

Socialist Lawyer

Magazine of the Haldane Society of Socialist Lawyers ■ Number 44 ● July 2006

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FOREIGN CRIMINALS



**FRANCES WEBBER
& ALEX GASK GO
BENEATH THE
SCARE STORIES**

**LIZ DAVIES
ON THE
'RESPECT
AGENDA'**

**RICHARD
HARVEY
ON SHOOT
TO KILL**

**SULTANA
TAFADAR
FOREST
GATE**

Haldane AGM:
3rd October
Tony Benn
see back page

Haldane Society of Socialist Lawyers

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The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes.

The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates.

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Still fighting

On 3rd May 2006, Haldane celebrated our 75th birthday with a glorious evening of comedy, song and reminiscences. We're still standing and still fighting. Sadly, it looks as though our next fight is to defend the Human Rights Act – attacked both by the Tories with their “British Bill of Rights” and by New Labour. Socialist lawyers also find ourselves in the unexpected position of defending the judiciary against government interference.

The furore over “foreign criminals”, “soft judges”, “lenient sentences” and “the human rights culture” comes from both the tabloids and the government – indeed it's impossible to work out who is the instigator and who the follower. Both have equally authoritarian instincts. Both use language that encourages racism and xenophobia. Both pretend that they are merely following public opinion when really it is they who create an atmosphere of fear.

In this issue, Alex Gask, Liberty's Legal Officer, describes the unlawful treatment that some foreign nationals have been experiencing since 2001. These men, not “foreign criminals” because they have never been charged, let alone convicted, of any criminal offence, have been detained under regimes that, one after another, have been held to be incompatible with the European Convention. First detention without trial, and now control orders. Not content with having been told that each of its “anti-terror” measures is unlawful, the government is now attempting to circumvent *Chahal v UK*, which prevents deportation to a country where there may be a risk of torture. “Memorandums of understanding” have been agreed with Jordan, Libya and Lebanon and are being negotiated with Algeria, Morocco, Tunisia and elsewhere. The underlying theme of these men's experiences, for some of them since autumn 2001, has been the illegality and repressive nature of each of the government's actions.



Frances Webber exposes the myths behind the “foreign criminals” affair. The press and the government behaved as though foreign “killers, rapists, paedophiles” were free to commit crimes with impunity. It was based on inaccurate, and inflammatory, figures and racist language. It led to Charles Clarke's downfall (no tears for him, but anyone committed to civil liberties should be wary of his successor), to the smearing of all refugees and asylum-seekers as criminals, and to a crackdown on any foreign national (and some British citizens) who had served a period of imprisonment, no matter how long ago and how out of character.

As the CPS announces that no police officers will be prosecuted for the killing of Jean Charles de Menezes, Richard Harvey looks at the history of police “shoot to kill” policy. The tactics now being used on London streets and resulting in the deaths of Harry Stanley, Diarmuid O'Neill, de Menezes and the shooting of Mohammed Abdulkahar, were pioneered in Northern Ireland. The “right to life” enshrined in the European Convention is meaningless if police officers – from the bottom to the top – are not to be held accountable for their use of lethal force.

Every time the government doesn't get its way in the Courts, it blames the “human rights culture”. Instead of accepting that it might have behaved unlawfully, and taking the necessary steps to respect the Human Rights Act that it was so proud of introducing back in 1998, it attacks the Convention and the judges who interpret the Convention. The Tories' proposed “British Bill of Rights” contains no meaningful proposals, but plenty of attacks on Europe as somehow imposing unreasonable burdens under the guise of human rights. New Labour is more coy, but Blair's letter appointing John Reid made clear his impatience with recent judicial decisions: “we will need to look again at whether primary legislation is needed to address the issue of Court rulings which over-rule the Government in a way that is inconsistent with other EU countries interpretation of the European Convention on Human Rights”. There can be little doubt that the immediate task for socialist lawyers is to defend the Human Rights Act, unamended.

Tony Benn, a politician who is committed to human rights, and spent his entire career defending the rights of the vulnerable and unpopular, is our guest speaker at our Annual General Meeting on 3rd October, speaking on “The Law, Society and the New World Order”. We will be deciding our political and campaigning priorities for the next year, and electing a new executive. We're sorry that our chair for the last two years, Richard Harvey, has decided to stand down from the office. He has really made a difference in keeping the Haldane Society on the map. We've improved our administration and fundraising base. Above all, he has been instrumental in directing our campaign to Close Down Guantanamo. We thank him for all his hard work and we'll miss his presence as chair. All members of the Haldane Society, and anyone thinking of joining or just wanting to hear Tony Benn speak, are very welcome to attend the AGM. Do you have a view on what our main tasks for 2006 – 2007 should be? Submit a motion - any motions for debate can be sent to the Secretary at Haldane Society, PO Box 57055, London EC1P 1AF. Why don't you stand for the executive and help us campaign? Put your name forward in advance, or just turn up and volunteer on the night. We'll be delighted to see you.

● **Liz Davies, vice-chair, Haldane Society**

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At 75, still standing up for what's right

The Haldane Society celebrated our 75th birthday on 3rd May with a party at Conway Hall in central London. It was great to see old friends and comrades, and new members just joining the legal profession and looking for some socialist support.

Non-lawyers Jeremy Hardy, Ian Saville and Leon Rosselson provided the official entertainment. Jeremy's stand-up incorporated Israel-Palestine, private schools and voting Labour. Ian Saville showed us how magic can be Marxist. Leon Rosselson inspired us with "The World Turned Upside Down" and then led us all in a chorus of "The Red Flag" (at the specific insistence of the chair). They all made us smile, laugh and applaud.

The best buzz, though, was the warmth and affection for the Haldane Society expressed by our lawyer speakers, and by the audience. Helena Kennedy reminded us of three significant times for the Society:

The 1930s, when the Society was founded in the midst of racism, war, attacks on civil liberties; the 1960s, when the Society pioneered lawyers' involvement in the struggles against racism and for women's liberation; and now, a time again of racism, war and a New Labour government that has

used the rhetoric of the women's liberation movement and rights for rape victims to introduce punitive criminal justice laws, under the mantra of "what about the victims?"

Phil Shiner and Imran Khan both expressed their appreciation to the Haldane Society for support that we have provided to peace campaigns and anti-racism campaigns.

Imran reminded us that the legal profession is now much more multi-racial than it was when he first joined and there was a sombre moment as he talked about his clients still in jail five years after the Bradford riots. Louise Christian let slip a few personal secrets as she told us about representing miners in the magistrates courts of South Yorkshire and Nottingham in 1984-85.

Shami Chakrabarti revealed a talent for stand-up and warned that, as New Labour is whipping up racism over 'foreign criminals', what would it be like if they decided to turn on 'socialist lawyers'? We are prepared for the challenge of being public enemy number one.

Perhaps the star turn was Michael Seifert who told us of the crunch-point in the Haldane Society's history, told to him by his father. In the 1950s, at the height of McCarthy-ite witch-hunting, Gerald Gardiner proposed a motion that the



Birthday bash was a bit

Haldane Society should not accept members of the Communist Party. There was a long, bitter, very personal debate. The motion was narrowly defeated and the losers left, to found the Society of Labour Lawyers. Gerald Gardiner later became the Lord Chancellor. The winners were not materially rewarded, but may have slept with a clearer conscience.

We received some extraordinary generous gifts,

which we raffled, notably Mike Mansfield's gift of brass miners' lamps and door knockers, given to him by Arthur Scargill and books (legal and non-legal) signed by their authors.

Mike Mansfield and Richard Harvey kept the whole evening rattling along and numerous volunteers made sure that everything went smoothly.

By far the best thing about the whole evening was the number of supporters, members and non-members, who turned out to give us their money, meet old friends and comrades, and celebrate the fact that the Haldane Society has reached the grand old age of 75.

We're not complacent. We get by on shoe-string finances, and the hard work of the executive who take out time from practice or studying to keep us going. But, we can continue flying the flag for socialist lawyers and, more importantly, for the clients and causes represented by socialist lawyers, because so many lawyers want us to keep going and provide us with generous support.

● **Liz Davies**

Britons killed by Israeli army

In April an inquest jury found that the shooting dead of British cameraman James Miller by an Israeli soldier in Gaza was murder, but the soldier responsible is still free. Israel said a two-year investigation had been carried out, but results were "inconclusive and could not provide a basis for proceeding under criminal law". Another jury found that

Tom Hurndall, a British peace activist, had been unlawfully killed by an Israeli soldier and deliberately shot "with the intention of killing him". Sergeant Taysir Hayb was convicted of manslaughter by an Israeli court and jailed for eight years. He said that his commanders had issued orders allowing him to shoot even unarmed civilians. ■

April

5: Amnesty International calls for an independent inquiry into all aspects of British involvement in secret CIA "extraordinary rendition" flights. More than 200 CIA flights have passed through British airports.

8: Government rebuffs campaign to give MPs a right to vote on Britain going to war, and will not support either a new law nor a new convention giving parliament war-making powers. Lord Falconer stated that it would put "an unwise and artificial inflexibility" on troops and government.

18: Research by the Institute for Public Policy Research shows that the poor and unemployed are twice as likely to be victims of violent crime and nearly three times more likely to suffer emotional damage as a result of being attacked.

May

4: Trade unions announce campaign for a change in the law after a law lord's ruling drastically cut compensation for the thousands of workers who die from lung cancer mesothelioma after exposure to asbestos dust. About 1,900 people die in the UK each year and the total is predicted to reach 160,000.

8: Government wins its appeal against a high court ruling that allowed anti-war protester Brian Haw to continue his vigil, despite new legislation aimed at controlling demonstrations around parliament. Brian said: "they've bent the law to get rid of me". The police used 78 officers to end the protest, an operation costing £27,000.

BNP loses in the courts

A recent court ruling (Roberts & Roberts v Gable & *Searchlight*, 12th May 2006) upheld the “Reynolds Defence”, so named after former Taoiseach Albert Reynolds and his libel action against the *Sunday Times*.

In an article in *Searchlight* in October 2003, Gerry Gable (ex-editor and a stalwart anti-fascist campaigner) reported allegations being made between opposing factions in the British National Party, and two BNP members sued for defamation.

The defendants pleaded both justification and qualified privilege, arguing that *Searchlight* was under a duty to publish allegations and counter allegations and that, irrespective of their truth, these allegations were a matter of public interest. Gable said that he was viewing the dispute as an outsider, and that he had not adopted, endorsed or embellished any of the allegations in his article. He said he had no reason to believe either side and he believed it would be clear to his readers that he was not in a position to determine who was telling the truth.

Mr Justice Eady upheld the defence, finding that “there is a duty (social or moral) upon political commentators generally, to cover the goings on in political parties, including disputes, fully and impartially. There is a corresponding legitimate interest in the public, and especially those who have a vote, to have such information available”. ■



Youngsters on the march through London against Israeli occupation

Twenty-thousand people demonstrated in London's Trafalgar Square on 21st May against the Israeli occupation of Palestine. Organised by the Palestine Solidarity Campaign, Association of Palestinian Community and the Palestinian Return Centre, it was supported by dozens of organisations from peace groups to trade unions. A replica of the Israeli wall and a large banner with the words “Stop Starving Palestinians, End Israel's Occupation and Recognise Palestinian Democracy” acted as a back drop for the speakers who addressed the demonstrators. Anti-Zionist Israelis, in large fur hats, took up a prominent position near the speakers while young people waving Palestinian flags stood on the railings in Trafalgar Square.

‘We demand safeguards in scheme’ say young lawyers

The Young Legal Aid Lawyers group (YLAL) has called for firm measures to ensure a place for new lawyers under the preferred supplier scheme in response to the Legal Services Commission's Consultation Paper: ‘Quality Relationships Delivering Quality Outcomes’.

“Without any safeguards or plans to assess the impact of the scheme on the next generation of legal aid lawyers or incentives and assistance for providers to commit to training young lawyers, it will be impossible to provide quality outcomes for clients in the future,” said Laura Janes, the Chair of YLAL. The group welcomes the LSC's proposals to reduce bureaucracy, engage in genuine partnerships with providers and to raise the

quality of services for clients but fear that the Preferred Supplier scheme will be meaningless unless firm steps are taken to ensure it is possible and desirable for the next generation of lawyers to commit to legal aid work.

YLAL has called for an independent assessment of the impact of the scheme on new lawyers entering legal aid and consideration of whether a commitment to training could be a nonmandatory criteria for Preferred Supplier status with some level of assistance from the LSC to enable small firms to achieve this. Without such incentives, firms will understandably seek to provide services at the lowest possible expense, in line with the Commission's emphasis on financial stability and “value for money”. Firms will engage para-

legals who can be paid at a cheaper rate and who will not demand additional resources required to meet training criteria. This will almost certainly effect small firms in particular – if they survive at all under the scheme. “Bigger is not always better. Young lawyers benefit from working in small niche firms alongside experienced practitioners, says Trainee Solicitor Ashley Dias-Patel.

“Equally, many smaller firms are black and ethnic minority firms, where clients often benefit from practitioners' understanding of their cultural background. Losing the benefits these smaller firms offer for the sake of contracting with fewer larger firms would be a false economy indeed”. YLAL believes that steps must be taken to ensure that the implementation of the scheme does not result in the irreversible loss of high quality legal services.

● **Jenny White**

www.younglegalaidlawyers.org

12: The House of Lords votes to block a bill which would permit assisted suicide for the terminally ill.

18: The Law Society, the professional body for solicitors in England and Wales, is facing an unprecedented £250,000 fine from the legal complaints commissioner for failing to bring the system for handling complaints against solicitors up to scratch.

25: Attorney General Lord Goldsmith told his officials he had changed his mind over the legality of the invasion of Iraq on 13th March 2003, it's revealed. Freedom of Information Commissioner allows government to withhold all its documents apart from already-leaked text of Goldsmith's original advice when he said it would be “safer” to obtain a second resolution from the UN.

30: Lord Phillips, the Lord Chief Justice, makes wide criticisms of the criminal justice system and warns prison overcrowding is proving ‘absolutely fatal’ for efforts to tackle the treatment of inmates.

31: Recommendations from the Law Commission are unveiled that will give unmarried couples the right to the same financial claims after a break-up as those who have gone through a marriage or civil partnership. A draft bill has been promised by summer 2007.

So what about Guantánamo?

The United States issued a statement on 12th July conceding that the Geneva Conventions apply to the “War on Terror”. So what about the rights of prisoners at Guantánamo Bay and other US military facilities?

The White House issued the statement following a Pentagon order mandating that all Defence Department practices and procedures comply with Common Article 3 of the Conventions. Both the statement and the Pentagon order cited the recent US Supreme Court decision in *Hamdan v. Rumsfeld*, in which the Court, in striking down the military commissions created by the Bush Administration for Guantánamo prisoners, held that Common Article 3 applies to the conflict with Al Qaeda.

