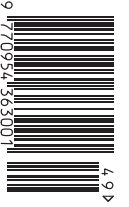


Socialist **Lawyer**

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Haldane Society of Socialist Lawyers



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

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July 2025: one of many pro-Palestine demos over the last months, this time supporting Chris Nineham and Ben Jamal at Westminster Magistrates Court relating to charges from a national demo in January.

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Boomerang effect

The cover and opening pages of this issue focus, of necessity, on the ongoing horror of the US-Israeli genocide in Gaza, on efforts by lawyers to hold those responsible to account, and on the British state's continued campaign to silence the solidarity movement, including Home Secretary Yvette Cooper's unprecedented decision to proscribe a direct action protest group.

The anti-imperialist truism about violence in the colonial periphery manifesting in the colonial metropole – what Aimé Césaire called the 'boomerang effect' – clearly applies here, though Britain nowadays is less a metropole than an appendage of its chaotic and increasingly fascist Atlantic cousin, whose 'orange emperor' is defied in Robert Lizar's poem.

In a recent *Observer* op-ed Jonathan Hall KC, the independent reviewer of terrorism legislation, defended the ban on Palestine Action on the basis that, among other things, its members 'have given up on parliamentary democracy'. The tacit assumption is that British democracy is in good health. But plainly it is not, least of all with regards to foreign policy, which is almost completely insulated from democratic oversight and popular pressure: at no point has the general public's depth of feeling about Gaza been meaningfully reflected in the corridors of power.

This is, of course, an enduring feature of the 'Ukanian' (Tom Nairn's term) polity, but Labour has done nothing to change it, despite Starmer's pledge to put 'human rights at the heart of foreign policy'. And as Alex Papasotiriou and Zoe Bantleman argue in their critique of Foreign Secretary David Lammy and Attorney-General Richard Hermer KC's approach to international law, the 'progressive' component of 'progressive realism' is negligible – indeed, it plays into the hands of the right.

One of the few advantages of the first-past-the-post system, at least in theory, is that it enables a governing party with a substantial majority to crack on with its manifesto commitments. But this Government appears rudderless, making cruel and inept decisions in some areas – notably welfare and benefits – and walking back from them after opposition inside and outside Parliament, while in others –

particularly asylum and deportations – crudely imitating Reform.

Beyond the racialised moral panic about 'illegal' migration, Ellen O'Neill and Alex Ferguson take a scalpel to Labour's plans for 'legal' migration which, like many other ill-considered proposals by this Government, will 'cause immense harm, waste time and money for everyone involved, and only distract from making good law'.

To be fair, a few decent policy goals survived Starmer and McSweeney's blitzkrieg of the Labour left. But as Isaac Acharya and Benjamin Matthes demonstrate in their respective articles, the Government's reforms to tenants' and workers' rights – both nearing their final stages in Parliament at the time of writing – have serious shortcomings, and still leave too much power in the hands of landlords and employers.

Elsewhere in this issue, Turkish war and environmental crimes and Erdoğan's escalating crackdown on his main political opposition are covered. Uther Naysmith provides a detailed critical commentary on the *For Women Scotland* judgment and its grave human rights implications for the trans community, a subject also addressed by Haldane exec members Saskia O'Hara and Ellen O'Neill at the recent Congress of the International Association of Democratic Lawyers. Such interventions serve as a reminder that in the movement for socialism we must bring all oppressed groups with us.

As *SL* nears its 100th issue, we want to thank our contributors, old and new, those who provide *ad hoc* editorial support and, of course, those people who work to get the magazine into your hands. This is a bumper issue of sorts, running to over 50 pages – a testament to Haldane members' collective intelligence and the range of struggles they are involved in.

One longtime *SL* contributor, and a comrade and friend to many in Haldane and the wider movement, Wendy Pettifer, sadly passed away in July, and is remembered by Bill Bowring in these pages. As we mourn the dead – those in our immediate circles and in the killing fields of twenty-first-century capitalism – we also fight like hell for the living.

Joseph Maggs and Gabriel Frankel



Britons in the IDF: Legal accountability for Gaza war crimes

On 7th April 2025, a detailed submission was delivered to the War Crimes Team of the Metropolitan Police Counter Terrorism Command (SO15). It was compiled by lawyers and international legal experts based in The Hague. The submission was made jointly by the Palestinian Centre for Human Rights (PCHR) and the Public Interest Law Centre (PILC), on behalf of Palestinians in Gaza and Britain. It presents compelling evidence that 10 British nationals were involved in war crimes and crimes against humanity during Israel's military assault on Gaza, which began in October 2023.

This is the first such submission of its kind – a forensic, evidence-based appeal for accountability concerning war crimes committed in Gaza. It is, in its scope, a historic effort to bring legal redress for Palestinians through a judicial process far removed from the devastated streets of Rafah and Khan Younis.

British suspects and alleged crimes

Though the report does not publicly name the 10 British suspects, because of concerns around prejudicing ongoing or future prosecutions, it confirms

that those identified include individuals at officer level within the Israeli military. These individuals have played command or operational roles in acts that may amount to war crimes and crimes against humanity under international law.

The report outlines evidence of British nationals participating in:

- The targeted killing of civilians and aid workers, including by sniper fire;
- Indiscriminate bombardments of civilian areas such as hospitals and schools;
- The forced displacement of civilians on a mass scale; and
- Deliberate attacks on protected heritage, religious, and civilian sites.

These acts not only violate the rules of armed conflict under the Geneva Conventions but also strike at the core of our shared humanity.

War crimes and crimes against humanity: definitions and implications

War crimes and crimes against humanity are among the gravest offences recognised in international law. These include acts such as murder, torture, indiscriminate bombing, and the targeting of civilians, humanitarian workers, protected

sites like schools and hospitals.

The inclusion of these crimes in this report reflects an increasingly urgent demand for accountability, one that seeks not only to punish wrongdoers but to assert the principle that no nationality provides immunity from justice.

The legal foundation: British law and international responsibility

Why should the UK investigate crimes committed thousands of miles away?

The legal grounds for this case are rooted in both domestic and international law. The International Criminal Court Act 2001 (ICCA) and the Geneva Conventions Act 1957 (GCA) make it explicitly illegal for any person, regardless of nationality or location, to commit genocide, war crimes, or crimes against humanity.

Section 51 of the ICCA affirms that such crimes are offences under the law of England and Wales. The Geneva Conventions, to which the UK is a signatory, not only prohibit these crimes but place a duty on signatory states to investigate and, where appropriate, prosecute offenders.

Importantly, the acts alleged in the report occurred in the context

Picture: © Jess Hurd



Supporters cheer as Liam Óg Ó hAmaidh of

of an international armed conflict, one of the thresholds required for prosecution under these laws. The suspects' British nationality makes them subject to UK law. This is not a political gesture – it is a legal obligation.

The role of the Metropolitan Police War Crimes Unit

The War Crimes Team within the Metropolitan Police's Counter Terrorism Command has previously investigated allegations of international crimes involving British nationals. Their remit includes assessing the credibility of evidence, determining whether there are realistic prospects for prosecution, and liaising with the Crown Prosecution Service to consider arrest warrants.

April

5: Anti-abortionist Livia Tossici-Bolt is convicted of two charges of breaching a Public Spaces Protection Order (PSPO) buffer zone outside an abortion clinic in Bournemouth. She had received support from the US State Department over 'freedom of expression'.

12: Two couples are taking the Government to court over its failure to legalise humanist marriages in England and Wales, despite the High Court ruling in 2020 that the lack of legal recognition 'gave rise to discrimination'. Humanist marriages are legal in Scotland and Northern Ireland.

15: Data released to charity Maslaha shows in eight out of nine prisons with the highest Muslim populations that Muslim men were subject to a disproportionately higher use of batons, rigid bar handcuffs or being deliberately held in a painful position by prison officers.

16: The Supreme Court issues a ruling that the terms 'woman' and 'sex' in the Equality Act referred only to a biological woman and biological sex. Five judges unanimously ruled that the legal definition does not include transgender women who held Gender Recognition Certificates.

22: A study reveals that hundreds of people have been jailed for minor offences through Antisocial Behaviour Injunctions (ASBIs), such as sleeping rough, due to a lack of sentencing guidance and public oversight. As a result disadvantaged groups are being disproportionately targeted.



Kneecap appears at Westminster Magistrates' court on 20th August 2025.

The PCHR and PILC handed over the dossier of evidence to the War Crimes Team. The next step lies in the hands of the British authorities, to act upon their legal obligations and pursue justice without fear.

The legal submission is proportionate and, in light of the evidence, necessary. The legal submission links British suspects directly to military units, specific locations, and particular criminal acts. There exists a clear investigatory pathway that must lead to prosecutions in British courts. Obviously this will rely on three things. First, that the investigation is well resourced. Second, that there is unfettered access to information held by British authorities. Finally, that there is no political interference.

Justice – and its limits

While this submission represents a powerful step toward accountability, it also exposes the severe limitations of law, particularly international law, in responding to systemic injustice and occupation. The machinery of the law is slow, conservative, and often politically constrained. After all, the international community has allowed decades of illegal occupation, settler violence, and periodic bombardments of Gaza to continue largely without consequence.

We must therefore resist the temptation to see legal action as a panacea. Law can document atrocity, but rarely does it stop it. Courts can affirm rights, but they cannot redistribute power. The reliance on legal remedies,

valuable as they are, cannot substitute for the wider political and social transformations that are necessary to end apartheid, occupation, and colonial violence by the State of Israel.

Socialism and the struggle for a democratic Middle East

The submission to the Metropolitan Police rightly focuses on accountability for war crimes and crimes against humanity. However, to achieve genuine peace and justice, we must look deeper, at power, capital, and ideology that sustain the status quo.

Israel's decades-long occupation of Palestine is inseparable from its economic, political, and military alignment with Western and particularly US imperialism. British nationals do not simply end up in Gaza by accident, they are often embedded within the capitalist system of arms trading, military cooperation and ideological support for ongoing apartheid.

As socialists we offer a vital and necessary alternative to the limited legal and nationalist frameworks that dominate the discussion in the region. We argue that neither the corrupt Palestinian Authority nor the leadership of Hamas offers a way forward for the Palestinian working class. Likewise, the Israeli ruling class, built on settler colonialism and sustained by militarised capitalism, has no interest in peace or equality.

The only sustainable solution lies in uniting working-class and oppressed people against the ruling elites of the region, in a struggle for democratic socialism.

This means:

- An end to the occupation and the dismantling of the Israeli

apartheid regime;

- The right of return for all Palestinian refugees;
- Equal rights for all people, irrespective of religion, ethnicity, or nationality; and
- The formation of a socialist federation of the Middle East, where the wealth and resources of the region are democratically controlled and shared among its people.

Only through a revolutionary transformation can the oppression and inequality that define the region be ended.

Beyond the courtroom

This legal submission offers a rare and powerful opportunity to expose the complicity of British nationals in war crimes and crimes against humanity. It challenges the British state to meet its obligations under international law and take action against war criminals, irrespective of political alliances.

Yet we must recognise that the law, by itself, is not enough, and any faith in the British state to act must be tempered by its ongoing military and logistical support for the Israeli military. Legal processes can highlight injustice, but they cannot dismantle the global systems of imperialism, racism and capitalism that sustain war, occupation and displacement.

That is why legal accountability must be linked with political struggle. A movement must be built not on nationalism or sectarianism, but on the shared interests of workers and oppressed people across borders. Only through such a collective, revolutionary transformation can we hope to achieve peace with justice – in Palestine, in Israel, and beyond.

Paul Heron

May

2: The Court of Appeal upholds the quashing of a key anti-protest regulation. The Government had appealed against a High Court ruling that the previous Home Secretary, Suella Braverman, did not have the power to redefine 'serious disruption' as 'more than minor' in the law about when police could impose limits on protests.

13: In a judicial review by the High Court brought over allegations that it acted unlawfully in continuing to sell fighter jet parts, Government lawyers claim that no evidence has been seen that a genocide is occurring in Gaza or that women and children were targeted by the Israel Defence Forces.

'Israel is fighting a proxy war on behalf of Britain, just like Ukraine is.'

Whoops. Kemi Badenoch lets the cat out of the bag...

21: Guardian journalists Patrick Butler and Josh Halliday win the Paul Foot Award for their coverage of how thousands of carers were taken to court by the Department for Work and Pensions for accidentally claiming Carer's Allowance alongside part-time work.

21: The Supreme Court rules that Alexander Darwell, a multi-millionaire hedge fund manager, was wrong to ban camping on his land. Dartmoor is the only place in England where wild camping without the permission of the landowner is enshrined in law.

State persecution of pro-Palestine protest: how to resist?

Monday 16th June

6-8pm online

Sponsored by:

- Haldane Society of Socialist Lawyers
- Jewish Network for Palestine (JNP)
- Campaign Against Criminalising Communities (CAMPACC)



Our hosts will be joined by:

- Les Levidow, CAMPACC and Jewish Network for Palestine
- Simon Natas, ITN solicitors
- Mira Hammad, Garden Court North Chambers
- Kevin Blower, The Network for Police Monitoring
- Palestine Activists: to be announced

How to resist the state's persecution?

We are approaching two years of Israel's genocidal assault on Gaza. The Prime Minister, Keir Starmer, supposedly now thinks the situation is 'intolerable'. Nevertheless, his Government continues to facilitate Israel's war crimes, while proscribing as 'terrorists' those who damage the weapons used to massacre Palestinians.

On 16th June 2025, before the ban on Palestine Action was announced, over 100 people gathered at a virtual public meeting on state persecution of pro-Palestine protest and how to resist,

co-organised by the Haldane Society. Les Levidow, who co-organised the event on behalf of the Campaign Against Criminalising Communities (CAMPACC) and Jewish Network for Palestine (JNP), kicked off the event, ridiculing the Prime Minister's hollow words. He called upon us all to denounce and delegitimise the unjust laws used to persecute protestors and to support those facing repression. We must, he said, free Britain from its racist legacy and in the course free Palestine.

Simon Natas of ITN Solicitors provided brief historical context to

the policing of Palestine demonstrations. From cases he has seen, he observed that arrests at Palestine marches seemed arbitrary and, in large part, contrary to the Metropolitan Police's own guidance, which was disclosed through an FOI request. Audrey Cherryl Mogan of Garden Court Chambers raised concerns about the many serious offences being leveled at Palestine protestors, including the use of section 44 of the Serious Crime Act 2007 (intentionally encouraging or assisting the commission of offences) against individuals calling for action. She also highlighted the use of remand and harsher sentences for protestors. While the Court of Appeal in *ABJ & BDN* [2024] EWCA Crim 1597 rejected arguments that section 12(1A) of the Terrorism Act 2000 was incompatible with Article 10 of the European Convention on Human Rights (a matter now on appeal to the Supreme Court), Mogan highlighted the important distinction drawn by the Court of Appeal at [53] between expressing an opinion that is 'shared' by a proscribed organisation and one that is 'supportive' of the organisation. As the first appellate decision on section 12(1A), this is an authoritative statement which at least clarifies that the former is not criminalised.

Mira Hammad of Garden Court North Chambers then considered Britain's obligations under international law, including its

'The "terrorists" are those who damage the weapons used to massacre Palestinians.'

obligations to end the occupation and support Palestinians' right to self-determination following the International Court of Justice's Advisory Opinion of 19th July 2024. The Labour Government accepts that there is 'clear risk' of serious violations of international humanitarian law in Gaza. Therefore, Hammad argued, in effect the Government has acknowledged that any entity specifically assisting Israel's activities is committing grave violations of the Geneva Conventions which, given their universal jurisdiction, are prosecutable as criminal offences in domestic courts.

One might think that an ideological commitment to Zionism or the influence of the Israeli lobby explains why an international human rights lawyer, who once defended protestors' right to take similar direct action, has now proscribed Palestine Action. But, as argued brilliantly in the Substack 'Oh Deary Sea' (@toucheachother), there is an economic logic underpinning the proscription of Palestine Action. The group needed to be banned because it effectively targeted the arms industry which is at the heart of Labour's reindustrialisation plan and will be receiving an additional £2.2 billion of taxpayers' money under this Government, as promised in the Chancellor's May 2025 Spring Statement. Conor Gearty KC has shown us in *Homeland Insecurity* (reviewed by this writer in *SL97*) that 'anti-terrorism law is how colonialism is done in the twenty-first century', but in the present context, proscription appears a particularly blunt instrument. Could this be the start of the unravelling of the War on Terror legal regime?

Gabriel Frankel

May

21: Kneecap's Liam Óg Ó hAinle is charged with a terrorist offence for allegedly displaying a flag in support of Hezbollah at a gig in London in 2024, 'in such a way or in such circumstances as to arouse reasonable suspicion that he is a supporter of a proscribed organisation', said the police.

23: UK signs a £3.4bn agreement to cede sovereignty over the Chagos Islands to Mauritius, but leasing the largest one, Diego Garcia, for 99 years to continue operating a joint US-UK military base there. However, the right of return for Chagossians is not included.

4.7m

The number of faces police forces scanned with live facial recognition cameras in 2024. Twice that of 2023.

26: Four Just Stop Oil (JSO) protesters are sent to prison for between two years to 18 months after being convicted of 'conspiracy to cause a public nuisance' at Manchester airport. Dressed in high-vis JSO vests they carried handwritten notes detailing their aims as well as bolt cutters, glue and sand.

June

6: A six-month government pilot is launched in the West Midlands where victims of rape and serious sexual assault who face their cases being dropped by the Crown Prosecution Service will be given the right to request a review by a different prosecutor before their case is dropped.

Proscribing protest

On 3rd July 2025, a letter organised by the Haldane Society and signed by thousands of people across UK civil society – from KCs to vicars to activists and trade unionists – was sent to Home Secretary Yvette Cooper with reasons opposing the proscription of Palestine Action.

