

# *Socialist* **Lawyer**



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## Justice in the balance

Legal Aid: the  
fight goes on  
Brazil: crisis  
and uprising  
Kenya: a new  
constitution  
The right to  
protest



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www.haldane.org**  
The Haldane Society was founded in 1930. It provides a forum for the discussion and analysis of law and the legal system, both nationally and internationally, from a socialist perspective. It holds frequent public meetings and conducts educational programmes. The Haldane Society is independent of any political party. Membership comprises lawyers, academics, students and legal workers as well as trade union and labour movement affiliates. The list of the current executive, elected at the AGM in November 2012 is as follows:

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## Austerity, legal aid, and fighting back

Three and a half years into the coalition Government and austerity is well and truly with us. Nor for everyone: the incomes of the 1,000 wealthiest people in the UK are growing. But in the real world, those living off benefits have to find money from what is supposed to be basic subsistence money to pay towards council tax, bedroom tax, and ever increasing fuel and food bills. Everyday in my practice as a housing lawyer I see people threatened with eviction for not being able to find £25 a week – from non-housing related benefits – for the bedroom tax; the benefit cap resulting in 42 per cent of income going on rent; and fewer and fewer people able to obtain legal advice since the LASPO cuts arrived in April 2013.

The Government's latest attack on legal aid is part of its assault on the welfare state. Its philosophy is that public services should only be available for the most desperate and delivered at rock-bottom cost and therefore rock-bottom quality. In health, education and criminal defence, the Government wants two-tier structures: the publicly-funded part of the structure should be so run-down that anyone who can afford it buys privately. That has already happened to social housing: 30 years of under funding has turned what used to be a universal scheme into an emergency safety net for the most desperate.

An irony is that rich countries could do with a bit of austerity. We consume too much fuel, eat too much meat, trade in luxuries and waste far too much. We have a duty to the planet and to poorer countries to change our lifestyles, particularly our fuel consumption, but not by flat price rises which merely give the rich licence to consume even more. We need a Government that prioritises public transport, cuts down on flying, and ensures that everyone can afford to heat their homes, pay their housing costs and put enough food on the table. A bit of austerity on the rich – along with redistribution – would help the planet no end.

People, even lawyers, are fighting back. Firefighters, teachers, university lecturers are on strike. A Day of Action against Austerity is planned for 5th November 2013. There is real anger among criminal defence lawyers and an appetite for direct action. The Law Society has been roundly condemned for its Thatcherite plea of 'there is no alternative' to cuts to criminal legal aid. Calls for direct action have come from the Criminal Bar Association, the London Criminal Courts Solicitors' Association and other professional bodies not known for their radicalism.

The next step in the campaign to save legal aid should be a one-day withdrawal of labour and boycott of the courts. A strike by lawyers would be

unprecedented in the UK although not elsewhere: Pakistani lawyers brought their country to a standstill when they went on strike after the Chief Justice had been suspended by General Musharraf. We are all anxious about our clients: if we do not turn up, will she be unjustly sent to prison? Or landed with a judgment? Lose her children? Be evicted? Will I receive a wasted costs order? If we all stand together on a one-day boycott, Judges just won't be able to punish either our clients or ourselves. Collective action and solidarity is the key. If we don't take action now to save legal aid, when will we?

It is poignant that Tooks Chambers, set up by our President Mike Mansfield QC during the 1984 – 1985 miners' strike, is a prominent casualty of legal aid cuts. It is important to note that Tooks' dissolution is the result of the cuts to legal aid that have already been implemented: years of attrition, a 10 per cent cut in civil legal aid payments in October 2011, low rates of pay for junior criminal barristers, the LASPO cuts to social welfare law. If the *Transforming Legal Aid* cuts go through, it is impossible to envisage the survival of specialist, expert legal aid practitioners in any firm or chambers. We are sad to see Tooks' demise. We salute the chambers – staff and barristers – for its record of fighting miscarriages of justice, holding the State to account through inquests, inquiries and judicial reviews, and for its commitment to delivering legal services to those who cannot afford to pay for them.

This issue of *Socialist Lawyer* shows just how busy our membership and executive are, not just trying to save legal aid and doing the day job of representing clients, but also standing in solidarity against human rights abuses in the Philippines, Mexico, Guantánamo Bay, Chile and elsewhere. Two longer articles show us that socialist lawyers are thinkers as well as activists: Bill Bowring responds to David Renton's previous article on socialism and legal rights and we are honoured that the Chief Justice of Kenya, Dr Willy Mutunga, has given us permission to reproduce his speech on building an anti-colonial jurisprudence.

We hold our Annual General Meeting on 14th November 2013 with Vice-President Phil Shiner speaking on 'UK human rights violations in Iraq and Afghanistan – the present picture' (see back page). Come along and consider getting more involved: motions and nominations for the executive should be sent to [secretary@haldane.org](mailto:secretary@haldane.org) no later than 5pm Monday 11th November 2013.

**Liz Davies** Chair, [lizdavies@riseup.net](mailto:lizdavies@riseup.net)



Haldane Chair Liz Davies speaking at the People's Assembly in June 2013.

## Re-born in the USA

Despite what the official history books may try to tell us, the United States has a rich socialist tradition. In the first part of the 20th century, the Teamsters' rebellion in Minneapolis and Eugene Debs' presidential election campaigns inspired millions of US workers.

However, the relative success of US capitalism in the 1950s and 1960s, within the context of the Cold War and the McCarthy-led witch-hunt of communists, seemed to diminish and extinguish socialism for a generation.

Yet struggle, solidarity and socialism remain very much on the agenda in 21st century America. Already this year fast food workers have held a series of one day strikes across major cities demanding a minimum wage of \$15 per hour. The Occupy movement, born as a result of the financial meltdown in 2008, and later brutally attacked by police, has maintained its momentum through Occupy Homes, stopping the foreclosure of homes – see [www.occupyhomesmn.org](http://www.occupyhomesmn.org).

There have also been some surprising election results because of old style campaigning and socialist politics. For instance in the August 2013 primary election for Seattle City Council a socialist candidate, Kshama Sawant, won a stunning 35 per cent of the vote with 44,000 votes.

With her clarion call for a city-wide \$15 per hour minimum wage, rent control and a tax on millionaires to fund public

transport and public education she had been written off by the mass daily city newspaper as 'too hard left for Seattle'. She was portrayed as a fringe underdog. The *Seattle Times* was forced to eat humble pie when they later admitted: 'What Kshama did was to simply overturn the common wisdom of how to succeed in local elections in general and city council races in particular. She took what were viewed as two immutable laws [the need for big money and Democratic Party endorsements] and essentially threw them out of the window... it's nothing short of an earthquake... Kshama has shown a new path for independent candidates who directly advance working people's interests.'

There is no doubt the anti-corporate message of the campaign hit a chord. As Kshama stated in her address about the established politicians, 'It is a scandal that Seattle council members pay themselves \$120,000 a year... meanwhile the workforce in the city struggles with low pay'.

Over in the mid-west Ty Moore, a socialist activist in Minneapolis is also challenging for a seat in the city council. He is standing in the 9th ward which is seen as the most progressive in the city. With 75 active supporters and a reputation as an active trade unionist he has a real chance.

These two elections illustrate that the campaigns of the past are maybe the music of the future.

**Paul Heron**



*'When I see the Stop the War people saying 'Hands off Syria', I want to put my head*

## June

**10:** Members of Parliament call for a review of new immigration rules amid fears that families were being separated. The cross-party group found that the minimum earnings rule of £18,600 a year, which came into effect in July 2012, meant many non-EU partners of British citizens were denied entry to Britain to live with their families.

**11:** The Justice Secretary, Chris Grayling, says he wants some victims to give pre-recorded evidence in criminal trials. Grayling's announcement followed the death of violin teacher Frances Andrade who killed herself following giving evidence in one trial. However, critics pointed out that such provisions already exist.

**14:** A woman who posted the words 'Feeling like burning down some mosques in Portsmouth, anyone want to join me?' escapes prison. Michaela Turner was given an eight-week sentence suspended for six months following comments she wrote on Facebook about the death of Lee Rigby.

**19:** The Supreme Court rules that the families of three soldiers killed in Iraq in poorly armoured Land Rovers can sue the Ministry of Defence for negligence. The court decided that soldiers fighting overseas can still claim protection under Article 2 of the European Convention on Human Rights.

# On the picket line

## A retrograde step

One of the worst known of the Government's proposals for the employment tribunal is its plan to remove the tribunal's power to make recommendations in discrimination claims. In theory, where a claimant succeeds, the tribunal may make a recommendation that within a period the respondent takes some specified steps related to discrimination revealed in the proceedings. This is an important part of the total powers of a tribunal. It is usual for the recommendations to consist of the adoption of an equality policy if the employer lacks one, or specific training for a team if more than one person has been involved in acts of discrimination.

From the point of view of workplace equality, the step is clearly retrograde. It reduces pressure on employers and reduces the choices open to claimants and to tribunals where some kind of discrimination has been uncovered. There is no 'balancing' reform to make up for the way in which a useful power which points towards equality is being lost.

In policy circles, various attempts are being made to defend the Government's repeal plans. It is said for example that the purpose of these provisions is to punish employers for discrimination, and that employers can just as well be punished by groups of employees bringing serial cases, with the compensation rising, as each employee succeeds.

This is to misunderstand the purpose of compensation in discrimination claims: it is not to punish the aberrant employer but to compensate the employee for her loss. But her loss, meaning the acts

she suffers and their impact on her, is not any greater where she is also the second or the third employee to bring a claim. Compensation does not rise merely because the employer has a bad history of discrimination.

In most successful cases there is no mechanism by which an employee can confirm that there have been previous claims. There is a poorly administered paper archive of tribunal decisions from which claimants may seek previous cases. There is usually a lengthy delay between judgments being given in court and a paper copy deposited there. Without someone making the enquiry, there is no way of getting access to previous criticisms of the respondent.

Few tribunals would be willing to consider previous decisions against the same respondent, but would assume they were irrelevant to the case in hand. Even where respondents find themselves losing in court, they often offer a compromise agreement, with confidentiality clauses to protect them from bad publicity, before a hostile decision is made. There is no 'transmission mechanism' to enable serial claims.

Another idea being floated is the possibility of claimants circumventing the problems of the repeal of the power to make recommendations by somebody, quite who is not specified, encouraging workers not directly involved in discrimination claims bringing 'indirect victim' claims.

Again, the proposal is impractical. There have in the past been claims of this sort, for example, where a worker is instructed by their employer to discriminate, declines, and is

dismissed. There will never be very many of them. The relatively tight tribunal time-limit of three months, combined with typical delays of about a year between claim and hearing, makes it impossible for a claimant to wait and see what happens with another worker's claim before launching their own 'piggy-back' case.

Our common law principles of compensation again reduce awards for those who can say no more than that they objected vicariously to their employer's discrimination against someone else.

Finally, it has been suggested that the loss of the power to make recommendations causes no harm because the tribunal has no powers to monitor the implementation of the recommendations it makes.

This is true, up to a point. tribunals have no power to monitor, but a determined claimant could probably seek enforcement through the civil courts. The general compliance of employers with tribunal powers is in general shockingly poor, with only around a half paying any amount of tribunal judgments at all within two years of a successful claim. However no one says that because tribunals have difficulty enforcing judgments their power to order compensation should be taken away from them.

If tribunal recommendations are ignored then there would be a much simpler and better answer to deal with this problem: not to protect the discriminators, but to require reporting and compliance with these recommendations and to grant the tribunal the powers it needs to punish the employers who do not comply.

**David Renton**

Picture: Jess Hurd / reportdigital.co.uk



*in my hands* – Tony Blair.

**19:** The Supreme Court also quashed an anti-terrorist sanction imposed upon an Iranian bank. The Treasury was ordered to remove sanctions against Bank Mellat and said that the Government's secret intelligence was irrelevant. The bank was said to have been financing groups involved in Iran's nuclear programme.

**24:** A former undercover police officer reveals how the Metropolitan police ran an operation designed to 'smear' the family of Stephen Lawrence as well as his friend Duwayne Brooks and campaigners who supported them. Peter Francis claims he was told to find 'dirt' which could be used against them.

**3:** The Metropolitan police officer Alex MacFarlane is sacked following his being secretly recorded using racist language towards a man he had arrested. MacFarlane twice stood trial for racially aggravated public disorder but on both occasions the juries were unable to agree a verdict.

**3:** The police and crime commissioner for West Yorkshire, Mark Burns-Williamson, refers the former Chief Constable of the West Yorkshire force Sir Norman Bettison to the IPCC following allegations that he tried to intervene in the Lawrence Inquiry. Bettison had earlier resigned from the force over allegations about his role in the Hillsborough disaster.

## July

## Broken promises

**S**top and search has long been a touchstone issue, particularly for black communities in Britain. Fifteen years ago it was the major complaint raised by community activists at the Stephen Lawrence Inquiry, and, consequently, a primary reason why Sir William Macpherson concluded that the Metropolitan police were institutionally racist. The solemn promise made by forces across the land after that report was that the use of the tactic would be less arbitrary and more ‘intelligence led’.

It would appear that few lessons have been learned and instead of a more targeted approach, there has not simply been a return to business as usual but, rather, a proliferation. In 2009/10 the Ministry of Justice’s own publication *Statistics on Race and the Criminal Justice System 2010* recorded 1,141,839 encounters, a 20 per cent increase on four years previously. More recently a report by Her Majesty’s Inspectorate of Constabulary (HMIC) in June 2013 concluded that their disproportionate use has a ‘toxic effect’ on relations between the police and minority ethnic communities. Chastened by this, Home Secretary Theresa May was forced to announce a public consultation. As *Socialist Lawyer* went to press, the outcome of this consultation was not known, but given the history of broken promises, we would be well advised not to hold our breath.

Any serious attempt to address stop and search would be widely welcomed. There can be little doubt that it is a blunt and largely ineffective instrument. Few stops actually result in an arrest let alone a conviction. According to the Government’s own statistics, just over nine per cent of such encounters under section 1 of the Police and Criminal Evidence Act (PACE) 1984 across England and Wales in 2009/10 led to an arrest. Meanwhile less than 1 per cent of those conducted under section 44 of the Terrorism Act 2000 resulted in an arrest.

The impact in terms of race relations is dire. An Equality and Human Rights Commission report, *Stop and Think* published in 2010 noted that:

*‘Since 1995, per head of population in England and Wales, recorded stops and searches of Asian people have remained between 1.5 and 2.5 times the rate for white people and for black people always between four and eight times the rate for white people.’*

Walkthrough arches to detect knives, guns and other weapons have become a familiar sight outside schools, train and London underground stations. Under these powers, enshrined in section 60 of the Criminal Justice and Public Order Act 1994, black people were up to 27 times more likely to be stopped than their white counterparts. The number that resulted in arrests was two per cent. When we consider that not

all arrests lead to successful prosecutions, it can be seen that the effectiveness of stop and search under these powers is almost infinitesimal.

By comparison, with their effectiveness in detecting crime, the capacity of stops and searches to stir up resentment among those who are targeted is incalculable. The riots that erupted in London and then spread to other towns and cities in August 2011 were sparked by the death of Mark Duggan at the hands of the police and the subsequent rough treatment of a female protester outside Tottenham police station. Many of those young people, black and white who took to the streets freely admitted that they did so as a means of striking back against a force which they regard as alien, invasive and oppressive. They identified with Mark Duggan because they themselves experience police harassment as a daily part of their lives.

Since then of course we have learned that the Lawrence family itself and many of the activists whose campaigning put the police on the defensive and led to Macpherson’s landmark ruling have been bugged and spied upon. Instead of finding Stephen Lawrence’s killers, the police were more interested in protecting their own and criminalising their critics.

Mark Duggan returned to the nation’s collective consciousness with the delayed opening of his inquest in September 2013. Our political leaders would do well to pause and give serious consideration to the wider lessons to be learned.

**Brian Richardson**

Picture: Jess Hurd / reportdigital.co.uk

*Doreen Lawrence speaking at the Trades*

## July

**10:** Her Majesty’s Chief Inspector of the CPS, Michael Fuller, publishes a critical report stating that the CPS was being damaged by a lack of resources. The CPS faces significant reductions in staff with its budget being cut by 27 per cent.



## ‘Chilling’

Officials for Tory minister Eric Pickles describing the effect of agreeing to a Freedom of Information request.

**18:** The Supreme Court strikes down Home Office attempts to change the immigration rules. The court said that ministers were not permitted to exclude workers, students, and other migrants from the UK under criteria not laid before Parliament.

**25:** *The Guardian* newspaper is granted permission to appeal in its bid to have a decision to keep private details of Prince Charles’s lobbying of ministers. The paper has been seeking the release of a set of letters written to Government departments over a period of nine months.



Union Congress in September.

## Fighting for Vadim's freedom

Vadim Kuramshim was sentenced to 12 years in prison by the state of Kazakhstan in late 2012. A human rights lawyer and human rights defender, he has been awarded the 2013 Ludovic-Trarieux human rights prize, one of the oldest and most prestigious awards given to a lawyer in the world. Indeed the first prize was awarded in 1985 to Nelson Mandela, then in a jail in apartheid South Africa.

The award of the Ludovic-Trarieux prize is a major boost for the campaign to free Vadim. The prize has the backing of lawyers and human rights organisations across Europe. Its website states: 'Since 2003, the prize is awarded every year in partnership by the Human Rights Institute of The Bar of Bordeaux, the Human Rights Institute of the Bar of Paris, the Human Rights Institute of The Bar of Brussels, l'Unione forense per la tutela dei diritti dell'uomo (Roma), Rechtsanwaltskammer Berlin, the Bar of Luxemburg, the Bar of Geneva as well as the Union Internationale des Avocats (UIA), and the European Bar Human Rights Institute (IDHAE) whose members are the biggest European law societies fighting for human rights'.

Vadim was arrested in September 2012 after returning from a conference in Warsaw where he had given a speech exposing human rights abuses in Kazakhstan. As previously featured in *Socialist Lawyer*, Vadim was found innocent by a jury of all the serious charges brought against him and released. The Kazak

regime re-arrested him in October 2012 and brought him back to court but this time with no jury. In breach of its own procedures, the court deemed Vadim guilty and sent him to prison for 12 years on the same charges on which he had first been acquitted.

The appeal court in February 2013 upheld the verdict and in March 2013, Vadim was transferred to a prison colony that is infamous for violations of prisoners' human rights.

The Haldane Society welcomes this latest recognition of Vadim Kuramshim's vital work as a human rights defender and reiterates our belief that he has been targeted as a result of his peaceful and legitimate human rights activities. We appeal to our members and supporters to step up the campaign for his release from prison in time to attend the formal awarding of the prize in Paris on 5th December 2013.

Letters can be sent to the President of Kazakhstan at the following address: President Nursultan Nazarbayev, Office of the President, Akorda Building, Left Bank of the Ishim River, 010000 Astana, Kazakhstan.

Emails can be sent to the Kazakh authorities at embassies of Kazakhstan in your country – a list of Kazakh embassies and consulates can be found here: [www.embassypages.com/kazakhstan](http://www.embassypages.com/kazakhstan); Ministry of Foreign Affairs Republic of Kazakhstan: [astana@mfa.kz](mailto:astana@mfa.kz) – please send copies to Campaign Kazakhstan: [info@campaignkazakhstan.org](mailto:info@campaignkazakhstan.org)

**Paul Heron**

## August

**30:** A challenge to the Government's 'bedroom tax' is rejected by the High Court. The judges said the measure was based on a 'reasonable foundation'. Richard Stein, a solicitor for some of the claimants said 'our clients are bitterly disappointed with today's decision, but they are not defeated'.

