Exclusive: Two new poems from Benjamin Zephaniah
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Vibrant and Valiant

Those members of the Society who were lucky enough to have made the trip to Havana last September returned apparently invigorated, having made new friends and taken part in exchanges of ideas with comrades in sister organisations from around the world through the auspices of the IADL. Many of the UK delegates had travelled in trepidation, having heard tales of the great dinosaur called IADL that they were about to encounter. The consensus on return appeared to be that although the bureaucracy might have its drawbacks the organisation itself had much to offer not least of which was the fellowship offered by members of all those sister organisations. The vibrancy and idealism of the people of Cuba and the inspiration afforded by Fidel Castro served as a reminder that whatever many may think at home, socialism is not an ideal from the past but a commitment to the future and something that many liked minded people around the globe are still committed to striving for.

Meanwhile back on home shores the first Labour government for 18 years was drawing to a close and preparing itself for re-election. Not much for socialists to write home about. True there had been advances in the field of employment rights, with a legal right to trade union recognition, and a minimum wage for example and for individual rights the incorporation of the ECHR by the Human Rights Act, but in the field of law and order the gauntlet had been well and truly thrown down with the proposal to withdraw the right to elect trial by jury for offences triable either way. This attack on such a basic tenet of our fundamental freedom prompted a rapid response from members of the Society and members have been active in setting up a campaign to resist the government’s proposals. As can be seen from the extract from Mike Mansfield’s speech and the accompanying article from members of the crime sub-committee this is an issue that all Haldane Society members should take seriously.

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Socialism did not fall entirely off the agenda for the election campaign and many members of the society were involved in campaigning for, and some stood for election as candidates for, the Socialist Alliance which campaigned valiantly for a socialist agenda taking the issues of the Labour government’s reactionary stance on law and order and in particular its appalling treatment of asylum seekers to the coalition Cabinet Home Office ministers.

Finally, a word of apology for the delay in getting this issue of Socialist lawyer to you. The magazine is put together entirely by the work of volunteers and articles are written on the same basis. Many reasons have contributed to the delay in this issue just one of which was the hiatus of the election campaign and the great effort that some of those involved in this publication put into their work for that whilst simultaneously carrying out demanding professional commitments. Thanks should go to all those involved in getting the issue out. We do hope to get another issue to you in the next few months, any volunteers for the editorial collective are welcome and should contact the Haldane Office with their details.
An edited version of a speech to the Haldane Society on trial by jury by Michael Mansfield

I've addressed the Haldane Society before on this topic. I've talked about the political and social history of the right to jury trial. We are all going in the same direction, with the need to maintain jury trial and the right to elect jury trial, what I feel is much more important at this juncture, is to ask how we ensure that the final erosion does not occur? I am assuming that most of you will recognize just how significant it is. It is the single most important feature of the criminal justice system.

Jury trial is to be regarded as the single most important facet of our working lives and not because, as Jack Straw and no doubt Derry loving before, that we are in it for the money. We regard it as important, not for us, but for the people we represent, for reasons which I will touch on in a moment. If we do regard it as the single most important feature of the criminal justice system, how do we promote that?

As the Haldane Society, and as lawyers who believe in that commitment, who do we have to persuade? It is not the public because on all the occasions that the public is canvassed about this proposition, whether it be through media programmes, the newspapers or through Royal Commissions there is overwhelming support for trial by jury. We don't have to win the moral ground, unlike double jeopardy and the right to silence, which the public found rather difficult, and which are rather difficult concepts. This one is not difficult to sell. The public are with us.

That is not the problem.

So, who are the people that we as a group have to address? Very simply, it is the politicians. It is true that there are some members of the legal establishment who have always found jury trial anathema and who have always attack the right to jury trial. They have suggested that either they are ignorant, easily 'nobbled' or whoever the rationale is that has been put forward by various Lord Chief Justices in the past and some of the higher judiciary now. That kind of criticism is in the wings. However, it isn't the bulk of the judiciary that we need to persuade. It is those politicians who have sufficient power to push the Bill through in the way they have been claiming that they want to do. As the House of Lords twice has rejected the Mode of Trial Bill in forms one and two, the Government were threatening to use the Parliament Act to push it through. Now they have another way of doing it and that is where the Auld Report comes in. The reason that I am focusing on politicians is that I think that the first focus has to be a concerted campaign by the Haldane Society or by a campaign group against these proposals. It is best to try and get an umbrella group that focuses on all members of Parliament, particularly those who voted in favour of this proposition on the last occasion. They need approaching through oral and written means. We are all part of constituencies in different parts of London and probably elsewhere. If we regard jury trial as a focal point for a criminal justice system, we must not allow the Government to usurp the principles underlying the system by infiltrating concepts such as the yob culture and law and order to persuade the public that they are more anxious about clamping down, whether it be on May 1st or any other day, on social disorder and increasing police numbers. We do not want that sort of thing to usurp what the criminal justice debate is all about. I think that the public, like everyone else, have very short memories. Unless this particular flame is kept alight it is going to go out.

Labour's U-turn

We have an obligation to ensure that the propositions that I have set out are kept in the forefront of everybody's mind. One of the ways that I have used in public meetings is by merely reading out what Labour politicians said in opposition, before they were elected. If you need a source text or a document to use to get useful quotes to throw at politicians look at the Juryman's Tale by Trevor Grove. He was a jury and he has written about his experiences. The good thing about the book is that it is a wastes and all job. He is indicating the shortcomings but at the end of the day he is coming down steadily in favour of justices. He was the Daily Telegraph Editor for some time and there is no question that he is a journalist of some accreditation. The book has a number of quotations from leading Labour politicians when they were in opposition. One of the main people is a course Morris when he was shadow Attorney General. He was then very strongly in favour of the jury system. He is quoted as saying, although somehow or another he has been convinced of the opposite within seconds of getting elected, that "I regard the jury as one of the great bastions of our liberty. I do so whatever it's defects."

The former Attorney General, Lord Williams, also said a number of equally impressive statements in relation to the jury system, as did Jack Straw. You may well be familiar with all of those but when you put them altogether, they provide a starting place for addressing Labour MPs as well as Tories. There can be no satisfactory explanation from any MP as to why this U-turn has taken place. They cannot suddenly pretend that from a high moral ground they have recognised that the high moral ground never existed, that it was all a mistake, they had not thought about it whilst in opposition and they just said these things without any meaning. They have to be asked what did they mean when they said them? Then you wait for the answer, and assuming some of them have got more than one brain cell, they will give you some answers. You then say then to them 'Well what has changed since then? They will try and say 'no we are not doing away with jury trials we are just doing away with the right to elect jury trial.' That is the way that they deal with the right to silence 'we are not doing away with the right to silence, it is just that if you exercise it, there will be penalties...like guilt'. But that is exactly what they are doing with the right to elect jury trial because it is going to affect roughly one third of those who elect for trial. We are dealing with thousands of cases per year in the area of hybrid offences.

The Democratic Argument

If the public who are already in favour, need any more support, the most persuasive argument that they are always in favour of, is the EP Thompson argument. It is also contained in the book. Not only did EP Thompson say the same thing but so did Devilin in his work on jury trials and so does Lord Alexander in this latest work. They all say that the jury provides, not in the sense of an election but nonetheless, a balance which occurs at the beginning. It is a jury of the members of the public who are keeping an eye on how the system works. It is not just about deciding individual cases. They are actually passing judgment on the system.

Jury trial is one of the few areas in our lives where you have an opportunity to see a result and to say if you don't like it, whether it is Ponting or any of these other comparable cases. To be able to say 'we do not like what you, as the government, are doing in these courts', that is part of the object of the exercise. To scrutinise with great care, conscientious care, how a government is performing, whether it be the DPP, the Attorney General, whoever happens to be prosecuting, and of course the judiciary itself. That was EP Thompson's point. It is a meeting point, a crucible, in which the public come face to face with the system in a way in which they do not in any other sense, unless they are actually locked up behind bars and arrested. That democratic element is a key feature that has to be emphasised time and again.

The Auld Report

The Home Secretary will sit or implacably listening to all the arguments, whether they be about democracy, whether they be about that it is not going to save any money, whether they be about the fact that Defendants do not manipulate the jury system, whatever it is, he will listen but he will not move because in fact they are now committed to this policy of resisting anything that goes against their proposal. You will have to deal with their arguments, to show the fact that the Mode of Trial Bills and the Auld provisions are actually going to create a more expensive process and that Defendants do not manipulate the system in this way. All of these arguments have to be addressed but the bottom-line is democracy.