President Bush issued an executive order back on 7th February 2002, shortly after US-led forces ousted the Taliban government in Afghanistan, stating in part that the Geneva Conventions do not apply to Al Qaeda and Taliban detainees. Now the White House states that it would formally withdraw that component of the executive order, abandoning its long-running argument that the nature of the “War on Terror” renders the Geneva Conventions obsolete.

In addition to the judicial guarantees noted by the Supreme Court in *Hamdan*, Common Ar-

ticle 3 prohibits acts such as “outrages upon personal dignity, in particular, humiliating and degrading treatment.” However, the Pentagon continues to argue that the Defence Department is already largely in compliance with Common Article 3. But human rights lawyer Clive Stafford Smith, recognising that “humiliating and degrading treatment” has been a hallmark of US military prisons in recent years, disputes that assessment.

“It is an important and positive development that the Bush administration, which for years has argued that the Geneva Conventions do not apply to the “War on Terror”, has reversed its position in response to the Supreme Court’s decision in *Hamdan*,” said Clive, Legal Director of Reprieve, which represents 36 Guantánamo prisoners. “But by insisting that with the exception of the military commissions at issue in *Hamdan* the Defence Department is already in full compliance with Common Article 3, the Administration already provokes doubt that this conversion to due process is sincere.”

“Indeed, Article 3 specifically requires that a fully competent court judge prisoners, and the Conventions elsewhere require that prisoners be given the same rights as US soldiers – in other words, that the Uniform Code of Military Justice be applied, not some novel legal system dreamed



Street art spotted near Chapel Street market in Islington. Picture: Paul Heron

up by the Administration.”

In the Pentagon’s memo, Deputy Defence Secretary Gordon England commands the following: “You will ensure that all [Defence Department] personnel adhere to these standards. In this regard, I request that you promptly review all relevant directives, regulations, policies, practices, and procedures under your purview to ensure that they comply with the standards of Common Article 3.” The White House and Congress have begun to debate new procedures through which to prosecute the ten Guantánamo prisoners charged with crimes. Reprieve

objects to the Administration’s efforts to reinvent the law, and say they will press for proper trials for anyone who may have actually committed a crime; the rest should be returned home.

● Three prisoners in Guantánamo Bay committed suicide on Friday 9th June, once again shining a spotlight on the horrors of the Cuba-based facility. Using nooses made from bed-sheets and clothing, the three men – two Saudis, Mana Shaman Allabardi Al Otaibi (Al Tabi) and Yasser Talal Al Zahrani, and Yemeni Ali Abdullah Ahmed – hanged themselves in their cells. Colleen Graffy, a senior official in the

June

6: Commons public accounts committee report recommends that thousands of remand prisoners, inmates with mental health problems and children should be released from prisons to relieve the growing overcrowding in England and Wales.

7: Inquiry names 14 countries which are involved in CIA’s programme of detaining terrorist suspects for transfer to countries where they may be tortured. UK is accused of not only offering logistical support to the CIA but also providing information that was used during the torture of a terrorism suspect in Morocco.

17: Figures emerge showing that the number of prisoners being jailed for life has nearly doubled in the last 10 years and sentences served are now more than 50% longer than they were when first introduced, despite claims that judges are being too lenient.

19: The Government’s own terror law watchdog warns that the police risk damaging their credibility. Lord Carlile wants a reduction in the use of section 44 ‘stop and search’ powers and added there was “little or no evidence” that they had the potential to prevent an act of terrorism compared with ordinary police powers.

20: John Reid says he is considering importing a version of ‘Megan’s Law’ which would allow the public access to a register of known paedophiles. He’s sending his junior minister, Gerry Sutcliffe, to investigate how it has worked in the US since implementation in 1997.



Fatal judgment for Trinidadian?

Lester Pitman's mother, a slight and soft-spoken woman, never misses a visit to her death row-inmate son, and never gives up hope for him. She arrives at State Prison, 103A Frederick Street, Port of Spain, Trinidad & Tobago for a family visit and is admitted, as a familiar face, by gruff guards. She sits quietly in stifling heat awaiting her son in the family and friends waiting area, about 20 metres away from the execution chamber.

The executions are carried out on the foot of death warrants and there are two read to each inmate; the first a few days before the execution, and the second is read minutes before execution. Last year, Lester had a 'first' warrant read to him, despite an ongoing appeal at the Judicial Committee of Privy Council (JCPC):

"At 3.55 pm yesterday [Wednesday, 8th June 2005], the death warrant was read to condemned killer Lester Pitman at the Port-of-Spain Prison by Registrar of the Supreme Court, Evelyn Ann Petersen. The death warrant gave instruction that Pitman be hanged by the neck until dead on Monday [13th June] at 6am. Pitman was convicted for murder on 11th December, 2001. The reading of the death warrant to Pitman was a swift move by Attorney General John Jeremie, to keep good

his promise earlier this week to resume hanging as part of Government's war against crime."

After the first warrant is read, the inmate is transferred to an uninhabited section of the prison and is placed in a cell opposite the execution chamber; Lester recalls being moved there in June 2005: "After the warrant was read, five or six officers handcuffed me, took my belongings out of my cell and took me to F2 wing, where the hanging gallows are. They told me to take off my blue shirt and gave me a cream uniform



Big news in Trinidad and Tobago

to put on. They told me that these were my sleeping clothes, but a prisoner told me they hang you in a cream suit. After I put on the cream suit, an officer took my blood pressure and weighed me. Then another officer pushed my back against the wall and measured my height, which was marked on the wall with chalk. I understood that they needed to take my measurements to get the gallows right for hanging me."

Subsequent to being moved, Pitman received a stay of execution pending the outcome of his appeal to the JCPC in London, thanks to the sterling efforts of attorneys at Trinity Chambers in Port of Spain.

The effect of this rollercoaster ride of impending death and sudden, if temporary, reprieve has had untold effects on Lester and his mother. Pitman's last chance now lies with the JCPC, where his fate is due to be decided later this month, July 2006. If the appeal is dismissed, he will undoubtedly be the first person to be hanged in Trinidad and Tobago since 2000.

Executions are carried out in the utmost secrecy and no member of the public is allowed to witness a hanging and those involved cannot speak publicly of it afterwards. Friends and relatives of the executed are informed by a notice, signed by the Registrar and attached to the front gate of the State Prison after the fact. When the pathologist is satisfied the inmate is dead, the body is sent to Golden Grove Prison, about an hour's drive outside of Port of Spain. Here prison inmates dig an unmarked grave at the Happy Valley Cemetery. The family is not allowed to attend the burial, conducted without ceremony.

In 2006 we could be facing a situation where the British-tax funded JCPC, by their direct actions, allows a man in a foreign territory to be brutally hanged without his mother's knowledge and she will not be allowed to attend his funeral. Mrs Pitman remains calmly hopeful, but time may be running out for her son. ■

● Thomas MacManus

state department, told the BBC that the suicides were a "good PR move to draw attention."

● Britain's Attorney-General Lord Goldsmith said on 10th May 2006: "...the existence of Guantanamo Bay remains unacceptable. It is time, in my view, that it should close. Not only would it... be right to close Guantanamo as a matter of principle, I believe it would also help to remove what has become a symbol to many – right or wrong- of injustice. The historic tradition of the United States as a beacon of freedom, liberty and of justice deserves the removal of this symbol." ■

26: David Cameron says "a modern British bill of rights needs to define the core values which give us our identity as a free nation" and be "a clear articulation of citizen's rights that British people can use in British courts".

27: Three former NatWest bankers, wanted in the United States in connection with the Enron scandal, face extradition after their last possible legal challenge to the European Court of Human Rights failed. The court decided yesterday not to grant an interim stay of extradition.

28: Charities bill being debated in parliament removes the presumption of public benefit from all types of charities – those with an annual income of more than £5,000 must register with the regulator, the Charity Commission, which must, in turn, apply a test of public benefit.

28: John Reid announces that the post of Chief Inspector of Prisons will be abolished in March 2008. Anne Owens, the current chief inspector, is concerned the merger of five criminal justice inspectorates (including the police, the courts, prison and probation services) would mean the "sharp focus and direct voice of prisons' inspection will be lost or muffled".

29: Russian authorities have refused to grant legal status to 40 foreign non-governmental organisations which submitted paperwork to the justice ministry under stringent new legislation that requires them to re-register by 18th October.

Blair tries to save face in ID card crisis

Leaked emails from the Home Office at the beginning of July admitted that it could no longer give a date for when the first national identity cards would be issued. Putting contracts out for tender was generally expected to start in March, when the legislation reached the statute book. But tendering has now been delayed until at least the end of the year, with no date set. The timetable for the cards, with the first due to be issued in 2008-09, is in the hands of Home Secretary John Reid and his fundamental review of the department.

"We have not abandoned the ID card project, nor have we put it on hold," said a Home Office spokesperson. The leaks had revealed that the ID cards plan was in such crisis that Tony Blair ordered a dramatically trimmed-down version to be prepared as a "face-saving exercise".

A senior Treasury official told his Home Office colleague last month: "Even if everything went perfectly (which it will not) it is very debatable (given performance of government ICT projects) whether whatever the national identity register turns out to be (and that is a worry in itself) can be procured, delivered, tested and rolled out in just over two years, and whether the resources exist within government and industry to run two overlapping procurements." ■



MPs and peers bear powerful testimony from the families of children who have died in custody

Child deaths scandal: why does the government refuse an inquiry?

INQUEST held a parliamentary briefing on child deaths in custody at the House of Commons on 4th July. A crowded meeting in Parliament heard MPs, peers and bereaved families call for a public inquiry into the death of 16 year old Joseph Scholes, who died in March 2002 in Stoke Heath young offender institution.

The briefing was hosted by the Scholes family's constituency MP, Chris Ruane and chaired by former Chief Inspector of Prisons, Lord Ramsbotham. It was addressed by Joseph's mother Yvonne, myself as co-director of INQUEST, Imtiaz Khan (Uncle of Zahid Mubarek) and Baroness Stern. The briefing also heard powerful testimony from the families of other children who have died in custody since Joseph, who were speaking publicly for the first time.

The meeting was a painful reminder of the continuing scandal

of child deaths in custody and the fact that despite the 29 children who have died in penal custody since 1990, there has never been a public inquiry into any of the deaths. Investigations and inquests into the death are subject to appalling delay and limited in scope and therefore cannot examine the wider policy issues surrounding the deaths.

Yvonne Scholes told the meeting: "Since 2002, while Home Office ministers have been pre-occupied with ensuring that they evade accountability for Joseph's death, a further five imprisoned children have lost their lives. Home Office ministers and their cohorts demonstrate callous indifference to the grief of bereaved families and force them to suffer years of agonising psychological torture in the legal arena. I am appalled that the tragic deaths of Ian Powell, Gareth Myatt, Adam Rickwood, Gareth Price and Sam Elphick,

which have brought the awful toll of death to 29, have not been sufficiently shocking to finally force through a public inquiry encompassing all the deaths. Instead their families too face many years of distressing delays before any kind of public scrutiny of the circumstances which led to the loss of their children. I think you will all agree that to deny justice is to deny justice."

Jean Elphick, mother of Sam Elphick who died in Hindley YOI in September 2005, added: "We are going to fight this all the way and we will get a public inquiry at any cost. It's not going to bring him back, it's not going to bring any of them back. But we want and we need peace of mind and we need closure. We need to know that it is not going to happen again to somebody else's son. That's all we are asking for."

Zahid Mubarek's uncle Imtiaz

July

3: Ministry of Defence accused of perpetuating discrimination by withholding compensation to scores of people discharged from the forces for being gay and lesbian when their sexuality became known, are still awaiting payment, even though the government accepted their dismissals were illegal.

3: John Reid plans for tougher official secrecy laws to prevent whistleblowing. He wants to stop security, intelligence agency and Whitehall officials with access to sensitive information from claiming they acted in the public interest.

5: Irish Government proposes new privacy legislation, in conjunction with proposals to introduce a statutory press council and reforms to the 1961 libel and slander laws. Litigants will have to submit a sworn affidavit and verifiable evidence to support it to demonstrate the offending article is not true.

6: John Reid decides a Briton accused of hacking into the Pentagon's computers is to be extradited to the US. Gary McKinnon, from north London, stands accused of what American prosecutors call the 'biggest military hack of all time', and potentially faces a sentence of 70 years if found guilty.

6: A decision in Istanbul's seventh high criminal court reopens the prosecution of Turkish novelist Elif Shafak on charges of "insulting Turkishness". She faces a maximum jail term of three years if convicted.



Amin spoke in support of the struggle for a public inquiry, drawing from his family's own experience: "I've been in contact with a number of victims' families whose hopes are also expressed in [the Mubarek Inquiry]. With such families we have a common aim: that is, the culpability of the prison service in the tragic deaths of our loved ones and the difficulty faced in finding out the tragic facts. Our legal challenge in the House of Lords gave us the victory which resulted in a public inquiry. This highlights the need for victim-lead campaigning."

Baroness Vivien Stern, member of the Parliamentary Joint Committee on Human Rights, said: "This is a human rights issue because everyone has the right to life and when the state takes away liberty it has a duty to protect life. What you have all said today makes it very clear how grossly the state has failed. It is also a duty whenever there is a death in the care of the state that there should be a proper and prompt investigation. Those who attack the human rights framework of this country should bear in mind that it pro-

pects everyone's right to life and everyone benefits. This could be anyone's child. A lot of people get sent to prison who clearly and manifestly should not be there. Sending them there is not only a lack of normal human empathy, but in some cases it is an act of gross cruelty."

In his concluding remarks, Lord Ramsbotham said: "I have noticed that the Prime Minister wants to rebalance the scales of justice in favour of the victims. If he really means this, what better illustration could he give than announcing that he is going to allow a public inquiry and press for it as soon as possible?"

Early Day Motion 2410 was tabled by Chris Ruane MP on 20th June, renewing the call for a public inquiry, and has already received 60 signatories. It followed an earlier EDM that received 112 signatories. The NSPCC has joined the growing list of individuals and organisations supporting the campaign.

The closed world of penal custody means that it is absolutely vital it is open to independent inspection and investigation and held to account when human rights abuses occur. What greater abuse of human rights can there be than a child dying in custody? Investigations and inquests into deaths in custody are subject to appalling delay, are limited in remit and cannot deal with the thematic issues that these deaths raise. The case for a public inquiry is as urgent and pressing as it was when the coroner at the inquest recommended such an inquiry at the conclusion of the inquest into Joseph Scholes.

● **Deborah Coles**

www.inquest.org.uk



Amelia Cuffy-Nash in *ASBO: The Show*: "a comedy, rich and provocative"

A grassroots response

'**ASBO: The Show**', play by **Moston Active Drama (MaD)**

A *SBO: The Show* is a comedy about urban survival, performed by over twenty young people from North Manchester. Set in the city's Moston district, it quickly grabs the audience by the scruff of the neck. Enmeshed in the quick humour, music and fantastic photographic backdrops are serious struggles about eviction, debt, unemployment and for the hope of respect and love.

