Why no justice in Gaza?

by Mike Mansfield

Plus: interview with John Hendy QC, Stop and search, Valentin Urusov
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Film and books

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The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes. The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates.

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Lift the siege

The murder and kidnapping of activists from the Free Gaza Movement by the Israeli government shocked the world. The Haldane Society was proud to take its banner on London demonstrations calling for an end to the siege of Gaza and for freedom for Palestine. We have a long tradition of working with lawyers, NGOs and other human rights activists for justice for the Palestinian people and for Israel to withdraw to the 1967 borders. Immediately, we call for the siege of Gaza to be lifted and for Israel to negotiate with Hamas, legitimately elected by the people of Gaza. Several of us have friends and comrades who were aboard the Free Gaza flotilla.

Our President, Mike Mansfield QC, describes the proceedings of the Russell Tribunal on Palestine. A key part of the Tribunal's findings is that universal jurisdiction should be as effective as possible and that European Union governments should not interfere with attempts to hold members of the Israeli government criminally liable under international law. The British government's response to the arrest warrant issued against Tzipi Livni for her role as a member of the Israeli War Cabinet during the invasion of Gaza in January 2009 shows that politicians are happy to undermine international law in order to maintain support for Israel. Universal jurisdiction – the right to prosecute certain crimes regardless of where the crime took place or the nationality of those involved – is all the more necessary when Israel itself shows contempt for international law, and for any basic morality. It's not moral to assassinate or kidnap anyone carrying humanitarian aid to a desperate people.

Workers have been getting a rough time in the Courts and no doubt litigious employers are heartened by the election of a Tory government, even one in coalition. Both Network Rail and (at first-instance) British Airways were able to obtain injunctions halting planned strikes, which had been properly balloted for and overwhelmingly supported by the members. Fortunately two of the three Court of Appeal judges saw the absurdity of preventing a strike because of a failure to include 11 spoilt ballots in the initial notification to BA cabin crew, even though the cabin crew had voted overwhelmingly for strike action.

Perhaps the European Court of Human Rights will have more common sense. Our Vice-President, John Hendy QC, represents the RMT in its application to the ECHR against the anti-trade union laws on the grounds that they restrict freedom of association. John Hendy is also President of the Institute for Employment Rights and we've been very pleased to work with the Institute recently in hosting a conversation between Lord Wedderburn QC and Jim Mortimer. Our interview with John – marking his election as a new Vice-President – couldn't have come at a better time for us, even though it was at an extraordinarily busy time for him.

The Haldane Society is in no doubt that the new Tory-Lib Coalition will attack the living standards of workers, and those who cannot work. Any hopeful thinking that the Liberal Democrats might be a restraining influence was shattered when they discarded the few progressive policies that they had on civil liberties. Abolition of control orders has become a ‘review’ of control orders. They are silent about 28 day detention and agreed to ‘review’ the Human Rights Act. We expect nothing better from this government than from the previous New Labour government, and potentially a great deal worse.

One of the targets of the £6 billion public spending cuts is likely to be legal aid (public funding). We've seen the various re-organisations by the Legal Services Commission turn the legal aid scheme into a poor shadow of what it should be: a nationwide network of publicly funded lawyers whose services are available to all except the richest (who can afford their own lawyers). The Attorney General was at the Legal Aid Lawyer of the Year awards in May (when our President Mike Mansfield QC and our Vice-Chair Kat Craig were each honoured). The work of each shortlisted candidate was truly extraordinary and a better case could not have been made for the necessity of legal aid. Despite all he heard, Dominic Grieve insisted that there will be cuts.

The Haldane Society is working with Young Legal Aid Lawyers and the Save Legal Aid Campaign to make the case for publicly funding legal services. The government will only listen if this is a broad-based campaign, reaching out beyond the legal profession to the vast majority of people who cannot afford to pay for legal representation. Far too many people are either not eligible to receive legal aid at all, or find themselves in ‘advice deserts’ where no legal aid lawyers can be found. We aim to work with trade unions, and other campaigns, so that ‘save legal aid’ is an integral part of all the campaigns to save the welfare state which was hard fought for and which will be vigorously defended.

Liz Davies, chair of the Haldane Society of Socialist Lawyers lizdavies@riseup.net
Since the Trade Union Co-ordinating group (TUCG) was founded in 2004, it has become a vanguard for working people. Eight national unions have come together to pressure governments, mobilise communities at a grassroots level and empower those who are not represented by mainstream politics. It organised the TUCG Convention on 6th March to plan future strategy. What does the Convention seek to establish and how it is going to achieve its ambitions?

End anti-union law
Britain has the worst anti-union laws in Europe. Margaret Thatcher’s systematic deconstruction of union power paved the way for anti-union law. The Labour government refused to repeal what the Tories introduced. The precedent set in the British Airways v Unite case has already found favour with Network Rail, who have used it to challenge the ballot of the Rail, Maritime and Transport Union (RMT).

‘UK law fundamentally breaches the right to association of the workers under the Article 11 ECHR’ says Professor Keith Ewing, member of the Institute of Employment Rights. The TUCG believes that unions need to prepare for a legal action by taking the government to the ECHR when it is necessary to challenge anti-union law. There needs to be compliance with standards set out by the International Labour Organisation (ILO).

Health and safety
Workers are killed and injured at work. To reduce risks in the workplace, funding needs to increase rather than reduce at a time of recession.

The Convention looked at what is being done to deal with workplace fatalities and unnecessary harm. The United Road Transport Union (URTU) are running a survey with the Health and Safety Executive (HSE). The URTU have been conducting interviews at various truck stops and motorway service areas to help improve working conditions and reduce the number of driver deaths and other avoidable harm. It is also working with the Government’s health and safety watchdog – Vehicle and Operator Services Agency (VOSA) – to ensure the Working Time Regulations are being enforced; particularly against unscrupulous employers.

End racism and inequality
The Convention heard how the BNP has used racist propaganda against minorities and scapegoated immigrants and Muslims. The TUCG believes that mobilisation is needed both locally and nationally to challenge such discrimination by working with local communities and NGOs. It supported the national demonstration on 20th March in Bolton organised by Unite Against Fascism.

The Convention noted that equality legislation is not effective enough to deal with discrimination at work. There was concern expressed that such legislation is watered down and does not adequately deal with equality. Minorities and women are more likely to be unemployed. Zita Holbourne, TU Race Relations Committee Member stated: ‘Public sector cuts will further increase inequality as most of the women and minorities are in the public sector where there is going to be cuts’. The TUCG were clear that opposing any kind of public sector cuts is essential to promote equality.

Delegates to the Trade Union Co-ordinating group heard speakers including John McDonnell MP (top), Zita Holbourne and Mark Serwotka

Convention’s grassroots union strategy

Ripon Ray, Haldane Executive Committee Member
Con-dems’ surprise detention move

I n an unexpected turnaround of events, the new coalition government has announced that they plan to end the detention of children. This surprising announcement, a Liberal Democrat proposal, could mean a dramatic change for a vast number of asylum seeking and other migrant families who are due to be removed from the UK.

Over 1,000 children each year are detained in the UK at one of three detention centres scattered around the country. The largest and most notorious of these is Yarl’s Wood in Bedfordshire, where the majority of children are held for varying periods of time, ranging from a few days to several months. They are the only children in the country who can be locked up without having committed any offence, and, unlike most other European countries, there is no time limit on how long they can be detained.

The psychological impact of detention on children is well documented. Refugee support groups, NGOs and legal representatives among others have voiced serious concern over the practice for a long time. Being detained during dawn raids on family homes and then transported in vans to detention centres surrounded by high walls and barbed wire fences compounds the already terrifying experience of being locked up.

Medical research published in late 2009 detailed accounts of children suffering regressive tendencies including bedwetting as a result of their time incarcerated at Yarl’s Wood. A number of children examined showed clear signs of post traumatic stress disorder. Almost all of them were assessed as being extremely distressed and traumatised by their experiences. These concerns were reiterated in a joint statement issued by the Royal Colleges of Psychiatrists, Paediatricians, and General Practitioners. The process has been further condemned by the Children’s Commissioner and Her Majesty’s Inspector of Prisons.

It would appear that the government has recognised that the process is an embarrassment to the UK. What remains to be seen is what the government will propose to do in its place. There are obvious concerns about this, as any procedure which results in families being forcibly removed from the UK is likely to involve some degree of distress. A worry is that parents will be separated from their children, as is already the case for many foreign national prisoners awaiting deportation.

The solution could lie in the removal itself. Countries such as Sweden and Australia run successful alternatives to detention which begin at the start of the asylum process. Implementation of a more engaging asylum determination procedure, with families being given caseworkers with whom they have regular contact, would mean an improvement in decision making overall. This could entail less need for last minute fresh claims to be made or judicial reviews to be lodged. In Sweden, the more holistic asylum process means caseworkers work with families, encouraging them to consider options and possibilities for their reception on return to their home countries. Voluntary return rates are much higher and the need for detention is much less. Child detention is no longer used.

The Immigration Law Practitioners’ Association has raised whether the focus on the detention of children can also be used to shine a light on other areas of detention policy and practice. In doing so they make reference to the recent case of Abdillahi Muuse v SSHD [2010] EWCA Civ 453 which concerned the unlawful detention of an adult Dutch national. In this case, the Court of Appeal noted that the behaviour of the UK Border Agency was ‘high handed and outrageous arbitrary conduct’. The Court of Appeal continued to state that there had been ‘manifest and unsupervised incompetence’ also holding that ‘…the judge found…the detention to which Mr Muuse was subjected was aggravated by racist remarks such as “look at you”, you are an “African” and suggestions that he should go back to Africa. Treatment of this kind which is calculated to degrade and humiliate is typical of abuses which occur when power is exercised by those who are not competent to exercise that power’.

As with the incarceration of adults, the detention of children is enormously expensive. The detention of children for immigration purposes is unnecessary on any number of levels. The decision to end this practice must be welcomed. It remains to be seen exactly how the coalition government will practically put this policy change into effect.

◆ Kezia Tobin

‘Peoples in Motion’ carried

T he Haldane Society co-sponsored an international conference, ‘Peoples in Motion: Self-determination and Secession’, in Belfast in June – over 50 people came from around the world.

The conference was organised jointly by ELDH and the Transitional Justice Institute at University of Ulster. TJI was founded by Colm Campbell, who, with Haldane, organised a Tribunal on Transfer of Prisoners in 1992 with Bernadette Devlin McAliskey and others. He, Christine Bell and Fionnuala Ni Aolain delivered impressive papers on their latest research. These are scholars with a splendid record of commitment to the cause of Palestine, and especially through CAJ, the Northern Irish equivalent of Liberty.