The letter, alongside a separate effort by Netpol's lawyers' group and interventions by several UN special rapporteurs, was covered in the *Guardian* and *Byline Times*, among other outlets. It is reproduced in full below.

Despite a vast chorus of opposition outside Parliament, MPs

subsequently approved the order to proscribe which, following the refusal of an interim relief application by co-founder Huda Ammori, came into effect at midnight on 5th July 2025. Palestine Action thus became the first ever protest group to be banned under the Terrorism Act 2000. Since then, well over 700 people have been arrested at peaceful protests across the country

on suspicion of terrorism offences merely for holding placards.

On 30th July 2025 the High Court granted permission to Ammori to proceed with a judicial review challenging proscription on human rights (Articles 10 and 11) and procedural fairness grounds, although a stay of the order was refused. The full hearing will take place over three days this November.

Joseph Maggs

Dear Home Secretary

We, as individuals or as organisations representing a broad spectrum of civil society and the legal community, are writing to you, in response to the threat of proscribing the grassroots solidarity and direct action group, Palestine Action.

The United Kingdom has a long and proud history of direct action that opposes military intervention. From Greenham Common to the two million marching in London against the invasion of Iraq, British governments of different political persuasions have respected people's right to peacefully protest. Indeed, as the leading case of *R v Jones* makes clear: 'The appellants acted as they did because they wished to impede, obstruct or disrupt the commission of that crime, or what they believed would be the commission of that crime, by Her Majesty's Government or the Government of the United States against Iraq in the weeks and days before (as we now know) hostilities began'.

Any attempt to criminalise peaceful direct action including by mislabelling it as 'terrorism' would raise grave concerns, some of which are listed below for your consideration:

- It would be unwise to blur the very clear lines between peaceful protest and terrorism by using misleading rhetoric. This conflation can underplay the credible dangers of genuine terrorism, legitimise terrorism in the eyes of those members of the public who support this cause, and confer unjustified renown on groups that are unfairly proscribed.
- In a series of acts contrary to international law, the UK govt appears to be using the RAF Brize Norton base to onward service RAF Akrotiri that in turn is used by our allies and the UK to facilitate what the ICJ has found to be a

plausible genocide in Gaza. As a state party to the Genocide Convention, facilitating such a genocide would be a particularly egregious breach of international law, by the UK. The UK government, by simultaneously seeking to criminalise those peacefully protesting this genocide using proscription, is further doubling down on these acts, rather than remedying these errors of judgment, as it should.

- Even if it were assessed by the Home Secretary that measures are needed to be taken to deal with this particular direct action group, a wide range of more proportionate, proven and effective remedies are available to her.

- Having to enforce and police the proscription of Palestine Action would create a disproportionate strain on police resources and an ensuing additional and unjustified burden on the justice system to enforce such a proscription. It would leave many ordinary members of the public vulnerable - for example, simply wearing a t-shirt saying 'I support Palestine Action' would be seen as violating the proscription and action would need to be taken.

- There are many dangers to proscribing peaceful direct action groups, even if their objectives are those some of us may disagree with. Current and future governments may misuse this precedent to attack other interest groups in future, offering no avenues for peacefully venting dissent. Bottling public anger and frustration creates the breeding ground for violence by or against members of the public.

It is our hope that the Home Secretary will recognise both the moral arguments and the strength of feeling in civil society in this matter and resist from this proscription.

Sincerely,
On behalf of the signatories

5: French dockworkers at the port of Marseille-Fos refuse to load a shipment of spare parts for machine guns reportedly destined for Israel, declaring they would not be complicit in the 'ongoing genocide' in Gaza.

6: Friends of the Earth (FoE) (which successfully took the last Tory government to court over its environmental plans) says that it will take legal action again if Chancellor Rachel Reeves makes decisions in the spending review that are not in line with the net zero climate target.

11,981

The number of sexual offences waiting to go to the Crown Court. It has risen by 41 per cent in two years.

7: The High Court tells senior lawyers to take urgent action to prevent the misuse of artificial intelligence after it was revealed that dozens of case-law citations have been put before courts that were either fictitious or contained made-up passages.

7: Notting Hill Genesis and United Living paid £550,000 in damages and costs for widespread fire safety defects in a Bermondsey development, including aluminium composite cladding material used in Grenfell Tower.

‘There’s a diminution of the migrant community’s ability to partake in civil society’

On 15th May 2025 the Haldane Society hosted Professor David Brotherton in London’s University of Law for a talk entitled: ‘United States of Deportation: the recent history and current status of deportation in the USA’.

Brotherton, a Professor at the John Jay College of Criminal Justice at City University, New York, has studied street

organisations and deportation in the US for more than three decades, winning multiple awards and authoring and editing several books about immigration, detention and deportation.

In the course of his work, Brotherton has appeared in over 200 immigration removal hearings as an expert witness, ‘nearly all CAT [Convention Against Torture] cases,’ he told the

meeting, ‘specialising in the Dominican Republic and Ecuador.’ Over time, the success rate in these cases has improved from roughly 5 to 45 per cent, ‘so they hate my guts’.

In 2016, an Immigration and Customs Enforcement (ICE) lawyer requisitioned 20 years of Brotherton’s travel documents and set up a six-month inquiry to prove his work ‘was all a fiction’ and ‘put the frighteners on me, and on the judge’.

The talk began with an explanation of how he came to be involved with deportation studies, describing his initial research on street organisations in New York in the mid-1990s and his discovery of the unreported mass deportation of Dominicans. The major drivers were Mayor Rudy Giuliani’s ‘zero tolerance’ policy, and the ‘draconian’ Illegal Immigration Reform and Immigrant Responsibility Act 1996.

Brotherton travelled to the Dominican Republic to interview deportees, rendered second-class citizens in their home country. He hosted the first conference on deportation in the Caribbean in 2003 and the first in the US in 2004, the latter under the title ‘The Invisible Crisis’.

Brotherton’s talk in London drew out the long history of



‘Clinton admitted the 1996 Act was the worst piece of legislation he ever signed off on. But he didn’t have to sign off on it’.

punitive migration and deportation laws in America, upon which President Donald Trump is building. He presented a timeline dating back to the Fugitive Slaves Acts of 1793 and 1850, and running through the Chinese Exclusion Act 1882; the alien land laws; the Palmer Raids of 1919-1920; the Immigration Act 1924; Japanese internment during World War Two; Operation Wetback in 1954; the

Talk plus Q&A In-person/FREE

UNITED STATES OF DEPORTATION

The recent history and current status of deportation in the USA

Speaker: David Brotherton
Criminologist and international migration specialist at John Jay College of Criminal Justice, New York City

Thursday 15th May
7pm to 8.30pm at the **University of Law**
14 Store Street, Bloomsbury, London WC1E 7DE

Reserve a spot: <https://bit.ly/3G0mSk5>

Haldane Society of Socialist Lawyers

June

10: An employment tribunal rejected discrimination claims by Deirdre O’Neill and Michael Wayne against the University and College Union for calling their film ‘Adult Human Female’ ‘transphobic’.

13: Barristers with civil and family legal aid practices in England and Wales find themselves struggling to pay bills as the Legal Aid Agency worked to update its systems following a data breach in May 2025 involving personal information of legal aid applicants dating back to 2010.

19: Three NHS workers launch a legal challenge against Barts Health NHS Trust, claiming its new uniform policy discriminates against them because of their pro-Palestinian and anti-Zionist beliefs.

20: Palestine Action members spray paint two military aircraft at RAF’s Brize Norton to ‘interrupt Britain’s direct participation in the commission of genocide and war crimes across the Middle East’, the group says.

21: The Treasury says that overseas aid cuts of £25 billion due in 2027 are immune to legal challenge. The latest cut, from 0.5 per cent to 0.3 per cent of gross national income, comes despite the Government’s legal commitment of 0.7 per cent.



Immigration Reform Act 1985; the Immigrant Responsibility Act 1996; and the Homeland Security Act 2002.

A critical role was played, Brotherton explained, by Democratic Party administrations, especially under Bill Clinton and Barack Obama, who he noted earned the title 'Deporter in Chief'. He said of Clinton that the president admitted the 1996 Act was 'the worst piece of legislation he ever signed off on. But he didn't have to sign off on it'. Various promises to repeal or change the legislation ultimately translated into Congress upping the penalties associated on three occasions.

Coming to the 'very, very harrowing' present, Brotherton described the situation for the migrant community as

'devastating'. Many 'are not coming to work, lots of migrant kids are not coming to school, they're certainly not reporting any illnesses to the hospital. There's a diminution of their ability to partake in civil society'.

In a chilling conclusion, he posed the question, 'What's the plan? Where are we headed?', arguing 'I don't think that [El Salvadorian dictator Nayib] Bukele... is the instrument. I think Bukele is the model for Trump. He passed three states of exception in order to get where he is today, and that's basically the only thing we're missing in the United States'. Brotherton flagged the implementation of the Alien and Sedition Acts as a particular danger.

However, he stressed that popular opposition is building. 'For example, the demonstrations we've had have been absolutely massive. The first one I went to I remember I thought it would be about 10,000 people, then I got there and it had to be up to 90-100,000 people'. May Day was 'packed to the gills' and was 'mostly young people'.

The Q&A focused on these last points, with attendees asking questions about the ICE budget, the scope of resistance available to communities, the role of the Democrats and the sentiment among Brotherton's colleagues

'The demonstrations have been absolutely massive... I thought we'd get 10,000... it had to be up to 90-100,000 people.'

'The Immigration and Customs Enforcement is a highly para-militarised force... basically Trump's Freikorps.'

about the state of democratic rights in the US.

Brotherton confirmed that there was real and broad concern among the legal professionals he worked with about the threat of dictatorship, describing ICE as a 'highly para-militarised force... basically Trump's Freikorps'. The head of ICE, Tom Homan, he added, was put in there by Obama!

Pointing to the threat of fascism represented by Trump and how it ran up against strong democratic traditions in America, Brotherton explained that 'one major characteristic of fascism is the end of voluntarism [...] everything from the unions to community boards to street associations [...] And that in America is completely unimaginable [...] Self-organisation is a big thing for them'.

Events will come to a crux, Brotherton predicted, around the November 2026 midterms, with Trump facing pressure now that 'his approval rating has fallen' since taking office. 'That's when we're going to get closer and closer to Bukele's state of exception', he said, adding later that Trump 'isn't going to change his mind' and will 'push as hard as he can.' The detention of Mahmoud Khalil was a clear example.

Of the opposition movement, Brotherton argued that 'resistance takes time to get going' but we are

seeing 'the emergence of a broad-based solidarity movement'. He noted that 'some of the most interesting instances of resistance have not been in the big cities; they've been in these much smaller areas', among migrants and citizens 'working side-by-side' on farms or in slaughterhouses.

He suggested the involvement of the trade unions would be a 'fillip' to this movement and pointed to the support received by arrested Democratic Mayor Ras Baraka, and to Alexandria Ocasio-Cortez and Bernie Sanders holding major rallies in 'Kansas and Nebraska and Nevada: areas which are not necessarily Democrat supporting, and they've had these overwhelming numbers of people'.

Asked how much life he thought was left in the Democratic Party, he explained it was 'very difficult to break out of [...] the two-party system', but that the 'crisis could be such' that something new emerges. 'Could it be the end of the two-party system? I don't know. We're in this no man's land. But it's happening very, very fast'.

What was 'percolating now' was a feeling that 'it's not just about resisting; you need a plan for the future - what's the alternative?' The key, he said, 'is where the youth move now'. There had been large movements around Occupy Wall Street, George Floyd and Gaza. 'Do you think all that just disappears. No, of course it doesn't. But they have to process it, those experiences, to meet the new moment'.

Thomas Scripps

A version of this report first appeared on the World Socialist Web Site.

23: Thomas White, a prisoner driven to psychosis after being jailed in 2012 under an indeterminate IPP sentence (for stealing a mobile phone) is finally moved to a hospital ward in Manchester after a six-year campaign by his family and supporters.

25: A report from the justice charity Appeal finds excessive use of joint enterprise trials. It includes people charged with murder despite only tenuous links with the crime. Cases were often based on speculation rather than facts.

'Behind Palestine Action...stands a darker puppeteer: the Islamic Revolutionary Guard Corps'

says Zionist campaign group We Believe in Israel, language echoed by the Home Secretary

26: Two police officers who were involved in the strip-search of a black teenager at her school in Hackney, East London, are dismissed after they were found to have committed gross misconduct. The search was 'disproportionate, inappropriate and unnecessary' said the police hearing.

26: The police criminal inquiry into the Post Office Horizon scandal is investigating more than 45 individuals, with seven formally identified as main suspects. The potential offences include perjury and perverting the course of justice.

Arresting LOs

Legal observers (LOs) are independent volunteers who attend protests to monitor and record police conduct and to provide information and bustcards to protesters. While LOs hold no special legal status, s.17(1) of the Public Order Act 2023 provides that 'a constable may not exercise a police power for the sole purpose of preventing a person from observing or reporting on a protest'.

Thomas (who asked to be referred to only by his first name) was LOing at the national demo for Palestine on 18th January when, at approximately 4:30pm, he was kettled by Metropolitan Police officers in Trafalgar Square, where public order conditions prohibited protesters from congregating. Kettling is itself a form of detention lawful only as a proportionate means of preventing protest-related offending such as violence and serious public disorder. Around 15 to 20 others were kettled, says Thomas, who attempted to communicate his role to officers but was ignored.

At approximately 4:50pm, officers apparently received instruction to arrest everyone in the kettle. Thomas was ordered to remove his LO bib before being arrested under s.12 of the Public Order Act 1986. 'My feeling', he said, 'was the police felt uncomfortable with me being walked through the crowd wearing an orange bib with "LEGAL OBSERVER" written on it'.

Arrestees were escorted from the kettle, placed on a coach and

each paired with an officer, some of whom, Thomas recalls, 'spoke freely about how many in the kettle should not have been arrested. One officer told another that the commander "didn't know what he was doing"'. The arrestees included a number of tourists visiting Trafalgar Square at the time of the protest.

Thomas was held overnight and interviewed the following day before being released on pre-charge bail, with conditions excluding him from Trafalgar Square, any of the boundary roads and any Palestine-related protests. Pre-charge bail was set until 10th February and extended to 18th April. On 26th March, Thomas was informed that no further action would be taken. He has instructed a law firm on a no-win-no-fee basis to advise on potential action against the police on grounds such as assault, battery and false imprisonment.

Over 70 people, including Ben Jamal, were arrested at the 18th January demo, with others, including Jeremy Corbyn, interviewed under caution. Thomas said: 'outside of the conditions not being lawful, and me not breaking these conditions, I am particularly keen to make my case about the crucial role of LOs as independent witnesses to state violence'.

Hana Curphey



Thomas attempted to tell police officers of his role but was ignored.

Learning from inquiries

On 18th June 2025, the 41st anniversary of the Battle of Orgreave, Not1More, a campaign group that supports frontline environmental defenders, and Leigh Day hosted a conference on public inquiries as a route to justice for communities. It was a transformative day of solidarity and discussion about the current state of inquiries and how they can be utilised to their full potential to hold public bodies to account.

On the first panel, 'Public inquiries: where are we now?', Sonali Naik KC explained how the role of inquiries into events of major public concern has vastly expanded from a parliamentary process in 1921 to a largely discretionary one independent from Parliament. With a wave of recent inquiries from Chilcot (the Iraq War) and Angiolini (the murder of Sarah Everard) to those concerning the Horizon IT scandal and Covid-19, questions abound as to their efficacy.

Considering that since 1990 over £1.5 billion has been spent on public inquiries, Naik asked whether they are a good use of public money and whether lessons have been learned and implemented. She suggested that inquiries could be 'more meaningful, if only they were given some teeth'.

Obstacles, failures and achievements

This was a recurring theme, with the second panel exploring the

obstacles, failures and achievements of inquiries into police misconduct. Donal O'Driscoll, a core participant in the Undercover Policing Inquiry (UCPI), described his experience as 'a rollercoaster' which has involved 'more ranting than success'. He reminded us that the nature of each inquiry is determined by its terms of reference, which may drastically limit the scope of an inquiry, and by key decisions by inquiry chairs concerning evidence and witnesses. The UCPI chair, for example, granted anonymity to multiple undercover officers, which was seen by many participants as unjustifiably protecting police perpetrators.

However, inquiries are in some respects powerful opportunities for institutional reflection and reform. Since Theresa May announced the UCPI in July 2015, the Metropolitan Police and Mi5 have released tens of thousands of documents, leading the former to publicly apologise and admit that the undercover unit used to sexually exploit women campaigners and undermine social justice campaigns 'should have been disbanded' 50 years ago. Yet while a win for the victims, with the UCPI costing £100m and rising, and already running seven years beyond schedule, should the truth be this expensive and delayed?

Suresh Grover, anti-racist activist and founder of the

June

26: Ukrainians who fled to the UK after the Russian invasion are being refused asylum by the Home Office on the grounds it is safe to return to Ukraine. Refusal letters typically state that the conflict-related risks do not meet the threshold for persecution under the refugee convention.

July

2: Karen Kneller, the Chief Executive of the miscarriages of justice watchdog the Criminal Cases Review Commission, resigns after serious failings in the case of Andrew Malkinson, who spent 17 years in prison for an offence he did not commit.

3: Police in London are accused of abusing their powers to curb protest, after a Greenpeace UK report shows that less than three per cent of arrests for conspiracy to cause a public nuisance in the past five years have resulted in prosecution.

3: Minicab drivers and their union, the Independent Workers of Great Britain union are launching legal action against Transport for London, claiming that long delays in issuing licences (needed to work legally) have damaged their livelihoods.