Central to the plot is Calvin Longbottom, who becomes Moston's 1,000th recipient of an Anti-Social Behaviour Order and, as a consequence, receives a cheque for £100 from the City Council. His mother then loses her job when the local bakery is taken over by an unscrupulous new owner. His sister is expect-

ing twins and the landlord and loan shark are knocking at the door. Homelessness seems inevitable and things are looking bleak. The drama unfolds chaotically but the apparently dysfunctional community eventually unites against the proposed gentrification of the local area.

Rich in local humour and provocative in its portrayal of urban youth culture, *ASBO: The Show* is a magnificent grassroots response to some immediate and hard urban realities.

As Manchester City Council's newly knighted leader prepares to welcome the Labour Party conference in September, this play is a sharp reminder of communities not far from the town hall whose inhabitants include "the few" for whom the Prime Minister has always made clear he is not interested in governing.

● **John Hobson**

7: 'War on terror'? Two-week United Nations conference on gun control collapses after US delegates veto further meetings and block discussion of domestic gun laws. Cuba, Iran, India, Pakistan and Russia also vote down measures to prevent the export of arms to countries that abuse human rights.

9: More than two dozen independent and opposition newspapers in Egypt suspend publication in protest at a law that would put journalists in prison if convicted of libelling Government officials, 300 journalists demonstrated outside parliament.

10: 'Hug-a-hoody' David Cameron: "We have to show more love to those who stay within the law while still ensuring 'painful consequences' for those who don't."

10: Britain faces a 'severe' terrorist threat - meaning that an attack is 'highly likely', and will remain so for a long time to come. John Reid unveils a new public system of five different threat levels, ranging from 'normal' to 'critical' will be introduced next month.

10: Attorney-General Goldsmith refuses to allow appeal over a five-year minimum term imposed on a paedophile. John Reid had played to the press by calling the sentence 'unduly lenient'. Tough on the causes indeed...



Michael Mansfield addresses the first panel at the Toops conference; and a speaker from the floor at the second panel

Tell Tony it's time to go!

In the week that Tony Blair said that Muslims have “a completely false sense of grievance against the West” a police report confirmed what the majority of people in this country have always known – that the bombings last 7th July were a direct consequence of the carnage inflicted on Muslim communities in Iraq and Afghanistan.

A private briefing document, compiled by anti-terrorist specialists and sent to senior Scotland Yard officers, marked ‘restricted’, says the conflict in Iraq has had a “huge impact” and a headline introducing one section says: “Foreign policy and Iraq; Iraq HAS [its emphasis] had a huge impact.”

By the day, the statistics coming out of Iraq become more horrific. Even the Pentagon now admits that 50,000 have lost their lives since March 2003, a figure which must be a massive underestimate, given that Baghdad’s central morgue alone received 30,204 bodies in the same period, most of whom died violent deaths.

Tony Blair wants to hang on in number ten as long as he can. We need to tell him to go, now.

● **Demonstrate: TIME TO GO ‘Troops Out of Iraq, No Attack on Iran, No Trident Replacement’**

● *Saturday 23rd September Assemble 1pm, Albert Square, Manchester. Organised by Stop the War and CND.*

Timely debate as ‘old certainties no longer exist’

Toops Court Chambers’ Annual Conference, held on 24th June, could not have been more timely – the day after Tony Blair called for an increase in summary justice. The conference was titled ‘State Powers, Individual Lives: a Legal Perspective’, and all of the speakers provided welcome antidotes to the increasingly reactionary headlines in relation to the justice system.

Adrian Fulford QC opened the first session, observing that, in the thirty years he had been involved in law, the issues discussed today had never been more important. He observed that old certainties no longer exist and that ‘sentence first, ver-

dict after’ will become more of a reality in this country.

Michael Mansfield QC called for a proper discourse rather than more legislation. Imran Khan gave a chilling account of the impact of terrorist legislation that is not clearly defined and can result in criminalisation of banal acts such as carrying an A-Z guide through London.

Erwin James provided a salient reminder of life for that rapidly increasing number of people serving prison sentences in the UK. He observed that, “There are lots of broken, defeated people in prison, the most vulnerable become the most dangerous”. He talked of the dangerous times we live in with our

attitudes to crime and punishment of ‘we want people to go to prison but we don’t want them back’. Dangerous rhetoric from the media and politicians which leads to a disingenuous debate. A proper debate on imprisonment has to be clear and calm.

Geoffrey Bindman gave an informed analysis of the impact of the Human Rights Act at a time when it is under threat. He recalled that when the Human Rights Act was created it was aimed at assisting victims as much as defendants. He dispelled, easily, the numerous myths of its impact to date and reminded us of the importance of the Human Rights Act for all of us, and that we must defend it.

The conference highlighted how exercises in spin by the Government divert from the real issues, preventing an informed debate.

● **Rebekah Wilson**

July

11: Government threatens to sue former Uzbekistan Ambassador Craig Murray for breach of copyright if he does not remove from his website intelligence material that was censored out of his newly published memoirs.

12: A ruling by five Law Lords opens the way for many people who are bullied at work to sue their employers for damages, using legislation intended to curb stalkers, the Protection from Harassment Act 1997, as long as the bullying was closely connected with the duties of the job.

12: Cash for peerages scandal moves perilously close to Tony Blair’s door: the Metropolitan Police nicked Lord Levy, Blair’s tennis partner, and spends all day interviewing him at a north London police station before releasing him on bail without charge.

12: Thousands of self-employed fathers will have to pay more in child support after a divorced mother, Helen Smith, won a House of Lords ruling over whether capital allowances for assets bought for the business could be deducted from payments for child support.

13: So-called NatWest Three appear before judge at hearing in Houston. David Bermingham, Giles Darby and Gary Mulgrew are former NatWest executives accused of embezzling \$7.3m (£4m) but are white and not terrorists so their one night in jail before they were granted bail was actually spent in a hotel.

Young Legal Aid Lawyers

A weak constitution for the next generation of legal aid lawyers

Young Legal Aid Lawyers (YLAL) fear that we are in the midst of a constitutional crisis. Parliament and the democratic process are being sold for a peppercorn rent.

Loans for peerages and identity cards are powerful symbols of a worrying trend when considered along side the triple blow that threatens to smash the fabric of our constitution over the coming months. Deeply uninspiring for young legal aid lawyers starting out with the aim of fighting injustice within an increasingly fragile framework.

Over the past few months, YLAL members have had to divert their energy to consider and respond to an array of proposals for the legal system that, taken together, paint a deeply worrying picture.

The first blow came in the form of the Legislative and Regulatory Reform Bill which threatened parliamentary supremacy by providing Ministers with the power to make new primary legislation, including the introduction of criminal offences of up to two years imprisonment, without the usual recourse to Parliament. Shockingly, only about half the House even bothered to turn up to vote itself out of the parliamentary process at the second reading in the Com-



mons. The Bill is currently in the Lords and appears to be creeping through the system with assurances from Government that it will only be available to cut "red tape". But government assurances have become less reassuring of late: just a few weeks after their assurances on this Bill, our Prime Minister initiated a debate on the need to reform the Human Rights Act!

The second and third blows threaten the principle of the separation of the powers and the efficacy of the judiciary to check, and balance, the power of the legislature. YLAL have been monitoring and responding to both proposals.

The second blow is the Legal Services Bill on the future of legal services. The Bill proposes to diminish the independence of the legal profession, allowing for commercial ownership of legal practice and stripping the profession of its self-regulatory functions. The new regulatory structure is ill-conceived and

vague in detail and provides for the profession to be controlled by the Minister for Constitutional Affairs and a board appointed by the Minister.

The third is the impending "reforms" to legal aid. By the time this edition is published, Lord Carter will have produced his report. If it is anything like "The Fairer Deal", government's overarching vision for legal aid, it will deny access to legal aid for all but the most destitute. Eligibility rates for civil work will be cut further – and there will be an increase in the use of loans. Criminal legal aid solicitors (whose rates have been frozen for the best part of a decade while the cost of running a practice has risen by 60% in the same period) will have to work at punitive fixed rates on yearly contracts. There will be plenty of telephone advice provided by non-qualified professionals, but for those with complex problems, it's going to be NHS direct all over again: five hours later, clients will be told they need to go and see a lawyer (if they can find one); or worse, easily recti-

fied problems will go unspotted.

The future is bleak. Government will be able to pass whatever laws it wishes as we slide into elective dictatorship and its citizens will be unable to effectively challenge bad law through the incapacitated legal process.

Why? In recent years, we have seen bad decisions and bad laws challenged time and again: the enforced destitution of asylum seekers and the detention without trial of suspects declared illegal by the Lords to name but a few. It's all rather troublesome for New Labour. What better way to deal with it than to bypass the democratic process so that it can introduce any law it likes and incapacitate the largest thorn in its side, the law. And the climate is perfect: the government knows that its electorate is unlikely to be sufficiently motivated and engaged to prevent the grossly undervalued sale of our constitution for a peppercorn.

As lawyers, we are trained fighters. Yet when it comes to preserving our own battle ground we are often too busy with our case work to see the woods for the trees – or too busy and tired to stomach the fight. But YLAL are determined to fight the changes with strong (but possibly empty!) stomachs to prevent a weak constitution for the future.

● Laura Janes, Chair YLAL

Young Legal Aid Lawyers (YLAL) are very pleased to congratulate Laura Janes on being named Young Legal Aid Solicitor of the Year. The awards, chaired by Cherie Booth QC, recognise excellence from lawyers working in publicly funded fields of law. Laura was noted for her initiative in founding YLAL to support young lawyers in publicly funded work and campaign against legal aid cuts. Laura's award is a recognition of her professional achievements and the successes of YLAL and our efforts in fighting for access to justice. ■

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'LEGISLATE TO FAIL TO PROVIDE'

One of the latest 'big ideas' from Tony Blair's 'Respect Agenda' is that "anti-social neighbours could face the loss of their housing benefit" but **Liz Davies** sees too many flaws...

You may be experiencing *deja vu*. Yes, you did read it before – two years ago – when it was quietly dropped, another New Labour idea designed to attract headlines but impossible to implement.

The proposal is that tenants evicted for "anti-social behaviour" would then face the loss of their housing benefit if they "refuse to take help to address the underlying causes of their behaviour". The suggestion is that help will be on offer, something that many workers in hard-pressed local authorities or the voluntary sector will find hard to stomach.

What does this mean in practice?

Local authorities, housing associations and the Courts are now pretty tough on "anti-social behaviour". Just ten years ago, the number of claims for possession on the grounds of nuisance behaviour were few and far between, and those that were brought were frequently adjourned on terms. At worst, usually a suspended possession order was made so that the household wasn't evicted provided that it complied with terms. In my practice, just ten years ago, evictions for anti-social behaviour only usually happened after there had been a breach, or several breaches, of a suspended possession order.

Nowadays, tenants are regularly subject to possession proceedings for all sorts of reasons, including the behaviour of their children. And, even though the adult tenant might be blameless, if the behaviour is considered serious enough, the Court may consider it appropriate to make an outright order for possession (see *Manchester City Council v Higgins*).

And there are a whole raft of additional powers available, which social landlords are only too keen to ask for and Courts only too keen to grant. ASBOs are well documented. The Court can also order that an individual or a family is excluded from a particular area (an exclusion order s.153C Housing Act 1996) and subject to a power of arrest. An exclusion order, prohibiting entry into a tenant's own home, can also be an interim remedy, made

whilst the possession claim is still proceeding, and backed up by a power of arrest.

Once evicted, the family is almost certain to be found intentionally homeless. Local authorities have no duty to provide accommodation except for a very short period and the family has to find its own accommodation in the private rented sector. It will shuttle between assured shorthold tenancies, often finding that housing benefit (still available) doesn't pay the whole of the contractual rent and so rent arrears accrue until they lose that accommodation. Perhaps, once alternative accommodation has been exhausted, the local authority will accept the family and not find it intentionally homeless. But only if there has been intervening settled accommodation. If the family has wandered from one particular insecure accommodation to another (staying with family or friends etc), the local authority will still look back at why it was evicted in the first place.

If housing benefit is withdrawn, households evicted for anti-social behaviour will find it impossible to obtain private rented accommodation. They won't be housed by local authorities. Far more of them will be shuffling between friends and family, facing the break-up of their family, and unable to afford accommodation that would constitute intervening settled accommodation, so as to allow them to re-apply to a local authority and not be found intentionally homeless.

Supposedly, there are carrots as well as sticks. Good practice policy in anti-social behaviour recommends early intervention once there are complaints, trying to ensure that any

underlying problems causing the anti-social behaviour can be resolved etc, providing social work, having a multi-agency and multi-disciplinary approach etc. Day-to-day experience in the Courts suggest that 'good practice' is mainly ignored by the authorities.

Once the family is evicted, the multi-agency approach is supposed to continue, so as to protect the children. If the family is to be found intentionally homeless, social services should be contacted and asked to help find a home (s.213A Housing Act 1996). In practice, social services tend to regard such requests as distractions from their main statutory function of child protection, and attempts to obtain housing through the backdoor. The referral often results in nothing but a few sheets of paper. So what exactly is the "help" that the government is suggesting could be offered by the state?

