reference to 'judicial review' principles in the Act raises serious concerns that the panel, whose members are often totally without legal training, will not be able to decide on potentially complex public law issues relating to the fairness or otherwise of a permanent exclusion. The majority of young people appearing before the panel have no legal representation whatsoever, and are therefore very unlikely to invoke the public law principles which appear in the Act.

Exclusion appeals can be seen to mirror the legal system and its flaws in many respects; the process seems fair, but imbalances in resources and ability to navigate the system result in only a small portion of exclusions even reaching the appeal stage in the first place. Consequently, the stripping back of this quasi-legal appeal process is based on the false

assumption that vast amounts of exclusion decisions are being undermined in a systematic and widespread 'interference' with a head teacher's right to manage their school. Similar arguments are often used to justify the ongoing assault on legal protection for workers and individuals. Why, for example, should a former employee take their employer to court following a potentially unfair dismissal when this interferes with an employer's right to manage their business? The question assumes that decisions made by people in power or authority are always correct and should never be challenged, despite the impact this may have on an individual's life. The independent appeal panel is not an alternative to a system which minimises exclusion by investing in schools and communities, but it is an opportunity for life-changing decisions to be scrutinised.

Gerry German is the director of the Communities Empowerment Network, an organisation which advocates on behalf of children who have been excluded from mainstream education. He is concerned about the use of permanent exclusion in schools, and thinks that more must be done to challenge the current regime. 'I would like to see the Equality and Human Rights Commission undertaking selective casework and formal investigations aimed at exposing individual and institutional discrimination,' he said. 'Law enforcement is the key to bringing about change.'

Exclusion from school can be the catalyst for a host of further problems, from poor employment prospects to the breakdown of relationships with family and friends and involvement in criminal activity. The changes to the appeal panel do nothing to address the underlying causes of school exclusion. They may possibly lead to further injustices occurring in a system which is already plagued by inequality. The long term consequences of these decisions remain to be seen.

■ Since the time of this article being written, Gerry German has sadly passed away.

Maryam Masalha has worked as a volunteer for the Communities Empowerment Network, an advocacy charity which assists children and young people who have been excluded from mainstream education

**ADIAM WELDENSÆ** and **NATALIE CSENGERI**  
speak to trade union leader **MARK SERWOTKA**

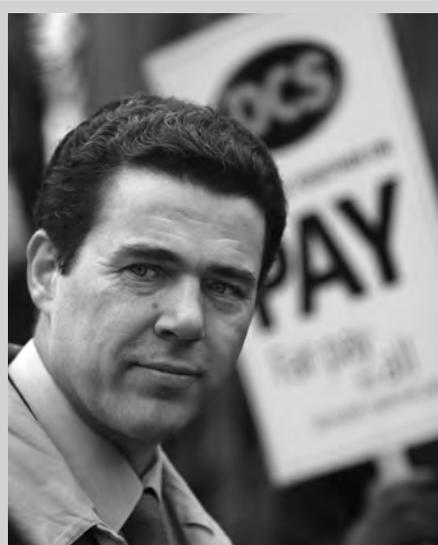
# 'The strike last November was something we've not seen in this country for generations'

## **Why has the PCS taken strike action?**

The action on 10th May was our third strike. Essentially, we are going on strike because we have not had meaningful negotiations with the Government on pensions. Our members are some of the lowest paid public sector workers in the UK. They pay thousands of pounds for their pension and they are getting a lot less out. None of those things are justified by any valuation of pension scheme. This is an economic decision taken by George Osborne and therefore the choice we have is to either stand up and fight back or have pensions suffer.

## **Can you elaborate more on the state of dialogue with the Government?**

Despite claims by the Government I went to every single set of negotiations with the Government's ministers. My understanding of negotiation is that for any negotiation to be a success it requires movement and it requires an attempt to try and meet somewhere in the middle so that people can be happy with the outcome. What we had here was the Government who had already made political



**MARK SERWOTKA** is General Secretary of the Public and Commercial Services Union. He was first elected to the post in December 2000 and was re-elected in 2005 and 2009.

Picture: Jess Hurd / reportdigital.co.uk  
decisions and had already announced them in Parliament during Osborne's spending review. The issues of substance one wants to talk about, 'length of time you work, how much money you pay, what your pension comes back as', we couldn't talk about. The Government's idea of negotiation was that it's all done and dusted, so we will talk to you about that 'thing' in the margins, rather than talk about things that really matter. My view of that is they are using the economic issues we have in this country to actually not talk about a whole raft of things they disagree with. Pensions are one of many things they are using on that basis. So even though we met for a year, it was a farce.

## **How do you respond to criticism that the strike will disrupt public services at a time when the public services are desperately overstretched?**

It's never a good time to strike, but my answer to that is what are we supposed to do? If you took the view that one can only strike when things are in a better state than they are now, then it will take all our ability to defend ►



Picture: Ripon Ray

►ourselves out of our hands. Disruption is regrettable, but although this particular strike is primarily about pensions – generally it is more than just that. It is also about austerity, it is about job cuts and privatisation. Therefore, 24 hours of disruption is a small price to pay if it defends jobs and defends services.

**Your strategy involves a programme of joint national strike action which is composed of more than one union across a variety of pension schemes. Your strategy also includes groups like UK Uncut. Why do you believe this coordinated approach is a more effective form of opposition in the current political climate?**

The idea that one union on its own can defeat the proposals is highly unlikely. The amount of industrial action you would have to wage on your own would be enormous. So we've recognised that our dispute is with the Government and it is as much political as it is industrial. Therefore, a strike of two million people which we saw in November 2011 is something we've not seen in this country for generations. It was a political event. It was about public opinion and it was about putting on the political spotlight. 30th November 2011 was the high tide and the Government reacted to this, upped the ante and started getting tough, threatening that if we didn't sign up then and there that they would take everything off the table. My view of that was: so be it, but it follows that you have to start doing more. We think part of that has got to be alongside UK Uncut, Occupy, the pension movement, the disability activists because it's about making a common cause. We all are suffering through austerity. Many know it's the wrong choice for the country. If we stand alone we will inevitably lose, but if we build the broadest possible alliance we have a chance of, well, I wouldn't put it as winning, but certainly limiting a lot of the damage the Government wants to do.

**Do you have any ideas as to a mechanism which would get more workers and more activists involved in a strategy to counter the Coalition Government's harmful policies to public sector workers?**

Well that is a very difficult question, because in some sense we can control what happens here, but we are less able to influence what happens in other people's unions. I made a speech just before Christmas that caused a few waves because it was actually designed not only as a talk for our members, but members of other unions. I did a couple of speeches where I have deliberately thrown in that if you are a dinner lady or a nurse or a council worker and you have gone on strike to stop this and now you have been asked to agree with it, then that doesn't look right to me.

Now the idea is for our activists who live in towns and communities to rub shoulders everyday with activists in other unions. We've also encouraged a lot of grassroots meetings and meetings with anti-cuts groups when we have different unions coming together to talk at a local level.

In the long-term, the strike on the 10th

Picture: Jess Hurd / reportdigital.co.uk



May 2012 may have the effect of reigniting some of the resistance in other unions. There is now a major union within the last two weeks whose members in the health service have voted not to accept the pension deal when everybody thought they would, because that is what their leadership wanted them to do. It is a very narrow result, but it's still incredibly significant as a signifier that there is independence there. Our strategy in the PCS is to empower people in the grass-roots to take a lot of the control themselves, with a big focus on organising and decision-making in their own communities.

**What do you think accounts for the fall in trade union membership overall?**

I think that if you look at trade union membership across the board, in fact it's halved since the 1970s and undoubtedly that's because of cuts in manufacturing, the huge inroad in the old trade mining and steel

working industries. Our membership has begun to fall now, but for a long time we were the fastest growing union in Britain and if I'm honest about that there are two reasons why this was. The first is that there was a period where the Labour Government created a number of public sector jobs and we managed to unionise a lot of those that were in the civil service. Secondly, I've always taken the view that people will join the union if they think there is a point and where unions are actually doing something. For example, every time we have a strike our membership goes up, even this year when the public expenditure cuts are eating into our membership. At the moment there are 4,000 jobs a month going in the civil service. Most of them are our members. So our strategy has been that if you can't stop the cuts there is huge sway of people who have now joined the unions. You have to go and try to make yourself attractive to them.



**The PCS is quite interesting in that its membership includes those working both in the private sector and the public sector. What is the experience around organising two usually distinguished groups of workers?**

People say trade unions have it easier in the public sector rather than the private sector, which is often called a 'no-go' area. We have actually found that we have been much more successful negotiating decent agreements with the private sector. As you are dealing with a company which wants to make profit we have some leverage as they are willing to make concessions. One can compare that to the problem with the Government in that they don't want to make any concessions because they are so on this path where any deviation from their holy grail will mean the world will cave in.