**2:** Uruguay's lower house passes a bill that will legalise marijuana and regulate its production, distribution and sale. The bill fixes the price of marijuana around \$2.50 per gram.

**2:** A coroner who wrote to the Culture Secretary, Maria Miller, to complain about the media's coverage of an inquest at which he presided is censured by the Office for Judicial Complaints. Michael Singleton had criticised the media 'intrusion' and 'ill-informed bigotry' concerning the gender change of Lucy Meadows. He had told journalists in court that he had done his own research on the case.

**2:** A Home Office swoop on suspected illegal immigrants at rail stations, businesses and homes draws criticisms from across the political spectrum. Labour called on the Home Secretary to say whether the campaign had broken official guidelines on stop and search. The move even drew criticism from Nigel Farage of UKIP.

Pictures: Jess Hurd / reportdigital.co.uk



Hundreds joined the Justice Alliance rally on 30th July outside the Old Bailey in London, opposing the government's attack on legal aid and access to justice.



Labour's Shadow Justice Secretary Sadiq Khan MP spoke at the rally outside the Old Bailey.

## Legal aid battle hots up

**London** A large, determined meeting of criminal solicitors and barristers on 1st October vowed to escalate the campaign against Grayling's proposals to decimate legal aid, and to withdraw their labour as part of that campaign.

The meeting, called by the Criminal Law Solicitors' Association, the Criminal Bar Association and the London Criminal Courts Solicitors' Association, was attended by around 500 barristers, solicitors, and legal executives. It unanimously voted to oppose all the different cuts to legal aid and declared that the Ministry of

Justice is not fit for purpose.

Speakers from the platform and the floor repeatedly called for barristers and solicitors to stand united and withdraw their labour from the Courts. There was widespread dismay expressed from both the platform and the floor at the position of the Law Society not to stand in solidarity with their criminal members and colleagues by taking a firm stance to oppose the cuts and support direct action.

There remain discussions to be had as to when and in what form the withdrawal of labour will take place. The Haldane Society would encourage the various professional

organisations to agree now that the legal profession will start by boycotting the courts – both civil and criminal – on a specified date and will consider escalating action.

**Manchester** On 29th September the Northern Save Justice Campaign held a spirited rally outside Manchester Crown Court, writes *Mikhil Karnik*. It was addressed by Jennifer Hilliard of Parents for Real Justice, Jean Betteridge from Access to Advice, Manchester barristers John Nicholson, Jared Ficklin, and Mark George QC, Denise McDowell of Greater Manchester Immigration Aid Unit, and by Labour MP Kate Green. Speakers spoke about the hypocrisy of



# Young Legal Aid Lawyers

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

## Carry on regardless



The Government's approach to legal reform has become wearily familiar. Step one: design a set of proposals that will undermine access to justice for vulnerable group x. Step two: trail the proposals in the right wing press supported by irrelevant and/or inaccurate material relating to fat cat lawyers/spurious cases/left wing campaigners (delete as appropriate). Step three: release proposals with an improbably tight timeframe for consultation. The timetable should be as inconvenient as practicable. Where possible, it should coincide with a time when our elected representatives are on holiday and not available for discussion. For example, a 36-hour consultation on bringing back capital punishment to restore the credibility of the criminal justice system by clamping down on the 63.2m Britons who dodge the death penalty each year; responses by 14:00 on Boxing Day. Step four: 'listen carefully' to the multiple thousands of respondents who explain in simple language why the proposals are really not a very good idea. Step five: carry on regardless and use secondary legislation where possible.

And so it was with

*Transforming Legal Aid*: the Government's latest assault on legal aid and those

those, like Chris Huhne, who when in trouble afforded themselves the best lawyers that money could buy, whilst at the same time condemning the rest to justice on the cheap. They reinforced how the attack on justice was ideological, and in fact would not achieve substantial savings overall, and how access to specialist lawyers was not a luxury it was a necessity. Those attending the rally then marched behind the Haldane Society banner (proudly carried by Mark George and myself) and a coffin to join the TUC protest outside the Tory conference.



individuals who rely on it to safeguard their rights. The Government received in the region of 16,000 responses, the majority in opposition to the proposals. Nevertheless, on 5th September 2013, the Ministry of Justice announced its intention to carry on regardless.

True, the Government has made some concessions. In particular, we are no longer facing price-competitive tendering for criminal legal aid contracts. Instead the Government has proposed a mixed model, with an element of competition (for police station work) while leaving clients with the ability to choose their own solicitor. And certain limited exceptions have been introduced to the abhorrent residence test, for victims of trafficking among others.

These concessions should not be overstated. It would be wrong to say we have won. A 17.5 per cent cut in fees for criminal legal aid will still sound the death knell for many firms. And allowing victims of trafficking legal aid to help with their employment dispute is of limited value if those same individuals cannot get free legal help when they are destitute and homeless. Nevertheless that is the effect of the exception. The devil is in the detail.

Then on 6th September 2013, following closely on the heels of the response to *Transforming Legal Aid*, came yet further Government plans to restrict access to judicial review. This new consultation marks an escalation in hostilities. In 2011, when the then Lord Chancellor Ken Clarke pushed the Legal Aid Sentencing and Punishment of Offenders Act through Parliament, legal aid for judicial review emerged unscathed. This was recognition on the part of the Government, we were told, of the importance of holding the State to account. How quickly things change. December 2012 saw the first in the latest series of consultations, purportedly designed to kick-start the economy by clamping down on spurious judicial reviews: dubious logic underpinned by questionable

statistics. *Transforming Legal Aid* saw more of the same, with the attack focused more closely on claimants reliant on legal aid. In this latest consultation the Government has truly nailed its ideological colours to the mast.

The effect of the proposals, among other things, will be to increase the financial risk to those who try to challenge the unlawful acts of the State and tighten up the rules that dictate who can bring such challenges. The consultation is littered with choice phrases: judicial review, we are told, is being used as 'a delaying tactic' undermining Government reforms, a 'campaigning tactic' to generate publicity, and generally as a means to 'frustrate or discourage legitimate executive action'. An article in *The Daily Mail*, trailing the proposals and quoting Lord Chancellor Chris Grayling, rails against campaigners challenging the legality of the HS2 High Speed Rail Line. While, in similar vein, the consultation paper singles out the efforts of peace activist Maya Evans in holding the Ministry of Defence to account for the unlawful acts of the armed forces in Afghanistan. As if these matters are not of legitimate public concern.

The picture that emerges is a Government that will not be held account for its actions at home or abroad. The approach is redolent of a spoiled child, reacting petulantly when told he cannot do whatever he wants to do.

Now it is clear that the battle is an ideological one, the battle lines are at least clearer. Now that we know the case against us, it is less important to focus on rebutting spurious economic arguments or the misuse of statistics. However it also makes the battle harder. A Government pursuing an ideological course is less likely to be deterred than one pursuing a policy out of pragmatism or economic necessity. This does not mean we should shy away from the fight.

The judicial review proposals for further reform consultation closes on 1st November 2013.

**Connor Johnston**

## Tories' contempt for the poor

The Government continues to wield its ideological sledgehammer to the welfare state with the introduction of mandatory reconsideration before appeal for all social security benefits as of October 2013.

Prior to this, a claimant could appeal a Department for Work and Pensions (DWP) decision immediately rather than ask for the DWP to review their decision. The benefit of doing this was twofold. First during a review the claimant would usually not get paid – by appealing straight away the person secured the basic rate of income, usually £71 for a single person while they waited for the appeal hearing. Secondly by appealing, the claimant sidestepped and removed the risk of any bias from the DWP decision maker reviewing the claim and rubber stamping the original decision, the claimant was able to access an independent impartial Tribunal and receive a fair hearing.

The Tribunal service over the past seven years has seen a huge increase in the number of negative DWP benefit decisions being appealed to the First Tier Tribunal. According to the Tribunal statistics in 2006/07 there were 254,000 appeals heard and by 2011/12 there were 434,000 appeals. The expected forecast for 2013/2014 is that the Tribunal service will hear another 607,000 appeals. The Tribunal service saw a 52 per cent increase in receipts of appeals between January and March 2013 compared to the same period in 2012, with 155,000 appeals

received. The increase is mainly due to the negative decisions made on Employment and Support Allowance claims. According to the Disability Alliance around 50 per cent of oral appeals and 20 per cent of paper hearings are successful.

With such an increase in appeals and with at least half of these appeals being successful, for this Government there can only be one solution – smash the current system and make it as difficult as possible for people challenging governmental decisions.

And that is what they have done. From 28th October 2013, the Government have removed the claimant's right to appeal before asking for a reconsideration. Mandatory reconsiderations must be requested within a strict one month period by anyone wanting to challenge a negative DWP decision on their claim. Requests for reconsiderations outside of the one month period are discretionary and can only be challenged if refused by judicial review.

When a claimant requests a reconsideration, no action during the first month will be taken by the decision maker while they wait for the claimant to submit further information. At the end of the month the DWP decision maker will then start the process of reviewing the original decision. The DWP have not ruled out that the reviewing decision maker could be the same person who made that original decision. Impartiality it seems does not exist here.

If that were not bad enough, it gets worse. There is no maximum time limit for the decision maker to reconsider and make their new decision. This could mean possibly many months without a new decision and long delays in justice for vulnerable people. What exacerbates this is that during this review process, where the claimant is requesting a review of a decision not to award benefit outright, they will receive no money. This could potentially leave a vulnerable person without money for many months and will have a huge knock on effect on people's lives. If a person is unable to claim another benefit, such as job seekers allowance, they will be left without money. They may receive housing benefits and council tax reduction but this will not cover any shortfall for water rates or heating charges or council tax charge or food and utilities, and they will be at risk of being evicted from their homes. They won't be able to claim crisis loans as they no longer exist. People will simply be left destitute.

Once the DWP have completed the review process, if the claimant is unsuccessful they would then need to appeal directly to the Tribunal service ensuring all the correct forms are completed within yet again another strict time limit. The claimant would then need to wait for the Tribunal service to notify the DWP of the appeal. The DWP will then have to provide an appeal bundle to the Tribunal service, yet there is no time limit for the DWP to do this within until October 2014 when there will be a 28-day time limit. Once the Tribunal service receive the bundle the case will be listed for a date some time in the future where the



claimant can finally have an independent impartial hearing of their case to determine whether they are entitled to the benefit.

Until then, there is no time limit for the DWP, all that there is, is an indefinite delay before an independent tribunal can look at the facts of the case and decide whether the claimant has an entitlement to benefit.

The right to a fair trial and to a case being heard promptly before an independent and impartial

## August

**5:** The Metropolitan police issues a formal apology to the family of Ian Tomlinson killed by one of its officers during the G20 protests in London in 2009. Julia Tomlinson said: 'The public admission of unlawful killing by the Metropolitan police is the final verdict, and it is as close as we are going to get to justice'. This followed confirmation that the Metropolitan police would offer the family compensation.

**12:** The Home Office agrees to withdraw its vans warning illegal immigrants to 'go home' after a legal challenge. Two claimants said the vehicles – dubbed 'racist vans' – breached the Government's duties on equality. The Home Office agreed that it would consult before launching such campaigns in the future.



**'There are poor children who do not have a room of their own in which to do their homework, in which to read, in which to fulfill their potential'.** Michael Gove unwittingly describes the effects of the Tory bedroom tax on poor families. The tax orders children aged six to ten to share a bedroom.

**15:** A ban on health workers who have HIV performing certain procedures is lifted. Dame Sally Davies, the chief medical officer, said the ban was outdated and that it was more likely that a person would be struck by lightning than be infected with HIV by their doctor or dentist.



Picture: Jess Hurd / reportdigital.co.uk

## ELDH news and events

The European Lawyers for Democracy and Human Rights (ELDH – [www.eldh.eu](http://www.eldh.eu)) continue to be active on a wide range of issues.

**Turkey** On 28th – 29th September 2013, our Turkish sister organisation ÇHD (Progressive Lawyers Association) holds its 3rd International Law Symposium in Istanbul: ‘Being a Revolutionary Lawyer’. ÇHD President Selçuk Kozağaçlı, who spoke at Haldane’s Defending Human Rights Defenders conference, received ELDH’s birthday letter in prison. He thanked us and sent his best wishes. His trial opening will be on 24th-26th December 2013. Obviously this date has been chosen by the court to discourage lawyers from Europe to observe. The indictment of about 600 pages has been submitted to the court by the public prosecutor and was approved by the court. ÇHD held a press conference insisting that the indictment is not based on truth and law and that it is grounded on political motives, to prevent lawyers, members of ÇHD and members of the People’s Law Office from defending the basic rights of the people.

The Danish District Supreme Court took a shock decision on 3rd July 2013 to shut down and impose a hefty fine on Kurdish Roj TV and its parent company Mesopotamia Broadcasting

accusing them of being guilty of inciting terrorism. The broadcasters were sentenced to pay a fine of 5.2 million Danish kroner each and their broadcasting licenses were revoked. Roj TV, Mesopotamia Broadcasting’s MMV and Nuce TV also had their licenses revoked. ELDH protested against this judgment. On 18th September 2013, in Copenhagen, ELDH sent observers on a fact finding mission to observe the opening of a trial against seven Kurdish politicians and business people who are charged with financing Roj TV.

**Edward Snowden** ELDH initiated a statement that the grounding of the Bolivian presidential jet and treatment of Edward Snowden shamed the European Union. This was a big success. Together with the other two organisers, the European Centre for Constitutional and Human Rights (ECCHR) and the Transnational Institute, ELDH collected 65 signatures of various organisations.

On 30th August 2013 in Berlin, the 2013 Whistleblower Prize was awarded to Edward Snowden, by IALANA (German section), Vereinigung Deutscher WissenschaftlerInnen, and Transparency International.

**Cuban Five** Haldane’s sister organisation in Germany, the German Association of Democratic Lawyers (VDJ) is organising a screening of the film *The Cuban Wives* in Düsseldorf on 11th October 2013 together with three other NGOs within the One-World-Festival. The film will be also be shown in Berlin on 4th

and 7th October 2013 during the Berlin Latin American Festival.

**Western Sahara** Our Basque colleague Urko Aiertza is organising a human rights mission to Western Sahara at the end of October or beginning of November 2013. There are colleagues from Spain, Italy and Germany who are interested. We need at least two more colleagues from England. Please contact me if you would like to participate.

**Conference on Europe in Belgrade** Preparations have begun for a conference on ‘EU and European Human Rights in Southern Europe’. The conference date is most likely to be on 7th June 2014. The organisers will be ELDH and the Serbian Democratic Lawyers, with the support of Lawyers for Human Rights (YUCOM). The conference will be held in English.

**Marxism and Law** Preparations have also begun on a colloquium on this topic, with the aim to invite some of the leading contemporary German and other European theorists such as Michael Heinrich, in London in autumn 2014.

The next meeting of ELDH’s Executive Committee is in Rome on 19th October 2013 at the Casa Internazionale delle Donne (International House of Women). The next day the Haldane’s sister organisation, the Italian Association of Democratic Lawyers, will organise a colloquy on Europe. Please contact me if you are interested in coming.

**Bill Bowring**  
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tribunal is being eroded. The contempt for the poor is both shocking and startling. The most vulnerable people with disabilities, those with mental health problems and those who lead chaotic lifestyles will struggle and continue to be labelled as benefit scroungers. The social impact will be huge and will cost society far more in the long run. Meanwhile George Osborne smirks that the economy is recovering.

**Rebecca Harvey**

## September

**22:** A Freedom of Information request by the charity the Money Advice Trust reveals that local councils have used bailiffs to collect debts on their behalf over 1.8 million times. The charity criticised the number as excessive and said councils should be more responsible in how debts are collected.

**5:** The Chilean Judges’ Association issues a statement apologising for its inaction during the reign of the dictator Augusto Pinochet, saying: ‘It must be said and recognised clearly and completely: the court system and especially the Supreme Court at that time, failed in their roles as safeguards of basic human rights, and to protect those who were victims of State abuse.’

**10:** Home Office statistics reveal that the use of tasers by police officers has more than doubled over two years. In 2009 there were 3,128 deployments rising to 6,649 in 2010 and 7,877 in 2011.

**15:** The demonisation of benefit claimants continues as the Director of Public Prosecutions Keir Starmer announces increased prison terms of up to 10 years for those who falsely claim. Starmer said the £1.9 billion annual cost of the fraud should guide decisions about whether prosecution was in the public interest.

# Who is that man in the Lord Chancellor's seat?

## Clare Sambrook points a finger at the Tory minister enjoying his job of destroying legal aid

The most striking thing about Chris Grayling's appearance before the Justice Select Committee on Wednesday 3rd July 2013 was the man himself – the depth of his self-assurance, the permanent self-congratulatory smile, his glib, condescending replies. The way, like a machine, he rattled out words, apparently without breathing. And what words they were: 'a new contractual framework, tough financial decisions, deliver change in a way that is sustainable, one-size-fits-all'. Grayling, who bears the title Lord Chancellor and has taken an oath to respect the rule of law, was all spin and no content, the consummate PR man.

Yet the matter under scrutiny could scarcely be more grave.

The coalition government plans to destroy legal aid as we know it in England and Wales, something that has allowed us access to justice, regardless of our wealth, since 1949. Grayling proposes to:

- Destroy the current model whereby the Ministry of Justice purchases legal services from 1,400 local providers.
- Issue vast contracts to a small number of businesses offering bulk legal services at the lowest price – Tesco, G4S and Stobart are poised to move in.
- Pay a flat fee regardless of plea. (A guilty plea promises fatter margins).
- Impose a 12-month residence test for civil legal aid. (Babies in care proceedings would lose legal representation).
- Pay for legal work on applications for judicial review only in cases where the application succeeds.

Two days ahead of his date with the committee, Grayling abandoned his reviled plan to deprive defendants of their choice of solicitor. The previous Thursday Grayling's proposals had been ridiculed and condemned by MPs of all parties in a Commons debate that he failed to attend. He spent the day campaigning in Bedford.

For the Justice Committee he did at least turn up. About the initial decision to deprive citizens of their choice of representative, he said: 'You can't both provide a guarantee of a slice of the work and provide choice.'

And: 'in order to invest in scaling the business – two firms merging, for example, there would be a need to provide a guarantee of volumes'. By volumes he meant the quantity of legal work.

So what made him change his mind? 'The market has said to me, "Actually the principle of choice is one that we regard as more important."'

The 'market' is 'Grayling speak' for the legal profession.

'This is not rocket science,' he said. 'The only issue of dispute, the one thing that resonated early on was perhaps we haven't got the choice piece right.'

'The choice piece'. So that's it then. Our choice of advocate, a piece of business. As he spoke you could sense justice being delivered, or rather not, by the pallet.

'There's never been a process of change where those people affected by change haven't been jumpy about it,' he said of the assault on our rights that has brought barristers protesting onto the streets.

Plaid Cymru's Elfyn Llwyd, who, unlike Grayling, has practiced law, challenged the huge reduction in legal providers planned for Wales. The proposals do not say what will happen if a provider is unable to provide sufficient or sufficiently qualified lawyers, said Llwyd. 'Unlike the Olympics, the Army can't be drafted in... What does the Ministry propose?'

Grayling smirked: 'A shortage of lawyers in this country is not one of the big challenges that we have.'

Llwyd said the proposals failed to consider victims of crime. Grayling replied that victims wanted to see criminals tried and locked up.

Yasmin Qureshi, Labour MP for Bolton,



challenged him on the likely disproportionate impact of his changes on black and minority ethnic firms – often one or two person firms.

