THE RIGHT TO SELF-DETERMINATION

BLAIR PEACH: IT'S TAKEN THREE DECADES Have we got the truth?

Plus: SIXTY YEARS OF LEGAL AID Has it a future?
HUMAN RIGHTS UNDER ATTACK: PHILIPPINES & COLOMBIA

Haldane Society Annual General Meeting
Thursday 19th November, London
see page 3
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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Editor: Kat Craig
Assisted by Liz Davies, Declan Owens, Tim Potter, Joe Williams and Farah Wise
Printed by: The Russell Press
Many thanks to all our other contributors
An example to follow...

Why be a lawyer? Many entering the legal profession are likely to answer: ‘because the money’s good’. Those people are unlikely to join the Haldane Society. Our members give very different answers: to make a difference to people’s lives, to challenge arbitrary state power, to use our legal skills as a tool that might help change the world. But ask any law student ‘who inspires you?’ the answer is likely to be ‘Mike Mansfield’. Fortunately for the Haldane Society, Mansfield combines his extraordinary legal practice with acting as our President. We review his book Memoirs of a Radical Lawyer on page 32. And, to inspire any law student who might yet be unconvinced, the man himself will be addressing our Annual General Meeting on 19th November (see box below right).

Sadly, inspired young law students face a tough future. As Laura Janes explains, legal aid practitioners face countless struggles just to keep afloat. For busy practitioners, the celebrations of 60 years of legal aid feel rather double-edged. The 1945 Labour Government brought in legal aid as a cornerstone of the welfare state, part of the assault on Beveridge’s Five Great Evils: want, disease, ignorance, squalor and idleness. These days, as the Legal Services Commission engages in consultation after consultation, payment rates are whittled away and fewer and fewer solicitors’ firms can survive when working at predominantly legal aid rates. Those that do are increasingly pressured to cut corners to make ends meet, giving rise to serious concerns about the quality of services for the most vulnerable members of society. Each political party promises massive public spending cuts after the general election. Public services will pay for the folly of cuts after the general election. Public services will pay for the folly of cuts after the general election. What is clear is that elements within the government continue to provide military aid to Colombia, whilst refusing to disclose details of what this aid entails and where it is going, citing ‘security’ concerns. To defend legal aid in those circumstances means getting the message across that legal aid is not about paying vast sums to fat cat lawyers, but ensuring that ordinary people can protect their rights.

Most of this issue of Socialist Lawyer, however, is about our comrades elsewhere in the world, whose struggles are without comparison. Colombia is the most dangerous place in the world to be a trade unionist. Those defending human rights are harassed, arbitrarily detained, tortured, killed or ‘disappeared’. The more high-profile cases, such as that of Congressman Wilson Borja, Senator Piedad Cordoba, or journalist and lawyer Dr Carlos Lozano, are only in part protected by their notoriety. They continue to function, at huge risk to themselves and their families, but they have to live in debilitatingly restricted conditions in order to remain alive. But hundreds of political prisoners are in Colombia’s prisons — jailed for opposing the regime and fighting for human rights. As Bill Bowring explains, this right is enshrined in international law. Nevertheless, governments routinely flout the rule of law. As the experiences of the Kurdish, Irish, Palestinian and Basque peoples show, the original grievance — lack of recognition of their identity and rights — is only exacerbated by government crackdowns when national identities are asserted, including the criminalisation of legitimate political organisations and community groups.

Paul Lewis, the Guardian journalist who exposed the Metropolitan police’s attempted cover up of their involvement in the death of Ian Tomlinson, will open our exciting 2009-10 programme of lectures with Philippa Kaufman of Doughty Street Chambers on Thursday 22nd October, speaking on ‘The Right to Protest: Police Violence, Kettling and Cover-ups’. On Thursday 10th December, our ‘Defending Human Rights Defenders’ lecture will take a fascinating look at the issues in both Colombia and the Philippines. Full details are on the back page. Haldane members, and their friends, are invited to come along to some fascinating talks. I hope to see you there.

Liz Davies, chair of the Haldane Society of Socialist Lawyers lizdavies@riseup.net

Haldane AGM: Thursday 19th November following Mike Mansfield’s lecture (6.30pm)
at the College of Law 14 Store Street London WC1E 7DE (nearest tube: Goodge Street)

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Hanoi congress elects first IADL woman president

Red and gold banners festooned the humid streets of Hanoi to welcome delegates to the seventeenth Congress of the International Association of Democratic Lawyers (IADL) this past June. The IADL holds Congresses every four years to elect office holders and discuss international issues confronting lawyers around the globe. Past presidents include René Cassin, one of the principal drafters of the Universal Declaration of Human Rights and DN Pritt QC, a founding member of the Haldane Society. This year the IADL broke new ground by electing its first ever woman president, Jeanne Mirer of the National Lawyers Guild, USA.

The Congress theme was: ‘Law and Lawyers in the Context of Globalisation: for Peace, Development and the Independence of the Judiciary’. It is hard to imagine a more timely meeting or a more appropriate place, Hanoi, with its thousand year old Temple of Literature and its heroic history of resistance to imperial wars, may justly call itself “The City of Peace,” notwithstanding the streaming shoals of motor scooters thronging streets, through which hawkers balancing baskets on bamboo poles sashay with astounding nonchalance.

Our agenda covered the right of peoples to live in peace in a clean and healthy environment; the right to economic justice and human dignity; challenges to democratic freedoms in the name of the so-called ‘War on Terror’; the spectre of climate change haunting the lives of hundreds of millions of people; impunity and other issues arising from crimes against humanity and war crimes; and worldwide assaults on the independence of judges and lawyers.

The newly-opened My Dinh International Convention Centre was an impressive venue. Vietnam’s President Nguyen Minh Triet opened the first plenary session together with Pham Quoc Anh, President of the Vietnam Lawyers Association. During the five days of the Congress, separate commissions examined the central issues confronting us. The Commission on the Right to Peace affirmed the centrality of the rule of law in international relations, declaring that: ‘If humankind is to survive, the law of war must be superseded once and for all by the law of peace. A war of aggression is a crime; not the means by which to resolve an in-

June

1: Belfast High Court: relatives of some of the victims of the Omagh bombing in 1998 (which killed 29 people) win a civil action – the right to sue four Real IRA leaders for £1.6m in damages.

9: Chancellor Alistair Darling says that Labour was to blame for the success of the Nazi British National Party at last week’s European elections. “People felt disillusioned with us and didn’t vote for us. That’s our fault. We should be able to inspire confidence.”

10: Women in some areas of the country who are rape victims can be 11 times more likely to see assailants found guilty than in other areas, according to the Fawcett Society. In Dorset in 2007 fewer than one in 60 women saw their attacker convicted. In Cleveland it was one in five.

10: Plans for means-testing in the Crown Courts from January 2010 will require those with a disposable income of more than £3,398 to contribute to their legal representation. The Government aims to “save” £25m from the legal aid budget by doing this.

15: The names of more than 170 misbehaving judges are to continue to be concealed after a Freedom of Information tribunal ruling. It is known that judges have been convicted of drink driving, falling asleep at a rape trial and viewing porn on their official computers.
The Commission condemned the unlawful pressures brought to bear by the United States and Israel on states whose courts have received complaints of war crimes committed by their citizens. A number of us visited a ‘Friendship Village’ housing victims of the US Government’s Agent Orange chemical warfare. It was both moving and shocking to discover that, more than three decades after the end of the Vietnam War, children continue to be born with toxin-induced congenital birth defects while the US Government and the corporations which manufactured this chemical weapon of death and environmental destruction refuse to pay compensation and reparations.

The Commission on Globalisation, Economic, Social and Cultural Rights viewed the international financial crisis as demonstrating the unsustainable and unjust character of the present world economic order. Millions of workers and their families face poverty, hunger, forced migration and other social evils as a result of unregulated greed and irresponsible financial mismanagement. This imposes a disproportionate and life-threatening impact on people in developing countries as well as on the poor in the industrialised world. Many developing countries remain crippled with debt resulting from conditions imposed by international financial institutions.

Workers’ rights are increasingly compromised by labour deregulation and policies of importing cheap migrant labour, leading to gross exploitation of workers and undermining family life and social structures. This further undermines the goals of multiculturalism and leads to increased racism and hostility between ethnic and social groups. Women experience double exploitation as gender empowerment is increasingly endangered. Inhuman treatment of children as cheap labour remains an international scandal. Congress affirmed its determination to fight against the exploitation of women and children and for the rights of workers to organise through trade unions.

The Commission on Development and Environmental Rights declared its support for the human right to a clean and healthy environment; a right which should be incorporated into international, regional and national laws and agreements. We recognised the particular responsibility of lawyers to find new, effective and speedy legal ways of securing reparations for damage caused to human beings and the environment by state, corporate or individual actors.

We expressed support for the UN Climate Change Summit in Copenhagen in December 2009 and called for increased priority to be given to the expertise and advice of NGOs and other representatives of civil society in formulating and implementing international policy on this issue.

The Commission on Independence of Lawyers and the Judiciary deplored increasing threats in places such as Colombia and the Philippines to lawyers and human rights workers, who are being imprisoned, beaten and even murdered by death squads merely for defending the rights of the people (see pages 14-17). IADL resolved to create a centre for the protection of lawyers and judges to strengthen its work in publishing reports and in organising solidarity and observer missions. We called upon lawyers around the world to provide and strengthen access to justice, particularly for disadvantaged groups such as the poor, ethnic minorities in remote areas, children, women and people with disabilities.

The Haldane delegation worked hard but we also explored our host city. A visit to Ho Chi Minh Museum revealed a page from the autobiography of DN Pritt QC, founding member of the Haldane Society and past president of IADL. It described how in the 1930s he received the brief to represent Ho Chi Minh in a case where the Hong Kong Government was trying to send him back to Indo-China where he faced immediate execution. Stranger still, the colonial government briefed Sir Stafford Cripps, another founding member of the Haldane Society. The case settled on the basis of an agreement that his ‘offences’ were clearly covered by the political offence exception and enabling Uncle Ho to leave Hong Kong under his own steam and to continue the work of liberating his people.

● Richard Harvey For more information see: www.iadllaw.org
The troubled relationship between the Danish political and media establishment and Islam came to a head again this summer. Maria Mawla, a 27 year old Danish woman of Lebanese origin, joined the territorial army and obtained permission to wear her head scarf under her helmet. Maria came to the attention of the right wing Danish People’s Party when her image was used in territorial army publicity.

The issue of whether she could wear a headscarf with her uniform was hotly contested and became a subject of debate in Parliament. The Danish defence minister has now ruled that wearing a headscarf is incompatible with military uniform. Maria herself was upset by the publicity feeling she was discriminated against.

This incident is the latest in a series of Islamophobic incidents within the mainstream Danish political establishment and press. Since 2002 Denmark has had some of the most restrictive immigration laws in Europe limiting family reunion for asylum seekers and arranged marriages. Denmark was also one of the first nations to join the war in Afghanistan.

However the issue first received world wide attention with the publication of twelve offensive cartoons of the prophet Mohammed in a Danish newspaper in 2005. The newspaper defended its actions saying it was an attempt to preserve the freedom of the press which was endangered by self-censorship in relation to Islam. The cartoons provoked worldwide demonstrations and economic boycotts.

In February 2008, three Muslim men were arrested and accused of plotting to assassinate one of the cartoonists. Two of the men of Tunisian origin were deported, it is claimed without due process being followed or the allegations being tested in court.

In an interview with a Danish newspaper in August 2009 Lene Espersen, the head of the Conservative People’s Party and the current Trade and Economy Minister, said that the greatest threat against Denmark and Danish values comes from militant Muslim extremism. She also called for a ban on the burka.

Maria Mawla has not been allowed the freedom of expression granted to the Danish press. The anti-Islam arguments are cloaked in rhetoric of an unwillingness to assimilate yet it is difficult to think of a greater degree of assimilation than joining the territorial army.
Unprovoked police response to anti-fascists

I was a legal observer at the anti-fascist demonstration in Codnor, Derbyshire, on 15th August. For the majority of the protest I observed police behaviour at the road leading to the southern entrance of the British National Party’s ‘Red, White and Blue’ festival. I recorded my observations as they were happening on a digital voice recorder.

At around 9.30am a coach from Manchester dropped protesters in Loscoe Village. They then walked, accompanied by two police officers, towards Denby Common where around 100 anti-fascist protesters were already blocking one of the roads leading to the farm where the rally was being held. Protesters stood in rows, inter-locked, while the police started to gather behind the group.

Like something more akin to a military operation than a group of police officers, the police suddenly moved into a ‘V-formation’, with dog units stationed at each end. ‘DO YOU UNDERSTAND YOUR ORDERS?’ shouted a senior officer. ‘YES WE DO!’ came the unified response, before police charged without warning into the middle of the group of protesters who were standing still in the road. Showing little restraint, the police forcefully split the protesters into two groups, one on each side of the road, effectively clearing the road to allow BNP supporters to enter the festival. Protesters were visibly frightened by the unprovoked and unjustified police response, with a number of protesters taking refuge in the garden of supportive local residents, appalled at the aggressive police actions taking place on their doorstep. With protesters now split and confined into two groups, police ‘evidence gatherers’ filmed protesters as other officers pointed out those seen to be ‘giving instructions’ to the crowd.