However, the real problem in all of this is that the Government are now going to say 'it is not us anyway, we are not suggesting this, it is Auld, he is suggesting this.' Now, this poses a real serious threat because not only are we going to have to combine and address arguments that have been heard many times, but in addition we are now facing a Report which is almost certainly going to do the Government's job for it. The Report's recommendations are likely to be firstly an adoption of Mode of Trial Bill number one, which is draconian. Secondly, Auld is going to recommend a change in the nature of the district judiciary whereby there will be a district judge with two lay magistrates sitting alongside, with increased powers of sentencing up to four years. That particular proposal is meant to be part of what he will undoubtedly call 'streamlining' and he will put it over as a sort of administrative act.

The third recommendation, which is even worse than the first
two put together, is to remove the right to jury trial anyway for indictable offences. This is part of the drip factor that they have been doing over many years. Every time they have a Criminal Justice Bill, they have done this in relation to the bottom, when they hope no one is looking, they knock off a few more offences from the indictable list that can only be tried by jury. In addition, the calendar of offences triable only by the district judiciary gets larger every single year. So you now have a situation where over 90 per cent of crime is being tried in the lower courts and is not going for trial by jury anyway. In fact we are actually dealing with a very small percentage and are fighting already a last die to the jury.

As far as Auld is concerned, I am predicting a little as to what he might say and of course he might not say it, but that is what we have been firmly led to believe. In the context of this, there is another history that needs to come in here. This is not the Devlin school of thought, but the Halsbury school of thought, and that of Denning and various others before him. All of them felt that juries were not in fact the correct way of trying ordinary people because it should be done by judges only. They thought juries did not understand and were not of the right class. Halsbury actually saying that the property owning classes were the only kind of people who should make the judgment. This is a constant attack on the jury by some members of the higher judiciary who show a real hostility to the idea that ordinary people could get anything right at all.

The Issue of Disclosure

The Auld Report, is likely to be a consideration of the judicial history of the attacks on the jury system over many years and an analysis of how he has come to his conclusions. One of the areas of most difficulty, but that is particularly one for lawyers to address, is one that I think is a very strong argument is the issue of Disclosure. I do not think that it will have any particular public attraction because they will think ‘what is disclosure, what are you on about’. Disclosure is perhaps the single most sensitive area where there have been more miscarriages of justice over the last fifteen years than in any other area, even confessions. Non-disclosure is really what I am talking about. The provisions on disclosure in the Criminal Procedure and Investigation Act 1996, which took on some of the things from the Torres has in fact produced a situation which is now worse than it was in the Judith Ward case. In other words, the risk of miscarriages of justice by non-disclosure is now far greater than ever before. There have been increased number of ex-parties hearings in private in which people are not represented. At the moment, to some extent, you can overcome some of this because there is a jury who obviously do not know about the disclosure hearing.

Now, why do I emphasise Disclosure? It is because a disclosure hearing, whether in the absence of the Defendant or in particular with his legal representative, involves the judiciary performing the role, that was anticipated that the judiciary should perform, that is a monitoring role throughout the case, to ensure that any material that the Prosecution might have that might be relevant to an issue in the case is constantly reviewed set against the public policy and national security and so on. If the balance comes down in favour of the Defendant, the Judge can say ‘Alas, I remember a document about this. I think this is the moment at which this document should be disclosed to the defence.’ It is a rolling review. As judges are not coming in with the verdict, the fact that they might have seen material which is adverse to a defendant, which they often do and you don’t know what it is they have seen, can just about be lived with. Disclosure hearing, I think, is a big test for the judicial system because the Judges are not passing judgment. It is a jury who decide on the facts.

Auld and Disclosure

I found that Auld has found this the most difficult area to contend with because I have been to a meeting where this whole complexity has had to be faced. If a trial is only going to be in front of a District Judge or District Judge plus two lay magistrates, how are they going to deal with disclosure when that same bench is going to decide guilt and innocence? It is no good saying that they will have a different bench because they have an obligation to have a rolling review throughout the case. So if they have a preliminary application in front of one lot and then say well now we’ll go off and have another lot, the other lot will not have to know what it is that has not been disclosed. Moreover, it does not only apply to high-profile cases. Disclosure is a theme and an aspect that can apply to all levels of cases and is becoming increasingly important. In many cases you never know there has been a disclosure hearing because you haven’t been told. You only discover later because you pick up something or a Judge, as I’ve had in a few cases, lets something slip and you say, well I don’t know where your Lordship got that. Now, what is Auld going to do about it? Well, at the moment, they seem to be striving to say that they are going to get, and I don’t know if this is in a final proposal, a bench or another magistrate.

This issue is interesting because they are talking about costs and economy and when you get into the gritty reality you are going to have another District Judge, sitting with the bench, whose role is different and whose role is to review the disclosure at the beginning and because he or she is going to have to know what is happening in the case, he is going to have to sit through the hearing. He is going to have to listen to the case as it develops and consequently say ‘Now wait a minute, I’ve got to nip one and look at some documents because I think there’s a document which relates to this issue that you were dealing with’. I don’t know how they are going to resolve it but that was one of the ideas that they were coming up with.

Procedural and Cost

The problem is, certainly as far as the European Convention is concerned and the right to a fair trial and so forth, how are they going to ensure that justice is seen to be done when you are a defendant sitting there and you think that this bench might have seen stuff which is not in your favour but they are not telling you what it is. They might have had a hearing in secret and you are convicted and you cannot appeal on that basis because you don’t know what it is that you haven’t seen.

There is a further aspect and I just put it out because we have to think how we are going to address the issue. If they are going to talk about money, how is this proposed Mode of Trial going to work, given there is going to be a right of appeal built into it. Now this is quite important because the last Lord Chief Justice, Bingham, finally agreed to Government proposals provided there was a built in right of appeal. In other words, if you lose your representations and submissions and the bench decide to have it tried at the lower court, the proposal is that you are allowed a right of appeal straight away obviously you can’t go on to trial and then decide if you are going on to appeal the mode of trial decision. So you do have a right of appeal. You go up in the Crown Court on that decision. Now you know as well as I do what delays there are in the Crown Court. Now is there going to be an appeal beyond that or is it going to stop at the Crown Court? Well we don’t know the results of that but let suppose it only goes as far as the Crown Court. Then the Crown Court decide that in fact has got to be heard in the Magistrates’ Court. Then it goes back to the Magistrates’ Court and suppose you get convicted you then have a right of appeal out of the conviction which as fact would involve representations about not being tried there in the first place and that the Crown Court got it wrong. You can begin to see, and more MPs won’t have thought through either, that it involves a lot of money. Now it may be that somebody needs to sit down and cost these provisions because we don’t want to be seen as people who are just shouting off about Magna Carta. We are not just putting forward principles without looking at the nuts and bolts of these arguments. There are other arguments about the question of the right of appeal and costing these processes.

Campaign Proposals

I think besides targeting all candidates in the election and before the election, they have to be targeted after the election as well. They need to have in front of them just as a starting point, one sheet of paper which sets out the main arguments. There need to be meetings organised as we did before, some in the House of Commons and some outside. The campaigns should be led by someone who is not a lawyer because the constant refrain is ‘lawyers would say that wouldn’t they’. It’s much better to get, if possible, a member of the public who is not a lawyer. I think we need to think about the publication of collected essays that have been written over the last one hundred years or more in relation to the different aspects of jury trial and the way that various people have supported it. There are other obvious arenas besides radio programmes, television programmes and newspapers. It has to be a full frontal maintained alert to the public about what we are facing so that they can also bring pressure to bear on the politicians. We need some sort of broadsheet willing to back a series of articles. Sometimes, you might have to approach press that you might not otherwise approach, in order to reach people who you might not otherwise reach. All these avenues have to be considered and this requires ensuring that a lot of money is raised in order to do it. One is going to have to approach the Bar Council, the Law Society and large law firms which have apparently backed jury trial all the way through. They have to start putting their money where their mouth is because this is going to be the last opportunity to really make a stand on this. If we don’t make a stand on this year, it is lost. It is seriously lost. And it will be our generation that will be responsible for allowing us to go.

Special thanks to Lara Maroof and Kate Augey-Johnson for typing up a manuscript of Michael Mansfield’s speech.
During 2000, radical poet Benjamin Zephaniah was poet-in-residence at Tooks Court Chambers, sponsored by the Poetry Society. During his residency he composed these poems as contributions to Socialist Lawyer

What Stephen Lawrence has taught us

We know who the killers are, We have watched them strut before us As proud as sick Mussolini? We have watched them strut before us Compassionless and arrogant, They paraded before us, Like angels of death Protected by the law.

It is now an open secret Black people do not have Chips on their shoulders. They just have injustice on their backs And justice on their minds, And now we know that the road to liberty Is as long as the road from slavery.

The death of Stephen Lawrence Has taught us to love each other And never to take the tedious task Of waiting for a bus for granted. Watching his parents watching the cover-up Bogs the question What are the trading standards here? Why are we paying for a police force That will not work for us?

