Mandela: socialist and lawyer

Plus: Legal aid; IPCC; Frances Webber on Citizenship; Basques; Richard Harvey on the Arctic 30; Brazil; Levellers and more
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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 on 14th November 2013 is as follows:

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In this issue of Socialist Lawyer we pay tribute to Nelson Mandela, remembering his radical roots, his work as a lawyer, and featuring some of the striking art inspired by the anti-apartheid struggle. As the author Steven Walker explores in his article, these early radical influences in Mandela’s political education and formation were often air-brushed out of much of the coverage that surrounded his passing. They are nonetheless worth recalling.

We are grateful to be able to feature the art work of South African printmaker Norman Kaplan who captures in his prints some of the strong sentiments evoked by South Africa’s recent history. The image featured on the cover of this issue pays homage to South Africa’s progressive Bill of Rights that was adopted as the apartheid era was brought to an end. It is a print which is mounted on display in the Constitutional Court building in Johannesburg.

The 6th January 2014 was a promising day in the campaign to save legal aid. The half-day of action organised by the Criminal Bar Association (CBA) was the first time lawyers had taken steps to, in effect, withdraw their labour. It was a reflection of how seriously the proposed further round of cuts to legal aid threaten the concept of access to justice in England and Wales.

The Justice Alliance continues to coordinate and lead the campaign to save legal aid. It organised a well-attended demonstration outside Westminster Magistrates’ Court on 6th January 2014 to coincide with the CBA’s half-day of action. Despite the predictable responses and caricatures that emerged from certain sections of the right-wing press, the events of 6th January 2014 attracted a great deal of positive publicity. The message is resonating that the campaign is about protecting the most vulnerable in society and ensuring that access to justice is not solely the preserve of the wealthy.

The campaign to save legal aid has seen a great deal of unity across the profession from solicitors and barristers. A further day of action by lawyers is expected to take place on 7th March 2014. The Justice Alliance has also launched a petition at www.change.org calling on David Cameron to halt the proposals set out in the Government’s paper Transforming Legal Aid. At the time of writing the petition had gathered some 15,642 signatures. Matters surrounding the ongoing campaign are explored in articles in this issue. Siobhán Lloyd summarises the Haldane Society’s response to the Low Commission’s consultation. Dr Daniel Newman from the University of Cardiff sets out some of the findings of a year long research study into access to justice, while Connor Johnston of Young Legal Aid Lawyers considers some of the debates that lie ahead for the campaign.

It is worth recalling that the 2013 Liberal Democrat party conference held in Glasgow voted to oppose further cuts to legal aid until it can be demonstrated that there will be ‘no adverse effect upon access to justice’. This is something of which the Deputy Prime Minister Nick Clegg and all Liberal Democrat MPs should be persistently reminded.

As recent events in the UK have illustrated, climate change and the environment are issues that remain to the fore. Richard Harvey looks back at the events and legal proceedings that unfolded in Russia and beyond as 30 Greenpeace activists were imprisoned for taking a stand in the Arctic. It is a pleasure to be able to feature in this issue the poetry of Brian Turner, New Zealand’s former Poet Laureate. Brian Turner’s poems reflect his love for the Central Otago region of New Zealand where he lives, as well as the environment. He is known in his home country for his environmental activism. Featured in these pages are three poems that appear in Turner’s new book Elemental.

There is considered analysis in this issue by Frances Webber in respect of questions surrounding citizenship. There is also an overview of some of the recent concerns that have arisen in respect of the Independent Police Complaints Commission (IPCC). A recent report on the BBC’s Newsnight outlined how plans are being formulated by the Government to significantly increase staff numbers at the IPCC. As Daniela Tringale argues, there is a strong case for more far-reaching reforms to be made to the IPCC.

With the football World Cup just over three months away, we follow up on the features on Brazil in Socialist Lawyer 65 with a report on disturbing events in the remote north-west state of Rondônia.

There are numerous upcoming Haldane Society events in 2014, including the regular annual talk known as In Conversation on 14th May 2014 which is organised together with the Institute of Employment Rights. A forum for debate, discussion and action, the Haldane Society continues to be as active as ever.

Tim Potter (socialistlawyer@haldane.org)
Radical lawyering in practice

In September 2013, a group of 36 Birkbeck University law students met for a weekend conference with speakers from the Haldane Society to discuss how lawyers can bridge the gap between radical theory and practice in today’s current challenging political context.

The diverse group of mature students brought a wealth of their own experience to the discussion which was led by a number of well-respected socialist lawyers and legal academics. Common experiences between students and speakers were those of racism, fighting against inhuman immigration control, and participating in current campaigns against benefit cuts led by Disabled People Against the Cuts (DPAC), such as the bedroom tax.

Bill Bowring, lecturer in international law at Birkbeck, opened the conference. He explained how the Haldane Society was set up by lawyers linked to the labour movement in the 1930s and that it has been involved in and supportive of many struggles such as those in Africa for self-determination in the 1950s and the miners’ strike in the UK of 1984-85. Speeches demonstrated how the Haldane Society maintains its tradition today with examples of the many ways in which representing individual clients has led to a just result and, in some cases, to fundamental changes to UK laws.

Common threads throughout the discussions held included:

- The inherent contradictions in practicing as a lawyer who challenges the State system which funds them;
- How our work can stop being defensive in a period where there is limited collective action;
- How we can best campaign to stop the current denial of access to justice through cuts to legal aid;
- How the Labour Party can be persuaded to return to its democratic ideology of the 1930s.

Speakers spoke of their successes in the face of these obstacles and all agreed that the current fight to stop further cuts to legal aid is of paramount importance if we are to continue to give a voice to the vulnerable.

Frances Webber was introduced and had questions posed to her by Professor Patricia Tuitt, head of Birkbeck Law School, about her book Borderline Justice which locates migration within the context of globalisation. Her tracing of the tightening of border controls throughout the EU, reflected in ever more draconian immigration statutes in the UK, reflects the commodification of people and the disregard for those who have no economic worth. She demonstrated how lawyers working with immigration campaigning groups such as Southall Black Sisters and the Newham Monitoring Project can bring politics into the courts and challenge the racist and sexist assumptions of some of the judiciary. She cited the case of Shah and Islam which established that domestic violence in a country of origin can give ground to a well-founded fear of persecution as defined by the Refugee Convention if there is a lack of protection in the country of origin. This case established that victims of domestic violence are a separate social group capable of claiming asylum and hundreds of women have since relied on it to escape serious domestic violence and death.

The solicitor Imran Khan echoed Francis Webber in emphasising the important role of the lawyer in bringing the experience of the community into the courtroom in what he described as ‘impact cases’. He spoke about the Stephen Lawrence case and how it was only in 2013, after a struggle lasting 20 years that two of those originally accused were found guilty of murder. He spoke also about the impact of the Macpherson inquiry upon the Metropolitan Police.

There was general agreement that in the decade since 9/11 there has been an enormous attack on civil liberties worldwide due to the ‘fear of terror’ and the increase in terrorist offences. The UK is no exception as we continue to organise to defend the right to protest. Individuals can and will always make a difference. Lawyers remain at the forefront.

Students heard how the Haldane Society was set up by lawyers linked to the labour movement in the 1930s.

October

2: Lady Justice Hale criticises the failure to appoint more women as justices of the Supreme Court. Lady Hale was speaking at a press conference to mark the start of the new legal year.

9: The Supreme Court rules that the Home Secretary’s attempt to deprive Halil al-Jedda of his British citizenship is unlawful. The appeal by the Home Secretary Theresa May was unanimously dismissed by the UK’s highest court.

12: The IPCC says a Metropolitan police officer accused of racial discrimination against the brother of Stephen Lawrence has a case to answer. Stuart Lawrence appealed to the IPCC after a Metropolitan police investigation cleared the officer. His solicitor, Imran Khan, said the complaint was ‘the culmination of a course of conduct over many years which amounted to harassment and discrimination based upon his skin colour’.

31 children aged 14 to 17 died in prisons in England and Wales between 1990 and 2011.
twenty years ago, one of the buzzwords of industrial sociology was the idea of ‘flexibility’. The workplaces of the digital future, optimists said, would contain large numbers of highly-skilled workers, well remunerated and able to work short hours. At the start of any week, they would choose the employers for whom they intended to work and the days they would work. Pessimists warned that if the employers had their way, they would choose workers from workplaces scattered across all the continents, engaged in insecure, low-paid work with no underlying rights.

The different hopes and fears of workers and employers shaped the discovery by the press in autumn 2013 that there are between 250,000 (Office for National Statistics) and 5,500,000 (according to the trade union Unite) workers on zero-hour contracts in the UK. Under these contracts, a worker remaining on the employer’s books is offered duties every week. In contrast to most workers, who have a fixed working week, there is no obligation to offer or indeed pay any minimum number of hours.

Zero-hour contracts may sound like self-employment but the worker is under the same degree of control and subordination as a full-time employee. Unlike self-employed contractors, a zero-hour worker is subject to the employer’s disciplinary, conduct and absence procedures.

What this means in practice is that the ‘flexibility’ of the arrangement goes only in one direction. According to the Office for National Statistics, 42 per cent of all zero-hour workers are given less than 12 hours’ notice of their shifts. If a worker is contacted on a Sunday evening and asked ‘are you free to work on Monday and Thursday afternoons this week?’ and answers ‘no’, then there is a real risk the employer will never contact them again.

Owing to the irregularity of their hours, zero-hour workers rarely receive holiday or sickness pay, maternity rights or pensions. One sector in which zero-hour contracts are prevalent is social care, where the typical underlying relationships might be akin to the following: a local authority provides care services to a shifting group of 200 or so elderly patients living in the community; it contracts out the care provision, which is once provided by council employees, to a private company; the identity of the patients will change from week to week, as their health gets worse or better, and new people require care; using zero-hour contracts enables the private company to pass on to their workers the insecurity structured into their relationship with the patients.

The coalition Government, noticing a large number of press stories about zero-hour contracts, is now consulting about legislative change. The best thing would be to abolish these contracts altogether. A minimum reform would be to insist that a flexible contract must pay a minimum number of paid hours, which might be as low as eight per week. This would at least give workers some protection from complete abuse and the cost to employers would be modest.

Rather than do this, the Department for Business, Innovation & Skills (BIS) has limited its consultation to the issues of ‘exclusivity’ and ‘transparency’.

By ‘exclusivity’, what is meant is that a contract might at present say ‘you are obliged to make yourself available to the employer 40 hours per week, while the employer is under no obligation to offer or pay you for any work at all’. Such clauses play havoc with workers’ lives, their ability to get another job, their benefits entitlements, etc.

BIS’ own figures suggest that less than 10 per cent of zero-hours contacts have an exclusivity clause. This sounds reassuring but is misleading. The assumption of exclusivity is implicit in the zero-hour contract and there is no need to make it explicit. Most employers do not formally dismiss a zero-hour worker who does not make themselves available to work. An employer can achieve just as much without dismissal by no longer offering the employee work. There is no dismissal, so in principle the employee cannot sue. If the worker did persuade a tribunal that they had been dismissed, their compensation might be nothing, as the employer would most likely say ‘but there was no guarantee of work and the usual hours were a mere zero’.

BIS offers a range of options for dealing with the problem of exclusivity, ranging from an outright ban to positive encouragement and invites comments. Reading between the lines, it is most likely that they will do nothing to limit the terms but issue a Code of Practice as to how they might be interpreted.

That the coalition is minded to propose such a Code is apparent from their second area of consultation, ‘transparency’. BIS notes that a large number of workers are unsure whether they are on a zero-hour contract or not and proposes including within a Code of Practice a model zero-hour employment clause. It is hard to resist the feeling that the real purpose of this consultation is to put zero-hour contracts on a firmer foundation and to make them if anything more common in the future.

David Renton
In October 2013, the Haldane Society human rights lecture series began with a compelling talk by Imran Khan and Lois Austin. Speaking about their personal experiences of undercover police surveillance, their vivid accounts had a clear message: a full independent public inquiry into police surveillance is essential.

Imran Khan, solicitor for the Lawrence family and Vice President of the Haldane Society (pictured below), started his talk by asking the audience: ‘hands up if you’re a spy’. Laughter aside, the seriousness of the situation was portrayed through Imran Khan’s encounters with police spies throughout his career, and in particular in relation to the Lawrence family. Between 1993 and 1997 the Special Demonstration Squad (SDS) sought to obtain and undermine the Lawrence family’s suspicions. As she described how she was rang her in February 2014 by Peter Francis from the SDS, the campaign also called for a full independent public inquiry. The inquiries into the police are being investigated by the police themselves, such as Operation Herne, or the hearings are happening in secret courts. Both speakers said this is unacceptable.

Imran Khan considered issues that could arise if such an inquiry were to proceed, such as whether Peter Francis would be granted immunity from prosecution for his testimony, as has been the case for other whistleblowers, or whether it would be too difficult considering the extent and nature of his personal involvement. On the issue of how far reaching such an inquiry should be, he argues that it is important that it should be much broader than just the Lawrence family inquiry and should focus on State misconduct.

The different targets of police surveillance, such as the blacklisted trade union workers, anti-racist campaigners and activists, must be brought together to ensure a wide reaching investigation into all areas of surveillance. There is no legitimate reason for infiltration into any group engaged in legal, non-violent, peaceful protest. It seems that as long as a public independent inquiry is denied, unaccountable police surveillance will continue to happen in pursuance of the interests of the State.

See www.campaignopposingpolicesusveillance.wordpress.com and page 35.

Emily Elliott

November

1: The Justice Secretary Chris Grayling announces a series of petty prohibitions on serving prisoners. Convicted male prisoners are banned from watching films classified for an over-18 audience. Other changes include requiring inmates to wear uniforms, removing access to daytime television and gym equipment.

4: The Inter-American Court of Human Rights awards £20,000 to a man tortured by the regime of General Augusto Pinochet. Leopoldo García Lucero, 80, was a member of the Socialist party and the ruling requires the Chilean state to launch a criminal investigation into the circumstances of his torture in a Santiago police station.

23 years before families got an apology for the lies about the 96 fans killed.

4: A report called Tackling Female Genital Mutation in the UK is launched in the House of Commons by the Royal Colleges of Midwifery, Nursing and Obstetricians and Gynaecologists, Unite the Union and Equality Now.

The report called for health workers to be able to report evidence of FGM to the police.

‘Hands up if you’re a spy’
Socialist Alternative and its candidate Kshama Sawant recently secured an historic victory as Sawant became the first openly socialist candidate elected to a major city council anywhere in the USA for decades. As reported in the last edition of Socialist Lawyer, Kshama Sawant was making waves in Seattle as her election programme included raising the minimum wage, rent control on housing, and calling for raised taxes on millionaires to fund transit, education and other public services.

That basic programme resonated with people and shifted the debate. During her campaign, she condemned economic inequality, the ongoing recovery from the recession, and a downtown building boom which is only benefiting the super rich. The Seattle Times reported on 26th October 2013 that: 'The election is for 10 days but we can already declare the big winner in Seattle. It’s the socialist... What’s most notable about Seattle politics this year is that nearly [Sawant’s] entire agenda has over the course of the campaign, been embraced by both candidates for mayor'.

That endorsement by other candidates was an acknowledgement that the campaign that Socialist Alternative had waged was successful. The Seattle Times had dismissed Sawant’s campaign as ‘too hard left’ for Seattle. Hundreds of volunteers flocked to support the campaign. It even split the local Democratic Party structures, with many of their more radical members coming over to support Sawant. Significantly the trade union movement, traditional supporters of the Democratic Party, swung behind Sawant.

Since her election Kshama Sawant has been the focus of national media coverage appearing on TV, press and radio. Her election has lit up the left and progressive movements in the USA. It has popularised socialist ideas and has further exposed the Democratic politicians as only interested in satisfying the needs of big business. The election, while only small, is significant as it shows that it is possible to succeed on an openly socialist platform aimed at improving the living standards of the working class.

The onslaught of neo-liberalism and the crushing of the living standards of people globally cry out for a united socialist response. In the USA of all places, it shows us what is possible.

Such was the enthusiasm, that when Sawant was inaugurated into office, thousands of people turned up to a packed Seattle City Hall. Her inauguration speech was something special. Sawant took the opportunity to set out her priorities: ‘I will do my utmost to represent the disenfranchised and the excluded, the poor and the oppressed, by fighting for a $15-an-hour minimum wage, affordable housing, and taxing the super-rich for a massive expansion of public transit and education’.

To the waiting media, who had come in their hundreds, from local and national media outlets across America, she stated boldly: ‘I wear the badge of socialist with honour’.

Paul Heron
**European champions**

The European Lawyers for Democracy and Human Rights (ELDH) continues to be active on a wide range of issues.