One speaker unable to attend was retired Professor Norman Paech, a leading activist in Haldane’s German sister organisation VDJ and a former member of the German Parliament. He was on board the Gaza flotilla vessel brutally boarded by Special Forces and witnessed the massacre. His testimony has played a key role in undermining Israeli propaganda. Haldane’s Richard Harvey made a magnificent presentation on self-determination struggles, especially in Northern Ireland. I also spoke on Lenin’s pioneering contribution to the right of peoples to self-determination.

For CAMPACC, Vicki Sentas of King’s College London, who has been a campaigner on human rights and ‘war on terror’ issues in Australia, spoke on the impact of ‘terrorist organisation’ laws on diaspora claims for self-determination. Two excellent presentations were made by Catrinia Drew of SOAS (whose book on self-determination and population transfers will soon be published and another long-term participant in the struggles of Palestine and East Timor) and Ephraim Nimni of Queens University Belfast (a political scientist and an Israeli citizen with a splendid record of anti-Zionism.

Contemporary self-determination struggles were brought to life by Haluk Gerger, from Ankara, on the Kurds; Urko Aiartza from the Basque Country; Hector Lopez Botill on the struggle of the Catalans and others; and finally Hassan Jouni from Lebanon, who spoke in very moving terms on the continuing tragedy of the Palestinian people. Tamil comrades also made a presentation.

◆ Bill Bowrington
At the end of March a European Lawyers for Democracy and Human Rights (ELDH) fact-finding delegation visited Donostia (San Sebastian) in the Basque country. Three Basque lawyers, Iratxe Urizar, Edurne Iriondo and Julen Arzuaga, of the Behatokia Human Rights Observatory, are members of ELDH. All three have attended Haldane events in London. Readers will recall an article about the Basque situation in Socialist Lawyer issue 53. ELDH condemns the use of violence against civilians for political purposes, but is very concerned about abuse of anti-terror legislation.

The purpose of the visit was two-fold.

First, we spent a day in intensive meetings with defendants and lawyers in a number of the anti-terror law prosecutions, motivated by Judge Baltasar Garzón, especially the mass prosecutions known as the 18/98 cases. We met representatives of Etxerat, the Basque prisoners’ relatives association; Alfonso Zenon a lawyer practising at the Audiencia Nacional; a defendant in the 18/98 trial; Iñaki Uria, a defendant in the Egunkaria case; Karmelo Landa a defendant in the Batasuna case; and our colleague Julen Arzuaga, who is a defendant in the Gestoras pro-Amnistia-Aslatasuna case.

Second, we attended the CONSEU and Udalbiltza International Conference – “The peoples’ collective rights in the frame of human rights”. This was held in Donostia on 27-28 March. CONSEU is the Conference of European Stateless Nations – see www.ciemen.org/objc-conseu.htm#programaang. Bill gave a presentation on “The right to self-determination – for the Basques, Irish, Kurds and Palestinians”, based on his article published in Socialist Lawyer 53. Also attending were speakers from Northern Ireland, the Kurds, Catalonia and others.

The Report of the ELDH delegation is now under preparation.

The root cause of the attack on all manifestations of Basque culture and political expression was aptly summarised by the UN Special Rapporteur ‘on the promotion and protection of human rights and fundamental freedoms while countering terrorism’, Martin Scheinin, in the report dated 16th December 2008 of his Mission to Spain (Human Rights Council, A/HRC/10/3/add.2). Scheinin was concerned that articles 572-579 of the Spanish Penal Code ‘do not fully respect the requirement of legality’. Thus, Article 574, which punishes ‘any other crime’ committed with the aim of subverting constitutional order or altering public peace ‘runs the risk of being applied to crimes that do not comprise or have sufficient relation to the intentional element of causing deadly or otherwise serious bodily injury.’ The ‘vaguely defined’ crime of ‘collaboration with terrorist organisations’ in Article 576 ‘... runs the risk of being extended to include behaviour that does not relate to any kind of violent activity.’ This is what has happened.

Baltasar Garzón has a track record. He is the examining magistrate of the Juzgado Central de Instrucción No. 5 of the Audiencia Nacional de España (National Court of Spain). In July 1998 he presided in the case against Orain SA, the Basque company that published the newspaper Egin and owned the radio station Egin Irratia. Garzón ordered the closure of both and sent company officers to prison, due to their alleged links with ETA. These charges were later dropped for lack of evidence, and the journalists were released. Many years later Garzón imprisoned them again under the allegation of being part of ETA in a ‘broader’ sense. Egin was allowed to reopen years later by the Audiencia Nacional, after all charges were found to be without foundation. By that time the machinery was inoperable and the paper never re-appeared. In October 2002, Garzón suspended the operations of the Batasuna party for three years, alleging direct connections with ETA. In February 2008 he also ordered the ban of two Basque nationalist parties, which had filled the political space of Batasuna, EHAK and EAE-ANV, on the same grounds.

Garzón has once more...
received a severe rebuff.

On 12th April, five directors of the Basque daily *Egunkaria*, which was closed in 2003 on the grounds that it represented the interests of ETA were acquitted in a three to two majority ruling by the Audiencia Nacional in Madrid. The trial, which came more than six years after the editors were charged, began on 15th December 2009.

*Egunkaria* was founded in 1990, had a circulation of about 15,000 and was the only paper published in the Basque language, Euskara. It was partly funded with a £5m subsidy from the Basque regional government, led in 2003 by moderate, anti-ETA Basque nationalists. The accused were held in preventive detention for four years before their release on bail. *Egunkaria*’s editor, Martxelo Otamendi, claimed to have been tortured by police.

The judgment of 12th April was scathing: ‘The provisional or temporary closure of *Egunkaria* was not directly covered by the constitution, nor was there any special legal norm that expressly authorised it… It has not been proved that any of the financing came from an illicit source… The mistaken vision that anything to do with the Basque language and all culture in that language must be being promoted or controlled by ETA leads to a mistaken interpretation of the facts.’ The judges added that it was clear from the newspaper’s editorial line that it did not follow ETA’s instructions.

It is to be hoped that the other trials will meet the same fate.

**Bill Bowring** | Haldane Society International Secretary

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Sofia, so good...

Come with us to Sofia for the weekend of Saturday 13th and Sunday 14th November. Volcanic ash permitting, there is an inexpensive Easyjet flight from Gatwick. *Lonely Planet* says: ‘Sofia has a young and dynamic vibe, like a city waking up after decades of slumber, and is becoming a confident and cosmopolitan European capital.’

We will be the guests of our sister organisation, the energetic Union of Bulgarian Lawyers (UBL) and it will be a stimulating weekend. The UBL have organised a conference on the Lisbon Treaty on Saturday 13th, covering undivided sovereignty, the new system of human rights protection and both social and constitutional aspects. And on Sunday 14th, the Executive Committee of the European Lawyers for Democracy and Human Rights (ELDH) will plan activities for the next six months, not only in Europe, but also Palestine, Western Sahara, Colombia and more. We meet in a different city twice a year: the previous meetings have been held in places such as Brussels, Geneva, Berlin, Paris and Rome.

ELDH was founded in 1993 by the democratic lawyers’ organisations of Bulgaria, England (Haldane), France, Germany, Italy, Switzerland and Turkey. The past year has seen dynamic growth. We have been joined by the Progress Lawyers Network of Belgium and the Alternative Intervention of Athens Lawyers from Greece so ELDH now unites lawyers from 16 European countries.

Our Bulgarian colleagues hosted the last Executive Committee meeting, held in Brussels on 6th March. Our colleague Maria Verheyden-Hillard, of the National Lawyers Guild, USA, told us about the reactionary US policies under the Obama Government concerning terrorism, foreign policy, the financial crisis and its social impact.

The Executive meeting followed an excellent conference organised by PLN called ‘What’s left of your privacy in 2010. Protecting privacy against government and employer’. This was attended by more than 200 lawyers and activists, mostly in their 20s and 30s. There was a sobering presentation by Tony Bunyan, Director of Statewatch, and a Haldane regular. He highlighted the important report *NeoConOpticon: The EU Security-Industrial Complex* written by Ben Hayes, also a Haldane member, and published by Statewatch and Transnational Institute. It can be downloaded at www.statewatch.org/analyses/neonopticon-report.pdf.

The previous Executive Committee meeting, in Paris on 18th October 2009, followed a well-attended international conference *The Evolution of Labour Law in Europe: Under the Pressure of the (Neo)Liberal Economy*. Speakers included Haldane’s John Hendy QC.

ELDH has an active year ahead. Members will participate in the Caravana 2010 delegation to Colombia on 23rd-28th August. ELDH is planning a conference on civil liberties, custody and pre-trial detention to be hosted in Paris next year and a seminar on gender and human rights in Bremen, Germany. In addition, we are planning delegations to Western Sahara, Palestine and Turkey. ELDH members will attend the COLAP (Conference of Lawyers in Asia and the Pacific) and the IADL conference in Manila, Philippines, on 18th-19th September 2010.

Get involved – email me at b.bowring@bbk.ac.uk

**Bill Bowring**
n 20th March the English Defence League (EDL) held a rally in Bolton; the latest in a series of such gatherings across the country opposing the ‘Islamification of Britain’ and drawing active opposition, primarily focused through the organisation Unite Against Fascism (UAF).

At a previous rally held by the EDL – in the north west of England in Manchester in October 2009 – groups from both UAF and EDL were held within Manchester’s Piccadilly Gardens for many hours, separated by police lines. A number of arrests were made, and there were complaints about both confinement within and prevention of entry into the Gardens and of heavy-handedness on the part of the police.

Prior to this rally in Bolton, the EDL’s most recent demonstration had taken place in Stoke. That event led to violence by its members against property and, most tellingly, against Asian people in particular.

In response to a request from UAF for legal observers to be present in Bolton, the Haldane Society sent a team drawn from within its membership, training having been provided in London and Manchester beforehand.

For many, the day brought a sharp reminder of the importance of providing such a role at demonstrations.

Although during training concerns had been expressed about personal safety in relation to the anticipated behaviour of EDL demonstrators, within an hour of the UAF rally convening in Bolton, it became apparent that it was the behaviour of the police that presented immediate threats to personal safety – to protestors, journalists and independent observers alike.

Protestors were almost immediately kettled into a section of Bolton’s Victoria Square, and the police proceeded to set up lines preventing other groups from entering.

At times individuals were allowed through and stewards, organised by local non-UAF groups, monitored the fringes of the square and side streets, spotting and chasing off a number of EDL infiltrators.

Elsewhere, a contingent of several hundred local Asian youths were kettled in a nearby street. This went unnoticed amongst the protestors in Victoria Square until the group were eventually allowed passage into the square later in the afternoon. Throughout the day the EDL group were separated from the anti-fascist protestors by police lines.