The death of Stephen Lawrence Has taught us That we cannot let the illusion of freedom Encow us with a false sense of security as we walk the streets, The whole world can now watch The acid tests and the super cops Struggling to define institutionalised racism As we continue to die in custody As we continue emptying our pockets on the pavements, And we continue to ask ourselves Why it is so official That black people are so often killed

Without killers?

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The one minutes of silence

I have stood for so many minutes of silence in my time. I have stood many one minutes for Blair Peach, Colin Roach And Akbar Ali Balg, And every time I stand for them The silence kills me. I have performed on stage for Alton Manning. Now I stand in silence for Alton Manning. One minute at a time, and every minute counts When I am standing still in the still silence I always wonder if there is something About the deaths of Marcia Law Oscar Okoye Or Joy Gardner That can wake this sleepy nation. Are they too hot for cool Britannia?

When I stand in silence for Michael Mansson Manish Patel Or Ricky Reel I am overwhelmed with honest militancy, I've listened to the life stories of Stephen Lawrence Kenneth Severin And Shiji Lapite And now I hear them crying for all of us, I hear so much when I stand For a minute of silence.

The truth is, Being the person that I am I would rather shout for hours, I wanna make a big noise for my sisters, Mothers and brothers, I want to bear a million love children To overturn the culture of cruelty, I want babies that will live for a lifetime, I don't want to silence their souls I want them to be heard I want them loud and proud.

My athletic feet are tired Of standing for one minutes of silence for Christopher Alder, I should be dancing with him, Ricky Reel Stephen Lawrence And Brian Douglas Make silence very difficult for me. I know they did not go silently, I know that we have come to this Because too many people are staying silent.

The silences are pantal, They make me nervous, I hear falling over Or being captured and made a slave So I will not close my eyes, I look at the floor for ten seconds I look to my left for ten seconds I look to my right for ten seconds, I spend ten seconds scanning the room Looking for someone that looks like my mother, I spend ten seconds looking for spies And ten seconds are spent looking at the person Who called the one minute of silence, And wonder how do they count their minute? Always spend the extra seconds Looking for people I know, Wondering how long they will live.

I spend hours considering our trials and Tribulations. I seem to have spent a lifetime Thinking about death; Robin Adams Will not leave me I've tried to look at this scientifically I've tried to look at this religiously But I don't want to limit myself either way. I've spent so much time standing in silence, It reminds me of being in trouble In the headmasters office, Waiting for the judgement. I've spent hours Standing for minutes Pondering the meaning of life The reason for death And considering my time and space.
Turkish lawyers denounce torture of political prisoners

by Kathy Lowe

Lawyers of political prisoners on hunger strike in Turkey are being harassed and abused. Yet many are helping to expose the intensifying repression used by Turkish authorities to keep the lid on the crisis in its jails. Despite muzzling the media and massively stepping up repression against political prisoners, lawyers, human rights leaders and trade unions, the Turkish government has failed to break an unprecedented hunger strike by over 1,200 Turkish political prisoners.

This was the conclusion of a fact-finding delegation from Britain and Ireland that visited Turkey in January at the invitation of the solidarity committee with political prisoners in Turkey (DE-TUDAK).

Members of the delegation included civil rights lawyer Jim Nichol, Kathy Lowe of the National Union of Journalists, Jimmy Kelly from Waterford, Ireland representing the Transport and General Workers Union and Secretary of Scottish CND Brian Quail. Their visit was organised following the violent storming of 20 jails by security forces on 19 December which left 30 prisoners dead and hundreds more severely injured.

Like the Irish Republican prisoners of the H Blocks in 1982, jailed opponents of the Turkish regime are on hunger strike to defend their political status. They started a rolling programme of hunger strikes on 20 October, action coordinated jointly by 11 far left organisations. The first deaths are expected at any time.

Political prisoners in Turkey are fighting against the imposition of harsh "F-type" isolation cells that rob them of the right of association – the right to organise. The authorities are building 11 of these F-type prisons, three of which have already been completed and which hold between one and three people in a cell.

Political prisoners across the country, had been kept in large communal areas largely under their own control. That was until the December attack when troops armed with guns, incendiary bombs and nerve gas were sent in to "eradicate" 20 jails. This massive assault, condemned by international human rights organisations and on 17 January by the European Parliament, was aimed at smashing the hunger strike and political opposition in the jails for good.

Fidex Kirbly, a 30-year-old leader of the health trade union who survived the raid on Gebze prison told the delegation: "The raid ended with a number of political prisoners suffering rape by troopers and other forms of brutal treatment as 10% of them were moved to the new isolation prisons. "They didn't take us there, they beat us there," said Orsun Armulu, recently released from prison and interviewed by the delegation in Istanbul's Okneydavi hospital. He described how in their F-type cells, still on hunger strike, he and others were routinely tortured, kept in the cold and dark wrapped only in blankets.

Lawyers confirm the prisoners' version of events. At a meeting in Istanbul the chairperson of the Progressive Lawyers' Association, which has 40,000 members across the country, described how lawyers were refused access to their clients after the 19 De-
Turkish lawyers denounce torture of political prisoners

A month raid. They have since managed to meet them but were continuously harassed and intimidated - forced to strip to their underwear and with their files taken from them. Their time with their clients, they said, was being restricted to ten minutes. They could interview them only by telephone, separated by a glass panel, and with the prison guards listening.

Outraged by the human rights abuses in the isolation cells and by the obstacles being put in the way of the lawyers representing them, the Progressive Lawyers’ Association produced a report on the situation.

When the Minister of the Interior refused to meet the Association to discuss the report its leaders released it to the media. They have continued to try to publicise the demands of the hunger strikers for closure of the “F-type” cells, for an end to torture, for the killers of the prisoners on 19 December to be brought to trial and for the prisoners’ families and lawyers to have the right to see them without intimidation.

In 1996, an earlier hunger strike by political prisoners against the threatened introduction of isolation cells forced the government to back off, but not before 12 prisoners had died. This time, like the Thatcher government during the H Block hunger strikes, the Turkish regime has staked its authority on completely destroying a whole layer of its political opponents.

However, the Turkish government is on the defensive since the country’s trade unions showed their muscle in a general strike against austerity on 1 December 2000. The last thing Turkey needs, as a leading member of NATO and as a candidate member of the EU, is a human rights scandal of such proportions. But the regime is being forced to step up and extend the repression in a bid to keep the lid on the prison turmoil.

The delegation met distraught relatives of hunger strikers who had been assaulted by guards when they tried to visit the prisoners. It interviewed trade unionists who had been arrested during protests and prominent intellectuals threatened with arrest for founding the organisation ‘Writers and Artists Against the F-types’.

Five branches of the Turkish Human Rights Association have been closed down. Its leaders, who in January briefed visiting representatives of the European Committee for the Prevention of Torture from the Council of Europe, say it is now impossible for them to hold news conferences without being broken up by police.

According to Human Rights Association Chairperson Hüsni Önol, very few of Turkey’s 10,000 political prisoners had been convicted of acts of violence. Most had been sentenced to ten years or more for “belonging to a banned organisation”. In a number of cases, they had never been brought to trial. Youths of 13 and 14 were among those who have been given heavy sentences under anti-terrorist laws for simply handing out leaflets, flyposting or joining demonstrations.

Many journalists and writers are also in jail and attempts to silence the media have been central to the government’s strategy. On 16 December, the state security court in Istanbul banned any broadcasts or newspapers reports about the isolation cells and hunger strike. But leaders of all the main trade unions defied the ban, appearing together on TV after the prison raid to condemn the massacre by the security forces. Journalists, especially those from the smaller papers of the left, continue to play a vital role in the struggle, determined to get the news of the hunger strikes out to the rest of the world whatever the personal cost.

"As parents, we want to tell them to stop the fast but we can't. We respect and support their political stand"

Every organisation the delegation met in Istanbul and Ankara had close links with the Turkish community in the UK campaigning in solidarity with the Turkish political prisoners. There was a tremendous urgency, it was stressed at the meetings, for international pressure on Turkey to be stepped up, for an EU-wide ban on arms sales, for an £8 million grant for Turkey agreed by the EU to be rescinded and the $10 billion austerity package agreed by the IMF to be cancelled.

A final meeting of the delegation with prisoners’ families brought another reminder of the H Blocks. İhsan Sozer whose son Mahmut and nephew Övgür are all on the death fast in an Ankara prison described his anguish at seeing them now unable to walk and beginning to lose their memories. “As parents,” he said, “we want to tell them to stop the fast but we can’t. We respect and support their political stand.”