**More importantly, how can numbers and union sentiment grow at the PCS in times of austerity and more generally among workers as a whole?**

One of the things we are doing right now which is quite exciting is that we are developing a close working relationship with Unite. We have the expertise in the public sector and they have the expertise in the private sector. The old notion of the TUC was that the whole is divided into public and private workers, with Unite dominating the private sector and UNISON in the public sector. What our relationship with Unite actually says is that this is the wrong way of looking at the world and rather what you should do is have a union that actually does both because then you can be the bridge when there is privatisation. You then also have your

expertise in the voluntary sector. I think what we could see here is a much closer working relationship between Britain's biggest unions, Unite, and what many would perceive as one of the more radical unions, the PCS, in the years to come.

**Do you have any thoughts on the current balloting requirements for trade unions? What would you suggest to improve them or, alternatively, to replace them?**

I think the current laws are ludicrously imbalanced. They were designed to be. The real tragedy is that while Mrs Thatcher brought them in due to her political perspective, when Labour came into power in the 1990s the one thing they could have done was to create a level playing field. They didn't. I think because they are so bowed to business interests that in this Rupert Murdoch era they refused to do so. I think it was Tony Blair who said that we've got the most restrictive union laws in Western Europe. They make our lives very, very, very difficult, in some cases verging on the impossible to have a lawful strike when you look at all the loopholes and the complexity in the balloting arrangements. The Government always criticises the low turnout of votes, but I think it suits them because it gives them their propaganda point. We want higher turnout, but with postal balloting it is notoriously difficult to keep a track of where everyone is. If the Government really wants to increase the turnout then they should allow people to vote by internet, by telephone, by allowing voting in the workplace in a controlled environment by a secret ballot. I think there is a drastic need for reform.

**Do you think all civil servants should have the right to strike, such as prison officers or police officers?**

My own view is that the right to strike is a human right that should be an absolute right. The withdrawal of the right to strike from prison officers gives them no leverage whatsoever. Although they then get the mechanism of a pay review body, what we have found now is that whatever mechanism is in place in times of economic difficulties is subject to the Government overriding the lot. It removes any chance of them being able to protect themselves. If I was running the Prison Officers Association I would only use it as an 'absolute last resort' to prevent potential riots and dangerous situations, but that is all doable. The unions have a fine tradition, where they have had strikes in the health service for example, of agreeing procedures to ensure there is no life or death situation. The same can be done I think for prisons.

What is interesting to me is that when we were on strike on 10th May 2012, the Police Federation were marching in protest. They are talking about balloting for the right to strike and, therefore, we are reaching this point where right across professions it seems to be the penny is dropping: we are all losing out in these times. I thought the Tories would say we'll try to keep sweet at least the people we depend on, those who keep law and order. I thought they would give the police something a bit more than they did. ►



**►What are your thoughts regarding the divvying up of the civil service into different agencies and its effect on the ability of PCS members in these different agencies to act in concert with one another?**

Our view is that all our members are employed by a single entity, the Crown. Therefore what we say to our members is, by breaking you up into different business streams and agencies it is about dividing up the workforce to actually give you all less collective strength. I think a lot of the divvying up is about privatisation, it's about breaking it up into different units making it easier to sell some of it off, which had nothing to do with efficiency. We used to have pay negotiations every year on behalf of

everybody with the Treasury. Now we have about 140 different sets of negotiation. This is incredibly intensive. Lots of resources are required and we are faced with the same straightjacket.

**With the election of politicians like Francois Hollande in France do you see any future for a backlash to austerity packages in Europe? Do you see a future for a politician with similar views to Mr Hollande ever being elected to the UK Government?**

Well if I didn't then we should all give up because if this is as good as it gets then it's pretty depressing. All of these things can change but they won't change on their own. I'm personally a strong advocate of proportional representation because I think

the problem with the British electoral system is it forces everyone to the centre. Think of the difference between Cameron and Blair. Think of the difference between the main policies which are usually all now pro-privatisation, pro-austerity to different degrees. Clearly Labour would be 100 per cent better than the Coalition but ultimately they did introduce the market into the NHS, the market into tuition fees and they introduced the beginning of the attack on public service pensions.

In the short term, clearly the hope has to be that in opposition Labour maintains some of their scepticism of what is going on at the moment. And I think that is the short term battle which you hope would mean that in 2015 Ed Milliband would mean some of the stuff Hollande has got elected on in France.

**Do you have any long-term political plans?**

The final jigsaw, if you like, that is breaking new ground here is, next month, we are going to ballot all our members asking them to give us the right as a union to stand candidates in parliamentary elections. The premise is that if nobody in the election says anything remotely near what you like, it will be a really good democratic choice to stand someone different. Also, it's a good way to take our message to the political arena. In some sense what we have recognised is if you look at Bradford West and George Galloway, whatever people think of George Galloway, the reality is that there was an election that dominated the news and there was a brilliant local campaign. So what if a public sector worker did that somewhere? What if somebody committed say to be the opposition of the closure of a hospital?

So that is taking us in the direction where we intend to be much more political, but not party political. That is the way we have defined it. The PCS does not affiliate to the Labour Party, so it is about saying political is an all-year round thing in the community and we want to do more about engaging the public. One can see that in that sense, we therefore have different strategy in Scotland with the SNP Government and in Wales. So our attitude has been that you don't work with people because of the colour of their rosette, you work with them because of what they say, and I think that gives us the key to build broader alliances.

**Do you think the unions are correctly poised for this sort of political change?**

I consider the unions to be the opposition in Britain at the moment because Labour is not making the arguments that you would expect. Therefore, we have published pamphlets on an alternative economic strategy and an alternative welfare state concept. We are attempting to say that we will industrially try to stop things, but it is also about putting forth positive agendas. This is all about recognising that we have got to up our game politically and do some things which may be challenging, but that is what trade unions have been doing for hundreds of years. It's about keeping the industrial angle going as much as we can but also making the arguments politicians should be making but aren't making. ■

Obituary of Professor Lord Wedderburn QC, FBA  
Born 13th April 1927; died, 9th March 2012



Picture: Ripon Ray

## Immense and insightful

The Haldane Society mourns the passing of one of its Vice-Presidents, the great labour lawyer, Bill Wedderburn, who committed his life's work to the advancement of the interests of the working class, writes *John Hendy QC*. His towering intellect, his brilliance as an academic lawyer, his profound knowledge of labour law, both here and abroad, his elegance as a writer, his inspirational teaching and his immense enthusiasm and energy were devoted to this end. But these immense gifts never masked his warmth, generosity and impish wit.

Bill's partisanship could never be used against him because of the faultlessness of his legal analysis. His insight and breadth of vision as to the context, function and purpose of labour law was matched only by his immense command of the detail of it. Like Kahn-Freund before him, his exposition of the comparable law of other countries provided a tool for highlighting – at the same time – the universality of the role of labour law in moderating the endless struggle between capital and labour and also its national characteristics, moulded by history, economics and culture.

As an academic he produced an endless flow of some of the most insightful writings in the field of labour law. His chapter on 'The Economic Torts' in *Clerk & Lindsell on Torts* was the ultimate analysis for practitioners and judges of the intricacies of industrial action law in the UK, a chapter which he updated extensively in every new edition (with footnotes on many pages exceeding the length of the text). In contrast to the unsurpassed focus of that chapter is his lecture, given at the

age of 80, 'Labour Law 40 Years On', subsequently published in the *Industrial Law Journal* at [2007] ILJ 397, which is a brilliant example of both the breadth and the depth of his analysis of the many facets of labour law, domestically and internationally, and its interplay with the events and forces of the world outside the courts.

It was *The Worker and the Law*, first published in 1965 and in many editions thereafter, that made his name throughout the labour movement. The book, in language accessible to all, is a masterpiece of exposition of a hideously complex legal subject. Eventually the law at work became too big for a single volume. Bill was never prepared to reduce its scope from 'labour law' to 'employment law' which meant disregarding collective aspects. In fact, he disparaged those who suggested that the law at work need no longer concern itself with collective labour relations.

Bill Wedderburn was born in Deptford – his team was Charlton Athletic FC – to parents who ran a scale-makers in New Cross. Educated at a local grammar school he got a scholarship to Cambridge. After national service in the RAF he taught at Clare College, Cambridge from 1952 to 1964 when he joined the London School of Economics. His chair was that of Cassel Professor of Commercial Law. It should not be overlooked that Bill's brilliance as a lawyer did not confine him to labour law – he was the editor of the *Modern Law Review* for 17 years.