**Trial of leaders of the Haldane Society’s sister organisation in Turkey**

The ÇHD lawyers’ trial started on 24th December 2013. On 23rd December 2013 ÇHD, together with the Istanbul Bar Association, organised a huge demonstration of lawyers against the criminalisation of lawyers, with around 2,000 participants. The President of the Bar Association held a speech standing on top of a caravan. The trial took place in a very large court room. The 22 defendants were represented by approximately 500 defence lawyers. Around 200 observers participated.

ÇHD President Selçuk Kozağaçlı, who spoke at the Haldane Society’s Defending Human Rights Defenders conference in 2012, made a very political defence speech which lasted more than four hours. The following day he continued for more than an hour. His speech was accompanied by cheers and applause from the observers and defence lawyers. Together with eight other ÇHD members, Selçuk has been detained since January 2013. At the end of the third day, the presiding judge announced the release of four of the defendants from pre-trial detention.

In a broad demonstration of solidarity, a large number of European lawyers have taken part in observation of the trial. These lawyers have come from Austria, Belgium, France, Germany, Italy, The Netherlands, Spain and Switzerland.

The next hearings for observation will be:
- 24th February 2014 – Istanbul Bar Association trial of 10 defendants,
- 8th April 2014 – KCK lawyers’ trial of 46 defendants, 11 of whom are still in pre-trial detention; and
- 15th to 17th April 2014 – ÇHD lawyers’ trial of 22 defendants, five of whom are still in pre-trial detention.

Volunteers from the Haldane Society are invited to participate in the trial observations.

**The Hans Litten Prize**

This prize was last presented to Gareth Peirce. In 2014 it will be awarded by our German sister organisation VDJ to Selçuk Kozağaçlı on 17th May 2014 in Berlin at the Berlin Bar Association.

**Day of the Endangered Lawyer**

The fourth Day of the Endangered Lawyer took place, as is now the tradition, on 24th January 2014 with meetings and demonstrations all over Europe focusing on the plight of human rights lawyers in Colombia. Protests and public meeting were organised in Ankara, Athens, Barcelona, Berlin, Bern, Brussels, Düsseldorf, The Hague, Istanbul, Izmir, London, Madrid, Milan, Paris, Rome and Vienna. In several of these cities, lawyers’ delegations met with the Colombian Ambassador to their respective country.

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**December**

4: The Attorney General, Dominic Grieve, announces he will start issuing legal warnings to Twitter users tempted to comment on trials. Advisory notices are already issued to print and broadcast media about high profile trials.

5: World mourns death of Nelson Mandela, including David Cameron. It was not always the case...

‘Mandela should be shot’. Tory MP Teddy Taylor, 1980s.


‘This hero worship is very much misplaced’. Tory MP John Carlisle, after Free Mandela concert, 1990.

9: An immigration judge rules that Trenton Oldfield should not be deported to Australia. Oldfield was the protestor who disrupted the boat race in 2012. The judge praised Oldfield’s ‘character and commitment’ and his ‘value… to UK society generally’. The Home Secretary later lodged an appeal.
Protests took place across Europe for the fourth Day of the Endangered Lawyer, including (pictured here) in Milan (left) and Madrid (below).

Isa Muazu, a mentally ill asylum seeker who went on a three-month hunger strike, is deported to Nigeria. Muazu had argued he faced being killed by Islamist militants if returned but the Court of Appeal did not uphold his case.

There is evidence the underlying data on crimes recorded by police may be unreliable', UK Statistics Authority.

A petition was taken to the Colombian Embassy in London on behalf of the Haldane Society, the Colombian Caravana UK lawyers group and the Solicitors International Human Rights Group. A packed meeting took place on 24th January 2014 at Garden Court Chambers. The key note speaker was Rommel Durán Castellanos who delivered a powerful testimony in which he vividly described the struggles and threats encountered by human rights lawyers working in Colombia.

Conference in Belgrade in June 2014
The main ELDH event of 2014 will be a conference organised with our new members in Serbia, the Lawyers For Democracy. The conference is entitled: ‘Human Rights and Democracy in the context of EU Enlargement – perspectives for the Western Balkans’. It will be held on 6th June 2014 in Belgrade. The conference is being organised with the Serbian NGO Lawyers Committee for Human Rights (YUCOM). There will be sessions on: Human Rights in the Western Balkans; EU Enlargement and Democratisation; and Freedom of Assembly in Context.

Marxism and Law
Preparation has begun for a colloquium on this topic. The intention is to invite some of the leading contemporary German and other European theorists such as Michael Heinrich probably to London in Autumn 2014 to follow the annual Historical Materialism conference.

Next ELDH Executive meeting
The next meeting of the ELDH Executive committee will be on 30th March 2014 in Paris at the chambers of our colleague the advocate Didier Seban. This will be preceded by a preparatory seminar for a conference on access to justice and legal aid on 29th March 2014 in Creteil near Paris.

If you are interested in attending any of the ELDH events described above or in observing the trials in Turkey please contact me at b.bowring@bbk.ac.uk.

Bill Bowring
Criminalising need

On 15th January 2014, David Watkinson – one of the Haldane Society’s Vice-Presidents and a retired housing law barrister – and Myk Zeitlin of the Advisory Service for Squatters spoke about the Government’s attack on squatting. Between them Watkinson and Zeitlin have resisted that attack on every front, from doorstep negotiations with the police to appeals in the European Court of Human Rights.

Their talk focused on Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), which introduced a new criminal offence of squatting in a residential building.

David Watkinson outlined the legal history of squatting, describing how the law had always disdained trespassers but stopped short of criminalising squatters until LASPO was passed. He described how the evidence gathered in the consultation (a process that sounded eerily familiar to anyone following the decimation of legal aid) produced almost no basis for the Government’s claim that the change to the law was necessary to protect people’s homes. That claim held even less water in March 2013, by which point none of the 23 people arrested under section 144 had displaced anyone from their home.

Watkinson went on to point out how effectively the previous legislation could deal with the Government’s perceived problem. He explained how section 144 operates and identified some situations where it may not apply. He also gave a useful explanation of human rights defences available to squatters.

Myk Zeitlin described the respect that the police had had for the ‘legal notices’ that the Advisory Service for Squatters displayed on squatted properties, saying they had been ‘like garlic on the doorstep’. However the new criminal offence and increased use of High Court sheriffs, rather than County Court bailiffs, has disturbed the settlement. The Advisory Service for Squatters are developing new tactics and re-drafting their legal notice.

Zeitlin also described the deplorable case of a person dying of cold outside an empty building because he had been threatened with arrest: the first death associated with section 144.

One significant effect of section 144 is the change of forum at which squatting issues are determined. Watkinson spoke of how he spent much of his career acting for occupiers in the County Courts but it is now the police, exercising their new discretion to make arrests, who will make decisions. In squatting situations there is often little or no documentary evidence and the police should consider the right to respect for the home under Article 8 of the European Convention on Human Rights. Zeitlin noted that the lawyers assisting the Advisory Service for Squatters are increasingly criminal rather than civil practitioners.

This law has deterred people from the most common and useful form of squatting: occupying disused residential buildings while they are due to be renovated. Squatters are now forced to gather

Fighting to free Huber

Huber Ballesteros was arrested on Sunday 25th August 2013 in Bogotá accused of financing terrorism and rebellion. The main witness in the case against him is paid by the State and has testified in 35 other cases against social activists. Huber is an elected member of the national Executive of Colombia’s largest trade union federation, the CUT, the Vice President of Fensuagro, Colombia’s Agricultural Union and a longstanding partner of Unite the Union and the United Steelworkers of America. He is the National Organiser for the Patriotic March, a social and political movement grouping over 2,000 organisations.

The arrest was widely condemned by the British and Irish trade union movements, with the General Secretaries of the Irish and British TUCs both writing to the Colombian Government calling for Ballesteros’ release.

He is currently being held in La Picota prison in Bogotá.

His arrest came in the midst of mass industrial action which was taking place around the country in the agricultural, health, transport and energy sectors. Huber was one of the leaders of the strikes and one of the 10 person committee set up for any eventual negotiations with the Government.

January

6: Solicitors and barristers working in criminal legal aid stage the first strike in the profession’s history. Demonstrations were held at courts around the country during the half-day walkout. A full day strike on 7th March 2014 was later announced.

8: The family of Mark Duggan, whose death sparked the riots in 2011, reacts with fury when an inquest jury rules that police acted lawfully when they shot him, even though he had not been carrying a gun when he was killed.

‘The police didn’t kill Mark Duggan – 50 years of liberal compassion did.’ The Daily Mail columnist Peter Hitchens explains that abolishing the death penalty was the real killer!

15: The Business Secretary, Vince Cable, announces that any employer not paying its workers the minimum wage faces a fine of £20,000. This is a £15,000 increase in the previous penalty.
Justice for Colombia. The Embassy in London by the NGO campaigners and lawyers calling petition signed by unionists, international guest of the TUC Conference as the official England to address the 2013 TUC before he was due to travel to most in need.

section of society when they are coincide with a housing crisis, introduced a pernicious law to 1977. This Government has notably the Criminal Law Act fall after repressive legislation, calls to extend section 144 of squatters, and perhaps lead to further reduce public support for residential buildings. This could into larger groups and live in non-residential buildings. This could further reduce public support for squatters, and perhaps lead to calls to extend section 144 of LASPO to non-residential buildings.

Watkinson described how levels of squatting can increase during housing crises but tend to fall after repressive legislation, notably the Criminal Law Act 1977. This Government has introduced a pernicious law to coincide with a housing crisis, criminalising an important section of society when they are most in need.

Nick Bano

Huber was arrested days before he was due to travel to England to address the 2013 TUC Conference as the official international guest of the TUC.

On 26th November 2013, a petition signed by unionists, campaigners and lawyers calling for the release of Ballesteros was handed in to the Colombian Embassy in London by the NGO Justice for Colombia. The campaign for the release of Huber Ballesteros continues.

Hasan Dodwell

February

11: The High Court orders the Home Secretary, Theresa May, to reconsider her decision not to hold a public inquiry into the murder of the Alexander Litvinenko. Mr Litvinenko was a former KGB spy who was poisoned with radioactive polonium-210 while in the company of two Russian men at a London hotel in 2006.

Despite a degree of trepidation leading up to it, the strike on 6th January 2014 protesting against the cuts to criminal legal aid was a remarkable success. Though the event was widely vaunted as the first such action taken by the Bar in its history, what I found more striking were the displays of unity between solicitors and barristers which permeated the day. What is more, we were noticed. Questions were asked in Parliament. And the press coverage of the event, with the odd exception, was considerably more balanced, positive and less focussed on London then I am accustomed to seeing in the context of legal aid. So where do we go from here? Flushed with the success of the action there have been murmurings of planning a parallel action, protesting against the equally damaging civil legal aid cuts. Personally, I would be apprehensive about this. The withdrawal of labour by criminal lawyers in the Crown Court is undoubtedly very effective. Complex cases and jury trials simply cannot progress without advocates. And it is harder for the State, responsible for bringing the prosecution in a criminal case, to justify taking advantage of the situation. These considerations do not apply with the same force in civil proceedings. If lawyers cannot be found to provide representation in civil cases the wheels of justice will not grind to a halt. The more likely and more depressing alternative – which we are already seeing as a result of the legal aid cuts – is that cases proceed and that tenants will be evicted, families will be split up and immigrants will be deported.

My other apprehension about further strike action is that there is the inherent risk of shifting the focus from the clients we represent to the wages that we take home. The Ministry of Justice’s ad hoc statistical release a few days before the strike – setting out the payments from public funds made to barristers in 2012/13 for criminal work – was a wearily predictable example. We cannot even blame the Tories for tactics like this. It was a matter of routine for Labour to publish the breakdown of ‘top-ten fat cats’ with one hand while slicing away at the legal aid budget with the other. Unfortunately, particularly when economic growth is still comparatively fragile, these messages resonate with the public.

In fairness, the action on 6th January 2014 did an effective job of counteracting this fat-cat image. A number of good media interviews were conducted on the day with low-earning pupil barristers who were able to explain the reality of being paid £50 for a hearing (the minimum recommended in the 2008 ‘Protocol for the instruction of counsel’) from which they must pay chambers fees and expenses, leaving them out of pocket after a hard day’s work. These personal experiences are borne out in the Ministry of Justice statistics, which show that 24 per cent of criminal barristers took home less than £20,000 for the year 2012/13 from public funds while 15 per cent received less than £10,000. Unsurprisingly, the Government have been slower to acknowledge. That is the story.

There is another side to the story that, as a profession, we must acknowledge. That is the reality that there are a statistically significant number of barristers, referred to within the Government’s statistics, earning between £200,000 to £700,000 per year from public funds. There are a number of justifications by which these figures can be explained away: they include VAT; they do not take into account overheads; they may include work which spans several years; and they are payments made to experts at the pinnacle of the profession earning much more than those at the bottom.

Particularly at a time of cuts not just to legal aid, but to welfare benefits and local authority funding, this is something I find increasingly hard to justify.

So, what does this mean? Well, it certainly does not mean that legal aid cuts are justified or that we should not be taking action to resist them. It does suggest that a further, parallel level of change is needed. Chambers need to ensure that pupils and junior tenants are paid. Solicitors’ firms need to be far more circumspect in relying on low-paid paralegals and trainees and ensuring that payment is made for work undertaken by junior counsel. And perhaps – more controversially – it means that we need to consider capping the yearly amount that advocates can receive for publicly funded work. Then, when we strike, and when the harsh spotlight of public scrutiny inexorably shifts to the wages we take home, we have nothing to hide and nothing to fear.

Connor Johnston is the Co-Chair of the 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

6th January: an effective job of countering ‘fat-cat’ image

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The invisible shackles of misery – what is the root cause and can the Modern Slavery Bill rectify the problem?

Paramjit Ahluwalia looks at how the Government’s new legal Act might be translated into convictions and why immigration and employment will matter

‘As long as the mind is enslaved, the body can never be free. Psychological freedom, a firm sense of self-esteem, is the most powerful weapon against the long night of physical slavery’. Dr Martin Luther King – 16th August 1967

The newspaper reports of 2013 were littered with stories of modern day slavery and trafficking. It would appear from the draft Modern Slavery Bill that the Government have woken up to the complex and multi-faceted nature of human trafficking.

The definition of trafficking itself within the Palermo Protocol is the ‘recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation’.

It is perhaps understandable why criminal legislators and juries have not found it an altogether easy mechanism to translate into criminal trials.

The appeal courts have started to quash convictions for those who have been recognised as victims of trafficking and thus give effect to Article 26 of the European Convention on Action against Trafficking in Human Beings. This requires the UK to provide for ‘the possibility of not imposing penalties on victims (of trafficking) for their involvement in unlawful activities to the extent that they have been compelled to do so’. This can be seen in the authority of R v N, R v Le [2012] EWCA Crim 189.

In the aforementioned case, the court outlined that the UK’s obligations could be met through various measures including, but not limited to, non-prosecution and dealing with a defendant by means of an absolute or conditional discharge.

However, not every victim of trafficking will avoid prosecution. The question courts will have to go on to consider is the extent to which such offences are ‘integral to or consequent on the exploitation of which he was the victim. We cannot be prescriptive. In some cases the facts will indeed show that he was under levels of compulsion which mean that in reality culpability was extinguished. If so when such cases are prosecuted, an abuse of process submission is likely to succeed’.
The appellate decisions are helpful, but these are matters that are brought to the fore after prosecution of a victim of trafficking and do not deter or help resolve issues about how to tackle or prosecute such multi-dimensional crimes.

One concern in cases of trafficking is the cross-over with immigration and employment issues that juries in criminal trials are not used to dealing with. The concept of the ‘continuum of exploitation’, as advanced by the Joseph Rowntree Foundation in 2010, is an apt description.

For example, if X is brought into the UK from southern India as a domestic servant and is paid £1 an hour for her work is this a criminal offence, or is it one to be tackled within the employment tribunals? What if the low pay and the level of psychological abuse of that worker is severe, but not as bad as the conditions that she faced as a domestic worker in India? Would that individual wish to leave that position of work? Would that individual trust the UK authorities, or would she fear deportation upon lodging a complaint with the authorities? These are unsavoury questions to have to ask within the UK in 2014, but this is the reality of the situation faced by many vulnerable and exploited people that can not easily be labelled and thereby dealt with.

The Home Secretary Theresa May in the foreword to the draft Modern Slavery Bill, dated December 2013, outlined as such: “the nature of this crime is so multi-faceted that it should not be put in one box. Addressing this issue requires tireless and coordinated effort across Government and law enforcement; enhanced cooperation with foreign partners; and increased awareness within communities across the UK.”

It is hoped that the Modern Slavery Bill can tackle these complexities through consolidating and simplifying existing offences. There are essentially two substantive offences proposed:

• Slavery, servitude and forced or compulsory labour – a person commits an offence if they hold ‘another person in slavery or servitude and the circumstances are such that they know or ought to know that the person is held in slavery or servitude’; and

• Human trafficking – a person commits an offence if they intentionally arrange or facilitate the arrival into the UK or another country of a person, the departure of V from the UK or another country, or the travel of V within the UK or another country with a view to them being exploited.