Protest: Since the report of the delegation in January, the situation has not improved. Death fasts are continuing and a further delegation to Turkey in September was being proposed as we went to press.
The Hillsborough Trial

but July day in Leeds. The Crown Court's automatic doors opened and one by one families emerged onto the pedestrian walkway. Television cameras, press and photographers gathered outside, who all watched as the bereaved and survivors, their tears now dried, walked from the court for the last time. Similar scenes were used to record the calm and dignified exit. It was operated by a video surveillance team the West Yorkshire Police. In their lens were the pictures that embrace all those who lost loved and children killed at Hillsborough Stadium over a decade earlier.

It was, at best, an ineptive and unnecessary intrusion at a time of profound grief. Just as in the evidence gathering, the legal claimed to have had "intelligence about some threat to Mr Duckenfield and a potential threat for some disorders." To the families this was the final, endearing act of the seven-week trial of two senior police officers. It was an act which once again swallowed their reputations. "All through the years we've been made to feel like criminals", said a bereaved mother, "but this is the last straw. What did they think we were going to do?"

The Crown Court had heard the private prosecution for manslaughter against the Match Commander, Chief Superintendent Donald Duckenfield, and his assistant, Superintendent Bernard Murray. There had been insufficient evidence, according to the DPP, to prosecute and both men had retired on ill-health grounds thus avoiding the disciplinary case against them. The ground-breaking private prosecution followed years of campaigning to establish criminal liability and to force disclosure of key documents, witness statements and personal files on the deceased.

It had been just before the kick-off of the FA Cup Semi-Final between Liverpool and Nottingham Forest on 15 April 1989 when a crush developed on the Leppings Lane tunnel outside the stadium. In total, 96 people died and 900 were injured. Among the injured was Donald Duckenfield, who was the Assistant Chief Superintendent at the Hillsborough match. He was arrested and charged with manslaughter.

The prosecution case was straightforward. People died in horror because of police inefficiency. Physically, the principal cause of death was asphyxiation. Lord Justice Taylor, back in 1989, found the "main cause" of the disaster to be overcrowding. The evidence was clear, the conclusion was inescapable. But, according to the prosecution, it occurred because the two defendants had been "grossly negligent, wilfully neglecting to ensure the safety of supporters".

When they arrived at the Police Control Box above and adjacant to the terrace, served by a bank of CCTV monitors, the officers had no responsibility but also the capacity to observe the overcrowded pens. The prosecution argued that they should have sealed off the tunnel, policing the crowd and diverted fans to avoid the crush. According to the legal team, Duckenfield had identified police management of the crowd to be "the main reason for the disaster".

The prosecution accepted that "these men's inertia, their abject failure to take action" was not the "only cause", but "primary and inexcusable". Hillsborough was "shabby, badly arranged". A police "culture" prevailed which "influenced the way in which matches were policed". But the "primary and inexcusable cause of death" lay with the defendant's failures; negligence of "such gravity that it amounted to a crime".

As the case progressed in Court, both former officers, their legal costs underwritten by the Secretary of State for the Home Office, sat impassively alongside their legal teams. Day after day families filled the court to watch them all, but could not disclose, was Mr Justice Hooper. "They all knew, but could not disclose," was the legal. Both families had been ready ensured that even if found guilty neither man would go to prison. In presenting his committal ruling four months earlier he opined, "the thought of being convicted for a serious offence must be a strain on anybody", but the "greatest worry" for a police officer was the accusation of impropriety.

Thus he took a "highly unusual course" to "reduce to a significant extent the anguish being suffered". Given the emotions surrounding Hillsborough, the judge considered that the former officers would risk serious injury, even death, in prison. Custody, therefore, was not an option. The families were not changed because they demanded a custodial sentence but because, yet again, it appeared to go against police officers a kind of immunity. Not a word of this could be spoken or published until after the trial.

The prosecution called 24 witnesses whose collective evidence demonstrated the overcrowding in the central pens and its viability from around the stadium. Duckenfield declined to give evidence. Murray, "haunted by the memory of Hillsborough", was remorseful but denied negligence. Defence witnesses amounted to a handful of residents and character referees. After weeks of legal wrangling, CCTV footage and cross-examination, Mr Justice Hooper put the four-part manslaughter test to the jury. For the first time, "reasonable match commander ... allowing a large number of spectators to enter the stadium through exit gate C without closing the tunnel would create an immediate and serious risk of death to the spectators" in the central pens, Second, could he have taken "effective steps ... to close off the tunnel" thus preventing the deaths? Third, was the jury "sure that the failure to take such steps was neglect"? Fourth, was the failure "so bad in all the circumstances as to amount to a serious criminal offence"?

In his closing speech for the prosecution Alun Jones QC argued that the police had "failed to prevent a criminal and disgraceful event". Hillsborough was "chaos, disorderly and disgraceful". The "clear, cogent and overwhelming" view was that "all four corners of the ground" was that the pens had been dangerously full when the exit gate was opened. If all prosecution witnesses had recognised the overcrowding, then from the police control box Duckenfield and Murray could not miss it.

Duckenfield's counsel denied that he had "unlawfully killed those 96 victims". The events had been "unforeseeable and unique" and gave rise to "a physical phenomenon" without precedent in the stadium's history. It had occurred in the tunnel and projected people forward with such ferocity that those in the pens were crushed to death. The explanation was that a small minority of over-energetic fans, possibly those who had caused crushing at the turnstiles, were responsible for the explosion of unanticipated force in the tunnel. It was a faked-yet convincing explanation; a "hidden cause" that could not be verified.

Murray's counsel contended the idea of "slow-motion negligence". The disaster "stuck out of the blue", the deaths unforeseeable. No reasonably competent senior officer could have anticipated the sequence of events that unfolded. Yes, there were deficiencies in policing Hillsborough but the defendants could not be singled out to "carry the can". The prosecution was no more than an exercise in scapegoating.

Mr Justice Hooper reminded the jury that they had to judge the case "by the standards of 1989" when "caged pens were accepted". Such pens had been acceptable "as a response to hooliganism", the defendants had to be judged as "reasonable professionals", meaning "an ordinary, competent person - not a Paragon or a prophet". The jury also had to carefully consider the circumstances. When the exit gate was opened "death was not in the bringing of those officers". They responded to a "life and death situation" at the turnstiles and the jury had to accept that "this was a crisis". The judge warned the jury to "be slow to find fault with those who act in an emergency".

In an impressive and urgent statement the bereaved and bereaved the judge instructed, "the more fact that there has been a disaster does not make these two defendants negligent". A guilty verdict would reflect negligence "so bad to amount to a very serious offence in a crisis situation". He put two questions to the jury: "Would a criminal conviction send out a wrong message to those who have to react in an emergency and take decisions? Would it be just to punish someone for taking a decision and not considering the consequences in a crisis situation?" These questions, repeated until the jury sought a clarification of the relationship between negligence and serious criminal act, were concerned with policy rather than evidence.

After 26 hours of deliberation the judge agreed to accept a majority verdict. Over five hours later Bernard Murray was acquitted. Within hours the jury was discharged without reaching a verdict on Duckenfield and the judge refused an application for retrial. A bereaved father reflected the families' feelings: "I never expected a conviction, especially after the judge's direction. But people on that jury held out and the case went all the way ...."

Certainly the judge's comments concerning the potential impact of a guilty verdict on future response of emergency services' professionals caused surprise and concern. Yet the families felt vindicated in taking the prosecution. While the DPP had ruled against a prosecution on the grounds of insufficiency of evidence, seven weeks in Leeds and a declared jury suggested otherwise. The relationship between negligence and serious criminal act troubled the jury as it had the inquest jury nine years earlier. At that time the Coroner directed that negligence could be incorporated within accident deaths. Perhaps the jury saw the retribution of Badger's failure reflected the families' pursuit of justice, however limited, was no misconceived.

Hillsborough and its aftermath stand as appalling indulgence of all involved with the accommodation, organisation and policing of football. It was an avoidable disaster led to the calumitous treatment of the bereaved in the immediate aftermath, the systematic review and alteration of police statements and the lack of disclosure. It was an inquest, judicial review, the civil actions, the judicial scrutiny and, finally, the private prosecutions together raise serious questions about the institutional, structural and embedded deficiencies in the law and its administration. What the bereaved and survivors have had to do is to remind the theatre of the law has little to do with the discovery of truth and the realisation of justice. Professor PHIL SCRATON is Director of the Centre for Studies in Crime and Social Justice at Edge Hill University College. His revised text appeared in the Guardian (Newspaper) (Mainstream November 2000), price £9.99. ISBN: 1-84016-166-7 and contains a full analysis of the private prosecution.

"According to the prosecution, the disaster occurred because the two defendants [police officers Duckenfield (left) and Murray (right)] had been 'grossly negligent, wilfully neglecting to ensure the safety of supporters'.
When the Employment Relations Act (ERA) received Royal Assent on 27th July 1999 there was criticism that it did not go far enough to turn the tide of Tory anti-trade union laws. However, legal workers at Christian Fisher solicitors used the new legislation to introduce recognition for the GMB at their workplace. Chez Cotton and Matt Foot explain how they did it.