Labour law was the core of his work. At the LSE, over some 30 years, he established an

academic base for labour law renowned throughout the world. He served on the editorial boards of a multitude of labour law publications. He was appointed a life peer in 1977, having been the chief architect of the Labour government's trade union legislation of the 1970s. His principal role in the House of Lords was, as he saw it, to defend workers' and trade union rights, a task which he consistently sought to fulfil until illness prevented him from doing so late last year. He had resigned the Labour whip, but not from the Party, in disgust at the worst excesses of New Labour but resumed the whip when Gordon Brown became Prime Minister.

Though called to the Bar in 1953 and made an honorary QC in 1990, he rarely appeared in court. However, he was junior counsel in several of the textbook strike cases of the 1960s including *Torquay Hotel co Ltd v Cousins* [1969] 2 Ch 106. I had the honour to lead him on behalf of the National Union of Mineworkers in some of the crucial civil litigation of the miners' strike of 1984-5. For both of us I think the high point of our courtroom collaboration must be the case of *Wilson and Palmer & ors v UK* [2002] IRLR 568, the first successful trade union case before the European Court of Human Rights. He and I also worked together to establish the Institute of Employment Rights, a think-tank for the Labour Movement, in 1989 – of which he was the first President.

Bill leaves four children. His third wife, Frances to whom he had been married since 1969, was with him at the end. ■

# Haiti cholera victims sue the United Nations



**Mario Joseph, of Bureau des Avocats Internationaux (BAI)** is Haiti's best-known human rights defender and is the lead advocate in the cholera case against the UN. He is long-standing friend of Haldane, through his work for many years on the Bureau of the International Association of Democratic Lawyers (IADL), of which Haldane is a founding member. He is supported by Brian Concannon of the US-based Institute for Justice and Democracy in Haiti (IJDH), which in November 2011 filed a Petition for Relief with the UN's Claims Unit in Haiti on behalf of more than 5,000 victims.

This unprecedented petition against the UN has its roots in centuries of anti-colonial struggle. Haiti has a proud history of revolution, and was the scene of the first decisive overthrow of slavery. C. L. R. James wrote of the 'Black Jacobins', part of the French revolutionary movement of the 1780s. The Haitian Revolution of 1791 to 1794, led by Toussaint Louverture, culminated in the Haitian Constitution of 1801, which proclaimed 'There cannot exist slaves [in Saint-Domingue], servitude is therein forever abolished. All men are born, live and die free and French.' The Haitian revolution was crushed by France within two years and Toussaint died in captivity. However, from 1804 until US occupation in the 20th century, Haiti was an independent black state, posing a

by **Bill Bowring**

very significant threat to all colonial and slave regimes. In 1817 Simón Bolívar received soldiers, weapons and financial assistance from black Haiti.

In 1904 the US imperialist President Theodore Roosevelt established the 'Roosevelt corollary' to the 1823 Monroe doctrine, itself a response to the successful liberation struggles against Spain and Portugal. This asserted the right of the United States to intervene in Latin America in cases of 'flagrant and chronic wrongdoing by a Latin American Nation'. On this basis, Haiti was occupied by the USA from 1915 to 1934; the departing US forces established the border between Haiti and the Dominican Republic, and laid the basis for the brutal hereditary dictatorship of the Duvaliers, 'Papa Doc' and 'Bébé Doc'. Bébé fell from power in 1986.

The former priest and continuing threat to US hegemony, Jean-Bertrand Aristide, was elected President in 1990, ousted in a coup in 1991, and returned to power in 1994. He left power according to the Constitution at the end of his term in 1996 and was re-elected with 92 per cent of the vote in 2000. In 2004, in what was termed a 'new coup-d'état or new kidnapping', US forces removed Aristide from Haiti, and engineered a compliant vote in the UN Security Council.

The United Nations Stabilization Mission in Haiti (MINUSTAH) has been there ever



*Karl Michel LaFrance, 10, got sick at 1am and died at home at 10am this morning. His mother says she didn't realise the gravity of his illness until it was too late. After he died, she brought him out to the road to be picked up by the government. Workers, hired by the department of health to pick up dead cholera victims, spray the body with disinfectant. LaFrance is put into a truck with 14 other bodies and taken to a mass grave.*

Picture: Ben Depp

since. China Miéville (2008) has suggested that '... multilateral UN sanctioned imperialism is more of a threat to justice and emancipation than its unilateralist Rumsfeldian sibling'.

On 12th January 2010, Haiti was struck by a massive earthquake. The International Red Cross estimated that about three million people were affected. The Haitian Government reported that over 316,000 people had been identified as dead, an estimated 300,000 injured, and an estimated one million were made homeless.

An outbreak of cholera began in October 2010. Five hundred and twenty five thousand Haitians contracted the disease and 7,025 have died since then.

MINUSTAH personnel deployed from Nepal brought the *vibrio cholerae* bacteria to Haiti, as has been established by numerous DNA tests and epidemiological studies, including those carried out by the UN itself. Although Nepal has endemic cholera, the UN did not test or treat the Nepalese peacekeepers for cholera prior to their deployment to Mirebalais. There they lived on a base with a 'haphazard' and 'inadequate' sewage system that dumped all waste into an unfenced pit. It was entirely foreseeable that human faeces containing cholera bacteria could contaminate a tributary that runs just metres from the base into the Artibonite River.

Epidemiologists calculated from the record speed at which the outbreak had spread that a full cubic metre of cholera-ridden water was dumped into the Artibonite and moved downstream like a plume, infecting the Haitian families that drink, bathe, play and do their laundry in the river.

In March 2011, Bill Clinton, by then UN Special Envoy to Haiti, acknowledged that MINUSTAH was the 'proximate cause' of the outbreak.

The Petition for Relief seeks:

- a) the clean water and sanitation infrastructure necessary to control the epidemic;
- b) compensation for victims who have lost family members or were ill from cholera; and
- c) a public apology from the UN.

MINUSTAH's operations in Haiti are governed by a Status of Forces Agreement (SOFA), which gives the UN and MINUSTAH broad immunities from civil or criminal actions in the Haitian courts. To balance this immunity, the SOFA requires the establishment of an independent Standing Claims Commission to hear claims and compensate victims who have been injured in the course of the UN's operations. Despite this requirement, no Commission has been established during the seven years MINUSTAH has operated in Haiti. In fact, no Standing Claims Commission has ever been

established in over 60 years of UN peacekeeping, even though most SOFAs provide for such commissions.

The UN has confirmed receipt of the petition, and its official response is that it is 'studying' it. Liability has so far been denied, despite the overwhelming evidence. However in a Security Council meeting on 8th March 2012, France acknowledged the damage cholera had done to Haitians and to the reputation of the UN, declaring, 'We can regret this, but we cannot ignore it.' Pakistan called for a UN apology, adding that the UN must do 'whatever is necessary to make this situation right.'

Unofficially, the UN responded to the petition several months after it was filed, by creating a 'coalition force' including the World Health Organization, Pan-American Health Organization (PAHO), UNICEF, and others. These organisations have announced a 'One Team Against Cholera' initiative to eradicate cholera through investments in comprehensive water and sanitation.

Haldane is part of the international campaign of solidarity, with the UK Haiti Support Group, to demand that the UN admits its liability to the cholera victims of Haiti, and provides effective and speedy relief as demanded by the petition. ■

Bill Bowring is Haldane's International Secretary



# Unlikely hero

Baltasar Garzón is a Spanish judge stripped of his position after his campaign to brand Franco's collaborators 'murderers'. Renowned historian **Paul Preston** explains the background.

The Spanish Civil War came to an end 73 years ago and is ancient history for most of the world. In Spain itself, on-going and bitter memory wars mean that it is still 'the past that has not passed away'. The war is still being fought in books and in political actions and the latest victory has gone to the right with the trial and condemnation of the judge, Baltasar Garzón, internationally renowned for his championing of human rights and most notably for his bid to have the Chilean dictator, General Augusto Pinochet, extradited from Britain to be tried for the execution of some three thousand leftists between 1973 and 1990.

The Garzón case is immensely complicated. He was charged with three separate offences all of which related to his role as a *juez instructor* – an investigating magistrate – that is to say a judge with police powers. One related to the fact that he had accepted a visiting professorship at New York University to lecture on human rights in 2005-2006. The post was partially financed by a grant from the cultural foundation linked to the Banco Santander at the same time as he was acting in a case involving another part of the bank. A complaint was filed charging that Garzón had accepted payment which came indirectly from the bank in return for dropping a tax fraud investigation against the bank's owner. The case was eventually dropped on the grounds that the judicial reasons for dropping the fraud investigation were sound.