The maximum sentences for modern day slavery offences are now to be increased from 14 years to life imprisonment and in addition the offences will now come within the extended sentences regime.

With both modern slavery and human trafficking now consolidated under one act of Parliament, it is hoped that the sentencing regime for both is applied in a more consistent fashion.

In the case of Attorney General’s Reference (Nos 2, 3, 4, and 5 of 2013) R v William Connors [2013] EWCA Crim 324, sentences of 6½, 4 and 3 years were upheld for individuals convicted of conspiracy to require someone to perform forced or compulsory labour in breach of section 71 of the Coroners and Justice Act 2009. There were no immigration issues in that case. This can be contrasted with the outcomes for those involved in trafficking an individual into the UK contrary to section 4(1) and 4(5) of the Asylum and Immigration (Treatment of Claimants) Act 2004. An example of this is the suspended sentence handed down at first instance to offences relating to trafficking of a domestic servant for exploitation in the case of R v SK [2011] EWCA Crim 1691.

Trafficking and slavery prevention orders are also to be introduced, to include measures such as banning people from working with children or travelling to specific countries. It is not clear from the legislation how this will deter or prevent future conduct.

The introduction of an anti-slavery commissioner by this draft bill is to be welcomed. Their function will be to ‘encourage good practice in the prevention, detection, investigation and prosecution of offences… and will focus on the effectiveness of the law enforcement response in England and Wales to encourage effective investigations leading to successful convictions of modern slavery cases’.

The reality in respect of human trafficking is that most people do not come forward to describe the hideous positions they face owing to fear. This is often due to fear of being deported, fear of being criminalised, or fear of losing what little money they have. The proposed legislation does not appear to go far enough in covering the complex issues faced by domestic servants and vulnerable employees, in particular where the conditions are such that it amounts to servitude. During the last decade, the Government, in one form or another, has increased the scope of its power in terms of detaining and prosecuting those without immigration status – be it for not having a passport upon entry or in respect of obtaining employment with false identity documents. What has not been recognised is how that punitive stance towards the voiceless and vulnerable within our society has contributed to perpetuating and enhancing the power and control of any envisaged trafficker or abuser. It is the efficacy of the safety net and the trust individuals can have in the authorities once they report those crimes committed against them that will dictate how useful this bill will be, not the proposed increased sentencing powers or the anticipated trafficking and slavery prevention orders.

The most intriguing aspect of the bill is that of clause 35, which imposes a legal duty to report all suspected victims of modern day slavery:

‘a specified public authority must notify the National Crime Agency if it has reasonable grounds to suspect that an individual may be a victim of human trafficking’.

It is envisaged that this will include the police and local authorities and, as the foreword indicates, the immigration authorities as well. The paper even highlights that a training package has been developed with Virgin Atlantic and Thomas Cook to spot indicators of modern day slavery. It is unclear how this will all be put into practice.

The draft bill outlines that ‘our approach will ensure that victims can access all the services that are open to them, and that we develop an improved picture of the number of victims of these terrible crimes’. A question that requires answering is does the Government accept that in order to firmly tackle modern day slavery and trafficking it has to re-assess its approach towards those without immigration status?

It is heartening that modern day slavery and trafficking has finally pricked the ears of those in the echelons of power. To have true worth, the Government needs to stop criminalising those without immigration status and understand that economic inequality is at the very heart of these offences.

Paramjit Ahluwalia is a barrister at Garden Court Chambers
Frances Webber analyses this Government’s protection of human rights and, ‘Citizenship is man’s basic right, for it is nothing less than the right to have rights.’ Chief Justice Earl Warren, dissenting in Perez v Brownell, US Supreme Court (356 US 44 1958)

It is probable that Chief Justice Warren had read Hannah Arendt’s groundbreaking study, The Origins of Totalitarianism. Arendt coined the phrase ‘the right to have rights’, which encapsulated her insight that although human rights were held to be universal, access to those rights was impossible without citizenship of a nation state.

The relationship between a Government and its citizens, the obligations owed by the one to the other, and how and for what reasons Governments can end the relationship by revoking citizenship have become fraught questions in the post-9/11 age, when citizens’ rights have repeatedly crashed against doctrines of state sovereignty. Some Muslim citizens of European states have discovered that they cannot rely on their government to protect them from arbitrary and illegal detention or torture abroad. Others have discovered how easy it is to lose citizenship, and how few procedural protections they have.

The case of Ali Aarrass
On 10th January 2014, lawyers appeared before the Brussels first-instance court to argue that Belgium is in breach of its obligation to protect its dual-national citizens from torture. The case is that of Ali Aarrass, a Belgian-Moroccan citizen tortured and imprisoned in Morocco, to whom the Belgian government refuses to extend consular protection.

Born in the Spanish enclave of Melilla and educated in Belgium, where he did his military service, Ali was subjected to a two-year investigation for alleged involvement in arms smuggling by Spanish judge Baltasar Garzón, and was cleared in March 2009. The Spanish authorities nevertheless extradited him to Morocco in December 2010, despite a UN Human Rights Committee request to stay the extradition. Ali disappeared into incommunicado detention and nearly a year later was convicted in the Rabat court of smuggling arms and sentenced to 15 years’ imprisonment (later reduced to 12). The conviction was based solely on ‘confession’ evidence which Ali consistently maintained was false, his signature to an incomprehensible document in an unfamiliar language obtained by sustained torture.

The allegations of torture were never properly investigated by the Moroccan authorities, but following a prison visit with a forensic medical expert in September 2012, UN Special Rapporteur Juan Mendez confirmed that Ali had been severely tortured. A December 2013 report from the UN’s Working Group on Arbitrary Detention concluded that Ali’s confession was obtained by torture, rendering his conviction and imprisonment unlawful.

No help from Belgium
During the whole period of his incarceration, Ali’s family and supporters have called on the Belgian government to provide diplomatic protection. The Foreign Minister has consistently refused, saying that in Morocco, Ali is a Moroccan citizen and it would be contrary to normal practice to intervene diplomatically. Only in August 2013, when Ali was in a critical condition on a hunger and thirst strike, did the Minister ask the Moroccan government to ensure that he was treated with respect for his human rights. Even then, he insisted that the Government was not providing diplomatic assistance and would not intervene in the conviction. The lawyers’ argument is that since torture is jus cogens in international law, the obligation to protect citizens from torture must take precedence over diplomatic conventions of non-intervention.

What is citizenship worth?
Ali’s case raises forcefully the issue of the way Muslim ‘terror suspects’ are treated as non-citizens by the states of their nationality, in the context of the clash between diplomatic conventions (reflecting State sovereignty) and human rights obligations.

Feroz Abbasi was one of the Muslim British citizens kidnapped abroad and bundled off to Guantánamo (others included Ruhel Ahmed, Tarek Dergoul, Jamal Al Harith, Shafiq Rasul, Asif Iqbal, Richard Belmar, Martin Mubanga and Moazzem Begg). In a challenge brought on behalf of Abbasi, R (Abbasi) v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1598, the Court of Appeal accepted that at Guantánamo the men were ‘arbitrarily detained in a “legal black-hole” without the possibility of challenging their detention, in apparent contravention of fundamental principles recognised by both jurisdictions and by international law’ – but the Government denied any entitlement to consular protection against arbitrary and limitless detention – and the court agreed. ‘International law has not yet recognised that a State is under a duty to intervene by diplomatic or other means to protect a citizen who is suffering or threatened with injury in a foreign State’, the Court of Appeal said. The judges held that since the Foreign & Commonwealth Office (FCO) had already considered Mr Abbasi’s request for assistance, there was nothing further they could do – they could not order the FCO to intervene on behalf of the Britons held at Guantánamo.

Relations of Moazzem Begg and other British detainees sought to join Abbasi’s case as interveners and to put evidence of their treatment before the court, but the application was refused, so there were no allegations of torture or inhuman treatment before the court, although by the time of the hearing in September 2002 the treatment of detainees (including British nationals) at Bagram and Guantánamo was already causing grave concern.

It is not only Muslims who find themselves abandoned by the country of their nationality in the face of ill-treatment by a foreign state. As recently as January 2014, the European Court of Human Rights in Jones and others v United Kingdom (2014) ECHR 32, upheld the
refusal by the UK House of Lords in 2006 to allow four white Britons to sue their Saudi torturers in British courts. But it seems that only in the case of Muslims do governments collude in torture and illegal rendition. The report of the aborted Gibson inquiry, The Detainee Inquiry, published in December 2013, indicated that from early 2002, British intelligence officers were aware of ill-treatment including the use of hoods, stress positions, sleep deprivation and physical assaults on detainees including at least one British national; that some approved of the ill-treatment, others turned a blind eye, and that even when officers registered concern, no action was taken to stop it. Similarly, the UK did not take opportunities to object to proposals to transfer individuals including British nationals to Guantánamo, and in some cases approved or cooperated with US renditions to torturing states. Ministers only sought the release of British detainees from Guantánamo in December 2003.

Extradition: Talha Ahsan’s case
British citizenship provides no protection against extradition, either. In October 2012, British citizens Babar Ahmad and Talha Ahsan (who has won prizes for his poetry) were extradited to supermax incarceration in the US, to await trial on charges which the Director of Public Prosecutions refused to prosecute in the UK for lack of evidence and whose sole connection to the US is a computer server’s location. The Asperger’s syndrome which Talha suffers, in common with Gary McKinnon, and which moved Home Secretary Theresa May to stop McKinnon’s extradition, did not help Talha.

Getting and losing citizenship
The protection of citizenship is becoming increasingly threadbare for European Muslims. Simultaneously, in the UK at least, citizenship has become harder to acquire, and easier to lose. In 2002, with multiculturalism giving way to the new politics of ‘community cohesion’, the New Labour government made naturalisation more difficult. Prospective citizens were tested to ensure that they were familiar with ‘British values’, to which they pledged allegiance in a revamped citizenship ceremony under the Nationality, Immigration and Asylum Act 2002.

Until 2002, only British citizens who had become British by naturalisation or registration (as opposed to being born British) could lose citizenship, and a strict procedure for revocation of citizenship had to be applied before the loss of citizenship took effect. The new law stipulated for the first time that those born British could be stripped of their citizenship, provided that they would not become stateless. It did away with the old grounds for deprivation of citizenship, disaffection or disloyalty, and trading with the enemy, replacing them by ‘conduct seriously prejudicial to the vital interests of the UK’. With no definition of ‘vital interests’, the new law potentially embraced a much broader range of actions for which citizenship could be forfeit.

Concerns at the vagueness of the phrase are heightened by the extreme breadth of the cognate phrase ‘national security’ and the discretion given to ministers to define it. Successive governments have decided that actions against a ‘friendly State’ can damage the UK’s national security, no matter that we cannot choose our government’s friends, who include many torturing states. Senior judges have both accepted this broad definition and have left it up to ministers to decide whether particular actions damage national security. ‘The courts are not entitled to factor from the opinion of the Secretary of State on the question of whether, for example, the promotion of terrorism in a foreign country by a UK resident would be contrary to the interests of national security’, said Lord Hoffmann in 2002 in the case of Shafiq ur Rehman v SSHD [2003] 1AC 153. There is no reason to believe that the judges would be any less deferential on the question of what are the UK’s ‘vital interests’ and what conduct would be ‘seriously prejudicial’ to them. In any event, since 2006, the only criterion for depriving a British citizen of his or her nationality is that it is ‘conducive to the public good’ to do so.

Loss of procedural protection
In 2004, the provision which allowed an appeal before the deprivation decision took effect was repealed, meaning that the person is no longer a British citizen from the moment the decision is served, and can (if abroad) be excluded from the country. Unsurprisingly, since 2004 virtually all deprivations have occurred while the ‘target’ is abroad, and the target’s understanding of the validity of the deprivation and the difficulties for families, who must either share the household or suffer the abuse, is partly a riposte to the Supreme Court’s judgment. The new clause 60 would allow the Secretary of State to take account of conduct ‘seriously prejudicial to the vital interests of the UK’. The fact that the 1961 Convention on the Reduction of Statelessness allows this, since the UK reserved this power when it signed the Convention, does not make it any less objectionable, particularly since it is partly politically motivated, a sop to far-right Tories, and partly a riposte to the Supreme Court’s Al-Jedda judgment. The new clause 60 would allow the Secretary of State to take account of conduct ‘seriously prejudicial to the vital interests of the UK’. The British government has used it 15 times, including as a basis for depriving citizenship of four British citizens and a beneficiary of the current ban on rendering British citizens stateless.

Getting rights back
The ‘right to have rights’ has become, in Theresa May’s words, a privilege, not a right. States’ rights are absolute; those of citizens are contingent and increasingly precarious.

For more information about Ali Aarrass and Talha Ahsan see www.freeali.eu and freetalha.org
While the Government will attempt to incorporate the mass walkout of solicitors and barristers on 6th January 2014 within the thus far successful, political construction of ‘fat cat lawyers’, those more attuned to the reality of legally aided criminal defence understand its significance. Those suspected and accused of crimes rely upon lawyers in order to make abstract principles of justice a reality. Defence lawyers actualise justice, allowing defendants the opportunity to compete with the might of the State and activate the equality of arms that must underlie the criminal process of a democratic society.

The cuts proposed by the coalition to the criminal legal aid budget could reduce the 1,600 criminal legal aid firms to a rump of just 400. Closing down so many legal firms, and forcing smaller firms to merge, will create advice deserts – whole tracts of the country lacking access to lawyers. The loss of the local law firm has severe implications for procedural justice. At present, most lawyers have regular clients, whose often complex needs they understand and can accommodate. At the very least, local lawyers know the communities clients are drawn from and shaped within. Those defendants who still have access to lawyers will likely receive representation of a diminished quality. As detailed in my recent book Legale Aid Lawyers and the Quest for Justice, research into the lawyer-client relationship suggests that this may be a perilous situation for the principle of justice. Even before any cuts were made, it was already apparent that criminal legal aid lawyers felt themselves pressured into delivering a lesser service than they would like. Such trends will be exacerbated by 17.5 per cent average reductions in remuneration.

The study was the largest of its kind for two decades. I spent a year accompanying lawyers from three criminal defence firms, followed by a series of formal interviews with the practitioners. This compared how they saw their practice with the way it appeared to an outsider. The research revealed two distinct images of criminal practice, with a disjuncture between interview and observation. In short, the lawyers did not feel able to act in the ways that they felt they should.

In the formal interviews, lawyers demonstrated the positive attitudes they held toward their clients. Lawyers identified a social agenda as fundamental to their practice. Every lawyer perceived their role to be important for the way they upheld access to criminal justice, functioning to protect some of the most vulnerable in society.

There appeared to be both a sense of pride and self-importance in these statements, as in the following statement from a partner:

‘I am proud to be in criminal defence. It’s an ego thing, I suppose; I think it’s hugely important. You have a member of the public who knows nothing and they have the might of the State against them and we are the knights in shining armour standing between the individual and the dragon of the State.’

This social agenda was cited as the main reason that these lawyers entered practice. They not only felt a calling for the law but were attracted by the opportunity to help those less fortunate than themselves, which legally aided criminal work offered. That can be seen in this account from a solicitor:

‘I only ever wanted to do crime. I have quite an altruistic attitude, so I wanted to make a difference – I wanted to help the underdog. It’s just something I’ve grown up with, my mum did a lot of charity work, I worked with a lot of disadvantaged people when I was growing up, and I just wanted, in my own little way, to make a difference.’

The lawyers talked of treating clients with respect. It was considered crucial that clients were made to feel important – given time and provided consistent representation. The lawyers questioned considered these interpersonal factors as more important to the lawyer-client relationship than strictly legal considerations.

Activating the ‘equality of arms’

Academic Daniel Newman spent a year observing lawyers and his research has vital conclusions for the future of criminal justice, while Siobhán Lloyd outlines our response to consultation on advice and legal support.
This included developing good relationships, honesty, accessibility and communication. The ability to individualise service was key, as presented in this quote from a partner:

‘Some clients just can’t be pushed through quickly. For whatever reason, they need more time. They need a solicitor who can spend time with them, go over their case and, maybe as important, get to know them as individuals. No two clients are the same. Some clients just require more time than others. It is not like making widgets within the car manufacturing industry, where I know that every widget looks exactly the same and takes me five minutes to make. Because people aren’t the same.’

These features were considered particularly important for the role they played in developing rapport with clients. The client had to be able to trust their lawyer; this was the basis of their relationship. That the clients could rely on their lawyers is vital under the consideration that lawyers are effectively engaged as translators.

From this perspective, clients do not understand the language of the courts and require lawyers to change their wants into a form that constitutes comprehensible legal discourse. This role attributes great responsibility to lawyers to even-handedly transmit the views of their clients. Lawyers talked of giving voice to the clients, allowing clients to have their say in what happened to their cases.