In response to an early attempt by UAF protestors to push through the police lines around the kettle, Greater Manchester Police immediately sent in dozens of Operational Support Group officers. Police dogs were used to intimidate and threaten protestors. Several young people sustained injuries from the police, and an elderly protestor was knocked to the ground. The police then clearly proceeded to target the key organisers of the UAF rally, including Weyman Bennett and Rhetta Moran.

Hostility was also directed towards legal observers, who were continually distributing information cards to protestors generally, and specifically to the increasing numbers of people being bundled towards police vans.

A number of legal observers were subject to police intimidation, including verbal aggression and even physical assault. Other disturbing incidents included an approach by a police officer and an accompanying child protection officer to a parent holding a small child early on in the demonstration. Requests for identification were made on the basis that should matters develop whereby safety was put at risk, then the information would ‘become relevant’.

In the event, most protestors were released without charge, although a number received fixed penalties. At the time of writing Weyman Bennett remains on bail on suspicion of conspiracy to commit violent disorder. Rhetta Moran’s bail conditions, which had included a restriction not to attend any UAF meeting or gathering in the country, have now been successfully challenged.
The libel chill

English libel law is preventing not only the media, but also medical science and research, NGOs and others from holding the powerful to account. These were the words of John Kampfner, former editor of the New Statesman and chief executive of the free speech organisation Index on Censorship as he launched the Libel Reform Campaign’s report on libel law in England last November. These are words which ought to excite any defender of free expression a sense of foreboding.

It is not immediately obvious as to why this issue should matter to you and me. After all, few of those reading this magazine are likely to be drawn into litigation on account of having their names trashed in the press or because of something they may have written or said about an individual, group or organisation with whom they take issue. Yet for those who promote debate and the exchange of ideas and information in the interests of informing you and me, the law as it stands sides with those with the greatest wealth and wherewithal. English libel law has facilitated the silencing and intimidation of dissenters and gadflies around the world.

In 2005, a Saudi businessman named Khalid bin Mahfouz sought to sue a US academic named Rachel Ehrenfield over her book Funding Evil. The book, chiefly available in the United States, made allegations that Mahfouz supplied funding to Al-Qaida. But Mahfouz would find no succour in the US, where his complaints would be rebuffed by the twin buffers of the First Amendment and a body of case law requiring the claimant to prove in court the falsity or malice. Ehrenfield refused to participate and default judgment was entered against her. She counter-sued in New York but the courts refused to hear the case since Mahfouz had never done business in their state. However, reports of the action against her spurred the New York legislature into a response. In February 2008, New York State passed the Libel Terrorism (sic) Protection Act. The effect of this Act is to render foreign libel judgments unenforceable in its jurisdiction unless the law of the country affords a defendant the same protection as the First Amendment. Similar legislation has now been passed in Illinois, Florida and California.

In the UK, the cause célèbre for the reform campaign has been the case of Dr Simon Singh. In 2008, Singh wrote an article for The Guardian newspaper which attacked the British Chiropractic Association for the more grandiose claims some of its practitioners make for their specialism. The British Chiropractic Association immediately sued Singh personally rather than The Guardian. The trial judge was first called upon to decide the meaning of the words used. He ruled that Singh had not made an expression of opinion but an assertion of fact.

Singh appealed to Court of Appeal and may well have been heartened by no less a bench than Lords Judge and Neuberger together with Lord Justice Sedley. The grounds of appeal were summarised by the court as ‘that the judge elided the issues of meaning and comment when, though related, they are distinct… [and] in deciding the meaning of the words the judge overlooked their context.’ In the judgment the court noted that some two years had passed since the article’s publication. It was, it said, unlikely that anyone would have been so foolhardy as to repeat the opinions expressed by Singh and as such ‘this litigation has almost certainly had a chilling effect on public debate’.

The court went on to conclude that the material words were in its judgment ‘expressions of opinion’. It said that to compel the author of the words to ‘prove in court what he has asserted by way of argument is to invite the court to become an Orwellian ministry of truth.’ From Orwell to Milton: from whom their Lordships quoted the Apotheosis. In that, Milton wrote of his visit to Italy where he ‘found and visited the famous Galileo, grown old a prisoner of the Inquisition, for thinking in astronomy otherwise than the Franciscan and Dominican licensors thought. It was, their Lordships decided ‘a pass to which we ought not to come again’.

The Haldane Society is a supporter of Libel Reform. Please see sign the petition at www.libelreform.org

Russell Fraser, member of the Haldane’s Executive Committee
On the picket line and in the courts, Unite battle with BA

Round Two of the battle between British Airways and the trade union Unite reached the Court of Appeal in May. Readers will recall that, in December 2009, British Airways had been successful with an application for an injunction to prevent a strike where the union had included in the ballot workers who were being made redundant (see Socialist Lawyer 53).

The union then re-balloted, obtained a second ‘yes’ vote and the case came back before the High Court in May, with the employer seeking an injunction on the basis that the union had not done enough to advertise the full result of the ballot to its members. In particular, British Airways complained that Unite had not written to its members telling them that there had been 11 spoilt ballot papers in a vote of over 9,000 workers.

British Airways obtained an injunction, only to have the decision overturned by the Court of Appeal. Had the High Court decision stood, it is likely that injunctions of this sort would have become common, with employers relying on even trivial acts of purported non-compliance with the statutory regime as sufficient reason to injunct a strike.

But while trade unionists have been celebrating an important victory, the case may not yet be complete. The decision of the Court of Appeal was by a two to one majority with Lord Neuberger dissenting. There is every likelihood that British Airways will seek to appeal the matter to the Supreme Court.

David Renton

Liliany’s ‘crime’: speaking out on

Over a hundred lawyers, trade unionists and Members of Parliament protested outside the Colombian Embassy in March, on International Women’s Day, calling for the release of Colombian political prisoner Liliany Obando. Ms Obando, an academic and trade union consultant, has been jailed by the regime in Bogotá since August 2008 without having been put on trial or convicted of any crime. The Colombian authorities accuse her of the Orwellian-like crime of ‘rebellion’, though have refused to make public any of the alleged evidence that they have against the single mother of two.

According to the protest’s organisers, the campaigning group Justice for Colombia, Ms Obando’s true crime was simply to speak out about human rights abuses in Colombia. Despite claims by the regime that the situation has improved dramatically in recent years, Ms Obando had worked with unions and human rights groups to show how cases of torture and forced disappearances, the vast majority perpetrated by State forces, had risen dramatically.

Since her detention Ms Obando has faced repeated harassment from prison guards including, it is said, at least one physical assault. Prison authorities have also threatened to move her to a jail far from home, and her two young children, in response to her establishment of a prison human rights committee.

The protest outside the Colombian Embassy was attended by several trade unionists and lawyers who have been active in the campaign to free Ms Obando since her case was first taken up by Justice for Colombia shortly after her detention.

One of them, Karen Mitchell, a partner at Thompsons Solicitors, described it as ‘a disgrace that women like Liliany continue to be jailed for their beliefs in Colombia. Her only crime was to have spoken out about the appalling human rights situation and it is clear that the Colombian regime is trying to silence her. If she had committed a crime they would have simply put her on trial and convicted her.’

Shortly before her detention Ms Obando toured Canada and
human rights abuses

Australia as the guest of unions in those countries where she spoke out about the killings of trade unionists and the involvement of the Colombian security forces in the murders. The publicity surrounding her visits is thought to have angered the Colombian authorities who subsequently raided her home and detained her.

However, she is one of several hundred political prisoners held in Colombia with many activists being jailed for long periods as a result of their involvement in campaigning activities that the State deem as 'subversive'.

'The constant killings of those who speak out against the regime are clearly designed to silence critics' said Mariela Kohon of Justicia for Colombia. 'However, far less attention is given to the regime’s practice of jailing people to shut them up. They are held for months or years before being released without charge, all on the spurious accusation of “rebellion”. Given that the British Government has spoken out so forcefully about the plight of political prisoners in Burma, Zimbabwe and elsewhere it is high time that they start putting more pressure on the regime in Bogotá.'

Following a recent visit by the UN’s Special Rapporteur on Human Rights Defenders, Margaret Sekagya, the UN expressed their 'serious concern about the arbitrary arrests and detention of human rights defenders, as well as unfounded criminal proceedings against them'.

Liam Craig-Best

Brazil's Supreme Court upheld the country’s 30-year old Amnesty Law in April, denying victims of the country’s military dictatorship an opportunity to redress abuses that occurred between 1964 and 1985. Hopes are pinned on a second, pending case, at an international court.

By seven votes to two, the Supreme Court rejected a motion brought by the Brazilian Bar Association (Ordem dos Advogados) to reassess the Amnesty Law introduced in 1979.

The decision has drawn criticism from human rights organisations, the United Nations and the Inter American Court of Human Rights, where a separate case is currently being fought to bring to justice perpetrators of torture and murder in the infamous Araguaia Guerrilla case.

At least 70 people were allegedly imprisoned, tortured, murdered or simply disappeared in Araguaia between 1970 and 1975, when the Brazilian armed forces cracked down on armed resistance to the dictatorship in the Pará region. Four of the victims' bodies were later recovered by family members. Despite the recent decision of Brazil's Supreme Court, the Inter American Court of Human Rights will press ahead with the case and is expected to revisit the legitimacy of the Amnesty Law in Brazil later this month.

The main challenge to the Araguaia victims is that Brazil had not signed the Americas Convention on Human Rights at the time of the alleged abuses. However, the Inter American Court of Human Rights contends that Brazil has not fulfilled its obligations under contemporary international conventions to investigate the case or to provide information to victims and their families. In similar hearings preceding the Araguaia case in other Latin American countries, decisions have tended to disregard amnesty laws and find in favour of victims of human rights violations.

In 2009, President Luiz Inácio ‘Lula’ da Silva was praised for creating a national truth commission to identify victims and perpetrators of crimes during the military dictatorship. This was a process which had already begun in 2002, when the Brazilian government created a USD$2billion reparation fund for families and victims of persecution.

Progress has been slow, however, leading to widespread criticism and doubt over the government’s commitment to a meaningful reconciliation with past human rights abuses.

Amnesty laws such as Brazil’s place countries in direct conflict with their obligations under international agreements on protecting human rights.

Neighbouring Chile and Argentina, who endorse similar amnesty laws, have also come under pressure to prosecute perpetrators of human rights abuses during their military dictatorships of the same era. Cases in both Chile and Argentina have tended to dismiss amnesty in each judicial process, rather than leading to a direct challenge to, or repeal of the amnesty laws.

Ana Naomi de Sousa

We’re saddened to hear of the death of Professor JAG Griffith on 8th May. Professor Griffith was an outstanding lawyer and committed socialist. His book, The Politics of the Judiciary, published in 1977, was an inspiration for many of us and a warning against incorporation into the establishment. We send our condolences to his family and will publish a full obituary in the next issue of Socialist Lawyer.