The second set of charges against Garzón related to the corruption investigation known

as the Gürtel case. The case implicated a number of leading members of Spain's ruling Partido Popular, especially those from the Valencian region. Garzón was tried for ordering in early 2009 illegal wiretaps of conversations between the accused and their lawyers. He claimed in his defence that his actions were approved by State prosecutors because he ordered the wiretaps on suspicion that suspects in the case were involved in money laundering. The Spanish Supreme Court found him guilty and suspended him for 11 years, effectively ending his career, on the grounds that he had violated the fundamental rights of defence.

It is widely believed in Spain that what brought down upon Garzón the wrath of a pro-Franco judiciary was mainly his attempt to investigate the crimes of the Francoist military rebels who, between 1936 and 1945, were guilty of fifty times the number of killings attributed to Pinochet. For this he was accused of *'prevaricación'*, an offence which has nothing to do with the English word prevarication meaning evasion or hesitation but means rather knowingly pursuing a judicial or administrative action knowing it to be contrary to the law. In this case, in the wake of the so-called law of Historical Memory of 2007, Garzón had initiated an investigation into the crimes of the military rebels and their allies. As an investigating magistrate, he was entitled to open investigations into suspected offences which could lead to criminal prosecution. However, in this case, there was no possibility of any such prosecution.

This was because of the existence of the law of political amnesty passed on 15th October 1977, one of the pillars of Spain's bloodless transition to democracy. The law effectively stated that acts of terrorism in opposition to the Franco dictatorship and crimes against human rights in its defence could not be subject to judicial proceedings. This was the basis of what is often called 'the pact of silence'. Essentially, it was an agreement not to rake up the past which, given the numerical discrepancy between the relatively few people involved in acts of violence against the Franco regime and the many involved in its brutal defence, constitute a major sacrifice made by the democratic forces in order to avoid bloodshed.

There is little doubt that Garzón had made himself unpopular within the overwhelmingly conservative judiciary in part because he was perceived as a celebrity-seeking self-publicist. However, the three cases amount to a vendetta that went far beyond personal issues. The investigation into the corruption involving the Partido Popular made powerful enemies but it is popularly believed that the real clincher against Garzón was the branding of General Franco and his collaborators as murderers. The fact that he was acquitted of the charges of *'prevaricación'* in this third case has been seen as a sign of cunning on the part of his right-wing enemies. The charges began with a private prosecution brought by two extreme ultra-rightist groups. That they were allowed to go forward caused public outrage. Garzón's acquittal on the charges is seen as a whitewash



*Garzón: from Spanish judge to anti-fascist hero.*



coming after he has already been neutralised in the 'Gürtel' case and the investigation into the crimes of the Francoists blocked.

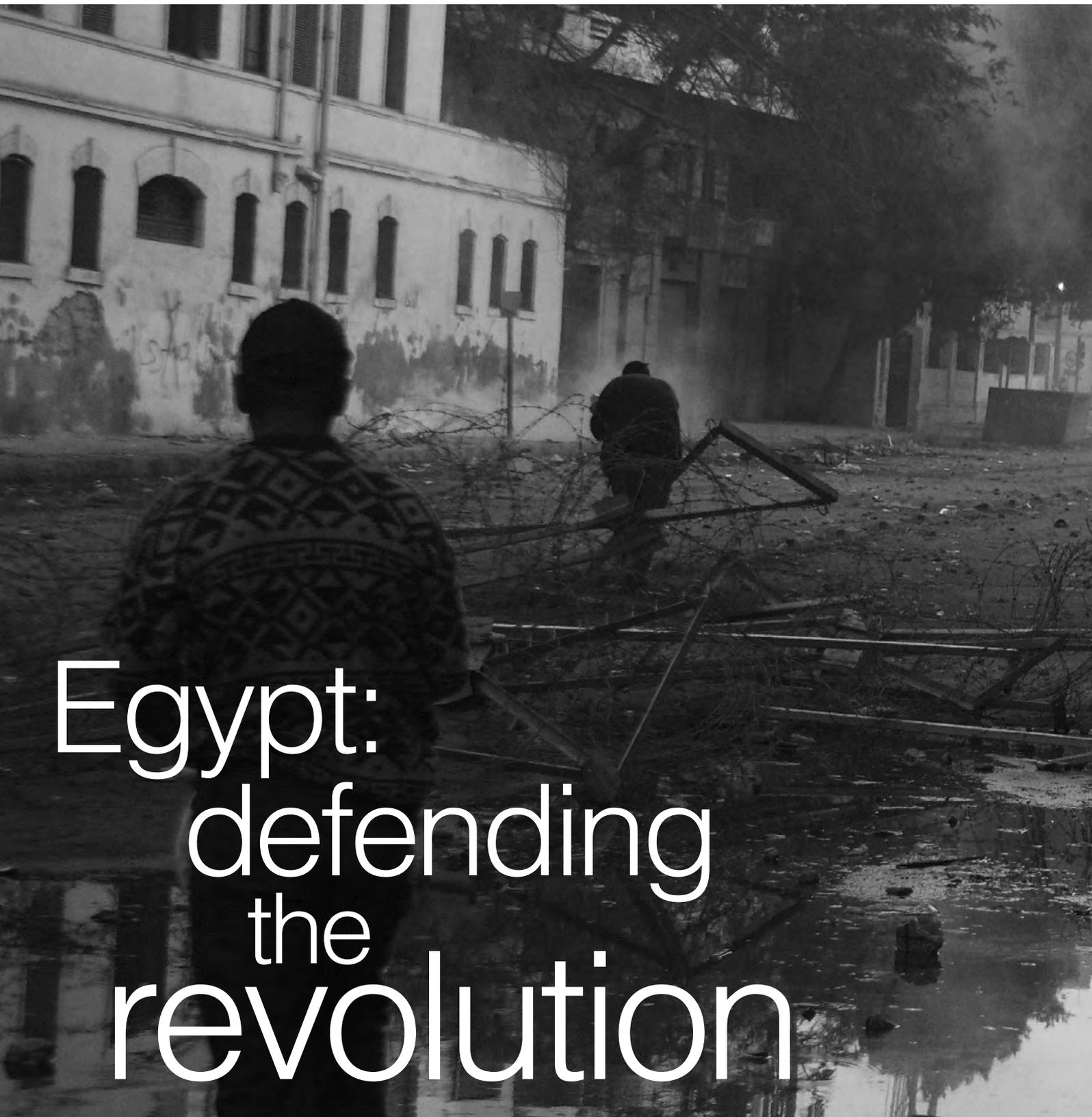
To this day, General Franco and his regime enjoy a relatively good press in Spain and in many other countries. This derives from a series of persistent myths about the benefits of his rule which were easily propagated during the nearly four decades of the dictatorship. A virtually totalitarian control of the media and the education system was the basis of a process of national brain-washing that created a sociological Francoism that survives to this day. Along with the carefully constructed falsehoods that he masterminded Spain's economic 'miracle' in the 1960s and heroically kept his country out of the Second World War, there are numerous myths about the origins of his regime. These derive from the initial lie that the Spanish Civil War was a necessary war fought to save the country from Communist take-over. During the Cold War and after, these same myths were spread in the Western democracies as Franco's Axis connections were wiped clean because he was regarded as a crucial ally. Moreover, anti-communism, a reluctance to believe that officers and gentlemen could be involved in the deliberate mass slaughter of civilians and distaste for anticlerical violence go some way to explaining a reluctance to believe that Franco should be considered in the same bracket as Hitler or Stalin.

For his efforts, and in response to his being condemned to be stripped of his position as a

judge, Garzón has become a hero to millions of Spaniards. They are the descendants of the nearly one hundred and fifty thousand men and women supporters of the democratically elected Second Republic who were murdered extrajudicially or executed after flimsy legal process. They were killed as a result of the military coup of 17th-18th July 1936 against the Republic. In response, another fifty thousand were killed behind the lines in the Republican zone. In the rebel zone, unknown numbers of men, women and children were killed in bombing attacks and in the exoduses that followed the occupation of territory by Franco's military forces. In all of Spain after the final victory of the rebels at the end of March 1939, approximately twenty thousand Republicans were executed. Many more died of disease and malnutrition in overcrowded, unhygienic

prisons and concentration camps. Others died in the slave labour conditions of work battalions. More than half a million refugees were forced into exile and many were to die of disease in French concentration camps. Several thousand were worked to death in Nazi camps. All of this is what Garzón wanted to investigate and it constitutes what I believe can legitimately be called the Spanish Holocaust.

Paul Preston is a Professor in International History at the London School of Economics. He is the author of *We Saw Spain Die* and *The Spanish Holocaust*.