During this first surge, the police made a number of arrests, acting with apparent disregard for the safety of protesters. One man, for example, was thrown to the ground by an officer attempting to arrest another protester who was standing stationary on the property of a local resident, while a female protester standing nearby was pushed aggressively by two officers attempting to intervene. The police eventually issued a warning, announcing that unless protesters ceased their actions, which were in breach of the conditions, they would be arrested.

Despite earlier endeavours to clear protesters from the road, at 11.30am protesters were seemingly permitted to move back onto the road, thus preventing BNP supporters entering the festival. After appearing to tolerate their presence for almost an hour, the police, now with reinforcements, again surged forward into the group and attempted to push protesters onto one side of the road. During this second surge, a number of protesters were injured, with reports that officers were throwing punches indiscriminately into the crowd. A number of protesters were arrested, with at least two immediately de-arrested after being removed from the road.

While observing these events, legal observers were filmed, threatened with arrest for obstruction and aggressively pushed from the road onto the pavement. From around 12.30pm onwards, protesters were kettled on one side of the road and prevented from dispersing. At 2.00pm, mounted police arrived. With protesters becoming increasingly agitated (protesters inside the kettle had no access to food, water or toilet facilities), one of the protesters approached the police and asked whether protesters would be allowed to return to their coaches. The protesters were informed by the officer in charge that they would not be permitted to move from the area. When asked what legal power the police were using to detain protesters, the officer eventually replied ‘common law, to prevent a breach of the peace’. After around half an hour, with protesters becoming increasingly uncomfortable, they were permitted, with a police escort, to join the main demonstration and return to their coaches.

The Haldane Society can provide support for demonstrators who are concerned about heavy-handed policing in the form of legal observers. Such requests are considered by the Executive Committee on an ad hoc basis. Legal observers are provided with a training session on the relevant law and given practical advice in advance of each demonstration. If you are interested in becoming a legal observer please contact Kezia Tobin at kezia.tobin@gmail.com

Joanna Gilmore

Comment

15: Hampshire police suspends its use of stop and search powers under the Terrorism Act after figures showed that no arrests in connection with terrorist activity were made despite a huge increase in stops. There were 36 arrests in 2007-2008 after stopping 3,481 people.

20: The Metropolitan Police’s tactic of ‘kettling’ is taken to the European Court of Human Rights by Lois Austin, one of the protesters at Oxford Circus in 2001 – the first major protest where the tactic was used. She claims the practice is a fundamental breach of liberty.

22: An official review says Kent police force’s blanket use of stop and search powers on thousands of environmental protesters at Kingsnorth last August was “disproportionate and counterproductive” – a total of 9,219 searches were carried out on activists.

23: Director of Public Prosecutions Keir Starmer announces significant overhaul of the way prosecutors work, saying the outdated use of paper files, ‘patchy’ standards and failings in dealing with victims and witnesses mean the justice system needs a radical rethink.

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Striking memories

At its summer party in July, the Haldane Society commemorated the 25th anniversary of the 1984–1985 Miners’ Strike.

As reported in the last issue of Socialist Lawyer, members of the Haldane Society threw themselves into supporting the miners during the strike. Our members represented individuals – at criminal proceedings as well as employment and welfare benefit tribunals – as well as the National Union of Mineworkers (NUM) itself in the attempts made to sequester the union’s assets.

John Hendy QC, Louise Christian, Michael Seifert, Steve Cottingham, Marguerite Russell and Paddy O’Connor QC all recalled their experiences before the various courts, and several speakers drew comparisons between the tactics used by police during the strike and those being used now against climate change and anti-capitalism protesters. At Orgreave and other picket lines, miners were ‘kettled’ by the police 25 years ago in the same way demonstrators are being contained by the police today.

We were delighted to be joined by Jim Mortimer – General Secretary of the Labour Party at the time. Unlike Neil Kinnock, leader of the Labour Party and notorious for refusing to support the miners unequivocally, Jim had done everything possible to provide solidarity: visiting picket lines around the country and organising collections.

We were honoured to receive a delegation from the Durham Miners’ Association, and their General Secretary, Davey Hopper, thanked Haldane for its contribution 25 years ago. He described the strike – for all the hardships and the eventual defeat – as the most important year of his life.

Mike Mansfield QC kindly donated copies of The Battle for Orgreave by film-maker Yvette Vanson, the film providing an apposite backdrop for the evening’s proceedings.

Our Christmas party will be on Friday 11th December, and we will be raising funds for Justice for Colombia to support human rights defenders and trade unionists there. Make sure you put the date in your diary now!

Liz Davies

August

4: Leading construction firms are named and shamed by an official watchdog for unlawfully blacklisting trade union activists. Construction group Balfour Beatty was prominent on the list of 14 companies published by the Information Commissioner.

11: Proposals from the Justice Secretary, Jack Straw, to change the law to enable the prosecution of overseas war criminals and torturers living in Britain for crimes dating back to 1991 fail to go far enough, according to Joint Human Rights Committee report.

13: Israeli soldiers shot dead 11 unarmed Palestinian civilians carrying white flags during Israel’s offensive in Gaza earlier this year, according to a report from Human Rights Watch, which said Israel had failed to investigate the killings adequately.

13: Youth courts are putting offenders as young as 12 behind bars unnecessarily, breaking Government guidelines, a charity warned today. A study by children’s charity Barnardo’s found too many 12 to 14-year-olds are being locked up.

18: Official reviewer of terrorism legislation criticised the Metropolitan police after it emerged that the force had stopped and searched 58 children aged nine or younger in 2008 using terrorism powers designed to ‘fight al-Qaida’.
Control orders: an unwinding regime?

Recent litigation in the English and European courts seems finally to have brought the control order regime to its knees.

The final (legal) nail in the coffin of control orders may finally have been hammered in as a result of the recent outcome in the case of Secretary of State for the Home Department v AE, AF and AN, brought by three men subject to such orders for their suspected involvement in terrorism-related activities. The men (‘controlees’) had been under control orders since May 2006 and July 2007 after a closed hearing in which a judge had determined the strength of their cases based largely upon secret evidence undisclosed to the accused, and sought to challenge the legality of the orders, arguing that their rights to a fair trial had been violated.

The House of Lords, in a unanimous ruling by nine of the law lords, agreed with the men and insisted that the control order regime brought in under the Prevention of Terrorism Act 2005 did indeed infringe the rights of controlees. The decision to allow the three men’s appeals was due in large part to judgment handed down by the European Court of Human Rights (ECtHR). This occurred a short time before proceedings in the House of Lords, in the case of A v United Kingdom, which established that for a control order to be compatible with a controlee’s Article 6 rights, the controlee had to be given sufficient information about the allegations against him to enable him to give effective instructions to his legal representatives in order to address such allegations fairly. If this requirement was satisfied, the controlee’s Article 6 rights would not be infringed and procedural fairness could be assured in control order proceedings. The Court held that such a requirement would not be met, however, in a case where the evidence against the controlee was solely or decisively ‘closed’, thereby made unavailable to the accused. However, bowing to the UK Government’s submissions on national security, the ECtHR accepted the view that ‘sufficient information’ need not constitute the detail or the sources of the evidence forming the basis of the allegations.

At paragraph 84 of the judgment, Lord Hope insists that ‘the slow creep of complacency must be resisted. If the rule of law is to mean anything it is in cases such as these that the court must stand by principle. It must insist that the person affected be told what is alleged against him.’ These statements of principle are all the more striking in light of the ECtHR’s earlier judgment in the House of Lords’ ruling. The judgment is hugely significant in helping to dismiss once and for all the notion that methods such as control orders are the way governments should deal with suspected terrorists in a democratic society.

The effect of the House of Lords’ ruling is now to compel the Government, in cases in which they wish to keep control orders in place, to remit the cases to the High Court for re-consideration in line with the procedural and evidential measures made mandatory in the law Lords’ ruling.

Yet, rather than having to place previously secret evidence before one of the appellants, the Home Office decided to let AF free of the order. The decision looks set to be followed in many of the remaining 19 cases, with the Home Office prepared to let the control orders lapse rather than reveal certain evidence in open court.

By maintaining the system of control orders now conclusively held to be incompatible with human rights, while simultaneously releasing controlees from their fetters, the Government’s position looks increasingly irrational.

The current controlees must now be either formally charged and prosecuted for some crime or released and compensated for the distress caused. The control order regime must be abandoned in its entirety. They direct what Liberty has called ‘dehumanising sanctions’ upon potentially innocent persons condemned on the basis of suspicion, while providing inadequate sanctions against genuine terrorists. If our criminal system is able to counter terrorism in a just way, the Government must be compelled to create new mechanisms which deal fairly and adequately with the protection of individual liberty as well as the safeguarding of national security and public safety. Anything less will simply mean a continuation of the stream of rhetoric and poor legislation that has led to the sharp decline of civil liberties.

Christopher Loxton
Honduras coup d’état: what next?

On 28th June, on the order of the Honduran Supreme Court, the democratically elected President Manuel Zelaya was suddenly replaced by a de facto government led by the Speaker of Congress Roberto Micheletti. Soldiers overwhelmed the presidential guard before bundling Zelaya onto a plane to exile in Costa Rica, soon followed by a number of cabinet members. The military’s arrest of the President pre-empted a non-binding poll on whether to add a ballot box to the November election that would have asked about the desirability of convening a constituent assembly to change the constitution.

As president, Zelaya had begun to embrace a leftist rhetoric and stance more closely associated with Venezuela’s Hugo Chavez. The last attempted coup d’état in Latin America had been the failed attempt to unseat Chavez in 2002, thanks to a buffer of the coup in Honduras. Instead civil liberties were effectively suspended on 1st July as a state of emergency was declared by the regime. Demonstrations were met with fierce reprisals by the military and security services.

The region’s predominantly leftist governments (and even the US) have condemned the coup, demanding the return of Zelaya to office and Micheletti’s regime has become increasingly isolated. Yet the de facto government says its actions were in accordance with the rule of law and democratic principles and a presidential election has been called for 29th November.

Remarkably, Zelaya re-surfaced in the Brazilian embassy in Tegucigalpa, the Honduran capital, as world leaders gathered in New York for the UN General Assembly. The response of the security forces was brutal for those who came out onto the streets in support of the deposed President. Electricity and water were cut off to the embassy and a curfew was imposed across the city.

A delegation of lawyers, including members of Haldane’s sister organisations the IADL and the US National Lawyer’s Guild, visited Honduras in August. They concluded that: ‘on 28th June 2009, the rule of law and the institutional order in Honduras were both interrupted… serious and systematic violations of fundamental human rights, such as the right to life, physical integrity, freedom of expression and association, rights to health and work, have been committed.’ This has been echoed by the UN and the 47-nation Human Rights Council, which unanimously endorsed a proposal by Latin American countries calling for “unconditional respect” for all human rights and fundamental freedoms. Can the governments of the so-called ‘pink tide’, which swept through Latin America in the last 10 years, exert their influence to return democracy to Honduras?

Brown’s agenda: shallow

Did the sombre Labour Party Conference mark the end of the New Labour project?

Gordon Brown’s attempt to rally the centrist faithful for one more general election, was notable for its attempt to garner some positive headlines with a scatter-gun of policy initiatives. Most of these are not destined to see the light of day until after the election – and in all likelihood will end up in the dustbin of history.

There is little to be sad about on that front; there can be few remaining on the progressive left who think that New Labour is capable of delivering the type of radical agenda that might breathe new life into the party. So why do we still feel disappointed by Brown’s plans?

First, the timid approach to electoral reform, with a promised referendum on an alternative voting system, represents not only a missed opportunity to overhaul the flagging parliamentary system, but is symptomatic of Labour’s failure to think big.

September

1: Lesbian couples who have children through fertility treatment can now register both their names on the birth certificate after a change to the law, confirming legal parenthood on a biological mother’s female partner for the first time.

4: Shaker Aamer, the last British resident held at Guantánamo Bay, has been reportedly tortured and prevented from seeing his lawyer. Another detainee says Aamer was assaulted by military guards who also cut off his clothes using ‘rough shears’ leaving him naked.

7: BBC decides to allow British National Party leader Nick Griffin to appear on Question Time, saying it was obliged to treat all political parties registered with the Electoral Commission with due impartiality.

9: Home Office ethics group on the national DNA database warns police officers who take ‘voluntary’ DNA samples from children under 16 without their written consent or that of their parents are legally committing an assault.

15: UN investigation, led by former South African judge Richard Goldstone, finds that Israel’s offensive against Gaza last January was ‘a deliberately disproportionate attack designed to punish, humiliate and terrorise a civilian population’.

Is New Labour’s time up?
...but this conference was informed and incisive

On 26th September, a day before the Labour Party Conference in Brighton, the ‘Convention of the Left’ held a one-day conference, which the Hal-dane Society attended.