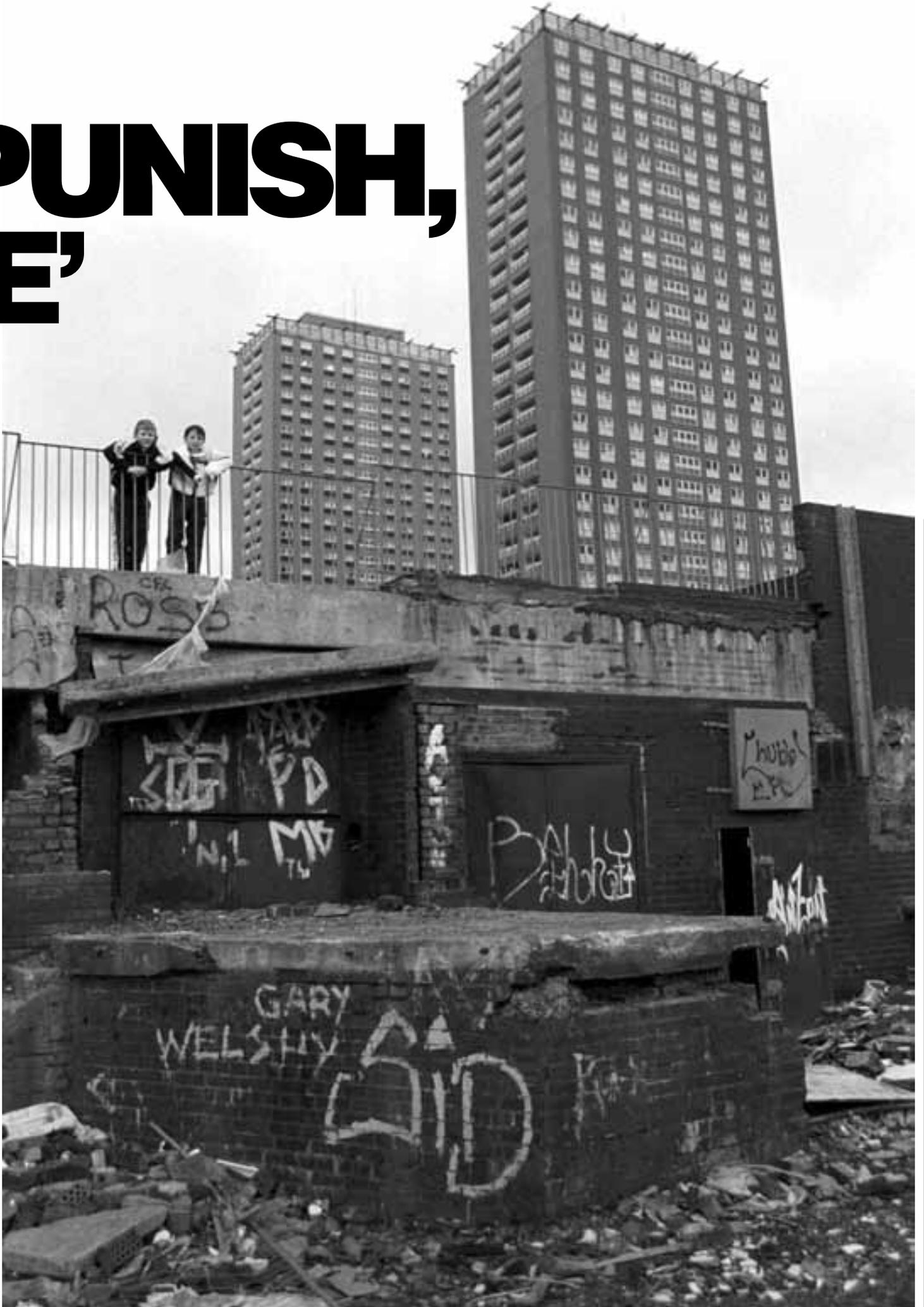
Why would withdrawing housing benefit act as a deterrent? If the behaviour could be deterred, surely the prospect of being evicted, found intentionally homeless, dependent on the private sector or the charity of friends or family would act as a deterrent. Why add the loss of housing benefit on top of all that?

None of this should be read as a justification for racism, violence, threats of violence and abuse of neighbours. Where households put their neighbours in fear or at risk, there should be intervention by the landlord. There should even be the ultimate threat of eviction by the Court. But that should all be coupled with early offers of intervention and effective help to tackle the causes of anti-social behaviour, and a step back from the knee-jerk use of eviction, in many cases a sledgehammer to crack a nut. Remember "tough on crime, tough on the causes of crime"? With anti-social behaviour, as with crime, the government seems to ignore the causes in favour of a punitive approach.

The government spins its 'Respect Agenda' as being a mixture of punishment and deterrence, on the one hand, and increased multi-agency help to problem families, on the other. The reality is that it legislates to punish and fails to provide the promised help. This proposal will be just the same. ■

'Day-to-day experience in the Courts suggest that 'good practice' is mainly ignored by the authorities...'

PUNISH, DE'



Picture: Jess Hurd / reportdigital.co.uk

“
FOR
CRIM

FOREIGN CRIMINALS

Home secretary John Reid spent his first day in his new job making a high profile visit to the Government teams responsible for finding “foreign criminals”. He’s been the *Daily Mail*’s gofer in the Government ever since.

Frances Webber looks at the disgraceful twists and turns in the Home Office in the last few months, while **Alex Gask** runs a critical eye over the Government’s methods for dealing with foreigners residing in the UK who are believed to pose a terrorist threat

”

“FOREIGN CRIMINALS”

FIT FOR PUR

The release of prisoners at the end of their sentence seems, to the uninitiated eye, a fair and just conclusion of their encounter with the criminal justice system. The scandal that broke towards the end of April, which resulted in the removal of one Home Secretary and a wholesale condemnation of the Home Office as ‘not fit for purpose’ by his replacement, illuminates the double jeopardy principle which sharply discriminates against foreign prisoners by enabling them to be deported in addition to serving the sentence imposed for the crime.

The Immigration Act 1971 allows the Secretary of State to deport foreign nationals (including EC citizens), either on the recommendation of a judge after conviction of an offence punishable by imprisonment,¹ or on his own initiative (whether or not the person has been convicted of an offence) on the grounds that his or her deportation is conducive to the public good.² Amid all the outcry about foreign prisoners, the fairness or correctness of the double jeopardy principle has not been called into question – in fact, the Prime Minister and his new rottweiler at the Home Office seek to extend its application. The result has been the reinforcement of popular racist stereotypes equating ‘foreigners’ and ‘asylum seekers’ with ‘criminals’, and the subjection of many fully rehabilitated ex-offenders to arrest for deportation, or to recategorisation within the prison system.

On 25th April 2006 Home Secretary Charles Clarke revealed in a written statement that 1,023 foreign nationals had been released between February 1999 and March 2006 on completion of their sentences without being considered for deportation. On 23rd May, in a further written statement, his successor John Reid indicated that the total of ‘missed’ foreign prisoners was in fact 1,019, of whom 186 had been convicted of serious offences. Clarke’s April statement released a storm of ill-informed and hysterical media coverage which fanned the flames of popular racism. The *Daily Mail* screamed: ‘Killers, rapists, paedophiles ... 1,000 convicted foreign criminals who should have been deported are at large – and the Home Office hasn’t a clue where they are.’ (Reid’s later statement indicated that of the 37 who had been convicted of ‘most serious’ offences, including rape, child sex offences, murder and manslaughter, he said, 27 were in prison. Eight had re-offended (but only six convicted), but there were no re-convictions for violent or



“Clarke’s April statement released a storm of ill-informed and hysterical media coverage which fanned the flames of popular racism”

1. Section 3(6).
2. Section 3(5).

RPOSE?



sexual offences among this group, although 13 of the 149 'more serious' offenders had committed violent or sexual offences following their release.) Even the *Guardian* referred in its 26th April story to 'more than 1,000 foreigners who ... should have faced deportation' after serving their sentence, when the issue was the failure to consider them for deportation action. In later stories it referred to the foreign ex-offenders as being 'on the run', as if they had escaped from prison.³

It may well be appropriate to criticise the Home Office for its failure to *consider* foreign offenders for deportation, through administrative oversight. But it rapidly became an issue about the failure to *deport* them. Thus on 2nd May, Clarke told MPs that over half of the cases which Home Officials had missed had now been considered, and that a decision to deport had been made in respect of 446 cases. But Clarke was doomed for his perceived softness, and was reshuffled out of his job three days later. A memo from Prime Minister Tony Blair to Clarke's successor John Reid, released to the *Observer* (14th May) complained about the judges' failure to take adequate account of victims of crime in their interpretation of the European Convention of Human Rights, and indicated that it might be necessary to amend the Human Rights Act so that foreign criminals could be deported. A few days later, Blair told the Commons that he would press ahead with plans to deport 'the vast bulk' of foreign prisoners after their sentences, regardless of the threat they might face in their home countries. 'There will be an automatic presumption to deport ... and those people ... should be deported irrespective of any claim that they have that the country to which they are going back may not be safe'.⁴

Since the Prime Minister's remarks, John Reid has indicated that he is prepared to be 'radical' in order to convince the public (by which he means the *Daily Mail*) that the government is tough on foreign criminals. In addition to reforms to the Home Office bureaucracy so as to ensure that foreign offenders are properly identified in the prison system, his 23rd May statement indicated that 'all decisions on deportation [will now be] made according to the most robust interpretation of the requirements of our international obligations'. As part of the prioritisation of cases according to the degree of risk posed to the public, he announced that:

"The Home Office will now consider for deportation

all non-EEA nationals who have received 12 months prison sentence, either in one sentence or as an aggregate of two or three sentences; the decision-making criteria of the rules, which go wider than the requirements of the ECHR, will be interpreted much more tightly."

Current criteria for deportation

No automatic presumption to deport would be held lawful, never mind the breach of the ECHR obligations which would be involved. The Court of Appeal gave guidance to judges on when a recommendation should be made over 25 years ago, a long time before the ECHR was incorporated. In *R v Nazari*,⁵ it held that in deciding whether to recommend deportation, the court must consider whether the accused's continued presence in the UK is to its detriment, taking into account the seriousness of the offence, the harm caused to the community by it and the risk of further offences. The sentencing court was not concerned with the political system in the receiving country or what the offender's life would be there; that was for the Secretary of State in considering whether to give effect to the recommendation, but it must have regard to the effect of any recommendation on innocent third parties.

The power to deport EU nationals and their family members may only be exercised, according to EC law, if their conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.⁶ Those who have the right of permanent residence can be deported only on serious grounds of public policy or public security, and after ten years' residence, can be deported only on imperative grounds of public security.⁷

As for the provisions of the immigration rules on the criteria for deportation, they have been the same since the 1970s. The factors to be considered by the Secretary of State in deciding whether to exercise the power to deport, including the offender's age, length of residence and strength of connections with the UK, personal history including character, conduct and employment record, domestic and compassionate circumstances, the previous criminal record and nature of the offence, and any representations received on the person's behalf.⁸ In 1986 the House of Lords held in *R v Secretary of State for the Home Department ex p Bakhtaur Singh*⁹ that the Secretary of State and the appellate body had to take all relevant circumstances into account including the impact of the

3. 'System "not fit for purpose"', says Reid, *Guardian* 23.5.06.

4. *Guardian* 18 May.

5. 71 Cr App R 87.

6. Directive 2004/38/EC Art 27, reflecting the 1964 Directive 64/221 and the cases of *R v Bouchereau*, Case 30/77 [1978] ECR 1999; *Bonsignore* C-67/74 [1975] ECR 297; *Califa* C-348/96, [1999] ECR I-11.

7. Directive 2004/38/EC Art 28.

8. HC 395 para 364.

9. [1986] Imm AR 352.



“After 29 years in the UK, Ernesto Leal faces deportation for a one-off, out-of-character offence in an otherwise law-abiding and productive life”

person’s removal on others (family, employers and community). It is noteworthy that for over thirty years the Secretary of State and the courts have accepted that consideration of deportation should look at the person and his or her circumstances fully, in the round.

Any attempt to impose automatic deportation, even for serious offences, would not only depart from this clearly beneficent and fair limitation to the double jeopardy principle, but would seriously distort the balance required by Article 8 ECHR in cases where the deportee has family in the UK, and would result in many more applications to the Strasbourg court, which in a series of clear decisions from the early 1990s onwards, has set clear limits on the double jeopardy principle, recognising in particular that integrated aliens should not normally be deported except for very serious criminality.¹⁰

Concern had already been expressed by lawyers, before the foreign prisoners row blew up, that the Court of Appeal has, in *R v Nelson Carmona*,¹¹ diluted the stringent requirements of EC law, allowing sentencing judges to deport EU nationals committing several minor criminal offences. Judges are required to assess significant risk of serious harm in other contexts, such as in deciding whether to impose a mandatory sentence for the protection of the public, under the new provisions of the Criminal Justice Act 2003,¹² and the test for deportation should, we suggest, be equally stringent, given what is likely to be at stake.

The effects on the ground

On 5th June, Langstaff J ordered the Home Office to release a British citizen who had been detained for deportation to Bangladesh in the wake of the foreign prisoners scandal. Although the man has a British passport, which was seen by immigration officers who searched his home and arrested him, the Home Office refused to release him without a court order. Their decision said that his offence of conspiracy to rob made his removal from the UK necessary for the prevention of crime and the protection of health and morals. The letter noted that his family came from Bangladesh and could return with him if they did not want to be separated from him.¹³ According to the press report, five more British citizens had been rounded up for deportation. British citizens of foreign origin in the prison system have also found themselves recategorised with a view to deportation.

In such cases, the Home Office is forced to act by the

courts, since British citizens cannot be deported by law. But most of those who have been rounded up have no such protection, not being British, since they are legally liable to deportation. They have to persuade an Asylum and Immigration Tribunal that they should be allowed to stay.

One of these is Ernesto Leal, a Chilean refugee who came to the UK with his family in 1977, when he was thirteen, and was given permanent residence rights. On 1st May, 30 police officers arrived at Leal’s Stoke Newington home to serve him with a decision to deport him to Jamaica, and took him to Belmarsh maximum security prison. In 2002, following a brawl in a bar, he was sentenced to 42 months for GBH with intent. He served 18 months, mostly in an open prison, and on release complied meticulously with the conditions of his licence and started to get on with his life. Now, after 29 years in the UK, he faces deportation for a one-off, out-of-character offence in an otherwise law-abiding and productive life.

On 31st May, the *Guardian* reported another such case, that of Antonio Guarita, a 44-year-old Portuguese man who had rehabilitated himself after a three-year sentence for robbery. Guarita worked with a homeless charity and had just got a full-time job with the charity and his own flat, and was about to receive an adult learning award, when he was sent back to prison pending a decision to deport him.¹⁴

Sentenced prisoners are categorised for security purposes when they first enter the prison system, and thereafter security categories are regularly reviewed. Those in open prisons were categorised as the lowest security risk, category D. Now, many are being recategorised upwards as prisoners who cannot be trusted in open conditions.

At least 200 foreign prisoners have been moved from open to closed prisons since the scandal broke. In mid-May, according to the *Guardian*,¹⁵ 300 prison officers in riot gear rounded up 141 foreign prisoners at Ford open prison in Sussex and taken them to closed jails, following the escape of 11 foreign prisoners in two weeks. A Prison Reforms Trust spokesman said that the escapes from Ford may well have been provoked by the fear of deportation.¹⁶ Thirty foreign prisoners were also transferred from Latchmere House resettlement prison, outside London, to closed conditions. At least two judicial review challenges have been lodged in response to the sudden recategorisation, on proportionality grounds. It would clearly be wrong to recategorise a prisoner solely in response to a media panic.

10. See eg *Beldjoudi v France* (1992) 14 EHRR 801; *Nasri v France* (1995) 21 EHRR 458; *Boultif v Switzerland* (2001) 33 EHRR 50; *Amrollahi v Denmark* 11 July 2002.

11. [2006] EWCA Crim 508, February 2006. See the note by the AIRE centre, May 2006.

12. Sections 224-229; see *R v Lang* [2005] EWCA Crim 2864.

13. *Guardian* 6.6.06.

14. Eric Allison, ‘Second offence’, *Guardian* 31.5.06.

15. *Guardian* 26, 31.5.06.