# Egypt: defending the revolution



A small group of radical lawyers is at the forefront of Egypt's left but the wider profession is veering towards cautious alliance with the military regime. **Taimour Lay** reports ►

# Egypt: defending the revolution



► ‘I studied law in prison actually,’ says Ahmed Seif Al Islam, taking a drag on a cigarette at the end of another long day in the criminal courts. In 1983 he was jailed for his involvement in an armed communist group, ‘Al Matraqa’ (‘The Hammer’). Being caught with two pistols meant five years inside. He used the time to become one of the country’s leading human rights lawyers, spending the period before the 2011 revolution defending protesters and strikers across the country.

‘Legal struggles are important when there is no mass movement in the street,’ he argues, looking back to life under the dictatorships of Anwar Sadat and Hosni Mubarak. ‘But when there is a mass movement, we are less important. Politics is what matters, not the courts.’

Some of his courtroom protégés today may disagree. At 61 Seif Al Islam is the grandfather of Egypt’s revolutionary left and the new generation of lawyers who see themselves as key defenders of the February revolution. Now his son, renowned blogger Alaa Abd Al-Fattah, is facing prison himself. He was released from detention last year pending further investigation into a trumped-up protest charge and is one of 12,000 people who have been trapped within the army’s judicial system since 2011.

As the protest movement gradually weakens, Egypt is now facing legal battles more than street fights with the police. From military prosecution of activists and strikers to the Muslim Brotherhood-dominated assembly that is meant to write a new constitution by the summer, politics is shifting back into the corridors of State institutions.

The conclusion of Mubarak’s trial on 2nd June 2012, in which the former President was handed a life sentence for complicity in the deaths of 900 demonstrators in February 2011, was a verdict that spared his security service lieutenants from blame – another sign, along with the dozens of recent acquittals handed to police charged with abuses, that Mubarak has been sacrificed to protect the officers and officials who still run the country.

Some revolutionaries bemoan the drift away from radical confrontation; others accept the new reality since the Brotherhood’s

Freedom and Justice Party (FJP) swept to victory in the parliamentary elections. But the current balance of forces is far from stable, says one Cairo journalist, who predicts further social upheaval as economic conditions worsen. ‘The past year is an astonishing vindication of the capacity of a few thousand dedicated street fighters to change history,’ he says.

The radical lawyers defending protesters in both criminal and military courts are a small minority within their profession. They include Mohamed Aziz, Ragia Omran and others who formed defence committees to assist protesters and union members who find themselves prosecuted by military judges. They continue to cope with arbitrary decisions, often handed down in writing by officers, appeals vetoed by the army and refusals to allow cross-examination of witnesses.

It is better in the ordinary criminal courts, but not by much. The Supreme Council for the Armed Forces (SCAF) is also changing the game under pressure, choosing in recent months to send people through the Emergency Supreme State Security Court (ESSSC), technically part of the civil, not the military, court system but with few additional safeguards.

Outside the stone halls of the Court of Cassation in central Cairo, 1km from Tahrir Square, families and football ultras are camped out calling for justice. The imposing sides of the court building are covered in the ubiquitous graffiti of 2011: black stencil prints of dead protesters and red-lettered slogans in English: ‘A.C.A.B’ (All Cops Are Bastards) and ‘Fuck SCAF’. Inside, torn Lawyers’ Union (‘Syndicat’) and Bar Association election posters still adorn the walls.

The vast majority of the 100,000-strong legal profession voted for cautious accommodation with the army earlier this year. Sameh Ashour, leader of the Nasserist party, was elected as Union chairman. He has called on SCAF to ‘intervene to protect the nation’ from the Muslim Brotherhood and resigned his seat on the Constitutional Assembly in March to undermine his rivals among the Islamists.

*Another busy day for lawyers, protesters and the public at Cairo's Court of Cassation.*

Pictures by Tom Dale



If most lawyers occupy this conservative ground – worried about more protests, anxious about the Brotherhood – it is also because of the realities of the profession outside of Cairo, according to one veteran lawyer. ‘In smaller towns you can’t work without a good relationship with the local police and prosecutor. Lawyers have a direct interest in the State’s bodies and are reluctant to challenge them, accuse the police of torture, for example, and that hasn’t changed since the revolution.’

Nadeem Mansour, 23-year-old director of the Egyptian Centre for Economic and Social Rights, says it will take a long time for lawyers to raise their standards and reputation. ‘Law is not the most prestigious job in Egypt. If you get the best marks, you do medicine or engineering or business. Because of the way politics had developed the last few decades, lawyers were seen as part of the system.’

The incomplete revolution has left the legal system untouched and liberal judges isolated. Khaled Ali, a 40-year-old socialist lawyer running for President, argues that judges have in fact been more cautious since the revolution than before. In 2006, dozens held sit-ins against political interference in the judiciary, sparking solidarity protests. ‘But they suffered defeats after that and have stayed quiet,’ he says.

Most Judges are former State prosecutors or police officers. Moreover, constitutional amendments in 2007 took elections away from judicial supervision and escalated the use of emergency measures such as the use of military courts. Today the ‘Judges’ Club’, as it is informally known, having formerly been run by reformers, is headed by a military regime loyalist, Ahmed Al-Zend.

But the system is not uniform. Khaled Ali made his name winning landmark labour cases in the Constitutional Court, arguing law before a body of judges who have developed a reputation for impartiality. Public law, following the French system, is invested in a dedicated administrative court which has produced a string of important judgments, raising the minimum wage in 2010 and halting the corrupt sale of State-owned assets.

The future of Egypt’s courts will depend on the next wave of youth

protest but also the degree to which the FJP-Muslim Brotherhood attempts to redefine the legal system to promote Islamist objectives under pressure from increasingly vocal Salafist groups.

There are other, more subtle, currents of change, including a diminution in deference within courtrooms. Across Cairo, frustrated families have chanted at judges and destroyed benches in response to the acquittal of police officers accused of shooting protesters.

Lawyers are also asserting themselves against a key document governing their working lives: the so-called ‘Judicial Authority Law’ which a committee of conservative judges is seeking to draft in line with pre-revolution provisions, including the notorious Article 18, which allows them to arrest anyone, including lawyers, who ‘disturb a court session’. Disputes over the retention of Article 18 led to punches being thrown between judges and lawyers in October 2011 and even gunshots outside the Judges’ Club.

The biggest uncertainty hangs over the prospect of immunity for Field Marshal Hussein Tantawi and his army. A retired air force general told the *New York Times* in January: ‘SCAF’s biggest fear is if they give up power, they will be held to account for corruption under the old regime and for the deaths of protesters in the past year.’ Analysts say that the UK and US are already advising the Muslim Brotherhood to put stability before justice to ensure a ‘smooth’ transition.

These legal decisions will create new fissures and reactions, from both the left and the establishment centre. The danger is that the smaller groups of the revolutionary left continue to be marginalised. But Seif Al-Islam refuses to be downcast. ‘Remember the Brotherhood also suffered under the old law, many were jailed, so I think they will attempt some good reforms to make the courts better. [As for preventing immunity] it’s up to the youth to keep fighting. They crossed a red line [in 2011] and they won’t go back.’

Taimour Lay is a journalist specialising in African politics and used to investigate oil companies for PLATFORM

A global audience of billions watched in awe and admiration in early 2011 as the people of Tunisia and Egypt struggled to shake off decades of tyrannical rule. Thirty years previously many of us experienced that same sense of thrill as we witnessed the culmination of a previous liberation struggle in another part of Africa. In 1980, the lowering of the Union flag marked the demise of British colonial rule in Rhodesia and the birth of independent Zimbabwe. Anyone who has seen the recently released documentary about Bob Marley will have caught a glimpse of this. The great Jamaican reggae star was the headline performer at the celebration concert that followed that ceremony. The leader of that freedom movement meanwhile was Robert Gabriel Mugabe who went on to become Zimbabwe's first real Prime Minister.

Some things seemingly never change. Despite his advancing years and ailing health, Mugabe clings to office, now elevated to the position of State President. The radical promises of black power that accompanied his rise have long since been abandoned however and his rule has been characterised by violence, corruption and economic catastrophe.

It was in these circumstances and for these reasons that a group of political activists and trade unionists met at the Zimbabwe Labour Centre in Harare on 19th February 2011. While there they began watching recorded news bulletins of the events in Cairo and Tunis and a number of speakers addressed the audience about the political significance of the uprisings, the parallels that could be drawn and the lessons that should be absorbed.

The streets surrounding the Labour Centre

in downtown Harare are named after a number of Africa's great freedom fighters, among them Kwame Nkrumah, Julius Nyerere and Nelson Mandela. It is a measure of how far Mugabe has betrayed those traditions that such a gathering was deemed necessary by those who organised it, but also that it could not be tolerated. Dozens of police stormed into the building and arrested every single one of the 45 people present. They were held for four days before being brought to court and charged with treason, an offence which carries the death penalty or life imprisonment on conviction.