An opening plenary session invited discussion on the current economic situation and the suggested response of the Left, followed by four parallel sessions which focussed on the impact of the economic crisis on ‘People, Planet, Peace and Politics’. Finally, the closing plenary sought unity among the Left in the current economic climate.

It was refreshing to listen to informed and incisive criticism of the Government’s bail-out of the banks and financial institutions. The scale of the injustice also brought raw anger and emotion from delegates, especially with the prospect of public service cuts imminent. Some of the figures presented on the day were shocking: the UK National debt is over £800bn and the bailouts have cost the public over £30,000 per household.

There was a general recognition from delegates that the fragmentation of the Left in the UK undermined the effectiveness of a significant political response to the ‘fait accompli’ that was presented to the British public. There was also a determination among delegates to unite against the fascist BNP.

Contributions came from Labour MP John McDonnell, Caroline Lucas (Green Party MEP), representatives of the many left political parties, as well as various trade unionists. One of the highlights was the passionate address from one of the Vestas workers who had travelled from the Isle of Wight. The local cause célèbre was the EDO protest which was a subject of much support from activists in the ‘peace’ session where suggestions were put forward for further direct action such as withholding tax that was attributed to the wars in Iraq and Afghanistan.

While there was no clear roadmap of how the Left would respond in a unified manner, it was encouraging that there were optimistic voices to be heard which will at least provide voters with an alternative in the general election.  

Declan Owens

18: No charges are to be brought against police marksmen who shot dead barrister Mark Saunders last year after a siege at his home in Chelsea. Crown Prosecution Service considered charges of murder, attempted murder and manslaughter against seven officers.

24: Director of Public Prosecutions Keir Starmer QC acknowledges that new guidelines on assisted suicide could lead to an increase in number of people choosing to die at home in Britain rather than travelling to Switzerland, but that Dignitas-style clinics are still illegal.

25: Employers will still be able to force workers to retire at 65 after a High Court judge, Mr Justice Blake, turned down campaigners’ attempts to have the UK’s default retirement age scrapped.

28: CPS rules that a police officer who allegedly struck Nicola Fisher during the G20 protests in London will be charged with assault. Sergeant Delroy Smellie faces up to six months in prison if found guilty.

2: No police officers involved in the shooting of Jean Charles de Menezes in July 2005 will be punished, according to the solicitors acting on behalf of his family.

Anna Morris

Erica Smith
V arious events this year have celebrated the fantastic achievements of legal aid over the last sixty years, but practitioners have also had to settle into the reality of fixed fees, and the evidence is that it is a grim, hard-nosed reality. Complaints of corner-cutting and poor quality have been surfacing in various forums. Concerns about the quality of advocacy in the criminal courts peaked when a Crown Court judge told a court that he came close to discharging a jury because of concerns that a solicitor lacked the competence to represent his client properly. YLAL’s recent survey revealed widespread and growing fears about quality by junior lawyers who are increasingly thrown in at the deep end with little or no supervision.

Yet more disturbing is that while purporting to proudly highlight the great value of legal aid in facilitating legal progress and social change, this summer the Ministry of Justice announced new plans to clamp down on public law, prison law cases and small damages claims. The proposals in Legal Aid: Refocusing on Priority Cases appear to open the door to restricting access to justice for the ordinary person against the state to the extent that the rule of law is likely to be totally undermined.

The most devastating blow of all, the Ministry of Justice’s plans to restrict funding for public law cases, complaints in prison law and small damages claims, under the euphemistic banner of ‘reprioritising civil cases’, deserves further attention. The proposals appear to suggest such a fervent reprioritisation that it will become nigh on impossible for vulnerable ordinary people to challenge public authorities. Furthermore, and despite its constant emphasis on the need to provide quality services, it issued proposals in June to overhaul quality assurance, effectively abandoning peer review and transferring the administration of the profession.

The Legal Services Commission mark cases on its website. Yet the display is sullied for practitioners who are all too aware that they sometimes have to fight more vigorously with the Commission to secure funding than with the other side to win the case. Less famous, but equally important, are the many cases in which diligent legal aid practitioners defend the vulnerable from losing their liberty and their homes and challenge the arbitrary decisions of the state on a daily basis.

The impact made by legal aid practitioners in defending the ordinary person against the state is both great and cheap. At just £2 billion or 0.4 per cent of national public expenditure, legal aid ensures that the vital constitutional check of judicial scrutiny is available to all regardless of wealth. Research has shown that early legal intervention prevents problems from snowballing with great social and economic costs. In times of recession, legal aid continues to be excellent value for money!

Given its great value and its proven track record, it is outrageous that in its sixtieth year and in the thick of a recession, the Government has continued to churn out yet more proposals to further reduce and restrict the efficacy of legal aid work. Unfortunately, for many burnt out practitioners, this final flurry of consultations have simply fallen into the TLDR (too long, didn’t read) category. Yet they contain some of the most devastating proposals yet. For instance, the Government has recently announced plans to slash the budget for prison law and further reduce fees for criminal practitioners.

As we celebrate sixty years of legal aid, Laura Janes looks at new Government plans to restrict access to justice for public law cases and asks whether there is any glimmer of hope for the future.
that decision. Even though many of these cases
are brought to challenge the actions of public
bodies, the Government itself will have the
final say in whether a person can access the
courts – unless the applicant can pay privately.
Currently, the courts play an important role in
considering wider interest or ‘test’ cases where
the decision can have important consequences
for lots of people. Funding for these cases will
be severely restricted if these plans go ahead.

The proposed restrictions for funding for
judicial review cases are justified on the basis
of the sharp reduction in the number of cases
granted permission by the High Court in the
last ten years. Although the High Court now
grants permission in fewer cases than it did
previously, it is not necessarily the case that
the Commission has been funding unmeritori-
ous claims. There are no statistics for the pro-
portion of legally aided applications that have
been granted permission and the reduction
may in fact be on account of the Commission
refusing to fund certain cases, prompting a rise
in litigants in person who are more likely to
fail. The paper also proposes to restrict legal
aid for non residents.

Compensation claims against public author-
ities will no longer be possible under the new
proposals unless the payout is likely to be over
£5,000. Although this is on the basis that the fi-
nancial cost might outweigh the financial ben-
efit, it undermines the principle that public bodies
that are at fault should be penalised financially.

Although the paper implies that more use
should be made of the complaints systems
before judicial review claims are brought, the
Government also plans to stop funding for sol-
licitors to help prisoners make complaints.
Prisoners are not only, in the words of Lord
Woolf, ‘…particularly vulnerable to arbitrary
and unlawful action’ but they require ‘a
number of avenues of redress open to them
whereby the illegal exercise of power may be
challenged’. Prisoners often need professional
help to formulate complaints effectively. A
Social Exclusion Unit report on reducing re-
offending amongst prisoners highlighted that
‘Many prisoners’ basic skills are very poor. 80
per cent have the writing skills, 65 per cent the
numeration skills and 50 per cent the reading
skills at or below the level of an 11-year-old
child… Over 70 per cent suffer from at least
two mental disorders’. The complaints systems
in prisons are notoriously ineffective without
professional legal help to navigate them.

In 1910 the Home Secretary Winston
Churchill said that the civilisation of a society
can be judged by the way it treats its prisoners.
The proposals contained in this consultation
reveal a total disregard for the rule of law. The
ability of the courts to review the legality of
state actions is often the best last hope for the
ordinary person. Over the last decade and es-
specially since the introduction of the Human
Rights Act in 2000, judicial review has been
recognised as an effective mechanism for chal-
lenging unfair laws. The Ministry of Justice has
introduced over 3,000 new laws – not all of them
have been sufficiently thought through and
legal challenges have provided crucial close
scrutiny of their legality.

If these proposals go ahead, using the law
as an effective tool for change will only be
available to the super rich. Sixty years of great
achievements will be undermined and over-
shadowed leaving the most vulnerable in soci-
ety without guaranteed means of redress.

With an election on the horizon, parties will
be vying with each other to introduce tough
new measures to deal with law and order. Cuts
in public services that will inevitably follow
one of the deepest recessions of our time will
make ordinary people more vulnerable to poor
or financially motivated decision-making in re-
spect of the provision of vital services. At such
a time, the prospect of restricting access to ju-
dicial scrutiny is terrifying.

Access to justice for everyone is essential to
making our constitution, with its intricate
system of checks and balances, work. The vast
majority of new and aspiring legal aid lawyers
are motivated to do legal aid work by a strong
desire to promote social justice and use the law
as a tool for change. If we want to look for-
toward the next sixty years with any sense of
pride, achievement or justice, the Government
needs to reconsider its priorities urgently.

Laura Janes is chair of Young Legal Aid
Lawyers (YLAL), see www.younglegalaid
lawyers.org for more information. The MOJ’s
consultation Legal Aid: Refocusing on Priority
Cases is available at www.justice.gov.uk/
consultations/legal-aid-refocusing-priority-
cases.htm

“The most devastating blow of all is the
Ministry of Justice’s plans to restrict funding
for public law cases, complaints in prison
law and small damages claims, under the euphemistic banner of ‘reprioritising
civil cases’”

Justice Secretary and
Lord Chancellor
Jack Straw, pictured
at the Labour Party
conference last month.
At this year’s seventeenth Congress of the International Association of Democratic Lawyers (IADL) in Hanoi, a group of Filipino human rights lawyers made an impassioned plea not to ignore the plight of their colleagues and fellow human rights activists, trade unionists and leaders of political groups and student movements. The delegation from the National Union of People’s Lawyers (NUPL) from across the Philippines was one of the most vocal and dynamic groups represented at the Congress. The delegation included Congressman Neri Colmaneres, who was himself imprisoned for four years and tortured under the Marcos regime.

The situation in the Philippines sadly echoes that faced by human rights activists in Colombia and many other countries around the world but is one that has not received as much international recognition. That changed in 2007, when the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Professor Philip Alston issued a damning indictment of President Gloria Arroyo’s administration and its role in the deaths and disappearances of almost 1000 people since coming to power. Professor Alston criticised the Philippine military and Government for not doing enough to solve a wave of political killings and stated many of these killings could be linked to government security forces. He also commented that the recent increase in extrajudicial executions can be attributed to the military’s intensified counterinsurgency programme, another painful parallel with the Colombian human rights crisis.

President Gloria Arroyo came to power in 2001, after Joseph Estrada was deposed by massive public demonstrations reminiscent of those that finally ended the dictatorship of Ferdinand Marcos. No doubt conscious of how easily ‘people power’ could equally remove her from office, Arroyo quickly allied herself with Bush’s post 9/11 ‘war on terror’ rhetoric and began to tighten her grip on power by using the military and police to silence her opponents.

She began by targeting of the opposition Bayan Muna party, the KMP (peasant movement of the Philippines), Gabriela (national alliance of women’s organisations), Anakbayan (national alliance of youth and student organisations) and Karapatan (Alliance for the Advancement of Peoples’ Rights). They were all labeled as fronts for the Communist Party of the Philippines, listed by the US State Department as a terrorist organisation.

Under Arroyo’s administration, a total of 270 political prisoners have been imprisoned. There have been a total of 201 enforced disappearances. But most disturbing is the report that 991 people have been summarily executed since she came to power.

There was a call for Arroyo’s impeachment in 2005 after widespread allegations that she had rigged her 2004 re-election in what became known as the ‘Hello Garci’ scandal. In the 12 months surrounding this scandal, extrajudicial killings reached their all time high. Of the 187 extrajudicial killings recorded for that period, 62 per cent of them were in the last three months of 2005.

In 2006, Arroyo declared a state of emergency and 51 men and women were charged with rebellion, including leading activists and human rights lawyers. Of those charged, one has been assassinated and three were abducted and remain missing.

In 2008 those killed included Celso Pojas, the Secretary General of the Davao City Farmer’s Association, who was gunned downed in front of his office by assassins on motorbikes. Sheryln Cadapan and Karen Empeno were students at the University of the Philippines researching workers’ rights in Central Luzon. They were abducted from the house of Manuel Merion,
Navarrete on two countries with a striking disregard for justice and freedom

In December 2008, a total of 72 high profile regional and provincial leaders were arrested in South Tagalog along with political activists and human rights lawyers. All now face false allegations of either murder or attempted murder. The group included five female members of Karapatan. Karapatan itself has constant problems in collecting data on these disappearances and trying to protect those at risk. Its regional offices are frequently raided and burned with members branded communists and staff constantly being threatened with violence.

But human rights defenders in the Philippines have fought back. In 2003, a delegation from Karapatan attended the 75th Session of the UN Human Rights Committee in Geneva and presented a report on the Arroyo Government’s systematic failure to comply with the International Covenant on Civil and Political Rights (ICCPR). In 2005, human rights defenders formed the Task Force on Political Repression and launched a nationwide campaign to stop extrajudicial killings.

In 2006, under intense pressure, Arroyo set up the Melo Commission headed by a retired Supreme Court Justice to investigate and report on the deaths of journalists and activists. Amnesty International had concerns about the independence of the Commission from its inception and called for the role of the state to be the main focus. Although the Melo Commission did implicate several powerful military and police figures, it stopped short of indicating any direct involvement by the Arroyo Government. Those figures that were identified by the Commission were not subject to any further investigation or prosecution by the Government, and most remain in post or have been promoted.