5: The Government's ban on Palestine Action (PA) comes into force after a High Court judge refuses to grant an injunction suspending the ban while legal action was pending. Lawyers for PA said that 'a vast number of individuals would fall foul of the proscription regime due to its lack of clarity'.

Southall Monitoring Group, also spoke about the stark reality of being a UCPI core participant. Before opting for an inquiry, Grover explained, 'you need to see whether you yourself, as an activist who is directly affected, gain anything from it'. Furthermore, he went on, because 'we don't have the political class on our side [...] the battle has to be won in the process'. He also highlighted the mystifying nature of inquiries, which inhibit public involvement. With large volumes of disclosure, core participants often find it difficult to understand the full picture without legal help.

However, it has not always been like this. Grover stated that in the 1970s there was enthusiasm for inquiries and a desire to learn lessons from them. However, according to research published in 2017, of the 68 public inquiries since 1990, only six have been fully followed-up by select committees to ascertain implementation of recommendations, if any, by government. Perhaps, then, there is a need for greater scrutiny regarding implementation, rather than novel alternatives.

Despite the challenges faced by core participants, an important message throughout the panel was the importance of being heard and receiving answers. O'Driscoll powerfully remarked that 'when you wake up and see the world for what it is, you can't go back'. 'Public inquiries are our only option', he concluded, at least for the time being.

Reimagining inquiries

The conference was a powerful day for reimagining how inquiries



could be improved. During the second panel, Elkan Abrahamson, Director of the Broudie Jackson Canter and a campaigner for the Hillsborough Law, suggested a variety of improvements including imposing criminal convictions for breaching the duty of candour; the use of position statements; a national oversight mechanism; and whistle-blower protection. Alternatively, Lee Marsons, Senior Research Fellow at Public Law Project, proposed the idea of utilising public services ombudsmen – and possibly creating a broad human rights-focused ombudsman – to reduce pressure on public inquiries and to remedy the legal aid deserts created by the 36 per cent decrease since 2007-08 in the Ministry of Justice's legal aid budget.

'A recurring theme was the need for stronger accountability mechanisms to implement recommendations.'

A recurring theme was the need for stronger accountability mechanisms to implement recommendations. Rosanna Ellul, Policy and Parliamentary Manager at Inquest, discussed the campaign for a National Oversight Mechanism, a new independent public body responsible for collating, analysing and following up on responses to recommendations arising from inquiries, inquests, reviews and investigations into state-related deaths. This could help rebuild public trust in the UK's investigatory framework.

This stood out as an essential reform, given the wave of preventable state-related deaths – from Hillsborough to Grenfell – highlighting the need for a people-centred inquiry system focused on providing comfort to bereaved families and ensuring it never happens again.

Beyond inquiries: diverse routes to justice

However, the law is not the only way to secure justice. During the inspirational third panel, speakers explored the importance of building solidarity outside of the inquiry process. Antonia Bunnin of Refugee Tales, an outreach project connected to Gatwick Detainees Welfare Group, provided the example of the 'walking inquiry', established to complement the Brook House Inquiry. A modern version of the *Canterbury Tales*, Refugee Tales hosts a walk every summer in solidarity with refugees, asylum seekers and people who have been held in immigration detention. They also publish detainees' experiences – a fifth volume was published last year – to document

the harsh realities of detention and to campaign against it. The power of grassroots groups in supporting legal change cannot be underestimated. As Ridy Wasolua, ex-detainee and a filmmaker at Refugee Tales, said: 'I continued to fight because I knew there was something to believe in'.

The arts can also be a tool to continue the memory of inquiries after they have ended. Sarah Kadri of LUNG, a campaign-led arts charity, uses theatre to highlight social issues. *The Children's Inquiry*, their most recent play, delved into the social welfare system and gathered children's experiences which are used verbatim in the script. This gives power to the voiceless outside of the law, which can amplify the experiences too often left out of the inquiry process.

Similarly, the People's Tribunal on Police Killings, an initiative led by Ken Fero, Samantha Patterson and the families of people who died in police custody, proves that there is power in the foundational purpose of inquiries, although the need for a 'people's' alternative indicates that official processes continue to fall short.

The continued importance of inquiries to communities affected by injustice should not be underestimated, as the recent announcement of an Orgreave inquiry demonstrates. Inquiries, then, can be meaningful, if only they were given some teeth. Often, short of system change, they are the primary route to obtaining answers for institutional failures and can, if done right, be a process which places the core participants, the people, at their centre.

Pippa Hill

7: Government ministers table amendments to the employment rights bill to prohibit the widespread practice by employers of using non-disclosure agreements to conceal unacceptable behaviour at work.

8: Asked to come up with proposals to tackle the backlog in the courts, one of 45 recommendations by Sir Brian Leveson is to limit trial by jury for offences that carry a maximum sentence of two years or fewer. It could affect thousands of defendants in England and Wales.

8: The Public Inquiry into the Post Office Horizon scandal reveals that at least 13 people may have killed themselves and that at least 59 more were driven to contemplate suicide. Over 10,000 operators are seeking redress, far more than the 1,000 who were wrongly prosecuted.

10: Grenfell Tower bereaved families and survivors accuse the Government of 'incompetence or outright indifference' after it paused investigations into possible bans from public contracts for seven firms criticised in connection with the fire.

16: The High Court rules that Northumbria Police were wrong to wear their uniforms in the Pride festival in Newcastle in 2024 and that the Chief Constable acted 'irrationally' and breached a duty of impartiality by supporting the event, which the claimant alleged supported 'gender ideology'.

Kathmandu: the 19th IADL Congress

Members of the Haldane Society of Socialist Lawyers are proud socialist internationalists. Haldane is a founder member of both the International Association of Democratic Lawyers (IADL), founded in 1946, and of the European Lawyers for Democracy and Human Rights (ELDH), founded in 1993. ELDH has members in 23 European countries.

The ELDH Co-Presidents are Italian lawyer Barbara Spinelli and Urko Aiartza from the Basque Country. The ELDH Co-General Secretaries are Thomas Schmidt, a trade union lawyer based in Duesseldorf, and Şerife Ceren Uysal, a Turkish lawyer. Bill Bowring serves on the ELDH Executive as its Honorary President, and as Haldane's International Secretary, along with Deepa Driver.

The IADL successfully convened its 19th Congress in Kathmandu, Nepal, from 18th-20th July 2025. Hosted by the Progressive and Professional Lawyers' Association (PPLA-Nepal), the theme of the Congress was 'The Role of Democratic Lawyers in Promoting and Defending Peoples' Rights, Peace, and International Law in the Face of Fascism, Genocide, Militarization, and Wars of Aggression'.

Over 250 delegates attended, including 128 from different national associations and more

than 120 from Nepal. The countries which participated both in person and online include those from Algeria, Austria, Bangladesh, Belgium, Brazil, Canada, Colombia, Greece, India, Indonesia, Italy, Japan, Lebanon, Malaysia, Nepal, Pakistan, Palestine, Portugal, Philippines, South Africa, South Korea, Spain, Togo, Turkey, the United Kingdom, the US, and Vietnam.

After formal greetings and introductions on the first day, the second day began with outgoing IADL President Jeanne Mirer giving a historical overview of the IADL's work and achievements, followed by Secretary-General Jan Fermon,

who outlined the Congress agenda. This was followed by a keynote address by Raji Sourani of the Palestinian Centre for Human Rights, who called upon democratic legal practitioners worldwide to intensify efforts against the ongoing genocide in Gaza and to employ all legal and political avenues to demand a ceasefire and pursue accountability. Sourani acknowledged the ongoing global efforts by Palestinian and solidarity movements and initiatives, such as the International Court of Justice genocide case filed by South Africa and the International Criminal Court arrest warrants against Israeli Prime Minister Benjamin Netanyahu and former Defense Minister Yoav Gallant, among others.

There were eight simultaneous Commissions: on Palestine; the struggle for women's rights: equality, non-discrimination and state responsibility; crisis in

'Delegates from 128 different associations attended the Congress in Nepal.'

international law and international system; fascism; Palestine (continuation); peace and war; the human right to a clean and healthy environment; and labor and labor rights.

Micòl Savia and Mohamed Randera were the two sole nominees for the Secretary General and Treasurer positions, respectively, and were elected by acclamation by the General Assembly. After voting by secret ballot, the Association's Commission on Elections officially announced Edre Olalia as the next President of the IADL. The General Assembly further elected Jeanne Mirer and the late Roland Weyl as Presidents Emeriti, recognising their significant contributions to the work of the IADL. There will be a Kathmandu Declaration, once it has been approved by the Bureau.

Thanks to the bequest from Barbara Cohen (see the obituary in SL 94, p.13) Haldane was able to send two delegates, Saskia O'Hara, who works at Public Interest Law Centre, and Ellen O'Neill, a pupil immigration barrister. They made a well-received contribution to the Commission on the struggle for women's rights, discussing the Supreme Court's ruling in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16 and EHRC guidance, with analysis of its legal and political impact, and the response of trans communities and allies. One of



Ellen and Saskia at the Commission.



The new IADL Bureau, Ellen O'Neill is second from left, bottom row.

July

17: The Court of Appeal quashes the convictions of Errol Campbell (now deceased) and Michael DeSouza – two men wrongfully prosecuted in the 1970s after being framed by corrupt British Transport Police (BTP) Officer Detective Sergeant Derek Ridgewell.

20: The Government announces a statutory inquiry into violent policing at Orgreave on 18th June 1984 during the miners' strike. Prosecutions for riot and unlawful assembly collapsed in July 1985 in the 'biggest frame-up ever' according to Michael Mansfield, one of the lawyers involved.

August

2: The Met Police is to more than double its number of operations that use live facial recognition, despite a lack of regulation governing its use. The technology matches faces caught on surveillance footage against a watchlist. It was also to be deployed at the Notting Hill Carnival.

522 Number arrested on 9th August for carrying placards that said: 'I oppose genocide. I support Palestine Action.'

259 The number of those arrested who were aged 60 or over.

4: A cyber-attack on the Legal Aid Agency has pushed the sector into crisis with much of the legal aid system still offline as services are being rebuilt. Barristers have not been paid, cases have been turned away and there are fears a growing number of firms could desert legal aid work altogether.

Turkey's environmental crimes

the stated priorities of the IADL for the forthcoming period is to 'eliminate all forms of gender-based violence and the full protection of the rights of women and gender and sexual minorities'. The inclusion of 'gender and sexual minorities' is a direct result of Ellen and Saskia's paper and the ensuing discussion. Ellen was also elected to the 48-member-strong Executive Bureau of IADL.

ELDH Executive Committee

The ELDH Executive Committee met online on 1st July 2025, with Haldane represented by Bill Bowring, along with representatives from Germany, Spain, Sweden, Switzerland and Turkey. Apologies were received from the Basque Country, Bulgaria, Catalonia, Greece, Italy, Netherlands and Serbia.

The International Fair Trial Day and Ebru Timtik Award took place in Brussels on 12th June 2025. The focus country was Tunisia, and the award was given to Ahmed Souab. ELDH was represented by Ayse Bingöl and Şerife Ceren Uysal. For the next Day of the Endangered Lawyer, in January 2026, the focus country will be the US. The International Human Rights Academy of the Aegean will take place on 28th-30th November 2025 in Izmir, Turkey. Haldane has participated in the three previous Academies.

The regular ELDH Executive meeting will have taken place online on 2nd September 2025. The agenda and link for the October meeting will be circulated to the Haldane Executive. All welcome!

● **Bill Bowring**, International Secretary, international@haldane.org or b.bowring@bbk.ac.uk

The Permanent Peoples' Tribunal held its 54th session in Brussels on 5th-6th February 2025 to examine the potential responsibility of senior Turkish officials concerning alleged crimes of aggression, war crimes and crimes against humanity in Rojava, north-east Syria, from 2018 onwards. These allegations included instances of environmental degradation.

Haldane Vice President Frances Webber served as President of the judicial panel and provides an overview of the proceedings elsewhere on pages 47-49 of this edition. This column addresses the environmental destruction discussed during the session.

Armed conflict is associated with negative impacts on the natural environment. Evidence was presented to the Tribunal referencing reports of significant environmental damage, such as illegal logging attributed to Turkish actors, as part of the prosecution's case. The evidence was based on a 2023 report by Syrians for Truth and Justice (STJ) and the Lëlûn Association for Victims in Afrin.

This report, which used interviews with residents, internally displaced persons, Syrian National Army members, relief workers and timber merchants, combined personal accounts with satellite imagery and open-source data analysis. It identified widespread deforestation in the Afrin region, noting that 114 forests experienced degradation due to illegal logging since 2018, with systematic clearing potentially affecting tens or hundreds of thousands of trees. Some reports attribute these activities to factions of the Syrian National Army, such as the Levant Front/al-Jabha al-Shamiya, which reportedly managed tree harvesting operations on Mount Barsa, selling timber in A'zaz, supplying NGOs for firewood in displaced person camps or transporting it to government-controlled areas where prices are higher. In several documented cases, Turkish military forces removed trees to construct military bases and create fire-lines. Satellite imagery illustrated the



reduction in tree cover at specific locations, and in some cases, such as Kafr Safra, also indicated the development of settlements in previously forested areas.

Forests provide ecological functions such as stabilising soil, retaining nutrients, and serving as carbon sinks. Logging has been linked to soil erosion, reduced soil fertility, increased flooding, elevated sediment levels in waterways, the release of carbon, decreased absorption of carbon dioxide, fragmentation of habitats, loss of biodiversity, and local species extinctions. Additionally, deforestation may contribute to food and fuel insecurity among communities dependent on forests for their livelihoods, resources, medicine, and building materials, and can result in displacement to urban centres and changes in cultural and spiritual practices.

Prosecutor Ezio Menzione presented evidence regarding attacks on energy and water supplies. Turkish military actions from autumn 2023 to January 2024 resulted in widespread outages that affected entire communities, including critical infrastructure such as water plants dependent on electricity for operations, during an ongoing regional water crisis. In 2021, Turkey had previously reduced the flow of the Euphrates River, contravening an agreed protocol established following complaints from Syria and Iraq about the impacts of Turkish dam

construction. As a result, the Tabqa Euphrates reservoir's level fell from 14.5 billion m³ to four billion m³.

The Alouk water plant, which resumed partial operations in September 2023 after nearly a year of inactivity, provided clean water to more than 610,000 individuals and supplied 30 out of 37 medical centres in the region, until it became inoperable due to attacks on electricity facilities. The plant is strictly a civilian installation with no military function or strategic importance, located in an area without nearby military targets or installations. Its operation is vital for public health and sanitation. Following disruptions, Doctors Without Borders reported that 52 per cent of camp residents were affected by diarrhoea or cholera due to lack of energy and clean water.

The Tribunal found substantial independent evidence supporting claims of intentional and systematic attacks on civilian infrastructure essential for water, energy, and health care provision. There was significant corroboration of these incidents. Moreover, Turkish Foreign Minister Hakan Fidan allegedly stated that civilian infrastructure constituted a 'legitimate target' for destruction, highlighting the extent of senior officials' disregard for international law. Environmental damage caused by illegal logging was substantiated by the 2023 STJ/Lëlûn report and satellite imagery.

Based on these findings, the Tribunal concluded that the actions of the Turkish state substantiate allegations of ecocide, reinforcing the need to establish its legal force and universal jurisdiction for state actors. As socialist lawyers, we also recognise the necessity to pursue civil legal consequences for ecocidal activities conducted by corporate entities. This Tribunal process exemplifies broader challenges related to climate change and biodiversity loss, underscoring the imperative for ecosocialist solutions.

Declan Owens, Ecojustice Ireland

13: Campaigners condemn plans in new police guidelines released today to disclose the ethnicity and immigration status of criminal suspects in the UK, fearing it may encourage focus on the racial background of suspects, and will lead to further far right conspiracy theories when information is not released to the public.

'It concluded the actions of the Turkish state substantiate allegations of ecocide.'



Far right
are not
welcome
in Epping

Justice for victims
and survivors

THE REAL ENEMY
ARRIVES BY
PRIVATE JET,
NOT SMALL BOAT

Refugees
welcome

stop
far right

Immigration white paper: more harm and wasted time

by **Ellen O'Neill & Alex Ferguson**

An 'absolute whirlwind' of change, 'almost impossible for lawyers to keep up with, let alone ordinary people' – this was how the Court of Appeal saw immigration law, practice and policy over 13 years ago (*DP (United States of America) v SSHD* [2012] EWCA Civ 365 at [14] and [1]). These comments were endorsed by the Supreme Court later that year, in *Alvi v SSHD* [2012] UKSC 33, which also noted the increasing complexity of the system. Lord Hope pointed to the expanding length of the Immigration Rules – having been only 17 pages long at their introduction, by 2012 they ran to 488 pages. A key driver of the growing complexity, he identified, was the introduction of the points-based system in 2008. Intended to simplify visa applications by assigning points for different attributes, it emphasised 'certainty in place of discretion [...] detail rather than broad guidance' (*Alvi* at [42]). Ironically, the judgment in *Alvi* – which required all substantive criteria for each visa to be in the Rules themselves rather than hidden in the thousands of pages of supplementary guidance documents – led to an increasingly prescriptive approach to the Rules, creating additional complexity, opacity, and sheer volume. By 2013, the points-based system had, in the Court of Appeal's phrase, 'achieved a degree of

complexity which even the Byzantine Emperors would have envied' (*Pokhriyal v Secretary of State for the Home Department* [2013] EWCA Civ 1568 at [4]). At the time of writing, the Rules run to 1,357 pages.

Yet this increasing intricacy and detail has not served its stated purpose. Instead the Rules have become more opaque. Immigration law has become a vicious cycle where frequent changes and complexification require a relentless game of catch-up with updates to application forms and guidance documents struggling to maintain coherence. Poor drafting leads to failure to properly apply the Rules, which in turn leads to legal challenge, which prompts redrafting, only for a dramatically different policy to be published in haste, beginning the cycle again. The result

'Immigration law has become a vicious cycle where frequent changes and complexification require a relentless game of catch-up.'

is a deep lack of legal certainty and inaccessibility.