The ERA gives a new statutory right for Trade Union recognition where the workforce shows its support by a majority joining a union or voting in favour of recognition. Once recognised the union has a right to negotiate for the best possible conditions for their members in the workplace. At Christian Fisher we were particularly interested in this provision.

Christian Fisher is a leading civil rights firm in central London. It specialises in human rights cases, public enquiries, Trade Union work and has a highly respected criminal department. It has expanded considerably in the last year and now employs over 40 members of staff situated between two buildings. Expansion has necessitated change and we are keen to maintain the positive relationship that has been enjoyed to date between the staff and the partners.

Discussions took place on the best way to establish new effective means of communication within an expanding workforce. Inspired by the Employment Relations Act, and unionisation at other Legal Aid firms such as Hodge Jones and Allen, a core group of employees, Chez Cotton, Matt Foot, Margaret Gordon and Monina Ramden, sounded out their colleagues to see whether there was support for unionising at Christian Fisher. As well as ensuring improved rights and conditions for our own workers we believed that a natural extension of the principles of Christian Fisher was to promote unionisation within the legal profession generally. The majority of those working in law are extremely susceptible to exploitation and poor treatment from their employers. Recent reports in the Law Society Gazette detail an industry where bullying, discrimination on the grounds of race, sex and disability, stressful working practices and Health & Safety breaches are rife.

A further concern was that many workers in left wing firms, busy defending the rights of other people, are experiencing a steady decline in their own conditions of employment. Legal Aid firms are under increasing pressure from the Legal Services Commission with block contracting, to take on more cases for less cost, with more administrative and bureaucratic burdens.

This has meant longer hours, increasing stress, less money and few benefits for workers doing this type of work. These sort of pressures have led to surprisingly militant action of lawyers in Brighton who withdrew their services for 24 hours in order to protest at the government’s plans for criminal contracting.

With this in mind we made enquiries to various unions, as to who might offer the best deal. We were keen to make sure that both legal and non-legal staff were given the same level of representation, commitment and expertise. We also wanted a union that would actively support a campaign for better conditions in the legal industry on a national level.

Our initial research revealed that the GMB was by far the best option for our particular circumstances. We could join the APEX/Commercial Services part of London Central, which is largely made up of people working in the legal field. Membership was £4.00 per month, with reductions available for part time workers and those on a low income. The union can assist with Occupational Injury claims, Road accidents claims, Accident benefits (for members and their family) and will even provide for a will! We would also have access to research facilities and use of a press department.

Sam Gurney, the GMB Organising Officer dealing with us, sent information and membership forms for us to distribute.

The four core members divided the workplace between them and approached each individual worker outlining benefits of joining a union and the plan to campaign on a wider scale for improved conditions for all law workers. In the process of signing up staff to the union it was apparent that there were concerns amongst staff about common issues such as holidays and health and safety. It did not take long to reach over 50% membership. When this was achieved we sent a formal letter to the partners explaining that we would be requesting a Recognition Agreement with the GMB under the ERA. We outlined our intentions and the benefits to the firm and the legal profession generally.

In the following two weeks four more staff members, Peter Jackson, Sarah King, Amber Nicholls and Geraldine Quigley joined the core group to act as a liaison committee between partners and staff. This meant that the views of the support staff, trainees, civil and criminal department were all well represented.

Within a month 95% of the staff had joined the union and it is likely that we will achieve 100% membership. Sam Gurney, GMB organising officer, and Anna Meyer, the GMB organiser responsible for law firms, attended the offices of Christian Fisher to meet members and deal with enquiries. They signed the Recognition Agreement on behalf of the GMB. This was then given to the partners of Christian Fisher, Mike Fisher, Louise Christian and Sadaf Khan, who countersigned the agreement and gave us a letter of support stating, "As the firm expands, it is important that the excellent relationship that exists between all members of staff continues. We look forward to working with the Trade Union to improve the environment and conditions of all staff."

We achieved recognition in the record time of four weeks.

Our Recognition Agreement enshrines the principle that the GMB and Christian Fisher have a common objective in using the process of negotiation to benefit the firm and the employees. It is agreed that matters of change or dispute are best resolved through discussion and agreement and prior consultation with...
the GMB will take place before any change in the terms or conditions of employment or work practices are implemented. Practical facilities and time off is given to union reps so that they can carry out their duties.

We realise that many firms in private practice will be less accommodating than Christian Fisher in encouraging the establishment of a union. However, the GMB and the TUC provide a wide range of support and training courses to help new unions establish. They will be happy to discuss tactics and use their vast experience of assisting workers in workplaces with employers hostile to unionisation. The Employment Relations Act does offer protection against reluctant employers. Recognition of a Trade Union is compulsory if there is majority support. Where employers try to obstruct recognition, the law will now work in favour of employees imposing recognition. The Act also makes it illegal to discriminate against an employee on the grounds of their Trade Union membership or activity, whether that discrimination consists of an act or a failure to act. The Secretary of State is given enabling powers to issue regulations outlawing the compilation and use of blacklists of Trade Union members. There is a right to take industrial action without being sacked.

It is also important to note that workers now have the right to be represented by a Trade Union Official at grievance or disciplinary hearings, whether a union is recognised or not, or co-worker of their choice. Other key changes of the ERA include the right not to accept a change to a personal contract, an increase in the maximum limit for compensation for unfair dismissal to £50,000 and family friendly provisions aimed at helping employees to combine work and family life.

At Christian Fisher the union has now set up working parties to update our grievance and disciplinary procedure in line with the new ACAS code published in September 2000 and to outline creative proposals to improve our working conditions. Three union representatives have attended the excellent three day introductory course organised by the GMB at the union offices. We have a Health & Safety Rep and Safety Officer to consider issues in our workplace. We will be negotiating with the partners shortly on a number of issues. The firm benefits from our collective effort and expertise. As workers we are able to input into decisions that affect us. The process has also increased political awareness within the firm.

The union at Christian Fisher has provided a forum in which all members of staff are able to actively participate in their working experience. There is a more interaction, support and understanding between the different departments. We are prop-

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So we see public inquiries?

One of the things which Labour governments are good at is agreeing to hold public inquiries. Even so the victims and possible victims of Harold Shipman had to go to the Divisional Court to get a proper public inquiry and the victims of the Marchioness Disaster only got one after spending three more years pleading for one. Public inquiries are undoubtedly the best way to ensure that the truth comes out. Who can doubt this after the light shed on arms by the detailed evidence to the Scott Inquiry or more recently the exposure of police racket by the Inquiry into the death of Stephen Lawrence or the report into government dishonesty over BSE? But there are also public inquiries which raise questions about their proliferation, expense and length and whether they are always able to solve all the problems they are intended to address. One very obvious thing is that if public decision making was more transparent and accountable there might well be less demand for public inquiries. However the disgraceful watering down of the Freedom of Information Bill means that there is unlikely to be any change there.

Another problem is where repeated public inquiries make the same recommendations but these are just shelved or ignored. The death of poor little Anna Clarese comes a dozen years after the deaths of Tyra Henry and Jasmine Beckford in 1984 and the Public Inquiry reports into those deaths by (respectively) Stephen Sedley and Louis Boulter both recommended better training and supervision for social workers involved in child protection. And the history of railway safety throws up an even greater example of the ability of governments and the press to ignore and then forget the recommendations of public inquiries. The report into the Clapham Rail Disaster of 1968 by Mr Justice Hilden recommended that automatic train protection be installed throughout the network within five years. This was shelved by the then Conservative government on costs grounds ("the value of a life") and then forgotten by the press and public. The Southall and Ladbroke Grove crashes killed a total of 38 people whose lives would have been saved by it.

Railways also demonstrate the limitations of public inquiries in other ways. While the Ladbroke Grove crash happened shortly after the start of the Southall Public Inquiry, the Hatfield derailment occurred during the Ladbroke Grove Public Inquiry and the Inquiry was still running until late in December while the ensuing breakdown and chaos on the rail network followed. It felt at times somewhat unreal to be discussing abstruse concepts of safety management and the details of who should audit railway safety cases while in the real world there was little down. The possibility of restructuring or changing ownership of the fragmented industry over 120 private companies was not in the terms of reference of the Cullen Inquiry and it is possible that the Inquiry is providing an ally to the government not to take on board the increasingly powerful arguments to at least take Railroad back into some form of public ownership. A similar contention could be made about the failure of the prosecuting authorities to provide any deterrence by a corporate manslaughter prosecution or for government to reform the relevant law (see post). Hatfield itself is being investigated by an internal industry inquiry held in secret of...
precisely the same nature and with pre-
somewhat the same lack of salutary result
about which the Inquiry heard in relation
to previous incidents which should have
warned of the danger of signals constantly
passed at danger. It is becoming increas-
ingly apparent that things cannot be
changed substantially without the intro-
duction of a lot more government money
(the cost of replacing large sections of the track
has increased and in the mean time it seems
unlikely that much progress has
been made even in installing the cheaper
train magnetic protection warning system) but it is
at the very least unattractive to send ever
increasing sums of public money to pri-
vate companies which are inefficiently run
and give disproportionate awards to their
directors and shareholders.