Professor Alston’s report in 2007 was scathing of the Government’s inability to properly investigate disappearances and extrajudicial killings and bring those responsible to justice. He made it clear that the only way that justice could be delivered was through convictions following fair trials.

However, the fundamental problem remained that the families and advocates for the disappeared had no power to find out where their loved ones were or who was responsible for their disappearance. *Habeas corpus* applications were simply met with a blanket denial by the state that the individual was in their custody.

In response to this problem of state impunity, the Supreme Court of the Philippines took a radical step. The Court held a consultative summit in July 2007 to which a number of human rights lawyers and members of NUPL were invited. At this summit, the NUPL recommended to the Court that judicial intervention was urgently required in cases where human rights were being violated.

Following this summit, the Supreme Court promulgated a set of rules, introducing a doctrine into its common law known as the writ of *amparo*, which appears to originate from the jurisprudence of countries such as Mexico, Argentina and Nicaragua. The writ of *amparo* is similar to the procedural obligations under Article 2 of the European Convention of Human Rights (ECHR). It is defined as a remedy ‘available to any person whose right to life, liberty or security is violated or threatened with violation by an unlawful act or omission by a public official or employee or by a private individual or entity’.

For the first time, lawyers were able to demand that the state account for the location of someone held in their custody and force them to provide all relevant information and evidence in their possession that would allow the court to determine their location, or their fate.

The rules set down by the Supreme Court meant that a writ could be lodged not just by the party concerned, their family or their lawyers but also by an individual citizen if no known family member was known. In this way, campaign groups could have standing to demand the release of whole families who had been taken together from marginalised and impoverished communities.

The Court also ruled that the writ could apply to activists whose liberty was merely threatened, in order to include those who had not actually disappeared but had been ‘invited’ to attend military or police camps. This invitation was a common prelude to arrest and disappearance. The Court also ruled that the writ could apply retrospectively.

NUPL lawyers immediately filed a number of writs naming amongst others a number of their own colleagues. The case of Sheryln Capadan and Karen Empeno is currently pending with the Court of Appeal. The lower courts have been reluctant to confirm the use of the writ and have sought to undermine its use by dismissing cases brought on the basis of a lack of evidence.

It is clearly vital that this developing norm is strengthened through precedent and NUPL lawyers are looking to the international legal community to assist them through the bringing of *amicus* briefs and by raising awareness of the availability of this remedy. There is also a need for lawyers with experience of cases that involve invoking the procedural obligations under Article 2 ECHR to share their knowledge with lawyers from NUPL in order for them to utilize the jurisprudence from the European Court of Human Rights to give weight to their submissions in the domestic courts. This call for support that cannot go unanswered.

Anna Morris is a Barrister at Garden Court Chambers and Vice Chair of the Haldane Society

**COLOMBIA**

Situated on one of the world’s political fault lines and forming an involuntary buffer between the US and various burgeoning socialist Latin American states, the Colombian people have been subjected to international interventionist policy and a domestic armed conflict for decades. Colombia boasts some unenviable statistics: the most dangerous place in the world to be a trade unionist, the country with the second highest number of internally displaced persons in the world (after Sudan) and one of the most precarious places in the world to be a human rights defender.

For over 30 years Colombia has been embroiled in a bloody civil war which pits the Revolutionary Armed Forces of Colombia (FARC), Colombia’s largest guerrilla group, against the Colombian Government and right wing paramilitary death squads. But with domestic and international media focussing mostly on FARC kidnappings and the country’s widespread and lucrative narcotics problem, it is perhaps no surprise that the state’s pivotal role in the conflict is often overlooked.

This article aims to demonstrate that many of Colombia’s complex problems can be traced back to state actors, and
Repression of the opposition still occurs and those who speak out against state-sponsored human rights abuses are criminalised, or otherwise silenced.

This criminalisation takes the form of fabricated allegations of collusion with the FARC against senior opposition politicians, journalists and human rights defenders. Prosecutions for offences such as rebellion and terrorism are mounted against individuals, placing them under huge amounts of stress and sapping resources from their campaigns.

The UN Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, visited Colombia on a fact-finding mission in September this year. Speaking from Bogotá, Ms Sekaggya made a statement on 19th September 2009 expressing ‘serious concern’ about the arbitrary arrests and detention of human rights defenders, as well as the unconfirmed criminal proceedings brought against them. Ms Sekaggya further concluded that:

“…patterns of harassment and persecution against human rights defenders, and often their families, continue to exist in Colombia. Journalists, trade unionists, magistrates, lawyers, student and youth activists, women defenders, indigenous and Afro-Colombian leaders, and LGBT activists have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, judicially harassed, under surveillance, forcibly displaced, forced into exile, or their offices have been raided and their files stolen, because of their legitimate work in upholding human rights and fundamental freedoms.”

Although the most high profile cases such as those of Congressman Wilson Borja, Senator Piedad Cordoba and journalist and lawyer Dr Carlos Lozano have not yet seen them convicted or imprisoned, the stigma of these prosecutions alone means their lives are now gravely at risk. Association with the FARC, particularly when allegations are made in such a public way, causes those subjected to these allegations to be stigmatised and targeted by the right-wing paramilitaries. Wilson Borja is forced to live in a bomb-proofed house with his family, for whose safety he constantly fears. Dr Lozano, who incidentally is a Government-appointed negotiator for the release of hostages and who was recently awarded the Légion d’Honneur by French President Sarkozy for his efforts in attempting to secure the release of Ingrid Betancourt (and therefore openly accepts he has had contact with members of the FARC in this capacity), has twice had the offices of his opposition newspaper Voz bombed. Other victims tell of funeral wreaths with their children’s names being sent to their houses, threatening phone calls and other forms of intimidation. Lawyer Rodolfo Rios, who has represented many defendants accused of links to the FARC and who has been the target of repeated and explicit threats, now lives away from his young daughters, such is his concern that they will be harmed. He cannot ever see them in public places and only meets with them on occasion in closely confined and controlled conditions.

The stigmatisation and danger resulting from these state allegations is well known to the Colombian Government, yet public figures appear to go out of their way to ensure suspects are prominently identified. But the Colombian Government is more significantly implicated in the victimisation that often follows such allegations. In recent years, more and more evidence has come to light demonstrating clear ties between close supporters of President Uribe and paramilitarism. In the most recent scandal, known as the ‘parapolitica’, 64 pro-Uribe congress people have been investigated, with some convictions already handed down by the court, of funding and even orchestrating the most serious of human rights violations being carried out by paramilitaries. Translated into British politics, this would equate to over 200 Members of Parliament being linked to killings and other illegal activities by a prominent terrorist organisation. Last year, the head of Colombia’s secret police force Jorge Noguera, who also served as Uribe’s campaign manager, was arrested for ‘giving a hit list of trade unionists and activists to paramilitaries who then killed them’. These shocking examples point towards
One page of the document contains the following content:

Torture, when they were originally detained. They are kept in prison for long periods. "Hundreds accuse them of being guerrilla sympathisers and intelligent leaders, teachers and human rights defenders – all imprisoned for their opposition to Colombian Government policies. Other political prisoners are peasant farmers who simply happen to live in an area of conflict. The army regularly carries out arbitrary 'mass detentions' during which they round up civilians in certain areas in their tens or hundreds, accuse them of being guerrilla sympathisers and imprison them for long periods."

Many Colombian political prisoners have not been charged with any crime and some suffered appalling abuses, including torture, when they were originally detained. They are kept in terrible conditions in overcrowded jails. In August 2008 and April 2009 Haldane members visited three of Colombia's prisons and were appalled by the inhumane conditions. It is apparent that the Colombian Army, and the Colombian Government as a whole, has much to answer for. In these circumstances, one would be forgiven for expecting governments in 'civilised' countries to take a critical stance against Colombia's Government and its appalling human rights record. Yet quite to the contrary, the UK continues to stand shoulder to shoulder with its ally in the 'war on terror', and further provides military aid to the Colombian Army. Very little detail about this assistance has been made public, though the UK is reportedly the second largest donor of military aid to Colombia after the US. Indeed, the only military unit that the Government has publicly confirmed receives UK assistance, the High Mountain Battalion, has a well documented history of involvement in the torture and murder of trade unionists among other abuses.

Further, despite the overwhelming threat faced by trade unionists in Colombia, the UK is currently pressing ahead with plans to enter into the Free Trade Agreement (FTA) being negotiated between the EU and Colombia. The US and Canada have both already delayed their FTAs with Colombia as a result of human rights concerns. The Colombian trade union movement has rejected proposals of an EU agreement, stating that the Colombian Government and big business should not be rewarded whilst workers continue to be murdered simply for standing up for their basic rights. The UK and EU trade union movements have supported the campaign to cease negotiations.

Support Colombia, affiliate to JFC
Justice for Colombia (JFC) is a British NGO that campaigns for human rights, workers' rights and the search for peace with social justice in Colombia. JFC are currently running four main campaigns:

- **Stop the EU-Colombia Free Trade Agreement**
  Colombian trade unionists are ruthlessly targeted, with security forces implicated in the violence. Whilst 2008 saw a 25 percent increase of trade union murders on the previous year perpetrators continue to enjoy almost total impunity. The FTA should be stopped and workers’ rights should be recognised and protected.

- **Stop the criminalisation of the Opposition**
  False accusations and baseless prosecutions against dissenting voices in society should end, as they place legitimate and significant social actors in real danger of assassination by paramilitary death squads.

- **End UK Military Aid**
  The UK gives military aid to Colombia despite the fact that the Colombian Army regularly violates the human rights of the Colombian people. There are no strings attached to the aid - so even as the abuses get worse, the aid still flows.

- **Free Colombian Political Prisoners**
  Haldane members have taken part in two recent delegations to Colombia, visiting political prisoners in appalling conditions. This judicial attack is little more than an effort to restrict democratic debate and discredit political opponents. Lawyers in the UK can provide vital support and help JFC fight for the freedom of innocent people.

For more information and to affiliate to the JFC see [www.justiceforcolombia.org](http://www.justiceforcolombia.org)

Kat Craig is a solicitor at Christian Khan Solicitors and Vice-Chair of the Haldane Society. Marcela Navarrete is a trainee solicitor at Wilson & Co Solicitors and a member the Haldane Society's Executive Committee.
Bill Bowring, International Secretary of the Haldane Society, introduces the concept of ‘the right to self-determination’

The four articles prepared for this issue of Socialist Lawyer bring to life the contemporary struggles of the Basques, the Irish, the Kurds and the Palestinians to vindicate their right to self-determination. Although international law has developed no definition of a ‘people’, there can be no question that all of these communities, each of which has a tragic and heroic history of oppression, a shared destiny, and a passionate commitment to a better future, are indeed a ‘people’. It is now established beyond any doubt that a ‘people’ is the bearer of the legal right to self-determination.

In the first chapter of my recent book, The Degradation of the International Legal Order: The Rehabilitation of Law and the Possibility of Politics, reviewed by Richard Harvey in Issue 50 of Socialist Lawyer (September 2008), I described the right of peoples to self-determination as the ‘revolutionary kernel’ of post-Second World War international law. The burning question of our times is how that right is to be exercised.

In order to answer that question, it is first necessary to understand the historical origins, context and content of the right.

The two UN International Covenants on Human Rights of 1966, the International
Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are the key legally binding components of the International Bill of Human Rights. They are also the firm foundation of the right to self-determination in international law. This right is stated in identical terms in Article 1 of each Covenant and has subsequently been unequivocally confirmed in a series of judgments and opinions of the International Court of Justice (ICJ), most notably the East Timor judgment of 1995 and the Wall in the Occupied Palestinian Territories advisory opinion of 2004.

The ICJ confirmed that the right has the status of jus cogens, the highest form of international law, binding all states whether they have ratified any treaty including the Covenants or not. Further, it is binding erga omnes, meaning that all states have a crucial interest in its enforcement and the obligation to enforce it. And by virtue of Article 53 of the Vienna Convention on the Law of Treaties of 1969, any treaty which violates the right is null and void.

So how did this extraordinary right come to be enshrined in Article 1 of the two Covenants? The answer is that this was the crowning legal achievement of the heroic struggle for freedom from colonial oppression that led inexorably to the end of the Western colonial empires. Three of the founders of the UN, Britain, France and the US, still permanent members of the Security Council, were each colonial powers at the end of the Second World War. Success in the bitter fight for independence from each, captured in Pontecorvo’s classic film *The Battle of Algiers*, led to a doubling of the number of members of the UN by the 1960s. In 1960 the Declaration on the Granting of Independence to Colonial Countries and People, which did not create a legally.
binding right to self-determination, was voted through by almost every state, with only the colonial powers and their close allies abstaining.

In the intense diplomatic manoeuvres at the UN, against the background of wars of liberation in Vietnam, Kenya, Angola, Cuba and elsewhere (to name but a few), the USSR played a thoroughly contradictory role. While suppressing movements for independence within its own territory, it gave unstinting material and diplomatic support to the national liberation movements in the Western world.