Their acting as advisers was of great importance; lawyers believed they enabled clients to make informed choices as to what happened in their cases.

‘Our job is to advise on the options open – at the end of the day it’s up to the client which course of action he takes, we simply allow them to make that choice. You could say we are officers of the court – that sounds very grand.’

Sadly, for these lawyers, their ideals were tested by the reality of working within an increasingly challenging system of legal aid remuneration.

Despite the best intentions of these lawyers, they found it increasingly difficult to put their client-centred philosophies into practice. While lawyers professed the importance of the lawyer-client relationship, their firms did not deem themselves able to offer consistency in representation. This meant that the organisational practice of discontinuous representation was implemented as standard, so lawyers were allocated to cases on an ad hoc and, primarily, cost-effective basis, often swapping cases during a busy day.

As a result, many clients failed to develop rapport with their representative, engendering anxieties that their lawyer did not know them or their case. This can be seen from the following Magistrates’ Court exchange between solicitor and client:

**Client:** ‘I was telling the last solicitor that, and the one before.’

**Solicitor:** ‘I know. But you have to listen to me now.’

**Client:** ‘You’re missing the point. I’ve had so many solicitors. I get sick of having a different solicitor every time.’
Over the past ten months, the Haldane Society has been busy campaigning against the Government’s latest proposals to cut legal aid, writes Siobhán Lloyd.

It has always been the Haldane Society’s position that legal aid should be expanded, not cut. We do not agree that severe cuts in public services need to be made. When the legal aid scheme was first introduced, in 1949, around 80 per cent of the population was financially eligible for legal aid in comparison with less than a third today. We believe that financial eligibility should return to the levels that it was in 1949. It is our view that the costs of this could be recouped through taxation.

In late 2012, the Low Commission on the Future of Advice and Legal Support was established to develop a strategy for access to advice and support on social welfare law. It launched a consultation calling for evidence on the impact of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and proposals on how to ensure that people had access to advice and support. Before responding to the consultation, the Haldane Society conducted a survey of our members to find out what the impact had been on them. We were told that the reduction of fees had been devastating for the services they were supplying to the public. Inevitably, many believed that the cuts would restrict access to justice for the poorest and most vulnerable in our society. We invited the Low Commission to recommend that areas that had been taken out of scope through LASPO be re-introduced.

Despite LASPO having only come into effect in April 2013, the Ministry of Justice launched a consultation proposing to reduce legal aid even further. As readers of this magazine will be aware, the Ministry of Justice wanted to slash a further £220 million from its legal aid budget. Among the most controversial of the proposals contained within the document Transforming Legal Aid: Delivering a more credible and efficient system were the following:

- Price competitive tendering for criminal legal aid contracts. The Ministry of Justice estimated that there would only be 400 contracts despite the fact that there are 1,600 criminal legal aid firms across the country;
- Removing client choice from criminal legal aid;
- A reduction in fees of 30 per cent in very high cost cases;
- A residence test for civil legal aid restricting eligibility to those with at least 12 months’ lawful residence;
- Legal aid only being paid for judicial review work if a permission application is successful;
- The removal of civil legal aid where cases are assessed as only having borderline prospects of success; and
- Most of prison law being taken out of scope.

There was a huge public outcry about the proposals and the risks that they presented to access to justice. It was our view that the proposals were an ideological attack on the poorest and most vulnerable in society and an economic attack on those who fight for their rights. We called for the creation of an organisation that could unite all the groups and individuals who were opposed to the cuts; collaboration with the main unions working in the justice sector; and for a 24-hour strike followed by a stepped programme of
Commission’s consultation

increasingly intense strike action. A number of public meetings and protests were organised and a number of organisations, including the Haldane Society, came together to form the Justice Alliance, which has spearheaded the campaign against the proposed cuts.

The Haldane Society was but one of 16,000 individuals/organisations which responded to the consultation. The Haldane Society urged the Government not to implement its proposals. Price competitive tendering would result in criminal defence services being procured on the basis of low price rather than quality of legal service. The proposals would lead to ethical erosion and a misalignment of values.

Indeed, in the observations for my studies, many lawyers came to assume the guilt of their clients before they had even met them or read the case files. Sometimes this was based on what the prosecutor told them, others on past experience of that client; it could even be premised on the area in which they lived. The following solicitor quote shows this:

‘Believe her? Look at the colour of this file. Never believe a client from there. Did I just say that? Whoops!’

In many such cases, there was a stage when lawyers exerted tangible pressure on a client. Sometimes, understandably, this was deemed in the client’s best interests. However, some lawyers might also have wanted to do this because it saved them time and effort or, occasionally, because it was more profitable. Of course, the professional code of conduct expressly forbids putting pressure on clients to plead guilty for such self-interested purposes. However, one method of applying subtle pressure was to use scare tactics, as in this example from a partner:

‘So, how are we pleading? Oh, I should warn you that the judge you’ll be appearing before is very tough on public order offences. He’s also very tough on breaches, and he’s been sending people down all day for failures to surrender.’

Sometimes, though, lawyers were just frustrated and told clients to plead guilty. That can be seen in the following from a partner:

‘My colleague tells me you aren’t sure about plea. I’m not sure why, bit of a waste of time. It seems to me that you have to plead guilty. You will plead guilty, won’t you?’

While it seems likely that a greater proportion of future defence lawyers will enter crime because they are not competent enough for a more lucrative area of law, most current practitioners do so based on firmly held principles and are appalled at the change to the services they are able to provide.

The different product on offer threatens the very principle of access to justice. It is vital that debates over the legal aid budget are not allowed to persist in focussing on lawyers’ wages as an absolute but, rather, upon how these proposed changes will impact on their clients. The State funds lawyers to help and support ordinary citizens when they need it. Cuts in this realm, then, do not allow lawyers to perform the obligations held by the State to the vulnerable – the State cedes responsibility.

Civil legal aid should not be forgotten, as the Haldane Society’s view that we need legal aid in the areas that were removed from scope in LASPO to ensure that there is a safety net.

Next steps

Opposition to the cuts needs to continue. It is the Haldane Society’s view that the only way to defeat the Government is by having more days of direct action where neither barristers nor solicitors work in the Magistrates’ or Crown Courts. The strike on 6th January 2014 demonstrated that the professions can come together to oppose the legal aid cuts. Legal aid lawyers need to work together with those trade unions representing workers in the justice sector. This is not just an attack on lawyers but an ideological attack on the public sector.

Civil legal aid should not be forgotten, as the Ministry of Justice intends to apply further cuts to it. At the time of writing another law centre had just announced that it was going to close its doors. We must fight to prevent more community legal advice services from closing down.

Finally, the message needs to be conveyed to the public that this is not about barristers in wigs refusing to work for less money. It is about ordinary people being denied access to justice.

Siobhán Lloyd is a barrister at 1 Mitre Court Buildings

Dr Daniel Newman is an academic at Cardiff University whose research focuses on access to justice. He is the author of the book Legal Aid Lawyers and the Quest for Justice.

leading to ethical erosion and a misalignment of values.

individually-procured on the basis of low price rather than the quality of legal service. The proposals would result in criminal defence services being procured on the basis of low price rather than the quality of legal service. The proposals would lead to ethical erosion and a misalignment of values.

individually-procured on the basis of low price rather than the quality of legal service. The proposals would lead to ethical erosion and a misalignment of values. Indeed, in the observations for my studies, many lawyers came to assume the guilt of their clients before they had even met them or read the case files. Sometimes this was based on what the prosecutor told them, others on past experience of that client; it could even be premised on the area in which they lived. The following solicitor quote shows this:

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In many such cases, there was a stage when lawyers exerted tangible pressure on a client. Sometimes, understandably, this was deemed in the client’s best interests. However, some lawyers might also have wanted to do this because it saved them time and effort or, occasionally, because it was more profitable. Of course, the professional code of conduct expressly forbids putting pressure on clients to plead guilty for such self-interested purposes. However, one method of applying subtle pressure was to use scare tactics, as in this example from a partner:

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The March (1985) by South African artist Norman Kaplan (see pages 22-23), who said: 'Throughout South Africa during the 1980s, youth and students courageously led marches in support of the liberation struggle, despite the brutal reaction from the apartheid state. During this period of intense struggle, I got the best review I've ever had when an apartheid judge in a trial of ANC underground activists called my cartoons demonstrating urban guerrilla tactics “dangerous and subversive”.'
Nelson Mandela, socialist and lawyer

Rolihlahla Mandela (Nelson was the name given to him by the white teachers at the church school he first attended) was rightly given to him by the white teachers at the Rolihlahla Mandela (Nelson was the name that Mandela was qualified as a lawyer. freedom fighter. It should also not be forgotten informing all of his pre-imprisonment days as a South African Communist Party with socialism facts. First, he was a life-long member of the achievements was the absence of certain simple commemoration and celebration of his worldwide publicity around his death and the Steven Walker
writes
Steven Walker.

What was striking in the worldwide publicity around his death and the commemoration and celebration of his achievements was the absence of certain simple facts. First, he was a life-long member of the South African Communist Party with socialism informing all of his pre-imprisonment days as a freedom fighter. It should also not be forgotten that Mandela was qualified as a lawyer.

There was a high level of hypocrisy and rewriting of history by certain politicians around the world who seized upon his death to try to bathe in his reflected glory. Everybody wanted a piece of Mandela as his last days beckoned. Politicians from the developed world wanted a photo-opportunity to associate themselves with him. They represented countries that supported apartheid and broke United Nations' sanctions, endeavoring efforts to persuade the South African white State to stop segregation and discriminating against non-white citizens. The apartheid regime took their lessons from the United States of America where historically it had been found that slavery, segregation and discrimination could somehow be wrapped in a legal constitution that laughably talked of 'all men being equal... and inalienable rights'.

Breaking sanctions imposed under international law was lucrative business and delayed the liberation of the black majority of South Africans. For example, the South African Air Force used Puma helicopters, C160 transport planes and Impala strike aircraft in 1969 against freedom fighters in South Africa and in neighbouring Angola where the South West Africa People's Organisation (SWAPO) were also fighting a war of liberation. Countries involved in producing or supplying these war machines included Britain, France, Italy, Belgium, and Germany – all in breach of the 1977 United Nations arms embargo designed to stop the apartheid State suppressing popular dissent.

One galling sight was that of US politicians parading their sombre respect at Mandela's funeral while conveniently forgetting their shameful history in supporting the apartheid regime. The USA had condoned apartheid and resisted attempts by the United Nations to impose tougher sanctions. The links between communists in Angola and South Africa were strong, supported by Cuban troops and Soviet advisors. So when South Africa illegally annexed Namibia, against a ruling of the International Court of Justice in 1971, it provided the South African armed forces with a base from which to launch attacks on Angola's freedom fighters in 1981. The USA turned a blind eye to this as it suited President Ronald Reagan's pernicious attempts to stop the 'spread of communism'.

On 26th June 1952, Mandela launched a campaign in Brighton Township, Port Elizabeth against the apartheid regime. The African National Congress, many of whose members were South African Communist Party activists, had become the focal point for all those fighting for repeal of racist laws that underpinned apartheid. These included The Pass Laws; The Group Areas Act; The Suppression of Communism Act; and the Bantu Administration Act.

Within five months Mandela and others were brought to trial and found guilty of 'statutory communism'. Although they received suspended life sentences, Mandela was later sentenced to life imprisonment on 11th June 1964, while serving another jail sentence. His release famously came on 11th February 1990. The charges were related to his pivotal role in forming the underground military wing of the African National Congress – Umkhonto we Sizwe (MK) – which vowed to fight a guerrilla campaign against the white minority rulers using sabotage and armed conflict. What the coverage of Mandela's death in the mainstream media overlooked was the fact that Mandela was a communist. In a tribute to 'a true revolutionary', the South African Communist Party issued this statement on its' website after his death:

'At his arrest in August 1962, Nelson Mandela was not only a member of the then underground South African Communist Party, but was also a member of our Party's Central Committee. To us as South African communists, Comrade Mandela shall forever symbolise the monumental contribution of the South African Communist Party in our liberation struggle. The contribution of communists in the struggle to achieve the South African freedom has very few parallels in the history of our country. After his release from prison in 1990, Comrade Madiba became a great and close friend of the communists till his last days."

As President of South Africa, Mandela addressed the South African Communist Party on its 75th anniversary, referring to its 'alliance' with the African National Congress and others ruling South Africa. While Mandela was imprisoned on Robben Island for 26 years incomunicado, the ANC and communists never stopped fighting apartheid. The leader of the South African Communist Party, Joe Slovo, helped Mandela found the MK and as a lawyer defended him in the 1964 court trial. It is fitting that Mandela should be recognised as a symbol of resistance and fortitude in the liberation struggle. His socialist ideology and the contribution of communists in overthrowing white minority rule, deserves more recognition than has to date been reported.

Steven Walker is the author of the book Fidel Castro’s Childhood – the untold story.
South African printmaker and painter Norman Kaplan spent much of his adult life in exile, producing artwork for the anti-apartheid liberation movement. In typically self-deprecating fashion, he says the best review he’s ever had was from an apartheid-era judge who called his cartoons about urban guerrilla tactics ‘dangerous and subversive’. Now 65, and living in the Eastern Cape, Kaplan still practises in the radical, humanist style that emerged on the ideological battlegrounds of the 20th century, quoting US artist William Gropper: ‘I fight wrongs. I fight in a creative sense’.

The problem, is that this form of art is spectacularly out of fashion. Kaplan’s prints have been purchased by major South African galleries, and, in the fiery, hopeful days of early post-apartheid, he won an open competition for the cover of an extraordinary collection of work by South African printmakers to celebrate the new Bill of Rights. Both his pieces from this collection, and those of the other artists, are engraved into glass panels in the new Constitutional Court building in Johannesburg. He is not without honour in his homeland.

But his commitment has cost him. He has never been able to make a living from printmaking and painting. And he lacks sharp elbows to push himself to the front of the contemporary art scene in South Africa. He despises sharp elbows. When he tells you about his background you understand why.

Norman Kaplan was born in Port Elizabeth, an industrial seaport on the Indian Ocean. His grandparents were Russian Orthodox Jews, but his father was an atheist, ‘a path I have followed’, says Kaplan. ‘He encouraged me to read Shakespeare and the Russian classics (which I loved), rather than comics (which I loved); introduced me to the movies and supported my artistic endeavours.’ However the pressure of supporting a family was too much for his father; ‘he was forced into a mercantile life that he despised, and that led to his premature death when I was in my mid-teens’. Kaplan’s disabled mother ‘had enormous empathy with the suffering of others, and taught my sister and me tolerance, forbearance, courage and selflessness’.

When Kaplan was still a small boy, he had his first direct experience of the blistering racism that shaped human relations in apartheid South Africa. ‘I attended a white, working-class primary school where we were beaten if we didn’t know the words of the national anthem. This was where I first discovered the enjoyment of drawing’.

‘But if I committed any infraction, I was called a “sleg poordjie” – a bad little Jew. Complaints fell on deaf ears. South Africa was a deeply racist and fascist country, where white supremacy was visible in every facet of life. But there was also a strong undercurrent of anti-Semitism. Young as I was, this unfair treatment developed in me resentment and hatred for an authority that would declare me inferior – a glimpse of what the majority of the country was experiencing to a far more devastating degree.’

At secondary school, Kaplan was taught art by a First World War survivor who introduced
him to lino as a medium. ‘In those days, “battleship lino” was plentiful and cheap’, says Kaplan. ‘It covered the floor of our small art room, and we would simply cut up pieces as required.’ For an exam, Kaplan rendered a figure from a depression era breadline in the USA. ‘To this day I’m not quite sure why I was drawn to this subject, but it was to prove prophetic. I like to think that, consciously or unconsciously, I tried to reflect something of the social reality I witnessed around me.’

Kaplan was still being attacked as a ‘joodtjie’ at school, and in his final year he walked out, never to return. The local art college took him in. It was still independent of government control, and headed by a member of the banned Congress of Democrats. Going there was, says Kaplan, ‘a revelation, and a liberation’.

His printmaking mentor was Alexander Podlashuc. The Podlashucs introduced him to the Weimar satirical magazine *Simplicissimus* and artists like Käthe Kollwitz, Ben Shahn, Leonard Baskin and Frans Masereel, ‘among a great body of humanist and revolutionary printmakers. They revealed a link between art and politics and I felt an immediate affinity with their work’.

Podlashuc took his students drawing in a poor suburb of Port Elizabeth called South End. Like District Six in Cape Town, South End and its racially-mixed inhabitants were anathema to the bigots in power, and were gradually bulldozed out of the city. Rather than draw romantic views of the harbour through half-demolished buildings, Kaplan drew residents who were clinging on. ‘To quote William Gropper, “People are my landscape”’. I never thought anything I did would change the world. I just knew that the artists whose work most moved me represented a society largely ignored by the mainstream art world – fractured, shackled, and dispossessed, but alive, fighting for recognition and dignity.’