JAG Griffith

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Valentin Urusov is serving a six-year sentence for possession of drugs at a penal colony in Yakutia, east Siberia. He is a Russian miner. His supporters say he was jailed after recruiting workmates to the independent Profsvoboda trade union. They say he is the victim of an illegal frame-up by police that courts and prosecutors failed to stop. Simon Pirani reports
Urusov's is the first case of a trade unionist being punished following trumped charges against him. Campaigners say the drugs charges against Urusov were fabricated by police officers who arrested him in September 2008. The frame-up appears to have been encouraged by managers at the Afrosi diamond mining company, where Urusov worked as an electrician and organised colleagues to fight to improve wages and conditions.

Supporters earlier this year warned that Urusov's life could be in danger, after he went to hospital with a kidney problem and complained of intimidation by prison authorities.

Leading Russian human rights activists, including Lev Ponomarev, Liudmila Alekseeva and parliamentary deputy Oleg Shein, have joined a campaign in Urusov's defence. Trades unionists in Germany, France, the UK and other countries, responding to an international appeal by activists in Moscow, have urged the Russian authorities to review the case.

The refusal by prosecutors to address detailed claims by Urusov's lawyers that evidence was fabricated against him is a key issue.

When Ivan Lavery, president of the UK mineworkers' union, wrote to Russian president Dmitry Medvedev about the case, officials from the federal prosecutor's office replied that convictions not be based on unlawful methods were used in the investigation 'have been checked and are not confirmed'.

Lawyers' claims of a frame-up

Urusov was arrested after leaving his home in Udachny on 3rd September 2008. In the preceding weeks, he and other activists had recruited 1,000 workers at the Aikhalo-Udachny ore processing plant to the Prosvoboda trade union. After a collective hunger strike and several mass meetings, the workers won an assurance from management that collective agreements governing wages and conditions would be amended by a joint commission which was due to meet two days later, 5th September, but never did.

Urusov states that, as he left his home, three men in plain clothes shouted to him to stop, and, fearing an assault by thugs, he ran away. They caught him, handcuffed him and forced him into a car. Only then did they identify themselves as drugs squad officers. They drove him 60 kilometres out of Udachny village to an isolated wooded area.

Urusov says his assailants fired guns near his head, forced him under threat of death to write a confession that he possessed drugs, beat him with sticks, placed a package containing cannabis resin in his coat pocket and pushed a substance under his fingernails, which he later learned was traces of cannabis designed to incriminate him.

When Urusov was convicted – on the grounds that he had had 66.3 grams of cannabis resin in his pocket – the court ignored his version of events, his lawyers say.

A central plank of the defence's argument is that N.A. Zeinalov, the Udachny prosecutor who brought Urusov to trial, failed to check Urusov's version of events, and the Mirinsky district court failed to take account of it in convicting him. Urusov's lawyers argue that this is a breach of paragraph 302 of the criminal code, which requires that convictions not be based on 'presumptions', and that 'all versions of events' must be properly investigated.

Vygnev Chernousov, a Moscow-based lawyer who represented Urusov at his first trial, in a memorandum supporting his appeal, pointed out a string of procedural failures, including:

- The court took no account of evidence given by G.A. Soloveva, a community activist who said Urusov had been active in anti-drugs campaigning, and of Urusov's mother, who said her son was being victimised for trade union activity.
- The court failed to check whether the arresting officers had followed standard procedures, such as registration of receipt of information about Urusov's alleged possession of drugs.
- The court accepted presumptions made about Urusov's supposed drugs use by the arresting officers, on the basis of unspecified 'operational information', but heard no evidence from medical professionals or Urusov's work colleagues that he used drugs.
- The court did not ask why S. Rudov, who organised Urusov's arrest, had travelled 600 kilometres from the Mirinsky district to Udachny to carry out the arrest; and why standard practices such as inclusion of a forensics expert in the arresting group and recording of the arrest by camera and/or video were not followed.
- The court did not question how the officers gained access to Urusov's home and his storage space at work, where they claim to have found 'drugs'; Urusov's claim that they stole his keys and undertook the searches in his absence and without his permission were not considered.
- The packaging in which the cannabis resin was contained was not correctly handled by police or subjected to proper forensic testing.
- The court's decision made no mention of the fact that the administrative report of Urusov's arrest was drawn up long afterwards and at a different geographical location, which the defence says was necessary for the police for the fabrication of evidence.
- Chernousov concluded that the differences between Urusov's claims and those of the arresting officers had not been reconciled, and
that the court had thereby breached the principle of ‘innocent until proven guilty’ as set out in paragraph 49 of the constitution of the Russian federation and paragraph 14 of the criminal code.

On 12th(227,511),(773,537) May 2009, after Chernousov published his memorandum, the Supreme Court of the Sakha republic rejected the Mirinsky court’s decision on the case, freed Urusov on bail and sent the case back to Mirinsky for reconsideration. On 27th June 2009 the Mirinsky court upheld the original decision and sent Urusov to a penal colony.

S. Rudov, the senior arresting officer, had meanwhile himself been arrested and imprisoned in connection with a separate case, in which he was accused of involvement in a corrupt property-acquisition scheme. Urusov’s lawyers had intended to take proceedings against the arresting officers for the illegal method used against their client.

Union accusations against company and local authorities

Urusov’s allegations of illegal police intimidation look even graver when taken together with evidence given by union leaders pointing to the likely involvement in the case of the Alrosa diamond company management, local authorities and the FSB security services.

The core accusation of such involvement by Sotsprof union federation leader Sergei Khramov, has to be seen in the context of trade unionism in the former Soviet Union. Sotsprof, to which Urusov’s Profsvoboda organisation was affiliated, is one of a number of small ‘independent’ unions formed in the 1990s by activists dissatisfied with the larger ‘official’ unions that evolved directly out of Soviet times.

In Soviet times these ‘traditional’, or ‘official’ unions were effectively part of the state structures. Their officials negotiated labour contracts with little workplace consultation, and threatened, spied on and helped the police to repress workers who dissented. The miners’ strikes of 1989-90, at the very end of the Soviet period, gave rise to the first substantial “independent” unions.

Two decades later the picture is more complex, and workers’ battles are conducted through both “traditional” and “independent” unions. But there are vestiges of the Soviet-era relationships, and nowhere more so in Yakutia, a huge, distant republic for which diamond mining is the key source of wealth. Khramov alleges that “traditional” union officials, who have remained as close to managers as they were in Soviet times, ratted on Urusov and his workmates because, in the course of their fight for better wages and conditions, they formed an “independent” workplace organisation.

Khramov, writing to parliamentarians in February 2009, quoted a letter from Pavel Tretjakov, leader of the “official” diamond miners’ union Profalmaz to Yakutia governor Vyacheslav Shtryov, who moved into the governor’s office after a spell as Alrosa general director. Tretjakov, who is also a regional parliamentary deputy for the pro-government party United Russia, wrote on 26th August 2008, that “various persons” had “penetrated” the Alrosa workforce to “push people to illegal actions (strikes, hunger strikes)” ... and complained that law enforcement agencies had not cracked down on these troublemakers hard enough.

The next day, Shtryov issued a decree (no. 1-5818-27/08), ordering his administration, together with Alrosa management to “prepare concrete material about particular facts, persons and actions” on the basis of which the law enforcement agencies could act. A letter from his deputy, Ildar Sultanov, proposed that to implement this decree a commission be set up comprising representatives of the procuracy, the militia, the Federal Security Service (FSB) and the “official” trade union. Within a week, Urusov had been arrested. In the months that followed, 13 other activists were dismissed from Alrosa, ripping the heart out of the rank-and-file workers’ organisation.

The campaign

While trade unionists in post-Soviet Russia have often faced beatings and intimidation by company security guards or local police, and dismissal from work, Urusov’s is the first case of an activist being punished following fabricated charges for a serious offence and consequent long-term imprisonment. Trade unionists and human rights campaigners in Russia thus see it as a pivotal case.

Once the Mirinsky court jailed Urusov for the second time, activists in Russia in a wide range of unions held meetings and street protests in his defence, and appealed to trade unions internationally to take up the case with Russian president Dmitry Medvedev. Trades unionists in several countries have lobbied the Russian embassies. In Britain, the NUM is appealing to other British unions to join its protests, and a support group has been established in London. In France a group of writers, artists and intellectuals has been formed to support Urusov.

In the first instance, people are asked (i) to write Russian president Dmitry Medvedev to ask him to review Urusov’s case, and to copy the correspondence to free.urusov@gmail.com and info@ikld.ru, and (ii) to urge their trade unions at national level to follow the NUM in taking up the case.

Simon Pirani is a Senior Research Fellow at the Oxford Institute for Energy Studies and author of Change in Putin’s Russia: Power, Money and People (Pluto Press, 2009).

More information from free.urusov@gmail.com. Campaign materials and updates available on the Free Valentin Urusov page on Facebook (you don’t have to join Facebook to see it) www.facebook.com/group.php?v=wall&gid=172737769194.
Russell Fraser: Perhaps the main thing of interest to readers of Socialist Lawyer is your views on the labour movement, trade unions and the law and indeed your involvement in that relationship.

John Hendy: (Laughs) Crikey, that’s a big question to start with. When you look back in modern British history, the labour movement created the Labour Party in order to get reform of labour law. It was the struggle arising from the Taff Vale case in 1901 (Taff Vale Rly. Co. Ltd. v Amalg. Soc. Rly. Servants [1901] AC 426) that led to the foundation of the Labour Party and ultimately to the Trade Disputes Act 1906. So the struggle for trade union rights has been at the very heart of the relationship between the labour movement and the Labour Party. Of course, when Thatcher came to power the Tories introduced all the anti-union laws. The labour movement hoped that when Labour came to power in 1997 it would at least extend or broaden the legal freedom of trade unions to protect their members. In other countries these are regarded as fundamental rights. But of course the Labour Government refused to restore trade union freedom and to introduce laws complying with international treaty obligations which the UK has ratified.

RF: Did you expect to see change from Labour?
I was relatively optimistic. Always cautious, but relatively optimistic. But the fact is it didn’t happen. We’ve had three terms of a Labour Government which are shortly going to come to an end and the labour movement’s really got nothing significant from the Labour Party in those three terms as far as fundamental trade union freedoms are concerned.

RF: Was it a belief in the labour movement that brought you to the law in the first place?
I think it was the discovery that there was such a thing as labour law when I was a law...
RF: Did you start your career as a labour lawyer?
Well, when you start you’ve got to do anything that comes your way. But very quickly I was lucky enough to do a bit of employment law and personal injury work for trade union members and it took off from there really. You have to take steps to shape your own career by pushing away work that you’re less interested in and focusing on what you’re keen on.

RF: And then, of course, perhaps the most significant point of your career came at the high point of the miners’ strike
Yes, it was certainly a very significant point in my life.