Why did the USSR lead and support the fight for a legally binding right of peoples to self-determination? The answer is not hard to find. The political leader and theorist who first promoted the right of nations to self-determination was Vladimir Lenin. Lenin advanced the principle in the fierce arguments within the international social democratic movement before the First World War, and Woodrow Wilson, who is usually given credit in the textbooks. When the Bolsheviks came to power in 1917, Lenin put the principle into practice, with independence for the three Baltic states, Estonia, Latvia and Lithuania, as well as Finland: all colonial possessions of the old Russian Empire. Lenin’s ‘last struggle’ before his death was fought against fellow Bolshevik Joseph Stalin, on the question of independence for Georgia, which was controlled by the Bolsheviks’ social democratic rivals, the Mensheviks: Lenin was for, Stalin against. In addition, while Woodrow Wilson restricted the right of self-determination to Central and Eastern Europe, Lenin gave concrete support to movements for colonial freedom throughout the world.

The USSR’s policies after Stalin came to power and during the Cold War were far from consistent. The Chechen and Crimean Tatars were brutally deported from their homelands in 1944, and Hungarian and Czech aspirations were crushed in 1956 and 1958. But hypocritical though it was, the USSR’s diplomatic and material support made colonial freedom – and the legal right to self-determination – possible.

Of the national liberation movements, the Palestinians and the Western Saharans are still fighting for the statehood to which they are entitled. The right to self-determination of the people of Western Sahara was recognised by the ICJ as far back as 1975, whilst the right of the Palestinians was recognised by the ICJ in 2004. Save these cases international law is reluctant to permit the exercise of the right by way of secession. The principle *uti possidetis juris*, developed during the South American wars of liberation from Spain and Portugal, means that existing frontiers are to be respected wherever possible. The principle has balanced the right to self-determination in the case of the states emerging from the former Yugoslavia (the Badinter Commission advising the EU on recognition) and Quebec (the ruling of the Canadian Supreme Court).

In the contemporary world the right to self-determination is best exercised in most cases by some form of autonomy, save where oppression is so extreme as to make autonomy impossible. Autonomy is what the Kurds demand from a state which still does not recognise their existence or that of their language. The Basques aspire to a unification of their historic homeland, located as it is in France and Spain. In Spain their autonomy is strictly limited, not least by the banning of their political parties. Repression of their movements is severe. Sinn Fein’s key legal demand prior to the Good Friday Agreement was that the UK recognise the right to self-determination of the people of Ireland, a topic on which Haldane’s Richard Harvey wrote a key text for the *New York Law School Journal of International and Comparative Law*, which will shortly be available on Haldane’s website.

The European Lawyers for Democracy and Human Rights (ELDH), of which Haldane was a founding member, counts as one of its members the Progressive Lawyers of Turkey, which includes the leading Kurdish lawyers. Julen Arzuaga, mentioned in Tim Potter’s article on the Basques, and his colleagues, are also members of ELDH. Haldane has a principled and proud record of solidarity and support for the Basques, Irish, Kurds and Palestinians, and will continue to support their struggle for the right to self-determination.

Bill Bowring is Professor of Law at Birkbeck, University of London, a practicing barrister and author of *The Degradation of the International Legal Order: The Rehabilitation of Law and the Possibility of Politics* (Routledge, 2008).

**Battle for identity endures struggle**

**Basques**

**Tim Potter** sets out some of the issues around the Basque struggle for independence

Events in recent months have drawn attention once again to Western Europe’s last remaining ongoing armed conflict. Over the summer months bombs have continued to be detonated by the nationalist organisation Basque Homeland and Freedom (ETA), most recently in Majorca, which killed two members of the Guardia Civil. A ceasefire announced by ETA on 22nd March 2006 was brought to an end on 30th December 2006 when a car bomb exploded in the early hours of the morning in a car park at Madrid’s Barajas Airport. Two Ecuadorian workers sleeping nearby were killed in the blast. In recent months there have been a series of high-profile arrests of key members of ETA’s hierarchy which have attracted significant media interest. Large demonstrations for and against separation from the Spanish state have taken place in Bilbao, the region’s largest city. The fractious issue of Basque autonomy continues to provoke strong feeling and debate.

The Basque Country, otherwise known as Euskal Herria or Euskadi, is made up of the Spanish provinces of Alava (Araba in Basque), Vizcaya (Bizkaia), Gipuzkoa, the
Demonstration against the ‘Trial 18-98’ and in solidarity with those accused in that indictment.

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Autonomous Community of Navarra (Nafarroa), and the French areas (not recognized as administrative regions) of Lower Navarre (Behe Nafarroa), Labourd (Lapurdi) and Soule (Zuberoa). It is one of the more affluent parts of the Iberian Peninsula, famed for its rugged countryside, phenomenal food, idiosyncratic rituals and mysterious, old language, which is said to pre-date Latin. Basques have a distinct sense of identity and this is most strongly manifested by their enduring struggle for self-determination.

The parts of the Basque Country on the Spanish side of the border exercise a degree of autonomy and self-governance. Within the autonomous community, nationalist voices call for the full independence of the Basque Country whilst others advocate the continued unification of the Basque Country to Spain. ETA, set up partly in response to Franco’s fascist regime, continues to wage its armed campaign for Basque independence, but many Spaniards outside of the Basque Country are unsympathetic to the tactics adopted by ETA. The Spanish state has refused to acknowledge that there is nonetheless significant recognition of a distinct Basque identity within the region itself, and both the Government and the courts have been singularly hostile towards evidence presented of such recognition. Over the last 10 years, the investigating magistrate Judge Garzón has been at the head of instigating prosecutions against a wide range of Basque organisations purported to be part of the apparatus of ETA. Garzón is perhaps best known in the UK for his pursuit of General Pinochet. In Spain he is a well known public and political figure. He has pushed for the exhumation of mass graves of victims of General Franco’s regime, many of which have remained untouched and unspoken of since the Civil War in the 1930s. As recently as the start of September 2009, Garzón was called to appear as a witness in a trial in Madrid in which he is accused of over reaching his remit as an investigating magistrate.

The Basque prosecutions instigated by Garzón have been broad in their scope, using anti-terrorism legislation to encompass (amongst others) newspapers, political parties, youth groups and lawyers. There have been convictions after often long, protracted trials. However there have been notable acquittals in which innocent members of Basque civil society, some of whom have separatist sympathies, have been caught up in this widely cast net. One victim has been Julen Arzuaga, a coordinator of the energetic Basque Observatory of Human Rights, otherwise known as Behatokia. He found himself prosecuted for his work in a prisoners support group called Gestorias pro Amnistía. As a campaigner for human rights, Julen Arzuaga has worked for an end to the practice of holding terrorist suspects incommunicado following arrest, and for those convicted of being involved with ETA to be moved to prisons closer to their families. It is most often the case that those convicted of terrorism end up imprisoned hundreds of miles away from the Basque Country, resulting in their families having to make long, tiring journeys to visit them in prison. The families see the prisoners as political prisoners. Having found himself accused of terrorism, Julen Arzuaga was eventually cleared of any such wrongdoing.

Amnesty International recently released its 2009 report on the state of human rights in Spain. The report drew particularly strong media attention within Spain for condemning the Guardia Civil’s interrogation technique of holding terrorism suspects incommunicado. Contained within the 2009 report are the following key observations:

‘Both the UN Special Rapporteur on human rights and counter-terrorism and the Human Rights Committee expressed concern that the definition of terrorism in some articles of the Spanish Criminal Code could include acts that do not appropriately fall under this category. They also repeated the long-standing calls on Spain to abolish legislation authorising incommunicado detention of people held on terrorism-related charges. Following the example set by the Basque and Catalan autonomous police forces, the national authorities announced that video cameras would be installed in the cells at the National Criminal Court where detainees are held incommunicado, as a precaution.’
against torture and other ill-treatment. However, their use is not compulsory and must be requested by the investigating judge in each case.’

The prosecutions brought by Garzón were initiated in 1998 with an aim to debilitate ETA’s support structure. They became known as Trial 18/98 and drew particular ire from many sections of Basque society. They involved a series of trials against youth movements, a prisoner support group, magazines and newspapers (amongst others). Many viewed it as unabashed persecution of Basque civil society in which the sweeping prosecutions inevitably ensnared many innocent participants in Basque political life alongside those who were later found guilty of terrorism by the Audiencia Nacional (the National Court) in Madrid. One of the criticisms made against the 18/98 prosecutions was the manner in which separatism or nationalism became confused with terrorism, as the investigative net was cast far and wide. Human rights lawyers from across Europe who observed Trial 18/98 consistently raised pertinent questions about failures in due process and the political nature of the prosecutions. Sentencing for many of those convicted in Trial 18/98 did not conclude until late-December 2007.

In 1998, the radical Basque newspaper Egin was temporarily closed as it was investigated for alleged connections to ETA. More than a year later Judge Garzón ordered it to be reopened, by which time the company that published it was considered bankrupt.

In March 2003, the political party Batasuna was banned by the Spanish Supreme Court as it was considered to be the political wing of ETA. The Political Parties Law enabled the Supreme Court to make this decision, as it outlawed parties that use violence to achieve political goals. In 2005, a new party named Aukera Guztiaik (All the Options) was banned by the Spanish Supreme Court. On the matter of political violence, Aukera Guztiaik stated their right not to condemn some kinds of violence more than others if they did not see fit. Many of their members and most of their leadership were former Batasuna supporters or affiliates.

Julio Medem’s 2003 film La Pelota Vasca (Basque Ball) is a valuable reference point for those seeking an insight into the Basque situation. The documentary gives the viewer a firm sense of the strength of feeling which surrounds the political situation in the Basque Country. It caused great controversy on its release in Spain and was accused of portraying nationalist sympathies. The centre-right People’s Party, which was in government at the time, refused to participate in the making of the film. One of the more striking voices in the film is that of the Irish priest Father Alec Reid. Following his work as a facilitator in the Northern Ireland peace process, he has worked to promote peace and reconciliation in the Basque Country. He speaks clearly of the need for dialogue and is critical of the closing down of opportunities for discussion and negotiation between the opposing sides.

The question as to the Basque right to self-determination and autonomy will continue to rumble on for some years to come. There is no sign at present as to there being a further ETA ceasefire. But the Basque conflict has not gone entirely unnoticed in the UK. The All-Party Parliamentary Group on Conflict Issues, co-chaired by Simon Hughes MP (Lib Dem), John McDonnell MP (Labour), and Gary Streeter MP (Conservative), had planned to hold a meeting on 3rd November entitled ‘The Basque Conflict, what next?’ The meeting was set to discuss how dialogue may be restarted. However, according to Spanish newspaper El País the meeting has been cancelled following an intervention by the Spanish Government. The session on 3rd November is now set to discuss Libya instead. One can only hope that in the not too distant future space is created for dialogue and the negotiation of a peaceful solution which promotes a respect for human rights by all sides.

Tim Potter is a barrister at 4 Brick Court and a member of the Haldane Society’s Executive Committee. The Haldane Society, in cooperation with IADL, will be planning a delegation to the Basque country in the coming months. Please contact Bill Bowring at b.bowring@bbk.ac.uk for more information.

Sean Oliver shows how, after centuries of fighting for the right to self-determination, the time has arrived for a United Ireland.

‘United Ireland back on the agenda’

Demonstration in Bilbao in September 2002 against the banning of the political party Batasuna. 40,000 marched and police shot rubber bullets and water canyons against the crowds in order to disolve the demonstration. Many were injured but demonstrators refused to leave and instead they sat in the streets of Bilbao till they had finished their protest.
The primary political objective of Sinn Fein is the reunification of our country – we want sovereignty and independence for the Irish people. For Sinn Fein, however, it is also about more than that – our ultimate objective is for an Ireland of equals, a democratic, socialist, 32 county republic.

In 2008 Gerry Adams announced the setting up of an Irish Unity Task Force to plan a programme of work, both national and international, to take us towards this objective. This is particularly important in Britain, as Adams outlined at a recent Westminster meeting to launch the initiative. So why this particular initiative now?

Ireland unity is not just some vague, fanciful notion which might come about at some point in the future. The Good Friday Agreement clearly sets out the political realities, as agreed by the two governments – Irish and British – and the political parties, in that they:

“(i) Recognise the legitimacy of whatever choice is freely exercised by a majority of the people of Northern Ireland with regard to its status, whether they prefer to continue to support the Union with Great Britain or a sovereign united Ireland;

(ii) Recognise that it is for the people of the island of Ireland alone, by agreement between the two parts respectively and without external impediment, to exercise their right of self-determination on the basis of consent, freely and concurrently given, North and South, to bring about a united Ireland, if that is their wish, accepting that this right must be achieved and exercised with and subject to the agreement and consent of a majority of the people of Northern Ireland;

(iv) Affirm that if, in the future, the people of the island of Ireland exercise their right of self-determination on the basis set out in sections (i) and (ii) above to bring about a united Ireland, it will be a binding obligation on both Governments to introduce and support in their respective Parliaments legislation to give effect to that wish.”