When Kaplan and his partner, Bronwen, returned to South Africa at liberation, they bought one of the few houses of the old South End that was left standing. They are living there today. Kaplan spent 14 years in exile in the UK, producing anti-apartheid posters, cartoons, illustrations, photo exhibitions and films. Much of this work is now archived in the Mayibuye Centre for History and Culture which he helped to set up. Much is also in cardboard boxes in the attic in the South End house. Even though he’s participated in a number of group and solo exhibitions in South Africa since he returned, the majority of the work he produced during the intense, hectic days of the anti-apartheid struggle remains largely inaccessible which seems a shame.

Kaplan says he is currently producing prints ‘depicting urban and rural life in the Eastern Cape as a microcosm of conditions in the country’. Those conditions are in some respects even more unequal than they were under the apartheid regime, but Kaplan is diplomatically holding fire. He has faith that a resurgence of interest in working with lino might blaze up into something substantial. At his art school in Port Elizabeth, they had no access to etching or lithography, ‘only lino and the beautiful simplicity of relief printing’. This put them on a par with African artists at the time, the vast majority of whom couldn’t afford brushes, paints, or canvasses, but would club together to buy a roller, cutting tools, a tin of ink and cartridge paper. This gave rise to a strong tradition of lino-printing in South Africa. ‘The democratic nature of print-making encourages the sharing of resources and skills’, says Kaplan.

In post-Marikana South Africa, where the democratic spirit is severely challenged, one has to hope that the work of humanist artists like Kaplan will help inspire a new generation of engaged and committed printmakers.

Jenny Morgan is a journalist. This article first appeared in *Printmaking Today* and is reprinted here here with the kind permission of the author. More of Norman Kaplan’s artwork can be seen at www.normankaplan.co.za

Above: The Funeral (1985). Kaplan explained: ‘By the mid-1980s, with all anti-apartheid activity proscribed and hundreds killed, funerals had become rallying points for resistance. Flags and symbols of the banned organisations were bravely and defiantly unfurled. By this stage, I was in exile in London, and producing a great deal of work for the banned African National Congress, the South African Communist Party, and SWAPO, the Namibian liberation movement.’

Opposite page: The Waiting Room, Kwazekele Township, Port Elizabeth (1995). ‘This depicts a scene in a township clinic. In 1994, with the advent of universal franchise and elections, the long night of apartheid racial oppression was finally over. The people wait with anticipation for the dawn of democracy and a better life.’
Sky

If the sky knew half of what we’re doing down here it would be stricken, inconsolable, and we would have nothing but rain

The Way Is Is

That you love nature is easy to say until you learn that unless you act accordingly it will call you to account in the end.

That’s why we’re required to make the connection between the sound the wind makes when it starts the leaves quivering and the way the white canes of sunlight line the spaces between the trees on a summer’s morning.

It’s a case of working out what’s here for the long haul and if we want to be part of it. It’s marvellous, abominable, confusing, exultant: the way things are, the way is is.

This is the poetry of Brian Turner

Brian is a poet and environmental activist. He was formerly the Poet Laureate of New Zealand. A collection of his poetry about the beauty of the Central Otago region in New Zealand where he lives has recently been published in the book Elemental. His poem Sky was included in a body of writing called Moral Ground – Ethical Action for a Planet in Peril.
West Over the Maniototo

The pathos of absence is eloquent here where who preceded whom matters less than where they came from, what they did, and why; matters less than questions like whether it makes sense to revere place or repeat practice, and whether superseded is only another soulless name for disregard.

In fact, few lived here, ever; most passed through en route to parts hardly known. Stone was hewn, moa slaughtered, grasslands burnt – as everywhere else – except it all took more time and effort then, a different sort of know-how, but with little evidence of a hunger for conspicuous wealth. All in the name of progress, of course. You could ask if this landscape invites reflection or is such purely a function of individual sensibilities? And could it be that here the imagination’s married to humility that’s free to roam in realms stripped of the pomp of narrow perspectives, and foreignness is what we cannot find within ourselves?
It was on 18th December 2013, that 300 men from the special federal and state troops, with 52 cars and three helicopters, raided the peasant area of Rio Pardo, in the region of Buritis, in the state of Rondônia in north-west Brazil. The troops passed through assaulting families and making arbitrary arrests. They used tear gas to disperse the women and children and threw an unknown liquid on their food. The peasant community, located within an area of 97,000 hectares, was all destroyed. Their motorcycles were seized and their cars torched. At least 12 people were arrested on this day, adding to dozens that have been arrested in recent months in the same conflict. They have blamed the police officers for crimes of torture, damage and abuse of authority.

These facts were reported by human rights and people’s organisations that have denounced State violence. The case was the continuation of an extensive story of violations involving 154 families of settlers established for decades on the land. Since 2010, the Brazilian Government has harassed them, saying they occupied a public territory and must leave without any compensation. The Government uses the argument of environmental protection to attack small settlers, in a clear contradiction of its rhetoric on human rights.

The State tends to blame the peasants and provoke disturbances by the dispatch of the military and by destroying their goods. This picture is out of sync with the Brazilian Government’s propaganda in foreign relations, where everything is presented as appearing to be right in a country with accelerated economic growth. In Brazil, it is poverty, social crisis, systematic violation of human rights and State repression which are on the rise.

On 13th November 2013, a big military operation in the aforementioned area in Rondônia had resulted in a huge people’s resistance. Troops from the National Security Force – a special military unit – aided by state police troops and agents from ICMBio – the environmental Government body that is directing the clearing of the area from Brasília – set up camp and started to arrest people. In response, peasants destroyed bridges to hold back the dispersal of the troops and destroyed two buildings that served as operational bases. The troops then detained three people who were passing by on the road. This led to hundreds of people coming together and facing the military with sticks and stones, to prevent the detention of these three individuals and to recover seized motorcycles. According to reports, in the middle of the riot, the troops became desperate and left behind a shot soldier. As asserted by a journalist who was covering the conflict and as evidenced by images taken that day, the soldier was wounded by the discharge of a rifle that was inside a police car in flames.

The case of Rio Pardo is not the only one that exposes the level of conflict over land possession in Brazil, where millions of poor peasants struggle under the banners of ‘land for those who work on it’ and ‘overthrow the latifúndio system’. Such conflicts continue to grow all over the country. The Amazon region has one of the most serious contexts in which there is to be found: violence against poor peasants and indigenous peoples; land concentration; and a failed judicial system.
The latifúndio system was installed during the colonial era in Brazil. It has never been withdrawn. It forms the base of a social class (the landlords or latifundiários), that has been built and maintained within a global imperialist system and which exploits the peasant workforce in order to export agricultural goods.

The propaganda of Brazilian economic growth relies mainly on the export of commodities – which include primary goods such as soy, sugarcane, corn, cotton, etc. – in a system predicated on land monopoly and monoculture drawn for export and based on servile relations of production. This means that the landlords’ oligarchies in the Amazon and all over the country are not the exception, but the rule of the system. They are connected to the bureaucratic powers that be in Brasília, where endemic corruption is but a minor problem within a structurally rotten State designed to serve the local ruling classes who in turn are connected to the global financial oligarchy.

The recent Governments of Luiz Inácio Lula da Silva and Dilma Rousseff (both from the Workers Party) have deepened the structural inequalities in the country. According to the analysis of a number of distinguished scholars and social movements, the banner of land reform, which has often been used for electoral purposes, has been progressively abandoned, even though it was never put in practice. The only agrarian reform policy applied is a mechanism that causes debt and the criminalisation of peasants on one side and land concentration on the other. Dilma Rousseff has replaced even minimal reference to land reform to sustain the World Bank prescription of ‘poverty eradication’.

In December 2008, Brazilian human rights organisations invited the International Association of People’s Lawyers (IAPL) to hold an international fact-finding mission in Rondônia state, which was already experiencing systematic human rights violations such as arbitrary arrests, extrajudicial killings and forced displacements. The delegation visited detention centres, including Urso Branco (‘White Bear’), a prison complex in Porto Velho notorious for violent episodes and massacres. The prison was the subject of provisional measures from the Inter-American Commission of Human Rights. The delegation also talked to figures from the authorities including judges and police agents, visited peasants’ areas and gave conferences and talks in universities and radio stations. Their report found that ‘lots of peasants credibly testified to the IAPL delegation that they are systematically harassed by the police and by landowners’.

In December 2009, just one year later, an armed group tortured and assassinated two members of the peasant movement from Buritis in Rondônia: Elicio Machado and Gilson Gonçalves. The IAPL delegation had interviewed Gilson Gonçalves who had described killings that had occurred the landlords’ militia in the region, and death threats that several peasants were receiving from landlords’ gunmen. The subsequent IAPL report referred to the allegations and distributed them to international and governmental organs. However this did not prevent Gilson Gonçalves nor Elicio Machado from being tortured and killed. In a meeting with officials from Incra-Ro (the federal body supposedly responsible for agrarian reform policy), officials had insisted with the peasants that the leaders of the movement should attend a further meeting. The second meeting was also attended by gunmen of the landlords who identified Elicio Machado as a leader to assassinate. All the evidence relating to the killing, including the names of the landlord that coordinated it and the leader of the militia were widely known. Nobody to date, at the time of writing, has been arrested or even investigated.

On 9th April 2012, a teacher who was a supporter of the peasants’ movement, Renato Nathan Gonçalves, was killed in Jacinópolis as he was going back to his house on a motorcycle. The crime was alleged to have been committed by civil police agents who were already involved in a series of killings that were taking place at that time. In the morning, when the police found his body and motorcycle in the road, the media were told that the body of a criminal had been found. They raided Renato’s house and oddly presented his professional equipment, maps and books as evidence against him. Professor Renato had worked in support of peasants’ communities by assisting in the creation of people’s schools and education and other community works. In tribute to him, a number of people’s organisations established 9th April 2012 as the ‘Day of Martyrs who Struggle for the Land’.

These are not the first nor the only cases of killings related to organised peasants’ movements in Brazil. State organs, be it the police or otherwise, and the press will often rekindle a propaganda campaign blaming the organised peasants for violence in the region. The Federal Agrarian Ombudsman, Gercino José da Silva Filho, who is supposed to monitor and facilitate the protection of the rights of the peasants, seems to attack those he is supposed to defend. In the meantime there continues to be a systematic campaign of selective attacks and assassinations of members of organised peasants’ movements.

Lawyers from organisations such as the Brazilian Association of People’s Lawyers have waged a tough battle in seeking to defend people’s rights within the context of a malfunctioning judicial system, impunity for State crimes, and in which they too are threatened in the exercise of their legal profession. The people’s lawyers, struggling inside and outside of courtrooms in solidarity with people’s movements, challenge the parameters of justice by unraveling the truth that the legal system in Brazil is designed to favour those oppressing the likes of the organised peasants’ movement in Rondônia.

Júlio S. Moreira is a lawyer and a teacher of international law. He is a PhD candidate in sociology at the Federal University of Goiás in Brazil and is Vice-President of the International Association of People’s Lawyers. He is also a member of the Brazilian Association of People’s Lawyers.
The odyssey of the A
A banner hung on an oil-drilling platform led to thirty Greenpeace activists being charged with piracy and held without bail. Richard Harvey for the defence...
It isn’t often that the law of the sea is cited in bail applications. In a voyage that takes us from Senegal to Murmansk, from Hamburg to St Petersburg, from Geneva on to Strasbourg, Greenpeace’s legal team have deployed new strategies in the struggle to protect the oceans.

From the Tropics to the Arctic

In March 2010 and February 2012, Greenpeace’s ship the Arctic Sunrise exposed illegal overfishing by a Russian monster trawler off the coast of Senegal. The Oleg Naydenov had illegally tried to conceal its identity until Greenpeace activists dragged away the tarpaulin masking its name and number. The new Senegalese Government investigated corruption by the former administration, leading the newly elected President to revoke 29 fishing licences, including that granted to a repeat offender, the Oleg Naydenov. Within months of the revocation, Senegalese fisher-folk reported a rapid rise in their catches. Outside licences, including that granted to a repeat offender, the Oleg Naydenov.

In March 2010 and February 2012, Greenpeace’s ship the Arctic Sunrise hit worldwide headlines 18 months later when, in September 2013, two journalists and 28 climate activists from 18 countries were arrested at gunpoint in international waters by Russian federal agents. The ‘Arctic 30’ were protesting against Gazprom’s oil-drilling platform, the Prirazlomnaya. In a similar action near the Prirazlomnaya in 2012, the Russian authorities turned a blind eye. However in 2013 the authorities not only acted, they overreacted. Shots were fired dangerously close to the activists. Agents abseiled from helicopters onto the deck of the Arctic Sunrise, threatening the crew at gun and knife-point. They confined the crew below decks and towed the vessel to Murmansk, coincidentally the homeport of the Oleg Naydenov.

Pirates of the Arctic Seas?

The Arctic 30 were charged with ‘piracy’ and held without bail, even though Vladimir Putin himself had said: ‘It is absolutely evident that they are, of course, not pirates.’ Prosecutors eventually amended the charge to ‘hooliganism’, a charge historically brought against Russian dissidents and carrying a seven year sentence.

This was not a case of just filing bail applications and then preparing for trial. A worldwide campaign was launched, joined by Archbishop Tutu and many other Nobel laureates. Numerous international experts on the UN Convention on the Law of the Sea (UNCLOS) unanimously denounced the piracy charges as baseless under both international and domestic Russian law. The Arctic Sunrise sails under the Dutch flag and, at Greenpeace’s request, the Dutch Government filed an urgent petition asking the International Tribunal for the Law of the Sea (ITLOS) to compel the release of the vessel to the Hague.

Although only States party to UNCLOS can invoke the jurisdiction of ITLOS, the Hamburg-based tribunal agreed to make the amicus brief submitted by Greenpeace available to all parties and judges. The first taste of victory came on 22nd November 2013 when ITLOS delivered a stinging rebuke to Russia, which had refused to participate in the proceedings. In Kingdom of the Netherlands v. Russian Federation, Provisional Measures Order (2013) Case No. 22, the judges by a majority of 19 to two ordered Russia to release the Arctic Sunrise and its crew and allow them to leave Russian territory and maritime areas. The two dissenters were the Russian and Ukrainian judges. The Netherlands promptly posted the required bond but the Russians still refused to comply with the ruling.

United Nations Special Procedures

An impasse had been reached. Anticipating this, Greenpeace’s legal team had already prepared their next line of attack. They promptly filed submissions in Geneva under the UN Special Procedures system. Greenpeace, joined by Amnesty International and the International Federation for Human Rights (FIDH), argued that the arrest and detention of the Arctic 30 during a peaceful, well-planned demonstration violated rights to freedom of opinion and expression and freedom of assembly and association under Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil & Political Rights (ICCPR). Charges of piracy and hooliganism were not only unfounded but were designed to have a chilling effect on anyone else seeking to challenge the threat to regional and international environmental protection posed by oil drilling in the Arctic.

European human rights jurisprudence recognises the vital watchdog role played by NGOs within a democratic society (see Steel and Morris v. United Kingdom, 15 February 2003, ECHR, 68416/01, paragraph 89; Vides Aizsardzības Klubs v. Latvia, 27 May 2004, ECHR 57829/00, paragraph 42;
began. The investigators’ first motion was granted, the defendants were to be detained for a further three months. Things began to look even bleaker. However, the next application succeeded, so did the next and the next, until finally 29 of the 30 were freed on bail. It seemed the first judge had not been told the party line so, when a motion for reconsideration was filed, the 30th detainee was swiftly released to join his comrades in a St Petersburg hotel.

Free on bail but not allowed home, the Arctic 30 faced many more months while Russian authorities continued to flout the ITLOS ruling and to ‘investigate’ the bogus case. Suddenly, a new window opened. Vladimir Putin presented an amnesty law to the Duma (Russian Parliament) to coincide with the 20th Anniversary of the Russian Constitution – though perhaps the real coincidence was the upcoming Winter Olympics.

Greenpeace lawyers in Russia and the Netherlands analysed the legislation and quickly realised it would benefit only those already convicted or ‘before the courts’. As the Arctic 30 were still in the investigative stage they were not covered. A flurry of calls revealed this to be a mistake due to shoddy drafting and with only hours to go before the Duma vote, the draft was amended and the amnesty became law. Overnight it seemed that the notoriously rusty machinery of the Russian exit visa system ran at express speed, enabling each of the Arctic 30 to celebrate New Year in their home countries.

**Back to Senegal and onwards to Strasbourg**

Remember the Oleg Naydenov? Just two weeks after the Arctic 30 were released, the French navy reported that the monster trawler was pirate fishing yet again off the coast of Senegal. Senegalese officials seized the vessel and towed it to Dakar under arrest. Instead of investigating the illegal trawling, Moscow protested that the arrest was part of a Greenpeace plot.