Public inquiries can also seem alien
to the people who should be most involved
in them. Despite the small changes of form
(e.g. calling the Chairman or woman Sir
or Madam instead of My Lord) they are usu-
ally fairly intimidating gatherings of senior
QC's engaging in all the usual court room
tricks and using court room language.
This can be a most inappropriate way for
a bereaved family to find out intimal de-
tails about the death of their loved one in
and Ladbrooke Grove were relieved that this
happened in the Inquests in March before the
Inquests in March before the
Public inquiries are also usually heavily depen-
dent upon the evidence of the person who is usu-
ally a High Court judge although there is an
increasing tendency to sit with assess-
ors particularly where a technical issue is
being discussed. In the Lawrance Inquiry Sir
William Lawrance was an example of a judge
who were people active in promoting
good race relations which is likely to have
had a very considerable impact on the con-
tents of the Report. But the perspective of
ordinary people as in the inquest is often
missing. Another factor is that
Public inquiries are often not that public, I
was not able to find any details and in
the Ladbrooke Grove inquiries by how lazy
the press are and how little detail is con-
tained in press reports. Even in Southall
where television cameras were allowed to film
witnesses (they were not in Lad-
brooke Grove) the press were only re-
ally interested in film lining the train
driver. And these were in-
quiries where there was more than usual
public interest. I sup-
pose that most people in
the country do not even know
that there was an Inquiry at all and the
events of Bloody Sunday in
Derry or that the longest running public
inquiry this country has seen
abuse centred round a chil-
dren home in North West
England which those in
quire have been in

Dorrett Lawrance. Did the McPherson inquiry
bring her justice for the death of her son?

In the case of deaths in custody, police
and prison officers are rarely prosecuted
and recently there have been a string of
controversial decisions not to prosecute

Sylvester and Christopher Aldick. An ear-
er judicial review in relation to some of
these decisions resulted in one prosecution
(over the death of Richard O'Brien) but it
was unsuccessful.

In relation to disasters and controver-
sial deaths at work there are also very few
prosecutions for corporate manslaughter.
In fact there have only ever been five pros-
ductions by the Health and Safety Execu-
tive for one successful.

In the meantime the Home Office
has produced a Consultation Paper on corpo-
rate manslaughter which claims that the
main problem with the current law is that
these cases cannot be brought against large
given specific duties in relation to health
and safety. The CCA is also critical of the
Home Office’s proposal that the new of-
fence of corporate killing (which in gen-
eral it supports) should be prosecuted by the
Health and Safety Executive and not
by the police and CPS.

Overall the system all too often gives
the impression to the victims but
innocent for many others.
Whose role is preventable and
criminal negligence. Where in the
USA companies implicated in such deaths
are driven out of business in this country per-
sonal injury damages are very low and

companies because of the difficulties of the
discipline of identification i.e. the necessity
to find one senior manager who is indi-
vidually liable before the company can also
be prosecuted. The proposed new of-

ence of corporate killing would be able to
be levied against the company alone on the
basis of management failings by more
than one individual. There are also pro-
posed lesser offences to be charged against
corporate directors leading to their dis-
qualification as directors. The proposals
have been criticised by the Centre For
Corporate Accountability in a new organi-
sation campaigning for corporate ac-
countability as laying insufficient
emphasis on the role of corporate direc-
tors, who the Centre believes should be

left: Lord Phillips, who chaired the official 1993
inquiry. Right: Lawyer John Chrissostom, centre at a
two conference in 1995 about the families of victims of
the Paddington rail crash.
Americanisation of the ‘Rule of Law’ and Cuba

by Troy Lavers, Kent Law School

This is a difficult period for this small island nation as the US economic embargo has been especially effectual since funding from the former USSR ceased in the early 1990s.

The effects of the economic sanctions on the country were readily apparent, not only from the statistics of the average monthly wage for a doctor (approx $20 US), but also from such obvious indicators as the condition of the public transport system. Admirably, the level of education and the quality of health care has improved dramatically for the average Cuban, since the 1959 revolution, in fact the Castro government has made social and economic improvement one of its highest priorities. In 1958 half a million were unemployed, the majority of people had no running water or electricity; two thirds of the children were without a primary school, and illiteracy had reached 43 per cent. Ten years later the number of schools and teachers had more than doubled, with free health care available to all Cubans. However, this is a difficult period for this small island nation as the US economic embargo has been especially effective since funding from the former USSR ceased in the early 1990s.

The economic embargo against Cuba is symbolic of the historical development of the patriarchal relationship between the US and its Latin American neighbours overall. However, the US justifies its position with claims on property owned by US citizens prior to nationalisation by the Cuban Government post-revolution. The Urban Land Reform was meant to redress the five out of six million Cubans who didn’t own their own homes or businesses as were not allowed to work their own arable land, while American citizens and companies had owned or controlled 804,070 acres of land, over 9,000 buildings and houses and 70 industries. Owners of property were offered payment with government bonds but this was ignored by the US.

This is not a new issue in International law, the normal custom of resolving disputes of expropriated property has been negotiation on a state-to-state basis, for example, the US settled all its claims with China’s communist government in 1979 for over $80 million (US) dollars. Cuba, on the other hand, appears to be viewed by the US in a different light from both a political and legal standpoint. Castro’s government in the past has stated that they would be receptive to entering negotiations similar to those claims it has previously settled with the UK and Canada. Negotiations of the claims would not achieve or maintain the US aim of economic isolation of Cuba, or finally, redress the positive affects of any influx of
foreign currency through trade and investment in Mexico, Canada, UK and other European countries. (Investments previously dominated by the US prior to the revolution.)

The Helms-Burton Act is specific in its attempt to undermine the Castro government and prescribe democracy from a US standpoint as Title II states that Cuba must have a "transitional government" that meets fairly strict criteria before any significant changes to the Act can be made. This would include approval by the Congress and the President because of its codification, Section 206(6) explicitly names Fidel and Raul Castro as unacceptable members of this new US approved government.

The Act also opposes Cuban membership of international financial institutions, such as the IMF and the World Bank in order to further economic isolation. Most importantly, in Title III the Act becomes inoperative if any participant, who have certified claims in expropriated property filed with the US Foreign Claims Settlement Commission to have rights of action in US courts in order to gain compensation from either entities of the Cuban government or foreign individuals and/or companies that engage in transactions involving these properties. If the offender continues to "Traffic" in these expropriated properties after notification of a claim filed in the US, they may become liable for treble the market value of the property. This is the essence of a secondary economic sanction that is applied extraterritorially, the punishment of third party states if they trade with a target state. The US once referred to this type of sanction as unacceptable breach of international law when they were targeted by the Arab league for trading with Israel in the mid 1970s.

Since in passage both Presidents have suspended the effective date of Title III of the Act in order to lessen the grievances of the US trading partners, but there is no power to suspend the use of Title IV which prohibits companies directors, major shareholders and CEOs along with their spouses and minor children from entering the US if they continue to deal with expropriated property after notification by the Secretary of the State. The US State Department has established a task force to constantly monitor any current or new investments by non-Cuban individuals in Cuba who may qualify for visa refusals.

Initially, there was outrage from the target countries of this unilateral sanction; responses included the passing or amending of blocking statutes to prohibit compliance with the US law. Lawyers and Government officials from the UK and other countries high-lighted the Act’s breach of the fundamental principles of international law because of its lack of any jurisdictional basis, in addition to its violation of several articles of General Agreement on Trade and Tariffs (GATT) and the North American Free Trade Agreement (NAFTA). The EU launched a complaint with the World Trade Organisation because of the violations of GATT articles and a panel was petitioned, but before it could be referred to the binding nature of the WTO dispute mechanism, the EU withdrew the complaint in order to settle the dispute in a Trade Summit with the US.

This resulted in the 1998 Joint Statement between the two parties that would establish an "International Registry of Claims" of expropriated properties to be used by the EU to prohibit governments from granting financial aid to companies who are deemed to have violated the US law. The condition on which this agreement is based in the amendment of Title III of the Helms-Burton Act, an exclusion of target individuals from entering the US. The overall purpose of this joint statement is theoretically meant to uphold and observe the standards of International law.