So, as laid out in the Good Friday Agreement, the people living on the island of Ireland will determine their own future, and if – or when – the majority in the north opt for reunification, there has to be a constitutional process to bring that about. Of course, our quest is to bring this about as soon as possible.

As Irish Unity is both possible and, we would argue, likely given the economic, political and demographic changes in Ireland, it makes sense for all strands of life and opinion, indeed all sectors of society, to begin discussing this outcome now. Central to this is the need to discuss all of this with the unionists. Those of us who believe in Irish unity have a duty to reach out and to explain why Irish unity is the best way forward, and also to listen to and consider the objections or difficulties which unionists may have, and to do our best to talk through them – we must be persuaders for change. Unionism is not a monolith, a solid bloc of people who all come at things in the same way. We need to create avenues to talk to as many different groups and classes as we can.

Sinn Fein also understands the importance of ‘internationalising’ the debate on this issue – across Europe, in the US with its massive Irish American population and the political sway it can clearly mobilise when needed, and here in Britain, with the huge Irish community and with the Government whose presence on our island is the cause of our difficulties. Involving all strands of opinion in society here will be crucial: everyone from Government and the civil service, the trade unions, the Irish community, political parties, people in the legal and human rights fields – all of these can contribute a huge amount to the debate in Britain – to discussions around Irish Unity, how it could be implemented and how it could happen in the best interests of both islands.

So we need to open up the discussion in Britain about the future relationship between our two neighbouring islands. We must put the issue of Irish unity back on the political agenda. Of course, Irish unity doesn’t belong solely to Sinn Fein – other groups and Irish political parties (on paper at least) aspire to it as well, and many of their followers and supporters certainly do. However, Sinn Fein has taken the initiative, beginning with a major conference in London on 20th February 2010, to put the discussion around the reunification of Ireland firmly onto the political agenda.

Sean Oliver is Sinn Fein co-ordinator for Britain. Further details of the conference on 20th February can be obtained from jayne.fisher@sinn-fein.ie
The Kurdish question is an international hot potato that no one has wanted to grasp seriously but which can no longer be ignored. Not for many years has the potential for a resolution been so great nor have the stakes for all those involved been so high.

Governments and interest groups in Brussels, London, Washington and Ankara all want to influence and determine the outcome of the issue. However, it is the Kurds themselves whose rights are affected as others try to dictate how they should identify themselves and organise their lives. For decades Kurds have been marginalised and criminalised both within geographical Kurdistan and in exile. The persecution has been especially severe, yet least known, in the north-west, the part of Kurdistan falling within Turkish borders.

The virtual silence about the war in South-eastern Turkey and Northern Iraq has to be understood within the context of the wider regional geopolitics, which go some way in explaining why for decades Kurdish efforts to bring about a peaceful solution to such a prolonged conflict have been ignored.

With the collapse of the Ottoman Empire and the occupation of former Ottoman territory by Western forces there was a fleeting moment in which an independent Kurdish state looked like a possibility. Indeed the unimplemented Treaty of Serves provided for a Kurdish state. However, the rise of Mustafa Kemal's Turkish nationalist forces changed the political situation. The subsequent Lausanne Treaty of 1923 dashed Kurdish hopes and partitioned Kurdistan condemning Kurds to further decades of oppression and denial of their right to self-determination.

No decade has passed by without Kurds struggling against the injustice they suffered at Lausanne. Despite repeated attempts to the contrary by the various regimes under which Kurds have been forced to live, Kurdish identity, language and culture have survived. However, survival has been at a great cost. Thousands have died, while many more have been subjected to torture. Families, homes and land have been lost, and people have repeatedly been forced to flee their country as refugees.

Until Saddam Hussein’s transmogrification, Kurds were a largely ignored people. They could be discriminated against and even killed, as long as killings didn’t become too much of an embarrassment (as occurred during Saddam’s use of chemical weapons against Kurds in Halabja in 1988). When the Kurds in Iraq became a useful ally against Saddam Hussein, the international community created a problem from which it has failed to extricate itself: how to answer persistent and awkward questions about what made the killing and persecution of Iraqi Kurds by Saddam’s regime different to that by the Turkish state. The problem for the international community is realpolitik.

Alex Fitch asks why the modest demands of Turkish Kurds are too much for Turkey and the international community
which does not allow for sentimentalism or idealistic notions about how humans should live in a perfect world.

So Kurds in Iraq enjoy regional autonomy, operate their own militias and are free to speak their language and enjoy their traditional culture. Kurds are also a key part of today’s Iraqi Government. Compare this to the situation in Turkey where if Kurds are officially identified as such it usually means something very unpleasant is about to happen to them.

In Turkey Kurds have no autonomy, are still not free to observe cultural or linguistic preferences (despite supposed reforms), are not welcome in national government and are most certainly not allowed to operate their own autonomous militias. The motivation for internationally proscribing the Kurdistan Workers Party (PKK), which since the mid-eighties has led the Kurdish freedom struggle in Turkey, as a terrorist organisation has nothing to do with preventing violence or criminality and everything to do with trying to avoid the inevitable confrontation of awkward truths.

To imagine that it is possible to ban the PKK is as ludicrous as the Turkish state’s attempt to deny the existence of Kurds through its policy of linguistic and cultural genocide. In an Iraqi and Iranian setting Kurds are currently categorised as generally ‘good’, being foreign policy allies. In Turkey, however, Kurds are ‘bad’ for the same reasons of realpolitik set out above. This leads to some tricky foreign policy contortions and, more frequently, an attempt to pretend the situation does not exist. The primary objective of Turkish Kurds is to obtain some autonomy within the context of a Turkey envisaged as part of the European Union, in which the rights of all people are respected.

This demand falls substantially short of the status of the Kurdish semi-autonomous Kurdistan Regional Government in Iraq, where Kurds enjoy their linguistic and cultural identity within what is essentially their own self-governing territory. Yet this objective is regarded as a serious threat by Ankara which has tried to draw the Iraqi Kurdish leadership into an unholy alliance against their fellow Turkish Kurds. Kurds in Turkey embarrass the international community by asking for, in reality, actually a lot less than their Iraqi kin are seen to be entitled.

The PKK recognised that militarily defeating the Turkish state under contemporary conditions was unrealistic. Instead the PKK fought for a respected position of political strength for the Kurdish people from which they could negotiate a just resolution after years of injustice. The desire for such a resolution has been underscored by regular PKK peace initiatives and unilateral ceasefires. Turkey failed to respond positively to any of these overtures. Instead the Turkish military has taken ceasefires and gestures of goodwill on the part of the PKK as signs of weakness and as an opportunity to increase its own offensive military activity.

The Kurdish people have a plan for peace. The Kurdish movement’s People’s Defence Force (HPG) are ready to support a ceasefire, disarm and join a just peace process. For over a decade the Kurdish people in Turkey have been trying to engage in sincere peace initiatives only to be ignored or attacked.

There can be few examples of a party being so eager to resolve a conflict yet being so consistently ignored or persecuted. From his isolated prison cell on Imrali Island Abdullah Ocalan, founder of the PKK, has prepared a road map towards a just solution to the Kurdish question and peace in Turkey. But any such negotiated solution will never be achieved if one of the crucial parties is criminalised and branded a terrorist organisation. It is therefore vital that the international community supports the peace process by calling for the unbanning of the PKK and other Kurdish organisations in Turkey, by removing these organisations from domestic proscription lists, by supporting the role of Ocalan in the peace process and by acknowledging the road map as the Kurdish contribution to that process.

Alex Fitch is a member of the Peace in Kurdistan Campaign and the Campaign against Criminalising Communities (CAMPACC). For more information visit www.campacc.org.uk
More than sixty years after the creation of the Israeli state, self-determination remains elusive for the Palestinian people. Israel’s practices in the Occupied Palestinian Territories (OPT) have recently been examined by a team of international scholars, who examined the legal consequences of a regime of prolonged occupation with features of colonialism and apartheid. The study is called *Occupation, Colonialism, Apartheid? A Re-assessment of Israel’s Practices in the Occupied Palestinian Territories Under International Law*.

The study clearly demonstrates that Israel has not only been the belligerent occupying power in the OPT but that its occupation has become a colonial enterprise which implements a system of apartheid. These acts of apartheid and colonialism constitute a denial of self-determination to the Palestinian people. This article will summarise some of the findings of this 300-page study and review its conclusions on what are the legal consequences of the Israeli regime of prolonged occupation and denial of self-determination for the occupied people, the occupier and third party states.

**International law**

The existence of Palestine and the Palestinian people, and their right to self-determination, is settled in international law (although not without some disagreement from Israel). In 1975, the General Assembly of the United Nations expressed its ‘grave concern’ that no progress had been made toward ‘the exercise by the Palestinian people of its inalienable rights in Palestine, including the right to self-determination without external interference and the right to national independence and sovereignty’. It also expressed concern that the Palestinians had not been able ‘to return to their homes and property from which they have been displaced and uprooted’. It then established a Committee on the Exercise of the Inalienable Rights of the Palestinian People to assist them in exercising their right of self-determination. The General Assembly has repeatedly reaffirmed the right of the Palestinian people to ‘self-determination, national independence, territorial integrity, and national unity and sovereignty without external interference’ (see, for example, General Assembly Resolution 33/24 of 29th November 1978, and General Assembly Resolution 36/9 of 28th October 1981).

The International Court of Justice (ICJ) in its decision on the question of the legal consequences of the construction of the Wall in the OPT confirmed the right of the Palestinian people to self-determination saying:

‘As regards the principle of the right of peoples to self-determination, the Court observes that the existence of a “Palestinian people” is no longer in issue... The Court considers that those rights include the right to self-determination, as the General Assembly has moreover recognised on a number of occasions (see, for example, resolution 58/163 of 22nd December 2003)’.

**Facts on the ground**

While the legal position may be clear, it is evident that in reality the Palestinians are not able to freely determine their political status or freely pursue their economic, social and cultural development as required by the right to self-determination. The territory of the OPT is fragmented by the Israeli military occupation. The expropriation of Palestinian land, settlement construction, checkpoints, settler-only roads, the separation wall and the control by Israel over natural resources all have entrenched Israel’s control over the OPT.

The people of Gaza live under a blockade that prevents essential materials and foodstuffs from entering the Strip. Israel maintains complete control over entry and exit, requiring even the most serious humanitarian cases to obtain prior authorisation. The government there is isolated with no control over its borders, airspace or sea. In the West Bank, the Palestinian Authority, notionally in power, has no control over its borders or over who can enter or leave the Palestinian territory. The administrative division of the West Bank into Areas A, B and C means that Israel continues to exercise full control – security, civilian and planning – over most of the West Bank.

Five years after the ICJ decision that the Israeli construction of the Wall in the OPT violated international human rights law and international humanitarian law, 200 further kilometres have been constructed. The UN High Commissioner for Human Rights in a statement on 9th July 2009 reported that ‘The overwhelming majority of the planned...
route of the Wall – 86 percent, runs inside the West Bank, not along the 1949 Armistice Line.... These severe restrictions violate not only the right to freedom of movement. They also effectively prevent Palestinian residents from exercising a wide range of other human rights, including their right to work, to health, to education and to an adequate standard of living'.

The UN High Commissioner also referred to the fact that the ICJ had pointed out ‘that the route of the Wall had been planned to encompass the bulk of the Israeli settlements in the OPT – settlements which are illegal under international law.’ Since 1967, successive Israeli governments have supported the policy of settlement building in the OPT in violation of international law. With more than 86,000 new settlers in the West Bank and 50,000 more in East Jerusalem since December 2000 according to Israeli human rights organisation B’tselem, there has been a concurrent increase in settler violence against surrounding Palestinian communities.

In East Jerusalem, annexed by Israel after the 1967 war, home demolitions, evictions, settlement building and denial of entry and family reunification to Palestinian families are the outcome of Israeli policies to ensure that Jerusalem remains the ‘eternal and undivided’ capital of Israel. These policies, together with the attacks on the Gaza Strip, the regular military incursions, arrests and restrictions on freedom of movement impact on virtually every human right of the Palestinian people and their ability to freely determine their political status and pursue their economic, social and cultural development including their right to self-determination.

Findings on Apartheid

The study examined Israeli practices in light of Articles 2(a-f) of International Convention on the Suppression and Punishment of the Crime of Apartheid, known as the Apartheid Convention, which cites six categories of ‘inhuman acts’ as comprising the crime of apartheid. The study concludes that Israel has introduced a system of apartheid in the OPT.

Article 2(a) concerns the denial of the right to life and liberty of the person. Israeli measures to repress Palestinian dissent against the occupation and its system of domination, including practices of murder in the form of extrajudicial killings, torture and other cruel and inhuman or degrading treatment of detainees, are found by the study to amount to inhuman acts as set out in Article 2(a).