A grouping of West African States that includes Senegal recently requested an advisory opinion from ITLOS on how responsibilities should be shared between flag and coastal States when flag State vessels engage in illegal fishing in international waters. As Greenpeace lawyer Daniel Simons says: ‘The arrest of the Oleg Naydenov, and Russia’s reaction to it, illustrates the importance of that case.’ Of Russia’s reaction, he said: ‘Had Greenpeace known that the Oleg Naydenov was back to its old bad habits, we would certainly have called on the Senegalese and Russian Governments to take action. The truth is we found out through the media once the vessel had been detained.’

Despite Moscow’s protests, rather than risk taking Senegal to ITLOS, the Russians decided to pay Senegal almost one million Euros (a €608,000 fine for the repeat offender Oleg Naydenov and €304,000 for a second Russian ship).

And what of the Arctic Sunrise? At the time of writing Russia continues to detain the Arctic Sunrise in Murmansk in violation of the ITLOS ruling. Although the Arctic 30 are free, violations of rights as reported to the UN Special Rapporteurs have an impact on all of Russian civil society. This is why Greenpeace’s lawyers are preparing an application to the European Court of Human Rights in Strasbourg.

Jeremy Brecher of Labor Network for Sustainability has written in *Foreign Policy in Focus* that the Arctic 30 ‘represented the people of the world taking a symbolic stand against climate destruction, the corporate climate destroyers, and the governments that back them. But the action of the Arctic 30 may be prophetic of something more: the emergence of a global insurgency that challenges the very legitimacy of those who are destroying our planet.’

Richard Harvey is a barrister at Garden Court Chambers and an adviser to Greenpeace International and Amnesty International. You are invited to join Richard Harvey, Greenpeace lawyers and other climate insurgents at the IADL’s ‘Lawyering for People’s Rights’ Congress in Brussels between 15th to 19th April 2014 (see advert on page 43).
The House of Commons Home Affairs Committee has very recently published a report on the Independent Police Complaints Commission (IPCC) which was set up in 2004 to replace the discredited Police Complaints Authority. The IPCC was established with the intention to secure and maintain public confidence in the police complaints procedure. The report says the IPCC is not capable of ‘delivering that kind of powerful, objective scrutiny that is needed to inspire the public with the confidence that when police officers, in exercising their warranted powers that can strip people of their liberty, their money and their lives,’ are held accountable.

Deborah Coles, co-director of Inquest says: ‘the IPCC systematically fails to hold the police to account for wrongdoings.’ Lawrence Barker, writing in The Independent on 13th October 2012, expressed the opinion that the police have ‘undue influence within the IPCC.’

The following comments are made at paragraphs 3 and 72 respectively of the House of Commons Home Affairs Committee 11th Report of the 2012 – 13 session on the IPCC dated 1st February 2013:

• ‘About 11 [per cent] of the staff and 33 [per cent] of IPCC investigators are former police officers.’;
• ‘Nick Hardwick, former Chair of the IPCC, claimed that in the case of Jean Charles de Menezes the then Commissioner of the Metropolitan police had sought to intervene to prevent the Stockwell investigation from taking place.’

The IPCC was set up to provide redress in cases where complaints arise from the public about police conduct. An example of one such case was that of Christopher Alder, a 37 year old black man who, as Liberty describe, ‘choked to death while police officers watched, chatted and joked at Hull Police Station in 1998.’ Father-of-two Christopher Alder was assaulted in a night club while enjoying a night out. He was hit on the head, taken to hospital and was arrested when his behaviour deteriorated. On their website, Liberty detail that: ‘After a five-minute journey in a police van, he emerged unconscious with his trousers to his knees.’ Within a report dated 27th February 2006 of the review into the event leading up to and following the death of Christopher Alder on 1st April 1998 it is stated at page 15 that: ‘He was dragged from the van to the custody suite. He lay on the custody suite floor watched by [four police officers]. They all claimed they believed he was faking his condition. Mr Alder…stopped breathing at about 03.57.’

Liberty has further detailed that: ‘In 2000 an inquest delivered an unlawful killing verdict, with the jury concluding that Mr Alder might
have survived with police assistance.’ Despite this, the police officers did not face any disciplinary proceedings nor a charge for gross negligence manslaughter. Liberty, acted on behalf of Christopher Alder’s sister, Janet Alder, who took the case to the European Court of Human Rights. In the case of Alder v United Kingdom, Application No 42078/02, 22nd November 2011, the court found that there had been a lack of effective investigation into Mr Alder’s death in violation of Article 2, Article 3 and Article 14 of the European Convention on Human Rights. Janet Alder accepted a friendly settlement and compensation of €26,500. For this reason, the court considered it was no longer justified to continue the examination of the case and, under Article 37 paragraph 1(c) of the European Convention on Human Rights, decided to strike it out of its list of cases.

A more recent example is the high-profile case of Mark Duggan. Mr Duggan, a 29 year-old man, was shot dead two years ago by one of the officers of the Specialist Firearms Command (CO19) who, in conjunction with officers from Trident, made the so-called ‘hard-stop’ of a mini cab in Tottenham on 4th August 2011, where Mark Duggan was travelling. Mr Duggan was under investigation by ‘Operation Trident’, a subdivision of the Metropolitan police, set up in 1998 to target gun crime in London with special attention to the sale of drugs and crime in Afro-Caribbean communities. The IPCC, called in to investigate, held that Mark Duggan shot first. This statement was shortly found to be untrue and the IPCC was then forced to apologise. The 11 police officers present at the killing were put together in a room to write a statement about what happened. It took them eight hours to do so. No member of the IPCC was present, because there were ‘no resources available’ said the IPCC’s lead investigator Mr Sparrow when examined at the Hutchinson-Foster trial. This was the trial of the man who allegedly sold or transferred the BBM Bruni model 92 gun to Duggan.

During the trial, the officer who shot dead Mr Duggan said that Mr Duggan came out of the minicab with a gun and raised it as if to fire. However, the officer who first reached Mark Duggan as he fell to the ground said he did not find a gun under his body. It was only later and then when he gave his statement in court that he mentioned that Mr Duggan was not holding a gun. It is still unclear whether the handgun, eventually found 12 feet away from Mark Duggan’s body, had actually been fired. It seems not. An expert witness told the court that the gun could not have landed there if Mr Duggan, when shot, was pointing it at the police.

By the end of the week following his killing, Mark Duggan had been smeared by The...
Daily Telegraph, The Sun and The Daily Mail, as a gangster and a crack dealer.

The Institute of Race Relations says it is common practice ‘in examining deaths that have occurred over the years involving members of the African-Caribbean community in particular… to place information in the public domain, citing unnamed police sources which… tends to frame the deceased as a violent and dangerous man.’ On 7th January 2014, the jury at the inquest into the death of Mark Duggan delivered a verdict. As the BBC set out in their reporting of the story on 8th January 2014:

‘They concluded, by a majority of eight to two, on the civil standard of balance of probability, that Duggan was lawfully killed by the police, even if he was not holding a gun in his hand when he was shot. Forensic evidence showed that his fingerprints and DNA were not on the gun or the sock it was in.

The reasons for the IPCC’s failure to be a trustworthy independent body to which people can refer to make a complaint about the police, especially in the most serious cases such as those involving death in custody or police corruption, have been referred to in the House of Commons Home Affairs Committee’s report dated 1st February 2013 on the IPCC.

Firstly, it is set out at paragraph 20 of the report that: ‘serious questions…[are]…raised about the capacity of the Commission to conduct a proper investigation into the circumstances surrounding the cases referred to it,’ as long as the IPCC does not have a panel of independent experts to analyse a crime scene but relies on police investigators. The Commission’s activities are mostly funded through grant-in-aid from the Home Office and, like all public bodies, its funding has been reduced in ‘excess of 21 [per cent] over the Comprehensive Spending Review period’ as is set out at paragraph 29 of the report. While an independent investigation would cost the IPCC a sum varying from £45,000 to £300,000, the majority of costs of an investigation done using police resources will fall to the relevant police force making that investigation. At paragraph 33 of the report it is suggested that ‘in the most serious cases…there should be a system for transfer of funds from [the relevant police force] to the IPCC to cover an investigation.’

Secondly, the report suggests at paragraph 35 that the IPCC’s lack of application of ‘non-discriminatory practises is crucial as a disproportionate number of the cases that cause the most serious public concern involve the black and minority ethnic (BME) communities, [and suggests] all Commissioners, investigators and caseworkers should be trained in discrimination awareness and relevant law, including all the protected characteristics under the Equality Act 2010.’

Thirdly, the IPCC’s limited investigation resources do not allow the Commission to investigate cases of serious corruption in the police force. In particular, as set out in a May 2012 IPCC report, between 2008 – 2011 ‘over the three-year period, the IPCC made a decision that 122 of the 837 corruption-related referrals should be conducted under the direction and control of the IPCC either as an independent or managed investigation.’
At paragraph 49 of the Home Affairs Committee’s report of 1st February 2013, the report suggested that rich ways to redirect IPCC resources to better use are ‘mediation and restorative justice…for improving the handling of police complaints. The Commission should set out best practice protocols for their use in appropriate cases and the use of informal or local resolution systems should be independently monitored to ensure that it is not used inappropriately in relation to conduct that would justify criminal or disciplinary proceedings.’

Lastly, at paragraph 69 of the report it is set out that ‘the basic failing in the system, [is] that there is no requirement for forces to respond to recommendations from the IPCC, still less to implement them.’ The Home Affairs Committee recommends that ‘the Commission be given a statutory power to require a force to respond to its findings. In most serious cases, the Commission should instigate a “year on review” to ensure that its recommendations have been properly carried out. Any failure to do so would result in an investigation by Her Majesty’s Inspectorate Constabulary (HMIC) and the local Police and Crime Commissioner, as a professional conduct matter relating to the Chief Constable.’

The Police Action Lawyers Group, says in a submission to the IPCC dated 4th February 2013 that the IPCC believes that ‘since officers have power to use force that are not available to ordinary citizens, they should be treated differently from ordinary suspects in investigation into deaths.’ However, police officers are rarely interviewed under caution in the course of IPCC investigations. The Home Affairs Committee sets out at paragraph 82 of its report of 1st February 2013 that ‘This single issue has caused immense damage, firstly because it shows a lack of impartiality on behalf of the investigation, secondly because only evidence obtained in an interview under caution … is admissible in any subsequent legal proceedings.’

To conclude, the Home Affairs Committee report of 1st February 2013 claims the number of fatalities in 2011-2012 involving the police are alarming: ‘…18 road traffic fatalities; 2 fatal police shootings; 15 deaths in custody; 47 other deaths following police contact; and 39 apparent suicides following police custody. Since 1990, inquests into deaths in police custody have resulted in 9 unlawful killing verdicts, none of which has yet resulted in a conviction.’ At paragraph 34 of the report it is stated that ‘In 2011, 38 [per cent] of those who died in police custody were from black or minority ethnic communities. Black people account for 2.9 [per cent] of the population yet 20 [per cent] of those who die in custody. Of the cases in which a black detainee has died occurred in circumstances in which the police[s] actions may have been a factor, compared with only 4 [per cent] of cases where the detainee was white.’

There is a clear case where the IPCC is concerned for progressive changes to be made.

Daniela Tringale is currently studying on the Legal Practice Course at London Metropolitan University.

The shocking exposés of covert policing has led to a new campaign. Brian Richardson reports

Millions of people throughout Britain will have been shocked, horrified and disgusted at the revelations of police surveillance that hit the headlines in 2013. In the very best traditions of investigative journalism Undercover, a book written by The Guardian’s Paul Lewis and Rob Evans, and the Channel 4 Dispatches programme exposed the nature and extent of decades of secret policing by the Metropolitan police Special Demonstration Squad. For example, officers were deployed to infiltrate the Stephen Lawrence Family Campaign with the aim of finding dirt which would discredit the family’s fight for justice. In addition, privileged conversations between Dwayne Brooks, Stephen Lawrence’s best friend and the only witness to his fatal stabbing, and his lawyer were bugged.

These exposés also highlighted the fact that police officers were deployed to infiltrate anti-racist and political organisations. In order to conceal their true identities, these officers assumed those of real people who had died prematurely and formed relationships, which were often intimate with female activists.

The Campaign Opposing Police Surveillance (COPS) brings together some of the victims of this activity and their legal representatives with others who have suffered at the hands of the police. These include environmental campaigners and trade unionists who were blacklisted and denied employment on major construction projects. The aim of COPS is not simply to keep these issues in the public eye but to demand that the police are held to account. At present the police are adopting a stonewalling approach of ‘neither confirming nor denying’ any specific allegations. Harriet Wistrich was the solicitor representing eight women who are bringing an action against the Metropolitan police. She commented: ‘Undercover police officers have intruded on the most intimate aspects of people’s lives and left devastation and trauma in their wake – yet they refuse to be held to account hiding behind whatever cloak of secrecy the law will provide – such gross violations of human rights require nothing less than transparency and accountability’.

Under pressure following the revelations, the police and authorities announced a number of reviews and internal investigations. COPS believes that none of these reviews is satisfactory and that what is required is a fully independent public inquiry.

As Socialist Lawyer went to press Harriet Wistrich was preparing to speak at a public meeting to launch COPS alongside Baroness Lawrence, Imran Khan, Helen Steel, Lois Austin, Dave Smith and Robbie Gillett. A full report of the meeting and details of how to get involved in the campaign are available at www.campaignopposingpolicesurveillance.wordpress.com and at Facebook.
Iratxe Urizar reports on a European Court ruling on the so-called ‘Parot Doctrine’

Spain guilty of violating Basque human rights
Introduction
The Grand Chamber of the European Court of Human Rights in Strasbourg affirmed in a judgment on 21st October 2013 that the Spanish Government had violated the European Convention on Human Rights (ECHR) through implementation of the so-called Parot doctrine. In an unprecedented decision, not only for its legal but also for its political consequences, the Grand Chamber of the European Court of Human Rights (ECHR) ordered the immediate release of the prisoner Inés del Río Prada and acknowledged that she had inappropriately spent five years more than she should have done in prison.

Antecedents: lengthening of sentences and violating the principle of legality
The so-called Parot doctrine derives from the Spanish Supreme Court judgment number 197/2006 which was initially applied against Unai Parot, a prisoner who was a member of Eta. In 2006, in order to prevent the release of this longstanding Eta prisoner, the Spanish Court modified the practice of the usual application of sentencing, giving way to a new retrospective interpretation of the law, a new interpretation later known as the Parot doctrine.

Spanish law allows for the possibility of applying reductions to a prison sentence depending on a prisoner’s behaviour in prison or their devoting time to studies. The maximum duration of a stay inside prison is 30 years set by law. Depending on a prisoner’s behaviour in prison, the prisoners, by the prisoners themselves and their colleagues, the Spanish Interior Ministry, and also other prisoners to whom the new doctrine had been applied. As with many Basques, these prisoners were incarcerated far from their homes and families in the Basque country as part of a deliberate policy applied against them.

The case of Inés del Río Prada: seeking protection in the European Court of Human Rights
Being aware that this new interpretation of sentencing constituted a violation of rights, including an attack on the right to freedom, the Basque political prisoner Inés del Río Prada sought redress from the ECHR in Strasbourg, interposing a demand, number 42750/09.

Ms del Río Prada was sentenced to very long prison sentences (3,828 years in total) for several actions she undertook as part of Eta during the 1980s. However, given the provisions set down in the Spanish penal code in 1973 in respect of maximum prison sentences and after accumulating several redemptions, it was established and in this way communicated to Ms del Río Prada, that finally the sentence to be served by her would be 21 years.

On 10th July 2012, a lower chamber of the ECHR issued a statement in which the Strasbourg judges unanimously considered that Parot doctrine practice was contrary to two articles of the ECHR. First, the doctrine was found to be contrary to the principle of the non-retroactivity of criminal law under Article 7 ECHR as the new Parot doctrine interpretation assumed a new calculation in respect of the sentence that a prisoner would serve, being a different sentence to the one which was foreseeable at the time the original offence was committed. In the same decision, the ECHR also considered that the Parot doctrine is contrary to Article 5 ECHR, which enshrines the principle of lawful detention. This means that certain prisoners have been illegally held in prison for years owing to a practice contrary to the ECHR.

Following an emphatic judgment which left no room for interpretation, the Spanish Government soon after made a public declaration that they had no intention of releasing del Río Prada. They also stated that this 2012 decision was not a final judgment and that they would appeal to the Grand Chamber of the ECHR, convinced that the court would recognise the error of its ways. In the midst of an extensive media campaign orchestrated by some right-wing groups, the Spanish Government brought their action to the Grand Chamber of the ECHR. This was accepted for consideration although it did not provide any new element as such for the court to consider. Pending the decision of the Grand Chamber, the Spanish Government declined to free del Río Prada or any of the other prisoners to whom the new doctrine had been applied. As with many Basques, these prisoners were incarcerated far from their homes and families in the Basque country as part of a deliberate policy applied against them.