Difficulty comprehending the Rules is a widespread issue. A recent brush with Appendix EU moved the Court of Appeal to describe it as 'a highly convoluted drafting approach that makes understanding it a real challenge for the most experienced lawyer, let alone for lay users', and to invite the Home Office to take steps to 'ensure that the standard of drafting within the Home Office becomes more professional' (*Mustaj v SSHD* [2025] EWCA Civ 663 at [12] and [77]). The Court went on to observe that 'too often Home Office Presenting Officers, or officials instructing counsel, themselves have no clear understanding of the Rules' (*Mustaj v SSHD* [2025] EWCA Civ 663 at [77]). As unsurprising as this is to anyone who has interacted with the Home Office, it is worth remembering what an extraordinary statement this ought to be. The people whose job it is to make and enforce the Rules cannot keep up with the whirlwind that they themselves have created. This is borne out by the most recent statistics from the First-tier Tribunal's Immigration and Asylum Chamber, which indicate that 41 per cent of appeals were granted, rising to 48 per cent of Human Rights appeals. As for the Upper Tribunal, data has not been available since the second quarter of 2021-22 'due to database migration'. >>>

>>> Much of the above is extensively detailed in the Law Commission's 2020 report on simplifying the Immigration Rules. But it is hard to identify a single one of the Commission's 41 recommendations which has been implemented at any point in the five years since its release. The Secretary of State and Prime Minister's introductions to the May 2025 White Paper, *Restoring Control over the Immigration System*, recognise some of these issues. They bemoan the chaos and complexity of the Rules, which the Home Secretary contends has caused the system to develop on the basis of 'decisions by the courts on individual cases rather than deliberate principles and rules endorsed by Parliament'. They promise a return to 'common sense' migration policy that delivers fairness and respects the authority of Parliament. But the solutions the paper identifies are vague. The future rules they loosely imply will prompt further essential and inevitable legal challenges and that vicious cycle will continue.

One key change is the proposal to double the standard route to settlement ('indefinite leave to remain') from five to 10 years. This will not apply to dependents of British citizens but is proposed to become the norm for most others. Characteristically, the White Paper itself did not specify how this would affect those already in the UK on a five-year route to settlement nor is it explicit on precisely which routes this will apply to. The Government has refused to clarify beyond describing the extended route as the 'default', but later briefed the press that this would indeed pull the rug up under those who have already begun building their lives here. The White Paper claims to seek to promote integration and recognises that delaying settlement delays an 'important step in integrating'. This proposal is by its own logic counterproductive. It promises that people will be able to 'reduce the qualifying period based on Points-Based contributions to the UK economy and society', and proposes a consultation period. What this means, how it will be quantified, and when, if at all, it will move from consultation to implementation are wholly unclear. It is difficult to fight the suspicion that 'earned settlement' exists as a catchphrase first and as a policy a distant second.

What is clear, however, is that expanding the points-based system will lead to greater complexity and therefore uncertainty, particularly when founded on unspecified notions of 'contributions to society'. It will also lead to hardship. A study by the IPPR, GMIAU and Praxis of the pre-existing 10 year route to settlement has shown that the precarity and instability that can arise from a life that can collapse with a single mistake on a form, or the lack of ability to pay thousands of pounds in fees annually, is associated with harm to employment prospects, health and wellbeing, household finances, social integration, and child development.

Under the new plans, some routes from entry clearance to settlement will require five applications with vast costs. At present, an application to extend leave on the basis of family life by two and a half years for a family of three costs £11,078 (£3,963 in application fees and £7,115 for the Immigration Health Surcharge). This goes far beyond covering costs – the Home Office succeeds in its stated

'The headline baiting "earned settlement" and "earned citizenship" proposals are just that – headlines, with no detail.'

aim to recover twice as much in fees as it spends on its 'customers'. In its most recent set out accounts (2023-24), UKVI made a profit of £1.38 billion in delivering what it describes as 'customer service', i.e. deciding applications. The costs are already exceptionally high by international standards, have risen exponentially in the past 20 years, and continue to rise each year. These proposals take the UK even further out of step with comparable countries.

Those with limited leave to remain cannot access state support except in a few immigration categories and unless they can demonstrate that they are destitute (or at immediate risk of destitution); that there are exceptional circumstances in their case; or that the welfare of children requires it. Fee waivers are available (for non-settlement human rights applications) but are difficult to apply for without representation (which an individual making such an application is unlikely to be able to afford). Refusal cannot be appealed and will end leave, putting people back to the beginning of the 10-year route. This will of course disproportionately impact the vulnerable, who are less likely to be able to

prove they have 'earned' earlier settlement. But among the justifiable alarm, the headline-baiting 'earned settlement' and 'earned citizenship' proposals are just that – headlines, with no detail.

Another significant and equally vague proposal is the promise to reform family migration and establish a new framework for the consideration of exceptional circumstances. The White Paper explicitly seeks to re-establish parliamentary control over the consideration of Article 8 claims. Whether the promised endorsement from Parliament will come in the form of new Rules or statute is not specified. Cooper's rhetoric here closely parallels that used by Theresa May when she introduced Statement of Changes HC194, which created Appendix FM, in 2012. Thirteen years ago, May claimed that 'the problem is that Parliament has never before been given the opportunity to set out how it believes it should be possible to interfere with Article 8 rights in practice. That meant the courts were left to decide the proportionality of interference with Article 8 rights themselves, in each and every individual case, and without the benefit of the views of Parliament'. Statement HC194 also introduced the Rules that formed the basis of the current framework for deportation and removal, later inserted as Part 5A into the Nationality, Immigration and Asylum Act 2002. If those provisions are anything to go by, uncertainty and extensive legal challenges are in store. Part 5A is notoriously poorly drafted and has therefore

The far right has been targeting hotels housing refugees such as the Bell Hotel in Epping, Essex...



required repeated and extensive consideration by the Court of Appeal and Supreme Court, which have consistently noted the shoddy work of its drafters (e.g. *NA (Pakistan) v SSHD* [2016] EWCA Civ 662; *KO (Nigeria) v SSHD* [2018] UKSC 53; *HA (Iraq) & Ors v SSHD* [2022] UKSC 22; and *Yalcin v SSHD* [2024] EWCA Civ 74).

The recycled rhetoric demonstrates the core of the issue: the Government's failure to face up to its (self-imposed) obligations in respect of fundamental human rights. The right have a clear answer – to derogate in immigration matters or leave the ECHR entirely. Reforming consideration of Article 8 claims will not prohibit the balancing exercise and consideration of the individual circumstances that is inherent in the Convention's principle of proportionality. We have little more to go on from the current administration than appeals to 'common sense' and 'fairness'. This is manifestly unsatisfactory. It might seem like common sense that a Palestinian family living in Gaza in July 2024 and applying to join their family in the UK would be able to demonstrate that refusal would have unjustifiably harsh consequences, and therefore that exceptional circumstances justified a grant of leave. This was the view of First-tier Tribunal Judge Seelhoff which was upheld on appeal in an unreported Upper Tribunal case published in January (*IA & Ors v SSHD* [2025] UI-2024-005295 & Ors (UT IAC)). The Government, however, disagreed. It prompted the Prime Minister to promise to close the

apparent 'legal loophole' the appellants had allegedly exploited. What loophole he is talking about is unclear – in the absence of an application form designed for applications outside the rules, the applicants had followed Home Office policy and used the form that most closely matched their circumstances, that of the Ukraine scheme. The White Paper confirms the exceptional circumstances test will be reformed but provides little clarity as to how.

As an example of how the Government has implemented immigration and nationality policy to date, we can consider the pre-White Paper changes to the 'good character' requirement guidance. In February, the Home Office revised their policy document in citizenship applications to say that individuals who had entered the UK without immigration permission or having undertaken a 'dangerous journey' to the UK would now 'normally' not meet the requirement to be 'of good character'. But if this would happen 'normally', that should imply that there ought to be some exceptional circumstances. The policy fails to cast light on what these circumstances might be. An example provided to assist decision makers throws together a set of facts in which some elements will be very common for applicants (being recognised as a refugee and having resided for 14 years in the UK, with no 'other' character issues), some much less so (being recognised as a victim of trafficking). It does not indicate the weight carried by different elements of this factual matrix or

whether all elements must be present for the applicant's illegal entry to be outweighed. In effect, this policy amounts to a blanket ban with the word 'normally' thrown in to avoid a challenge on the grounds of fettered discretion.

Following a pre-action letter from Wilson Solicitors, in April the Home Office committed to clarifying the guidance by the end of May. At the time of writing in early July, no changes have been published, no timeline is in place, and no one seems to know whether the Home Office still intends to make the changes it promised. A sentence in the guidance reminding decision-makers of the standard of proof literally ends in mid-sentence – '*you must be satisfied that an applicant is of good character on the ?*' [sic].

The lack of clarity brought by each of these recent changes makes it impossible for many applicants to make an informed decision about whether to risk the £1,630 on an application for citizenship or £3,029 for indefinite leave to remain. Whether they seek legal advice or not, both guidance and Rules are simply not clear, and liable to change at any time. The White Paper was an opportunity for the state to recognise its role in the deficiencies of the immigration system, and to develop one that actually works. Its failure to do so will continue to cause immense harm, waste time and money for everyone involved, and only distract from making good law.

Ellen O'Neill is a pupil barrister. Alex Ferguson will begin pupillage later this year.

...opposed by anti-racism and pro-refugee campaigners across the country.



Pictures: Jess Hurd

THE EMPLOYMENT

Not fair

by **Benjamin Matthes**

Among the many reversals and manifesto misses that have come to mark the present Labour Government's legislative agenda, few illustrate the gulf between promise and delivery so starkly as its treatment of Fair Pay Agreements in the Employment Rights Bill 2025. Overshadowed by broader battles over welfare cuts and foreign policy, Labour's quiet backslide on its most radical workplace reform has largely escaped the scrutiny it deserves. As the Bill assumes its final form, the absence of sector wide Fair Pay Agreements stands brazen – a squandered chance to fulfil its promise as a 'generational' change for working people.

The original pledge: a return to Sectoral Bargaining

When Labour released its *Employment Rights Green Paper* in 2022, the document's skeletal 16 pages belied one of the most far-reaching commitments to organised labour made by any major UK party primed for power in a generation: the promise to establish Fair Pay Agreements across the economy, secured through sectoral collective bargaining. This pledge, which drew directly from the Corbyn-era manifestos of 2017 and 2019, sought to re-centre workers and their unions as the key actors in negotiating the conditions that govern working lives.

Under this model, Fair Pay Agreements would require employers' associations and trade unions to negotiate binding minimum standards for entire sectors – covering not only wages and pensions but also working time, holidays, skills training, health and safety, DEI and the introduction of new technologies. In effect, Labour's promise aimed to rearrange the balance of power in industrial relations, expanding the reach of collective negotiation far beyond the shrinking pockets of union presence in individual workplaces.

This is not an untested ideal. For much of the twentieth century, sectoral collective bargaining formed the backbone of British labour relations. Rooted in a post-war consensus coined 'Collective-Laissez Faire', this system (reductively described) entrusted trade unions and employer federations with the task of setting the broad terms and conditions of work. At its zenith in the late 1970s, more than 80 per cent of UK workers were covered by union-negotiated collective agreements.

This arrangement would gradually unravel from the late 1960s onwards, as economic >>>



NT RIGHTS BILL

*Summer 2025: BMA
strike of resident doctors,
at Guy's and St Thomas'
Hospital in London.*

Picture: Jess Hurd

**£18.62/HOUR IS
NOT A FAIR WAGE
FOR A RESIDENT
DOCTOR**

 **BMA**

THE EMPLOYMENT RIGHTS BILL

>>> downturn, anti-union politics, shifts away from mass factory production and the diffusion of neoliberalism saw Thatcher's governments systematically dismantle collective bargaining through aggressive deregulation and anti-union legislation. In its place, the Blair years elevated the individual contract of employment to the primary mechanism for setting employment terms, as enterprise-level union recognition procedures of the Employment Relations Act 1999 offered little in the way of practicable rights for unions seeking to enter the workplace. Union membership and collective-bargaining coverage plummeted from around 82 per cent in 1979 to roughly 26 per cent today. This collapse in collective protection left workers reliant on a patchwork statutory 'floor' of rights accompanied by a law of contract generally ill fitted to adjudicate disputes in contemplation of the inequality of bargaining power inherent in the relationship between employer and employee.

In its 2022 pledge to at least partially revive the tradition of sector-level bargaining, Labour dangled the possibility of restoring a form of industrial relations and economic citizenship that decades of deregulation and anti-union policy had systematically dismantled.

How the Bill falls short

Three years on from the Green Paper's bold pronouncement, the Employment Rights Bill 2025 emerges as a cautionary study in political retreat. Stripped of its ambition for economy-wide Fair Pay Agreements, the Bill offers only a narrow, highly circumscribed version of sectoral bargaining, confined to two sectors: adult social care and school support staff in England, with similar arrangements permissible in Wales and Scotland, but only at the discretion of ministers.

The proposed negotiating bodies are carefully ring-fenced. Their remit is restricted to recommending minimum pay, conditions of employment, training and progression pathways, all subject to extensive ministerial oversight. Crucially, the government alone decides the membership of these bodies, limiting representation to recognised union officials and employer nominees, while retaining the power to set and constrain the scope of negotiations.

Key elements once promised – negotiations over diversity and inclusion, the management of technological change, dispute resolution frameworks, or the status of precarious workers – are now omitted outright. Any agreement reached must first be ratified by the relevant minister, who may amend its terms unilaterally or impose new terms altogether should negotiations fail. While pay terms may gain the status of statutory rights, other agreed provisions linger as implied contractual obligation.

Revealing, too, is the Bill's explicit disavowal of collective bargaining in law: these arrangements are excluded from the definition of collective bargaining under the Trade Union and Labour Relations (Consolidation) Act

1992. There is no independent arbitration mechanism should negotiations stall, no automatic right for unions to expand their reach into new sectors, no guaranteed facility time and no statutory footing for broader sectoral expansion without fresh primary legislation.

To be sure, the move to implement Fair Pay Agreements for social care workers and school staff should be taken as a victory – long and hard-fought – for sectors in dire need of better conditions of work. But Labour's backpedalling on its commitments to both these industries and, crucially, to those sectors that will not be covered, should not be overlooked. Taken together, these limits transform the potential for a structural recalibration of British industrial relations into little more a consultative exercise. They preserve the core tenets of the Thatcher-Blair settlement: an individualised labour market governed by contract law, supplemented by statutory minimums, with collective power confined to carefully delimited enclaves. In short, the Bill does not deliver the promised renewal of sectoral bargaining – it performs it.

'This Bill does little to reach the root causes of stagnant wages, rising precarity and the hollowing out of workers' voices across the wider economy.'

The stakes: why limited Fair Pay Agreements will fix structural fault lines

At its heart, the promise of sectoral bargaining is not about isolated pay uplifts for a select few industries; it lies in addressing the deep structural inequities that have come to define Britain's modern labour market. The Bill, in confining Fair Pay Agreements to two sectors under tight ministerial leash, does little to reach the root causes of stagnant wages, rising precarity and the hollowing out of worker voice across the wider economy.

The present state of work in the UK makes the inadequacy of this gesture painfully clear. The hyper-casualised labour market of today – characterised by zero-hours contracts, bogus self-employment, unregulated gig work, rising precarity, longer hours, stagnating real wages and stark inequalities – is broken. UK workers work the longest hours in Europe – including some 5.1 million employees putting in almost eight hours a week in unpaid overtime. Britain ranks as the eighth most unequal major economy in the OECD, with CEOs paid 73 times more than the average worker. The British working life is also counted among the longest in Europe, with the current retirement age of 66 slated to increase to 68 by 2046. We receive the fewest paid holidays than all but four European comparators.

Against this backdrop, the watering down of Fair Pay Agreements is not politically neutral. It emerges from a context in which Labour, traumatised by the zeitgeist of 1980s union antagonism, hesitates to fundamentally



disrupt employer-centric paradigms of labour regulation. The limited scope of the proposed Fair Pay Agreements functions, then, as a seal over fault lines that have long been left to widen. They do not furnish a path for unions to organise and negotiate sector-wide in other low-paid, insecure industries. They do not compel employers to cede genuine bargaining space or guarantee a meaningful seat at the table for workers to assert democratic control over their working lives. They do not correct the imbalance that leaves the individual worker bearing the brunt of economic risk, while rewards concentrate ever upwards.

They are largely a technocratic salve for a structural ailment – one that risks lending an aura of progressiveness to a settlement that remains fundamentally unchanged. For all the rhetoric of a ‘new deal for working people’, the Bill, as drafted, does not reclaim the principle that workers should bargain collectively and sectorally to shape the conditions of their labour. It acknowledges, and tightly manages, their right to be consulted – when, where and how ministers see fit.

The alternative: what genuine sectoral bargaining offers

To grasp fully what has been forfeited by Labour’s retreat, it is necessary to restate what genuine sectoral collective bargaining, wholly and widely implemented, can deliver – and why its revival could be key to addressing the entrenched inequalities and precarities of Britain’s modern labour market.

‘Sectoral collective bargaining makes fair pay and secure work realistic for more people.’

The case for wide-reaching sectoral collective bargaining rests perhaps foremost in its empirically grounded capacity to raise wages and reduce precarity for low-paid workers. Decades of evidence show that where bargaining coverage is broad, the wage floor rises with it: classic studies put union wage uplifts at 10-20 per cent, enough to shift millions out of the perpetual low-pay trap. This fairer wage floor boosts household security, cuts reliance on state support and feeds back into the economy through higher tax revenues and local spending. Simply put, sectoral collective bargaining makes fair pay and secure work realistic for more people.