The allegations against the majority of the detainees were so pitiful that Magistrate Munamoto Mutevedzi released 39 of them on 7th March 2012 citing 'glaring weaknesses' in the prosecution case. The remaining six were remanded in custody however on the ground that there was a 'reasonable suspicion' that they had committed an offence. The six defendants were Munyaradzi Gwisai, Antonater Choto, Tatenda Mombeyarara, Edson Chakuma, Hopewell Gumbo and Welcome Zimuto.

The most high profile of these defendants was Gwisai. A graduate of the law faculty at the University of Zimbabwe, in the 1990s he had been general secretary of the students' union. The president at the time was Tendai Biti, now Movement for Democratic Change (MDC) Secretary General and Minister of Finance in the Inclusive Government. Gwisai himself was subsequently elected MDC MP for the Highfield constituency in Harare in 2000, a position he retained until 2002. He is now a practicing lawyer and lecturer at the University of Zimbabwe. In addition, he is the chair of the Zimbabwe Labour Centre and general co-

ordinator of the International Socialist Organisation. In short, he is a man with a high political profile.

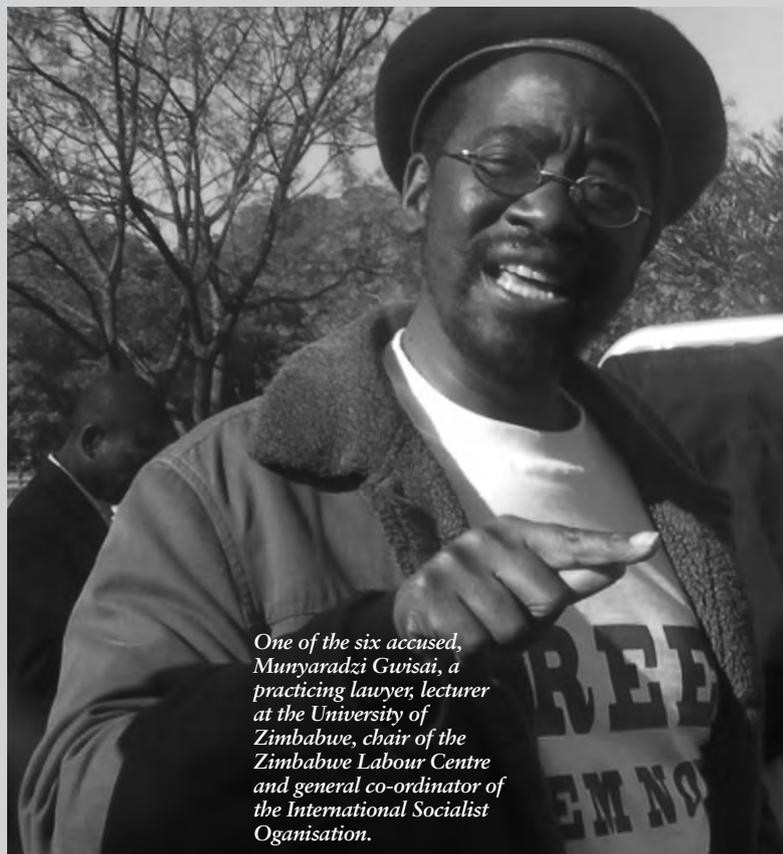
As Haldane's recent 'Defending Human Rights Defenders' conference illustrated, international solidarity is a fundamental principle for The Haldane Society. We were therefore deeply concerned about the possible outcome of the trial and determined to show our support for activists who were simply exercising their internationally guaranteed right to freedom of expression. It was for this reason that we drew up a proposal to send somebody out to Zimbabwe in order to observe the proceedings. There is a tradition of such activity among lawyers and political activists which is intended to demonstrate to the authorities that their activities will not go unnoticed and unrecorded.

By the time the trial was due to commence on 18th July 2011 the charge had been amended to conspiracy to commit public violence or alternatively incite public violence. These are lesser charges than treason but nevertheless attract sentences of up to 10 years' imprisonment. Just three days before this date and with the defendants still awaiting service of the case against them the State Prosecutor announced that he had more pressing business in the High Court. There was no choice but to adjourn the matter for a month.

I arrived in Harare on 20th August 2011 and joined a spirited crowd at the regional Magistrates' Court in the appropriately named Rotten Row the following Monday morning. The case had clearly attracted considerable attention. In addition to the grassroots activists and lawyers there were representatives of both

**Brian Richardson** reports from a trial of six socialists in Zimbabwe, which showed further evidence how far Robert Mugabe's Zanu PF has betrayed the traditions of Africa's great freedom fighters.

# Whose treason?



*One of the six accused, Munyaradzi Gwisai, a practicing lawyer, lecturer at the University of Zimbabwe, chair of the Zimbabwe Labour Centre and general co-ordinator of the International Socialist Organisation.*

the British and French embassies in attendance. The building itself seemed in many ways emblematic of the dilapidated state of the country. Built during the colonial era it had clearly seen better days. It came as no surprise to learn that in February 2012 the building had to be closed following a cholera and typhoid scare.

In the event, not only did the trial not take place in the week that I was present, it was adjourned on several further occasions and did not get going until 14th September 2011. It was subsequently adjourned several more times before finally concluding on 19th March 2012 with the conviction of all six defendants for conspiracy to commit public violence. They were sentenced to two years imprisonment suspended for five years, fined \$500 and ordered to complete 420 hours of community service. At the time of writing these sentences are subject to appeal.

When set against the possible outcome when the defendants were originally charged, these sentences can be viewed with a sense of relief. On the surface they appear to confirm that they did indeed receive a fair trial. The adjournments were undoubtedly frustrating, leaving those charged with a genuinely terrifying sense of uncertainty. At first glance they could be read as an indication of the State's commitment to transparency and justice. One of the reasons the matter was postponed was because a number of magistrates recused themselves because they were familiar with Gwisai. He had taught them at the university during their time as law students. In addition, the proceedings were held in open court with the public free to sit in and observe. Indeed, on the first day when the

matter was adjourned I was invited to accompany both sides to the magistrates' office to witness them discussing how the matter would proceed from then on.

The bare facts of the case do not begin to tell the real story however. There was a widespread consensus among activists, opposition parties and wide sections of the media that these proceedings amounted to a show trial intended to send a very clear message to anybody opposed to Zanu PF's continued domination; the political activity that was occurring elsewhere in Africa would not be tolerated in Zimbabwe.

This was certainly the view of those members of Zimbabwe Lawyers for Human Rights (ZLHR) that I met during my visit. They compared the prevailing atmosphere with that which had existed three years previously. 2008 had been a year of heightened repression when Mugabe faced the real prospect of defeat in the presidential election to the MDC candidate Morgan Tsvangirai. Despite the repression, Mugabe's own Zanu PF party conceded that Tsvangirai polled more votes than Mugabe. However 'official' figures revealed that his lead in the original poll was not sufficient for him to avoid a second round run-off. The violence and intimidation that followed the first election was so severe that, fearful for his own life, Tsvangirai pulled out of the reconvened poll thus handing victory to his nemesis. A measure of the brutality that was unleashed is that in that year ZLHR dealt with 1,445 cases of alleged abuse.

Mugabe clung onto the presidency but worldwide disgust at his antics led to the imposition of sanctions which forced him into a power sharing agreement with Tsvangirai appointed Prime Minister. The relative stability that this brought led to a reduction in ZLHR's caseload to 358 in 2009 and 400 in 2010. Following the arrest of these defendants in February 2011 the numbers rocketed once again. Over the next six months ZLHR represented 875 people including Gwisai and his comrades.

Away from the set piece façade of the courtroom the treatment of the defendants was savage. Seventeen of the original detainees were kept in solitary confinement while being interrogated. All, including the women, allege that they were struck repeatedly with sticks on their buttocks and backs in an attempt to force confessions out of them. Meanwhile a number were denied urgent medical treatment. This was a particular concern as several of the detainees were activists from HIV/AIDS campaigns with serious conditions that required monitoring and careful management. One detainee, David Mpatsi suffered a lung infection during his detention. He subsequently died after a rapid deterioration of his health on 14th July 2011.

When members of ZLHR originally attempted to gain access to the defendants on the day of their arrest they were chased away from the police station by men, some of whom were dressed in civilian clothes. It is believed that these men were from the notorious Central Intelligence Organisation.

It was submitted by ZLHR that this increase in harassment and intimidation was by no means coincidental. The explanation

for the crackdown is a growing sense of unease within ruling circles. Mugabe's days are clearly numbered. He may be able to continue cheating the electorate but he cannot cheat death indefinitely. The succession is uncertain with many people who have benefited from his patronage set to lose out when he finally departs. Those who have been handed farms, diamond fields and other largesse are desperate to hang onto them and determined therefore to quash any revolt from beyond their ranks.