The hearing finally takes place
There followed a wait of some months for a further decision. The hearing in the Grand Chamber in Strasbourg was held on 20th March 2013.

When the hearing in respect of the Parot doctrine had begun, the Spanish Interior Minister Jorge Fernández was specifically asked about the approach the Government would take should the ECHR rule against this doctrine. He replied that he would deploy a form of ‘legal engineering’ to avoid the application of this decision.

Condemnation of the Parot Doctrine
It was on 21st October 2013 that, with great anticipation, the judgment of the Grand Chamber was finally published. The judgment was received with great joy by the families of the prisoners, by the prisoners themselves and by their lawyers.

The judgment left no room for any doubt. It ordered the release of Ms Inés del Río Prada and also other prisoners to whom the Parot doctrine had been applied. This was their decision:

‘The Grand Chamber, in its final judgment, issued today for the case Del Río Prada c. España (demand no 42750/09), the European Court of Human Rights concludes by 15 votes to two, that there has been a violation of Article 7; unanimously, that there has been a violation of Article 5 (right to liberty and security of the person); and, by 16 to one, that it is the responsibility of the respondent State to ensure the release of the plaintiff, as soon as possible.’

However, just as it seemed to have finally become clear, through the decision of the
Grand Chamber in Strasbourg, that this doctrine was contrary to the ECHR, there followed a backlash in Spain. The reaction of the Spanish extreme right, through the use of significant media power, was to promote a campaign for the Spanish Government not to follow the decision. The front pages of several Spanish newspapers in the days that followed the decision on 21st October 2013, created an environment in which there were numerous voices clamouring for the Spanish Government to declare the decisions of the Strasbourg court invalid. The extreme right in Spain accused the judges of the ECtHR of being partners of Eta.

Despite concerted opposition to this decision, the prisoners started leaving prison, albeit not immediately. On 23rd October 2013, it was Inés del Río Prada who initially left the prison where she had been detained in Curtis, 663 kilometres away from Tafalla, her hometown. Everyone else who had been affected by the Parot doctrine remained in prison while discussions about what to do with them were transferred from one Spanish court to another. They were all ultimately released from prison albeit in a climate of intense media pressure. 40 prisoners in total were released following the decision of the Grand Chamber of the ECtHR in the case of Inés del Río Prada. At the start of 2014, 550 Basque political prisoners remain incarcerated by the Spanish State.

Conclusion
Following this decision by the Strasbourg court, the law known as the Parot doctrine can be understood as part of an alarming array of emergency measures adopted and applied against those involved with the movement for Basque independence and self-determination. These measures have been disguised as part of ‘a war against terrorism’. They include not only highly restrictive laws that criminalise activities that might be considered as normal aspects of civil society, but also changing existing measures retrospectively, as the case of Inés del Río Prada illustrates.

The important and necessary work of the ECtHR can not be understated, existing as it does as a vital mechanism to correct situations of human rights violations. The work of the Strasbourg court is still needed to correct those instances of serious violations of human rights. The great task ahead is that of democratisation of a system, like the Spanish, that continues to permit the recurrence of situations that require correction time after time by the ECtHR, as in this case, and also by numerous international authorities at the highest level. A lot of work remains ahead.

Iratxe Urizar is a lawyer and has been a member of the Basque Observatory of Human Rights since 2002. She specialises in cases concerning European arrest warrants and extradition and in taking cases with human rights issues to international courts and institutions, such as the European Court of Human Rights and the UN Committee Against Torture where she represents Basque victims of torture.
Twenty-five years ago this month, Belfast human rights lawyer Pat Finucane was shot dead at his home in front of his family by agents of the British security forces. Successive British Governments have spent millions of pounds and wasted year upon year in their determination to deny his family and the wider community a public inquiry. As the Haldane Society’s Richard Harvey told a Conference in Belfast in November 2013: ‘No inquiry could be as expensive and time-consuming as these deliberate delays, whose only conceivable purpose must be to conceal the level at which there was prior official knowledge of the murder, explicit or implicit sanction by those in authority, and determination to cover it up’.

On 13th November 2013, Queen’s University Belfast (QUB) hosted the conference: ‘Challenging the Oppression of Lawyers in Times of Conflict’. In his keynote address to the conference, Harvey condemned governmental intransigence over Pat Finucane’s case. He attacked the Northern Ireland Office for its complacent response to the Rosemary Nelson Inquiry Report, despite its findings that: ‘There were omissions by State agencies, which rendered her more at risk and more vulnerable. The two agencies of the State that had ample knowledge of Rosemary Nelson were the RUC and the NIO’.

The QUB conference was superbly organised by graduate students who brought together academics, grass-roots activists, legal professionals and students with experts on threats to lawyers in the Basque country; China; Colombia; India; Northern Ireland; Nigeria; Palestine; Russia; Turkey; and South Africa.

In opening, Richard Harvey said: ‘Human Rights Defenders are all who stand up for the rights of local communities, indigenous peoples, ethnic and religious minorities, victims of discrimination and poverty: they are trade unionists, journalists, lawyers, medics, whistle-blowers, community activists. They are the lone parent protecting her child’s right to walk to school unmolested by bigots.

But oppression of lawyers provides a kind of barometer of human rights. Defenders need lawyers to help protect their lives and liberties. Both in the courtroom and in the court of public opinion, lawyers have a special duty to stand up for those targeted by repressive legislation and politically-motivated prosecutions’.

He described the UN Basic Principles on the Role of Lawyers and reviewed international, regional and domestic mechanisms available for the protection of threatened lawyers. He pointed to work by the Haldane Society, the International Association of Democratic Lawyers, the Colombia Caravana and Lawyers for Lawyers and urged people to join such activist groups to organise, to investigate and to document threats to lawyers and other human rights defenders.

Iratsu Urizar, lawyer and member of the Basque Observatory of Human Rights, described ongoing violations by the Spanish Government of the UN Basic Principles on the Role of Lawyers, several of whom in Spain have been stigmatised with charges of complicity with their clients and held for years in detention before being acquitted of all charges.

Kurdish lawyer and human rights activist Deniz Arbet Nejbir described human rights lawyers in Turkey as ‘hostages of the peace process’, some of them enduring between two and four years of pre-trial detention simply for representing clients unpopular with the State.

Professor Philip Leach, director of the European Human Rights Advocacy Centre, described the ‘egregious human rights violations by law enforcement officials’ and the ‘climate of impunity and lack of independence of the judiciary’ in the North Caucasus region. He has worked together with Professor Bill Bowring to take 300 cases to the European Court of Human Rights, resulting so far in more than 200 judgments against Russia. He detailed disappearances, murders, assaults and other threats to human rights lawyers and their clients.

Professor Sara Chandler, chair of the Law Society’s Human Rights Committee, detailed the threats to lawyers and their clients in Colombia. Her important role in defending human rights in Colombia is dealt with in greater detail in this edition in relation to the Day of the Endangered Lawyer.

Kieran McEvoy, Professor of Law and Transitional Justice at QUB, presented analysis of five critical junctures in Northern Ireland’s legal culture: (1) Civil Rights and Internment without Trial, (2) Emergency ‘Diplock Court’ legislation; (3) Lawyers’ Responses to the Normalisation of the ‘Emergency’; (4) Murders of Pat Finucane and Rosemary Nelson; and (5) Judicial Review challenging the QC’s Oath to the Queen.

Full credit for a superbly organised conference goes to QUB’s graduate law students and especially Hannah Russell. The full conference report is available at: http://blogs.qub.ac.uk/lawyersinconflictconference/post-conference/conference-report/}

Shockingly still today, 25 years after the murder of Pat Finucane, solicitors in Northern Ireland are still receiving serious threats, as Professor McEvoy and solicitor Niall Murphy confirmed.
It is a bedrock principle of the US system of justice that everyone who is charged with a crime is presumed innocent unless and until proven guilty. That includes ‘high-value detainees’ awaiting trial in Guantánamo’s military commissions. Yet pre-trial hearings held in the cases of five men charged with planning the 9/11 attacks have revealed a clear presumption of guilt on the part of the Government. Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarak bin ‘Attash, Ramzi bin al Shaibah, Ammar al Baluch, and Mustafa Ahmed Adam al Hawsawi have been charged with crimes for which they could be sentenced to death. Regardless of the emotions surrounding the terrorist attacks, these defendants must be treated fairly, in accordance with the law.

Yes, it is still open – Marjorie Cohn reports on the 155 detainees facing presumed guilt, force-feeding, closed pre-trial hearings and other violations of legal principles.

The issues litigated in the hearings included undue influence exerted on the military commission by political leaders, defects in the charging process, Government violation of the attorney-client privilege, and the exclusion of the accused from some pre-trial hearings. Judge James Pohl, who presides over these cases, took the motions under advisement. That means he postponed ruling on them. Although one defendant filed a motion to prevent the Government from force-feeding him, that motion has not been heard.

Undue influence in the charging process
Defence attorneys argued that high Government officials exerted undue influence
on the charging of their clients. The Military
Commissions Act (MCA) expressly prohibits
‘any person’ from unlawfully influencing or
coercing the action of a military commission.
Yet top US officials proclaimed the guilt of
some of the defendants before they were
charged and their cases set for trial in the
military commissions. President George W
Bush made more than 30 public statements
directly implicating Khalid Shaikh
Mohammad in the 9/11 attacks; some of
Bush’s statements also named Ramzi bin al
Shaibah and Mustafa Ahmed Adam al
Hawsawi. Secretary of State Donald Rumsfeld
and White House Press Secretary Ari Fleischer
made similar statements. President Barack
Obama, Vice President Joe Biden, and
Attorney General Eric Holder referred to the
defendants as ‘terrorists’. Holder named all five
defendants as ‘9/11 conspirators’. Obama and
White House Press Secretary Robert Gibbs
specifically referred to Mohammad, as did
Senators John McCain and Lindsey Graham.
The guilt of the defendants, all of whom face
the death penalty, was pre-determined.

Defects in the charging process
Mohammed al Qahtani was charged in 2008
along with the five defendants in this case. But
Susan Crawford, the former Convening
Authority (CA) – who decides whether and
what to charge against defendants in military
commissions – determined that al Qahtani’s
case should not be referred for prosecution.
The CA found that ‘[w]e tortured
[Mohammed al] Qahtani ... His treatment met
the legal definition of torture. And that’s why I
did not refer the case’ for prosecution.

Torture of the present defendants may well
have affected the decision to charge them as
well, and particularly, whether to seek the
depth penalty. Bruce MacDonald of the CA
testified that a capital referral was not a
foregone conclusion. However defence counsel
were prevented from effectively developing
that information.

The Sixth Amendment to the Constitution
assures the right to effective assistance of
counsel when the Government is considering
whether to pursue the death penalty. Yet the
period preceding the formal charging of

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Ánamo
These defendants was replete with insurmountable obstacles to ‘learned counsel’, making their assignment meaningless. Under the MCA, defendants have the right to learned counsel, who are learned in applicable law relating to capital cases, to ensure defendants are effectively represented. But several roadblocks to their representation rendered their assignment mere window-dressing.

Learned counsel were denied timely security clearances, so they were unable to meet with their clients or read 1,500 pages of classified documents. The denial of access to the clients damaged the attorney-client relationship and prevented the defence from building rapport, which is essential in eliciting from the accused facts and circumstances that could lessen his culpability or establish actual innocence.

Because professionals known as ‘mitigation specialists’ were also denied security clearances, they, too, could not meet with the accused to assist in the gathering of information the defense could submit to prevent their clients from being charged with the death penalty. According to American Bar Association Guidelines, a mitigation specialist is considered: ‘an indispensable member of the defense team throughout all capital proceedings. Mitigation specialists possess clinical and information-gathering skills and training that most lawyers simply do not have.’

Furthermore, the accused were denied qualified and security-cleared translators, and one defendant had no case investigator until weeks before the charges were referred to the commission. Finally, there was a total obstruction of privileged attorney-client communications.

Thus, counsel were stymied in their efforts to communicate effectively with their clients about their detention, interrogation and torture by the US Government, life history, current and past mental statuses, current location of their family, and the whereabouts of any educational, medical, or other records.

Government violation of the attorney-client privilege and interference with the right to counsel

The attorney-client privilege is the oldest privilege for confidential communications in the common law. Yet defense attorneys are prevented from bringing written work product to client meetings without revealing the contents to the Government, unless they are signed or written by the defense team. Counsel are also prevented from their memories to discuss complex legal issues.

Because of the Government’s ongoing interference with the attorney-client privilege, bin ‘Attash had not received written privileged communication from his defence counsel from October 2011 until May 2012, when counsel filed a motion barring invasion of attorney-client communications. This caused ‘profound damage to the relationship between Mr. bin ‘Attash and his counsel.’

In addition, prison authorities established a ‘privilege team’ to screen items prisoners could not have in their cells to prevent their possession of ‘informational contraband’, which is given such a broad definition it could include media reports on efforts to close Guantánamo. The

review team includes intelligence agents, and they need not keep the information confidential.

Lawyers are forbidden from talking about ‘historical perspectives or [having] discussions of jihadist activities’ or ‘information about current or former detention personnel’ with their clients. Thus, Mohammad’s lawyer cannot ask his client why he may have plotted against the United States or who might have tortured him in CIA black sites. Al Baluchi’s attorney is precluded from comparing his client’s alleged role in the offence with conspirators in other acts of terrorism who have and have not faced the death penalty. This is a serious interference with the defendant’s ability to present a defence.

Exclusion of the accused during closed pre-trial hearings

Defence counsel objected to the exclusion of their clients during closed pre-trial proceedings. The prosecution maintained that defendants must be excluded from hearings in which classified material is discussed. The MCA guarantees the right of the accused to be present at all hearings unless he is disruptive or during deliberations. The defence argued that defendants should be allowed to attend hearings in which classified information is discussed, if the information came from the accused himself. For example, Mohammad’s attorney wants his client to be present when they discuss his torture. The US Government waterboarded Mohammad 183 times at a CIA black site. Hearings were held from which the accused were excluded.

Motion to prevent force-feeding

Learned counsel for Hawsawi filed a motion to prevent the Government from force-feeding his client, or in the alternative, to be notified in advance and given an opportunity to be heard before any force-feeding is employed. Hawsawi has been participating in the hunger strike at Guantánamo, but has not yet been force-fed. His counsel argued that ‘Mr Hawsawi has been peacefully protesting by refusing food, on and off, for months now. Given his slender build and already relatively low body weight, it is entirely plausible that forced feeding is imminent.’ This motion was not argued at the hearings because the judge found it premature, as Hawsawi is not being force-fed yet.

Of the 153 detainees remaining at Guantánamo, most are reportedly participating in the hunger strike, and many are being force-fed. The US military has censored the names of the hunger strike participants. The written procedures refer to force-feeding as ‘re-feeding’. Although they contain a few redactions, the pages that describe the procedure for ‘re-feeding’ are totally redacted.

In 2006, the United Nations Human Rights Commission concluded that the violent force-feeding of detainees at Guantánamo amounted to torture. The Obama administration is also violently force-feeding detainees. The Constitution Project’s Task Force on Detainee Treatment found that ‘improper coercive involuntary feedings’ were being undertaken with ‘physically forced nasogastric tube feedings of detainees who were completely restrained.’

Boston University Professor George Annas, who co-authored a recent article in The New England Journal of Medicine, characterised the method of force-feeding being used on Democracy NOW!, as a ‘very violent type of force-feeding’. The American Medical Association and the World Medical Association have declared that force-feeding should not be used on a prisoner who is competent to refuse food.

On 1st May 2013, the Office of the United Nations High Commissioner on Human Rights wrote to the US Government stating: ‘[It] is unjustifiable to engage in forced feeding of individuals contrary to their informed and voluntary refusal of such a measure. Moreover, hunger strikers should be protected from all forms of coercion, even more so when this is done through force and in some cases through physical violence.

Health care personnel may not apply undue pressure of any sort on individuals who have opted for the extreme recourse of a hunger strike. Nor is it acceptable to use threats of forced feeding or other types of physical or psychological coercion against individuals who have voluntarily decided to go on a hunger strike.

The judge ruled that the defendants have no rights to complain about their treatment under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Looking ahead

Trials in these cases will not begin before 2015. President Obama should halt all military commission proceedings and announce that the trials will be held in federal civilian courts, which have shown they are more than capable of prosecuting terrorism cases. Justice is impossible to achieve in military commissions, where guilt is a foregone conclusion.

Marjorie Cohn is a professor at the Thomas Jefferson School of Law in San Diego, USA. She is a past president of the National Lawyers Guild and is deputy secretary of the International Association of Democratic Lawyers. This article first appeared on the Truthout website and is re-printed here with the author’s kind permission.