But it is not just about pay – it is about who decides the terms of their own work. Who holds the pen. Who gets to say when hours stretch too long, when safety corners are cut, when dignity is traded for profit – the fundamental principles of representation, democracy and free association that amount to the very purpose of unionism, stretched to get more workers sat around wider tables. An economy where even half the workforce is protected by collective bargaining holds the promise of carrying workers’ voices from sector-level negotiations into the wider debate about the nation’s economic direction –

opening the door to a more genuine form of ‘economic democracy’. At the very least, sectoral bargaining reclaims work as a space of co-determination, pushing back against a one-sided model in which terms are imposed unilaterally by capital, mediated only weakly by statutory floors.

Comparative evidence underscores this potential. Germany and Sweden, for example, maintain coordinated wage-setting institutions that ensure broad coverage, wage compression and cooperative industrial relations that weather economic cycles far better than Britain’s fragmented model. The EU’s Directive on Adequate Minimum Wages now requires states with low coverage to strengthen collective bargaining mechanisms, recognising that wage fairness cannot be delivered solely through statutory minimums. New Zealand’s recent foray into Fair Pay Agreements, though politically a failure, illustrates that countries with eroded union density can still attempt to rebuild sectoral structures if the political will exists to defend them (no amount of sound design being capable of survival when consensus is thin and business interests are allowed an effective veto).

Genuine, large-scale sectoral bargaining remains one of the few credible options through which wages might be lifted sustainably, inequality contained and the dignity of democratic voice restored. By limiting Fair Pay Agreements to narrow enclaves, Labour’s Bill, in the immediate term, forfeits this opportunity.

A chance missed – but not lost

By confining Fair Pay Agreements to two tightly managed sectors, Labour has traded the possibility of recalibrating Britain’s industrial relations for a gesture that leaves intact the same contract-driven framework that has now long failed working people.

But the opportunity is not entirely extinguished. Lord Henty – who, together with Keith Ewing and the Institute of Employment Rights, has been instrumental in reviving sectoral collective bargaining as a serious proposition – is now pushing for amendments in the House of Lords. Labour, for its part, has signalled that it will review the success of the initial Fair Pay Agreements in social care and school support.

What remains clear is that the dogma of bygone economic orthodoxies cannot be allowed to anchor a sinking labour market – nor the lives and well-being of the workers it carries with it. As the decades-long shadow of anti-union governance recedes, the moment demands courage to fulfil the promise Labour once held out: to place dignified socio-economic empowerment and the collective amplification of workers’ long-silenced voices at the heart of our industrial settlement.

Benjamin Matthes is a trainee solicitor at an employment law firm



Many of the striking barristers picketing the Supreme Court in 2022 earned less than the minimum wage.

Picture: Jess Hurd

FOREIGN

PROGRESSIVE REALISM OR DEATH BY A THOUSAND CUTS?

by **Alex Papasotiriou & Zoe Bantleman**

Picture: Jess Hurd



*Secretary of State
for Defence John
Healey.*

N POLICY

'Progressive Realism': such is the name of the Labour Government's approach to foreign policy, as confirmed by the Foreign Secretary, David Lammy, in his Locarno Speech in January 2025 and elaborated on by the Attorney General (AG), Richard Hermer, in his 2025 RUSI Annual Security Lecture, a few months later. The policy asserts the commitment of Starmer's Government to international law, albeit with significant caveats. It is distinguished from 'romantic idealism' and from 'pseudo-realism', both held to be dangerous. Behind these characterisations, it is not at all hard to discern references to the left and the (far-)right, respectively. However, each is the subject of a different level of analysis in the AG's speech.

The cherry picking of international obligations in favour of national interest is condemned, less so in principle and more by association with Russia's politics. In another utilitarian and *a contrario* argument, the corrosion of the international legal framework is seen as beneficial to 'our enemies'. For these reasons, and before praising international law and its obligations as consistent with the national interest (again, they are useful), the AG considers that the approach of both 'romantic idealists' and 'pseudo-realists' are not just naive, but dangerous.

Utilitarianism aside, Labour's commitment to international law, and its criticism of a 'pick and mix' approach is a welcome development in the aftermath of its predecessor government's stance. The incompatibility of the Illegal Migration Act 2023 and the Safety of Rwanda (Asylum and Immigration) Act 2024 with human rights was not disputed by the legislators, who enacted these statutes in spite of it. Yet Labour's arguments in favour of adherence to international law focus mainly on those who oppose it. It is certain factions of the right who oppose the international legal framework as contrary to the national interest and call for not only absolute state power but its exercise in a manner that places the national interest starkly above the rights of individuals and minorities.

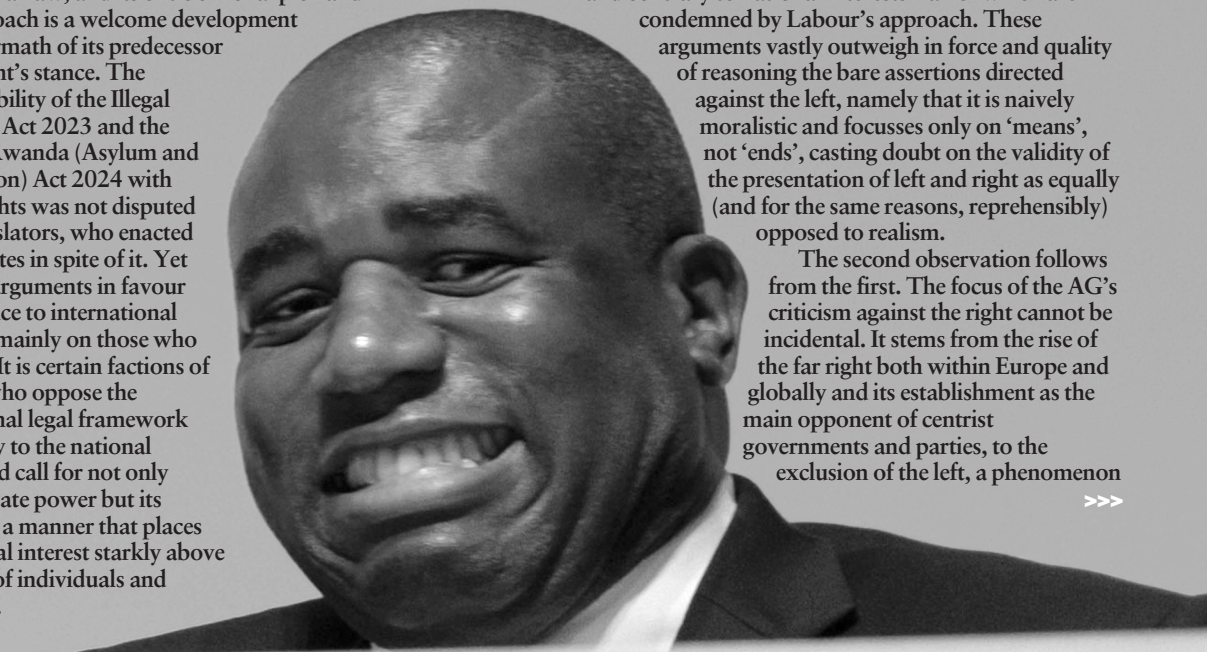
'The arguments against the "pseudo-realist" right's approach vastly outweigh in force and quality the bare assertions against the left's "romantic idealist" approach.'

Two observations can be drawn from Labour's ostensibly balanced criticism of views on both the left and the right.

The first is the fallacy of the 'horseshoe theory', a centrist view suggesting that the left and the right have considerable similarities and advocating for the rejection of both on that basis. As mentioned previously, whilst the AG's lecture expressly disavows equally the 'idealist' left and the 'pseudo-realist' right's approach to the international rule of law, the four reasons proffered for that stance are directed against the latter: it is the right that advocates for a selective approach to international law; that disregards the effect of the disintegration of the international legal framework; that considers international law an affront to state sovereignty and contrary to national interests – all of which are condemned by Labour's approach. These arguments vastly outweigh in force and quality of reasoning the bare assertions directed against the left, namely that it is naively moralistic and focusses only on 'means', not 'ends', casting doubt on the validity of the presentation of left and right as equally (and for the same reasons, reprehensibly) opposed to realism.

The second observation follows from the first. The focus of the AG's criticism against the right cannot be incidental. It stems from the rise of the far right both within Europe and globally and its establishment as the main opponent of centrist governments and parties, to the exclusion of the left, a phenomenon

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Foreign Secretary
David Lammy.

>>> for which the left needs to explore and address its culpability.

What is, therefore, the criticism levelled against the left, or 'romantic idealists'? The adherence to moral principle without anything else, particularly without focus on the practical benefits of such an approach. This is seen as contrary to the reality of the 'world as it is'. But what is that reality and by whom is it defined? Is it the reality whereby economic stagnation was presented as a consequence of the UK's membership of the European Union, which in turn led to Brexit? Or is it the latest reality, whereby 'uncontrolled' migration, including from places where the UK has pursued extractive and colonial policies, has not only made Britain 'an island of strangers', but is at the heart of its fiscal problems?

We would argue that the reality is different. It is the failure of capitalism. It is the West's exploitation of foreign resources leading to the impoverishment of local environments and populations, the latter of whom have to resort to emigration. It is labour shortages, which necessitate immigration. However, whether one agrees with that being the reality or not, there can only be one observation: reality is defined by those with power. Being a proponent of realism is easy when you define reality. Such an approach has, nonetheless, been criticised by legal philosopher Jürgen Habermas, who stated in the aftermath of 9/11: 'On the basis of the citizens' equal rights and reciprocal respect for each other, nobody possesses

'Populism is both painted as a threat to human rights and used to critique the courts who have failed to consider 'public sentiment' (as presented in populist politics and the media).'

the privilege of setting the boundaries of tolerance from the viewpoint of their own preferences and value-orientations'.

Therefore, as critical legal thinkers and practitioners, we are not the AG's 'romantic idealists', myopic deontologists, who levy the ethics of international law as 'pious priests'. We are not originalists who call for the law to be frozen in time, who argue it is complete and has foreseen every problem, who fail to provide evidence-based criticism or recommendations for its improvement within an historical space, who believe the legal space has eliminated the political space. We are conscious and critical of the colonial origins of international law, the violence it condones and upholds, under the guise of a moral compass. We draw on international law to resist and constrain the abuse of power, even if it does not go so far as dismantling systems of oppression. However, we are not so 'pragmatic' and Machiavellian as to remain silent in the face of oppression, on the basis that diplomacy might more effectively produce results.

Labour's caveat to upholding international law is that it 'must be critiqued and where necessary reformed and improved' in order to address new situations. Importantly, 'institutions should not, without state consent, bend existing rules and obligations to make decisions or trade-offs that are far more effectively and legitimately dealt with through political and diplomatic means'. Therefore, it is not the lawyer who is the intended bearer of the 'romantic idealist' title. It is, first and foremost, the international institutions, such as courts, treaty bodies, and commissioners, which the AG politicises: 'States agreeing to treaties some time ago did not give an open-ended licence for international rules to be ever more expansively interpreted or for institutions to adopt a position of blindness or indifference to public sentiment in their member states.'

The intention appears to be to create a fertile ground for the Labour Government to seek to (re)interpret international law, if it is politically advantageous, to not be bound by the Strasbourg Court's interpretation, when it has voluntarily agreed to be bound by it – in essence, to have one's cake and eat it.

The Lord Chancellor Shabana Mahmood's recent speech, at the Council of Europe on 18th June 2025, is even more explicit. It builds upon the Prime Minister's February admission, from the despatch box, that Article 8 of the European Convention on Human Rights (ECHR) was being reviewed, following the Home Secretary losing a case involving the right to respect for the family life of a Gazan family. Her speech affirms the recent immigration White Paper's promise of a new Article 8 framework by year-end and indicates an intention to 'clarify' (i.e. limit) the invocation of the right to family life by foreign nationals who commit crimes.

The argument from the Lord Chancellor, and the underlying threat, is that if we do not (at least domestically) restrictively reinterpret the rights of 'rule breaker' migrants, 'those who would undermine the entire idea of universal human rights – the populists – will seize the space we leave behind'. Therefore, populism is both painted as a threat to human rights (for the rest of us, 'rule followers') and used to critique the courts who have failed to consider 'public sentiment' (presumably, as presented in populist politics and mainstream media).

However, the Lord Chancellor completely fails to acknowledge that these 'rules' were made by this and prior governments. They include rules criminalising people arriving here without prior authorisation to seek asylum, in complete disregard of immunity of penalties for refugees under international law. The need to now domestically reinterpret international law is, therefore, in part created by prior, poor faith domestic interpretations of other international laws – it is a self-fulfilling prophecy. They also include rules which impact the socio-economically disenfranchised, who are British in all but citizenship, having lived here almost all of their lives, been shaped by British culture and society, and failed by the British welfare, education, and criminal justice systems, before being 'rehabilitated'.

Despite the AG's critique of the right's Schmittian exceptionalism, these individuals are painted as the



Attorney General
Richard Hermer.



Lord Chancellor
Shabana Mahmood.

Pictures: © Lauren Hurley / Flickr

enemy, the *other*, the stranger, who must be carved out as the necessary exception to universal human rights. Such notions of distinction and conflict between friend and enemy were, ironically, central to Schmitt's political philosophy: the stranger 'must be repulsed or fought in order to preserve one's own form of existence'.

Similar views are echoed across Europe, for instance in the contents of a letter dated 22nd May 2025, signed by a number of European Presidents and Prime Ministers, on the initiative of Denmark and Italy. This also criticises the Strasbourg Court's interpretation of the ECHR, describing it as extending its scope beyond what was originally intended, resulting in shifting the balance between protected interests. Examples given include, unsurprisingly, purported 'limitations on the states' ability to decide who to expel from their territories'.

The inconsistency in this reasoning is obvious: one cannot, on one hand, condemn a cherry picking approach to international obligations and, on the other hand, describe the interpretation and enforcement of such obligations by international institutions as '*bending the rules*'.

In a recent article for *The Spectator*, Richard Ekins has argued, '[n]ot every international obligation is made equal and it has always remained open to sovereign states to determine when or whether to comply with a particular obligation, a calculation that should of course consider the relative importance of the obligation and the likely reaction of other states'. However, Ekins fails to address the fact that, if a state does not wish to be bound partially or fully by a particular obligation, it remains open to the state to make a reservation when signing, ratifying, accepting, approving or acceding to a treaty – this avoids what he accepts to be an 'unconscionable' act of voluntarily agreeing to be bound when not intending to comply in good faith.

If there is concern over Parliament's role in ratifying treaties (which can be done without debate or vote, as we saw in the UK's Treaty with Rwanda, to which Ekins had no objection), consideration can be given to the extent of the executive's prerogative powers, rather than Parliament invoking its sovereign powers to make domestic law in poor faith. This avoids the impasse David Wolfson raised in response to the AG's speech of a Minister being faced with ignoring either a statutory or a treaty obligation. Furthermore, if there is such an impasse, it is not insurmountable: statutory provisions that fail to interpret international law in good faith can be repealed or amended; sovereignty can also be exercised in that way.

Parliamentary sovereignty and the UK's dualist system have often been raised to support arguments against upholding international law and presented as pinnacles of

democracy: for example, Ekins continues, 'in a democracy, it must remain open for elected parliamentarians to deliberate about the national interest, to which international order is highly relevant, and to decide what must be done'. In practice, Parliament's ability to legislate contrary to international law without judicial interference, given that only national law is enforceable by the courts, is capable of further diluting the separation of powers and enabling authoritarian governing within democratic systems. This is the danger of deploying the UK's constitutional idiosyncrasy to diminish the value and

'When politicians publicly disparage judicial decisions as though they are an abuse of the executive's absolute power, that is a distortion of the rule of law.'

importance of international law, particularly where fundamental human rights are concerned. Forms of such 'illiberal constitutionalism' have been observed in both Europe, with Hungary and Poland, and the USA, with Trump disparaging constitutional values at the same time as invoking the First Amendment and with the executive and judicial re-interpretation of established rights to align with conservative and nationalist politics.

In the wake of such practices, the existence of an international court and its independence – not least on account of its lack of proximity with the domestic state of affairs – affords superior protection to human rights than that offered domestically by the, corroded in practice, separation of powers. Corroded indeed, when politicians from both the Government and Opposition publicly disparage judicial decisions as though they are an abuse of the executive's absolute power, itself a distortion of the rule of law. The interpretation and enforcement of the law is constitutionally a matter for the domestic courts. Equally, the Contracting Parties are bound by the ECHR as interpreted by the Strasbourg Court, whose jurisdiction to interpret it was, in turn, agreed by the Contracting Parties and enshrined in the ECHR. An attempt to influence that jurisdiction by criticising it as overreach is but a veiled attack on its independence and impartiality; it falls short of openly disregarding its authority, whilst unduly attempting to interfere with it. Even more fundamentally, it leaves *pacta sunt servanda* ('agreements must be kept'), the principle underpinning international agreements, in tatters. As the AG himself says, 'if you enter a contract you should comply with it... if you sign a contract then you cannot unilaterally choose to comply with some terms but not others'.

Labour's attempt to theorise a progressive realist approach to international law is, thus, not only conceptually flawed, it risks reproducing the very problem it seeks to redress – international law losing its functional value. However, rather than wholesale reneging on (or withdrawing from) our obligations and corresponding protections, it proposes reshaping them to serve political will, presented as the public interest: death by a thousand cuts.

Alex Papatotiriou is a barrister at Richmond Chambers, whose practice involves complex advisory work, drafting and appearing before the courts and tribunals in all matters of UK immigration and nationality law. Zoe Bantleman writes in a personal capacity. She is a barrister, Legal Director of the Immigration Law Practitioners' Association (ILPA), and an editor of the *Journal of Immigration, Asylum and Nationality Law*.