‘I simply do not accept that,’ Grayling said. ‘I pay tribute to the BME business community in this country, which is among the most entrepreneurial, successful and effective parts of the private sector in the UK...’

He carried on in that fatuous way as if Qureshi’s concern related to the competence of black and minority ethnic practitioners.

Qureshi, a former Crown Prosecution Service barrister, told him: ‘If they go out of business then the number of ethnic minority people in the judiciary is going to be reduced too.’

No matter.

Elfyn Llwyd’s fears for Welsh legal firms got the same patronising brush-off: ‘I’m absolutely certain the Welsh legal profession will rise to the challenge,’ Grayling said.

He dismissed the deep anxiety widely felt about the flat fee paid regardless of plea.

Gareth Johnson, Conservative MP for Dartford, and a practising solicitor, said that some lawyers might push defendants to plead guilty because of the financial incentive – a guilty plea entailing less work.

‘I regard the standards of the legal profession to be much higher than that,’ Grayling said.

And ‘I want people who are guilty to plead guilty as early as possible.’

Jeremy Corbyn, Labour MP for Islington North, challenged the withdrawal of legal representation from prisoners trying to make complaints about medical treatment or access to mother and baby units.

Grayling replied, ‘That’s why we have prison visitors, Independent Monitoring Boards, the Prisons Ombudsman.’

Under pressure from Corbyn, Grayling said: ‘I suspect this is an ideological difference between us.’

Does Grayling seriously expect us to believe that justice is safe, because Chris Grayling has faith in the Ombudsman, the Welsh, and the entrepreneurial spirit of migrants? Or is ideology all that matters to him?

Who is this smug, self-satisfied operator? What makes him tick?

Chris Grayling was born into privilege. Educated at the Royal Grammar School, High Wycombe, he took history at Cambridge, then joined the BBC as a news trainee. He moved into management, ran TV production companies, then he jumped into another world.

He joined Burson-Marsteller, the world masters of reputation management, whose clients have included the Nigerian government during the Biafran war, the Argentinian junta after the disappearance of 35,000 civilians, the dictator Nicolae Ceausescu and the Saudi Royal Family.

Nice guys.

Grayling spent a few years at Burson-Marsteller. On his website it is not named, it’s a ‘leading communications agency’. Then he parachuted into the safe Tory seat of Espom and Ewell. He rose fast through the shadow cabinet, developing a property portfolio with help from his Parliamentary expenses.

The *Daily Telegraph* revealed in 2009 that Grayling had claimed thousands of pounds to renovate a Pimlico flat – bought with a mortgage funded at taxpayers’ expense, even

though his constituency home is less than 17 miles from the House of Commons.

The *Daily Telegraph* revealed an unusual arrangement Grayling set up with the Parliamentary Fees Office whereby he claimed £625 a month for mortgages on his main home and the Pimlico flat.

Over the summer of 2005, he undertook a complete refurbishment of the flat. Between May and July he claimed £4,250 for redecorating, £1,561 for a new bathroom, £1,341 for new kitchen units, £1,527 for plumbing and £1,950 for rewiring and other work.

During the 2005-06 financial year, Grayling claimed close to the maximum allowance for MPs, the *Daily Telegraph* reported. In 2006-2007 he submitted receipts for the work that had been carried out the previous year. In June 2006, for instance, he submitted an invoice for £3,534, with a handwritten note claiming ‘this has only just been issued, date notwithstanding’.

A scribbled note that accompanied another late-arriving claim, for £2,250, submitted in July 2006, stated: ‘Decorator has been very ill & didn’t invoice me until now.’

Anyway, back to the Select Committee meeting.

Sir Alan Beith, the chair and Liberal Democrat MP for Berwick, mentioned a few mismanaged Ministry of Justice contracts – the court interpreting shambles, prisons and probation contracts, the offender-tagging contract with G4S and Serco, under investigation and soon to blow into a massive scandal.

‘You haven’t got the capacity within the department to manage contracts on this scale have you?’ said Beith.

Grayling replied that the problem with the court interpreters contract was that it had been placed with too small a supplier, and bigger suppliers could sort it out.

Huh?

That such a man holds the title ‘Lord Chancellor’, has taken an oath to uphold the rule of law, yet holds Parliament in such contempt that he failed even to attend the Commons debate on his proposals is... surprising is the first polite word that springs to mind.

‘You have to deal with the world as it is rather than how you would like it to be,’ Grayling told the Justice Committee.

### Postscript

On 4th September 2013, in Westminster Hall MPs again decried the proposals. Grayling did not attend. *The Times* revealed exclusively on 5th September 2013 that Grayling had scrapped plans to award criminal legal aid contracts to the lowest bidder. In answer to a Freedom Of Information request the Ministry of Justice said there were 35 people on its legal aid policy team, and *one* of them was legally qualified.

Clare Sambrook is a novelist and journalist, co-editor of *OurKingdom* and winner of the Paul Foot Award and Bevins Prize for outstanding investigative journalism. This article is drawn from a piece published on *OurKingdom*, the UK arm of openDemocracy on 3rd July 2013, the day that Grayling appeared before the Justice Select Committee.



# New threat to the right to protest

**Stephen Knight** on the new police arrest tactic to include legal observers

The right to protest is a fundamental part of a democratic society. However, in the police's emerging tactic of engaging in mass arrests at political demonstrations, we see a new assault on protest, and therefore on the very foundations of our democracy. Just as bad though, is that not only have the police taken to arresting protesters, but they are now clearly expanding their assault on protest to include the arrest of legal observers.

At the anti-fascist protest in Tower Hamlets on 7th September 2013, the Haldane Society, along with Green and Black Cross (GBC) and the Legal Defence and Monitoring Group (LDMG), sent a combined team of 14 legal observers. The legal observers had the role of monitoring the policing of the protest, gathering evidence on the conduct of the police, and distributing legal advice to protesters in the form of 'bust cards' containing a summary of protesters' rights and useful legal contacts. Legal observers are always independent from the protest, and are marked out as such by their orange high-vis vests which have 'Legal Observer' printed clearly on them.

The police imposed conditions on the length and location of the anti-fascist protest under section 14 of the Public Order Act 1986 (POA). This provision allows a senior police officer to impose conditions on a public assembly if the officer reasonably believes that certain circumstances apply. A near-identical provision applies to processions, under section 12 POA. On this occasion, the supposed circumstance invoked was that the demonstration 'may result in serious public disorder, serious damage to property or

serious disruption to the life of the community'. The conditions imposed limited the duration and location of the protest.

It is an offence for a person taking part in a public assembly to knowingly breach the conditions set down under section 14 POA. Importantly, on this occasion, the police took almost no steps to inform people of the conditions. There is little doubt that the vast majority of the demonstrators present were completely unaware of the conditions, and therefore it would be impossible for them to knowingly breach them.

Around the time that the fascists were approaching Tower Hamlets, part of the counter-demonstration moved from the original site of the protest. Hundreds of those involved in this part of the protest were rounded up by police officers and confined to two small kettles. Police officers, including the most senior officers at the scene, seemed confused as to the reason for the kettles, being unable to provide coherent or consistent legal justifications for them when asked.

Despite assurances that those kettled would be released later in the day, by mid-afternoon the police began an operation which saw the arrest of everyone detained in the kettles: almost 300 people in total. The arrests were almost all made for alleged breach of the conditions placed on the protest. At one of the kettles five legal observers remained present throughout the duration of the kettle to monitor the arrests and provide support to arrestees. They were the final five people arrested. At both kettles, those legal observers not detained also had to contend with constant threats of arrest on

spurious accusations of obstructing police officers in the execution of their duty.

But this was not the first time the police had acted in this way. At a previous anti-fascist protest on 1st June 2013 police had made 58 arrests – again for breaching conditions of which protesters were clearly unaware. At that protest, police further compelled legal observers to remove their high-vis jackets and leave the demonstration. Arrests of legal observers have also taken place at other high profile events, including at the arrest of 182 Critical Mass cyclists during the 2012 Olympics Opening Ceremony.

At all of these protests the combined tactics of mass arrests and arrests of legal observers have had a chilling effect on protest.

The police do not embark on mass arrests in order to obtain convictions against all of those present. They are fully aware that almost everyone arrested for knowingly breaching conditions on the protest will be acquitted, given the difficulty of proving knowledge of the conditions. Far more troubling motivations underlie this tactic. First, mass arrests are used as an intelligence gathering exercise: being arrested, even if no conviction results, means the taking of personal details and biometric data. Secondly, they prevent people being able to exercise their right to protest when at a demonstration, as mass kettling and arrest effectively brings protest to an end. Thirdly, when people are released from custody on police bail, bail conditions are often imposed forbidding the individual arrestee from further participating in protest. For instance, on 7th September 2013, those bailed to return at a later date found >>>

>>> themselves with conditions prohibiting them from participating in protests within the M25 at which the British National Party, English Defence League and English Volunteer Force were present, thereby effectively removing from a large number of anti-fascists their ability to participate in political expression. Fourthly, and most importantly, those arrested are less likely to attend future protests if they know they may face the same treatment again, and others are less likely to attend at all if they know there is a risk of mass arrests taking place.

The tactic of arresting legal observers, while not having a direct effect on as many people, is also worrying. By arresting legal observers, the police seek to remove independent observers in order to allow themselves to act with impunity.

Whereas the most high profile mass arrests and arrests of legal observers have been undertaken by the Metropolitan Police, this approach has also been used elsewhere, for example at the anti-fracking protests at Balcombe this summer. Clearly, the growing and consistent use of mass arrests at political demonstrations is part of a wider approach by the police of cracking down on protest. These

If you were arrested on 7th September, or could provide any useful evidence to help in people's defence, email GBC on [gbclegal@riseup.net](mailto:gbclegal@riseup.net). If you would like to get involved with legal observing with the Haldane Society, email [legalobservers@haldane.org](mailto:legalobservers@haldane.org)

are not isolated incidents, but a determined strategy to undermine political dissent by dissuading people from attending protests, and preventing effective monitoring of the police.

As well as the chilling effect on protest, it is strongly arguable that the arrest of legal observers for breaching conditions placed on protests is itself unlawful. Legal observers clearly do not 'take part in' protests – a fundamental part of the offences under the POA – but instead are present to observe them. It is clear that senior officers are aware of the arrest of legal observers, and may have directly

ordered their arrests. The constant visibility of legal observers at mass protests, and their interactions with them, cannot have left any doubt in these senior officers' minds that legal observers are not protesters. It should therefore be obvious to the police that independent legal observers are not capable of being subject to conditions under sections 12 and 14 POA. Further, the recent *dicta* of Lord Justice Moses in *Mengesha v Commissioner of Police of the Metropolis* [2013] EWHC 1695 (Admin) indicates that the courts are alive to the independence of legal observers, and are approving of their role.

Those legal observers recently arrested are currently consulting their lawyers as to the next steps they should take. Given the growing tactic of threatening legal observers, it is conceivable that it may become necessary to bring a case to court in order to establish once and for all their independence from the protests they attend. It would be unfortunate if a legal challenge were to be the only way of containing this new threat to the right to protest.

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Stephen Knight is an Executive Committee member of the Haldane Society



## Michael Goad and Emily Elliott report on an important victory in the High Court against the Metropolitan police and its kettling actions

On 7th September 2013, around 300 anti-fascist demonstrators were arrested in East London. The arrestees were reportedly kettled by police for several hours before being arrested *en masse* for breaching restrictions imposed on the demonstration under the Public Order Act 1986. This shocking crack-down by the Metropolitan Police, on what had reportedly been a peaceful demonstration, is nothing new, particularly in recent years where Government attacks on every aspect of public services have increasingly been met with protests and dissent. This in turn has been met with repression from authorities, such as the police service, who are keen to dissuade similar protests in the future. The more extreme and oppressive tactics adopted by police in times of austerity makes the High Court's recent decision in the case of *Mengesha v Commissioner of Police of the Metropolis* an important victory in defence of the right to protest.

The case arose during the trade union march in central London on 30th November 2011. Legal observers from the Haldane Society had attended to monitor the policing of the demonstration. At around 15:00, a group of demonstrators attempted to occupy the headquarters of Xstrata mining company on Panton Street. Police responded by setting up a containment and kettling about 150 people, including a number of legal observers. The group was contained for about two hours

before the detainees were released one at a time. Upon release, each detainee was filmed by a police officer and required to provide their names and addresses and submit to a search. Those who refused were not allowed to leave and were pushed back into the containment.

The officers on the ground on 30th November 2011 offered little or no legal justification for their actions at the time. Some of the officers claimed to be relying on a power under the Police Reform Act which allows officers to require a person to give their name and address if they believe that person has been acting in an anti-social manner. However, that legislation was clearly not intended to provide such a blanket power as the police were purporting to exercise on that day – a fact subsequently recognised by the Metropolitan Police's legal team as they did not rely on it at the High Court.

The tactics were, however, deeply troubling. There are obvious privacy concerns with what was effectively large-scale, arbitrary surveillance. No attempt was made to establish whether particular individuals may have actually committed any crimes. Everyone was treated as a suspect merely because of their presence. Everyone's details were taken, the information no doubt destined for one of the Metropolitan Police's secretive databases.

Further, the conduct seemed to be deliberately intimidating. Many of the demonstrators present were young people,





*Mass arrests also took place this summer of anti-fracking protesters in Balcombe in west Sussex.*

perhaps on one of their first protests. Each had been kettled for hours before being funnelled through police lines to be held with their back against a wall and a video camera pointed inches from their faces.

One of the detainees was Susannah Mengesha who had attended the demonstration as a legal observer with the Haldane Society. Represented by Kat Craig (Haldane Vice-Chair), then of Christian Khan solicitors, Ms Mengesha initiated judicial review proceedings against the Metropolitan Police arguing that it was unlawful for them to require detainees to provide their personal details as the 'price of being permitted to leave'.

In the Metropolitan Police's initial response to the claim, they maintained that the filming and questioning was 'part and parcel of the containment', containment itself having been declared lawful by the European Court of Human Rights in *Austin v UK*. They even argued that the demonstrators had benefitted as it had prevented dragging the containment out longer in order to identify actual offenders in the crowd. However, by the time of the hearing before the High Court on 2nd May 2013, the Metropolitan Police had conceded that it was in fact unlawful to require the detainees to provide their details. Lord Justice Moses referred to this prior argument, made by the Commissioner, as a 'significant misapprehension as to the lawful scope of his powers', noting that *Austin v UK* had found containment to be only permitted where a breach of the peace is taking place or is reasonably thought to be imminent. This method of last resort is not permissible for any other reason, such as ensuring identification of all those in the containment.

Accepting that there was no legal power to require the detainees to provide their details,

the Metropolitan Police instead tried to argue that in fact everyone had given their details voluntarily. The Court rightly gave that contention extremely short shrift and rejected it early on in the hearing. It was noted that one only needed to view the video of Ms Mengesha providing her details to see that it was not being done voluntarily. Further, the Metropolitan Police's initial response, which tried to justify obtaining personal details as a necessary part of the containment itself, seemed to accept that it had been a requirement and not a request.

The hearing also touched upon whether a constable is acting unlawfully when he requests a person to stop and identify themselves in circumstances where it appears that an obligatory demand is being made of them and they have no alternative but to comply. Such a circumstance appears to apply here – the demonstrators and legal observers were lawfully contained and thereafter, lawfully searched. In between leaving the containment and the search, their details were taken. It was noted by Moses LJ that this gave an impression that the details were lawfully required. Unfortunately however, he stated in his judgment that, as important as this issue is, this case did not require it to be resolved.

With the Metropolitan Police having nothing else to hide behind, the Court granted Ms Mengesha's application in a judgment handed down on 18th June 2013. The judgment praised Ms Mengesha's conduct in the proceedings with these closing words: 'With the same sense of responsibility she has demonstrated throughout her conduct as a legal observer, the claimant does not seek any form of just satisfaction other than this vindication of her claim'.

This decision is important for three reasons.

Firstly, the fact that demonstrators will no longer be subjected to these arbitrary and intimidating tactics is a good thing and, as I stated above, an important victory for the right to protest.

Secondly, the case clearly illustrates the strategies of the police, and the Metropolitan Police in particular, towards protests and public order situations. What stands out is the sheer brazenness of the police in assuming these powers and the lack of regard for any legal constraints. The fact that, when the proceedings actually got to court, they did not even try to argue a legal justification shows just how little consideration they had given to the lawfulness of their actions at the time. This astonishing arrogance is no doubt partly due to the support they have always received from the courts and legislature in validating their public order powers, the vindication of 'kettling' being one recent example.

Finally, this case demonstrates the importance of judicial review itself. The shameless arrogation of such powers by the police shows how crucial it is to have a robust, and accessible, means of holding the Executive to account. It is therefore essential that we fight against the proposed changes to legal aid funding for judicial review which will deny funding in cases deemed 'borderline' and cases that are resolved prior to the permission stage. Such changes will mean judicial review is simply not a financially viable practice for many firms, resulting in many cases, like Ms Mengesha's, not being brought in future.

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Michael Goold is a pupil barrister and co-secretary of The Haldane Society and Emily Elliott is a member of the Society's Executive Committee

Miscarriages of justice appear to have fallen out of fashion. While the early 1990s saw a series of cases that shook the criminal justice system to its core, today overturned convictions still make occasional headlines but rarely linger in the media for long. The general assumption appears to be that things just are not like they were in the bad days of the 1970s and 1980s, when ‘fit ups’ and forced confessions were a common problem. There have undoubtedly been substantial improvements since cases such as the Guildford Four and Birmingham Six came to the public’s attention; however, miscarriages of justice take many forms, and the recent case of Sam Hallam shows that the potential for them to happen in the present remains very real. While reforms have helped to reduce – but by no means eliminate – the number of wrongful convictions since their enactment, older potential miscarriages of justice remain. Those unfortunate enough to have spent years or sometimes decades behind bars for crimes they did not commit are still waiting for justice.

The case of Eddie Gilfoyle is one that again raises the grave spectre of a serious miscarriage of justice. The circumstances of the case are extremely tragic and made even more so by the fact that an innocent man appears to have spent 17 years in prison for a murder he did not commit. In 1992 Eddie Gilfoyle, a Falklands War veteran, was working as a nurse in his local hospital. On 4th June 1992, Eddie’s wife Paula Gilfoyle was found hanged in the garage of their home in Upton, Wirral. She was eight and a half months pregnant. The cause of death was asphyxiation caused by hanging. A suicide note was found at the house written by Paula, and the death bore the hallmarks of a tragic suicide. Yet four days later Eddie was arrested; and, in the summer of 1993, he was convicted of the murder of his wife by a jury at Liverpool Crown Court. Eddie subsequently spent 17 years in prison before being released on parole in 2010, under strict license conditions that have been ordered to remain in place for the rest of his life.

How the case went from a tragic suicide to Eddie’s conviction for murder is a story so fraught with problems that his supporters have battled tirelessly for 19 years to expose it as untenable. Since his conviction, a steady stream of further material and revised analysis of the evidence have thrown much doubt over the conviction, and, as recently as 2010, important new evidence has been disclosed to Eddie’s lawyers for the first time.