However it exemplifies the EU complicity in the US breaches of the principles of jurisdiction, a very undesirable precedent, and has the potential to turn a secondary sanction into a multilateral one, pushing aside the issues of international law and trade agreements that are so fervently raised previously. It would appear that economic interests are superior to any concern of the operation of rule of law and jurisdiction.

Fortunately, some Republican Senators take a particularly dim view of amending Title IV of the Act so the agreement has been inactivated since 1998, which is the same position since its inception which is the right wing of the Senate has inhibited the activity of the agreement, which would undoubtedly lead to further harmonisation, or to be more precise, international Americanisation of this vindictive law. Why does this four-year-old law warrant consideration today? Because the future American policy on Cuba is uncertain at this point, potentially the balance of power of the political parties between the Senate and the Presidency may allow for this agreement to become active, and because the US has decided to violate international law when it is economically advantageous to do so. Most importantly, it is not just a Cuban problem; it is a problem for the defence and adherence to rule of law. Economic sanctions have become the new "smart bombs," no longer an issue to use military might to coerce smaller and poorer countries to agree to your foreign policy goals, trade is far more persuasive. The US's attempt to prescribe its own variety of democracy in Cuba through the use of an extraterritorial secondary sanction violates fundamental principles of the ideal of democracy whether on a national or international level. It is not surprising that more than half of the 115 countries that have applied to the US over the last 80 years for foreign policy purposes have occurred since 1995. It has become more than an academic debate of the challenges to international law, but a challenge for all nations who live in America's world.

"Economic sanctions have become the new 'smart bombs', no longer is it necessary to use military might to coerce smaller and poorer countries"
Terrorism in the United Kingdom

The Government attack on Civil Liberties and Minority Communities

by Adrian Berry

The Government has recently added to the legal powers at its disposal through the passing of the Terrorism Act 2000. This Act constitutes an attack on the civil liberties and human rights of people living in this country. It also attacks the rights and freedoms of those living in other countries as many of its oppressive measures are international in scope. For those among us who considered that the passing of the Human Rights Act 1998 would usher in a new rights based culture and empower the citizen against the state, the Terrorism Act is a salutary reminder of the authoritarian tendency that characterises the New Labour administration.

The powers granted to the Home Secretary, the prosecuting authorities and the police constitute a development of the use of the law of terrorism. Since the passing of the Northern Ireland (Emergency Provisions) Act 1973 and the Prevention of Terrorism (Temporary Provisions) Act 1974 there have been terrorism laws in force in force continuously in all parts of the United Kingdom. However these laws have been subject to periodic renewal. The new Terrorism Act departs from previous practice by putting terrorism law on a permanent footing. It is not possible to deal with all the aspects of this new and wide ranging piece of legislation in one article. The focus here is on the problems thrown up by the new definition of terrorism, the prescription of foreign organisations, the criminal provisions that follow from it and the effect of the legislation on minority communities in the United Kingdom.

Defining Terrorism

Before the passing of the current Act the definition of 'terrorism' was "the use of violence for political ends and includes any use of violence for the purpose of putting public or any section of the public in fear", section 20(1) Prevention of Terrorism (Temporary Provisions) Act 1989. The new definition is contained in section 1 of the Terrorism Act 2000 which is less concise and seeks to cover a wider range of situations. It refers to terrorism as being the use or threat of action designed to influence the government or to intimidate the public or a section of the public. The use or threat of "action" must be for a "political, religious or ideological cause" and "action" is defined to include "serious violence against a person and serious damage to property". It is also made clear that "action" can be an action outside the United Kingdom and that where an action is designed to influence a "government", that government may be a government other than the government of the United Kingdom.

The new definition of terrorism as for a "political, religious or ideological cause" is designed to make it hard to argue that an action is not political and thus that the terrorism provisions do not apply. In truth it adds little as the term "political" has a very wide meaning. However the widening of the definition is a sign that it is intended to apply to a wider range of organisations than in the past.

Proscribing Foreign Organisations

In particular actions directed towards foreign governments may now be characterised as terrorist. When this is considered in the light of provisions for proscribing organisations "concerned in terrorism" under section 3 of the new Act, the potential for the Government to abuse proscription powers and to proscribe individual organisations as a tool of international diplomacy and foreign policy becomes clear. Although international terrorism has been the subject of legislation in the United Kingdom since 1984 the new Act makes it possible for the first time to proscribe foreign organisations concerned in international politics and struggles in other countries.

A foreign state that wishes to curb political violence by organisations active...
in that country may lobby the British Government to have that organisation banned in the United Kingdom. Where that foreign state is a democracy there are arguments for and against international co-operation to control activity declared to be terrorist. Where the foreign state is authoritarian, engages in extra-judicial killing, arbitrary detention, torture and other serious abuses of human rights, it seems extraordinary that the British Government would wish to assist that state to maintain order by helping it on an organisation that challenge that state's power and legitimacy. Yet the new Terrorism Act provides for that possibility. Moreover, as will be considered below, the Home Secretary has taken this opportunity and has banned several organisations that challenge authoritarian regimes in other countries such as Turkey and Iran.

Ethnic and Religious Minorities in the UK

The new Terrorism Act is important for ethnic and religious communities in the United Kingdom because of the wide-ranging criminal charges that may be brought against those suspected of membership or support of a proscribed organisation. Although ostensibly directed at those who assist a banned organisation, the use of arrest powers and the potential for criminal charges under the Terrorism Act threaten a far wider class of people than those actively involved. Human Rights organisations such as Justice and Liberty argued repeatedly when the Bill was going through Parliament that these criminal provisions were oppressive, breached the rights protected by the European Convention on Human Rights, and required modification. The Government did not listen.

Many ethnic and religious minority communities in the United Kingdom support liberation struggles, resistance to oppression and the struggle for self-determination in the countries with which they have ties and connections. They may offer financial, welfare or political support to members of their community in these countries. Members of these communities may or may not support the methods used by proscribed organisations who share these goals. Whatever the position, the proscribing of organisations also connected with the foreign political struggles, makes minority communities vulnerable to abuses of their rights in the United Kingdom through exposing them to the police powers and criminal charges created by the Terrorism Act.

Criminal Charges and Human Rights

One provision under the Act will serve as an example of how rights are limited by its provisions. It is an offence under section 12 to arrange a meeting which you know will be addressed by a member of a proscribed organisation. Thus a community group cannot arrange a meeting to persuade a member of a proscribed organisation to use peaceful means. Similarly a campaigner for human rights or a journalist could not attend that meeting. Even more bizarrely, if members of that proscribed organisation met to discuss decommissioning they could be prosecuted under this section.

Under the European Convention on Human Rights these scenarios would be unjustified breaches of the rights to Freedom of Assembly and Freedom of Expression in the absence of exceptional circumstances in the United Kingdom. Clearly foreign organisations active in other countries would not create an exceptional circumstance in this country sufficient to justify a breach of human rights.

Moreover, an ethnic or religious minority community which has organisations that provides material help and support to other members of that community suffering in an authoritarian state will come under suspicion now that the Terrorism Act applies to political situations in other states. The danger is that the police will engage in surveillance and monitoring of minority communities, and use their powers, including the power of arrest under the Act, in a way that at odds with the Human Rights that the members of these communities enjoy. The experience of ordinary Irish people in Britain since terrorism laws were first introduced underscores this point.

Proscription of organisations makes minority communities vulnerable to abuses of their rights

The threat in the United Kingdom that foreign organisations pose a threat to the United Kingdom sufficiently strong to warrant the introduction of criminal charges that breach Human Rights law is very thin. The new Terrorism Act is premised on the basis that the current and future threats are such that permanent terrorism legislation is required. It has its roots in the 1996 Inquiry Into Legislation Against Terrorism (Cm 3420) by a law lord, Lord Lloyd of Berwick. This was instigated at the request of the then Home Secretary Michael Howard in 1995. The report of the Inquiry contained a range of recommendations. In the second volume there was an analysis of the current and future threats to the United Kingdom by Paul Wilkinson, Professor of International Relations at St Andrews University. Professor Wilkinson summed up the current threats to the United Kingdom as being from the IRA; animal rights extremists; Middle Eastern groups such as Hezbollah, the PKK or a secular Palestinian group on a Israeli or Jewish target; and attacks by radical groups such as the Algerian GIA. He noted that “Attacks originating from conflicts elsewhere in the world such as South East Asia, are by no means impossible but the track record suggests they are less likely.” (Cm 3420, Vol.2, p.37).

As has been noted, under the Terrorism Act international organisations have been proscribed for the first time. Previously only organisations concerned with the conflict in Northern Ireland was banned. The list of 21 international organisations banned includes the GIA (Algeria), the PKK, the Tamil Tigers and several groups from South Asia such as the Sikh Balbar Khalsa and the International Sikh Youths Federation (ISYF). It is legitimate to ask what threat these organisations pose to the United Kingdom. The information on past incidents is included Professor Wilkinson’s report. In the period 1985-1995 he records the number of “Terrorist Attacks” as including: Provisional IRA 189, Shaks 6, PLO 2, PKK 1, Jad 1 (Cm 3420, Vol. 2, p.91).