Article 2 (c) concerns measures calculated to prevent a racial group from participating in the political, social, economic or cultural life of the country and to prevent the full development of a group through the denial of basic human rights and freedoms. Again, the study concludes many of the actions of the Israeli state amount to ‘inhuman acts’, such as the restrictions on freedom of movement, curtailment of the right of Palestinians to choose their own residence by systematic administrative restrictions preventing spouses living together, the denial of the right to a nationality to many Palestinian refugees, restrictions on rights to work, obstruction of right to education, restrictions on freedom
Israel’s rule has assumed a colonial character. The terms of the Declaration on Colonialism, its right to self-determination, deny its indigenous population the exercise of freedom and self-determination. Here, the law on colonialism intersects with the law on apartheid. The study considers that the targeting, arrest, imprisonment and ban on the travel of Palestinian parliamentarians, national political leaders and human rights defenders, together with the closure of related organisations by Israel, amounts to persecution of opposition to the system of Israeli domination in the OPT, thereby satisfying the requirements of Article 2(f). The suppression of peaceful demonstrations against the wall in Bil’in and Nablus and other villages in the West Bank, as well as the recent arrests and detention of the Palestinian leaders of the committee organising the Bil’in protests, could also be added as an element of this persecution.

The study further analyses the other elements of the Apartheid Convention and concludes that Israeli policies and practices are ‘integrated and complementary elements of an institutionalised and oppressive system of Israeli domination and oppression over Palestinians as a group: that is a system of apartheid.’

Findings on Colonialism

International law indicates that a situation may be colonial when the acts of a state have the outcome that it annexes or otherwise unlawfully retains control over territory and thus aims permanently to deny its indigenous people the right to self-determination. Here, the law on colonialism intersects with the law on self-determination: a situation that is defined as colonial will also be one that aims to deny its indigenous population the exercise of its right to self-determination.

The study considers five issues taken from the study’s findings on the Apartheid Convention and concludes that Israeli practices are colonial and as a system of apartheid as well as violating the Palestinian’s right to self-determination. The first is violating the territorial integrity of occupied territory. The study references Israel’s annexation of East Jerusalem: an act unlawful in itself but also as an act manifestly based on colonial intent. Israel’s acquisition of territory in the West Bank, the construction of settlements and settler-only roads, and the wall separating Palestinians and Israelis all violate the territorial integrity of the OPT.

The second issue is the deprivation of the population of occupied territory of the capacity for self-governance. The study concludes that Israel prevents the Palestinian people from freely exercising political authority over that territory. The creation of the Palestinian National Authority (PNA) and Legislative Council (PLC) does not affect this conclusion. As mentioned, the PNA only controls a fraction of the OPT and, in any event, the devolution of power to the PNA and PLC has been only partial. By preventing the free expression of the Palestinian population’s political will, Israel has violated that population’s right to self-determination.

The integration of the economy of the occupied territory into that of the occupant is the third issue that the study considers in this context. It considers that Israel has subordinated the economy of the OPT into its own as a result of the structural economic measures imposed on the OPT, and has thus deprived the population under occupation of the capacity to govern its economic affairs.

The fourth issue concerns the principle of permanent sovereignty over natural resources in the OPT. Again the study concludes that Israel violates this principle through its settlement policy, construction of settler-only roads and the wall, denying the Palestinians control over 38 percent of West Bank land. Control over water is also a crucial issue here. In respect of both these issues, Israel has violated the Palestinian people’s right to economic self-determination.

Finally the study considers that Israeli practices violate the Palestinian’s right to develop and practice its culture freely; curtail their cultural development and expression.

In respect of the question of whether there are elements of colonialism, the study demonstrates that “the implementation of a colonial policy by Israel has not been piecemeal but is systematic and comprehensive, as the exercise of the Palestinian population’s right to self-determination has been frustrated in all of its principal modes of expression.”

Conclusion

The study, which includes contributions from academics from South Africa, Palestine, Israel, Ireland and the UK, is comprehensive and ground-breaking. The contributors must be commended for reframing Israel’s practices as colonial and as a system of apartheid as well as violating the Palestinian’s right to self-determination. So far, however, the impact of the study has been minimal. The study provides us with an exceptionally thorough legal analysis and with findings of the most serious violations of international law on Israel’s part. It is vital now for us to use these findings to hold Israel to account, as well as those other third party states that co-operate with these breaches of international law.

In its conclusion, the study notes that the primary responsibility for remedying the illegal situation it has created lies with Israel. It must cease its unlawful activity and dismantle the structures and institutions of colonialism and apartheid that it has created. Further, it should provide reparation, compensation and satisfaction to remedy its unlawful acts. But above all, the study emphasises Israel has the duty to promote the Palestinian people’s right to self-determination. Presently, there is little evidence that Israel intends to do any of these things.

The legal consequences for other states are also clear: all states have the obligation to recognise the situation as unlawful, refrain from assisting or aiding the prolongation of the situation and co-operate to bring the situation to an end. Failure to fulfil these duties results is a committal of an internationally wrongful act.

The authors of the study suggest that the exact parameters of states’ duties of co-operation and abstention should be clarified by way of an opinion from the ICJ. This, it seems, can do no harm.

Meanwhile we may also wish to act more directly and support the Boycott, Divestment and Sanctions (BDS) campaign. The Campaign was launched in July 2005 with the initial support of over 170 Palestinian organisations and is now co-ordinated worldwide. One of its objectives is to strengthen and spread the culture of boycott as a central form of civil resistance to Israeli occupation and resistance. The BDS campaign now has many prominent supporters, including Desmond Tutu, Naomi Klein, Ken Loach and the Israeli academic who wrote recently in The Guardian, Neve Gordon. Co-ordination and solidarity between the BDS activists and lawyers able to make the legal arguments on the Israeli practices of colonialism and apartheid could create a real momentum for self-determination and justice for the Palestinian people.
I would like to join/renew my membership of the Haldane Society

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Please send this form to: Membership Secretary, Haldane Society, PO Box 57055, London EC1P 1AF
Thirty years ago on 23rd April 1979, Blair Peach died after being struck on the head by police while demonstrating against the National Front in Southall, west London. No police officer was ever charged or prosecuted despite serious concerns about the use of excessive force and the lawless behaviour of officers from the Metropolitan Police Special Patrol Group. The report of Commander Cass into Blair’s death was withheld and has remained unpublished for three decades.

It was the negative experience of Blair Peach’s family and friends that led them to join others to set up INQUEST in 1981. In June INQUEST and The Friends Of Blair Peach wrote to the Commissioner of the Metropolitan Police urging the publication of the Cass Report. INQUEST’s co-director Deborah Coles met Metropolitan Police Authority (MPA) members Jenny Jones and Joanne McCartney with Blair’s ex-partner Celia Stubbs and his brother Philip Peach to brief them prior to the MPA meeting on 25th June where a resolution proposed that the Cass Report should finally be made public. The MPA voted unanimously to do so. The test for the Metropolitan Police is to see how much of the report will be disclosed or subjected to censorship.

The continuing secrecy surrounding the case undermines family and public confidence in the Metropolitan Police and in light of recent events whether there has been any accountable learning in the policing of protests. There are evocative and disturbing parallels between the death of Blair Peach and that of Ian Tomlinson nearly 30 years later caught up in the police response to the G20 protests in the City of London on 1st April 2009. INQUEST is working with his family and legal team and has written an extensive briefing on his death.

INQUEST’s first book, Death and Disorder, published in 1986, examined deaths involving the police during – or which sparked – public disorder: Kevin Gately (who died during a protest in Red Lion Square in 1974), Blair Peach and Cynthia Jarrett, whose death during a police raid prompted the notorious Broadwater Farm disturbances in 1985 during which PC Keith Blakelock was killed. Death and Disorder looks at these three deaths in the context of others involving public disorder, from the infamous Peterloo Massacre of 1819 to the sometimes fatal use of troops and police against strikers in the first half of the twentieth century.

‘My congratulations to all involved in this 30 year battle for disclosure ... it was this awful state of affairs which led those of us who founded INQUEST to set it up. But it is mind-boggling to think that we were still arguing over this report 30 years later.”

Terry Munyard, barrister at Garden Court Chambers and founding member of INQUEST, speaking in July 2009 on the decision to release the Cass Report on the death of Blair Peach

IT TOOK THREE DECADES

‘Blair, a good friend and colleague of mine, was killed by officers of the Metropolitan Police at an anti-fascist demonstration in Southall on 23 April 1979. No-one has ever been held responsible for his killing.

‘The decision to publish the Cass Report is an extraordinary victory for INQUEST... and for Celia Stubbs, his partner. Belatedly, it lifts another layer of camouflage from the secrets, lies and impunity that prevail in large sections of the British state and make such terrible events not merely possible but more likely... What INQUEST, Celia Stubbs and countless others around the world – say, the Mothers and Grandmothers of the Disappeared in Argentina – keep reminding us is not just that the instincts of the powerful are wrong, but that they can also be defeated, however long it may take.’

David Ransom, former editor of New Internationalist, writing in the editor’s blog (http://blog.newint.org/) 26th June 2009
INQUEST
Working for truth, justice and accountability

...NEEDS YOUR HELP!
Looking back over the last year whilst reporting to one of our major funders, I was struck by the incredible amount of work INQUEST has done with such a small team. Thanks to those who have supported us over almost thirty years INQUEST has consistently punched above its weight. We need that ongoing support even more now. We receive a lot of admiration and recognition for the work we do on behalf of bereaved families, but we don’t have the resources to match the increasing demand.

Thirty years ago Blair Peach’s family and friends were founder members of INQUEST. Thirty years on we have worked with them again to get the report into his death made public, and in the years between we have supported thousands of family members in their search for answers about how and why their loved ones died. Sadly, the need for the organisation remains as urgent today as when it was founded and in a difficult economic climate, your support is needed even more as the demands on our services are not matched by our resources.

If you are in a position to support us in any way, now is the time to do so by setting up a supporter membership or standing order, making a one-off donation, joining the INQUEST Lawyers Group, purchasing our publications or encouraging someone who you think can help us to do so. You can do all that safely online or by cheque, and if you are a taxpayer and you Gift Aid your donation the government will give us 28p for every pound you donate – at no extra cost to you.

For more information and to join INQUEST contact Steve Roberts at steveroberts@inquest.org.uk

Socialist Lawyer ● October 2009 ● 31
Ever-optimistic and inspirational

Michael Mansfield: Memoirs of a Radical Lawyer
Hardcover: 512 pages.
Publisher: Bloomsbury Publishing.

£20. ISBN-10: 0747576548

Ordinary people throughout the world have been the catalyst for positive change and justice for centuries. This truism has been superbly captured by the symbolic fights for justice that Michael Mansfield has found himself at the centre of when acting as the advocate for families and communities in countries as diverse as England, Ireland, Palestine and Kosovo. While reading Memoirs of a Radical Lawyer I experienced a range of emotions evoked by the various cases he was involved in, ranging from outrage and relief to despair and optimism.

Having grown up in Ireland I immediately recognise the Fayed family's steadfastness after the tragic loss of Jean Charles. Most would not have immediately recognise the Fayed family within this category but Mansfield highlights the controversial Inquest into the deaths of Dodi Fayed and Princess Diana as one which a family was entitled to and rightly sought. The range of subject matters covered within the memoirs is impressive. There is a persuasive case for vegetarianism (as an aside to the McLibel litigation) vying for the reader's attention along with the more recognisable case against the Iraq war and an appeal for observance of international law. Or maybe the reader is more drawn to Mansfield's views on the inadequacies of legal aid or the prison system, the 'politics' of terrorism, or the ability of art and culture to 'challenge fixed notions and to open people up to fresh possibilities and ideas? In addition to numerous other references, a chapter is devoted to a strident defence of the jury system where Mansfield's recent representations of some of the miscarriages of justice cases in the 'fertiliser' and 'ricin' conspiracy trials are outlined for the reader. This concern for the protection of the jury system can also be traced back to a Haldane Society mission to Belfast to examine the use of the non-jury Diplock Courts in Northern Ireland in the 1970s. It is a pity that his fears for the jury system at that time have been accentuated in the current climate.

Accordingly, Mansfield uses his first hand experiences of the merits of the jury system throughout his career to point the way forward for the current UK Government and admonish it for the sins of Belmarsh and other recent attempts to curtail the right to jury trial. He reinforces the efficacy of the jury system with various examples of useful questions that have come forward from its members. There is also a justifiably righteous polemic against the death penalty in a chapter entitled 'The Execution'. These views are likely to be endorsed by Socialist Lawyer readers. Unfortunately, Mansfield's successful posthumous appeal on behalf of Mahmoud Mattan – wrongly executed in 1952 after being sentenced to death by a British Government and admonished by the United States for not conversant with the detail. He forensically deconstructs the underlying premise of 'expert evidence' that the police and prosecuting authorities sought to rely upon in the varying miscarriages of justice cases in which he was involved such as the Angela Cannings, Barry George and the Birmingham Six appeals. There appears to be an uneasy dichotomy between so-called objective science and the 'art' of
science that we should all be aware of.

It clearly emerges in these memoirs that Mansfield’s view of the role of a barrister does not accord with the traditional view of the role as manifested by the Bar’s cab rank rule. He explains that it is crucial that he understands his clients and therefore his cases show that he has a sympathetic understanding of what may have prompted some of them to act as they did. However, as he points out, his reputation is such that BNP members are not lining up for his services. He would be obliged to point out to such a potential client that he does not appreciate what the BNP stands for and would not be able to get close enough to represent them.