To return to the immediate aftermath of Paula’s death, the Coroner’s Officer, PC Jones, told the Senior Scenes of Crimes Officer when he arrived at the scene, that ‘there’s nothing for you here’. PC Jones told the Senior Scenes of Crimes Officer that upon arrival at the house he had observed the body in the garage and concluded it was a straightforward case of suicide, there being nothing to suggest any suspicious circumstances. By the time the Senior Scenes of Crimes Officer had arrived the Coroner’s Officer had already cut down the body. Astonishingly, however, he had not taken any photos of the body *in situ* before doing so. This was to be the first of a substantial number of errors committed at the scene of Paula’s death. The fact that the Coroner’s Officer was first on the scene, and was allowed such unfettered access, may appear surprising even

# Eddie Gilfoyle: miscarriage of justice

**Jacob Bindman** on the tragic suicide which inexplicably became a murder investigation



to those with little knowledge of how deaths are investigated by the authorities. The effective preservation and analysis of a crime scene is largely dependant on properly trained officers getting to it first, and ensuring that vital evidence is not destroyed. Naturally this task has traditionally been entrusted to trained detectives, experienced in such matters. The role of the Coroner’s Officer is a far more functional one, essentially acting on behalf of the Coroner to officially confirm a death and record the circumstances. Therefore, where a death is reported, whether suspicious or not, the police are required to attend the scene and obtain primary access to the body in order to, if necessary, rule out suspicious circumstances. Yet in the Wirral, at the time of Paula’s death, the police had in place a policy unique to that division of the Merseyside Police Force: allowing the Coroner’s Officer to inspect the scene first. Eddie’s solicitor only learned of the existence of this policy in 2012. The policy was subsequently changed, but embarrassment at its prior existence perhaps partly explains the caginess by the Merseyside Police Force in the years since Eddie’s conviction.

The mishandling of the scene is a crucial element of the problems with Eddie’s case. What was left in the aftermath of such a poorly handled initial investigation was a lack of vital evidence and a space in which extreme hypotheses were allowed to develop into a full blown prosecution for murder against Eddie. Two separate internal investigations into the handling of the initial investigation resulted in strong criticism of the way the case was dealt with and disciplinary action against a number of officers – although it must be noted that the

complaints against the officers were not proved at disciplinary proceedings.

Frustratingly for those representing Eddie, details of these internal investigations were only provided to them in piecemeal fashion over the course of the trial and two subsequent appeals. Indeed, the full accompanying notes to the *Humphreys Report*, which was the first internal investigation, were not disclosed until June 2012, while parts of the second internal inquiry, the *Gooch Report*, remain redacted to this day. This drip of disclosure has significantly hampered Eddie’s attempts to clear his name; and, as a result, the Court of Appeal has never properly considered the effect of the failures at the scene.

The question still needs to be asked: why did Paula’s apparent suicide become a murder investigation? There is no definitive answer, but a number of factors drove a feeling of disbelief to suspicion on the part of the authorities. The fact that Paula was eight and a half months pregnant proved to be the catalyst for a change of thinking in those investigating. At the time of her death research was limited, but there was a common assumption that women close to giving birth simply would not want to commit suicide. Pre-natal suicide is relatively rare, but subsequent research has shown that it is by no means as rare as it appears to have been thought at the time Paula’s death was investigated. Since Eddie’s conviction in 2003 by *The British Journal of Psychiatry* has suggested that suicide is a leading cause of maternal death. This applies primarily to the period after giving birth but the increased risk of pre-natal suicide where underlying mental health issues may be present was highlighted. Additionally, during



told an internal investigation that he was adamant the rope was not there the first time, and that he had looked in the exact draw in which it was found.

One can speculate that the intense shock to a small and closely knit community, and the disbelief of the people closest to Paula about her motivation to end her own life, led to the single minded pursuit of an alternative theory to suicide. Despite the inadequacy of the initial investigation, this new theory received some support from what would later prove to be highly questionable forensic evidence. One example of this is that the jury were shown a video of a pregnant female police officer standing on a step-ladder, trying unsuccessfully to tie a rope in a knot around the beam in the garage where Paula had been found. The rope she used was limp and floppy where as the original was stiff and thus likely to have been able to be manoeuvred more easily. Unfortunately the original ligature was destroyed after the post-mortem meaning that this piece of vital evidence was not available for examination. However, the prosecution pathologist gave evidence that based on his experiments Paula could not possibly have committed suicide. His conclusion was that Paula must have been a willing victim as there was no bruising signifying a struggle. Two tiny scratches were found on her neck, which the pathologist attributed to a struggle, presumably as the noose tightened around her neck.

However, subsequent evidence from renowned pathologist, Dr Bernard Knight, suggested that the scratches most likely came from the first post mortem, at which no marks were recorded. Another pathologist later provided evidence that he had seen scratch marks in suicides and that they were therefore not necessarily indicative of a struggle. Above all, support was given at trial for the prosecution's extraordinary theory that Paula had been tricked into placing a noose around her own neck and then Eddie had pulled her legs from underneath her. Shockingly, not one of the witnesses were experts in knots, nor were any in a position to give the seemingly conclusive opinions they gave.

By the time of the second appeal, the Crown had accepted many of the flaws in the forensic evidence but instead relied on an alternative explanation: that Paula was sitting on top of the step-ladder and was pushed off by Eddie. Again, this was strongly refuted by Professor Knight, but by this stage it appeared that the Court of Appeal had shifted the focus of the case to other parts of the evidence against Eddie, finding that the non pathological evidence of Paula's death was the key to the conviction; and, somewhat surprisingly, that it always had been.

The 'non pathological evidence' in the case relates largely to Paula's alleged state of mind prior to her death. Professor David Canter, an eminent psychologist, had provided an expert report to police prior to the trial, in which he concluded that Paula had not killed herself. Although this evidence was deemed inadmissible at the trial, it clearly influenced the police and prosecution's thinking. Yet following further disclosure of material by the Criminal Cases Review Commission that he had not been shown by the police before writing his report, Professor Canter reversed his view and concluded that all the evidence

suggested that Paula *had* killed herself. Unfortunately for Eddie, Professor Canter was not allowed to give evidence at Eddie's second appeal in 2000. This comes on top of the increased understanding of suicide in pregnancy that has become apparent in the years since Paula's death. Despite the question marks that had emerged over the prosecution case, the Court of Appeal in 1995 and 2000 placed great significance on the fact that Paula appeared to be in a happy state of mind, and that consequently suicide would have been greatly out of character. However, in 2010, Eddie's solicitor was allowed access to the unused material in the case, which revealed a metal box containing a copy of Paula's diary never before seen by the defence. The diary revealed that Paula had attempted suicide as a teenager after a row with her then boyfriend. That same boyfriend had subsequently gone on to murder a young woman, and his relationship with Paula had continued for a substantial period while he was serving a life sentence. Along with the diary, Paula had kept a suicide note from a former fiancé whom she had been with when she first met Eddie, which contained phrasing which was similar to her own suicide note. Clearly this is important evidence that would, at the very least, have tested the unerring belief of all concerned that Paula showed no glimpses of depression or unhappiness. Such evidence forms a part of Eddie's latest attempt to have the CCRC refer the case back to the Court of Appeal for a third time.

These are just some of the problems with Eddie's conviction that have led to the third attempt to have it quashed. Allied to these concerns are a plethora of significant problems with the case, such as the fact that Eddie did not give evidence at trial due to his mental state following the death of his wife, and concerns about his ability to engage with the trial after it emerged he had not been given the correct medication during proceedings. This article is an attempt to give some background to the case, and to highlight some of the problems that have led many to believe that Eddie should not have spent 17 years in prison. A campaign for the quashing of his conviction is building up steam once again. The Eddie Gilfoyle Campaign recently released a 50 page booklet which provides details of the history of the case, and the evidence involved, in an accessible format. Meanwhile Eddie's solicitor, Matt Foot, has submitted substantial representations and evidence to the Criminal Cases Review Commission to ask that they consider referring his case back to the Court of Appeal once again, in light of the fresh evidence and new analysis of old evidence that has emerged.

The campaign has drawn a wide spectrum of support from many, including Lord Hunt of the Wirral, former chair of the Bar Council, Desmond Browne QC, and numerous lawyers, campaigners and members of the public. *The Times* has also reported extensively on the doubts that surround the case and expressed grave concern about the safety of the conviction.

For more information visit [www.eddiegilfoyle.co.uk](http://www.eddiegilfoyle.co.uk).

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Eddie's second appeal, which took place in 2000, a psychiatrist with experience of suicides in pregnancy (an expertise that was not available during his first trial) gave evidence that Paula was in his view 'phobic of labour'. Unfortunately for Eddie the Court of Appeal refused to receive this evidence.

In addition to any subjective incredulity that the police may have felt, as officers spoke to family and friends in the days that followed Paula's death, an anecdotal picture began to emerge of a woman with a 'bubbly' personality who was very much looking forward to becoming a mother. It was these testimonies that began to change the attitude of those investigating towards Eddie. The focus changed, Eddie was arrested and interviewed at length on three occasions before being released without charge. At the time of his first arrest on 8th June 1992, the police carried out an extensive search of the house including the garage and found another, partially completed note from Paula. Using Electro Static Document Analysis a further partially drafted suicide note was found in a notebook. These finds would fuel the officers' new hypothesis that Eddie had dictated suicide notes to Paula under the false pretence that he was doing a course on suicide at work, a theory suggested by two of Paula's work colleagues. It was this theory that came to be the driving force behind the police's pursuit of Eddie.

In a further search on 23rd June 1992 an officer recovered what came to be known as the 'practice rope' from a drawer in the garage. This appeared to be a rope in a noose-like formation that bizarrely had not been seen during the previous search of the garage. An officer who was present for the first search later

In 2010 Kenya created a new modern constitution that replaced both the 1969 Constitution and the past Colonial Constitution in 1963. This was the culmination of almost five decades of struggles that sought to fundamentally transform the backward economic, social, political, and cultural developments in the country.

**by Willy Mutunga**

#### **The vision of the constitution of Kenya**

The making of the Kenyan 2010 constitution is a story of ordinary citizens striving and succeeding to overthrow the existing social order and to define a new social, economic, and political order for themselves. Some have spoken of the new constitution as representing a second independence.

There is no doubt that the constitution is a radical document that looks to a future that is very different from our past, in its values and practices. It seeks to make a fundamental change from the 68 years of colonialism and 50 years of independence. In their wisdom the Kenyan people decreed that past to reflect a status quo that was unacceptable and unsustainable through: provisions on the democratisation and decentralisation of the Executive; devolution; the strengthening of institutions; the creation of institutions that provide democratic checks and balances; decreeing values in the public service; giving ultimate authority to the people of Kenya that they delegate to institutions that must serve them and not enslave them; prioritising integrity in public leadership; a modern Bill of Rights that provides for economic, social and cultural rights to reinforce the political and civil rights giving the whole gamut of human rights the power to radically mitigate the status quo and signal the creation of a human rights state in Kenya; mitigating the status quo in land that has been the country's achilles heel in its economic and democratic development; among others reflect the will and deep commitment of Kenyans for fundamental and radical changes through the implementation of the constitution. The Kenyan people chose the route of transformation and not the one of revolution. If revolution is envisaged then it will be organised around the implementation of the constitution.

#### **The vision of the new judiciary under the constitution**

##### The Old Judiciary

Let me reflect briefly on the nature of the judiciary of which all Kenyans are a part. We are the heirs, albeit by what you might think of as a bastard route, to a tradition that gives a very powerful place to the judiciary: under the common law system. It is a flawed inheritance because it came to us via the colonial route. The common law as applied in Kenya, at least to the indigenous inhabitants, as in the colonies generally, was shorn of many of its positive elements. During the colonial era we were not allowed freedom of speech, assembly or association. Our judiciary was not independent, but was essentially a civil service, beholden to the colonial administration and very rarely minded to stand up to it. Indeed, administrative officers took many judicial decisions. There was no separation of powers. And institutions of the people that they trusted were undermined or even destroyed. Indeed the common law was a tool of imperialism. Patrick McAuslan, upon whose book with Yash Ghai most lawyers of Kenya cut their constitutional teeth, wrote satirically (plagiarising the late 19th century poet, Hilaire Belloc): 'Whatever happens, we have got the common law, and they have not'. We can recall the trial of Jomo Kenyatta: a masterful display of juristic theatre in which the apparent adherence to the rule of law substantively entrenched the illegitimate political system in power at the time. Colonial mindsets persisted, in the executive, the legislature and, unfortunately, even in the judiciary, even after independence. We continued to yearn for the rule of law.

By the rule of law, I do not mean the sort of mechanical jurisprudence we saw in cases like the Kapenguria trials. It was mechanical jurisprudence that led the High Court in



Picture: Jess Hurd / reportdigital.co.uk

independent Kenya to reach an apparently technically sound decision that the election of a sitting president could not be challenged because the losing opponent had not achieved the pragmatically impossible task of serving the relevant legal documents directly upon the sitting president. Again it was this purely mechanical jurisprudence that fuelled the decision of a High Court that the former section 84 of the independence constitution (that mandated the enforcement of a bill of rights) rendered the entire bill of rights inoperative because the Chief Justice had not made rules on enforcement as he was obligated by the self-same constitution to do.

#### The New Judiciary, the New Rule of Law, the Decolonising Jurisprudence

It is time for the judiciary of Kenya to rise to the occasion, and shake off the last traces of the colonial legacy. As I see it, this involves a number of strands or approaches.

There must be no doubt in the minds of Kenyans, or of us, about our impartiality and integrity. No suspicion that we defer to the executive, bend the law to suit our long term associates or their clients, or would dream of accepting any sort of bribe.

Secondly, to be a judge has always been the pinnacle of ambition of any lawyer who actually takes pride in her work. So it should be possible to take for granted that a judge is of high intellectual calibre, with mastery of legal principles and techniques, hard working, and committed to applying these qualities in the task of judging.

Thirdly, we in Kenya have been the inheritors of not only the common law but of english court procedures. While english court procedures have over time been made simpler, some archaic terminology has been done away, with case management having been firmer, and alternative dispute

resolution has been much more used, in Kenya we still have cases that are heard in driblets. We need radical changes in judicial policies, judicial culture, and an end of judicial impunity and laziness.

Fourthly, I see in the constitution, especially Article 159 (2), a mandate for us to carry out reforms tailored to Kenya's needs, and aimed at doing away with these colonial and neo-colonial inefficiencies and injustices. It is perhaps remarkable, and indeed, a paradox that, although disappointment with the judiciary was at least as great among the common Kenyan as frustration with politicians, it is also true that they chose to place their faith in the institution of the new judiciary in implementing the new constitution.

Fifthly, what I want to emphasise here is the need to develop new, not only highly competent but also indigenous jurisprudence. I link this last adjective to the constitution's value of patriotism. I conceive that it requires the judge to develop the law in a way that responds to the needs of the people, and to the national interest. I call this robust (rich), patriotic, indigenous, and patriotic jurisprudence as decreed by the constitution and also by the Supreme Court Act of Kenya. Above all, it requires a commitment to the constitution and to the achievement of its values and vision.

Sixthly, few people now maintain the myth that judges in the common law system do not make law. Our constitution tears away the last shreds of that perhaps comforting illusion, especially in the context of human rights, when it provides under Article 20 (2) (a) that 'a court shall develop the law to the extent that it does not give effect to a right or fundamental freedom'. As I read it, it means that if an existing rule of common law does not adequately comply with the Bill of Rights, the court has the obligation to develop that rule so that it does comply. And it is matched (in Article 20(3)(b), >>>

>>> which follows) by an obligation to interpret statute in a way that also complies with the bill of rights. This is an obligation, not to rewrite a statute, but to read it in a way that is bill of rights compliant if at all possible. I would urge that it is not just the bill of rights that should be used as the touchstone of legal appropriateness but also the constitution more generally. The constitution says no less.

#### Elements of Robust (rich), Indigenous, Patriotic, and Progressive Jurisprudence

The elements of this decolonising jurisprudence would include the six strands and approaches discussed above, would shun mechanical jurisprudence, but would also reflect the following ingredients:

The decolonising jurisprudence of social justice does not mean insular and inward looking. The values of the Kenyan Constitution are anything but. We can and should learn from other countries. My concern, when I emphasise ‘indigenous’ is simply that we should grow our jurisprudence out of our own needs, without unthinking deference to that of other jurisdictions and courts, however, distinguished. And, indeed, the quality of our progressive jurisprudence should be a product for export to these distinguished jurisdictions. After all our constitution is the most progressive in the world.

While developing and growing our jurisprudence commonwealth and international jurisprudence will continue to be pivotal, the Judiciary will have to avoid mechanistic approaches to precedent. It will not be appropriate to reach out and pick a precedent from India one day, Australia another, South Africa another, the US another, just because they seem to suit the immediate purpose. Each of those precedents will have its place in the jurisprudence of its own country. A negative side of a mechanistic approach to precedent is that it tends to produce a mind-set: ‘If we have not done it before, why should we do it now?’ The Constitution does not countenance that approach.

Our jurisprudence must seek to reinforce those strengths in foreign jurisprudence that fit our needs while at the same time rescuing the weaknesses of such jurisprudence so that ours is ultimately enriched as decreed by the Supreme Court Act.

The task of growing such jurisprudence involves a partnership: between other judiciaries, the profession and scholars. I hope that the bar, too, will respond to the challenge. Standards of advocacy need to improve, the overall quality of written and oral submissions needs to improve. We have so far found the jurisdictions of India, South Africa and Colombia to be great partners as our respective constitutions are similar in many respects. Besides, decolonising jurisprudence requires South-South collaboration and collective reflection.

We are trying to move away from excessively detailed written submissions. This makes sense only if the judges read the written submissions in advance. And do so with a critical eye, prepared to interrogate the arguments of counsel. And prepared also to put forward alternative ideas. It is a questionable practice to come up with ideas and authorities in the privacy of judges’ chambers when writing a judgment, if counsel had no chance to put forward argument on those ideas and authorities. The very purpose of written submissions is to try to prevent that happening by enabling the judge to be well prepared in advance. If the judge is well prepared, he or she is in a much stronger position to criticise counsel for not being prepared. In this way the bench can help encourage higher standards of advocacy.

We are trying to make this task easier for you by enhancing the quality and quantity of legal materials available to the bench by and appointing legal researchers. It will be a learning experience for judges as well as legal researchers to work out how the cause of justice can best be served by this innovation. We are confident that this offers an opportunity to make major strides in the quality of the jurisprudence in the courts of Kenya.

I want also to add that these major strides in the quality of jurisprudence in our courts can be amplified if we improve our collegiality and ability to co-educate each other so that



*Pawa 254 (Power 254) is a centre for radical artists in Nairobi. Willy Mutunga (pictured on the right, above) visited the centre and toured the exhibition.*



the decisions coming out of our courts will reflect the collective intellect of the judiciary distilled through the common law method as well as through regular discourses and learning by judicial officers. To be a good judge must involve continuous training and learning and regular informal discourses among judges.

The Judiciary Training Institute (JTI) must become our institution of higher learning, the nerve centre of our progressive jurisprudence. JTI will co-ordinate our academic networks, our networks with progressive jurisdictions, our training by scholars and judges, starting with our own great scholars and judges. In our training to breathe life into our



constitution our jurisprudence cannot be legal-centric; it must place a critical emphasis on multi-disciplinary approaches and expertise.

Now that law reporting is regular under the able leadership of the National Council on Law Reporting, the Supreme Court has also established a program of researching the 'lost jurisprudence' during the years when reporting did not exist. I am confident there will emerge gems and nuggets of progressive jurisprudence from that search.

Let us hope that the community of scholars responds to the challenge equally. The quality and quantity of Kenyan legal literature is disappointing. We need high quality

commentary on the constitution, and on our laws. And we need high quality commentary on our judgments. We must not be over-sensitive to criticism. No one learns anything if they are not criticised. There are some small shoots of revival in legal writing. Let us hope they thrive and multiply.

Article 159(2)(e) says that the courts must protect and promote the purposes and principles of the constitution. I have sought to establish such framework for purposive interpretation in two Supreme Court matters.