RF: Are you proud of your involvement with the miners’ strike and indeed the Haldane Society? Did you ever encounter professional difficulty through this assistance?
Millions of people supported the miners and indeed lots of people at the Bar supported the miners. There was nothing unusual in that. I was proud to have helped both personally and professionally. That caused no professional difficulties at all.

RF: Coming back to law reform, a number of cases of blacklisting in the construction industry was uncovered in the last year and some of those cases are now going to the tribunal. Is that an area of law which needs amending?
Regulations on blacklisting have just been introduced but they are not as strong as they ought to be.

RF: Might you have expected blacklisting to have been consigned to the 1970s and 1980s?
It doesn’t surprise me in the least that it continues. I’ve always assumed that it has gone on – for as long as employment has existed and active trade unionists have been about. My dad was an active trade unionist all his life, much of it as an electrician on building sites. I grew up knowing about blacklisting of active trade unionists in that industry.

RF: You said earlier that Labour is coming to an end in power and that must imply you expect a Tory victory?
Not necessarily but whatever the result of the next election the Labour Party is clearly going to be weakened. Whatever the complexion of the next government I can’t see any possibility that they’re voluntarily going to give trade unions the essential rights that they need. The most fundamental right is the right to organise industrial action and the right of workers to take industrial action without losing their jobs or otherwise being penalised.

RF: And that's what I wanted to lead up to what you might expect to emerge from either the Labour Party or the Conservatives after the election in terms of labour law especially as there may be more industrial strife to come this year?
There have been murmurings about the Tories implementing a requirement that pre-strike ballots would have to represent a majority of the workforce instead of the majority of those voting. Barring strikes in essential services has also been talked about. But I wonder what enthusiasm there might be for those sorts of steps to be frank. The law is so slanted against trade unions already that its hard to see what added value these steps might be thought to bring.

RF: Would you re-introduce any Thatcher union law?
I wouldn’t necessarily go back to the labour legislation of the 1970s. What is required are positive rights that reflect the standards of Conventions Nos. 87 and 98 of the International Labour Organisation (ILO) and Articles 5 and 6 of the European Social Charter – that’s what we ought to have. After all those are treaty obligations which the UK has ratified but which it refuses to implement.

RF: Are there many countries in Europe whose workers, on balance, have a better deal than our own?
Virtually every country in Europe.

RF: Unions are generally seen as quite strong in France, for example. Do you fear for the future of unions here?
No, no I don’t. Workers need trade unions and always will do. The unions, with all their faults, may take a bashing but they’ll always be there. You mentioned the union movement in France but only about 12 percent of French workers are in trade unions. Yet they wield enormous powers because around 90 percent of the workforce benefits from collective agreements made by trade unions and of course the French unions can mobilise massive demonstrations.

RF: Why is that? Why does the general public in France appear to always support those workers on strike?
That’s a huge cultural question. One has to know about the history and tradition of the French revolution; the position of the left and the communists during the Resistance; all those things, so that the French labour movement is, in many ways, unique. Most other countries have high rates of union membership and high rates of collective bargaining coverage. Only in France do you have that extraordinary dichotomy between a low level of union membership and a high level of collective bargaining coverage. Britain’s uniqueness in Europe is low levels of union membership and low levels of collective bargaining coverage. It’s only around a third of workers now who have the benefit of a collective bargain in Britain. If you look across the channel virtually every country has in excess of 80% collective agreement coverage – as indeed we did here prior to Thatcher.

RF: Do you put that down to cultural distinctions?
No, that’s down to government policy primarily. It’s the result of Thatcherism and Blairism. They set out to destroy collective bargaining. Industry-wide collective agreements were destroyed. All legal and structural supports for collective bargaining were removed. And, of course, legislation removed the power of the unions to take industrial action, particularly sympathetic industrial action. It’s the combination of those concrete measures that have destroyed collective bargaining coverage in Britain – nothing to do with culture.

RF: And you don't see that changing any time soon presumably?
I think there are possibilities. I think the European Court of Human Rights offers a glimmer of hope. The decision the year before last in the case of Demir and Baykara (*Demir and Baykara v. Turkey* [GC], no. 34503/97, ECHR 2008) established that Article 11 which protects the right to be a union member has, as an essential element, the right to collective bargaining. That will have big repercussions. If the right to collective bargaining is an essential element so must be the right to strike which necessarily underpins the right to collective bargaining.

**RF: Has it been relied on in the English courts yet?**

We relied on it in the case of Metrobus v Unite (*Metrobus Ltd v Unite the Union* [2009] IRLR 851) in the Court of Appeal last summer in support of the right to strike. We argued that the restrictions on the right to strike in UK legislation ought to be construed in accordance with the European Convention given the lead in cases like *Demir*. But the Court of Appeal was not impressed with that argument and they construed the UK legislative requirements very strictly. Those requirements are just extraordinary; in Metrobus the injunction was granted on two bases: (i) the union took 20 hours to deliver the ballot result to the employer – this failed the requirement to deliver it “as soon as reasonably practicably” (there was no complaint about the timing of the notice of industrial action); (ii) the union failed to give the “explanation” in the notice of industrial action that its identification of the proposed strikers was drawn from its computer! Not surprisingly the employer made no complaint that it had suffered any detriment by these two failures. But the CA held that either justified the injunction. When you explain that to European lawyers they can’t believe it.

**Ripon Ray: Why are judges against unions?**

I don’t think the problem here is the judges; it’s the law. Nonetheless, generally speaking, and with notable exceptions, judges in every country, tend to reflect the economic interests of those who control the country. That would be equally true in Cuba and Venezuela as it has been in pre- and post-apartheid South Africa. Here, though, unions have a tough time in court. We’ve seen the judiciary hammer the government on various restrictions on civil and political freedoms.

**RF: What’s formed your view that some labour laws are iniquitous?**

Politically anyone on the left will see these restraints on working class power as unjust.
“It can be quite lonely representing the sorts of interests that Haldane members are naturally inclined towards”

The Labour Organisation judgments in the ILO have been ignored by successive governments, Conservative and Labour. Twenty years of adverse judgments in the ILO have been ignored by the UK – which is basically enemy territory – because it puts people who are on the left in touch with each other. It can be quite lonely in touch with the old, I always thought it was rather sad that people like myself were active in the Haldane when we were younger but then we get caught up in other things – family things, work and what have you – and we fall away. But there are a lot of links to be passed on and a lot of help that can be given to those coming up. I’d like to see the Haldane do more of that and I’m sure the will is there, it just requires working out the structures in which that can be done.

It would perhaps have been understandable if the world-weary ranks of the Labour movement had not turned out in good number as they did for this talk. The nation was still getting used to the sight of the Clegg-Cameron (Clameron, anyone?) love-in as those of us with even a shred of a care for workers’ rights pondered what hardships this new administration might wrought. We convened against the hostile backdrop of continuing and deliberate attacks on the right to withhold one’s labour.

John Hendy QC asked the obvious questions of his companions on stage: why after 13 years of a Labour government do we still have virulently anti-union legislation? Lord Wedderburn responded. Collective rights have always been cherished more by our European cousins; the state went to war on the labour movement in 1983; civil servants, cautious and conformant as ever, balked at Michael Foot’s dream of a ‘Workers’ Rights Act’; but, he concluded, hope lies with the ECHR and the judgments of its courts.

Jim Mortimer warned us not to underestimate the effect of the ‘Miners’ Strike. He lamented that the Parliamentary Labour Party did not fight in Parliament as it should have done, since the country at large sympathised with the plight of miners. Mr Mortimer damned Neil Kinnock’s failure to challenge the Tories and the National Coal Board. Mr Mortimer also lamented the unions’ current failure to connect effectively with their memberships and drag the Labour party back into the wider Labour movement. He demanded that collective bargaining be restored to its rightful place in employment relations. The message from those with a grip on the public purse should be simple: no public funds if you do not recognise collective bargaining.

John Hendy QC reminded the audience the new government will soon have to yield to the mass of unfavourable International Labour Organisation judgments, accumulated over 20 years. Hope then, it seems, rests in not just the workers but also the law.
A recent case involving sex workers may be unique, says Anna Morris

**HAPPY ENDING**

On 29th April a jury of 10 men and four women sitting in Luton Crown Court acquitted Claire Finch of keeping a brothel at her home in Chalton, Bedfordshire. Ms Finch, 49, a qualified masseuse ran a massage parlour from her three bedroom detached house and also offered clients massage with a ‘happy ending’.

Ms Finch worked with other women, some of whom would provide a full range of sexual services. The decision to work collectively was based largely on concerns for the women’s safety. There were not more than two to three women working at any one time. The youngest woman was 32. There was no drug use nor did Ms Finch allow anyone who was not a friend or acquaintance to work with her. There was no coercion and no illegal immigrants. Any money that was earned by any of the women was split 50/50, with Ms Finch’s half destined to pay for the advertising and overheads.

Ms Finch and her colleagues worked in this way under the name ‘Astrid’s Massage Parlour’. During the trial, three of Ms Finch’s neighbours, including her next-door neighbour Joan (85) testified that they knew what Ms Finch did for a living and that she was the ideal neighbour.

‘Astrid’s’ was just one of the many massage parlours that advertised in local and regional press such as the Luton and Dunstable News. During the trial, the police admitted that since 2003 they had had intelligence that the premises were being used for the provision of sexual services but did nothing to prevent its operation. Ms Finch told the jury that in 2004 she had been visited at home by two police officers who knew that she was running a massage parlour. These officers warned her about a man who knew that she was running a massage parlour. During this time, she called the police to attend after a client had become physical when she had refused to comply with his wishes. Ms Finch also stated that since she had stopped working collectively, she had been compelled to offer a full range of sexual services to clients, not just ‘happy endings’.

Her Honour Judge Mensa directed the jury that if they found on the balance of probabilities that Ms Finch faced an immediate threat of unlawful violence or death and that she acted reasonably in order to avoid it, then they must acquit her. The jury did just that, unanimously and in little over two hours.

The case therefore raises an important question for policy makers and law reform: if the new Government is to seriously engage in the debate surrounding prostitution, then Ms Finch’s case strongly suggests that the way to prevent any exploitation of women is to close down every premises where women work, thereby forcing people onto the streets or further underground. It is time to recognise that if a woman does exercise her free choice to engage in sex work, she is entitled to do that work as safely as possible.

Anna Morris represented Claire Finch, instructed by Lawton’s Solicitors, Luton. She is a barrister at Garden Court Chambers and Vice Chair of the Haldane Society
Israel’s brazen policy of indiscriminate death and destruction in Gaza during operation Cast Lead in 2009 is well documented in the Goldstone report. The reaction of the UK authorities was barely more than a whisper and a momentary murmur. When a member of Hamas was assassinated in Dubai, the response was a gently raised diplomatic eyebrow. Once, however, the modus operandi of the murder was finally unravelled a minor storm broke out, not so much about the illegality of the murder, but about the fact that over half the gang employed by Mossad and authorised by the Israeli state used British passports. At some point at least 12 British citizens living in Israel had their passports cloned and photographs substituted. Even in the face of such a serious infringement the repercussions were merely symbolic. A senior Mossad agent in London was asked to leave. By the time you read this article there will be another agent in place and the whole incident will have become a dim and distant indiscretion.