Picture: Jess Hurd



NO TO TRUMP'S STATE VISIT

Wednesday
17th September
2pm London
Embankment
5pm Rally

**Socialist
Lawyer**

Magazine of the Haldane
Society of Socialist Lawyers
Issue 98, 2025-2
www.haldane.org

The orange emperor's nightmare

by Robert Lizar

On the Gaza Riviera lies the luxury town of Saint-Trumpez,
Private yachts gloat in the harbour, exclusive hotels adorn the bay,
They're all luxuriously furnished, it's an exclusive beach resort
(The fishing boats have disappeared, and no one recalls the port),
The ensuites are palatial, each one's an emperor's dream,
Bathroom taps glint bright with gold, while the water gushes green.

This brand-new town is clean from top to bottom, cleansed with every care,
Nothing can upset the tourists; there's no trouble anywhere.
The helicopter police are circling, always droning overhead,
And through the night the searchlights guard against the raising of the dead.

By night, there's a ghostly moaning and an angry orange breeze,
That blows through artificial orchards, filled with artificial trees.
By day, admire the brilliant plumage of the artificial birds,
And hear the soothing buzzing of the artificial bees.

On sand as fine as bone meal, rows of bodies glisten on display,
Tanning, oh so gently, white to brown, as the sunlight shrouds the bay.
Drinking water is imported for a very reasonable fee,
And all the advisory notices say, 'No swimming in the sea'.

The local market sells fresh watermelon, olives, figs and grapes,
They're all flown in from Florida in the cleanest orange crates.
Back street gift shops trade metal fragments from a now forgotten war,
But local historians cannot tell us what the killing all was for.

The real estate's a great investment, the apartment values soar,
Don't worry, no risk of your discomfort, from the presence of the poor.
It's a vision of perfection, the property developer's pure dream,
Hush child, now! His sleep must never be disturbed by your agonising scream.

But soon the hurricane will return, to blast Trump's nightmare Frankenstein,
Then the world's weather team must honour that storm, by its true name – Palestine!

Why we cannot build our way out of this prisons crisis

by **Jodie Anderson**

Prisons in England and Wales are full. By June 2025, capacity reached 98.9 per cent (87,919 people). Space is predicted to run out in early 2026, overflowing like a neglected bathtub whose taps were left to run by successive governments over decades.

Since 2023, eight prisons have been subject to 'Urgent Notification' by His Majesty's Chief Inspector of Prisons – a formal alert to the Lord Chancellor and Secretary of State for Justice indicating serious, immediate concerns. A 2024 inspection from Bedford Prison documented extensive damp, mould, flooding, and infestations of rats and cockroaches. Prisoners were locked in their cells for up to 23 hours a day, often without education, training, work or even fresh air.

On the sharp end of this crisis are the people in prison. In the year ending March 2025, 399 deaths were recorded in prisons – a 37 per cent increase from the previous year. 91 were self-inflicted. Self-harm reached the highest rate since records began in 2004. Most disturbingly, almost a quarter of these incidents occurred within the first 30 days of imprisonment.

The myth of rehabilitation

The gap between what prisons represent in the public imagination and how they exist in reality, is stark. While some believe prisons are places of accountability and rehabilitation, the reality is these institutions are debasing, marked by cruelty, degradation, systemic indifference and neglect. In 2018, as David Morgan was overdosing in a holding cell at Chelmsford Prison, staff ignored the medical emergency and mocked him while he lay dying. The notion that prisons are places that can punish and rehabilitate people into productive members of society is a myth that could not and has never been realised. 59 per cent of adults released from a sentence of 12 months or less reoffend within a year. Is it time we accept that the prisons project has failed?

Roots of the crisis

The current prison crisis did not emerge overnight. The prison population of England

and Wales has doubled over the last 30 years. Driven not by a corresponding rise in crime (the Crime Survey for England and Wales reports that overall crime rates have fallen by 75 per cent since the mid-1990s), but by political decisions to criminalise poverty, mental ill-health and drug and alcohol dependencies. The Vagrancy Act 1824, which criminalises homelessness and begging, is still on the statute books while courts routinely impose short custodial sentences for repeat theft offending – all exacerbated by austerity and a perpetual cost of living crisis.

Successive Labour and Conservative governments have embraced a carceral logic, prioritising criminal justice over social justice. As social housing, healthcare, women's services, education and welfare were gutted under austerity, the prison estate grew. It serves as a holding pen to further punish those on the political and economic margins of capitalist society, falling through the threadbare social safety net. This form of human warehousing offers neither safety nor justice. Instead, it obscures the visible consequences of decades of ideologically driven neo-liberal policy failures – allowing society to blame individuals for their failures rather than the system.

While Ministry of Justice data does not record social class in mainstream prison >>>

'The prison population has doubled over the last 30 years – overall crime rates have fallen by 75 per cent.'



Picture: Janet Evans

>>> demographics, those from the most deprived areas of England are 10 times more likely to be imprisoned than those from the least deprived. 47 per cent of prisoners entered custody with no formal qualifications, vastly exceeding the 1.5 per cent in the general population.

The decimation of public services has coincided with decades of penal populism. Soaring sentence inflation, the use of notoriously cruel indeterminate Imprisonment for Public Protection (IPP) sentences, convictions under joint enterprise, harsh recall policies, court backlogs increasing the number of people held on remand – all reflective of a broken system.

And who decides what is criminal behaviour? The ‘justice’ system is not a neutral arbiter of crime or public safety. Acts of immense social harm committed by corporations, governments and elites are routinely overlooked or excused. On 14th June 2025, we marked eight years since the Grenfell Tower fire, which resulted in the deaths of 72 people. Despite clear evidence of corporate and state negligence exposed by a public inquiry, not a single conviction has been secured. Yet still, it is the working class, homeless, migrants, ethnic minorities and mentally ill who are paraded as the face of criminality. Social constructs of prisoners as the only criminals obscure the far greater corrosive harms and crimes committed by billionaires, corporations, the ruling class and political elite.

Ignored warnings

The writing has been on the prison wall for decades. Independent reports and reviews on criminal justice have made some limited proposals (see: the Corston Report – on women in the criminal justice system (2007), the Harris Review – on deaths of children and young people in custody (2015) and the Lammy Review – on BME offenders (2017)). However, entrenched bipartisan views on law and order continue to sideline more transformative ideas.

Most recently, in May 2025, former Justice Secretary David Gauke published an independent sentencing review calling for the scrapping of short sentences, earned early-release schemes and community-based sentences rooted in expanded surveillance and technology. However, the review failed once again to grapple with the fact that structural change is needed to address the routes into the criminal justice system.

‘True change means diverting the criminal justice budget from a failed expansion project...’

The deadly cost of the crisis

In February 2025, joint inquests concluded into the self-inflicted deaths of three men at Lowdham Grange prison within a 37-day period. The jury found a litany of systemic and individual failings had contributed to their deaths. The Coroner also raised concerns that staff were still ignoring critical suicide prevention guidance – obscured cell observation hatches – despite a previous inquest raising the same issue in 2020.

This institutional neglect is the norm. Prisons repeatedly fail to act on inspection reports, inquest findings and ombudsman recommendations. Promises are made, action plans are signed off and yet the deaths continue.

HMP Wandsworth has become the ugly face of the prison crisis – a symbol of a crumbling system. At Wandsworth, an unannounced inspection in 2024 revealed failings ‘at almost every level’ of prison operation. By May 2025, Wandsworth had recorded the second highest number of self-inflicted deaths since January 2020. 17 of the 20 men who took their own lives were on remand – meaning they had not yet been convicted or sentenced.

Prisoners in clear mental distress are routinely ignored by staff, 40 per cent of emergency cell bells are not answered within five minutes. Raj Singh died only 12 days into his sentence at Wandsworth prison, in 2023. He had pressed his emergency cell bell, but it was left unanswered for 30 minutes. When staff eventually came to Raj’s cell it was too late. He had ended his life.

Despite evidence that Wandsworth is beyond repair, last year the Government announced a £100 million investment in the prison. It is a grotesque irony that while food banks multiply and youth services vanish, the Ministry of Justice and HM Prison and Probation Service’s projected cost of the prison expansion project is between £9-10 billion. A commitment to expansion simply ignores the reality that we are not suffering from a shortage of cells, but from a surplus of poverty and inequality, and a lack of imagination

about what it takes to truly cut crime.

If the Government is genuinely committed to reducing the prison population and addressing the harms caused by crime, it will halt the prisons expansion project with immediate effect.

Towards harm reduction and transformative justice

The evidence is overwhelming: prisons cannot be reformed. They exacerbate harm, increase vulnerability to violence and drug dependencies and fail to rehabilitate. Most people entering the prison population today will be released, not rehabilitated, but as traumatised and institutionalised individuals.

Yes, short-term reforms are urgently needed: abolish short sentences, end the overuse of remand and recall, resentence all IPP prisoners to fixed terms. But these measures alone are not enough.

Tackling the root causes of crime requires a radical reimagining of justice. We must shift from punishment to prevention.

As my own family put it following the self-inflicted death of my cousin Marcus at HMP Birmingham in 2018 – one of eight deaths in the prison that year: ‘Our family know that prevention is better than cure. We have lost two brothers, who were both excluded from school. As we know, thousands of working class boys are excluded or off-rolled from school; many with Special Educational Needs and many vulnerable. Many will end up in prison. Education, and crime and punishment for the middle class bears no resemblance to how we the working class experience them. This needs to change.’

True change means diverting the criminal justice budget from a failed expansion project, into housing, health services, drug rehabilitation, education and employment. These are not luxuries but the basic material conditions for social stability and personal dignity. Where these exist, the drivers of crime are dramatically reduced.

Prisons in England and Wales are in crisis – but the crisis is not one of spending, space or staff. The crisis is ideological. Breaking free from this requires a radical political shift – one that challenges how harm, safety, justice, and accountability are defined, and who gets to define them.

Jodie Anderson is a Senior Caseworker at the charity INQUEST. She was previously a criminal defence barrister at Garden Court Chambers



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at law, in respect of loss of
or damage to any vehicle,
its contents or accessories.

By Order, Governor



Transness and the chimera of biological sex

On 16th April 2025 the Supreme Court (UKSC) handed down judgment in *For Women Scotland Ltd v The Scottish Ministers* [2025] UKSC 16. Lord Hodge, Lady Rose, and Lady Simler wrote the leading judgment, Lords Reed and Lloyd-Jones agreeing. **Uther Naysmith** provides a summary of the judgment followed by a critical commentary.

Pictures (from Trans Pride 2025): © Jess Hurd

Background

The Gender Representation on Public Boards (Scotland) Act 2018 (the 2018 Act) provides for positive discrimination on public boards aimed at achieving a quota of 50 per cent women non-executive members. Under s.2, the definition of 'woman' included people who hold the protected characteristic of gender reassignment who are living as a woman and who propose to undergo or have undergone a process 'for the purpose of becoming female', i.e. transgender women. This definition was overturned as being outside the legislative competence of the Scottish Parliament since it impinged upon the definition of a protected characteristic. In response, the Scottish Ministers issued guidance stipulating that transgender women in possession of a Gender Recognition Certificate (GRC) were women under the Equality Act 2010 (EqA) and therefore counted as women for the purposes of the 2018 Act.

For Women Scotland (FWS), a campaign group organised around the belief that a person's sex at birth is immutable, sought to overturn this guidance as being based

'The Court adopted a terminology

on an error of law and outside the competence of the Scottish Government. The Outer House of the Court of Session dismissed FWS's case on the grounds that under s.9(1) of the Gender Recognition Act 2004 (GRA), a GRC changes a person's sex for all purposes. The Inner House of the Court of Session upheld the Outer House's judgment, since s.9(1) operates unless (a) there is a specific exception within the GRA itself, or (b) the 'terms and context' of a subsequent enactment require a different interpretation. Crucially, the Inner House held that a subsequent enactment can only disapply s.9(1) GRA explicitly, or if its terms are rendered 'meaningless or unworkable' were s.9(1) to apply. The Inner House held that this threshold was not met by the definition of sex in the EqA, except potentially in the case of provisions relating to pregnancy and maternity. FWS appealed to the UKSC.

The UKSC judgment

The Court adopted a terminology of 'biological' sex as the sex one has at birth: a transgender woman is a 'biological man' and a transgender man is a 'biological woman' [6]. The



gy of ‘biological’ sex as the sex one has at birth...’

Court noted that ‘biological sex’ is ‘widely used’ and contrasted ‘biological sex’ to ‘certified sex’ or ‘acquired sex’ (sex acquired by obtaining a GRC) [7]. The Court then laid out its approach to statutory interpretation [9]: Passages in a statute derive meaning from the context of the entire statute. The words themselves were the primary source by which the meaning was ascertained; external aids played a secondary role but ‘cannot displace the meaning of words’ which are ‘clear and unambiguous’ and do not produce absurdity. Where there is doubt about the meaning of the words, the Court will give significant weight to external indicators of Parliamentary purpose [11]. Where a word is used throughout an Act, there is a presumption that that word has the same meaning throughout [13].

Section 9(1) GRA stipulates that where a full GRC is issued to a person, their ‘gender becomes for all purposes the acquired gender’ so that if the acquired gender is ‘the male gender’, the ‘person’s sex becomes that of a man’ and if the acquired gender is ‘the female gender’, the ‘person’s sex becomes that of a woman’. Under s.9(2) a GRC operates ‘for the interpretation of enactments passed [...] before the

certificate is issued (as well as those passed or made afterwards)’. S.9(3) provides that s.9(1) is subject to ‘provision made by this Act or any other enactment or any subordinate legislation.’ In other words, s.9(1) applies unless s.9(3) applies [156]. The Court held, contrary to the Inner House, that the s.9(3) exception must not be interpreted as establishing a test of necessary implication [101]. The principle of legality does not apply, since the GRC procedure to change sex is not a common law or constitutional right [102]. The blanket provision of s.9(1) must be ‘carefully considered in the light of the wording, context and policy of the statute in question’, and in order to ensure legal coherence a stringent test for the application of the s.9(3) exception is unhelpful [108].

The EqA is both an amending and consolidating statute, reforming and harmonising equality law [113], protecting people from discrimination on the grounds of protected characteristics and seeking to strike a balance between conflicting rights [151] by imposing duties on individuals and organisations not to discriminate [152]. Sex, as a protected characteristic, must be interpreted in a predictable

way capable of being consistently applied by duty-bearers [152]. The group-based protections of the EqA recognise that people sharing a protected characteristic have ‘common experiences or needs’ arising from biological or physiological differences as well as societal expectations or structures; where these shared experiences are not taken into account, particular disadvantages arise for the group [153]. Clarity and consistency in identifying relevant groups is thus, the Court explained, ‘essential’ to the operation of the EqA [154].

The EqA does not contain any specific provision relating to s.9(1) GRA. The Court therefore had to determine if the word ‘sex’ in the EqA means ‘biological sex’ or ‘certified sex’ [158]. If ‘sex’ in the EqA could only be coherently read as meaning ‘biological sex’ then the s.9(3) GRA exception would apply [160]. The test is whether a ‘certified sex’ reading renders

provisions of the EqA incoherent or gives rise to an absurdity; an interpretation producing unworkable, impractical, anomalous, or illogical results is unlikely to have been intended by the legislature [160]. The ordinary meaning of the word ‘sex’ in the EqA plainly and unambiguously corresponds with the biological characteristics making an individual a man or a woman; these were ‘assumed to be self-explanatory and to require no further explanation’ since men and women were defined only as a group by reference to the biology they share [171]. A ‘certified sex’ interpretation would render the protected characteristic of sex incoherent, since ‘woman’ would include all females plus ‘those trans women (biological men) who have the protected characteristic of gender reassignment and a GRC’ whilst simultaneously excluding ‘some (biological) women living in the male gender with a GRC’ [172]. The Court found ‘no good reason’ to interpret the legislature’s intention in relation to the EqA’s sex-based provisions as applying to these cross-cut groupings rather than purely to ‘biological’ women and men whose shared biology leads to them facing shared disadvantage and discrimination [172]. Furthermore, a ‘certified’ sex reading would complicate the day-to-day operation of the legislation since a GRC is a confidential document, thus creating ambiguity about where it is legitimate to treat ‘biological’ women as a distinct group [173].

The Court found a strong indicator in favour of a ‘biological’ reading of sex in the provisions relating to pregnancy, since only ‘biological’ women can become

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‘The test is whether a “certified sex” reading renders provisions of the [Equality Act] incoherent or gives rise to an absurdity...’



>>> pregnant. The plain and unambiguous references to pregnant and breast-feeding women make sense only if sex has its ‘biological’ meaning, excluding transgender women in possession of a GRC and including transgender men in possession of a GRC [178]. A variable definition of sex is unclear and unpredictable [191]. There is no basis for presuming that sex can mean one thing in one part of the Act and another thing in another part [195]. Further, since no physiological change or even change in outward appearance is necessary to obtain a GRC, there is no obvious means of distinguishing those who do and do not possess a GRC; the only distinction is a confidential paper certificate, whereas the individual’s ‘biological sex’ may continue to be readily perceivable [202]. To permit a ‘certified sex’ reading would create an inequality of status between transgender people with GRCs and those without, where those in possession of a GRC have additional rights and there is no obvious means of distinguishing between the two groups [203]. There is no reason why the legislature should have intended this inequality to persist, especially where in ‘many (if not most) cases’ there will be no material distinction in personal characteristics or appearance, or how they are perceived or treated by society at large [203]. The Court cited unspecified research by the anti-transgender lobby group Sex Matters, finding that it is in practice impossible for organisations to distinguish between transgender people with and without a GRC, thus pressuring many sex-based groups into accepting members of the opposite ‘biological’ sex [203].