The constitution took a bold step and provides that 'The general rules of international law shall form part of the law of Kenya' and 'Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution'. Thus Kenya seems to have become a monist state rather than a dualist one.

The implications of this will have to be worked out over time, as cases come before the courts. Even in the past, Kenyan judges have not ignored international law. They have often quoted the Bangalore Principles on Domestic Application of International Human Rights Norms.

Now, however, the courts have greater freedom. Many issues will have to be resolved. Indeed, we now have great opportunity to be not only the users of international law, but also its producers, developers and shapers.

In some ways our task is rather easier than that faced by some other court systems struggling to establish the validity of their place in the constitutional scheme. The principle of *Marbury v Madison*, that established the possibility of judicial review of legislation, and at the same time the key place of the courts in the upholding of the US Constitution, is enshrined in our constitution (Articles 23(3)(d) and 165(3)(d)). So are the basic characteristics of the Indian public interest litigation (Articles 22(2) and 258(2)). Our path has been smoothed: we do not have to strive to establish our role as guarantor of the supremacy of the constitution, or of the rights of the downtrodden. We are indeed clearly mandated to fulfil these roles.

Let me again remind you that our constitution specifically mandates public interest litigation. Our appointment process is precisely designed to give us independence of the executive and the legislature so that we can if necessary 'force other institutions of governance to do what they are supposed to do'. We can only pray that we have the moral stature, the legal skills and the courage to do what we are directed to do.

Finally, Article 159 (2) of the constitution has restored 'traditional dispute resolution mechanisms' with constitutional limitations. We live in our country where courts are not the only forums for administration of justice. Traditional dispute resolution mechanisms keep these institutions as free as possible from lawyers, 'their law,' and the 'law system of the capital.' The development of the 'Without the Law' jurisprudence will be a critical nugget in our progressive jurisprudence.

## Conclusion

Professor Upendra Baxi wrote, of public interest litigation in India:

'The Supreme Court of India is at long last becoming...the Supreme Court for Indians. For too long the apex court had become "an arena of legal quibbling for men with long purses"'. Now increasingly, the court is being identified by the Justices as well as people as "the last resort of the oppressed and bewildered".'

I hope that the courts of Kenya will truly be viewed as the courts for all Kenyans, and the salvation of the Kenyan oppressed and bewildered. And, to return to where I really began: I believe we shall only do this through the rigorous but creative use of the basic values of our constitution, indeed through the judiciary's becoming the embodiment of those values, especially of patriotism, social justice and integrity.

Dr. Willy Mutunga is the Chief Justice of the Republic of Kenya and the President of the Supreme Court of Kenya. He gave this speech to Judges and guests of the Kenyan Judiciary on the occasion of launching the Judiciary Transformation Framework on 31st May 2012.

## Poetry by Talha Ahsan

### TV Death Row

– Yo.

The universal call sign hollered from behind a cell door.

– Yo.

A reply with all the authenticity of a baseball cap worn backwards by an ageing celebrity. The inmates stand by the iron doors embedded with a two foot glass pane a few inches wide. They raise their voices through the gap at the sides. Every fifteen minutes a correctional officer will tour the tier. At night they flash torches upon prone bodies to inspect for the stipulated living breathing flesh as per directive. There is a pause in the conversation.

– You should get a TV, he continues

– But I'm worried I'll end up watching it all day and night.

– What's wrong with that?

I laugh. He laughs with me. Then his laugh takes on a different tone and turns louder upon realisation my laughter was at the perceived but clearly unintended irony of his question.

In the housing block opposite is located Death Row. There are eleven of them. In 2012 the death penalty was repealed in Connecticut but any prior capital conviction remains. They await the outcome of cases to overturn their sentences. I asked my attorney once what they did all day. "Watch TV," he replied. There followed a moment of sunken despondency.

TV is a *momento mori* of candy floss and glitter. Those are just bones with a temporary

**Talha Ahsan** (born 1979, London) is a British poet and translator. He is currently in pre-trial solitary confinement in a supermax prison in Connecticut since his extradition to the USA with co-defendant Babar Ahmad in



fix of salmon-toned fresh skin. Those are just skulls grinning under cheerleader-blonde. Behind the glass, beyond the pores and bones, another goldfish bowl of a cell: dark, humid and pink if you sneaked a peek.

Amongst the whirring of blood, bald and barefoot, thoughts pace hands cuffed behind back. Between the two slits, a morsel descends the darkness of an alimentary canal.

– OK, I'll think about it, I say.

I return to another slither of window to a world: a cut unhealed upon a cell wall.

The skeletons of autumn queue for last rites kept in line by an indifferent wire fence. No appeal will be heard.

October 2012. He was detained without trial for over six years after being arrested under an extradition request from the USA – a country he had never set foot in – on allegations relating to an obsolete Islamic media website concerning conflicts in Chechnya and Afghanistan. The case raised controversy due to comparisons with Gary McKinnon and accusations of double standards due to Ahsan's diagnosis with Asperger's syndrome.

A new book of his poetry is being released soon with an introduction by Gareth Peirce.

*TV Death Row* was written in supermax. The other poem was written just prior to his extradition when he was in HMP Long Lartin.

## Scratched on a Wall

You cannot cut your hand on edges that are blunt, or rather a knife to your skull than a rock for the heart?

The dirt will choke out your lungs if you cannot clean yourself with your tongue.

A person who believes the sun will never rise again, and a person who believes it will, do not live on the same island.

In prison, I have matured double my age, like a piece of paper, folded and folded over again, I am stronger, less easy to tear.

Words are written not to remember but to forget as memories for others to pick up and skim across a deafening sea.

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# Ballots or banners?

In May 2011 Chilean students began a series of mass protests demanding a free and state-funded education system. Some 700 schools were occupied and daily street protests took place during that year. The student protests have continued throughout 2012 and 2013. These protests have been the largest seen in Chile since the end of the US Government backed dictatorship of Augusto Pinochet in 1990, which overthrew the democratically elected Government of Salvador Allende on 11th September 1973, Chile's 9/11. Under Pinochet and using State terrorism, a radical programme of neoliberal policies, including mass privatisation, was forced on the population. Thousands were murdered to bring 'free markets' to Chile.

In 2011, the students' initial demands for reform of the education system soon gave way to a more comprehensive critique of the neoliberal economic model, still largely in place more than 23 years since formal democracy

Film maker **Pablo Navarrete** looks at how student protests in Chile have taken on a new political dimension

returned. A key student demand has been the reform of the undemocratic 1980 constitution, 'approved' under the dictatorship and still in place today. The constitution has been a key instrument in ensuring the perpetuation of the neoliberal model.

For the upcoming documentary I am producing on the student protest movement, the film's director Roberto Navarrete travelled to Chile in 2011 and 2012 to speak to the high profile student leaders such as Camila Vallejo (*The Guardian* newspaper's person of the year in 2011) and Giorgio Jackson, but also to ordinary students, to understand why their protests are causing such an effect in Chile and inspiring others in Chile and beyond.

Since 2011, a major source of debate within the student movement has centred on how to relate to the formal political process with one section of the student movement opting not to participate in elections and instead make its demands on Chile's political class from the



“The movement has made a cultural change and Chilean society is now thinking about a re-articulation of our organisations and our work, making them more stable and permanent.”

served to awaken consciousness, and signalled a new horizon for Chilean society, in the direction of making profound changes to our country. In terms of concrete demands, the student movement, the social movement for education, hasn't achieved very much in terms of new Government legislation, in the sense that the vast majority of the laws that are being debated by our politicians do not faithfully represent our demands for free, high quality public education for all so that the access and functioning of education can be democratised. However we believe that there have been many advances in subjective terms. Today, the Chilean population believes that a different future is possible in Chile. They believe that thanks to organising and collective action we can make changes and thus put the weaknesses of political institutions that were created to dominate and exclude the great majority into sharper focus.

Therefore, Chilean society, which once had great respect for its institutions, today no longer believes in them and those rulers or those who hold political power cannot find protection behind these institutions because they are totally discredited. The abuse of power, mismanagement of information, misrepresentation of information by the media, the abuse of economic power through economic practices that have no type of regulation in the private sector, all these things have become evident and people now find them intolerable. The discontent that had been brewing in society exploded in 2011. From this discontent, civil society has put forward new proposals. We are not simply a group of indignant people but a movement that had the ability to propose an alternative horizon for construction. I think that's the summary I would make of 2011. It's been a year in which we could not make much in terms of concrete advances given the moorings of political institutions inherited from the dictatorship. Nevertheless we have made advances on a subjective level, the movement has made a cultural change and Chilean society is now thinking about a re-articulation of our organisations and our organisational work, making them more stable and permanent. Through this we plan to strengthen our proposals for a different society, a different development model.

**RN: As a young person, what would you say it is that has motivated you to get involved in the protests?**

*Giorgio Jackson:* The motivation always lies partly in the personal stories that are generated in the collective. In my particular case, it came through a lawyer, Fernando Atria, a well known academic in Chile who writes a newspaper column entitled the 'The anguish of the privileged.' I studied in a private school.

I am one of the privileged few, although I do not consider that I have much money to spare. In fact I pay for my studies with a private loan. Nevertheless, I am aware that my chances of being in a good school and of having a good career come at the expense of the discrimination of others. And I feel a tremendous sense of injustice about that. I think now there are many of us who have this sort of anxiety, guilt, for being privileged at the expense of the discrimination of others, and those that are discriminated against feel helpless and are very angry. So the time has come where both groups have realised, without us looking at each other with hate, that now is the time to pull in the same direction and the synergy this has produced has been extremely powerful.

**RN: How would you sum up what the student movement achieved in 2011?**

*Giorgio Jackson:* That question is always complicated because you have to separate things between the quantitative, i.e., the concrete achievements in public policy and the like versus more qualitative things, things that are perhaps somewhat intangible. I think in terms of quantitative changes we did not achieve what we wanted. It is very difficult to make these changes with a right-wing Government and the system of political representation that exists today. The country's institutions close the door to any change very abruptly. But some things were achieved that were unthinkable, that confronted the Government's agenda, that pushed the Government further than they wanted. It's true that it never corresponded to the weight of the protests but these things always fall well below expectations. On the other hand, the optimistic part is that in qualitative terms we redefined what was possible; we stopped thinking negotiating to obtain just a little more. This happened through work and pressure. So we've put aside the taboo and fears that existed in thinking of a different model and delivered a clear and honest message to the public. The people empathised with this message because it was not an invented one. The reproduction of inequality and privilege exists in Chile and there is a generation that says 'no more'. The neoliberal model, the model of education as a consumer good has had 30 years to operate without restrictions. And it hasn't showed the benefits it promised. So now it's time that us Chileans change this model.

streets. Another section that includes Camila Vallejo and Giorgio Jackson have now decided to participate in elections with the aim of creating structural change from within the political system. In the run up to the 17th November 2013 presidential elections, which are likely to result in Chile's rightwing coalition losing power and a return to the presidency of former socialist party leader Michelle Bachelet, former student leaders such as Camila Vallejo and Giorgio Jackson are now running for Congress in elections scheduled for the same day as the presidential one. Below are extracts of interviews carried out by Roberto Navarrete with Camila Vallejo and Giorgio Jackson in December 2011, sections of which are included in our upcoming documentary.

**Roberto Navarrete : What would you say have been the strengths and weaknesses of the student movement in 2011?**

*Camila Vallejo:* We feel that the mass student mobilisations that took place throughout 2011

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Pablo Navarrete is a documentary film maker and editor of the website [www.alborada.net](http://www.alborada.net). For more information about the forthcoming documentary 'Chile's Student Uprising', including how you can contribute to its production visit: [www.alborada.net/alborada](http://www.alborada.net/alborada) films.

Immigration is a deadly business. On 19th and 20th August 2013 the Permanent People's Tribunal convened in Mexico City for a preliminary hearing on the themes of migration, refugees and forced displacements of Central Americans and Mexicans in transit to the United States. In the June 2013 edition of *Socialist Lawyer*, Camilo Pérez-Bustillo wrote an article detailing the background to the tribunal.

The tribunal hearing marked the three year anniversary of the massacre of 72 migrants in San Fernando, Tamaulipas in the North East of Mexico. On 22nd August 2010 an Ecuadorian migrant was able to escape from a ranch where he was being held hostage together with other immigrants primarily of Central and South American origin. He was able to report the incident to the authorities. While several members of the Zetas Cartel have been arrested in relation to the massacre, many questions remain unanswered. The Tribunal was appropriately opened with the reading of the names of the 72 migrants, several of whom to this day remain unidentified.

The tribunal heard from two family members of victims of the massacre. The first witness was Angela from Guatemala. Her husband, son, daughter, brother-in-law and the daughter of her brother-in-law were

murdered in the massacre. She had seen news of the massacre on TV and suspected the worst. She testified that she had received a call from a hostage taker demanding payment. She wasn't able to afford to make payment. Her family had emigrated for economic reasons after all. Shortly after she received several calls from the state authorities, each call advising her that they believed to have found the corpse of a family member.

The second witness was Maria Gloria from Brazil. She spoke of how her nephew had chosen to emigrate to the US as an alternative to a life of poverty, drugs and crime. Mato Grosso is a very poor region in western Brazil. Those who can, emigrate. Jean Charles de Menezes also came from that region. The news reached her family within days of the massacre however they had to wait two months before the body could be sent back to Brazil. For unknown reasons the body was erroneously sent to Honduras. When it eventually reached Brazil, Gloria and her family were advised not to open the coffin. Acting against that advice they opened it to find that there were no human remains inside.

In addition to these two family witnesses, the Tribunal heard from various expert witnesses, including a psychologist who visits immigrants in detention; General Gallardo, a retired army general who was imprisoned for

suggesting reform within the army to prevent human rights violations; and Fathers Solalinde and Fray Tomas, priests who run migrant shelters and who dedicate their livelihoods to defending migrants. What was argued by all witnesses was that the massacre of migrants at San Fernando was not an isolated incident. The Tribunal also heard of clandestine communal graves in which the corpses of at least 193 migrants were discovered in April 2011 in the state of Tamaulipas.

Those who represented migrants' rights organisations spoke of the extortion, torture, forced disappearances and deaths of migrants. It is publicly known in Mexico that the most common form of transport to the US is on the few freight trains which cross the country. So dangerous is the journey that it is referred to as the death train (*tren de la muerte*) or the steel beast (*la bestia*). On average migrants make five stops between the southern and northern border of Mexico. On each of these stops they can be expected to pay between \$100 to 400 US Dollars, in a country where the minimum wage is around £2.50 per day. Failure to pay what is demanded by the gangs and corrupt officials will most likely result in being thrown off the train. Serious injury or deaths caused by train accidents are common. In order to obtain medical assistance migrants must turn to the authorities who will deport them as

Pictures: Consuelo Pagarza

# Extortion, torture and death: Fiona McPhail reports from the preliminary hearing of the



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soon as the necessary medical treatment has been carried out. Amputations are very common.

Within a week of the hearings the derailment of a freight train carrying around 150 migrants in the region of Tabasco was reported. The death toll is rising and it is suspected that those who survived the accident have sought to make their own way to avoid being caught by the authorities and deported. As these migrants are travelling illegally the train companies and the State denies any responsibility for them.

Those fortunate enough to not suffer train injuries run the risk of being kidnapped and tortured. The tribunal heard that approximately 20,000 migrants are disappeared per year. A Honduran mother testified that her son left for the US in January 2008 aged 17. She had initial contact from him and was then contacted by a third party demanding money. She was provided with a bank account number and contact number. She made several transfers until she was advised by phone that he was no longer there. Since then she has had no news of him. She joined the Caravan of Mothers who have marched throughout Mexico demanding that the Mexican government take action and assist in finding those migrants who have been disappeared.

It is argued by the prosecuting committee on the Tribunal that this systematic violation of migrants' rights through action and inaction, frequently resulting in the most serious of human rights violations meets the criteria of crimes against humanity and that the State's immigration policies amount to the use of death as a deterrent.

As well as witnesses from the States of origin, the Tribunal heard from the receptor state, the US. Representatives of Houston United, a community based organisation in southern Texas reported that while the number of migrants crossing the border had declined, most probably as a result of the economic crisis, the death toll had risen. The US authorities had reported 271 border deaths in Texas for 2012. It was stated that the real figure was mostly likely much higher.

The weight of the tribunal lay not only in the breadth of its representation but also its form. The mothers, wives and partners of families who have been separated as a result of economic hardship and immigration chose to convey their pain through a theatrical performance at the end of the first day. There are around 30 million Mexican and Central American women in such positions. Of those women and girls who try to emigrate, six out of 10 are raped, report Amnesty International.

On the same day that the Tribunal commenced, a migrant shelter in San Jose Huehuetoca was attacked. This was the third attack on a migrant shelter in five days, bringing home the dangerous reality faced by those seeking to defend migrants. Several of those speaking before the tribunal in their capacity as human rights activists had either been threatened or imprisoned for their work.

The victims and their defenders demand justice. They demand the creation of DNA databases so that migrants can be identified and legislative reform that decriminalises immigrants. They demand greater protection for migrants in transit. Crucially however they also demand an end to the economic policies that keep their countries plunged in poverty and ultimately force the poor to risk their lives striving for a more dignified life.

The prosecuting committee has until July 2014 to finalise and conclude its arguments. Further to the two day preliminary hearing, the jury was persuaded that there is a case to answer.

For further information on future hearings please contact Camilo Pérez-Bustillo at [cperezbustillo@gmail.com](mailto:cperezbustillo@gmail.com).

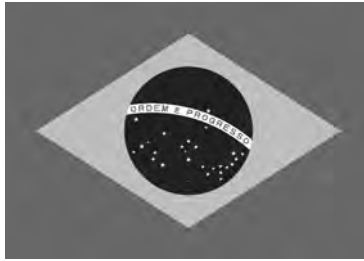
Fiona McPhail is a solicitor from Scotland and a member of The Haldane Society. She is currently based in Mexico City.

# the price of migration to the US

Permanent People's Tribunal held in Mexico City in August 2013



THE TIMES  
ARE A-CHANGIN  
SÃO PAULO 2013.



# It started with a bus fare increase...

Rio-based **Damian Platt** analyses 2013's mass demonstrations in Brazil

**The third consecutive term of the leftist** Partido dos Trabalhadores (Worker's Party) Government was ticking along relatively comfortably for Dilma Rousseff, ongoing corruption scandals aside, until protests against a bus fare increase in São Paulo triggered similar action across the nation, drawing hundreds of thousands of dissatisfied Brazilians onto the streets in June 2013 to protest against a political system they see as corrupt and inefficient. The massive demonstrations came as a surprise to many observers. Brazil is the BRICS poster child: a strong democracy and an optimistic emerging economy, ripe for investment and ready for the future. The last time Brazilians took to the streets *en masse* was back in 1992 to call – successfully – for the impeachment of then President Fernando Collor, the man who froze the nation's bank accounts.

Rousseff, a former militant involved in organised opposition to the military dictatorship – who was imprisoned and tortured for her activity – was quick to identify the protests as a sign of the strength of 'our democracy' and new 'political energy'. The middle class is growing slowly and millions have been lifted out of extreme poverty by social assistance programs initiated by the Partido dos Trabalhadores. However as people

move laboriously up Brazil's skewed social ladder, they are hit by the expense of middle class life, where private health care and private education are standard, given the generally poor quality of public services. In short people might earn more but, while the cost of living rises, they are seeing poor returns from their growing contributions to the public coffers.