“John Reid has indicated that he is prepared to be ‘radical’ in order to convince the public (by which he means the *Daily Mail*) that the government is tough on foreign criminals”

The real scandal

There is a real scandal in the Home Office’s treatment of foreign prisoners, but it doesn’t make the headlines. It is the weeks and months which many foreign prisoners serve in immigration detention following their release date, when so far as the prison is concerned they are free, but they remain detained under Immigration Act powers pending deportation. Frequently, their detention is unlawful, since the Secretary of State has given no consideration to whether to deport them or not, and there have been a number of successful challenges by way of judicial review, in cases where no reasons have been given for continued detention following expiry of sentence. A 2004 report by the Prison Reform Trust concluded that the main problems of foreign prisoners in this situation were lack of information, the language barrier and a sense of isolation. More seriously, the report found there were significant causes for concern relating to mental health, racism and disrespect. Applications for parole, for transfers to lower category prisons or to immigration detention, or release on licence often took months to process. The *Guardian*’s Eric Allison revealed¹⁷ that out of 4,000 staff at the headquarters of the Prison Service, the National Offenders Management Service and the National Probation Directorate, just three were responsible for dealing with all foreign national prisoners – estimated at one-eighth of the prison population, over 10,000 people. For Kingsley Williamson, a prisoner awaiting deportation in Norwich jail following open conditions at Hollesley Bay for the last few months of his sentence, it became too much; he hanged himself on 14th March. And on 10th June, Oleksiy Baronovsky, a 34-year-old from the Ukraine, died in HMP Rye Hill in circumstances suggestive of suicide. Baronovsky had served a seven-year prison sentence for burglary and had been granted parole, but was detained beyond his release date under Immigration Act powers pending deportation. The government’s determination to remain one step ahead of the *Mail* in punitive authoritarianism will certainly give rise to more despair and more suicides.

Garden Court Chambers has produced a cross-disciplinary fact sheet on the deportation of foreign nationals, with contributions from specialists in criminal, immigration and prison law, to enable lawyers to respond to clients’ predicaments. Following an open meeting on the deportation of foreign nationals on 7th June, a steering group was set up to coordinate a response. Contact Louise Hooper for details at louiseh@gclaw.co.uk

● **Frances Webber**



Tony Blair's government's efforts to obtain 'diplomatic assurances' that prisoners will be well treated from states where torture is known to be rife are the latest, and some would say murkiest, in a long line of attempts to deal with foreign terrorist suspects residing within the UK.

Since 11th September 2001 the government has entered into a series of battles with the human rights fraternity (and some would say with human rights themselves) over its methods for dealing with foreigners residing in the UK who are believed to pose a terrorist threat. While there is no principled conflict over the most obvious way of dealing with such suspects – arresting them and charging them with

DIPLOMATIC ASSURANCES



ATIC ANCES

“FOREIGN INNOCENT CITIZENS CRIMINALS”

1. See Immigration Act 1971, section 3(5)

2. Article 1F of the 1951 UN Convention relating to the Status of Refugees

3. Article 33(2) *ibid*

4. [1996] 23 EHRR 413

5. [1989] 11 EHRR 439

6. Article 3 of the European Convention on Human Rights: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

7. Article 15 of the Convention allows signatory States to derogate from parts of the Convention in times of war or emergency “threatening the life of the nation”. Article 3 is one of the fundamental rights specifically excluded from this possibility.

8. *Chahal* para 80

9. It is not just the ECHR that provides such a limit on expulsion of individuals to situations where they are likely to face torture. Along with other international instruments, Article 3 of the UN Convention against Torture makes it clear that: “No State shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

10. Certified by the Home Secretary under s21(1) of the 2001 Act.

criminal offences – the problem the government faces is what to do with those individuals it believes to be ‘terrorists’ but does not possess sufficient (admissible) evidence on to be able to prosecute.

From the government’s point of view the next obvious solution that presents itself is the Home Secretary’s power to deport foreign nationals when he considers doing so to be “conducive to the public good”¹. This is an extremely wide power. It can be used even where a terrorist suspect has refugee status, since the protections offered by the 1951 Refugee Convention do not apply to a refugee where there are “serious reasons for considering” that he “has been guilty of acts contrary to the purposes and principles of the United Nations”² – and the prohibition on “refoulement” in Article 33 specifically offers no protection to an individual “whom there are reasonable grounds for regarding as a danger to the security of the country in which he is”³.

However, despite the lack of protection offered by the Refugee Convention, the option of deporting the foreign terrorist suspects is not available to John Reid, and was not to his many predecessors. This is due to the bane of many a Home Secretary – what has come to be known as ‘the *Chahal* problem’, arising from the *Chahal v United Kingdom*⁴ case before the European Court of Human Rights (‘ECtHR’).

In the earlier case of *Soering v UK*⁵, brought by a man who was due to be extradited to the USA to face ‘death row’, it was held by the ECtHR that an individual cannot be removed to a jurisdiction if “substantial grounds have been shown for believing that...[s/he] faces a real risk of being subjected to torture or to inhuman or degrading treatment or punishment” there. To do so would amount to a violation by the removing State of that individual’s rights under Article 3⁶ of the European Convention on Human Rights (‘the Convention’).

Chahal was an application brought some years later by a British resident who the then Home Secretary, Michael Howard, was attempting to deport due to suspicions that he was a Sikh separatist. In ruling that Mr Chahal could not be removed from the UK, the European Court extended the principle set down in *Soering* to cover deportation as well as extradition. Importantly, it was held that since the prohibition on torture in Article 3 is absolute and non-derogable⁷ the prohibition on removal applies even to a person considered to be a dangerous terrorist. Indeed, “the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration”⁸.

Thus the *Chahal* ruling makes it clear that if there is cogent evidence that an individual is at risk of Article 3 treatment in a receiving state, he cannot be removed there – even if that person is believed or known to be a terrorist⁹. The individuals whom the government suspects to be terrorists are wanted men in their own countries, and prisoners in these countries are known to be at risk from torture. So what could be done with these men who seemingly cannot be removed?

The first horrendous idea was that set down in Part 4 of the Anti-terrorism, Crime and Security Act 2001, which provided a regime of indefinite detention for certified “suspected international terrorists”¹⁰. To pass such a law the UK was forced to derogate from Article 5 of the Conven-

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tion, which prohibits arbitrary detention. As was argued vociferously by many, including both the Haldane Society and Liberty, this regime was internment by another name. Quite apart from the insult to the rule of law and the appalling suffering of the 17 detainees held for up to 39 months under this regime, Part 4 showed the hypocrisy of a government claiming that the war on terror was necessary to uphold our principles and values whilst simultaneously flushing those values away. In addition, like internment in Northern Ireland, Part 4 arguably acted as a recruiting sergeant for future terrorists or terrorist sympathisers.

Happily, in the *A* case¹¹ in December 2004 the House of Lords found that Part 4 was unlawful. While the majority accepted that there was a “public emergency threatening the life of the nation”, a breach of Article 14 was found and the derogation from Article 5 was considered unlawful because the detention of foreign nationals was disproportionate and discriminatory – British nationals could pose just as much of a threat but could not be interned.

The government response to the *A* decision was almost as rushed and ill-conceived as Part 4 itself. The Prevention of Terrorism Act 2005 introduced ‘control orders’ – a sort of ‘anti-terrorism ASBO’. Since the foreign terrorist suspects could no longer be detained without trial they had to be released, but the control orders ensured that their liberty was still severely curtailed. Restrictions include being confined to their homes for 18hrs per day, requiring prior approval before meeting anyone, and not being allowed to use mobile phones or the internet. And still no charges had ever been laid against these men. Once again the courts have done their constitutional duty and applied the rule of law, with the High Court recently finding that two different aspects of the control order regime still constitute an unlawful interference with human rights¹². The Court of Appeal will consider one appeal at the end of June and another is sure to follow.

So we are left with the last, and most simple, of the government’s attempts to remove foreign terrorist suspects. If there is evidence that the country to which an individual is to be removed will subject him to torture (or, at best, not protect him from it) then why not just get them to promise that they will behave? Surely that would be enough to satisfy those concerned about the safety of these dangerous men, and the pesky requirements of international law?

Memoranda of understanding

While the story of diplomatic assurances comes after indefinite detention and control orders, it is clear that efforts were being made in this regard even from well before 9/11 occurred¹³. However, it is only recently that these efforts have been stepped up and placed in the public eye. In late February 2005 it was reported that Baroness Symons travelled to Algeria, Morocco and Tunisia to negotiate with those countries’ governments for the return of terrorist suspects from the UK. In addition to these three countries, it is either known or believed that attempts have also been made to seek assurances from Egypt, Syria, Yemen, and the United Arab Emirates.

Perhaps the most glaring change between more recent efforts and those being conducted behind the scenes over the years is that the UK has actually now been successful in

11. *R (A & others) v Secretary of State for the Home Department* [2004] UKHL 56

12. See *Re MB* [2006] EWHC 1000 (Admin) and 28/06/06 judgment of Sullivan J (not yet published)

13. See the *Hani Youssef* case discussed below.

14. [2004] EWHC 1884 (QB)



signing memoranda of understanding (‘MoUs’ – the term used to describe the formal diplomatic assurances obtained) with Jordan, Libya and Lebanon.

In legal terms, the aim of seeking to obtain a State’s assurance that particular individuals will not be subjected to torture on their return is to remove the “substantial grounds” for believing the individual will face “a real risk” Article 3 treatment. The argument is an obvious one – if there is sufficient evidence that the receiving country will not allow torture to take place, then the Article 3 obligation on the UK is not engaged.

The core of any memorandum of understanding is a straightforward assurance that individuals removed will not be tortured. The emptiness of such a promise is not difficult to identify. All of the countries with whom the UK has entered into negotiations (with the exception of the UAE) are signed up to the UN Convention Against Torture and the International Covenant on Civil and Political Rights, and have therefore already made more formal and binding promises to the rest of the world that they will not allow torture. It is clear that these promises are not trusted by the UK, or we would never have needed to enter into negotiation with these countries in the first place. So, all that is left is the repetition of an already broken promise.

It would therefore seem obvious that a mere promise not to torture could not alone be considered enough to remove the real risk of Article 3 treatment. In the case of *Hani Youssef v. Home Office*¹⁴ the High Court was provided with a large amount of information relating to negotiations with Egypt over diplomatic assurances. Amongst that information was a 14th June 1999 letter from the Prime Minister’s Private Secretary to the Private Secretary



Protest outside News International following a News of the World sting operation on 1st June, when 70 migrants, promised employment by an undercover journalist, were taken by coach to Colnbrook removal centre.

at the Home Office which read:

“The Prime Minister’s view is that we should now revert to the Egyptians to seek just one assurance, namely that the four individuals, if deported to Egypt, would not be subjected to torture. Given that torture is banned under Egyptian law, it should not be difficult for the Egyptians to give such an undertaking.”

“He believes that we should use whatever assurances the Egyptians are willing to offer, to build a case to initiate the deportation procedure and to take our chance in the courts. If the courts rule that the assurances we have are inadequate, then at least it would be the courts, not the government, who would be responsible for releasing the four from detention.”

Despite the Prime Minister’s cavalier approach to human rights, the Egyptian authorities would not agree to even this minimal assurance.

Subsequent attempts to negotiate MoUs appear to have recognised that a simple promise not to torture cannot be enough. For example, the MoU agreed with Jordan guarantees *inter alia* that anyone returned under it will be “treated in a humane and proper manner” if subsequently detained, will be “brought promptly before a judge” in order to challenge the lawfulness of that detention, will be granted a fair trial¹⁵ if charged with an offence, and will be “allowed to follow his religious observance”.

However, there is nothing here that doesn’t already appear in the ICCPR. What is of more significance is that the MoU with Jordan also guarantees that if the individual returned is detained within three years, “he will be entitled to contact, and then have prompt and regular visits from, the representative of an independent body nominated jointly by the UK and Jordanian authorities...The nomi-

nated body will give a report of its visits to the authorities of the sending state.”

It is this agreement to allow for independent monitoring of detainees that appears to be the main tool with which the Government intend to establish that torture is no longer a significant risk. Post-return monitoring is presumably intended to work both to dissuade the receiving state from allowing torture to occur, and also to allow the sending state to hold the receiving state accountable once that torture has occurred and has been detected by the monitoring body.

The problem is that neither of these goals can realistically be achieved.

The first obstacle is an obvious one. Who will the reliable and independent body be? The International Committee of the Red Cross, along with international human rights bodies such as Amnesty International and Human Rights Watch, have made it clear that they will not cooperate with any such monitoring, since to do so would be to approve tacitly the use of diplomatic assurances (and to promote double standards in relation to torture prevention – see the comments of Louise Arbour below). The only independent monitor that has so far been agreed is a small, relatively unknown Jordanian organisation (which has agreed to carry out monitoring with financial support from the UK Government).

Secondly, a fortnightly visit to a detention facility by “an independent body” is absolutely no guarantee that torture will be identified. Torture can be conducted in such a way as to avoid external physical symptoms – for example electric shocks, sexual torture or psychological torture. Also, a detainee who has been tortured is likely to be reluctant to report that it has occurred for fear of reprisals – perhaps specifically threatened.

Thirdly, accountability is unrealistic since by drawing attention to torture that occurs the sending state will be required to acknowledge that it has itself failed to uphold the obligation not to send a person to such a fate. And even if the sending state is prepared to advertise its error, there is simply no mechanism for enforcement of a MoU beyond the usual international diplomacy.

The ineffectiveness of diplomatic assurances, even when supported by monitoring by the sending state, can be highlighted by looking outside the UK and considering the case of Ahmed Agiza, an Egyptian national suspected of being a leader of the terrorist group ‘Al-Gihad’. Lest it be thought that Mr Blair is alone in his attempts to negotiate out of his Article 3 obligations, it was Sweden that removed Mr Agiza to Egypt (one of the nations with whom the UK is currently negotiating) in December 2001 following diplomatic assurances being given by the Egyptian authorities. Once in Egypt he was immediately detained. Allegations of torture followed, and in 2003 a complaint was made to the UN Committee on Torture¹⁶.

In accordance with the diplomatic assurances given, once returned to Egypt and detained Mr Agiza was visited by representatives of the Swedish Embassy at monthly intervals. On each occasion the representatives were apparently convinced of Mr Agiza’s well-being by a combination of his own assurances and by observance of his physical condition. It was not until March 2003 that Mr Agiza in-

15. This guarantee essentially repeats the wording of Article 6 of the Convention.

16. The information on this case set out here is taken from the Committee Against Torture’s Communication No. 233/2003 dated 24 May 2005

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formed his monitors that he had been tortured¹⁷. At this stage he apparently declared “It does no longer matter what I say, I will nevertheless be treated the same way.” In contrast, Mr Agiza’s family, who were able to visit him in detention, reported that he had told them of torture (including electrocution) throughout the period during which the monitoring Embassy were satisfied that he was being treated well.