The Court found a further indicator of a ‘biological’ sex reading in relation to the EqA provisions relating to sexual orientation. Sexual orientation in the EqA is defined as attraction towards persons of the same sex, the opposite sex, or either sex; this can only mean ‘biological sex’ on the grounds that people are not sexually oriented towards those in possession of a certificate [204]. If s.9(1) GRA applied to the meaning of sex under the EqA, a ‘trans woman’ (a biological male) with a GRC (so legally female) who remains sexually oriented to other females would become a same sex attracted female, in other words, a lesbian’, which would render the concept of sexual orientation under s.12 EqA meaningless and affect the composition of groups defined by sexual orientation by including transgender women with a GRC who are sexually oriented towards women as lesbians [206]. The Court expressed concern at the ‘inevitable loss of autonomy and dignity for lesbians’ that this interpretation would entail, and in particular the requirement that lesbian transgender women (‘legal females who are biologically male and attracted to women’) would necessarily be included in lesbian clubs and associations, thus having a ‘chilling effect’ on lesbians seeking to use lesbian-only spaces [207].

The Court found that sex therefore has a ‘biological’ meaning throughout the legislation; the term ‘woman’ means ‘always and only’ a ‘biological female of any age’ and excludes all ‘biological’ males [209]. Any other definition would ‘turn the foundational definition of sex on its head’ and diminish sex-based protection from discrimination for both individuals or groups [209]. The ‘biological’ reading of sex maintains the statutory purpose of preventing sex discrimination, whilst simultaneously protecting individuals with a GRC from non-discrimination and ‘without seriously undermining’ the intention of the GRA [209]. The Court considered numerous



‘The Court found that sex therefore has a “biological” meaning throughout the legislation; the term “woman” means “always and only” a “biological female of any age” and excludes all “biological” males.’





other instances [211-246] where it felt a 'certified' sex reading would be unworkable broadly on the grounds that in each case it would assimilate transgender women ('biological males') into the class of women for whom single-sex provision may be made whilst excluding transgender men ('biological females') from accessing those same single-sex provisions.

Therefore, the Court concluded that the guidance issued by the Scottish Ministers is incorrect, and for the purposes of the 2018 Act the word 'woman' includes only 'biological women' and does not include transgender women with a GRC. Construed in this way, the 2018 Act is within the competence of the Scottish Parliament [266].

Case commentary

Effect of the judgment

Contrary to much media and political rhetoric, the Court did not hold in any way that transgender women are legally male as a matter of general law. Rather, this judgment is authority for the proposition that transgender women are legally male (and conversely, transgender men are legally female) *for the purposes of sex-based provisions of the EqA only*. This is a blanket exception to s.9(1) GRA, applying to all transgender people regardless of their biological or physiological characteristics. For all purposes in connection with sex-related provisions of the EqA, a transgender person is to be treated as the sex they were assigned at birth. Outside of the EqA context, however, the definition of sex is unaffected. Transgender people, with and without a GRC, are still protected from discrimination to the extent that the EqA prohibits discrimination on the grounds of gender reassignment. This judgment is authority for the proposition that where a service is lawfully provided to a single sex pursuant to sex-based provisions of the EqA, that service is not compelled to include transgender persons whose acquired sex is the sex for which the service is being provided. There is no new legal compulsion under this ruling to provide single-sex spaces or services.

Disregard for transgender existence and human rights

The phraseology and tone of the judgment suggest an unease at the notion that a civilised society could sincerely regard transgender women as real women, as if s.9(1) GRA existed solely to humour the delusions of individuals whose outward expression of sex will never be capable of matching their perceived 'real' sex on a meaningful level. Rather than respecting the statutory purpose of the EqA – to promote equality – the judgment effectively reinforces social prejudice by trivialising claims to dignity and respect by transgender people. No regard was given to the meaningfulness of transgender existence or to the reality that transgender

people, with and without a GRC, live and are accepted on their own terms as their acquired sex in wider communities and networks. Rather, the Court treated such social integration as undermining the legal principle of equality.

'The Court failed to give any meaningful regard to human rights...'

The Court failed to give any meaningful regard to human rights reasons which point away from a purely 'biological' conception of sex in the EqA. No meaningful analysis was conducted of the actual specific reasoning set out in Amnesty International's thorough submission to the Court, nor was a proportionality assessment conducted in light of the physical and moral security which human rights law demands be granted to transgender people in the full scope of their identity. The Court uncritically accepted the claims by highly contentious anti-transgender groups to be acting for the good-faith promotion of women's human rights [e.g. 31-35], and explicitly thanked the submissions by one such group for giving 'focus and structure' to the argument in favour of a 'biological' sex reading [35]. This one-sided consideration, alongside the failure to engage seriously with the wealth of actual human rights jurisprudence, means in practice that any attempt to balance competing rights within the judgment is

rendered inherently lopsided.

Basic factual errors

Scientific research into the nature of sex is still ongoing. What is clear, however, is that sex is an incredibly complex factual and scientific question. It cannot be reduced to what American physician Dr Marianne Legato calls the 'rigid dyadic view' of Male or Female, which 'does not allow for nor explain the whole spectrum of variations in gender identity, sexual differentiation, and patterns of sexual activity' ('Untangling the Gordian Knot of Human Sexuality: What is the Biologic Basis of Variations in Sexual Phenotype?', *Gender and the Genome* (2018)).

By adopting a terminological apparatus which equates biological sex with a sex assigned at birth, the Court sets up a question-begging framework which permeates the judgment. Biological sex is presumed to be birth sex and to be unchangeable, with no justification being provided for these assumptions. Nowhere in the judgment does the Court explain which biological factors are relevant for determining this supposedly biological birth sex, and neither is any regard given to the biological changes which operate on an individual who undergoes a medical process of sex reassignment. Given that nowhere in the EqA is sex explicitly stipulated to be something biological or immutable (as the Court itself recognises [158]), this is an unjustified leap. Whilst the Court did attempt to make clear that it is not its role to adjudicate on the wider question of sex in 'the public domain' [2], the failure to provide any criteria whatsoever for determining which factors do and do not go into determining a person's 'biological' sex at birth, and why these factors are inherently unalterable, renders the core basis of the judgment unclear. This is tantamount to holding that the word woman in the EqA means 'a woman – no, a real woman'. In consequence, the judgment reflects a conservative and scientifically dated view about the meaning of the very important words it is using to delineate the scope of legal rights. What begins as a mere terminological choice in an endeavour for linguistic simplicity ends up in creating a wholly new legal principle: the principle of the self-contained, 'common sense' 'biological' sex.

The Court accomplishes this intellectual move from A to B to double-X implicitly in the reasoning of the judgment. Just as people in the complexity and messiness of real life do not fall in love with a GRC, neither do they fall in love with a birth certificate. However, because no rationale is given that explains why treating birth sex as 'biological' is a coherent or meaningful definition, nor any explanation of the meaning of the word 'biological' (beyond the fact that it is fixed at birth and is unchanging), the Court is left asserting a nothingness: under the EqA, sex is...something. The *only* clarity provided by this judgment in relation to the meaning of the word sex under the EqA is the absolute clarity that sex in the EqA excludes transgender people from being recognised as their acquired sex in any capacity. Beyond this, no framework is given as to the meaning of 'sex' in British equality law.

Abolition of the GRA by judicial legerdemain

The Court's interpretation of ss.9(1)-(3) GRA renders the entire statutory scheme for the recognition of gender reassignment legally incoherent. If this interpretation is adopted in future cases, it will have the effect of rendering >>>

>>> the GRA functionally non-existent. Crucially, the Court's interpretation rests on the rejection of a test of implied necessity for determining whether s.9(1) is excluded by s.9(3). This is a question of statutory interpretation and fundamental rights. Specifically, the Court rejected the application of the principle of legality on the grounds that this case does not concern 'a basic tenet of the common law or constitutional rights' [102]. At a basic level this is incorrect: The Human Rights Act 1998 (HRA) is a part of the UK's constitutional architecture, expressly passed for the purpose of incorporating important fundamental rights into British law. The GRA exists to provide scope and depth to rights guaranteed to British citizens by the state under international human rights treaties and secured as the legitimate subject-matter of adjudication by British courts through the HRA. The overriding of s.9(1) by s.9(3) is expressly an overriding of the right of transgender people to be recognised as their acquired sex, arising from Britain's obligation under Article 8 of the European Convention on Human Rights (ECHR). If the principle of legality exists at all for the purposes of statutory construction, it plainly must be applied in this case.

The principle of legality in its classical formulation holds that 'Parliament must squarely confront what it is doing' and that 'fundamental rights cannot be overridden by general or ambiguous words'. Absent express language or necessary implication to the contrary, the courts 'presume that even the most general words were intended to be subject to the basic rights of the individual' (*R v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115).

Applying this to the GRA, it must first be noted that the words of s.9(1) are clear and unambiguous: 'the person's gender becomes for all purposes the acquired gender'. The words 'all purposes' are unqualified; all means all, not merely some or most. Therefore, as a matter of statutory construction, the wording of s.9(1) must be held as establishing a broad principle that transgender people in possession of a GRC are to be treated as their acquired gender. The exception of s.9(3), by contrast, is limited, stipulating that the wide-reaching rule of s.9(1) applies 'subject to provision made by this Act or any other enactment...' Where no such provision is made in the GRA or any other enactment, the s.9(1) rule applies. All purposes means all purposes unless Parliament provides otherwise; the use of the word 'all' in this context cannot be seen as merely incidental or flippant, but as representing the crux of the purpose of the statutory framework for legal recognition of gender reassignment. This framing creates a strong presumption that s.9(1) will apply.

In this context, where s.9(1) unambiguously effects an explicit change of legal sex for all purposes other than where Parliament has provided otherwise, and this framework corresponds to Britain's core human rights obligations under the ECHR and imported into British law through the HRA, a necessary implication test was not merely permissible but is in fact the only coherent statutory interpretation of the GRA. The principle of *Simms* legality falls on top of this basic statutory interpretation, providing an even higher level of necessary scrutiny before the s.9(3) exception can be applied. In other words, the GRA creates a strong presumption in favour of s.9(1), and *Simms* legality requires the Court to draw any exception to s.9(1) in the narrowest possible terms in order adequately to protect the rights of British citizens to effect a legal change of sex pursuant to the Article 8 recognition of transness as a legitimate identity worthy of protection. By contrast, the Court not only rejected a necessary implication construction of s.9(1), but went so far as to express that the multiplicity of statutes referring to men and women 'must be carefully considered in the light of the wording, context and policy of the statute in question' [108]. Furthermore, it refused to accept any stringent test for determining when s.9(1) is abrogated [108]. The rejection of a test per se rides roughshod over both the wording of s.9(1), failing to coherently interpret the GRA as a statutory whole,



and the principle of legality.

Section 9(3) cannot be coherently interpreted in the manner handled by the Court; under this interpretation, the exception engulfs, devours, and destroys the rule itself. The Court's approach is tantamount to saying that a GRC effects a legal sex change unless it does not. It is a vibes-based test that destroys any semblance of legal clarity for people in possession of a GRC and renders the integration of transgender people into society as full and equal members impossible. In one fell swoop, the Court has resurrected the precise mischief which the GRA was designed to suppress. By transmogrifying the limited scope of s.9(3) into a gaping hole at the heart of the GRA, it has created a legal framework for sex reassignment where transgender people are opened up to being treated as belonging to different sexes in different contexts on spurious and arbitrary grounds. Ergo, the Court has placed them in an indeterminate class, legally unsexing and reducing them to the rank of second-class citizens. This is a far cry from the egalitarian and scientifically grounded approach adopted in ECHR jurisprudence. In the landmark case of *Goodwin v United Kingdom* (2002) 35 EHRR 18, the Strasbourg Court concluded that 'No concrete or substantial hardship or detriment to the public interest' was likely to flow from any change to the rights of transgender people and that

'The Court's approach is tantamount to saying that a GRC effects a legal sex change unless it does not.'



'society may reasonably be expected to tolerate a certain inconvenience' to enable individuals to live in accordance with their chosen sexual identity.

The Court's interpretation, contrary to the underlying human rights logic favouring transgender inclusion in *Goodwin*, cannot reasonably be understood as falling anywhere close to the mark of the situation Parliament intended to bring about with the wording of s.9(3) GRA. Rather, the underlying logic of the judgment is that s.9(1) must be narrowed and minimised, and s.9(3) must be broadened and expanded, in order to prevent the worrisome outcome of transgender people being accidentally recognised as their acquired sex too often or too broadly. By implication, whatever the existence of transness means for our understanding of sex must be limited; Parliament cannot really have meant the words 'for all purposes' to apply for all purposes, because transness threatens the existence of narrow and rigid absolutist definitions of sex and therefore must be regarded with suspicion.

Could the EqA have been interpreted differently?

The difficulties presented by s.9(1) GRA for the interpretation of sex in the EqA are real. The Court outlined many of these difficulties in its judgment. If it achieves

nothing else, it demonstrates the unwieldy nature of the sex-based provisions of the EqA, which are straining under the weight of rapidly evolving scientific and social understandings of sex. If the EqA is to be maintained in its current form at all, then urgent law reform is needed to properly set out the boundaries of transgender inclusion. The issues raised by this case are multifaceted, and the learned judges attempted with much confusion and needless complication to wade through the morass of factual considerations. However, while ignorance regarding the social context of transness may be understandable as a private human foible, it should not be allowed to impact legal reasoning. The Court had a constitutional responsibility to consider the matter fairly, being intellectually honest about the arguments in favour of a transgender-inclusive reading of sex in the EqA and taking into account the moral dignity of transgender people and the factual existence of transness as a social phenomenon which the law regards as worthy of a holistic and unqualified respect. The Court abdicated this responsibility.

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THE RENTERS' R

The end of 'No-fault' evictions – will it work?

by **Isaac Acharya**

The Renters' Rights Bill, the most significant reform to the private rented sector (PRS) in decades, is the Labour Government delivering on its manifesto commitment to 'transform the experience of private renting', with a package including: abolishing 'no fault' evictions; introducing a database of private landlords; a modified set of legal grounds for eviction; banning discrimination against benefit claimants and families; strengthening regulation to tackle disrepair; and banning the practice of requiring large sums of rent in advance. These are welcome changes and will greatly benefit individuals and families across the country. Tenants will have more security, find it easier to enforce their rights, and some of the barriers to entry for the most vulnerable will be removed.

Ending 'no-fault' evictions – a brief history of security of tenure

The complex regulatory history of the PRS cannot be explored in full here. However, a cursory history is essential for understanding the true significance of the reforms.

Prior to World War One, tenancies were regulated by common law with very basic protections afforded to renters. Rents were uncontrolled and tenancies terminable either in accordance with the terms of the tenancy agreement or simply by a landlord or tenant giving notice. It is not uncommon for PRS tenants who are unfamiliar with the basics of housing law to assume that this remains the case today. While the current position is different, the introduction of 'no-fault' evictions by the Thatcher Government saw a significant reversal of the precious protections that were first introduced seven decades earlier and strengthened in the 1960s and 1970s. The introduction of 'no-fault' evictions was



RIGHTS BILL



Picture: Jess Hurd

accompanied by the abolition of rent controls and the shrinking of the social housing sector, creating the unstable and precarious housing system we have today.

Harold Wilson's Government had introduced strong protections for tenants which, among other things, required landlords to show a lawful ground (i.e. reason) for an eviction. The most common grounds for possession were rent arrears and 'anti-social behaviour'. Most grounds were discretionary, meaning a judge had to consider whether in the circumstances it was reasonable for the landlord to evict the tenant. 'Discretionary grounds' are commonly used in the social housing sector today. With discretionary grounds, judges have the power to make a range of orders, including, for example suspended orders on terms that the rent arrears are repaid at a set monthly rate, or that the allegedly anti-social behaviour in question does not recur. 'Mandatory grounds', where the judge must order the eviction as long as certain criteria are met, were available from the 1960s for cases where the landlord wanted to move back into the property if they had been living there prior to letting it out, or where their mortgage lender was taking possession. However, these protections meant that tenancies were largely indefinite; but for exceptions such as those mentioned above, tenants could stay in their homes as long as they wanted.

The Housing Act 1988 introduced the section 21 procedure, which allows landlords to end a tenancy without giving a reason for possession. From 1997, the procedure was available by default to end all new private tenancies. Procedural requirements apply to section 21 evictions, which presents an opportunity for tenants to defend proceedings where landlords have failed to comply procedurally. However, to do so can be futile in the long term, as eventually the landlord can almost always fix the procedural error and evict the tenant. Ultimately the landlord is likely to get what they want if they want it, no matter what the tenant does, or their circumstances. Indefinite tenancies in the private sector are now a thing of the past.

This has created fundamental uncertainty for families, unable to settle in their homes for the long term and unable to be confident that, provided that they pay their rent and do not cause nuisance to their neighbours, they can stay in their homes. In addition to reduced security of tenure, section 21 evictions dramatically readjusted the power dynamic between tenants and landlords. Any complaint about conditions, request for repairs, or disagreement between landlord and tenant carries the risk of automatic eviction.

In addition to uncertainty and insecurity, tenants live in poor quality homes. A

'In addition to uncertainty and insecurity, tenants live in poor quality homes.'

government survey on housing quality showed that those in the PRS are more likely than others to have a home that falls below the Decent Homes Standard, with 21 per cent of PRS households living in non-decent conditions, 12 per cent having serious hazards in their homes and 10 per cent having damp. Furthermore, landlords are able to increase rents in line with market rates once a year with one month's notice – or as often as they want by 'agreement'. With section 21 available to them, landlords can demand higher rents by 'agreement' and evict tenants who cannot or will not pay the increase.