This deliberate designation of legal immunity accorded to Israel by other states follows a depressingly repetitive pattern over the last 60 years. The UN passes resolution after resolution, the World Court (ICJ) passes a searing judgement on the illegality of the wall and its ramifications and the need for action, but not a single political finger is lifted to implement any sanction or remedy for the numerous and substantive violations.

Israel is so sure of its unassailable immorality accorded to Israel by other states follows a depressingly repetitive pattern over the last 60 years. The UN passes resolution after resolution, the World Court (ICJ) passes a searing judgement on the illegality of the wall and its ramifications and the need for action, but not a single political finger is lifted to implement any sanction or remedy for the numerous and substantive violations.

IsraeI’s Legal Immunity

From settlements to wall, assassinations to the Gaza flotilla, Michael Mansfield QC comments on the Russell Tribunal on Palestine, while Marina Sergides looks at the attempts at enforcement of universal jurisdiction.
the view that all states are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all states, while respecting the United Nations charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people’s right to self-determination is brought to an end. In addition, all the states parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 are under an obligation, while respecting the United Nations charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that convention."

It was against this background that on 4th March 2009 in Brussels, the Russell Tribunal on Palestine was launched. Essentially this project is a citizens’ or people’s initiative supported by prominent international jurists. Bertrand Russell was the inspirational spirit behind the original concept. There have been two previous tribunals – the first on Vietnam 1966-67 and the second on Latin America in 1974-76. The current one concerning Palestine (RTP) it is to hold hearings in five parts. The first part occurred in Barcelona on 1st-3rd March 2010. The second will take place in London towards the end of the year. Participants included Nobel Prize laureates, a former UN Secretary General, a former UN Undersecretary General, two former Heads of State, senior politicians and many representatives of civil society: writers, journalists, poets, actors, film directors, activists, scientists, professors, judges and lawyers. The whole process was opened by Stephane Hessel, French Ambassador and co-author of the Universal Declaration on Human Rights.

A jury panel of eight members has been brought together to adjudicate during the five parts. They are Mairead Corrigan Maguire, Nobel Peace Laureate 1976, Northern Ireland; Gisele Halimi, lawyer, former Ambassador to UNESCO, France; Ronald Kasrils, writer and activist, member of Mandela’s government, South Africa; Jose Antonio Martin Pallin, emeritus judge, Chamber II, Supreme Court, Spain; Cynthia McKinney, former member of the US Congress and 2008 Green Party presidential candidate; Alberto San Juan, actor and activist, Spain; Aminata Traore, author and former Minister Culture of Mali; and myself. In Barcelona the hearings were divided into sessions presided over by the jury during which witnesses, both expert and lay, gave evidence and were questioned by the panel. In order to expedite proceedings and concentrate attention on key issues, witnesses were asked to submit reports or statements in advance. At the end the jury deliberated upon its verdict and
completed a report containing its conclusions.

The focus was not so much the obvious and well recognised violations by Israel but the complicity of others in these violations and most importantly what can be done to end the pattern of immunity. To this end six different areas of concern were identified: the right to self determination; settlements and the plundering of natural resources; the annexation of East Jerusalem; the blockade and invasion of Gaza; the construction of the wall; and the European Union/Israel Association agreement.

The jury examined the role of the EU with regard to each of these, and having received testimony from a wide range of witnesses, the most poignant of which came from humanitarian aid workers and activists on the front line as well as a military member of the UN Goldstone mission, it reached unanimous conclusions about the breaches by the EU and its member states of specific rules of international law. In consequence the tribunal called on the EU and its member states to fulfil its obligations forthwith:

• to implement the EU Parliament resolution requiring the suspension of the EU/Israel Association agreement;
• to implement the UN fact-finding mission report on Gaza with regard to the collection of evidence and the exercise of universal jurisdiction against Israeli and Palestinian suspects;
• to repeal any requirements in any member state that a suspect must be a resident of that member state or any impediments to the compliance with the duty to prosecute or extradite all suspected war criminals sought out by the member states;
• to ensure that universal jurisdiction laws and procedures are made as effective as possible in practice; and
• to make no regressive changes that would blunt the effect of existing universal jurisdiction laws.

The RTP also called on individuals, groups and organisations to take all avenues open to them to achieve compliance by EU member states and the EU of their obligations. In consequence the tribunal called on the EU:

• to repeal any requirements in any member state that a suspect must be a resident of that member state or any impediments to the compliance with the duty to prosecute or extradite all suspected war criminals sought out by the member states;
• to ensure that universal jurisdiction laws and procedures are made as effective as possible in practice; and
• to make no regressive changes that would blunt the effect of existing universal jurisdiction laws.

The proposed changes advocated by Lord Pannick QC would merely undermine the concept of universal jurisdiction and the rights protected by the Geneva Convention. It appears that the paramount and overriding factor for Lord Pannick QC is not whether it is necessary to have effective implementation of the doc-

A UNIVERSAL APPLICATION OF UNIVERSE JURISDICTION

At the end of 2009 Israel reacted angrily to the issuing of an arrest warrant for the former Israeli Foreign Minister, Tzipi Livni. The warrant granted by Westminster Magistrates’ Court in London for war crimes following Israel’s attack in Gaza, was revoked shortly after when it was found Ms Livni was not visiting the UK. Ms Livni was Foreign Minister during Israel’s assault in 2008 but does not have diplomatic immunity.

This has provoked a debate about the enforcement of universal jurisdiction – the right to prosecute a perpetrator of certain crimes regardless of the place of the perpetration, the nationality of the perpetrator or the nationality of the victim.

Currently, a Judge is entitled to issue a warrant for arrest for war crimes carried out in other countries without any prior decision from the Crown Prosecution Service (CPS) or Attorney General (AG) and after considering whether there is a prima facie case. However, an anomaly arises at the second stage, the issuing of charges and subsequent enforcement of the warrant. The AG, rather than the CPS or Director of Public Prosecutions (DPP), can decide whether a charge should not be brought on public interest considerations, despite the existence of a prima facie or even a good case. Some argue that the status quo (the AG’s veto restricting universal jurisdiction) should go further than it currently does in that the AG should also be entitled to veto any warrant for arrest at the first stage.

Lord Pannick QC gave a talk to the Lawyers for Palestinian Human Rights (LPHR) follow-

Tzipi Livni was Foreign Minister during Israel’s assault in 2008 but does not have diplomatic immunity
licication to

trine of universal jurisdiction such that it could or would deter foreign leaders from committing gross and unlawful acts against human beings (as envisaged by the Geneva Conventions) but further, whether, put bluntly, the application of universal jurisdiction potentially acts to hinder international relations that are stated to be in the public interest but that are, in reality, inherently political.

Daniel Machover (head of civil litigation at Hickman and Rose Solicitors) also spoke at the LPHR event. He was of the view that the AG should not have the power to decide whether to issue an arrest warrant at the early stages of any potential prosecution. First, he argued, there are few, if any, other criminal offences where the ‘public interest test’ is considered at the pre-investigative arrest stage. And there are good reasons why this is so. The public interest can only be properly and thoroughly determined once all the information is obtained through the investigative process. This process can, and often does, take place after a warrant has been issued and/or an arrest has taken place. Without proper regard for the nature of the crime alleged and the evidence in support and against it, how can any such decision be made?

Second, we are the only country in Europe that adopts a system where the AG, a politician and advisor to the cabinet (rather than the DPP or CPS), determines whether to charge in such matters (albeit that the AG is answerable to Parliament). Where the relationship between the decision maker and executive is so close it is vital that we protect the right to commence private proceedings in the criminal court to obtain an arrest warrant. This right acts as a safeguard against non-judicial or non-inde-

pendent decision makers who refuse or fail to prosecute under criminal law even where there is a prima facie case, if not more. Although, to a degree, the likelihood of any prosecution will largely vary according to the quality of the office holder, any AG will be under domestic and foreign pressure, and so is unlikely to commence any sort of criminal prosecution such as the one under discussion.

Perhaps, however, the most cogent reason for not adopting the change proposed by Lord Pannick QC is this: the phrase ‘public interest considerations’ can all too often become a cloak behind which our leaders hide political interests. We have seen a similar practice for all things ‘terrorist related’. The pressure to respond to our international friends and the potential to undermine the principle we hold so dear is real, and this could not be more clearly demonstrated than in the storm caused by the arrest warrant issued against Tzipi Livni.

The Government at the time acted quickly to reassure Israel and the former Foreign Min-

ister that the warrant obtained from an English Court, which had applied domestic law and concluded that there was a prima facie case of war crimes, that there was simply nothing to worry about. The former Foreign Secretary David Miliband said in a statement in December 2009 that “the procedure by which arrest warrants can be sought and issued without any prior knowledge or advice by a prosecutor is an unusual feature of the system in England and Wales. The government is looking urgently at ways in which the UK system might be changed in order to avoid this sort of situation arising again.” The new Con/Lib Government has done nothing to distance itself from this position. Foreign Secretary William Hague has said he intends to ‘act speedily’ to amend rules on universal jurisdiction in order to remove the possibility of private prosecutions for international crimes in the UK.

Why is the Government so eager to change the law if the AG is so trusted to act in the best interests of the public? In truth the public interest considerations, particularly in the current context, are so inextricably linked with political concerns, embarrassments and sensitivities that the concept of universal jurisdiction can only be properly protected by the judiciary. Without their intervention, at least at the early stage of any potential prosecution, the vital questions of whether there is prima facie evidence of war crimes having occurred (and therefore a breach of international obligations under the Geneva Conventions) will simply never be asked or will be lost to those tempting and overriding political considerations.

Marina Sergides is a barrister at Garden Court Chambers and a member of the Haldane Society’s Executive Committee.

Postscript

Since writing this article its central point has been amply demonstrated once more by the murderous Israeli attack on the humanitarian aid flotilla, and by the stunning failure of European governments (especially the UK) to take any protective measures. On 20th May I wrote to the Deputy Prime Minister (see The Guardian website) in the light of his protestations about the Gaza blockade (The Guardian, 22nd December 2009), predicting this fatal outcome unless something was said or done immediately. The customary and conspicuous silence ensued. A bevy of coalition politicians can rush to Afghanistan but not to the assistance of peace activists. So much for the rule of law.