This case also shows diplomatic assurances’ lack of ‘teeth’ since the Egyptian authorities failed to conduct any genuine investigation when Sweden did at last seriously raise with them Mr Agiza’s allegations of mistreatment.

While the UN Committee on Torture found only that Sweden had breached Article 3 of the Convention against Torture by sending Mr Agiza back to Egypt when there were substantial grounds for believing that he would be tortured, the contradictory evidence coming from those who visited the complainant privately and independently and those who visited him formally, together with the Committee’s criticism of Sweden’s withholding of evidence of Mr Agiza’s ill-treatment, indicate at best that the effectiveness of diplomatic assurances, even with monitoring provisions, is dubious. In its conclusion, the Committee noted that “the procurement of diplomatic assurances, which, moreover, provided no mechanism for their enforcement, did not suffice to protect against this manifest risk [of torture].”¹⁸

However, while many human rights organisations have made it clear that they consider national and international law to prohibit reliance on diplomatic assurances, it would be incorrect to suggest that case law indicates a definitive rejection. Indeed, the ECtHR has itself given some indication that the efficacy of such assurances has not been ruled out. Going right back to *Chahal*, the Court commented only that “[t]he assurances of the Indian Government were of little value *since that Government had shown themselves unable to control the security forces in Punjab and elsewhere.*” Far more recently, in the Grand Chamber case of *Mamatkulov and another v Turkey*¹⁹ the ECtHR found no violation of Article 3 in relation to the extradition from Turkey to Uzbekistan of two men following diplomatic assurances not to torture being given. While not explicitly recognising the force of the assurances, the Court did refer to them immediately before concluding that there were not substantial grounds for Turkey to believe that the applicants risked Article 3 treatment.²⁰

Yet even convincing assurances from states where torture is suspected do not deal with the separate concern over the use of diplomatic assurances noted by Louise Arbour, the High Commissioner for Human Rights:

*“even if some post-return monitoring were functioning, the fact that some Governments conclude legally non-binding agreements with other Governments on a matter that is at the core of several legally-binding UN instruments threatens to empty international human rights law of its content. Diplomatic assurances basically create a two-class system among detainees, attempting to provide for a special bilateral protection and monitoring regime for a selected few and ignoring the systematic torture of other detainees, even though all are entitled to the equal protection of existing UN instruments.”*²¹

17. Although earlier complaints of ill-treatment had in fact been made to the Swedish authorities. These complaints were not revealed by Sweden until years later.

18. Prominent in the Committee’s conclusions on this matter was concern over the involvement of “a foreign intelligence service” in removing Mr Agiza from Sweden to Egypt. That foreign intelligence service appears to have been the CIA engaging in an early example of ‘extraordinary rendition’ - see part 3.3 of Dick Marty’s report for the Council of Europe: “Alleged secret detentions and unlawful inter-state transfers involving Council of Europe member states”.

19. Apps. No. 46827/99 & 46951/99. (18 BHRC 2003, (2005) Times 8 March.)

20. In other ECtHR cases, guarantees regarding the death penalty in the US have been accepted (see *Aylor-Davis v France* App. No. 227422/93 (unrecorded)). However, even aside from the different political situations in the US and Egypt etc, the death penalty is considerably easier to monitor than torture.

21. Taken from her address on Human Rights Day, 10 December 2005.

Many countries have signed up to the UN Convention Against Torture – but the UK doesn’t trust many of them not to torture



This concern over double standards and the inevitable dilution of the content of the international treaties that already bind the nations being asked to give diplomatic assurances arguably undermines any reliance even on properly monitored and effective guarantees.

In conclusion, despite its failed attempts at detention without trial and (hopefully) control orders, it appears that the UK government remains detached from its human rights obligations. Notwithstanding the obvious practical obstacles it is still intent on pursuing the policy of obtaining diplomatic assurances in its efforts to rid these shores of terrorist suspects. Unless the battle over the Human Rights Act that is on the horizon ends in a sickening defeat, it appears likely that it will be left to the courts to remind the government of its obligations under domestic and international law in respect of torture and inhuman treatment. If the practical obstacles identified above are overcome it is to be hoped that the domestic courts will take a tough line and rule out any exception to non-outrage.

The simple truth is that the government is in a Catch 22 situation: the only country with which a memorandum of understanding could genuinely be sufficient to satisfy Article 3 is a country with which there would be no need to enter into one.

● Alex Gask



*Parliament Square installation by anti-war artist **David Gentleman**. Each drop of blood is meant to represent the estimated 100,000 lives lost in Iraq since the occupation began. Picture: Jess Hurd/reportdigital.co.uk*

One year ago, on 22nd July, Jean Charles de Menezes was dragged by armed undercover officers from his seat on a tube train at Stockwell, South London and shot seven times in the back of his head. Within two weeks, Tony Blair told us “the rules of the game have changed” and attacked judges for refusing to deport people to countries that routinely practise torture. Two days after Jean Charles was shot to death, Commissioner Ian Blair warned that we can expect more people to be shot as the police hunt for suspected suicide bombers.¹ In the cliché of the day, ACPO continues to insist that its anti-suicide-bomber programme, “Operation Kratos,” is “fit for purpose.”² It is not and never has been.

Both Prime Minister Blair and Commissioner Blair have it badly wrong. Shooting to kill is not a game and the rules – so far, at least – have not changed. To state the obvious, we are talking about a matter of life and death. The more the police get it wrong, the more we are also talking about the death of policing by consent and the birth of policing without accountability. In other words, a police state. As far as accountability goes, it appears that no police officer is to be prosecuted in relation to the de Menezes killing and that the closest his family will come to seeing accountability will be an investigation into Health and Safety at Work violations by the Met.

Both Blairs may not be in post much longer. Tony is facing an enquiry potentially far more serious than health and safety in Downing Street, while Sir Ian is embroiled in yet another policy and public relations debacle following the shooting, fortunately non-fatal, of Mohammed AbdulKahar and the terrorising of his family’s neighbours in the heart of the Muslim community of Forest Gate in East London.

The insistence that the threat of terrorism poses a new and unique problem to policing and to civil society’s humanitarian values is fundamentally flawed. The new threat lies in the failure to respond correctly to terrorism and its causes.

Question: In which year did the first bombing of the London underground take place? Come on, let’s not always see the same hands. That’s right, 1883.³ In its aftermath there was an immediate rush to blame ... yes, of course, the Irish. Then it transpired the bomb was the work of anarchists. But who were these anarchists? What did they look like; where did they live? Some, it seems, were Jewish refugees from the pogroms of Tsarist Russia. And so, by a familiar manipulation of the press, the finger of suspicion was pointed at the entire Jewish community, many of whom had been in Britain for generations. Thus two entire communities, Jewish and Irish, were criminalised and victimised as misinformation and disinformation ran riot.

From 1883 to today it seems little has changed. Certainly not for Harry Stanley, a Scotsman with a table leg, shot to death in 1999 on the say-so of a man in a pub who thought he was Irish and that the table leg was a sawn-off shotgun.⁴ Not for Diarmuid O’Neill either, killed in 1996. O’Neill was unquestionably an IRA man, however, equally unquestionably he was not only unarmed but the Security Services knew he was unarmed – information they apparently withheld from the SO19 team whose adrenalin had been pumped by watching videos of the Canary Wharf bombing immediately before they charged in and shot him dead. Consider also Neil McConville, in 2003 the first man to be shot dead by the PSNI. They were acting on information that he was travelling with a man with a gun in his car. In fact there was a gun wrapped in a cloth in the passenger seat well with no ammunition and no police officer saw it before he was shot dead, allegedly because of a fear that his car might run over a police officer. And now, Jean Charles de Menezes, an innocent Brazilian who did nothing to bring suspicion on himself.

The Jewish community at the end of the 19th century; the Irish community at almost any time in history; and now



SHOOT TO KILL

ONE YEAR AFTER JEAN CHARLES DE by Richard Harvey



Picture: Jess Hurd / reportdigital.co.uk

1. BBC News 24th July 2005 "Police chief 'sorry' over death."
2. BBC News 8th March 2006 "Police defend shooting strategy."
3. I, for one, was completely unaware of this fact until I read the intriguing article by Antony Taylor of Sheffield Hallam University at: www.chartist.org.uk/articles/econsoc/nov05/taylor.htm Much of the information in this paragraph is drawn from his research.
4. For general information on the specific cases mentioned as well as on police use of lethal force generally, see the detailed submissions of British Irish Rights Watch to the Joint Parliamentary Committee on Human Rights, September 2005: <http://www.publications.parliament.uk/pa/jt/200506/jtselect/jtrights/uc701-ii/701m202.htm>.
5. s.3 (1) A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.
6. Article 2(1) Everyone's right to life shall be protected by law ...
(2) Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.
7. Edmund Lawson QC, keynote speaker at Fatal Shootings Conference, quoting Collins J. in *R (ex parte Bennett) v HM Coroner for Inner South London and others* [2006] EWHC 196 (Admin)
8. Annex 3B of ACPO Manual of Guidance on Police Use of Firearms.
9. See www.met.police.uk/communities_together/docs/v_05-11-08_srb_anna_de_vries_1_.pdf
10. See Peter Taylor's BBC Panorama programme: "Stockwell,

"Police officers are apparently being trained to shoot to kill without being trained in the legal duties imposed on them"

at the dawn of the 21st century, the Muslim community all have something deeply disturbing in common with African Americans and Afro-Caribbeans; living with the daily fear that their ethnicity alone puts them in the cross-hairs as members of a suspect community.

None of this is to suggest that terrorism is anything less than deadly serious. But if we are not to go any further down the road of the crudest forms of racial and ethnic stereotyping – and we all know where that road leads – then I offer the police (who love acronyms with a passion) an acronym to embrace. **"TACTICS."** **T** Training; **A**ccountability; **C**ommunity Co-operation; **T**ruth and **T**ransparency; **I**ntelligence; **C**onfidence of the public; **S**ecurity for all.

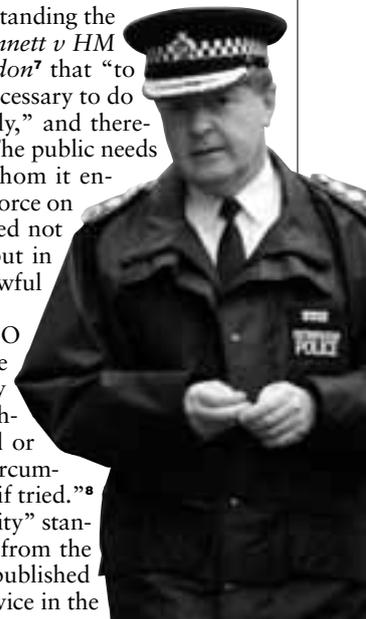
Training: I was asked recently to speak to an audience composed largely of senior police officers and was alarmed to read in the flyer for this "Fatal Shootings" conference that:

"The ACPO Manual for the use of firearms states that every authorised firearms officer should be aware of the domestic and European law relating to the use of lethal force. It places a clear onus for responsibility on the individual officer. Yet it is clear that training is not routinely available, creating significant vulnerabilities for firearms officers and ACPO ranks in a climate of increased firearms incidents and more stringent accountability." (Emphasis added)

Police officers are apparently being trained to shoot to kill without being trained in the legal duties imposed on them. The language of domestic common law and statute ("force reasonable in the circumstances" under section 3, Criminal Law Act 1967⁸) differs significantly from the requirement of "absolute necessity" imposed by Article 2 of the European Convention⁶. What is, or *seems*, "reasonable" in all the circumstances may not be "*absolutely necessary*", particularly in circumstances where the identity or the motives of a person are only suspected rather than established to a certainty.

This has long been a complex area of the law and remains so today, notwithstanding the observation of Collins J. in *Bennett v HM Coroner for Inner South London*⁷ that "to kill when it is not absolutely necessary to do so is surely to act unreasonably," and therefore, presumably, unlawfully. The public needs to be assured that those to whom it entrusts the power to use deadly force on its behalf are thoroughly trained not only in how to use firearms but in the circumstances where it is lawful to deploy them.

According to the ACPO Manual, firearms may only be discharged "when absolutely necessary after traditional methods have been tried and failed or must, from the nature of the circumstances, be unlikely to succeed if tried."⁹ However, that "absolute necessity" standard is conspicuously missing from the Operation Kratos Guidelines published by the Metropolitan Police Service in the



wake of the public outcry after the killing of Jean Charles de Menezes. These refer exclusively to the Criminal Law Act standard of force reasonable in the circumstances and no reference is made to Article 2.⁹

With today's technology, to an increasing extent there is more than one finger on the trigger. The Dedicated Senior Officer (DSO) at the scene bears an awesome responsibility, as Peter Taylor observed in *Stockwell, Countdown to a Killing*.¹⁰ Asked whether the DSO effectively pulls the trigger, Assistant Commissioner Steve House said: "There are code words in Operation Kratos which do signify to the officers on the ground the tactics to be used and one of those is use of firearms fired at someone's head, yes."

Operation Kratos was formulated with the assistance of the Israeli Defence Force, yet the Israelis told Peter Taylor they are not permitted to shoot to kill a suspected suicide bomber unless they are sure they can see a bomb. Unlike the Kratos guidelines, the Israelis train their police in alternatives to shooting to kill. Chief Constable Barbara Wilding, one of the architects of Operation Kratos, has admitted that SO19 was not prepared to deal with a situation of the kind that led to the death of Jean Charles de Menezes on 22nd July last.¹¹ It appears that police training is not "fit for purpose."

Accountability: If the police are not giving and getting the right training, then they are failing in their duties under Article 2. The obligation on the State to protect life also imposes a duty to investigate deaths cause by State agents. They are accountable for their use of lethal force. Their actions must be subject to scrutiny by an independent and impartial tribunal, to determine whether or not the force was unlawful. This applies under domestic law, as the House of Lords clarified in *Amin*¹² and *Middleton*¹³.

Of especial relevance to command officers is the European Court ruling in *McCann* that: "the Court must, in making its assessment, subject deprivations of life to *the most careful scrutiny*, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also the surrounding circumstances including such matters as *the planning and control of the actions under examination*." (Emphasis added)¹⁴

This is very like the notion of command responsibility under the Geneva Conventions and carries similar connotations for those dealing with fatal shootings by members of the conventional armed forces. The UK has been censured by the European Court of Human Rights on more occasions than any country but Turkey in relation to killings by members of the security forces. Most of those killings occurred in relation to Northern Ireland.