Rio de Janeiro, where the largest protests took place, is the current focus of national ambition. 300,000 people, or one million depending on who you listen to, came onto Rio's streets on 20th June 2013. Excessive marketing for World Cup preparations and the 2016 Olympics has grated on the population of a city where the cost of living has soared. While there have been notable improvements in public safety, a less violent city is a more expensive city. A principal target of resentment is State Governor Sérgio Cabral, whose support has plummeted to eight per cent in his second term of office. Once the initial surge of protests had subsided, demonstrators camped outside his home in the exclusive Leblon neighbourhood until he moved, presumably at the request of influential neighbours, elsewhere. Eduardo Paes, Rio's mayor, although not unscathed, has weathered the storm with more sagacity, making concessions and inviting protesters for talks.

Although the largest demonstrations were not much short of an outpouring of general discontent, there were some quick victories. Protesters in several cities achieved their immediate goal when local authorities, including Rio de Janeiro and São Paulo, announced a freeze on bus fare rises. In Rio, the State Government abandoned unpopular plans to bulldoze a school and an indigenous people's museum to make way for a multi-storey car park near the Maracanã football stadium and future World Cup final venue. Mayor Paes also guaranteed the future survival of Vila Autodromo, a *favela* that was earmarked for demolition to make way for Olympic development. These achievements seemed unlikely before demonstrators took to the streets.

But while the protesters scored some points, two incidents highlighted the longstanding violence and human rights abuses suffered by the country's poor. On 24th June 2013, military police belonging to the BOPE special operations unit (portrayed brilliantly by José Padilha in his ultra-violent *Elite Squad* films) killed nine alleged drug traffickers in the sprawling Maré *favela* complex. One BOPE member also died in this unauthorised operation which left residents without >>>



Pictures: Maria Objetiva

*Protests against a bus fare increase in São Paulo (below) triggered similar action across the nation, leading to hundreds of thousands on the streets protesting against a political system they see as corrupt and inefficient.*

>>> electricity for 36 hours. Then in July 2013 members of a police ‘pacification’ unit, based in the enormous beachfront Rocinha *favela*, took a bricklayer called Amarildo into custody during a routine operation. He has not been seen since. This episode was condemned at the end of August 2013 by the Rio branch of the Brazilian Bar Association, which, together with respected local sociologist Michel Misse, launched a campaign to monitor and investigate killings and disappearances linked to police activity in the city. Misse documented 10,000 such incidents between 2001 and 2011. The average of one thousand police related deaths a year in Rio de Janeiro is more than triple the yearly average for the whole of the USA. The national truth commission investigation of human rights abuses under the military dictatorship, which ruled the country from 1964 to 1985, counts 540 disappearances for the whole country for that period. Misse’s alarming figures exemplify the class chasm and violence which hamper societal development in Brazil. While the mass marches pointed to the possible existence of a youthful, informed middle class, eager to flex its muscle, the Maré



killings and Amarildo’s disappearance confirm that Brazil’s most vulnerable population continues to be at risk of human rights violations on a daily basis.

On a Friday evening in September 2013 I listened to three lawyers who have been voluntarily defending and accompanying protesters detained by the police. Carol, Clarice and Natalia tell a story which leaves me depressed. I left Rio for three months just as the protests were beginning, and was enthused by what seemed to be a possible tidal change in public opinion, because for once it seemed that a critical mass of average Brazilians were taking matters into their own hands. I wrote a comment piece for *The Guardian* where I celebrated the fact that protesters appeared to have avoided attempts by the traditional Brazilian mass media to characterise them as vandals and rioters. Three months down the line it seems that the powers-that-be have succeeded in their goal of criminalising the protesters. Carol tells me that her mother, who leaned out of the window to shout support in June 2013, now sees them as mere troublemakers.





*Liberdade, Belo Horizonte, 22nd June. Belo Horizonte (2.5m inhabitants) – like any big city in Brazil, the poorest people cannot afford to buy a house or an apartment.*

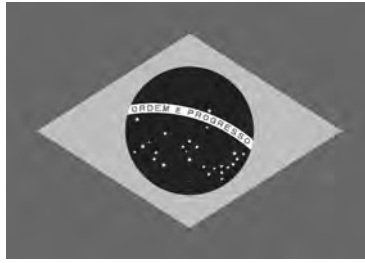
Her mother's change of attitude appears largely informed by violent TV scenes of clashes as demonstrators face baton charges and tear gas grenades. This began with the dispersal of the massive 20th June 2013 march, when military police charged protesters at different points across the city centre. Because of this, the lawyers say, the largely peaceful demonstration ended in mayhem. At this point the general public began to dissociate themselves from the protests. I ask about an incident during July 2013. Shortly after the Pope had left a meeting at the Governor's palace by helicopter a protest outside turned violent. Both demonstrators and police filmed two men in t-shirts conspiring to throw petrol bombs. Other cinematographers captured images of what appeared to be the same men running behind police lines shortly afterwards. Threatened with arrest, one pulls out ID, waving it at confused 'colleagues'. These images led to allegations – fiercely denied – that undercover police used violence against other police in an attempt to destabilise the demonstration. Bruno Telles, a 25 year-old student arrested on suspicion of throwing the

first bomb, was released when TV images and police statements contradicted each other. It looked like someone wanted to frame him. A backpack containing Molotov cocktails was also found at the scene of the protests. Its owner is unknown. Violent episodes like this led to characterisation of Brazil's protests as 'riots' in the international press, notably in *The Times*.

What happened with the episode outside the Governor's palace, I ask? Was it really instigated by undercover police? The lawyers think it might have been, but tell me the investigation was archived. Really? But didn't anyone follow up? We don't know, they say, those were the days when the Pope was visiting – so much was going on. Since that moment numbers on the streets have fallen dramatically, down to a hard core of 'Black Bloc' anarchist style protesters, who are mostly teenagers. The State Governor has introduced a law – unconstitutional, I'm told – to prevent such demonstrators from using masks to conceal their faces. Public opinion is strongly in favour of such a measure: after all, who wants to let vandals gain the upper hand?

Despite recent social advances, Brazil is still a fiercely unequal society. It registered 46 dollar billionaires in 2013, a 25 per cent increase on 2012, according to Forbes. The protests, and the belligerent State response, reflect the contradictory nature of this emerging power. While a new generation struggles to find its voice and millions are lifted out of poverty, corrupt power structures and centuries-old social conflict continue to hinder progress. It is no accident that Fernando Collor – the disgraced former president impeached after the mass protests of 1992 – holds court today at the centre of power in Brasília, where he is a Senator. And while everyone knows where to find Collor, no one will say what happened to Amarildo, and neither do we know who threw the petrol bombs at police outside the Governor's palace.

Damian Platt was a Brazil Campaigner for Amnesty International between 1997 and 2005 and is co-author of the book *Culture is Our Weapon*. He is based in Rio de Janeiro from where he runs a consultancy service and publishes the blog *Culture is Your Weapon*.



# What lies behind the ‘urban crisis’?

**Joviano Mayer** and **William Azalim** look at the roots of the anger in Brazil

**No one could have predicted the events** that took place in Brazil in June and July 2013, after a violent police crackdown against the protests of the MPL (Free Pass Movement) in São Paulo. The increase in the rate paid by the users of public transport of 20 centavos of a Real, was the trigger for protests to occupy the streets. The violent response of the military police forces, rather than stifle the movement, caused it to spread like wildfire throughout the country, the focus of the protests no longer restricted to the question of fare increases on public transport.

The demonstrations that shook the establishment and created an inflection point in Brazilian democratic history had an urban crisis as their backdrop. This urban crisis has been highlighted in recent decades by the deepening of socio-spatial segregation in Brazilian cities, which have increasingly become hostage to the logic of business management for the benefit of private real estate capital.

The advent of mega sporting events in Brazil, namely the 2013 FIFA Confederations Cup, the 2014 World Cup and the 2016 Olympics in Rio de Janeiro, has aggravated the crisis in large cities. The construction works associated with these events have increased the

hegemony of private cars at the expense of public transport, with the construction of flyovers, the widening of roads, and tunneling.

Thousands of poor families have been removed from their homes to make way for these major infrastructure works, with no guarantee of proper resettlement. Such removals occur in total disregard to the international human rights treaties to which Brazil has been one of the signatories. Social movements estimate that more than 150,000 families will be removed due to these sporting events in Brazil.

The mega sporting events are, in short, a clear expression of the so called notion of the ‘city of exceptions’, where the city is designed for profit and in which any sort of urban standard for the use of space can be relaxed in favour of the interests of real estate capital. Not without reason, the complaints related to these events surfaced during the protests. In Belo Horizonte, the State capital of Minas Gerais, the three big marches that happened during the Confederations Cup, one of which had approximately 150,000 people, headed towards the football stadium where the games were taking place. The violent police repression, aimed at protecting the so called ‘FIFA territory’, resulted in the deaths of two people.

The issue of housing issue is of great importance in the context of this ‘urban crisis’, especially when considering the role of housing as part of the access to goods and services offered by the city. In Brazil, the struggle for housing also has a central role in popular urban movements, which often use the occupations of idle property as a method of political pressure and popular organisation.

It is appropriate to emphasise the important victory achieved by the homeless movement in Belo Horizonte as a result of the June 2013 protests in Brazil. After occupying Belo Horizonte’s City Hall, the movement managed to establish a channel to communicate and negotiate with the local government, which had until then been closed to dialogue.

Minas Gerais is the third richest state in Brazil with the third largest GDP of all of Brazil’s other states. Belo Horizonte, the capital, has about two and a half million inhabitants. Like any big city in Brazil, the poorest people, especially those with household incomes of less than three minimum wages, cannot afford to buy a house or an apartment, even with access to public subsidy programs for housing finance.

The 1988 constitution of the Republic of Brazil guarantees everyone the right to >>>

PAZ SEM VOZ  
NÃO É PAZ, É  
MEDO!

e o transi  
s mudan  
RASI

*'Peace without a voice  
is not peace, it's fear!'  
20th June 2013, Belo  
Horizonte.*

Picture: Maria Objetiva



Pictures: Maria Objetiva

*Protests against the Confederations Cup, June 2013. The violent response of the military police forces, rather than stifle the movement, caused it to spread like wildfire throughout the country.*

>>> housing and provides that all property should fulfill a societal function. Therefore, an abandoned urban property with a strictly speculative purpose, without any economic or residential purpose, violates the constitution. However when homeless families occupy a property that stands idle without a societal function, in order to put into effect the right to live with dignity, the State acts in defence of property at any cost.

The judiciary, which is extremely conservative and steeped in the notion of property as an absolute good, has not yet incorporated the new constitutional framework that amends the right to property for the benefit of its societal function. Thus, decisions on a preliminary basis to grant a repossession order against communities that have arisen from urban occupations are frequent. The popular collectives of lawyers and public defenders who work for the legal defence of these communities manage to, at most, gain time in procedural motions to allow for the consolidation of occupations. When this happens, the issue becomes more political and less legal in the view of the authorities.



This is the case of urban occupations in Belo Horizonte where, in late July 2013, those involved in such occupations banded together to occupy the City Hall and demand negotiations with the Government to prevent the displacement of approximately 3,000 families in uncertain living situations.

These occupations were not recognised by the Government, which refuses to provide such basic services as energy supply, delivery of post, sanitation, transport, health, education and urban infrastructure. The experience of the Dandara community, where 1,200 families live on land which has been occupied since April 2009, exemplifies the Government's response.

The direct action taken by these communities in the seat of the municipal government in Belo Horizonte, shortly after the Pope's visit to Brazil, lasted 32 hours and gained significant media coverage. Within hours, the municipal authority had obtained a court order to evict the protesters from City Hall. This would come at a high political price.

Many of the young people who had poured into the streets of Belo Horizonte in recent months camped out in front of City Hall and in



*Occupying the City Hall in Belo Horizonte in July. The protest lasted 32 hours and defied court orders.*

a beautiful demonstration of solidarity blocked one of the city's major avenues. A sea of colourful tents, painted with signs and slogans supporting the protesters, was formed. A photo of a mother breastfeeding her son, who had been denied entry by the police, through the bars of the headquarters of the City Hall was widely shared on social networks. These events were to prove crucial in progressing negotiations between the protesters and the local government. The immediate agreement reached was that the protesters would vacate the building with the promise (transcribed in minutes signed by the Mayor) that urban occupations would be included in the zoning of the city as areas for land regularisation.

This experience in Belo Horizonte can provide some helpful indicators of positions that can be taken by political groups that campaign in favour of socialism. For the social movements that had been involved locally, 2013 was just a trial run.

In Brazil, as in many other countries, the city was not always part of the analysis of revolutionary theory that traditionally prioritised workers' and peasants' causes. The

protests in June and July 2013, in this sense, have a lot to teach the progressive forces of society. Firstly there is the conclusion that the demonstrations in recent months were exceptional urban rebellions. The protests help to provide a focus on urban issues within the context of the development of capitalism. They also help to allow for the construction of a theory of urban struggle.

We only have to listen to the voices that sounded in the streets to realise that the claims written on the signs and on the bodies of protesters are not just a direct result of the contradictions forged on the factory floor. The logic of production and appropriation of space produces its own contradictions that cannot be analysed and understood as coming from the contradiction between capital and labour, in the strictest sense.

Understanding the contradictions that are typical of the logic of space appropriation in cities, within the frameworks of neo-liberalism, is a part of understanding the 'urban crisis', the ultimate reason for these demonstrations. And if the 'urban crisis' is the ultimate reason for these demonstrations, which shocked both the

right and the left, it is necessary to empower the victims of this 'urban crisis', those segregated from the city. Part of this lies in favouring those claims being made for urban reform, many of which are already set out in the constitution and laws of Brazil.

Progress towards recognising existing constitutional rights is sadly slow. The 'Status of the City', an important law which regulates the guidelines for the social functioning of cities and the urban policy instruments of strategic planning, has not yet been assimilated by the political forces that act on the urban scene some 12 years after its enactment.

A major challenge is presented to the left: to fully understand the urban phenomenon, to defy all its complexity, to unravel its peculiar contradictions, the normative and institutional limitations and the roles played by antagonistic actors and to, finally, walk the path of the valued use of the city.

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Joviano Mayer is a lawyer who works with social movements in Belo Horizonte, Brazil. William Azalim is an activist based in Belo Horizonte, Brazil.

When 16 regiments of the New Model Army put their names to an Agreement of the People as the basis of a constitutional settlement of the civil war between Parliament and the Crown, it was a unique challenge to State power that still resonates today, *writes Paul Feldman.*

Until then, history had always been pretty much shaped by the ruling classes, with ordinary people playing out supporting roles. Their views were not sought nor encouraged and their interests were assumed to be the same as those leading change.

The English Revolution of 1640-1660, which ended the rule of absolute monarchy for good and established the power of Parliament, was different. Here was one of the first shattering social events of the modern age, involving the whole population in a titanic struggle.

In England, a century after the protestant reformation, reading and writing was no longer confined to the clergy. And access to the printing machine led to a wide circulation for pamphlets and manifestos. The yeoman farmers and the artisans of the towns increasingly viewed themselves as independent thinkers.

These were the forces Oliver Cromwell turned to when early skirmishes with forces loyal to Charles I ended in defeat for the disorganised parliamentary forces. The New Model Army was paid, trained and knew what it was fighting for. Centuries later, it would inspire the creation of the Red Army.

During 1647, as the first civil war drew to a close, the regiments who had done the fighting were angered by attempts to disband them and send them to Ireland. Parliament had failed to pay their wages for some months. So the regiments elected agitators to represent them in what became the Council of the Army, which included officers and commanders.

The agitators co-operated closely with political activists and pamphleteers who were dubbed the Levellers. They helped draw up key demands in several documents throughout the summer of 1647. One was the Case of the Army Truly Stated. By the autumn, they had also produced the Agreement of the People.

With the King detained, the Council of the Army met at St Mary's, Putney, in October for what were to become historic debates about constitutions, natural rights, property and power. The 'Agreement of the People for a firme and present Peace, upon grounds of common-right and freedoms', to give it its full title, shook Cromwell and the army grandees to the core.

The Agreement was based on what was termed 'native rights', considered by the Levellers to be inalienable rights that could be traced back to pre-Norman Conquest times. Not for nothing was John Lilburne, a key Leveller, known as 'free born'.

At the top of the Agreement's groundbreaking agenda was the rule of law and the independence of the judiciary. The Agreement suggested that power lay with the people and that Parliament should always be subordinate to the electorate. All in all, it set out the framework for a written constitution and set in motion our long, unfinished struggle for democracy.

The Agreement wanted members of Parliament elected in proportion to the population of their constituencies; biennial

parliaments, which would be the supreme authority in the land. Certain constraints were placed on Parliament: it was not to interfere with freedom of religion; it was not to press men to serve in the armed forces; it could not prosecute anyone for their part in the recent war; it was not to exempt anyone from the ordinary course of the law; all laws passed by Parliament should be for the common good. The Agreement insisted: 'These things we declare to be our native rights.'

The debates focused on who should have the vote, with Colonel Rainsborough famously declaring: 'The poorest he that is in England hath a life to live as the greatest he, and therefore... every man that is to live under a Government ought first by his own consent to put himself under that Government.'

Defending the existing limited franchise, Cromwell's son-in-law Henry Ireton rejected

the claim. The vote was rightly restricted to those who have 'a permanent fixed interest in this kingdom', namely 'the persons in whom all land lies, and those in corporations in whom all trading lies'. He added that 'liberty cannot be provided for in a general sense if property be preserved.' Ireton summed up the bourgeois nature of the revolution, with its emphasis on property and ownership and attacked the concept of natural rights.

A second civil war erupted and the debates were suspended. Nevertheless the Agreement spread like wildfire throughout the army. In November 1647, at an army rendezvous at Corkbush Field, near Ware in Hertfordshire, many soldiers wore the Agreement in their hatbands.

Lilburne inspired a second version of the Agreement towards the end of 1648 which was due to go before Parliament in January 1649.



This was overtaken by Parliament's decision to put Charles I on trial for treason against the people. The King was executed at the end of January. England became a republic. Monarchy and the House of Lords were abolished.

Lilburne, who had been a lieutenant colonel in the army, and his supporters were soon under arrest for treason. They published a third version of the Agreement in May 1649, smuggling it out of the Tower. Many regiments adopted the Agreement and denounced Cromwell. The mutiny was put down at Burford in Oxfordshire in May 1649 and the Levellers demands had to wait to be taken up by the American and French revolutions.

There is a continuity of a people's struggle for democracy in Britain that runs through to today from the 1640s, embracing the struggles of Tom Paine and his supporters in the 18th

century, the Chartists of the 19th century and the Suffragettes in the 20th century. The Agreement of the People for the 21st Century ([www.agreementofthepople.org](http://www.agreementofthepople.org)) was launched last year to focus on where we go from here.

Many argue that representative democracy has turned into a corporatocracy, where the powerful economic and financial interests decide what is in our best 'interests'. To quote Al Gore, our democracy has been 'hollowed out'. The question then is, can the present political-state system be fixed? Or is it beyond reform and repair and time to conceive of a more advanced democracy for the 21st century?

In the preamble, our draft Agreement states that the British State political system is undemocratic and unjust in that:

- The State is a highly centralised, alienating

power that has established itself above society as a whole.