Michael Mansfield QC is President of the Haldane Society
A group of several hundred demonstrators gathered outside the Chilcot inquiry to protest as Tony Blair was giving evidence on 29th January of this year. Despite the proximity to Parliament Square, the event was subject to the low-key policing favoured by the Met in the aftermath of the G20 protests. However, whilst the Chilcot demonstration was underway, in Court Number One of the Royal Courts of Justice (RCJ), the Administrative Court was considering the more heavy-handed police tactics that had been adopted by police in the recent past. Judicial review proceedings arising out of the Climate Camp protest at Kingsnorth power station in 2008 were reaching a conclusion.

R (E, T and Morris) v Chief Constable of Kent Police

The claimants, two 11 year-old children and one adult, David Morris, were bringing claims against Kent Police that stop and search powers had been unlawfully used against them when they attended Climate Camp. The children were going to their first ever Climate Camp. David Morris had attended several demonstrations in the past and was one of the litigants in the McLibel case. The claimants had all been required to submit to searches by police using powers under Section 1 of the Police And Criminal Evidence Act 1984 (PACE) in order to enter the Kingsnorth demonstration. For a search under s.1 PACE to be lawful, the searching officer must personally form reasonable grounds to suspect

Owen Greenhall reports on the unlawful searching of climate change protestors.
that the person searched has ‘stolen or prohibited items’. Whilst some protesters intended to commit acts of civil disobedience during the demonstration, simply attending Climate Camp was not a lawful basis to be searched. The search forms given to the claimants state things like ‘Oasis/Kent’, a reference to the name of the policing operation at Kingsnorth, as grounds for the search.

At the conclusion of the judicial review, it was accepted by Kent Police that searching the individual claimants was unlawful and that this constituted a breach of their rights under Article 10 (Freedom of Expression) and Article 11 (Freedom of Assembly) of the European Convention. The claimants had also reserved the right to amend their claim in light of the anticipated decision of the European Court of Human Rights in Gillan and Quinton v UK. This case also concerned the use of stop and search powers against protestors, though under Section 44 of the Terrorism Act 2000, and the judgment was given barely a week before the outcome in the Kingsnorth case. Following the decision in Gillan (ECHR Application no. 4158/05), it was conceded that the Kingsnorth claimants’ Article 8 (Private and Family Life) rights had also been violated. The Kingsnorth case was therefore the first domestic case in which stop and search powers were held to breach privacy rights.

Whilst the Kent Police were prepared to concede that the particular searches carried out on the three claimants were unlawful, it was the claimants’ position that the treatment they received was symptomatic of a blanket policy to stop and search everyone attending the demonstration. When granting permission to bring judicial review proceedings, Mr Justice Roderick Evans said that the claims: ‘involved matters which go beyond cases of the individual claimants and that matters of wider police activity and public importance arise’.

Stop and Search at Kingsnorth
Although the disruption of lawful protest through the use of stop and search powers is not unique to the demonstration at
Kingsnorth, it does stand out for the sheer scale on which the powers were used. According to the police’s own records, 8,218 searches were carried out during the five-day camp. A strategic review carried out by South Yorkshire Police concluded that the use of stop and search was so widespread that ‘a near “condition of entry” application of the power existed’. Queues lasting up to two hours formed as people waited to be searched at checkpoints before entering the protest site. Many people were searched several times. Such tactics were clearly intimidating and discouraged local residents from joining the demonstration. Protesters who objected to the searches were often arrested, though charges resulting from these arrests were later dropped.

During searches, police officers routinely sought to ascertain names and addresses of those attending the camp by noting details from bankcards and other items examined. Individuals with foreign accents were threatened with arrest on suspicion of immigration offences if they did not provide their personal details. This systematic recording in police databases of information about so-called ‘domestic extremists’ has since been widely condemned in the media.

It is difficult to exaggerate the intrusive nature of the policing of the Kingsnorth demo and the use of stop and search powers was integral to this strategy. The South Yorkshire review states that the way in which stop and search powers were used was ‘disproportionate’ and that ‘the counter productive results of unified crowd hostility and organisational vulnerability through legal challenge should not be overlooked’. In plain English: stopping and searching everyone makes people so angry they sue the police.

**Duty of Candour**

Some 3,550 of the searches conducted at Kingsnorth were carried out under s.1 PACE. The three claimants sought disclosure of the search forms relating to these searches to discover what grounds were stated on the forms, in order to establish that the police were operating a *de facto* blanket policy of stop and search. Whilst the claimants were not conducting group litigation in the technical sense, requests for disclosure were made in light of the fact that the court had acknowledged that the claims raised matters of wider importance. Guidance on the duty of candour of public authorities in judicial review cases was recently...
released by the Treasury Solicitor in the wake of the Binyam Mohamed litigation. The duty is described as a ‘weighty responsibility’ embodying the principle that ‘a public authority’s objective must not be to win the litigation at all costs but to assist the court in reaching the correct result and thereby to improve standards in public administration’. However, the actions of Kent Police appear to fall short of this ideal.

Whilst permission for judicial review was granted in May of 2009, and requests by the claimants for disclosure soon followed, the Kent Police refused to provide access to any of the search forms sought by the claimants. Steadfastly maintaining that there was no blanket policy of stop and search, Kent Police chose instead to write to the Legal Aid Authorities complaining about the claimants’ ‘unreasonable behaviour’ and requesting that ‘their funding should be stopped forthwith’. In January 2010, the lack of progress on disclosure necessitated a further directions hearing, with related costs, in order to progress the case. It was only after this hearing, and some eight months after permission for judicial review was granted, that Kent Police finally disclosed Slide 18.

Slide 18 is part of the material used to brief officers prior to the Kingsnorth demo. It sets out the power to stop and search under s.1 PACE and then states that the officer giving the briefing must read out: ‘Intelligence and information received directly from protestors website, in the lead up to Climate Camp, that they intend to break the law to attack the Power Station gives police the reasonable grounds [to use s.1 PACE].’ Described in court by Alex Bailin QC counsel for the claimants, as a ‘smoking gun’, the significance of Slide 18 was immediately picked up: it did not contain a lawful basis for the use of stop and search. John Halford from Bindmans, the claimants’ solicitor, said of the slide that: ‘It demonstrates without doubt that Kent’s public position on this important protest and those who wished to attend was a grotesque parody of what was going on behind closed doors. Police Officers were being secretly briefed to treat everyone coming to the Climate Camp as suspected criminals, and to stop and search them accordingly.’

**Future Litigation**

There are a large number of protestors who were subject to the same treatment as E, T and Morris. The official debriefing report into Operation Oasis concludes that ‘Officers were informed to use their statutory power of search under Section 1 of PACE. This in turn was interpreted as an instruction to search everyone.’ However, whilst accepting that mass stop and searches took place and that the briefing materials put forward an unlawful ground for stop and search, the Kent Police nonetheless refuse to accept that there was a blanket policy of stop and search. As John Halford says, ‘The police won’t accept everyone else was searched unlawfully – but that is the logical conclusion of this new evidence.’ Legal Aid is not available to the majority of the other protestors, but 47 of them have filed claims against Kent Police and are acting as litigants in person.

A recent Freedom of Information Act request was submitted to Kent Police for evidence that they had disseminated the lessons learnt from Kingsnorth. The response that ‘there is no information held by Kent Police pertinent to [the] request’ indicates their attitude to the case. Whilst the glare of publicity following the G20 may have forced the Met to improve its public order policing, the manner in which Kent Police have conducted the Kingsnorth litigation and the events at Bolton earlier this year show that outside of this spotlight much more needs to be done to defend freedom to protest. Moreover, it is important not to lose sight of the issues which motivate people like David Morris to engage in demonstrations: ‘The key issue in this case is the threat of catastrophic climate change hanging over us and future generations. This issue is far too important and urgent to let ourselves be intimidated or deterred by police violence, corporate greed or government propaganda. We are all climate activists now!’

Owen Greenhall is a race discrimination caseworker at the Prisoners’ Advice Service and a member of the Haldane Society’s Executive Committee.
In my role as director of the Innocence Network UK (INUK) I am regularly contacted by lawyers, both criminal and non-criminal, who offer their services freely to a member of the innocence project working on the cases of people who say that they are innocent of the serious criminal offences that they were convicted of, mainly murder and rape. They say that they want to work with an innocence project because they want to give something back, that they care about justice and they want to help innocent people who may have been wrongly convicted to achieve it.

In the five years since the establishment of INUK, this has led to dozens of pro bono lawyers assisting approximately 500 student caseworkers in the 25 member innocence projects in universities all around the country that are currently collectively investigating 78 cases of mainly long-term prisoners maintaining innocence. Such lawyers are welcomed for the vital legal work that they can provide to innocence project investigations. This includes facilitating prison visits, ensuring that correspondence to prisoners is confidential and not opened before it reaches them, obtaining affidavits from witnesses who want to provide alibis or retract their incriminating statements and appointing a barrister when the case is referred back to the Court of Appeal (Criminal Division) (CACD).

However, reflecting not on what lawyers working with member innocence projects say in response to claims of innocence by alleged victims of wrongful conviction but, rather, on what they do, it is not difficult to see why it is so rare for wrongful convictions to be overturned. My experience shows that the reality, unfortunately, is that lawyers working with the innocence projects tend to put law before people. They are overwhelmingly deferential to the dictates of the legal system and appear unwilling to fundamentally challenge the potential injustice of the rules of criminal appeal.

This is ironic because INUK was established precisely because the existing appeal and post-appeal provisions are failing potentially innocent victims of wrongful conviction and are in urgent need of reform. To start with, the principal way that alleged wrongful convictions for serious offences are overturned in law is by fresh evidence or argument that was not available at the time of the original trial as required by s. 23 of the Criminal Appeal Act 1968. As such, evidence of innocence will not generally even constitute grounds for appeal, let alone overturn a wrongful conviction unless there are exceptional reasons for why it was not adduced at trial.

This requirement for fresh evidence is reinforced by the Criminal Cases Review Commission (CCRC). The CCRC was set up in the wake of notorious cases such as the Guildford Four and the Birmingham Six and is the official (so-called) independent public body that reviews alleged miscarriages of justice at post-appeal stage. The CCRC is widely believed to have been established to fully investigate claims of innocence and assist in overturning wrongful convictions if evidence of innocence was found. However, the CCRC is, in fact, bound to the appeal courts by statute, ostensibly s.13 of the Criminal Appeal Act 1995, to only refer cases back to the appeal courts if it is felt that there is a 'real possibility that the conviction will not be upheld'. In consequence, innocent people can remain languishing in prison even if the CCRC is presented with evidence of innocence if that evidence was or could have been made available at the time of the original trial.