Over twenty years ago, I was asked by human rights groups in the UK and the United States to organise an inquiry into whether shoot-to-kill tactics were being employed by the security forces in Northern Ireland. The inquiry was chaired by Haldane Society Vice-President Professor Kader Asmal, then senior lecturer in law at Trinity College, Dublin and later a minister in the governments of Nelson Mandela and Thabo Mbeki. Together with Geoffrey Bindman and other human rights lawyers from the United States and France we documented 155 cases of civilians with no known connection to paramilitary organisations or activities, but who had been shot dead by the security forces. In a further 20 cases involving paramilitaries, we found more force than absolutely necessary was used by the security forces. These cases constituted 65% of all those shot dead by the security forces by the beginning of 1985.

In our report, entitled *Shoot to Kill?: Report of the International Lawyers, Inquiry into the Lethal Use of Firearms by the Security Forces in Northern Ireland*¹⁵, the most conspicuous failure we noted was the failure of accountability. Then and since, the record of holding to account members of the security forces who use lethal force when not absolutely necessary has been abysmal. The impact on the wider community resulted at best in cynicism

Countdown to a Killing," 7 March 2006. The programme itself can be viewed at: <http://news.bbc.co.uk/1/hi/programmes/p-anorama/4779602.stm>

11. BBC News, 8th March 2006: "Police Defend Shooting Strategy."

12. R (Amin) v Home Secretary [2004] 1 AC 653 at 665.

13. R (Middleton) v HM Coroner for West Somerset [2004] 2 AC 182

14. *McCann and Others v the United Kingdom* (1995) (ECHR) Series A. No. 324 Paragraph 150

15. Mercier Press, Cork and Dublin, 1985.

16. See *The Irish Community: Diversity, Disadvantage and Discrimination*, by Bronwen Walter.

17. See *Suspect Community: People's Experience of the Prevention of Terrorism Acts in Britain*, Paddy Hillyard, Pluto Press, 1993

18. Vikram Dodd, *The Guardian*, "Surge in stop and search of Asian people since July 7", 24 December 2005. 27% of all those stopped were Asians (12% of London's population). Stops of vehicles were up by 86% for white drivers; 108% for Afro-Caribbean drivers and 193% for Asians.

19. *Id.*

20. BBC News: "Muslim anger over stop and search." 2 July 2004.

21. *Id.*

22. Report of the Stephen Lawrence Inquiry, February 1999 Cm. 4262-

1. See especially Recommendations, at Chapter 47

23. See Metropolitan Police Authority Report by Commissioner on "Women and ethnic minority staff in specialist units." 9th May 2002.

Figures for March 2002 indicated that "Visible Ethnic Minority (VEM)" officers are 4.7% of MPS strength and female officers 16.9%, whilst 5% of borough officers and 4.2% of non-borough officers were VEMs and 18.8% and 13.9% respectively were women. *Id.*

24. Under the Police Reform Act 2002, all fatal shootings by the police must be investigated independently by the IPCC.





“The UK has been censured by the European Court of Human Rights on more occasions than any country but Turkey in relation to killings by members of the security forces”

and disillusionment and at worst it served as a potent recruiting weapon for those the security forces claimed to be fighting. Nowhere was this more devastatingly clear than in the impunity with which the Paratroop Regiment was treated in the immediate aftermath of Bloody Sunday. In London, just as in Derry, accountability cannot wait 30 years for a public inquiry if our police, politicians and security forces have any concern for the impact on the public today.

Community Co-Operation: One of the chief threats posed by terrorism is the risk that, in the eyes of those responsible for law enforcement, members of entire communities become identified with the threat. In the 1970s and 1980s the Irish community in Britain were subject to arbitrary arrest, stop-and-search and exclusion at ports of entry on a massive scale. In a study carried out for the Commission for Racial Equality in 1993, the Runnymede Trust reported that 60% of Irish people surveyed in Britain had been stopped and questioned under successive Prevention of Terrorism Acts.¹⁶ Of over 7,000, mostly Irish, people detained under the Act only 14% had any charges brought against them and most were not charged under the PTA itself.¹⁷

In the two months following July 7th 2005, the official stop-and-search figures for Asian and Black people in London alone were more than twelve times higher than for the same period the preceding year. 2,405 Asian and Black people were stopped while walking compared with 196 for the 2004 period.¹⁸ As Peter Herbert, barrister and member of the Metropolitan Police Authority, has said: “Intelligence cannot lead to a 1,100% increase, this is just random stop and search.”¹⁹ When Home Office and police spokespeople deny that there is a plan to target ethnic groups they will not be believed and they risk jeopardising hope of co-operation from those communities they most need to have on their side. Even before the 7th July 2005 bombings, the Home Office admitted there had been a 300% increase in stops of Asians from 2002 to 2003.²⁰ As the Labour party peer Lord Nazir Ahmed said after he had himself been stopped twice: “Anti-terror policing has to be based on intelligence – they don’t have that intelligence because people are simply being stopped because of the way they look.”²¹

Despite the Macpherson recommendations, in particular that a ministerial priority be established for all police services “to increase trust and confidence in policing among minority ethnic communities,”²² there is still a woeful under-representation of Black and Asian officers within police forces around the country. This is notably true at command level where under-representation of women as well as what the Met calls “VEMs” is also still a matter for urgent concern.²³ The Security Services are desperate to recruit from these communities. If terrorism is seen as a phenomenon peculiar to a particular ethnic group, there will be the same failure to learn the lessons of the past. In the words of a former Northern Ireland Special Branch officer, quoted in *The Sunday Times* on 24th July: “I suspect that the authorities in England will make all the same mistakes as we

did.”

An important ally in obtaining community co-operation is the Independent Police Complaints Commission.²⁴ The IPCC has a specially mandated statutory role to investigate police firearms incidents. However, as the Rowntree Trust reported in November 2005:

*“Sir Ian Blair, the Metropolitan Police Commissioner, wrote at once [following the de Menezes killing] to the Home Office in an attempt to prevent the Independent Police Complaints Commission (IPCC) from investigating the shooting and barred the IPCC staff from the scene. He requested that the Home Office draw up “rules of engagement”, similar to those provided for the military in a war. He described discussing with the Prime Minister “maximising the legal protection for officers who had to take decisions in relation to people believed to be suicide bombers”. The Home Office refused his request and the IPCC inquiries began a few days late.”*²⁵

*“Community confidence and public co-operation are both undermined when the senior law enforcement officer in the country seeks to bypass the law himself and to keep independent investigators away from the scene of the killing of an innocent man.”*²⁶

Transparency: One lesson that seems never to be learned is that if the people are not told the truth and told it promptly, they will rapidly lose confidence in those who have misled them. When direct lies or inspired leaks to the press are subsequently disproved, the police lose credibility. It is hard to recall a single case in which the public was told the truth from the beginning, be it Harry Stanley, Diarmuid O’Neill or Neil McConville.

Nothing shows the importance of transparency more clearly than the de Menezes case. Commissioner Blair’s position remains untenable. If he genuinely did not know for 24 hours that the man who had been killed was not a terrorist then he was appallingly badly served by those whose job it was to keep him fully briefed. The public interest, let alone that of the de Menezes family, in knowing the truth about such a crucially important event was overwhelming and he should have taken immediate action to restore public confidence in his own and his force’s integrity. The alternative, of course, is that he knew well before his 10:00 am press conference on 23rd July but chose to remain silent for reasons yet to be explained. If he is telling the truth, then his leadership qualities are deeply suspect. If he actually knew, then he must be held to account.

The truth principle goes beyond press conferences in the aftermath of individual cases. The repeated denial that there is such a thing as a shoot-to-kill policy simply does not stand up. “Shoot-to-incapacitate”²⁷ is a nice euphemism but when undercover officers empty a magazine into a man’s head then the police should at least have the decency to say what they mean. Sometimes it is necessary to shoot to kill, so why be afraid to say so, so long as the constraints of Article 2 are observed? The denial only increases public concern that the security services do not intend to abide by the European Convention.

Operation Kratos was bungled because of this mentality of denial. It should have been made public from its inception so that Parliament, human rights groups and the public in general could discuss whether it was in fact an appropriate response to the threat of suicide bombing. By not operating transparently, ACPO fuelled the perception that the policy is misconceived and inappropriate.

Another chance revelation that resulted from this tragic killing was the fact that the army is now operating undercover on the streets of London. The Sunday Times of 24th July 2005 reported: “The highly secretive SRR [Special Reconnaissance Regiment] draws on members of the 14th Intelligence Company, and the Force Research Unit (FRU), which handled all military intelligence informers in Northern Ireland.”²⁸ This was also the unit heavily implicated among other matters in the murder of the human rights lawyer Patrick Finucane.²⁹



“If Ian Blair genuinely did not know for 24 hours that the man who had been killed was not a terrorist then he was appallingly badly served by those whose job it was to keep him fully briefed”



“Tony Blair seems to think problems can be legislated away simply by passing new and more repressive laws”

25. Report by Dr. Andrew Blick & Professor Stuart Weir, 3 November 2005.

26. See British Irish Rights Watch Submission to Joint Parliamentary Commission on Human Rights, September 2005 (Footnote 5 above): “While BIRW is encouraged by the referral of the case to the Independent Police Complaints Commission, we are very concerned by allegations that Sir Ian argued instead for an internal inquiry into the incident, on the grounds of national security. We are also concerned that the IPCC were not handed the papers until five days after the event, and that IPCC investigators were not allowed to enter Stockwell station for a further three days. We believe this may have contributed to a loss of vital evidence.”

27. The phrase used by Assistant Commissioner Steve House, Central Operations Metropolitan Police in response to questioning by Peter Taylor in Panorama’s “Stockwell: Countdown to a Killing.”

28. Liam Clarke & Tony Geraghty, “Shoot to kill echoes Irish dirty war,” Sunday Times, 24 July 2005

29. Lawyers Committee for Human Rights (now Human Rights First): “Beyond Collusion: UK Security Forces and the Murder of Patrick Finucane,” February 2002. See <http://www.serve.com/pfc/pf12022002c.html>

30. Personal recollection of author from interview at House of Commons in compiling “Diplock and the Assault on Civil Liberties,” Richard Harvey, Haldane Society, 1981.

31. Liam Clarke & Tony Geraghty, “Shoot to kill echoes Irish dirty war,” Sunday Times, 24 July 2005.

It is extraordinary that there has been no public debate about the appropriateness of involving this highly suspect branch of our military in policing the streets of the metropolis. Enoch Powell, not a man often quoted with approval in these pages, once told the Haldane Society he found it offensive to see the army patrolling the streets of his constituency. “An army is a killing machine,” he said, “wholly unsuited to the role of policing.”³⁰

Intelligence: The recent cases mentioned above are ones where, but for faulty intelligence, human beings would be alive today, their families would not be devastated, and the public – especially minority communities – would have greater confidence in those sworn to serve and protect us all.

Without reliable and carefully researched intelligence more commanders will order yet more officers to shoot to kill suspects who will turn out to be wholly innocent. Without community co-operation, intelligence is restricted mainly to surveillance and electronic analysis. The persistent refusal to tell the public the truth and to tell it as soon as possible after an event has occurred will only discourage people from providing that information which is the lifeblood of attempts to detect and prevent acts of terrorism.

Confidence of the public: Winning and maintaining that confidence is key. The alternative is a “them and us” dichotomy such as persisted and deepened over the years of conflict in Northern Ireland. It leads to increased militarisation of our society and increased polarisation of its racial, ethnic and religious communities.

The police need to trust people with the truth, even if they have botched an operation. Fobbing off the public with euphemisms only undermines confidence. As a former Northern Ireland Special Branch Officer told the Sunday Times, “It is a dangerous balance for everyone. ‘You can’t be afraid to act if life is at stake but if you alienate people you can hand the terrorists a long-term support base from which to operate.’”³¹

Security – For All of Us: None of us feels more secure when we discover by accident that a shoot-to-kill policy for suicide bombers had been introduced and disseminated to all police forces by ACPO shortly after September 11, 2001 without either parliament or the public being told. Nor do we feel safer to awaken to the reality that a regiment of the army with an unsavoury past is operating on our streets. Our sense of security is undermined when we are lied to time and again.

Terrorism is not a new threat, neither is it unique, requiring a wholly different policing response. Tony Blair seems to think problems can be legislated away simply by passing new and more repressive laws. The question might reasonably be asked, how many innocent people have to be locked up for ninety days before more people become convinced that terrorism is the only response left to them in defence of their communities or their faith? However, to ask that very question may risk prosecution under the Terrorism Act 2006.

We all need to be and to feel secure. That requires politicians to recognise that the rules have not changed but remain the same: respect the rule of law, respect human rights and human dignity and apply the best strategy and TACTICS to prevent the killing of another Jean Charles de Menezes or the terrorising of another Forest Gate. ■

'I THOUGHT I WAS GOING TO DIE'

Last month 250 police officers stormed a house in east London. **Sultana Tafadar** looks at the consequences of a disastrous 'anti-terror' raid...

“**T**he only crime I have done in their eyes is being Asian and with a long length of beard”, reflected Mohammed Abdul Kahar, speaking publicly for the first time on 13th June 2006, about his ordeal at the hands of the Metropolitan Police. Many, who had watched the unfolding of one of London’s most public anti-terrorist raids, shared his sentiments. The shocking blunders committed by the police during the raid, on 2nd June 2006, which left Kahar with a bullet through his chest, sparked outrage within the Muslim community. His subsequent week-long detention, along with his brother, at Paddington Green Police station whilst fruitless searches of their homes were carried out, and their eventual release without charge, left police and community relations in tatters.

The fiasco of the Forest Gate raid raises disturbing questions as to how this apparently ‘intelligence’-led operation turned out to be so flawed; whether the police’s shoot to kill policy that resulted in the death of Charles De Menezes last year was in operation; and whether racial and religious profiling is employed by the police in targeting young Muslim men in pursuit of the “War Against Terror”.

In the early hours of Friday 2nd June 2006, 250 police officers descended upon the Forest Gate home of Mohammed Abdul Kahar, 23, and his brother Abdul Koyair, 20. Fifty police officers, including armed officers dressed in black and wearing balaclavas, smashed down the front door of 46 Lansdown Road, Forest Gate, and the adjoining property where the two brothers lived. The aim of the operation was immediately made public – to prevent a lethal “suicide” chemical weapon from being used. Specialist teams, including chemical warfare experts, wearing chemical protection

suits, were present at the scene. A no-fly zone was imposed above the area. Having received “specific intelligence” and conducted weeks of surveillance, the police were confident that they would find chemical weapons on the premises.

Wild speculation raged for days about what ensued thereafter. The brothers, British born sons of Bangladeshi parents, would later give a harrowing account of what actually took place during the raid and the days following it at a press conference on 13th June.

Kahar related that how he was woken at around 4am by the screams of his brother. “I could hear him screaming, so I got out of bed. I just had my boxer shorts on and a T-shirt. It was dark and I assumed a robbery was happening. As I made the first step down the stairs, my brother was still screaming and I turned round to look at the stairs.”

Moments later, he was shot in the upper right hand side of his chest, with the bullet exiting through his shoulder. He described how an armed man “looked at me straight away and shot. As soon as I turned the steps and we both had eye contact he shot me ... As soon as I turned round, I saw an orange spark and a big bang.”