The perspective that this crackdown is symptomatic both of the power struggle within Zanu PF and the ruling party's fear for its own future is not confined to those on the left. During my time in Harare I met with Senator David Coltart, a member of the minority MDC faction led by Arthur Mutambara and, in fact, the single white Cabinet minister in the Inclusive Government. Coltart's opinion of the trial was that even if there was a *prima facie* case against these activists, one had to question why they were being charged in this case at this time. By comparison he indicated that he was able to cite numerous examples where there was very clear evidence of serious criminal offences committed by senior members of Zanu PF, yet, no action was taken against them. When considered in that wider context therefore, he argued, the decision to proceed with this trial was clearly motivated by political considerations.

The State's 'star witness' Jonathan Shoko testified that he was a police officer attached to the Central Intelligence Unit and that he had 'sneaked into a planning meeting'. Consequently the police knew in advance that the meeting was taking place and officers were lying in wait, ready to pounce. That in itself exposes the State's real agenda. There was more to come. While this witness was giving evidence the trial took a dramatic turn when the defence exposed him as being Rodwell Chitoyo, a secret State agent rather than a police officer. In the wake of this there was an application to dismiss the charges against the defendants. It was not granted. Nevertheless, they succeeded in revealing the real reasons for their arrest and conviction.

My abiding memory of my time in Harare will be of the courage and steely determination of the defendants. The day before the trial was due to begin we met at an outdoor music festival at a park in the city centre. Tatenda Mombeyarara casually remarked that his children had asked him if he was going to be coming home the following day. When I asked how he felt about the prospect of being sent to prison he replied that this was the price that had to be paid for living under a dictatorship.

Such rulers are not all powerful though. That simple fact is illustrated by the very events that these activists were watching, indeed, it is precisely why they were arrested. Before they were so rudely interrupted there is little doubt that these unsung heroes had absorbed the spirit of Tahrir Square. Bloodied but unbowed they live to fight another day and for a future that can consign Mugabe's decades of betrayal to the dustbin of history.

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Brian Richardson is a barrister and author of *Tell it Like it is – How Schools Fail Black Children*





# The trial of Lord Coe



As imagined by  
**David Renton**

It is 2022, and following the successful prosecution of the so-called 'Seven Sisters' (BP, Chevron, Shell, ExxonMobil, and their subsidiaries, Standard Oil, Texaco and Gulf Oil) for crimes against the environment, Sebastian, formerly Lord, Coe is indicted for aiding and abetting ecocide. In the early days of the trial before the New International Criminal Court in Johannesburg, Coe, despite his advanced years, appears jaunty. He denies his guilt. His opening speech reminds the court that the London Olympics organisers had promised the world that their Games would be the Greenest ever. And he speaks of the work done by the Olympics' Sustainability Partners. 'The organisers did nothing wrong. I should not be here.'

Under cross examination by lawyers acting for Gaia, Coe's initial confidence slowly recedes. The first morning of the cross-examination is given over to the activities of BP, the Olympic Games' nominated 'Sustainability Partner' and 'Official Carbon Offset Partner'. Long before the Games opened, Coe accepts, the organisers were well aware of the part played by BP in the 2010 Deepwater Horizon drilling disaster, in which around 200 million gallons of crude oil were released into the marine environment of the Gulf of Mexico.

Shown images of dying birds and fish, Coe admits, 'Yes, I knew about Deepwater. Everyone did at the time. All the pictures you've shown today were on our news channels for weeks.'

'It was the worst case of oil pollution in history and yet you chose BP as your sustainability partner?' the prosecutor asks. Coe shakes his head and does not answer.

The prosecution moves on to BP's involvement in the mining of the Canadian Tar Sands. 'We now know that by 2012 these alone were responsible for 8 per cent of Canada's carbon emissions. They kept the world's car economy going for years beyond peak oil.

'If so', says Coe, 'you're telling me things I didn't know at the time. I take them very seriously.'

'But you made BP your Carbon Offset Partner? You had researchers, you could have Googled BP, none of this was secret at the time.' Coe pulls his glasses down his face and again says nothing.

In the afternoon, the prosecution moves on to the other major sponsors of the games. Dow Chemical had produced the poison gas used at Auschwitz. Its subsidiaries were responsible for the 1984 Bhopal disaster which killed around 25,000 people in India.

'I had heard about Deepwater, you couldn't miss that', Coe answers, 'but by 2012 I considered Bhopal very old news.'

'The poison was still responsible for birth defects and premature deaths by the time of London 2012', the prosecutor counters.

'I was a sports administrator', Coe says, 'I knew the length of a running track and how to build a successful games. Neither I, nor I suspect anyone involved in administering London gave a first thought to Bhopal.'

'Rio Tinto had mined the gold, silver and bronze that was used for the athletes' medals in Utah, processing the metal in a factory whose airborne pollution caused several hundred deaths each year.' Coe denies any knowledge. 'Coca-Cola and McDonalds', the prosecutor continues, 'had caused obesity across North America. You authorised the largest McDonalds in the world, right in the middle of the athletes' village.' Coe insists his conscience is clear, 'I was not troubled by McDonalds's record on health or the environment.'

In his opening remarks to the Court, Coe had referred to the activities of the Olympic Delivery Authority which held annual safety, health and environmental awards. Coe is now shown a list of the prize winners at these 'green' awards. One winner, BAM Nuttall, had been a member of the construction industry blacklist, Coe accepts, while other blacklists, Carillion and McAlpine, were also involved in building the main Olympic sites.

Coe agrees that the Olympic Games were seen worldwide by a population of billions, that the sponsors' logos were ubiquitous on television. He accepts that viewers all over the world were encouraged to believe that the companies were ethical. 'And I could hardly criticise them if that's what they concluded. If we hadn't believed the sponsors were legitimate, we would not have allowed them to be associated with the Games.'

It is put to Coe that involvement in the Olympics 'green-washed' companies such as those of the Seven Sisters, and held off the day when their crimes would be prosecuted. 'You are not asking me, are you', he counters, 'to support their prosecution, or my own?'

What about Meredith Alexander, the Games' 'Ethics Tsar', who resigned six months before the Games, in protest at the involvement of these polluters? Didn't her departure cause the organisers to re-think? 'No', Coe answers, 'by that point we were bound by our arrangements with BP and others. If we had returned their funds, the London Games might have lost money. That would have been unacceptable at a time of cuts and austerity.'

The prosecutor breaks in, 'But you were already losing money at a colossal rate. When you won the bid, you said their budget would be £2 billion. By the time of the Games itself, this had gone up to £23 billion, half of it from general taxation.'

'Yes, I know that', Coe says, 'We were over budget, and I didn't want it to get any worse. The decisions of the organisers have to seen,' he maintains, 'in the right context. You have to think back to the very different world in which we were operating. It was 2012, we were hosting the Olympics and we were looking for sponsors. We needed to raise large sums of money. The distribution of wealth was more concentrated then than it is now. The only companies capable of raising the millions we needed were the major corporations.'

'You have pointed out the poor environmental record of BP,' Coe continues, 'but every large corporation at that time was joined to the same networks and ran their business in the same way. They invested in each other's shares. There was barely a company on the London Stock Exchange that wasn't involved in the sectors we all now find troubling, mining, oil extraction, or military-related technology. Who else could we have gone to?'

'Yes, we got the Courts to pre-emptively injunct people on the basis that they "might" have protested against the Games. Yes, we were criticised for that and for so many things: for failing to get more people involved in sport, for allowing local sports to be closed down, for building on green spaces. Well, you couldn't have the Games without athletes and they needed areas to practice. I remember articles in *The Guardian* about the 10,000 soldiers we deployed, the jets and the helicopters and the battleships that were stationed on the Thames. But it was just ten years after 9/11. How was I to know if the Games would or would not be attacked?'

'We were criticised for closing roads all across London so that the organisers and the sponsors could be driven quickly to the events. Well, the sponsors had given us hundreds of thousands of pounds. They were entitled to better treatment. But we had a legacy, and one which still leaves me proud. We may not have made any contribution to education or to housing, but we brought the Westfield shopping centre to Stratford.'

'People pointed to our salaries; 15 managers on over £150,000, two on over £1 million including bonuses. Yes, many of our security guards were paid less than £10 per hour. But it was more than many of the guards in London who didn't work on the Games.'

'You can criticise the Games, but in 2012 every international sporting event was being organised in the same way. We were the very most typical expression, no better but no worse than anyone else, of the way the way the economy worked in 2012.'