I would recommend these memoirs to those outside the law looking to make sense of the legal process and to political activists. My only ‘criticism’? A mere two references to the Haldane Society – though we do get a prominent mention on the sleeve! Of course, the memoirs are essential reading for all members of the Haldane Society as well as for discerning criminal practitioners throughout the country, who will certainly benefit from the distilled wisdom of a legal career at the coalface of criminal justice.

I do not spoil anything by informing the reader of the last words of Mansfield’s book: ‘I am ever optimistic’. It may seem strange to some that this should be the case after recounting a catalogue of injustice and institutional intransigence. However, we are by then familiar with how he helped to achieve a measure of justice for his clients over 42 years and it is refreshing to note how he pays tribute to the families and the communities that he has represented that one can agree with and commend his optimistic conclusion. It is an uplifting and inspirational read for socialist lawyers.

Declan Owens

To ‘protect’ is to dehumanise


In this beautifully written and extraordinarily valuable book, Liz Fekete, editor of the European Race Bulletin and executive director of the Institute of Race Relations, draws on sixteen years’ research to show the convergence of European immigration and national security policies in a new nativism which both justifies closed borders against asylum seekers and demands assimilation as the price of settlement and citizenship. The main theme is how anti-immigrant racism and anti-Muslim racism have come together in the past decade and a half in immigration and national security policies to exclude poor foreigners and Muslims from the basic rights and benefits of European society.

The book first traces the growth in the 1990s of xenoracism, a form of non-colour-coded institutionalised racism derived from globalised racism (which imposes strict controls on people to protect the freedom of capital). It describes the processes, familiar to British immigration practitioners, of removal from mainstream benefits, dispersal, the voucher system, immigration limbo and fast-track detention, analysing these as part of the process of segregation or ‘quarantining’ of the alien presence to better control it, and showing how these dehumanising policies were developed elsewhere in western Europe to ‘protect’ the continent from asylum seekers, whose poverty marked them out as the ‘enemy’. Then, the ‘war on terror’ added the new ‘enemy’ of Muslims, targeted by the EU’s speedily developed security state through hugely intrusive surveillance, religious profiling and a vastly increased role for the intelligence services. At the same time, European states retreated from multi-culturalism into a stridently anti-Muslim public discourse and assimilationist policies. In the section on ‘enlightened fundamentalism’, Fekete demonstrates the profoundly hypocritical use of ‘enlightenment values’ to beat Muslims with, and to restrict or deny migration and settlement rights – we have the British example of the use by the UK Border Agency of fears of ‘forced marriage’ to increase the minimum age of entry for spouses from 16 to 18 to 21. Fekete also examines the changing nature of citizenship, which has become a precarious and potentially temporary status, removable at will from those deemed ‘undesirable’.

In the section on detention and deportation, she describes the undermining of the 1951 Refugee Convention, the warehousing of rejected asylum seekers in privatised detention centres or camps comprising the new ‘asylum prison-industrial complex’, the co-option of north African states into the carceral process, the target-driven deportation policies which bear disproportionately on the most vulnerable – families with children and the sick – as the easiest to deport, with disastrous consequences for health and welfare; the secret deportation charter flights, the lack of transparency and due process and the deals with torturing states which mark national security deportations. And in the final section, ‘the fight for civil rights’, after looking at the way children are stripped of their childhood in detention and return programmes or demonised as criminals, she turns to the solidarity movements which have sprung up to defend, particularly, children from these inhuman processes, and the burgeoning civil rights and self-help movements set up by asylum seekers, migrant and Muslim groups, whereby new inter-racial alliances are created to campaign for truly universal human rights.

The book is a treasure trove of information about EU and member states’ immigration policies. It also illuminates and makes grim sense of all the rule changes and legislative shifts by showing their political and policy purpose in the European and global context. It demonstrates the deathly cynicism and callousness informing the policies; but also gives a strong sense of the movements of solidarity and humanity which governments cannot crush, and to which our legal efforts in the courtroom contribute. It makes very rich, comprehensive and compelling reading.

Frances Webber

**FILM**

MST: Landless farmers and the biggest march in Brazilian history

Director: Gibby Zobel

Xu Filmes, 2008

The Brazilian Movimento dos Trabalhadores Rurais Sem Terra (MST), or Landless Workers Movement, is 25 years old this year. During its existence it has campaigned vociferously for much needed land reform in Brazil. Earlier this summer the British journalist Gibby Zobel introduced his documentary on the MST at a special screening hosted by the London based Brazilian cultural magazine Jungle Drums. The film gives a distinctive insight into the
movement and some of the individuals who participated in the 2002 march of 12,000 people who walked the 240 kilometres from Goiana to Brasília. This proved to be not only the largest but also the longest march in Brazilian history.

Currently, the MST is said to have some 1.5 million members in 24 of Brazil’s 27 states, a far cry from its initial days as a grassroots organisation in 1984. Brazil’s colonial legacy has left a vastly unequal distribution of land. This includes large ranches left abandoned and unproductive. The MST and its demands for meaningful agrarian reform sprung out of this gross inequality and a perception that Brazilian governments down the years have done little to advance the interests of Brazil’s four million landless farmers.

The 2002 march lasted some 17 days. Its intention was to stir up a long-term debate within Brazilian society. A four kilometre column would rise before dawn to march along the motorways to Oscar Niemeyer’s purpose-built capital. The film depicts the march in its many guises. This includes accounts of the discipline required to marshal some 12,000 people and the education that was offered to marchers en route to Brasília. In this respect we hear from Leonardo Boff, a former priest and Liberation Theologian, who sums up the uniqueness of the march: ‘... it innovates that which not Marx, not Lenin, not any revolutionary imagined: to unite the fight and marching with study and reflection ...’

Zobel accepts that he has made a film which focuses primarily on the MST and the marchers. He wanted their accounts to be heard given that the arguments opposing agrarian reform advocated by Brazil’s large landowners are heard far more often. The film captures some rare interviews with MST participants. We are taken to the modest home of Cabaçinha, who took part in the march and, sadly, recently died. The film captures his hopes for the political impact of the march as well as for reform under Lula, Brazil’s first working class president, who was first elected in 2002.

Space is also given for the expression of the views held by many Brazilians when it comes to the MST. A farmer sums up these prevalent opinions, stating that ‘In theory, on paper, it’s very beautiful. I think that on paper the MST is very beautiful. But, in reality, they end up doing nothing. People put many people here who don’t know the rural way of life. People are afraid, people are terrified of the MST. There are many people in this movement who are being used because they are simple people and so they are doing this march and in their heads they have the best of intentions. But there are people, I believe, many who are not doing this march but are coordinating it, and they have other objectives’.

Zobel’s documentary is worth watching for those interested in Latin American politics and social movements in general. There is a trailer for the film at www.youtube.com/xufilmes. Given the grass roots nature of the film it does not have a distributor beyond the director himself who can be contacted at xufilmes@gmail.com.

Tim Potter
should be regarded as a necessary restriction on the exercise of free speech in the interests of national security and for the prevention of disorder.

As the feminist scholar, Cynthia Cockburn, states in her Introduction: ‘Conscientious objection to state military service is one of the most meaningful, demonstrative and difficult forms of non-violent direct action in the repertoire of the world’s anti-militarist, anti-war and peace movements’. It is impossible to disagree with her view that it is a wonderfully productive focus for study, in theory and practice.

Although this is not the only book on conscientious objection, it is probably the best. The two authors are from Turkey, Çinar is studying for his PhD at the University of Essex and Üsterci is a Board Member of the Human Rights Foundation of Turkey.

The collection of articles contained in the book was published in Turkish in 2008 and it is the result of the International Conference on Conscientious objection held at Istanbul Bilgi University in January 2007. The book is remarkable for the way in which it explores all aspects of conscientious objection, but especially as a critique of patriarchy, sexism and heterosexism.

The theme is highly topical. Of the 192 members of the United Nations, 168 have armed forces but, according to the editors of this book, only 35 per cent recognise conscientious objection. The situation is different in Europe. However, Turkey was the most relevant location for the Conference. Of the 47 members of the Council of Europe, only Turkey does not recognise conscientious objection as a right – even Russia has a constitutional provision, Article 59 of its 1993 Constitution, which recognises the right to ‘Alternative Civic Service’, with a Federal Law of 2002.

Turkey is a therefore a special case. The editors point out that conscientious objection in Turkey is almost foolhardy. ‘Each Turk is born a soldier’ is a national motto; masculinity is defined through military service, and the effects of the 1980 military coup are still prevalent. By June 2008, however, 69 young people (13 women and 56 men) had declared themselves conscientious objectors, and one of them, Halil Savda, has been imprisoned, although he has now been released.

As well as a number of Turkish scholars and activists, there are a number of distinguished international contributors. These include Professor Kevin Boyle of Essex University; Rachel Brett, who is the leading Council of Europe expert on conscientious objection; the Chilean anti-militarist Pealo Carvallo; the US scholars Cynthia Enloe and Matthew Gutmann; and several objectors, including Tali Lerner of the Israeli organisation ‘New Profile – the Movement for the Civilization of Israeli Society’.

The book is clearly and logically divided into four sections. The first, ‘Conscription and resisting conscription in a militarised society’ explores the philosophy, ethics and history of conscientious objection. ‘Conscientious objection as a critique of patriarchy, sexism and heterosexism’ contains some of the most challenging papers. The third section, ‘Conscientious objection in the world: experiences and problems’ presents studies of conscientious objection movements in South Africa, Greece and Paraguay, comparing experiences in the three countries; the Americas, Chile, Spain, Israel, Greece and Turkey. Finally, ‘Conscientious objection and the law’ contains Çinar’s own chapter on international implementation of the right to conscientious objection, as well as international and European standards and a thorough analysis of the legal situation in Turkey.

The chapter by Kevin Boyle is of special interest. He analyses the case of Osman Murat Ulke v Turkey (2006), in which the European Court of Human Rights avoided, once more, deciding the status of conscientious objection under the European Convention of Human Rights. The applicant was an active member of the war resisters’ association in Turkey, and spent a total of 701 days in prison as a result of eight convictions. He lives in a state of ‘civil death’, in which he may be arrested and prosecuted at any time.

Boyle observes that in Şepet and Bilbul v Secretary of State for the Home Department (2003) the UK House of Lords took the view that conscientious objection had not yet crystallised as a norm of international law. However, in Yeo-Bum Yoon v Republic of Korea (2006) the UN Human Rights Committee found that the imprisonment of two objectors was an unjustified restriction on the manifestation of their religious beliefs. Although the Strasbourg Court held that Turkey’s treatment of the applicant had violated Article 3, it simply avoided dealing with the applicant’s claim that his right to freedom of conscience (Article 9) had been violated. Following the judgment, both the Council of Europe’s Committee of Ministers and the European Parliament urged Turkey to reform the law on conscientious objection. This timely book will help to move the process of reform forward in Turkey and internationally.

Bill Bowring

The root causes

Economic inequality has an adverse effect on all people living in developed countries, conclude Richard Wilkinson and Kate Pickett in their authoritative study _The Spirit Level: Why More Equal Societies Almost Always Do Better_.

This recently published book surveys statistics of social problems (including life expectancy, mental health, homicide rates, drug and alcohol abuse, educational performance and teenage pregnancy) across developed nations and concludes that there is a startling correlation between inequality and the vast majority of serious social problems.

Even more significantly, these problems are more prevalent among the rich in unequal societies (as well as among the poor) than among equivalent groups in societies where gaps between the incomes of rich and the poor are smaller. Japan and the Scandinavian countries, which achieve a more equal income distribution, suffer far less from social problems than the US and the UK where there is a gulf between the income levels of the rich and of the poor.

This concise, readable study provides powerful ammunition for those of us who have always known that inequality has a corrosive effect on our society almost as damaging as poverty.

Margaret Gordon
Haldane Society of Socialist Lawyers invites you to:

Human Rights Lectures 2009–2010

Right to protest: police violence, kettling, cover-ups

Speakers: Philippa Kaufmann, barrister and counsel for Lois Austin in Austin v Commissioner of Police for the Metropolis (House of Lords decision on “kettling”), and Paul Lewis, The Guardian journalist, exposed police involvement in the death of Ian Tomlinson at the G20 protests in April 2009

Thursday 22 October
6.30pm, Room S102

Human Rights Act or a Bill of Rights?

Speaker: Professor Conor Gearty, barrister and Director of Centre for the Study of Human Rights, LSE, recent publications include Are Human Rights Universal?

Thursday 21 January 2010

Memoirs of a Radical Lawyer

Speaker: Mike Mansfield, QC (President of the Haldane Society) – followed by Haldane Society AGM

Thursday 19 November
6.30pm

Defending human rights defenders in Colombia and the Philippines

Speakers to be confirmed

Thursday 10 December, 6.30pm, Room S101

All lectures between 6.30pm – 8.30pm at the College of Law
14 Store Street, London WC1E 7DE (nearest tube Goodge Street)

Further information from www.haldane.org