- This power is exercised primarily on behalf of dominant capitalist economic and financial interests as demonstrated by anti-people austerity measures.
- Legal authority does not come from the people as citizens, but from the Monarchy, Lords and Commons.
- The House of Commons is a powerless assembly rather than an independent transforming legislature instructed by the will of the electorate.
- Members of Parliament do not exercise any real control over ministers or civil servants.
- A surveillance State secretly monitors and tracks the legitimate activities of activists, trade unionists and protesters.
- Local government has lost its relative autonomy and is now reduced to carrying out central Government orders and decisions.
- The State has abandoned primary responsibility in a number of areas including housing, higher education and care in older age in favour of markets for public services.
- The State refuses to take steps to cut carbon emissions and other measures to meet the challenge of climate change.
- Power at national level increasingly exists only in relation to an unaccountable, unelected transnational State that includes the EU, the IMF and the WTO.

The Agreement makes the case for a transition from representation without power to a popular sovereignty, through the creation of an 'inclusive written constitution' that 'embraces the aspirations of the powerless majority'. We want to encourage the building of a new, nation-wide democratic tradition from the ground up through, for example, People's Assemblies.

Building on our existing rights, the draft extends them into areas of social rights like housing, health and education. The economic rights proposed include the right to co-operative ownership in place of shareholder control and the right to democracy and self-management in all areas/activities of the workplace. The Agreement suggests the right 'to live in an environment shaped by ecological care and not profits'.

We are honoured that the Haldane Society has lent its support to the project, along with MP John McDonnell, the Real Democracy working group of Occupy London and organisations like the National Coalition for Independent Action. Many individuals have also endorsed the campaign through the website and on Facebook.

There is much work to be done in turning what is a framework into an actual, living constitution. We need to involve as many people as possible, professionals and activists, in this project. As more and more rights are rolled back, undermined and frequently obliterated by a rapacious, increasingly authoritarian State, we can learn from history. Like the Levellers, we should be campaigning for what we want, what we aspire to, at the same time as defending in every way possible what we've achieved.

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Paul Feldman is a journalist. He has written this article on behalf of the steering group of the organisation Agreement of the People for the 21st Century.



David Renton's thoughtful and trenchant article in *Socialist Lawyer* 64 has done us all a great service, opening up questions of crucial importance to the Haldane Society. That is because we are socialists, committed to solidarity in resistance to the depredations of capital, and to fighting for its abolition. We are not simply human rights defenders, though many of us are active in a host of human rights organisations, for example the Bar Human Rights Committee and the Solicitors International Human Rights Group.

What then should be our understanding of the discourse of human rights, which has become something like a secular religion or substitute for religion? The practice of human rights protection often looks worryingly like Euro-centrism; European standards set against USA power politics or geopolitical mayhem. That was the issue in the notorious *Kadi* judgment of 2008, in which the European Court of Justice (ECJ) annulled the decision, taken initially by the United Nations Security Council (as the Sanctions Committee) placing Mr Kadi on a terrorist list. The ECJ did so in the light of 'the principles of liberty, democracy and respect for human rights and fundamental freedoms enshrined in Article 6(1) EU as a foundation of the Union.' That is, European principles.

So far as the UK is concerned, human rights are liberal rights, the right of the individual to dignity. In reality, even the Tories have no problem with the Council of Europe's 'three pillars'; the rule of law, multi-party democracy, and the protection of individual human rights. As Adam Wagner wrote on 3rd September 2013 on the UK Human Rights Blog, under the heading 'Why we would be mad to leave our European Convention on Human Rights':

'It cannot be overstated how fundamentally British the [European Convention on Human Rights] is. The included rights were based largely on those developed by the British common law, reaching back to the 1215 Magna Carta and the 1689 Bill of Rights. After the Second World War, imposing traditional British values on foreign legal systems was seen as part of the victor's spoils. British politicians "made a huge contribution to the drafting", said Lord Bingham, "reflect[ing] values which we in this country

took for granted and which had, we thought, been vindicated by our military triumph".

British politicians were instrumental in drafting the ECHR, building on the 1948 Universal Declaration of Human Rights and older British common law liberties. Sir David Maxwell-Fyfe, a Conservative politician and lawyer, drafted much of it after he had joined the European Movement on the invitation of Winston Churchill.

This conception of human rights has no place for collective rights, for example the rights of the working class, or even of trade unions. The UK, like other common law countries, refuses to have anything to do with social and economic rights, and refuses to ratify the Council of Europe's Revised Social Charter with its system of collective (not individual) complaints by trade unions and NGOs to the European Committee of Social Rights, or the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The jurisprudence of the European Committee of Social Rights, with many decided cases, can be found at [www.coe.int/t/dghl/monitoring/socialcharter/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/default_en.asp).

David Renton is not a liberal; he is a revolutionary socialist. He has made a fine reputation as a lawyer fighting for workers' rights, and is well known for his 2012 book *Struck out: Why Employment Tribunals fail workers and what can be done*.

What does he say? He writes that, drawing on Marx, a useful approach to the problem of rights in the present situation:

'...could be to disregard temporarily the search for further and better lists of rights in order to focus on their revolutionary kernel: i.e. *the right to a just outcome* [my emphasis]. Part of establishing a fair outcome depends on a system of expropriation.'

There is no disagreement between David Renton and me as concerns the need for expropriation.

We differ in respect of what Marx actually wrote. Indeed, Marx and Engels wrote very little on law, and even less on what a future communist society might look like. David Renton asserts that after Marx's acerbic critique of the rights contained in the French and American declarations of the late 18th

century, essentially the same rights as are contained in the ECHR, in 1844 in his *On the Jewish Question*:

'Over the next 40 years Marx and Engels were to sharpen this critique of rights and develop a richer sense of how an alternative society might work.'

In actual fact, Marx and Engels affirmed the opposite, in 1845 in *The German Ideology*. They wrote that:

'Empirically, communism is only possible as the act of the dominant peoples "all at once" and simultaneously, which presupposes the universal development of productive forces and the world intercourse bound up with communism.'

And continued with one of my favourite passages from their works:

'Communism is for us not a *state of affairs* which is to be established, an *ideal* to which reality [will] have to adjust itself. We call communism the real movement which abolishes the present state of things. The conditions of this movement result from the premises now in existence.' (Their emphases)

Thus, they were and remained perfectly clear that communism could only come about once abundance, 'the universal development of the productive forces' had been established all over the world. They refrained from providing any blueprint for future society. Except that is for another famous passage in the same work:

'For as soon as the distribution of labour comes into being, each man has a particular, exclusive sphere of activity, which is forced upon him and from which he cannot escape. He is a hunter, a fisherman, a herdsman, or a critical critic, and must remain so if he does not want to lose his means of livelihood; while in communist society, where nobody has one exclusive sphere of activity but each can become accomplished in any branch he wishes, society regulates the general production and thus makes it possible for me to do one thing today and another tomorrow, to hunt in the morning, fish in the afternoon, rear cattle in the evening, criticise after dinner, just as I have a mind, without ever becoming hunter, fisherman, herdsman or critic.'

This is very far from being a serious vision of the future, but is instead part of a comment on the present.

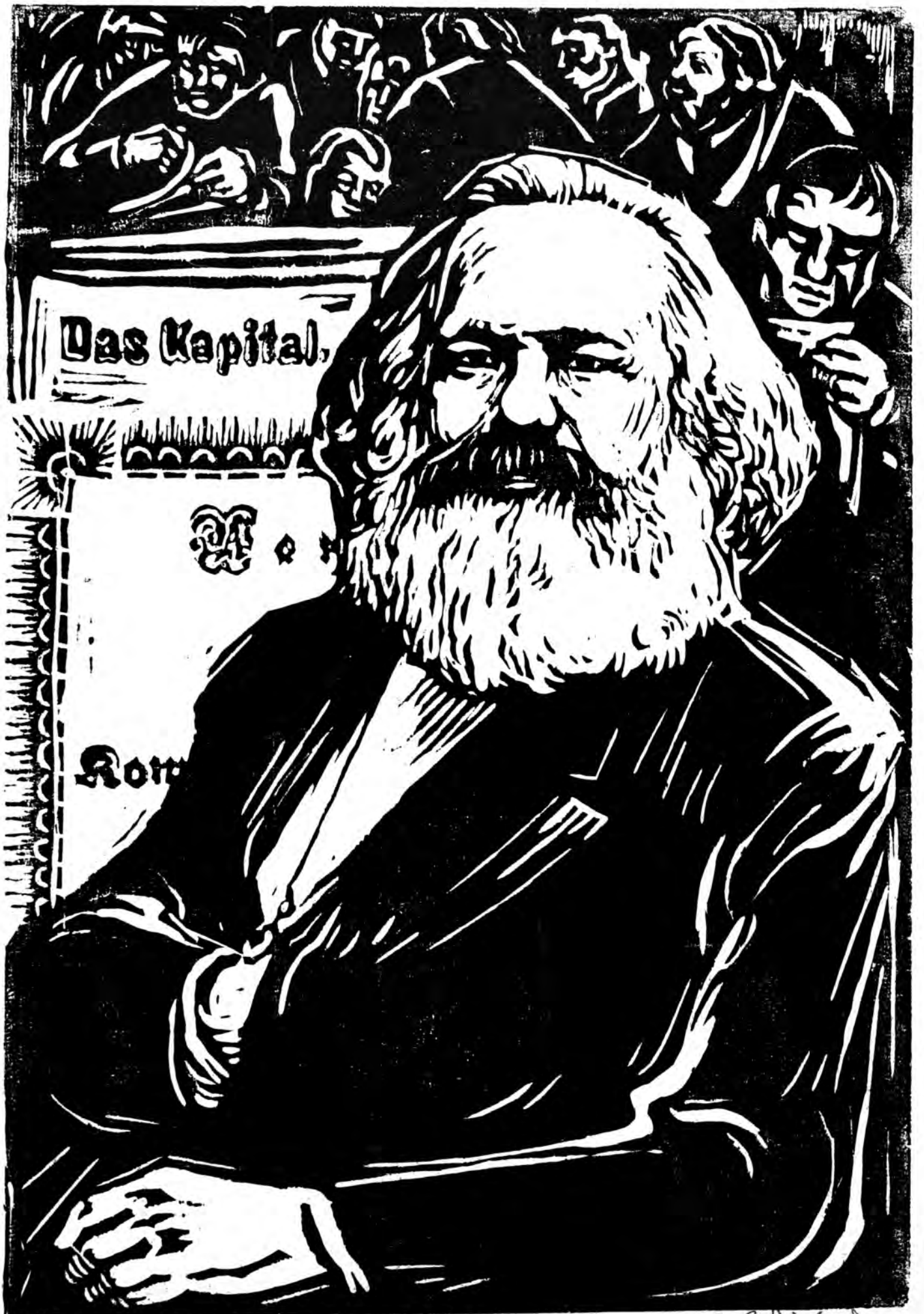
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# Rights and wrongs

**Bill Bowring** replies to David Renton, who asked, 'Do socialists still have an alternative concept of rights?'

*Opposite page: 'Karl Marx (Holzschmitt)' (1970) by Robert Diedrichs (1923–1995), German graphic artist, painter and illustrator. See more of his work at: [http://commons.wikimedia.org/wiki/Robert\\_Diedrichs](http://commons.wikimedia.org/wiki/Robert_Diedrichs)*





Karl Marx (1818-1883)

II/20/11

Rob Dietrich

>>> Furthermore, their *Manifesto of the Communist Party of 1848* says nothing about a future communist society. Instead, the final section, Part IV, begins:

‘The Communists fight for the attainment of the immediate aims, for the enforcement of the momentary interests of the working class; but in the movement of the present, they also represent and take care of the future of that movement.’

Communists, therefore, struggle on the side of the working class in the present day. And Marx and Engels go on to specify their attitude to existing parties in the various European countries. The class struggle has not gone away, far from it, and now intensifies all over the world. In passing, it is of great interest that two recent American block-buster films, *Hunger Games* and *Elysium*, both depict bitter and bloody class struggles in the future.

To return to *On the Jewish Question*, Marx condemned the bourgeois rights of the Declarations, asserting that ‘...the so-called rights of man, the *droits de l’homme* as distinct from the *droits du citoyen*, are nothing but the rights of a *member of civil society* – i.e. the rights of egoistic man, of man separated from other men and from the community.’ That is, the man who wants to be left alone by the State, principally to make money.

David Renton then, quite properly, turns his attention to Marx’s 1875, 30 years later, *Critique of the Gotha Programme* – that is, the programme drafted by Lasalle for the new mass workers’ party, the German Social Democratic Party, an explicitly socialist document.

I disagree with David Renton’s interpretation of Marx’s critique. The provision which attracted Marx’s merciless criticism was:

‘3. The emancipation of labour demands the promotion of the instruments of labour to the common property of society and the co-operative regulation of the total labour, with a fair distribution of the proceeds of labour.’

For Marx, this necessarily implies ‘equal right’, that is, bourgeois right. Under capitalism, the worker receives remuneration according to the amount or quality of work

done. But, Marx insists, human beings are not equal at all, starting with their ‘...unequal individual endowment, and thus productive capacity’, that is, physical and mental endowment. One worker is brighter than another, stronger than another. And, Marx continues:

‘...one worker is married, another is not; one has more children than another, and so on and so forth. Thus, with an equal performance of labour, and hence an equal in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid all these defects, right, instead of being equal, would have to be unequal.’

It is not, as David Renton suggests, that for Marx ‘...all universal rights... result in unequal treatment’. The point is that human beings are unequally endowed, and have unequal personal lives. As Marx makes clear, his famous slogan ‘From each according to his ability, to each according to his need’, can only be realised ‘...after the productive forces have also increased’ and ‘all the springs of co-operative wealth flow more abundantly’. We now know, as Marx and Engels did not, that there are severe ecological barriers to achieving abundance.

To sum up, Marx and Engels insisted that communists fight in the present, we cannot predict the future, and of course there is no certainty that the working class will win.

Marx and Engels both drew deeply from the radical materialist Baruch Spinoza (1632-1677), for whom all transcendence, anthropocentrism, and teleology were anathema. In 1841 Marx made extensive transcripts, in Latin, from Spinoza, pages 233 to 276 in Volume IV/1 (1976) of the *Marx/Engels Gesamtausgabe*, the MEGA which continues in production. And in the Introduction to his *Dialectics of Nature*, written in 1883, Engels wrote:

‘It is an eternal cycle in which matter moves... a cycle in which every finite mode of existence of matter... is equally transient, and wherein nothing is eternal but eternally changing, eternally moving matter and the laws according to which it moves and changes. But however often, and however relentlessly, this cycle is completed in time and

space... we have the certainty that matter remains eternally the same in all its transformations, that none of its attributes can ever be lost, and therefore, also, that with the same iron necessity that it will exterminate on the earth its highest creation, the thinking mind, it must somewhere else and at another time again produce it.’

This is Spinoza. One can be quite sure that if the earthly paradise were ever achieved, that would be the moment at which a passing asteroid would eliminate the planet and all its inhabitants, workers and capitalists alike. Something like Lars von Trier’s film *Melancholia*.

To return to the question of rights. I think that a strong case can be made for the proposition that each generation of ‘human rights’ has its origins in revolutionary struggle, and that is why they remain, unlike black-letter law, so powerful and so scandalous. The first generation of civil and political rights, now enshrined in the ECHR, had their origin in the French and American Revolutions, abhorred by Edmund Burke, the father of English conservatism. We should take our stand with Burke’s enemy, Tom Paine, whose *Rights of Man and Common Sense* still read as a full frontal attack on contemporary English political corruption.

The second generation, social and economic rights, were first treated as legal rights in the International Labour Organisation which was created in 1919 as a direct response to the October revolution of 1917. Haldane’s John Hendy and Keith Ewing have shown how the UK shamelessly violates its ILO obligations. And the key right of the third generation, the right of peoples to self-determination, was first promoted by Marx, Engels and Lenin, and came to fruition in the anti-colonial struggles after World War Two. Self-determination struggles continue for the Irish, Basques, Kurds, Palestinians, and Tamils. That, for me, is the ‘revolutionary kernel’ of rights.

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Bill Bowring teaches law at Birkbeck College. He is a barrister practising at the European Court of Human Rights and is International Secretary of the Haldane Society.

“Marx and Engels insisted that communists fight in the present, we cannot predict the future, and of course there is no certainty that the working class will win.”

# Self determination

**Steven Walker** looks at what influenced young Cuban lawyer Fidel Castro



The 60th anniversary of the beginning of the Cuban revolution on 26th July 1953, offers a chance to consider where Fidel Castro drew inspiration from and the ideas which prompted his band of

guerrillas to mount an audacious attack on the Moncado barracks – headquarters of the Cuban military dictator Fulgencio Batista, who had seized power in an army coup in 1952.

Fidel studied law at the University of Havana in 1945 on the advice of those who noted his passion for argument. A world divided ideologically between capitalism and communism, stimulated a febrile political atmosphere at university. Two of his earliest university friends belonged to the communist youth and Fidel made his first overtly political speech in 1946, criticising the dictatorship of Gerardo Machado, Batista's predecessor.

Fidel was aligned with two main political groupings at university – the *Movimiento Socialista Revolucionario* (MSR) led by Rolando Masferrer and the *Union Insurreccional Revolucionaria* (UIR) led by Emilio Trio. This was his revolutionary apprenticeship being refined, where he learned much about the nature of Cuban institutions and how steeped in corruption and violence they were. The two groups quarrelled and jostled for prominence on campus, while outside the corrupt President Ramon Grau San Martin, an American puppet, seized power in 1944.

Two of the key historical and political events dominating students at Havana University and influencing their beliefs, ideas and perceptions of Cuba's past and future were the independence struggles of 1868 to 1898 led by José Martí; and the revolutionary movement of 1927 to 1933 involving former army officers, students and government officials that had led to the overthrow of Machado. Fidel recognised that these were incomplete shifts in fundamental power – simply replacing varieties of colonial rulers and corrupt American puppet dictators. Fidel vowed to succeed in creating a truly

independent Cuba, a self-determining country led by those on the side of the many rather than the few.

In early 1947 Fidel became increasingly politically active, openly criticising

President Grau and Batista for their failed leadership and corruption. His political profile

was growing and he was seen prominently as a leading mourner at the funeral of the much-respected communist labour leader Jesus Menendez, who had been shot dead by an army captain in Manzanillo.

In 1948, the Cuban Presidency passed to Carlos Prío, who with the influential army officer Batista, gave unparalleled freedom to the American mafia who accelerated the degeneration of Cuba into what became widely renowned as America's brothel, where casinos, gambling and gangsterism flourished and the proceeds of organised crime were stashed away from mainland American tax authorities.

Fidel was sent with a group from the MSR when he was twenty-one years old to assist in the insurrection in the Dominican Republic, then under the ruthless American-backed dictator Rafael Trujillo. The Cuban insurgents failed and most were arrested but Fidel managed to escape by swimming across the shark-infested waters of the Bay of Nipe to make his way to his father's sugar cane estate. Back at university in Havana, Fidel swapped allegiance to the UIR and was nominated to the



Presidency of the University Special Committee on legal affairs.

The pattern of Fidel's journey to later succeed in overthrowing the Batista dictatorship in 1959 was being

hardened. Fidel was now by no means an avowed Marxist, he gradually distanced himself from the UIR and had little contact with his communist friends. He later tells of the influence of Marxist-Leninist ideas and reading a part of *Das Kapital*, but implies that these were not forming part of any coherent political ideology. What seems to have been of much more significance was to identify with those fellow students and historical Cuban heroes such as José Martí, and satiate his appetite for revolution and insurrection.

In 1948 Fidel joined a group of students from different parts of Latin America to stage a protest at the Pan American Conference in Bogotá, the capital of Colombia, where the USA sought to tighten its grip on those countries dependent on and economically and politically controlled by the USA. The student delegations harassed those attending the conference, with demonstrations, marches and leafleting delegates, attacking US colonialism.