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- Rashida Manjoo, UN Special Rapporteur on Violence Against Women;
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Introduction
The General Council of the New Model Army, composed of representatives of the officers and the soldiers, met at St Mary’s Church in Putney on 28th October 1647 to discuss a document entitled The Case of the Army Truly Stated, which had earlier been put forward on behalf of five of the army’s total of 26 regiments. That morning there was produced what appeared to be a summary with the title An Agreement of the People.

Both documents had been produced by soldiers influenced by and sharing the ideas of a group of political theorists and activists generally known as the Levellers. This was a nickname given to them by their opponents rather than adopted by them. One of them, William Walwyn, may well have been the primary author of An Agreement of the People.

The contents of An Agreement of the People
Briefly, An Agreement of the People proposed:

• That there be a Parliament, elected bi-annually, and following a re-distribution of the electing counties, cities and boroughs so that they be ‘more indifferently proportioned according to the number of inhabitants’;

• That, subject to those ‘who chose them’, the powers of Parliament expressly extended to ‘the enacting, altering and repealing of laws,...to the appointing, removing and calling to account magistrates and officers of all degrees; to the making of war and peace; to treating with foreign states and generally to whatsoever is not expressly or impliedly reserved to the represented by themselves’;

• Freedom in ‘matters of religion’ as ‘the ways of God’s worship are not at all entrusted by us to any human power’;

• No conscription to serve in wars ‘as the matter of impressing and constraining any of us to serve in wars is against our freedom’;

• An indemnity for ‘anything said or done in reference to the late public differences’;

• Equality before the law ‘every person to be bound alike and that no tenure, estate, charter, degree, birth or place do confer any exemption from the ordinary course of legal proceedings whereunto others are subjected’;

• That the laws ought to be equal so they ‘must be good and not evidently destructive to the safety and well being of the people’.

The question of suffrage
Implied in the first proposal was the issue of suffrage – who was to do the choosing? The Case of the Army was specific, that ‘all the freeborn at the age of 21 years and upwards be the electors’ save for those that had been deprived of their freedom ‘either for some years or wholly by delinquency’. This became the first issue to be debated. Despite the sharp differences that appeared in the beginning, expressed in the famous exchanges between Commissary General of Horse, Henry Ireton and Colonel of Foot, Thomas Rainborowe, by the end of the day some consensus had been reached being summarised in one recent account as ‘that the vote should be granted to all adult males, excepting servants, foreigners, apprentices and beggars’.

It is often assumed that women were not included in the proposals or consensus on the right to vote at all. However, that is not explicit in the record of the discussions. Moreover it is, I suggest, improbable, for the following reasons:

First of all such a proposal would have been contrary to that made shortly before in The Case of the Army Truly Stated and as Patricia Crawford has noted in her writing on the Putney debates: ‘It was generally agreed [in the mid 17th century], as a point of pride, that women born in England were not bound but were freeworn, with a property in their persons as men were’.

Secondly, certain classes of women at that time possessed the right to vote particularly the feme sole – the propertied single woman – and the widow. The Levellers certainly would not have proposed the removal of the vote from those who already had it. Nor is it at all likely that Cromwell and Ireton would have agreed the removal of the right to vote from those classes as its exercise was bound up with property rights. It was their argument that the vote was to be exercised by ‘persons’ who had a ‘fixed interest in the kingdom’.

That the right of women, or some women at least, to vote was recognised on all sides at Putney cannot be seriously disputed. As Patricia Crawford remarks: ‘the question of the female franchise was so clearly already bound up with the fundamental question of rights that it was unnecessary to raise it directly. Cromwell and Ireton knew that the feme sole with property could vote, the Levellers knew that the poorest women could be “people”, citizens possessing some rights, or Christians who enjoyed some share in the government of separatist congregations’.

The aftermath of Putney
By the end of the Council meeting on 2nd November 1647, agreement with the main proposals had been reached. These were to put into a declaration to be presented to Parliament. The Levellers had mostly won the Council to their way of thinking. On 8th November 1647, Cromwell with Fairfax, the Commander-in-Chief, in the chair proposed that the representatives return to their regiments. This was carried. A committee was appointed to draft the declaration. That task was never completed.

On 15th November 1647, seven regiments attended the first of three successive rendezvous of the army at Ware, Hertfordshire. There Fairfax denounced those representatives who had taken it upon themselves to be ‘guided by divers private persons who are not of the army’. Most regiments agreed and any opposition was quietly crushed. The other regiments also agreed with Fairfax’s proposals at the remaining rendezvous.

As Christopher Hill observes in his 1975 book The World Turned Upside Down, ‘so ended the Leveller attempt to capture control of the Army’. After the second civil war in 1648, Hill notes that ‘[t]he Leveller leaders were arrested, the radical regiments provoked into unsuccessful mutiny [were] crushed at Burford in May 1649. So, effectively were the Levellers’.

The Levellers’ success and failure
The principles of parliamentary or representative government, universal suffrage, freedom of religion, and equality before the law are now generally accepted. As Geoffrey Robertson QC points out in his writing on the Putney debates, the first two principles are enshrined in articles 21(1) and (3) of the Universal Declaration of Human Rights, adopted by the General Assembly of the United
David Watkinson looks back at the battles for democracy over 350 years ago.

Nations on 10th December 1948 and, he might have added, the other two at articles 7 and 18. Why did they fail in 1647-1649?

A number of reasons can be given:
• Their task was one in which it was inherently difficult to succeed, namely to change the prevailing and entrenched understanding as to how England was to be governed;
• By 1647, the New Model Army was the most powerful institution in the country. The failure to win it over was fatal to any attempts to evoke change;
• The Levellers were weak and up against a strong and determined opposition. They were not a coherent organised political party, nor were they seeking power for themselves but rather to re-order how power was obtained. Their opponents had positions to maintain, could see the threat and had the authority and means to deal with it.

Removing the established power
Monarchy had been the settled mode of government since before the Norman conquest. The monarch ruled and Parliament was called ‘first, much of [the Levellers’ support] was derived from two aggrieved groups: the religious sects, who wanted toleration and the rank and file of the New Model Army, who wanted fair treatment (in particular they wanted their back pay and protection against prosecution for offences…committed in time of war).… But in 1649 Cromwell was able to break the back of support for the Levellers by offering limited toleration to the sects and regular pay to the soldiers.

Second, the basis of the Leveller programme was always a call for elections… but the Levellers had no effective strategy for consolidating power and preparing the ground for elections… In a recent study by Rachel Foxley, it has been stated that ‘the Levellers were a shifting group of people gathered relatively informally around core writers and organisers, redefining their programmes round a succession of documents (petition or ‘Agreements of the People’) through meetings and discussions, and defining themselves as a group, if at all, through reference to the last key document they had subscribed to’.

Third, as David Wootton remarks, ‘they never prepared effectively for a trial of strength with the officers… Neither uprising [Ware and Burford] was adequately prepared; the timing of both was more convenient for Cromwell than for the Leveller movement’.

Conclusion
The Levellers’ programme was one for the re-ordering of society and threatened the positions of the rich, powerful and those in authority at the time, absent the King. Those to whom it was addressed and would have been advantageous had immediate concerns which the ‘authorities were able to meet. Decisive action was taken to outmanoeuvre and crush the movement when it appeared to be gathering strength, at points when the Levellers were too weak and disorganised to resist. Despite their defeat their ideas continued and prevailed, As Wootton concludes: ‘There was never any prospect of their views gaining general acceptance in their own day; but Hobbes may have paid attention to them… and Locke was almost certainly influenced by them… as Tom Paine was by Locke… Out of disjointed and discarded arguments, the Levellers built a coherent political philosophy. In large part that philosophy is still ours today.’

David Watkinson is a barrister and non-practising door tenant at Garden Court Chambers. He is currently a student of the English Civil War period and Ancient Greek at Birkbeck University.
Extraordinary moment

This beautifully produced book is Gary Younge's homage to Martin Luther King and to the movement whose spirit King captured in his great speech of 28th August 1963. The speech was delivered late in the day, as people were beginning to leave, and King departed from his prepared text – his famous ‘dream’ passage was added in a moment of inspiration. Like Lincoln’s Gettysburg address of 19th November 1863 it is impossible to read the speech without feeling strong emotion. These are two great moments of American history.

The book brings together Younge’s long-standing interest in the American South and his commitment to issues of social justice. In 2011, Younge conducted two public interviews with Clarence Jones (born in 1931 and now in his 80s) who wrote the draft text of the speech and was King’s lawyer. Younge also interviewed, over the course of 16 years, many civil rights leaders, activists and commentators, including Joan Baez, who sang at the march on Washington, Angela Davis, and others.

This is not a reference book or scholarly analysis and there are no footnotes. However, Younge has read widely, including Mike Marqusee’s Redemption Song: Muhammad Ali and the Spirit of the Sixties. This is journalism of a very high order, from the heart.


Martin Luther King Jr was born on 15th January 1929 and was assassinated on 4th April 1968. This book is not a biography of King, nor is it a history of the great movement against segregation which culminated in the march on Washington. It brings to life a number of the participants in this extraordinary moment of history. Younge focuses on Bayard Rustin for example.

Rustin, who was born on 17th March 1912, was a member of the Communist Party before 1941 and was openly gay, both of which caused problems for King, who kept Rustin out of the limelight. In one of the few errors in this book, Rustin is given as 20 years younger than King on page 60, which would have made him barely a teenager at the time of the march. Rustin was a superb organiser, indeed the key organising figure behind the march. As Younge shows, Rustin had to work hard to persuade King to support the march at all. Support came from younger activists in the Congress of Racial Equality (CORE) and the Student Non-Violent Co-ordinating Committee (SNCC).

The moment on which Rustin was able to build was the Children’s Crusade in Birmingham Alabama in May 1963, when black children were bludgeoned, hosed and hounded in front of the cameras. Rustin declared: ‘Birmingham became the moment of truth. Birmingham meant that tokenism is finished’.

The American right tried to derail Rustin and the march. The notorious segregationist senator Strom Thurmond branded Rustin a ‘communist, draft-dodger and homosexual’. That simply served to rally and consolidate the black movement. It was down to Rustin that a quarter of a million people marched on 28th August 1963, many more than had been expected.

The inauguration of US President Barack Obama for a second term on 21st January 2013 fell on Martin Luther King Day. President Obama regularly introduced to Congress, President Ronald Reagan, when asked if King was a communist sympathiser said: ‘We’ll know in 35 years, won’t we’. He was referring to the eventual release of FBI surveillance tapes. King was a life-long Democrat voter and probably a socialist. He was always first and foremost a preacher. He was doing God’s work.

Bill Bowring

Mac users

A new report from the Institute of Race Relations examines 93 post-Mac users

Investigated or ignored? An analysis of race-related deaths since the Macpherson report

Harmit Athwal and Jon Burnett, Institute of Race Relations, January 2014

‘The law is clearly failing victims of racist crimes. This report should be read – and acted on – by all criminal lawyers and everyone interested in racial justice. It can be downloaded from the Institute of Race Relations website, www.irr.org.uk.

Frances Webber
Vital legacy

Black Star: Britain's Asian Youth Movements
Anandi Ramamurthy, Pluto Press, 2013

Here to stay, here to fight! It is the slogan that decorates the front pages of the Kala Tara (Black Star), magazine of the Asian Youth Movement. Its writings imbue a characteristic militancy and syncretic identity, fostered by the experiences and language of the progeny of the first émigrés from the subcontinent. Anandi Ramamurthy’s book weaves a rich tapestry charting the chronology of the organised, radical, grassroots South-Asian movements in Britain that fought against systematic white supremacy, a history that has been all but extinguished from popular supremacy, a history that has been against systematic white movements in Britain that fought grassroots South-Asian of the organised, radical, tapestry charting the chronology of the subcontinent. Anandi Ramamurthy’s book weaves a rich tapestry charting the chronology of the organised, radical, grassroots South-Asian movements in Britain that fought against systematic white supremacy, a history that has been all but extinguished from popular discourse. Based on testimonies from those involved in the movement’s beating heart, Ramamurthy’s book is comprehensive and precise. Shocked and awed by the British imperial exercise in the subcontinent, many South Asians wore hope and optimism for a brighter future when emigrating to the country of their former masters. They were greeted with deprivation and white supremacy both from above and below. The inception of the Asian Youth Movements and its subsequent scions rode on this toxic wave. Orientalist tropes of South Asian workers racialised the division of labour, often resulting in white workers collaborating with management over disputes brought by them. Similar sentiments seeped into schools with white parents campaigning for the removal of black kids, accompanied by segregated classes and a racist syllabus. With racist attacks and murders, it meant the birth of a movement was imminent.

The Asian Youth Movements (AYM), as the book narrates, were black power organisations, believing in the principles of self-defence and direct action against fascism of the State and on the street. The author discusses its self-determined complexion, working class, intelligent, organised and, most importantly, revolving around the experiences of those uniquely placed; the daughters and sons of immigrants but with their roots firmly planted here. Bradford, Leicester, Manchester, London and beyond all began to organise along these lines. The book illustrates how the AYM focussed much of their attention on campaigns against immigration laws and on confronting white supremacy on the street. The Anwar Ditta campaign, a Pakistani woman who fought to reunify her family following attempts by the State to keep them separate, garnered national support for the AYM. The Bradford 12 Campaign, a national movement that successfully defended Asian boys who had made petrol bombs to protect their communities after a series of racist attacks had swept the country, was testament to the AYM’s strength. Ramamurthy articulates in detail these important events and identifies the significance of each in the personal and collective sense, allowing the reader to appreciate how this was not just a politics of anti-racism but one of self-empowerment. The Asian Youth Movements also sought to provide educative services, cultural events that celebrated the music, poetry and prose of the region without compromising their radical politics. It worked with other groups, similarly aligned in black communities, emulating in many ways the form and practice of the Black Panther Party. Their unique identity paved the way for linking their experiences as children of imperialism to struggles elsewhere, from Ireland to Palestine.

This book, however, is not apologetic. It does not romanticise or hyperbolise. It asks the bigger questions of religious and secular identity and where that leaves such a movement today. Ramamurthy talks frankly about its splinters, the influence of the Indian Workers Movement and later, the co-option of the organisation and its comrades by the State. The author highlights the important analysis of race and class, identifying the imperative role of South Asians in the labour and anti-racist movement. There is something for everyone in this book; whether to prompt activists to critically look at their own work or others to situate their struggles as descending from a relatable history that many never thought existed. One is left with a sense of frustration but also hope that a similar, more perpetual resurgence of this energy can once again flourish. South Asians were not only active in this country’s labour and anti-fascist history, they were an integral part of it. This book remembers and continues that legacy.

Tanzil Chowdhury

Terror victims

Shadow Lives –The Forgotten Women of the War on Terror
Victoria Brittain, Pluto Press, 2013

The sensationalist journalism that surrounded the reports of the ‘white widow’ and her alleged role in the September 2013 attacks on the Westgate shopping mall in Nairobi is a timely reminder of the crude and simplistic way that the lives of individuals connected to terrorism are usually described by the media. Victoria Brittain’s powerful book is a timely counterpoint to this inflammatory language which characterises most reporting on this subject.

Shadow Lives is a meticulously researched account of the lives of women and families affected by the implementation of anti-terrorism measures. Victoria Brittain describes the lives of the ‘devastated individual families who have been invisible here mostly in Britain, dehumanised, expendable, in cruel experiments of social control which have left some dead, others mentally or physically broken.’ The book opens with an account of the historical and political forces which have shaped radical Islam and focuses on the subsequent suspension of many established principles of the rule of law following the attack on 9/11 which led to Guantánamo Bay and Control Orders in the UK.

Britain has interviewed and befriended over long periods of time a number of different women. She describes in detail the stories of Sabah, the wife of Jamil El Banna, who disappeared in Guantánamo Bay following a business trip to Gambia in 2002, and also of Zimira, the wife of Shaker Aamer the last British resident to remain in Guantánamo Bay.

Imprisonment in Guantánamo and domestic Control Orders are open ended forms of imprisonment or restriction on individuals who have not faced trial and have had limited opportunity to challenge the basis of their detention.

Britain goes on to describe the ‘shadow lives’ led by the wives of individuals subject to Control Orders and the ongoing practical and emotional difficulties in their lives. The emotional rollercoaster of legal proceedings where hope can be repeatedly raised only to be dashed is described from the perspective of the families. The individual voices of these women and their personalities shines through in Brittain’s writing, as does their strength in adversity and their religious faith.

All of the women speak of their shock of being excluded from the normal operation of constitutional rights and the rule of law. Britain concludes that the events of 9/11 should have been used to strengthen our constitutional beliefs and the rule of law, and instead the so called ‘war on terror’ has undermined the very values it purported to protect.

Margaret Gordon
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