David Renton is a barrister at Garden Court Chambers and the author of *Struck Out*



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# Reviews



## Stories from the 'war' on drugs

### **FILM: Cocaine Unwrapped**

Directed by Rachel Seifert  
Dartmouth Films (2011)

*Cocaine Unwrapped* looks at one drug and its impact in two different worlds, the relatively wealthy west and the poorer southern hemisphere. In the process it tells several stories. The film travels from London to Baltimore and from Colombia to Bolivia. Ecuador and Mexico are also visited along the way. It examines the simple coca leaf and its production and transformation into cocaine. The film looks at drug mules, prisons, poverty, death squads, gang crime and its political impact. It is an eye-opening and riveting account of the devastating repercussions of the war on drugs. Above all it is a human story.

The film opens in London as we hear individual users talk about how they enjoy the drug and how it helps them on a night out. In Baltimore, Seifert casts her camera on the industrial devastation of the city; the rise in unemployment and the neighbourhoods where dealing drugs is a way out for many of the poorest as famously depicted in the HBO series *The Wire*.

The film then tackles the 'war

on drugs' and takes us to South America.

In Colombia 140,000 members of the police are fighting the 'war on drugs.' This is backed up with a para-military force and billions of dollars of 'aid' from the USA. The effects for small farmers in the Tumaco region are that their crops of chocolate, bananas and yucca plants are destroyed as indiscriminate aerial spraying occurs regularly. As local community leaders explain, the spraying results in ill health, economic stagnation and mass migration. An interview with the former president of Colombia, César Gaviria, succinctly outlines the social damage this 'war on drugs' causes: '...it destroys the lives of people who are not criminals and who are just trying to survive.'

Bolivia is taking a different approach. For 20 years the previous Bolivian Government, backed by the USA, waged a war against coca growers. This all changed in 2005 with the election of Evo Morales and the Movement for Socialism. The Government now allows the limited growth of the coca leaf. This is monitored by the growers themselves through the trade unions. It supports the farmers to diversify into other crops. As

Morales himself explains, the coca leaf in its natural form is not cocaine, it is just a leaf. Indeed as a leaf it can be made into among other things herbal tea and creams for skin disorders, something Bolivia itself is keen to exploit.

However, as we see Bolivia abandoning the 'war on drugs' the film focuses on Mexico, in particular the town of Ciudad Juarez. A local journalist describes how the violence has escalated in recent years. 50 freshly dug graves are shown, ready for more casualties as the conflict between the army and local gangs as well as inter-gang rivalry escalates further.

There are suggestions that the 'war' in Mexico against drugs has been used as a smokescreen to hide the abuse of the democratic process. The current President of Mexico, Felipe Calderón, was elected following a suspect election at which the final ballot was hotly disputed. The Mexican Government has sent in the army to deal with the problem. Given that soldiers are not trained in the subtleties of civilian policing, this militarised intervention has led to an escalation of the conflict. A situation of mounting human rights abuses pervades as ruthless drug cartels resort to increasing

and horrifying levels of violence.

The film director Alejandro González Iñárritu specialises in films that tell multiple stories in one film. *Amores Perros* and *21 Grams* are two of his best works. The seeming unrelated stories he depicts inevitably crash and collide. *Cocaine Unwrapped* takes a similar format, showing the stories of the casual user, the drug mule, the dealers, the displaced farmers in Colombia and the violence in Mexico. In so doing it takes us from capitalist countries in the North to developing countries in the South, from production to consumption, highlighting that the human suffering is at its most acute closest to where the production starts. Director Rachel Seifert accounts for the environmental and human costs of the drug in Latin America and also the seemingly illogical way in which the 'war on drugs' is conducted.

The tragedies that unfold consist of a network of miscommunication, violence and cyclical poverty that feeds on the demand for and illegality of cocaine.

*Cocaine Unwrapped* does not have answers but it holds up a clear mirror to the effects of the 'war on drugs'.

**Paul Heron**

## Sensuous memoir



### **Soft Vengeance of a Freedom Fighter**

Albie Sachs  
Souvenir Press  
ISBN:  
9780285640207

On 7th April

1988, the detonation of a car-bomb reverberated in Maputo, Mozambique. It was planted by the South African Security Services and its target was the exiled anti-apartheid activist and lawyer Albie Sachs. The blast was intended to rid the apartheid regime of one of its most vociferous opponents and do what two periods in prison with a total of 168 days in solitary confinement could not, to finally break his body and spirit.

Sachs not only survived the blast, but despite losing his right arm and the sight in one eye, refused to break. *The Soft Vengeance of a Freedom Fighter* charts the recovery of Sachs's physical body and the parallel developments and healing within

his beloved country. Many will already have read and enjoyed this book and the personal journey it describes. Since its first publication in 1990 when he returned to South Africa after 20 years in exile, this book has become a crucial voice in South African literature and a widely read accompaniment to his other key works such as his 1963 *Jail Diary*. It is a sensuous work, describing in great detail each touch and caress of those caring for him and emotions and affections he holds not only for those around him but for the country and ideals he holds true.

In the introduction to this new edition, Professor Njabulo S Ndebele unflinchingly states that when he first read *The Soft Vengeance* in 1991, he felt that Sachs spent too much time describing the minutiae of his rehabilitation, the slow and painful progress that he made towards the acceptance of himself and his inner strength and qualities despite his physical scarring. Now, Njabulo reflects

that Sachs was simply ahead of his time and that in fact, he was describing the tortuous journey that the people of a constitutional democracy must engage with in order to re-build a broken society:

'The complexity prefigured in Albie's painstaking voyage through wounding, recovering, healing and living, did not come across strongly enough (in 1990) to override the character of the moment. Twenty years later we had moved from being a country of policies, to one that needed to re-imagine the minutiae of daily life; and that such minutiae would inform a new sense of personal capability within families, communities, organisations or institutions.'

There is in this a recognition that constitutions, laws and policies are only part of the work necessary to heal the wounds that apartheid left on the body of South Africa's people. It is ironic then that Sachs himself has played such an important role on both the constitutional and personal rehabilitation of the rainbow nation.

Now known as one of the architects of the 1996 South African Constitution and as one of the Judges of the

Constitutional Court who has participated in several landmark rulings; from declaring the death penalty as a violation of the right to life to creating a positive duty on the new South African Government to provide anti-retroviral drugs to HIV positive pregnant women. These contributions to 'hard law' can be seen as the framework in which the 'soft vengeance' of which he speaks could truly be delivered. Through the 'soft law' of the Truth and Reconciliation Commissions, Sachs had to face those who sought to destroy him and explore the issue of forgiveness first hand and deciding to spare them the fate they sought for him.

The 'soft vengeance' that Albie Sachs envisaged was not just the simple decision that he and the nation he loves will not be broken by racism and violence, but by showing through words, actions and capability that in the words of Professor Ndebele, 'there is a willingness to succeed through "cumulative, small, unspectacular but formative victories" and the recognition that every South African must strive to embrace their own completeness.'

**Anna Morris**

## A poor last resort



### **Struck Out. Why Employment Tribunals Fail Workers and What Can be Done**

David Renton  
£17.50; Pluto Press

When the Coalition heralded its Protection of Freedoms Bill we were not to know that the liberties it sought to guarantee were those of Government departments to withhold evidence in court and employers who sought to discard workers arbitrarily.

To that end, David Renton's book is timely. Its strength is derived from the volume of statistics and cases it relies upon in

casting its central claims. This provides a delicious contrast to the Government's recent Beecroft Report on employment law which even the fallen angel Vince Cable deemed to be a collection of 'one man's anecdotes'.

The work is a pleasing mix of legal exposition, historical analysis and sociological discussion. Renton charts the development of the tribunal from the recommendations in the 1968 Donovan Report, through the report's implementation in the form of the Industrial Relations Act 1971 to the present day. It is, in the author's words, intended as a policy statement rather than a practical guide.

Renton vividly illustrates the

friction between strengthening workers' rights through collective bargaining and individual victories which reward the claimant, usually inadequately, but leave the workforce worse off. In many respects the increased resort to the employment tribunal has not advanced the worker's cause: equal pay claims which damage unions but compensate small groups of workers; victims of racism whose claims are viewed sceptically by courts wedded to orthodox notions of how witnesses 'should' behave; and the subversion by judges of legal tests which supplant objective with subjective standards of reasonableness.

Renton concludes by emphasising that collective bargaining has achieved the historic gains made in favour of

workers and not the law. He does however offer three sensible and relatively straightforward achievable reforms to the system: the elevation of reinstatement to the primary remedy in unfair dismissal cases; the reconstitution of panels comprising four lay persons which would decide by consensus on cases' merits; and simplifying the instances in which tribunals can reduce awards so as to ensure a successful claimant is left closer to the position she would have been in had she not been dismissed.

However, while successive governments and business leaders continue to peddle the lie that employment regulations in the UK are too onerous, it will be some time before these types of changes are seen.

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