He went on to describe how the force of the bullet thrust him against the wall, and then “I looked at the right of my chest and saw blood was coming down and I saw a hole in my chest. I knew I had been shot.” A police officer struck him in the face with a gun as he lay there. He begged, “Please, I can’t breathe,” but “they just kicked me in the face and kept saying ‘Shut the f*** up.’ I thought they were going to shoot me again or my brother. I feel ashamed for asking them to spare my life ... One of the officers grabbed my left foot and dragged me down the stairs, my head was banging on the stairs.”

Koyair gave a similarly harrowing account,



“It was like a dream at first ... But I realised it was not a dream and my own brother had been shot for no reason. They tried to murder my brother ... After that I saw the officers hitting my brother.”

Throughout the whole ordeal, the police officers failed to identify themselves to the occupants of the house. Kahar related that he thought they were the targets of burglars. He described how he heard his mother crying and screaming and thought, “‘One by one they’re going to kill us.’ I was just shouting ‘I ain’t done nothing.’ I was worrying about my brothers, everyone. At that time, I thought I was going to die and thinking of everything at the last minute.”

The two brothers were subsequently ar-



'Stop Police Terror, Defend Civil Liberties, Justice for Muslims' protest outside Scotland Yard after the raid in Forest Gate

detention. The fruitless search of the premises continued amidst wild media speculation. Nothing of "evidential value" was found and after eight days of searching, the police had no choice but to release them without charge.

For many, the use of excessive force and the shooting of an unarmed man during the raid, raises disturbing parallels with the police's shooting of Jean Charles de Menezes on July 22, 2005 in Stockwell Tube station. He was the first victim of the "shoot to kill" policy activated by the Metropolitan police after the bombings of July 7, 2005. Part of Operation Kratos, the policy was developed soon after September 11, apparently following consultation with Israeli and Sri Lankan state security agencies on how to deal with suspected terrorists or suicide bombers.

Surveillance officers followed Menezes, mistakenly suspected of being involved in failed bombings of July 21, 2005, from a block of flats to Stockwell Tube station. There he was shot several times in the head by SO19 firearms officers and died instantly. It later transpired that they had made a fatal error.

The Forest Gate raid was also an "intelligence-led" operation accompanied by months of surveillance. According to some reports, the initial intelligence came from a call to the anti-terror "hotline" claiming that a chemical vest was being prepared at the site. Others reported that the source was a police informant. What is clear is that the intelligence came from a single source, and despite Scotland Yard's "serious reservation about the credibility" of the intelligence, the police were nevertheless ordered to go in. Moreover, the police did expect to find all the components of the bomb on the premises, only the trigger or mechanism. Nevertheless 250 officers were deployed and a no-fly zone was established.

It appears that intelligence in both incidents were deeply flawed, with police officers proceeding regardless and resorting to disproportionate use of force.

Both the Menezes and Forest Gate shootings were surrounded by misinformation, apparently emanating from official sources. In the case of Menezes, the police leaked claims to the press that he had been wearing a padded jacket from which wires were clearly visible, supposedly to disguise a suicide belt or explosives. It was reported that he had run from the police when approached, jumped over the ticket barrier at the tube station and had run onto an underground train, painting the picture of a terrorist trying to evade arrest. This account turned out to be a lie.

Similarly, within hours following the raid in Forest Gate, wild media speculation raged as to how Kahar was shot, nearly all reports alleging that the brothers themselves were responsible for the shooting. Apparently quoting police sources, some reported that Kahar had been shot in the shoulder after he had struggled with officers, some said there was no evidence to suggest officers were behind the shooting, and others claimed that he had been shot by his brother who had fought with an officer. It was later reported that a police officer had "accidentally" discharged his gun as a result of wearing thick gloves. All these accounts turned out to be false.

Moreover, both incidents were followed by

'Both the Menezes and Forest Gate shootings were surrounded by misinformation, apparently emanating from official sources'

character assassination of the victims. For example, after the Forest Gate incident, there was speculation about an elder brother of the two men being arrested after taking part in the demonstration against the Danish anti-Muslim cartoons where one participant was dressed as a suicide bomber. Also, the day after the press conference, newspapers reported how money in excess of £30,000 had been found in cash at the house. Menezes similarly had his name smeared by allegations that he had raped a woman three years ago. He was later cleared of the allegation.

In defence of the raid, Tony Blair stated that if the police "have a reasonable piece of intelligence and they believe they have got to investigate, take action on, they should.... Part of the modern world, I'm afraid, is that you have to live with a greater degree of precaution on the part of our security services and our police." Added with the warning from a senior police official that "The public may have to get used to this sort of incident, with the police having to be safe rather than sorry", the comments rub salt into the wounds of an already disenchanted Muslim community. It confirms fears that, like Kahar, many more from the community will be targeted for such treatment, because of their appearance and their religious devotion.

An already disproportionate targeting of persons based on their religious background is apparent from the fact that Muslim men are subject to stop and searches six times greater than their white counterparts. Thousands have been subjected to 'stop and searches' and hundreds have been arrested, leading to only a handful of convictions. According to Home Office figures, up to 30th September, 2005, 895 people were arrested under the Terrorism Act 2000, of which just 23 have been convicted of terrorism-related offences. When those statistics are viewed in the context of other measures deployed in the "War Against Terror" – the increased use of draconian anti-terror laws, alarming extension of police powers, steps taken to deport foreign nationals to countries that routinely use torture, threats to scrap the Human Rights Act, involvement in CIA rendition flights, and policies in relation to Iraq and Afghanistan – the threat to the lives and liberties of Muslims can only be described as terrifying.

As the Government recognises, to win the "War on Terror" both home and abroad, it needs the help and support of the Muslim communities. If Muslim communities have to get used to such horrific treatment, then the Government will have to get used to losing an ally they simply cannot afford to lose. ■

rested under the Terrorism Act, and held on suspicion of the commission, preparation and instigation of acts of terrorism. Kahar was taken to Royal London hospital in Whitechapel and was held under armed guard whilst he received treatment for his wound. Two days later, he was taken for questioning to Paddington Green high security police station where his brother was being held.

The house where the brothers lived was ripped apart as the search for the chemical weapons continued. Within 24 hours of the raid it became apparent that no such weapons existed on the premises. Yet the police were given permission, on 7 June, to hold the two brothers for an additional 48 hours following the expiration of the initial warrant for their

Devastating legal criticism of invasion



The War on Terror and the Framework of International Law

by Helen Duffy
Cambridge University Press.
£29.99

In October 2001, Helen Duffy of Interrights circulated a 39-page paper on the legal issues thrown up by 9/11 and the responses to it. At the time there was some disquiet in legal circles – the document was circulated at meetings of the short-lived Lawyers against the War group in London. But the invasion of Afghanistan came and went with little critical comment from high profile lawyers. Some gave credence to notions of “pre-emptive self-defence” or “humanitarian interventionism”.

By the time Iraq was invaded this had all changed. Heavy-weight legal academics denounced that war; a senior Foreign Office lawyer resigned; and the Attorney General’s opinion was under critical scrutiny. We then saw the House of Lords trashing internment without trial and, more recently, the US Supreme Court’s fatal attack on the Guantanamo “military commissions”.

One wonders whether the “war on terror” might have progressed differently if, five years ago, the “legal community” had been more urgently vocal. Would parliamentarians and journalists have found it more difficult to cover their abstentionism or dithering behind confused notions of “legality” for instance?

Such criticism cannot be levelled against Duffy. She wasted no time in circulating her initial critical analysis and that seedling has now grown to a 450-page oak.

Starting with the 9/11 atrocities and finishing with Guan-

tanamo Bay, she examines every aspect of the “war on terror” through the prism of the law. With fully annotated references she identifies the current legal position, its sources, its ambiguities and its debates in respect of each of the plethora of actions and responses that have characterised the period.

While she avoids political comment or condemnation of particular states – the global impact adds up to a devastating legal criticism of the actions of Britain and the USA and all states that co-operated, connived with or failed to stand up to them.

Readers will be familiar with some of the issues raised as they have been covered in this magazine. Duffy’s contribution is to combine meticulously researched detail with the added benefit of bringing previously disparate issues under one comprehensive discussion.

Making the connections is essential. It exposes consistent patterns and over-arching themes. This is a “war” that as been fought in the name of “justice” and “the rule of law”. But, reading this book, it is difficult to avoid concluding that the driving forces are political and military.

The author makes this point forcefully in relation to torture. A recurrent theme of government spokespersons in Washington and London has been the suggestion that human rights and security are juxtaposed as irreconcilable alternatives. This helped open up a space for debate over the possible legitimacy of torture.

But, as Duffy argues, “questions

as to whether torture can be “justified” are not really a debate as to the lawfulness of particular acts in particular situations (as the unqualified prohibition of torture is legally incontrovertible at this stage) but as to whether the rule of law should be applied at all”.

The same point, of course, can be applied to numerous other actual or potential abuses: indiscriminate aerial bombardment of civilian areas, targeted assassination, grave breaches of the Geneva Conventions relating to fair trial and the treatment of prisoners etc.

There is a consistent pattern of failure to utilise available legal mechanisms in preference for untrammelled force. The relative paucity of criminal prosecutions, globally, in the past five years is one result.

Another thread running through the book is a critique of the legal usage of the terms “terrorism” and “war”. The former has consistently evaded any internationally agreed legal definition after decades of effort, its utility seriously undermined by broadness of scope and vagueness of meaning. And deliberate obfuscation over the application of the latter is central to some of the most important controversies – for instance the treatment of prisoners.

She exposes a consistent pattern of legal “selectivity” – in respect of which law applies, for whom and for whose protection – against which she asserts the universality of law. One consequence of this universality is not just its application to state abuses in the “war on terror”, but also to co-operation with or failure to prevent

such abuses by other states. In certain circumstances tacit collaboration or passive acquiescence is itself a breach of human rights or humanitarian law.

The “rendition flights” scandal and abuses committed

by coalition partners in Iraq and Afghanistan are highlighted as areas where governments may be called to account.

Duffy takes apart the “legal black hole” arguments often used to justify unilateralism and abuses. And she resists the view that state actions post-9/11 have shifted the boundaries of “customary law”. Their very contentiousness makes this unlikely.

But she warns of issues at the margins – extradition procedures, “profiling”, listing of proscribed organisations, derogation – where there is a danger of a longer term low-level corruption of standards.

The book is critical of international institutions, particularly the United Nations Security Council. UNSC Resolution 1373, passed in the aftermath of 9/11 placed binding obligations on states to take extensive counter-terrorist measures without simultaneously requiring human rights commitments. This new “legislative” role, she argues, has reaped unfortunate consequences, not least due to the inadequate definition of “terrorism”.

Duffy legally dismantles the main justifications put forward for the invasions of Afghanistan and Iraq: Security Council authorisation, regime change, humanitarian interventionism, self-help in international enforcement. She is particularly scathing about that favourite excuse of Downing Street mouthpieces – “veto abuse” by oppositional states such as France.

Events have moved on since publication last year. An updated edition might cover the US Supreme Court decision, the European Council report on rendition flights and the current contest over “control orders” in Britain. And a critique of the “Iraqi Special Criminal Tribunal”, presently trying Saddam Hussein and others, would be welcome – deserving a chapter on its own.

An indispensable resource irrespective of your standpoint.

● Piers Mostyn



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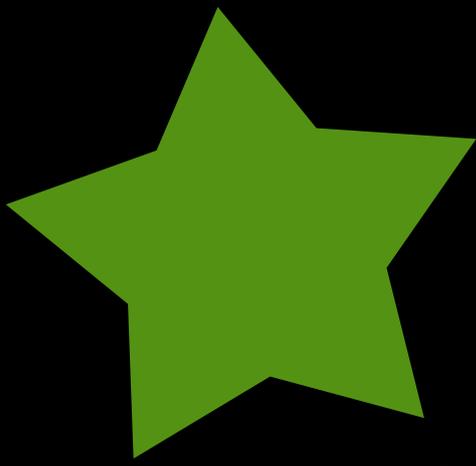
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**Haldane Society
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Annual General Meeting

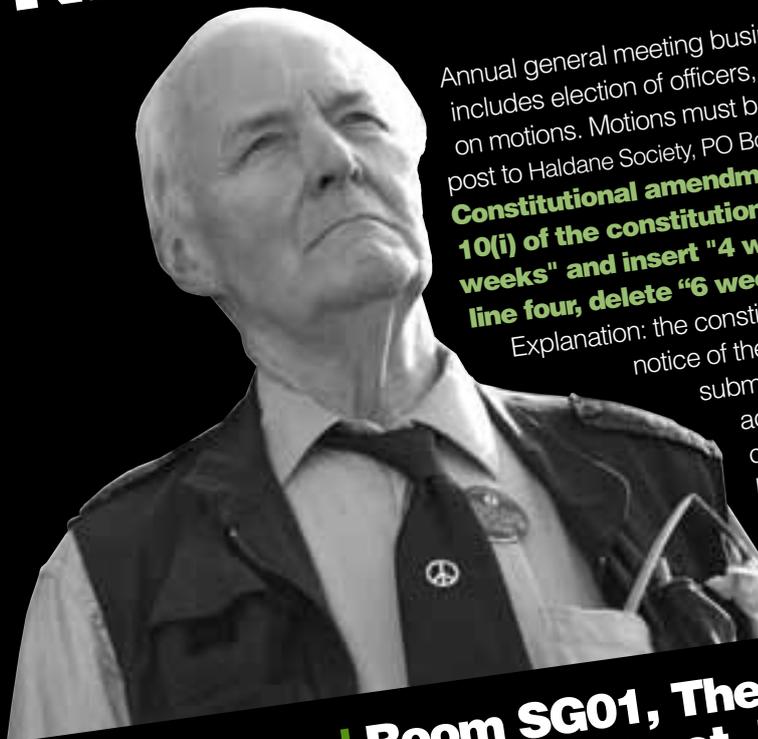
**7pm, Tuesday
3rd October**

Special guest speaker:

Tony Benn

speaking on:

THE LAW, SOCIETY AND A NEW WORLD ORDER



Annual general meeting business section of the meeting includes election of officers, opportunity to discuss and vote on motions. Motions must be submitted by 22nd August by post to Haldane Society, PO Box 57055, London EC1P 1AF.

Constitutional amendment for debate: (1) At clause 10(i) of the constitution, at line three,, delete "9 weeks" and insert "4 weeks". (2) At clause 11(i) at line four, delete "6 weeks" and insert "2 weeks".

Explanation: the constitution currently requires nine weeks notice of the AGM and contains a deadline for submission of motions six weeks in advance of the AGM. The executive considers these periods to be too long and proposes a four week period and a two week deadline for submission of motions instead. The two parts can be voted on separately if so required.

all welcome

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