During the frantic atmosphere and growing tensions the Colombian President, Jorge Eliécer Gaitán was shot and killed at a demonstration, enraging the poor majority of Colombians who supported his attempts at liberal social reform. This triggered a wave of riots, violence, killings

and bombings in Bogotá. The Americans blamed communist agitators but there is no conclusive evidence they were particularly successful in organising what was in effect an expression of mass outrage against the murder of a much-admired President.

A police inquiry falsely named Fidel as a communist agent sent to deliberately stir up discontent. Fidel managed to reach the Cuban embassy under

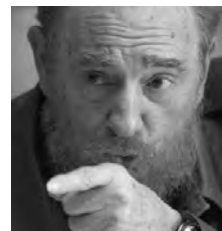
Argentinean diplomatic protection and was flown back to Havana on a cargo plane. Fidel drew lessons from these two events, where he participated actively in an insurrection with an intoxicating mix of violent struggle, the actions of massed crowds, and the inspiration of Gaitán's oratory and mesmerising personality.

Fidel was by now immersing himself in student politics and actively supporting the fight for independence in Puerto Rico. He was also demonstrating solidarity with other student movements in Argentina, Venezuela, Colombia and Panama, which were demanding an end to American colonial rule via financed puppet dictatorships.

Eduardo Chibás left the *Auténtico*, the Authentic Revolutionary Party of Cuba, and in 1947 founded the *Partido Popular Cubano* (PPC – Cuban People's Party) quickly becoming better known as the *Ortodoxo* party. Fidel joined immediately, finding in Chibás yet another hero who he followed with great enthusiasm, regarding him as a man of the future destined to pave the way to Cuba's independence.

The *Ortodoxo* party soon established itself as the first serious opposition to the Government, fully adopting the principles and values of the revered José Martí for anti-imperialism, socialism, economic independence, political liberty and social justice. What is striking about this period in Fidel's life is his ability to identify with and follow charismatic male figures who had the capacity and personality to grasp the attention of the masses. Thus his political personality was being melded with his underlying aggressive personality, creating a formidably strong union. Although the attack on the Moncado barracks in 1953 failed, Fidel never lost sight of his goal and six years later in 1959, together with Che Guevara, his brother Raúl Castro and others, succeeded in overthrowing Batista and liberating Cuba.

Steven Walker is the author of *Fidel Castro's Childhood – the untold story*, 2012, Troubador Books, ISBN: 9781780882154.



## Uncovering decades of deception

### **Undercover: The True Story of Britain's Secret Police**

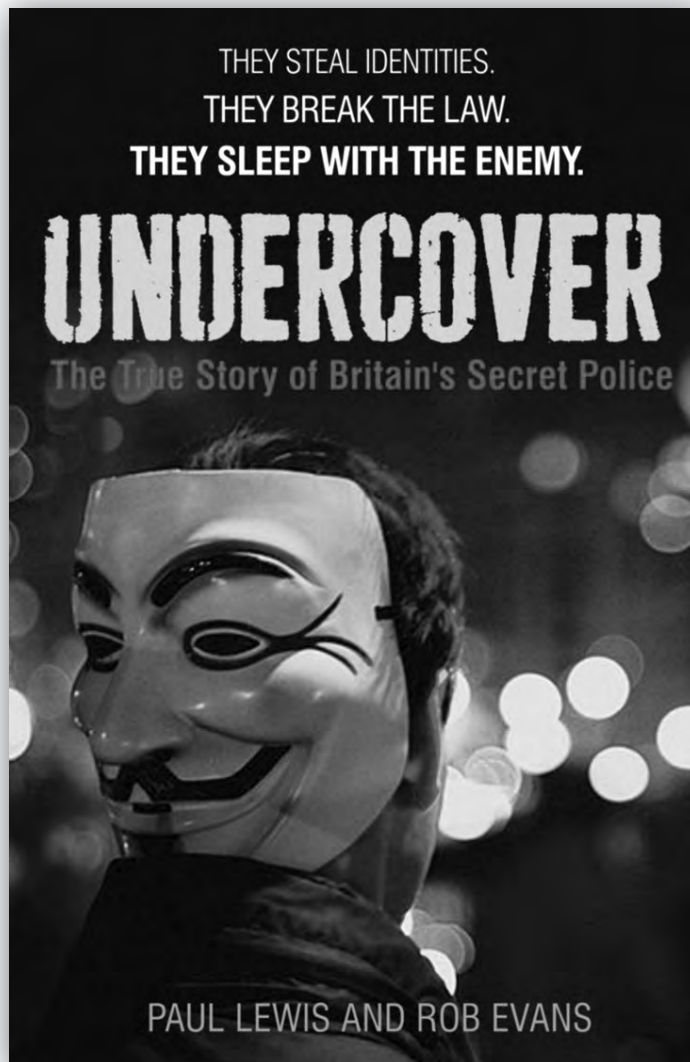
By Rob Evans & Paul Lewis  
Faber and Faber (2013)

If you haven't already read Rob Evans and Paul Lewis's book, or its extracts in *The Guardian*, then perhaps you think that intrusive police surveillance does not affect you? Or you may think that your membership of the Haldane Society of Socialist Lawyers, support for various anti-capitalist and/or justice movements and your attendance at demonstrations are nothing that the State would be interested in, let alone want to monitor, record and analyse, right? Wrong.

What *Undercover* immediately makes clear is that there is no longer any de-lineation between the State's legitimate programme to monitor and disrupt genuine threats to national security and their fetish with infiltrating grassroots movements for justice and social change.

The authors tell the story of the previously unknown secret lives of police officers Bob Lambert, Peter Black, Mark Kennedy, Lynn Watson, Marco Jacobs and a number of other undercover officers or HUMINTS (Human Intelligence Sources) that were deployed by the Metropolitan Police's Special Demonstration Squad (SDS) founded in 1968.

Within the SDS hand-picked officers would 'disappear into a black hole for several years', changing their appearance, assuming the identities of deceased members of the public, and creating new identities for themselves as activists in order to live by the SDS motto of undercover policing, 'by whatever means necessary'.



Unlike other undercover police officers, SDS officers were not there to gather evidence that could be used in court, or to be able to witness events in order to testify against suspects under oath. They were simply there to feed information about political movements back to their handlers, for as long as it was deemed necessary.

Few causes were safe, the anti-apartheid movement, Greenham common, London Greenpeace, Youth Against Racism, Newham Monitoring Project, the Animal Liberation Front, Campaign Against the Arms Trade, and the Socialist Workers Party were all known targets. Many have since spoken out against the betrayal

they felt for the police's underhand and un-regulated infiltration.

That police spies have targeted and penetrated the left is perhaps not a surprise to many, but few can fail to be shocked by the authors' revelations that the Metropolitan Police had been monitoring the private home of Doreen Lawrence, listening to the legally privileged conversations of Dwayne Brooks and that officers had committed the most personal violations by having intimate relations with female activists, most with the tacit approval of senior officers. These revelations prove that there is no longer any part of our public or private space that is safe from the State's intrusion.

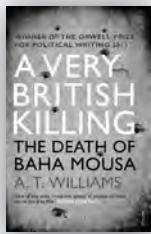
*Undercover* poses searching questions about whether the decades of deception were worth it? It also asks whether it can ever be justified to spy on those who are arbitrarily defined as being of interest to the State for whatever reason they see fit? The answer to both is clearly no. In the majority, the intelligence that went back to the SDS handlers was simply of politically committed activists, challenging the State hegemony. It demonstrates that the police tactics were simply another example of the State's ongoing programme of social control through the designation of dissenters as deviant or 'criminal'.

*Undercover* is a vital exposé of the lengths that the Metropolitan Police covert operations went to. However, it is not just the 'classic' covert surveillance we should be concerned about. Most demonstrators today are aware of the risk of being overtly photographed or recorded by intimidating 'Evidence Gathering Teams'. The Court of Appeal in the case of John Catt recently confirmed the existence of a police database containing names and images and known associates of demonstrators with no previous convictions. Increasing technology also means that we now give up a lot of information that could be of interest to the State for free to big corporations in exchange for a virtual social contact. This is not to mention the meta-data that can be harvested by the intelligence agencies, packaged, sold and analysed by whoever is willing to pay the price.

Fearless revelations by investigative journalists such as Evans and Lewis alongside whistle-blowers such as Edward Snowden and Chelsea Manning show us that we are only at the tip of the iceberg in understanding how the State seeks to monitor and control our freedoms. *Undercover* is also a timely reminder of the importance of this type of quality journalism as a vital mechanism for holding the State to account.

**Anna Morris**

## Institutional culpability



**A Very British Killing: The Death of Baha Mousa**  
AT Williams,  
Jonathan Cape,  
2012

This is a story of two British institutions failing Iraqi civilians. The culpability of the first institution is well-known: British troops detained and tortured nine Iraqi civilians in Basra in 2003, one of them – Baha Mousa – was so badly assaulted he died as a result. Only one person – Corporal Payne – has been convicted of any crime. However these assaults were not committed by a rogue bad apple soldier. The torture session had lasted two days. The Iraqis were guarded by at least 15 soldiers. Fifteen to 20 soldiers were

responsible for forcing them into stress or ski positions, yelling insults and abuse at them, hooding them and then punching, kicking, and battering them while blindfolded. Other soldiers including senior officers and the padre had wandered through the barracks and must have observed ‘the choir’: the detainees lined up and struck in succession. The screaming must have been audible throughout the barracks.

The second institution is the legal profession. Obviously it is not for lawyers to track down the truth: a lawyer’s job is to defend his or her client fearlessly, subject only to certain ethical restraints. It is the court process, assisted by adversarial advocates, that is supposed to get to the truth. The court-martial of only seven soldiers accused of assaulting Mousa with such force so as to cause his death lamentably failed to get to the truth.

Andrew Williams provides a devastating account of how the adversarial system can let down truthful witnesses. The Iraqi

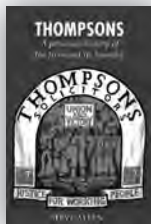
witnesses – the surviving detainees – had not been prepared for the experience of giving evidence; they were doing so through interpreters, a process which inevitably makes their testimony more distant. As the witnesses became confused, and rambling, it was hard for the prosecution to elicit their previous statements from them. When they expressed emotion, it felt false and jarring to a British courtroom. Skilled criminal defence lawyers were able to make far too much of apparent inconsistencies. The second group of witnesses were soldiers who had been only too happy to help the prosecution when it looked like they might be in the dock. Once they were off the hook and their comrades were charged, they suffered a collective loss of memory. The prosecution was reduced to treating some of them as hostile witnesses. All seven defendants were acquitted and the media ran sympathetic stories about the ordeal they had suffered. The only convicted perpetrator was Corporal Payne who had

pleaded guilty to inhuman treatment while contesting a charge of manslaughter. He must have regretted that decision as he watched his comrades walk free.

Three people shine through as determined truth-seekers. Sir William Gage conducted the two-year inquiry into the death of Baha Mousa and was able to piece together an account of what happened in the barracks in Basra. Phil Shiner, Vice-President of the Haldane Society, took groundbreaking cases to the Supreme Court and Strasbourg in order to establish that a full inquiry was needed and that human rights could apply to the actions of British troops abroad. And Colonel Daoud Mousa, Baha’s father, had been seeking the truth from the moment he was presented with a death certificate that contained an inaccurate cause of death for his son. He was let down by the court-martial and by most of the legal profession, and only finally found some justice from William Gage.

**Liz Davies**

## A special practice



**Thompsons – A personal history of the firm and its founder**  
Steve Allen  
ISBN 978-0-85036-638-9  
Merlin

As the 100th anniversary of the beginning of the First World War approaches, interest in those who resisted the military conscription of the time is starting to grow.

One such radical dissenter was WH (Harry) Thompson, who founded the well-known law firm of the same name in 1921.

Harry Thompson’s actions as an ‘absolutist’ – a conscientious objector who declined to help with

the war effort or cooperate with the authorities to that end in any way – saw him imprisoned several times between 1916 and 1919.

That is just one fascinating detail contained in Steve Allen’s book *Thompsons – A personal history of the firm and its founder*.

Others include the account of legal assistance provided to the Poplar Borough Councillors who were jailed in 1921 for failing to set a rate, an act of resistance grounded in opposition to unfairness in a system of payment towards the cost of common services provided across London.

As well as being at the helm of the foundation of the National Council for Civil Liberties in 1934, Harry Thompson also provided legal expertise to the unemployed workers and anti-fascist movements of that decade.

While parts of the book may only be of interest to those familiar with the firm’s internal life – the author himself worked there for over 30 years – the coverage of the

firm’s assistance to the trade union and labour movement at key moments in the 20th century will however appeal to a much wider audience.

For example, in a powerful chapter entitled ‘Dying for work’, the author documents the firm’s involvement in seeking redress for those affected by workplace accidents and the campaign against the Workmen’s Compensation Act 1925.

Associated chicanery on the part of employers and insurance companies had been a feature of a system which had repeatedly left workers shattered by industrial injury with no real choice but to accept early and often inadequate settlements in the decades before the welfare state.

Further afield, in an early example of the firm’s involvement in supporting trade unionists across the world, legal assistance was provided to defendants in a case known as the Meerut Communist conspiracy trial which

arose after an upsurge in strike action in India in 1928/29 and a clampdown by the law officers of the British Empire.

The book includes an index of key legal cases in the areas of personal injury, labour and employment law in which the firm has been closely involved. The referral to the same in the text reveals an organisation of many deeply committed individuals and one imbued with a clear political understanding and analysis of the challenges facing working people.

Thompsons today has over 1,000 staff and partners working in an increasingly competitive market within a context of de-industrialisation.

However, as the author is keen to point out, the firm has never acted for insurance companies and remains ‘a special practice, a firm united in its endeavour to act for the trade unions, for working people and the disadvantaged and oppressed’.

**John Hobson**

## Original and gripping

### FILM: *Neighbouring Sounds*

Directed by Kleber Mendonça Filho, 2012

*Neighbouring Sounds* is a new type of Brazilian film, a social commentary with no guns, no corpses, nearly no *favelas* and the country's official entry for the 2014 Oscars.

The film's gripping opening sequence is a montage of peasants and their masters. Worn, leathery faces peer out with untrusting eyes, frozen in time in parched countryside. A crescendo of percussion – *Boom-BOOM-Boom-BOOM* – grows louder, louder, louder, until the still images break into the film proper, and the viewer finds himself in a completely different universe, following a girl on pink roller blades, plastic wheels click-clacking on the surface of a brand new car park. She skates into a fenced playground at the top of a residential high rise. It's crowded

with children, and alongside them, uniformed adults whose faces are recognisably similar to those in the faded portraits of the opening sequence. These are the modern serving classes: the nannies, cleaners, cooks, porters and security guards.

*Neighbouring Sounds* tells the story of two families who live a few blocks from the sea in Recife, in a claustrophobic world of jagged high rises, right angles and barred windows. The upwardly mobile Bia, played by Maeve Jinkings, a frustrated housewife, is at war with the neighbour's dog. She staves off frustration with large doses of marijuana, in between shutting her children to and from Chinese and English lessons. A second, richer, family is represented by João, played by Gustavo Jahn, a sympathetic, handsome late-twenty-something who manages the many flats on the street owned by his grandfather. While João begins an affair with Sofia, and attempts to rent out a flat in a building where floral tributes stand as reminders of a recent suicide, Bia takes delivery of a 40-inch plasma TV,

and, in the film's most violent scene, is attacked and punched about the head, inexplicably, by a female neighbour.

Anthropologist Darcy Ribeiro wrote that the proto-cell of Brazilian life originated from the social structure organised around the sugar mills, which date back to the 17th century. The *senhor* was the governor of the lives of all those who worked and lived there: those of his own family, the mill workers, and of course, the slaves. After João and Sofia visit his grandfather Seu Francisco, in the countryside, at the decayed former sugar mill he still owns, the underlying tension and unease running through the film escalates into an atmosphere of pure menace. Bia's daughter has a nightmare about a horde of thieves, dropping endlessly one by one into her garden in the dead of night. João dreams of a waterfall of blood. While the security guards swap tales of random violence, Bia spies a lone black boy sneaking along the rooftops in the dark.

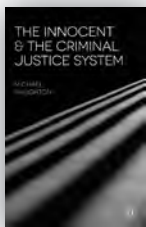
Seu Francisco has made his way to the city, swapping his former plantation for urban real estate.

While the high-rise monochrome jungle of Recife might look like another world, Ribeiro's polarised cast structure of the sugar mill is still firmly in place. Everything is different; nothing has changed. The urban domestic staff open and close doors for their masters. Everyone knows their place; everyone is edgy.

*Neighbouring Sounds*, which excels in originality, observation and detail, captures a long awaited moment of possible opening in Brazil. But can the country really change? The sins of the fathers continue to dictate the lives of the living. João is the quintessential Brazilian stereotype of extreme affability, and in his case, little productivity. Despite treating people well, and entertaining heartfelt notions of justice, he reinforces the archaic class system with his lazy, easygoing platitudes. He greets termination of his love affair with Sofia with the same vague, passive smile he applies to the rest of life. His grandfather, former *senhor* of the sugar plantation, continues to take all the decisions, but for how long?

**Damian Platt**

## Expertly done



### **The Innocent & the Criminal Justice System: a sociological analysis of miscarriages of justice**

By Michael Naughton,

Palgrave Macmillan, 2013

Naughton's new book is expertly written. His experience gives his writing an engaging practical tone, while being squarely academic.

The book is divided into practical sections covering causation, investigation and the (in)adequacy of redress. Without flinching, pillars of 'British Justice' are shown in an unflashy way to be in fact, irrelevant to the actual workings of the criminal justice

system. Innocent until proven guilty? Not when police investigations are designed purely to find evidence of guilt, defence is poorly funded, and defendants rendered passive by the requirement to work entirely to the agenda of the prosecution.

Much of the book rests on the following definition: miscarriages of justice are unfortunate, accidental, made in good faith but 'abortions' of justice come about intentionally, in bad faith, maliciously. It is here that my only discomfort with the book arose. These are both unavoidably words which denote traumatic events occurring exclusively in women's bodies. Personally then, I found this analogy and its association of abortion with wrongdoing jarring. The word 'miscarriage' may indeed be insufficient – this may be then a missed opportunity to invent newer, better terms more fit for purpose.

The chapter on causes of miscarriages of justice describes a crucial aspect of this subject that is rarely acknowledged: within our system it is not only possible that wrongful convictions are brought about purposefully, by treatment such as that meted out by corrupt police to the Guildford Four and others in the infamous cases, but they can come about with none of the actors in the investigation or prosecution of a crime breaking any rules or perceiving in any way that they are doing wrong. This is the truly terrifying part of the problem. The sociological aspect of the search by police for evidence to convict a person, 'tunnel vision' as Naughton refers to it, is an example of this. Confirmation bias means that evidence which would tend to prove a person's innocence is unconsciously filtered out because it goes against an original assumption of guilt.

The last chapter of this book

gives Naughton's 'troubleshooting' recommendations for prevention of wrongful convictions in the future. The parole board's attitude to those who deny their guilt must be altered since it now discriminates actively against factually innocent prisoners; the Court of Appeal (Criminal Division) must widen its ambit to assist the factually innocent without being restricted by principles of finality and jury deference. The Criminal Cases Review Commission needs to get back its teeth and become a properly independent investigatory body. Compensation at current levels is woefully inadequate. An idea that is simple but quietly revolutionary ends the book. Wrongful convictions will continue until the overriding objective throughout the criminal justice system becomes the safeguarding of the innocent.

**Elizabeth Forrester**



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All lectures at 6.30pm at the **University of Law**  
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