In short, the criminal appeal system is not
really about overturning the convictions of innocent people who receive criminal convictions. Rather, it is about overturning convictions deemed to be 'unsafe in law'. This is defined in terms of a breach of the legal process or the presentation of something fresh that was not or could not have been available at the time of trial to enable a distinct investigation of all of the evidence that lead to the conviction to determine its reliability and/or applicability to the conviction. They investigate all of the available unused material for evidence of innocence and carry out fieldwork investigations, such as interviewing potential witnesses, finding possible alibis, and researching new scientific technologies that could establish innocence or guilt. In this way, INUK reflects both the popular belief and the public aspiration that the criminal justice system should convict the guilty and acquit the innocent.

Despite this difference of approach, lawyers working with INUK's innocence projects still resign themselves to working within the legal framework. Perhaps due to a deeply engrained cultural resistance, many do not seem to be able to step outside of the very processes INUK seeks to challenge. Instead, they often opt to subordinate innocence project investigations to the criteria of the CACD and the CCRC by advising students to ignore the question of factual innocence or guilt and seek out legal grounds for appeal, attempting to close cases if no obvious grounds for appeal can be found. This is, perhaps, not surprising as it is not usual for lawyers to question the correctness of the legal process. Instead, they are enculturated to dutifully learn and apply the law in the area that they practise. They are not inclined to see any value in critiques or challenges of existing law for the clients that they represent.

..."I ask my law student caseworkers to suspend the pursuit of legal grounds and focus their investigations on finding out if the alleged innocent victim of wrongful conviction is telling the truth"...
Reviews

The Army of Crime (L’armée du crime)
Dir: Robert Guédiguian, 2009

It is hard to make a film about the Second World War that shows us something we haven’t seen before. Yet Guédiguian’s beautifully tragic film manages to do this by steering well clear of the battlefields and combat that for many of our generation have come to symbolise this war.

The story is instead focused on a group of men and women who resisted the Nazi occupation of France, but who were never acknowledged by history for their efforts. The protagonists are an assorted group of communists from around Europe, including Poles, Romanians, Italians, Spaniards, Armenians and others seeking refuge from fascism in France. Several are also Jewish and have borne the brunt of the anti-Semitic dictats of the Nazis. Their actions led to the infamous Affiche Rouge, a red poster put up all over France to denounce the occupiers as an ‘army of crime’.

The discrimination they face contrasts sharply with the seeming normality of life in Vichy France. Officers walk arm in arm with smiling girls, the sun shines and German soldiers play football in the park inviting Frenchmen to play with them. Yet anti-Semitic propaganda is already present in newspapers. It is within this context that the young Jewish communists begin to react against the increasingly anti-Semitic policies of the Vichy government. This uncoordinated and sporadic resistance is condemned by their leaders, and soon channelled into politically motivated and organised resistance by the Communist Party as a whole once the Nazis invade the USSR.

The question of the legitimacy of violent resistance to tyranny is one of the main issues addressed in the film. A particularly poignant part of the film shows Missak Manouchian, a poet whose family were massacred in the Armenian Genocide, struggling to reconcile the need for violent resistance with his personal morality. He faces the dilemma shared by all those who fought in the war. Eventually he has to choose sides. He does so with dignity, fully understanding what it means. One of the film’s strengths is that it treats this complex subject with subtlety. Ultimately the message is clear when one of the characters states ‘We fight for life. We kill people but we’re on the side of life’. This is not a glorification of violence but rather an acknowledgement of the legitimacy of using violence to resist greater violence.

Movie is homage to internationalism

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In another scene successive members of the ‘army of crime’ go into a brothel full of Nazi soldiers and French prostitutes intending to bomb it. The first to go in comes back unable to fulfil his mission. He is criticised by the others, but none of those who follow are able to do it, observing that the women are too lovely. This scene is a rare moment of comic relief but also serves to show their humanity.

Vichy France appears as a place of ambivalent politics amid the normality of everyday life. After a student at an elite school is beaten up for painting a hammer and sickle on its walls, the headmaster insists that his school is not a political place and will stay neutral. Staying neutral was not an option in a Europe sliding into cataclysm. This was clearly understood by the Jews and communists of occupied France.

The group carry out a variety of violent acts that succeed in casting fear into the hearts of the enemy and those who collaborated. This success also brings them to the attention of the Gestapo and the Vichy police. What follows are scenes reminiscent of Gillo Pontecorvo’s The Battle of Algiers. The role of the French police in assisting the Nazi soldiers is forcefully exposed, most notably by offering their services in torture par excellence. Their common struggle ‘against Bolshevism’ is more important than defending the sovereignty of their country, let alone the lives of foreign refugees and French Jewish citizens.

The false patriotism of the Vichy police and the collaborators who acted as their informants contrasts sharply with the resistance being led by foreigners, whose actions proved, in the light of history, far more patriotic. This film is an homage to internationalism, showing that human values are universal and not circumscribed by nationality, religion or ethnicity. It reminds us of the immense courage and historical importance of those who fought fascism in occupied Europe, from the Spanish Civil War onwards.

Marcela Navarrete

Excellent update for tenant champions

The introduction to the fourth edition of Repairs – Tenants’ Rights provides an excellent overview of the changing context within which housing practitioners have been working in this area since the last edition was published in 1999.

Importantly, the authors remind the reader that the updating of the book has been prompted by the fact that the latest available data indicates that there are still over 1.2 million non-decent privately rented homes and over 1.1 million non-decent social rented homes in England alone.

The authors provide a comprehensive treatment of the legal framework and all relevant issues in a highly practical guide to the conduct of claims for housing disrepair in the County Court and actions under the Environmental Protection Act 1990 in the Magistrates’ Courts.

The section on remedy and damages draws on material presented regularly over the years in Legal Action and will assist practitioners when they are using the housing disrepair protocol and at other junctures in the legal process, such as track allocation in claims where tenants have moved on, or where outstanding remedial works have been completed.

The latter is a familiar battleground, not least because of the absence of public funding for claims allocated to the small claims track. Indeed, the authors highlight recent failed attempts by landlord representatives to raise the small claims threshold; a move that would have effectively shut out those tenants daunted by the prospect of negotiating the courts without legal support.

There are useful precedents in the book that will assist those new to the subject. The authors have also updated the section on technicalities; useful for those who otherwise might not know one end of a soffit or quoin from another.

The updating of this publication will be welcomed by all practitioners working within a quite technical area of practice but one in which very tangible results are regularly secured, be it the defeat by way of counterclaim of possession proceedings brought on the basis of rent arrears, or the ostensibly straightforward matter of ensuring that a damp house becomes dry and appropriate payment of compensation made.

John Hobson
Can litigation defend workers’ rights?

Against the Law: Labour Protests in China’s Rustbelt and Sunbelt

One of the mysteries of life as an employment law practitioner in the UK is the sharp increase in Employment Tribunal cases in recent years. Between 1997 and 2008 the number of claims doubled, from under 90,000 to over 180,000, without any significant change in procedure or case law to explain the rise.

In this context, Ching Kwan Lee’s valuable book serves a dual purpose. It provides a contemporary history of workers’ protests in another country. It also offers useful insights into the relationship in China between litigation and industrial action; and it is worth asking whether the same insights can be applied fruitfully here.

Lee’s thesis is that there has been a tremendous increase in workers’ protests in China since 1990. While 20 years ago more than two thirds of all workers were employed by the state, today a relatively generous pensions system guarantees retirees 80 percent of employment income plus 100 percent of in-kind benefits. The Chinese system is now based on payments by the employer to employees. The levels of pension payments are lower than they were and the payments are less reliable. There has also been a dramatic reorientation of the Chinese economy from state sector industrial production, very often of military goods, to private production of exports in goods and services. Geographically, the shifting location of production is marked in Lee’s book by the contrast between the northeastern ‘rustbelt’ province of Liaoning, formerly a centre of heavy industrial production, and the southern ‘sunbelt’ province of Guangdong, a centre of electronics production.

These various factors have reinforced one another. For example, the legacy of pension payments in privatised state sector companies is, from the perspective of managers in these companies, a tremendous waste of resources. It makes the businesses unprofitable in competition with private sector start-ups. The companies are compelled to choose between non-payment of wages, leading to the risk of strikes or non-payment of pensions, which leads to protests by retired workers.

In ‘rustbelt’ China, Lee indicates, strikes and other collective protests by workers are commonplace. The first half of her book describes in vivid detail protests by older workers blocking roads to demand payment of the pensions owed to them, occupations of factories and shopping malls by redundant workers, petitions, demonstrations of at times up to 30,000 workers singing the Internationale, and workers flying protest delegations as far as Beijing.

Protests are sustained by a generation who can recall Mao-era promises to workers. They are frequently effective, at least in the short-term. If protests are not still more pervasive Lee argues, this is down in part to fears of state repression, as well as to a willingness on the part of some party bosses to make public compromises. In addition, the shift from a model of collective social housing to individual private housing has given workers a certain minimum level of security at the family level thereby keeping workers afloat, but also discouraging the most militant forms of protests, which could potentially lead to the loss of the home.

In ‘sunbelt’ China, Lee suggests, collective protests are by contrast highly unusual. Here the dominant form is litigation including group litigation. There is a growing labour bureaucracy, composed at the lowest level of labour bureaux, which can arbitrate disputes, and above them China’s civil courts. The workers most likely to look to the courts are migrant workers. They are also the most likely to be dismissed or to have their wages withheld. There is a black market in legal advice, with lawyers handing out business cards to workers travelling to attend labour bureaux hearings.

If we think our courts are frequently effective, at least in the dormitory, or whether they still lived in the dormitory, or whether they had signed labour contracts. Whether out of distrust of the court or of fear of being trapped by trick questions, workers give very clumsy and long-winded details in places whether the judge wants precise and direct responses. Palpable frustration and anger simmers on both sides.

At the end of her book, she cites a number of Chinese workers, speaking out against the actions of corrupt party officials and others whose behaviour is ‘against the law’. Yet what also emerges from her book is a strong sense of the unsuitability of individual or collective litigation as a tactic to defend workers’ rights.

In the UK we have our own ‘sunbelt’ industries, maintained by a shifting combination of private enterprise and state subsidy, the banking sector being a case in point. Here too, trade unionism is strongest in the public sector and in older manufacturing companies. Here too, trade union membership correlates poorly with individual litigation. Union density rises sharply with the size of the workplace. The likelihood of bringing Tribunal claims by contrast falls with workplace size.

We do not have a geographical segregation between old and new business sectors, or, in so far as we do, it is on nothing like the same scale as in China.

What we share clearly with the workers described in Lee’s book is that individual litigation provides poor outcomes to defend rights. It does not maintain pay rates. It does not keep workers threatened with redundancy in their jobs. One central vice of our system is the nature of the remedies it provides. Almost never will a successful claimant in an unfair dismissal case receive from the Tribunal as much as they would have been paid had they not been sacked. In seeking strategies to defend collective interests, it is the militant workers of the Chinese ‘rustbelt’ rather than their litigious counterparts in the Chinese ‘sunbelt’ who we should follow.

David Renton
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