Whatever view is taken of the utility of proscription against the Provisional IRA, it is clear that there is no pressing need, when considering past indicators, to proscribe Sikh organisations, Middle Eastern organisations, or the PKK because of the threat they pose to the United Kingdom. Indeed in a briefing paper issued on 28th February 2001 in support of its proscription of 21 international organisation the Home Office noted in respect of the PKK’s representation “There are no indications that the PKK do not have any overt representation in the UK, but operates covertly and has some support among the Kurdish community.”

Two-Tier Criminal Justice

While individual examples are illustrative, the threatened to move the essential balance between the rights of the individual and foreign organisations is wrong. It involves dubious political judgments and that the breaches of human rights to which it gives rise cannot be justified by pressing need or exceptional circumstances.

Terrorism laws supplement existing laws of criminal justice. They are premised on the basis that the police powers and the range of offences for acts of violence towards people and property are insufficient to deal with the phenomenon of terrorism. This assumption is challenged by many who rightly consider that terrorism laws introduce a two-tier criminal justice system where particular individuals and communities are subject to greater police powers and lesser civil liberties than others. The use of an extra, stronger, set of police powers and criminal provisions is highly problematic and creates obvious scope for injustices in the criminal justice system. In the context of the conflict over Northern Ireland the history of miscarriages of justice under the terrorism laws, such as the cases of the Birmingham Six and the Guildford Four, are well known. Terrorism laws present a threat to the very civil society and people that they seek to protect.

In Great Britain the Prevention of Terrorism (Temporary Provisions) Act 1974 was introduced in the wake of the bombing of two pubs in Birmingham by the Provisional IRA which killed 22 people and injured 180. At the time the legislation was presented as a response to an urgent problem and considered a temporary measure. In the absence of any comparable threat the United Kingdom should not proscribe any international organisation because in doing so it props up authoritarian regimes, restricts human rights in this country and disproportionally falls on the heads of ethnic and religious minority communities.
Through the Looking Glass: A Dissenter Inside New Labour
by Liz Davies
£15.00, Verso, ISBN 1-85964-039-2

Through the Looking Glass is an important book that primarily details Liz Davies’ two years as an unpaid member of the NEC of the Labour Party. Most readers will be familiar with the events leading to the blockage of her candidacy to fight Leeds North East at the 1997 General Election, events which in her own words meant that she was ‘cast out from being an obscure and not typical Labour Party activist and “political councillor” onto the front pages of the national press.

The book proceeds to concentrate on the efforts of the Grassroots Alliance slate, which was largely single to represent the members who in 1998 elected them to the highest decision-making body within the Labour Party and the reproduction of the party leadership at every turn.

The respect in which they, and Davies in particular, were held by members across the country was demonstrated by the fact that her vote increased when she stood for election a second time. Davies is in fact modest about the role that she and her candidates played and its importance to ordinary members struggling with the reality of Labour and all that it has come to represent. Many party members/political hacks will be interested in the sections of the book that deal with the failed attempts by Blair to fix the party’s choices of candidates for the Labour whip, Labour Partylington and the Mayor of London. Furthermore, the factual selection process for the GLA contains just how contentious the leadership has become of the membership and, of course, activism. Davies describes her own entry into the Labour Party as a young person fired by idealism and a commitment to social justice – reflecting a path well-trodden by a range of people who have seen such activism as part, if indeed a large part, of their commitment to social change. Davies sees her experience as that of the thousands of young people drawn towards the protests in Seattle, Genoa and elsewhere who would now even consider joining a party whose national conference is characterised by corporate sponsorship while real and democratic debate has been consciously and effectively shut down in the party at large.

Davies’ position, as further set out in recent public meetings, is that the Labour Party is moving in the right direction too slowly, but rather in the wrong direction too quickly and she raises the question as to when silence, in the face of the progression of New Labour, in effect, becomes collusion with policies such as the voucher scheme for asylum-seekers and privatisation at a level never dreamed of by the proponents of Thatcherism in the 1980s.

Through the Looking Glass, the volume of his diaries ending in 1990, Tony Benn expresses concern at the prospect of the Labour Party becoming devoid of the reality and experience of working people. He cites an occasion when he meets people of good faith and serious commitment in the anti-nuclear movement but whose experiences have little or no socialist analysis of the issues with which they are seeking to engage.

Ten years on, Davies has written as a member of the same party, reflecting on the absence of political discussion at the highest level in the party. Davies cites the example of McDonalds sponsoring school materials and further lobs the pass of so much in a party that historically managed to unite broad awareness of individuals in a collective focus, be it around education, health, anti-militarism or workplace rights.

Through the Looking Glass will provide food for thought for many people who have chosen, and will choose, to remain in the Labour Party while nevertheless feeling alienated by the policies and priorities of Blair and the mandate for a second term now given to him at the ballot box. It will also be of interest to those seeking to understand the links between those meetings in the broad anti-capitalist/anti-neoliberal movements that have emerged and are clearly attracting layers of people who not too long ago may easily have joined and campaigned for the Labour Party. After twenty-one years of active membership Davies has now left the Labour Party but in concluding her book she makes it clear that she has ‘certainly not left politics, the movement for social justice or the search for socialism’.

John S Hobson

Prisoners, deaths in custody and the Human Rights Act: A Briefing
by Paul Griffiths, Debbie Cole & Simon Creighton
£5.00, ISBN 0 9468 5810 1

Over the past forty years, prisoners have been the largest group of individuals to have pursued claims to the European Court of Human Rights a reflection of the fact that those held in custody are dependent upon the state for the very most mundane demands of daily life.

Through the citing of examples from the relevant case law this publication offers an important overview of where Convention rights in the penal context have been asserted as well as considering the prospects at hand now that prisoners may articulate such rights before the domestic courts.

The publication has been written primarily for prisoners, not-lawyers and non-governmental organisations. It also provides a useful point of reference for those using the legal process to preserve or advance the position of those detained by the state, whether in institutions run with or without the public sector or in those that are now managed privately. There is thorough coverage and discussion of the various Convention articles that immediately come to mind for discussion, the right to life (Article 2), the right not to suffer torture and inhuman or degrading treatment or punishment (Article 3) and in the area of subordinate sentences the right to liberty (Article 5).

The section on the right to life foresees significant impacts on the inquest system and equally importantly on the extent to which the DPP and CPS will be required to provide adequate reasons for their decision as a decision is taken to not prosecute following a death in custody. Of further interest is the consideration given to the possible impact of Article 6, for example in relation to prison discipline. There are some 120,000 ‘adjudications’ held in private and hence prison governors each year and the libertarians foresee an avalanche of challenges emerging in this area as prisoners caught within a number of grey areas of prison offences seek to assert their right to a fair hearing. This follows from the fact that at present the Prison Service undertakes an administrative approach that has hitherto granted significant discretion to an adjudicating governor in a process characterised by only a basic level of procedural fairness.

This whole area however must now be considered in the light of the very recent decision of Greenfield’s Secretary of State for the Home Department where the Queen’s Bench Divisional Court held that a charge of drug abuse brought against a prisoner did not warrant fair trial provisions. In effect, a charge brought in prison for which the sanction of an extension of time in custody could be imposed – is simply a disciplinary proceeding and not a Convention criminal charge.

Furthermore, it should be noted that additional time in custody did not violate rights under Article 5 since such a penalty, which a prisoner risked while in detention, formed part of the sentence required to be served before release. There is no requirement for a separate jurisdiction to be added on for which the sanction of an extension of time in custody could be imposed – is simply a disciplinary proceeding and not a Convention criminal charge.

Elizabeth Woodcraft’s first book is written with guts and energy. Frankish Richmond is a London barrister with a complicated love life and practice. An old client, an ex-girlfriend, some corrupt policeman and a murder make this novel a page turning crime thriller without the predictable ending. Her novel not only has a great plot but it has political bite. Frankish is not your usual barrister, he turns down work on the grounds of principles! This and other aspects of Frankish’s character lead to sensitive and insightful handling of a number of social justice issues. Writing of style is wretched edged and witty. She covers her subject with authority, no doubt gained from her twenty one years of practice. Elizabeth Woodcraft practices in family law at 14 Tavistock Court, the chambers of Michael Mansfield QC.

This novel is a breath of fresh air amongst the other crime writers, you’ll pick it up, read it fast and too want to know when you can catch up with Frankie and Livy. 

Rebekah Wilson

Good Bad Woman
by Elizabeth Woodcraft

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Rebekah Wilson
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