From 1918 to 1981, the proportion of households in the PRS shrank from around 75 to 13 per cent. Investment in social housing, and relatively affordable house prices during that period, led to an increase in social renting and owner-occupation.

Today, the PRS accounts for around 20 per cent of households. Around 17 per cent of households have a social landlord, and the rest are owner-occupiers. However, given high housing prices for those looking to buy outright, it is likely that a significant portion of the population will remain in the PRS for the foreseeable future. It is important therefore that the rights of PRS tenants are adequate.

The Renters' Rights Bill

The Bill is expected to become law by early 2026. Its key parts are as follows:

Ending 'no fault' evictions; new grounds for possession and model of security

The Act proposes to abolish section 21 evictions and reform the grounds for possession. Currently, possession is mandatory where a tenant is in more than two months of rent arrears. This will be increased to three months.

A ground where the landlord wants to move back into the property to live in or sell the property will be introduced. The notice period for this ground will be four months, which is an increase compared to the similar ground currently in effect. The ground will not be exercisable within the first 12 months of a tenancy.

Furthermore, tenancies will be periodic from the start, which the Government describes as being aimed at preventing the practice of requiring tenants to pay rent for properties that they want to leave. Often, landlords or letting agents invite tenants to sign fixed term tenancies every 12 months to protect their position (given a fixed term >>>

THE RENTERS' RIGHTS BILL

>>> tenancy without a break clause means a contractual commitment to pay rent for 12 months, irrespective of whether the tenant wants to move out before the end of the tenancy).

Local authority enforced regulation of unfair market practices

There will be new regulations to improve fairness in the private rented market, which will be enforceable by local authorities, including:

- A ban on refusing tenancies on the basis that applicants have children or claim benefits; and
- A requirement that properties are let at the advertised price, to avoid 'bidding wars' for rented property.

Proposals requiring secondary legislation

There are several key proposals which the Bill in its current form will allow the Secretary of State to bring into effect by regulations. These are:

- A private landlord ombudsman;
- A private landlord register; and
- Strengthening housing conditions laws in the private sector by introducing the Decent Homes Standard to the PRS, implementing Awaab's Law in the PRS, and giving local authorities enhanced enforcement powers.

The details of how these will function in practice are currently unclear.

Currently, social landlords are subject to an Ombudsman which can order compensation be paid and provide guidance to social landlords on how to deal with similar issues in future. A similar mechanism is being proposed for the PRS. The current draft of the Bill would allow the Secretary of State to set out penalties for findings against landlords by the Ombudsman which range from apologies to compensation and exclusion from the scheme (and therefore from being a landlord) in future.

The register of private landlords would make information public about findings of regulatory breaches against landlords.

Awaab's Law is expected to come into effect in October 2025 for the social rented sector, as part of legislation and regulations separate to the Bill. It will require social landlords to respond to all emergency hazards and all damp and mould hazards that present a risk of significant harm to tenants, within prescribed timeframes. The Renter's Rights Bill provides that the same can be implemented in the PRS by way of regulations. Awaab's Law introduces implied terms into tenancy agreements, meaning that enforcement can be pursued via court action for breach of tenancy, as well as pursuing complaints via the relevant ombudsman.

The Housing Health and Safety Rating System (HHSRS), broadly speaking sets out types and levels of hazard, with local authority enforcement powers and/or duties depending on the level and type of hazard. It applies across all housing sectors. The Decent Homes Standard provides a threshold of decency against a range of criteria, including the



minimum level of safety (i.e. absence of Category 1 HHSRS hazards) as well as levels of repair, modern facilities and thermal comfort. The Decent Homes Standard is enforceable by local authorities, who can impose substantial financial penalties or other sanctions on landlords. It currently only applies to social housing but the Bill will introduce it to the PRS.

Analysis

Abolition of section 21 evictions is more than welcome. It is cause for celebration for tenants, those advising them and those dissatisfied with the insecurity, imbalance of power and commodification of housing which they have contributed to bringing about.

The modification of the mandatory rent arrears ground from two to three months also strengthens the position of tenants, as do the local authority-enforced regulations against unfair market practices.

'The register of private landlords would make information public about findings of regulatory breaches against landlords.'

The effectiveness of the abolition of section 21 evictions will depend to an extent on how the mandatory 'landlord moving into or selling property' ground functions in practice. The Bill initially included a ban on landlords re-letting the property for 12 months after using the ground. In other words, a landlord who evicts a tenant for the purpose of selling or moving in, cannot then change their mind – at least, not immediately. In July, the re-letting ban was halved to just six months following a House of Lords amendment.

Enforcement may prove difficult. The Bill places the burden on local authorities to enforce by means of financial penalties or criminal prosecutions, potentially in response to a PRS Ombudsman decision. However, it is unclear to what extent and by which means local authorities or the Ombudsman will become aware of the ground having been used within the last six months by the landlord. Many tenants who are served with a notice under the ground may choose to surrender the tenancy at the end of the notice period and would neither know nor report to the local authority that their landlord had chosen to re-let.

Another issue arises where a tenant wants to stay in the property and seeks to argue in court that the landlord will re-let the property. It may be unlikely for a tenant to be



able to prove this to the standard that a court would expect *prior* to an eviction. An evicted tenant could discover a flat has been re-advertised or re-let *after* being evicted, but it would by then be too late to keep them in their home, and their only recourse would be to report it to the local authority. Even if a tenant managed to conduct their own investigation, it is unclear what action local authorities, with their limited resources and existing pressures, will realistically take to enforce these rules.

The financial penalties of up to £7,000 would likely be enough, in principle, to discourage landlords from using the ground disingenuously. However, this depends on a strong enforcement system. In Scotland, where no-fault evictions were abolished in 2017 and a similar mandatory ground was introduced, research suggests that 20 per cent of evictions based on the landlord's intention to sell did not result in sale. If the new ground for eviction to sell a property does not have the same procedural defences built into it as section 21 currently does, it may actually be easier to evict tenants under the new no-fault grounds, as long as a landlord is willing to bend the truth. How it will work in practice remains to be seen, and litigated.

The enforcement burden placed on local authorities across various elements of the Bill is cause for concern unless it is accompanied

‘[Unless] the same procedural defences [are] built into it as section 21 currently has, it may actually be easier to evict tenants under the new no-fault grounds...’

by significant funding for them. Already tenants can wait for months or years before local authorities take action in relation to serious hazards under the HHRS. If they cannot respond promptly to homes which are reported to be unfit for human habitation, it is difficult to see how they will act swiftly in relation to the Decent Homes Standard or non-compliance with other aspects of the Bill such as discrimination based on prospective tenants' circumstances (although the latter will be investigated by the Ombudsman, decisions will be enforced by the local authority). If legal aid is not available for PRS Ombudsman complaints, and with the reliance on local authority enforcement in many areas, without an effective mechanism in place to compel the local authority to act, some of the rights in the Bill risk being illusory.

Rent rises and affordability

The Bill does relatively little to address the core problem of rising rents and unaffordability. Rents will continue to be raisable in line with market rates once per year, pricing many out of the PRS, forcing them into poverty and potentially into rent arrears.

Rent control is a policy that receives much criticism. It is cited as a cause of poor conditions in homes, and a deterrent for investors and developers, who may otherwise invest in new PRS accommodation.

However, as hinted at above, many of the conditions are in place for the PRS to continue to make up a significant proportion of our housing stock, if not grow. House prices are unaffordable compared to incomes, meaning that many more are required to rent privately. Rental income is not the only reason landlords see the sector attractive, as property is a good investment if house prices are expected to rise. In accordance with the Bill's new grounds for eviction, landlords will still be able to evict on a mandatory basis in order to realise their investments. This fact along with the lack of controls on in-tenancy rent rises means that the sector will continue to prioritise the flexibility of landlords being able to sell, or price tenants out of homes.

While not quite rent controls, the Bill does include potentially important changes to section 13 notices (of an increase of rent) and to rent review tribunals. Currently, a landlord is entitled to increase rent to the market rate by serving a valid one-month section 13 notice. A tenant can challenge the rent increase on the ground that the landlord is demanding more than the market rate. Under the Bill:

- 1) The landlord must give two months' rather than one month's notice of a rent increase;
- 2) If a tenant challenges the increase by making an application to the tribunal, the increased rent will not take effect until after the tribunal's determination, and may not take effect until up to two months from that date; and
- 3) The tribunal cannot increase the rent to more than the landlord demanded in their notice.

These changes might appear subtle. However, tenants will now be able to use the threat of tribunal litigation as a negotiation tool: either accept a more affordable rent increase or face the delay and uncertainty of tribunals. The risk to tenants of taking this approach is low, as there is no longer the possibility of the tribunal backdating their rent increase (because of (2) above), nor the risk that the tribunal finds that the market rent is higher than the landlord had demanded at the time of the notice (per (3)).

With a clear perspective in mind, we should note the many positives of the Bill as well as areas where we might wish to go further.

Isaac Acharya is a legal adviser at a housing charity

Obituary Wendy Pettifer

Our much-loved comrade Wendy Pettifer died in early July 2025, aged 72. Bill Bowring remembers her and we re-publish one of her poems, 'Trying'.

Tenacious in the pursuit of social justice

Among her many talents, Wendy was fluent in French, and could speak German and Italian.

From 1977, aged 24, she was a community worker in Manchester Law Centre, and spent a short time working at a women's refuge in London. She then worked as an advice worker at the Hackney Centerprise Co-operative from 1980 to 1989 (it was forced to close in 2013). She was attracted by the collective style of working in an advice service that broadly aimed to empower as well as help its clients. Wendy saw that the advice centre punched above its weight and was involved in various campaigns, often with tenants' associations. Wendy herself concentrated on housing and benefits, although she had some landmark successes in early deportation cases where legal action was combined with community campaigns.

In her spare time she joined the Hackney Women Writers group and published her own creative writing.

From 1985 she worked part time at Centerprise while studying to become a solicitor. She qualified in 1992 aged 39, and worked in private practice at Wilson Solicitors in Tottenham and later at the College of Law, before joining Hackney Law Centre. She also gained an MA in Refugee Studies from the University of East London.

Wendy was a housing solicitor at Hackney Law Centre for seven years from 2009 before retiring in 2016. Prior to this, she served on the management committee in the early 1990s and in 2004-



05 volunteered her services to the Law Centre's housing advice team. She also worked as a solicitor at the Anti-Trafficking and Labour Exploitation Unit and was a member of the Hackney Labour Party.

Over the course of her career, Wendy specialised in cases involving homelessness, serious disrepair, migrant women, and children. One such case, *R v Harrow LBC ex p Fahia* [1998] 1 WLR 1396, reached the House of Lords. Wendy's efforts saw the definition of settled accommodation expanded to include people who had not possessed a formal tenancy at the time they became homeless. Wendy brought a determination and tenacity to her work, always seeking to achieve the best outcomes for her clients in the pursuit of social justice.

Alongside her career in housing law, Wendy was a dedicated campaigner and took part in international legal work. She was

elected to the Executive Committee of the Haldane Society and became a trustee of Social Workers Without Borders. She was a member of the Greek Solidarity Campaign, and between 2009 and 2011 travelled regularly to Tunisia with REMDH. She also participated in overseas missions in Egypt and Kenya. Always relishing a challenge, in 2016 Wendy used her legal skills and fluent knowledge of French to volunteer with La Cabane Juridique and support refugees living in inhumane conditions in what was then known as the Calais 'Jungle'.

For reasons of ill health – bowel cancer – for which she had magnificent support in the NHS, she did not stand for the Haldane Executive in January 2021. However, she continued to write articles for *Socialist Lawyer* and we were delighted to print her poems, for example in SL94 (see inset, left, and at <https://www.haldane.org/socialist-lawyer>).

Wendy represented Haldane on the Executive Committee of the European Lawyers for Democracy and Human Rights, of which Haldane was a founder member in 1993, and now has

Wendy was a regular contributor to this magazine right up to the end of 2024.





Wendy in conversation with a former colleague at a Law Centres reunion event in 2024.

Picture: <https://www.lawcentres.org.uk/news/remembers-wendy-pettifer>

Trying

That's what tattered children do in the Jungle
Try to clamber to a better life
Lacerate their hands on barbed wire
Break their legs falling falling always falling
From tarpaulin roofs, artic lorries, motorway bridges
Onto harsh tarmac.

The new arrivals full of jaunty optimism
Wheeling cases full of treasure
Saunter into the setting sun
Soon selling their bodies to pay *passeurs*
To try to get to the UK because there's nowhere else
To run run always running from hunger fear and poverty.

Every dusk tryers make holes in fences
Riot police shoot tear gas, pepper spray their faces
Eyes streaming, throats burning, hands bandaged
Children stagger through foggy fumes.

Trying is hoping for something better than
Stagnant water, dead rats, carrion crows
Calloused hands in the dead of night
Try try always trying, keep on that road nearly there.

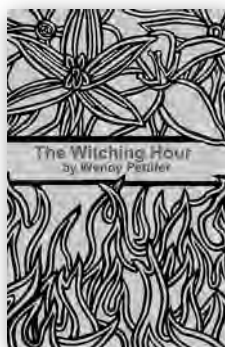
members in 23 European countries.

In November 2018 she participated in the work of the International Academy of the Aegean, in Nesin Mathematical Village, Şirince, Izmir, Turkey. At the online meeting in November 2020 she reported on Haldane's Hostile Environments conference, and took on the leadership of the ELDH's subcommittee on the protection of refugees. The last online meeting of the ELDH Exec in which she participated was on 20th February 2024.

Wendy wrote poetry all her life, but after retirement published two collections: *Love Lines* (2020) and *The Witching Hour* (2021), see right. On the evening of Friday 3rd September 2021 in an arts venue area at the side of St. Mary's Old Church in Stoke Newington, Wendy held a well-attended book launch for the second collection. All revenue from sales went to the Care4Calais Refugee Crisis



Charity. You can watch Wendy reading her poetry in a moving video at <https://youtu.be/5SjD2q2N3Ys> (QR code left).





Lawfare in Turkey: turning anti-Kurdish measures against the opposition

by **Mehmet Bozdag**

Since the foundation of the Turkish Republic in 1923, national security legislation has been used to clamp down on political opposition, be it leftist, Islamist, or Kurdish. However, Recep Tayyip Erdoğan's latest crackdown on his main political rival, the Republican People's Party (*Cumhuriyet Halk Partisi*, CHP), marks a new turn in this history: one where political and legal tactics once used to suppress democratic Kurdish resistance are now weaponised against mainstream Turkish opposition. Turkey now stands at a crossroads.

On 19th March 2025, Turkish authorities arrested Ekrem İmamoğlu, the charismatic and popular mayor of İstanbul and the CHP's presidential

candidate. The headline charges against him and seven other major opposition figures are supporting and aiding an armed terror organisation, the Kurdistan Workers' Party (*Partiya Karkerên Kurdistanê*, PKK). İmamoğlu's arrest triggered the largest pro-democracy demonstrations in recent Turkish history, with over two million people taking to the streets to protest what they saw as an unprecedented assault on democratic

opposition. This did not deter the Government: by mid-June, five CHP district mayors in İstanbul had been arrested on terrorism and corruption charges, and by mid-July that figure had risen to 11 nationally, including the CHP mayors of major cities such as Adana and Antalya. On 16th July, as part of the ongoing trial, İmamoğlu was sentenced to 20 months in prison under Article 125 paragraph (b) of the Turkish Penal Code (Law No. 5237) for 'publicly insulting a public official conducting their responsibilities' and for 'threats' under Article 106 of the same.

'The largest pro-democracy demonstrations in recent Turkish history... did not deter the Government's arrests and broadcasting bans.'



Above left: On 29th March 2025 a protester on police barricades holding a Turkish flag participated in the Freedom for İmamoğlu rally organized by the CHP.
Above right: Demonstrators called for free and fair elections in Turkey, in Helsinki on May Day 2025.

Opposition-friendly television channels, such as Sözcü TV, have received temporary broadcast bans under Article 8 of the Radio, Television and Broadcasting Law (No. 6112) for ‘inciting hatred or hostility in society’; people posting on social media in support of the demonstrations have also been arrested for ‘inciting public hatred’ under Article 216 of the Turkish Penal Code (Law No. 5237). For many, this is an authoritarian assault on the country’s democratic opposition on a scale not seen since the 1980s.

Except that, for the observant, none of this was particularly new: the very same tactics and legislation have been used to target Turkey’s Kurdish opposition parties for at least a decade. Turkey is home to over 17 million Kurds, who have for decades been denied their cultural and linguistic rights. Since the mid-1980s, the PKK has waged an insurgency against the Turkish state, which has claimed upwards of 40,000 lives to date (most of them Kurdish civilians). This insurgency has led to the securitisation of numerous aspects of Turkish law, which in turn has been used to target democratic and peaceful Kurdish opposition and deeply politicised accusations of supporting terrorist organisations.

Ahead of key presidential and parliamentary elections in May 2024,

the Government arrested 10 municipal mayors in the mostly Kurdish east of the country, also on suspicion of supporting terrorism and installing Government-appointed administrators (known as *kayyum*) in their place. Between 2016-19, nearly 100 Kurdish mayors had been replaced on the basis of anti-terror charges and supposed links to the PKK, following the 2016 arrest of another charismatic and popular opposition leader threatening Erdoğan’s electoral success, Selahattin Demirtaş of the pro-Kurdish People’s Party (*Halkların Demokratik Partisi*, HDP).

Article 216 of the Turkish Penal Code, used to silence those taking part in the pro-İmamoğlu protests, has been used to silence Kurdish activists and journalists for decades, and prosecutors have been extremely liberal when interpreting it to press charges against political targets. Likewise, the analogous Article 8 of the Radio, Television and Broadcasting Law used to temporarily ban Sözcü TV has previously been used shut down media friendly to ethnic minorities, such as Açık Radyo, which was closed

for mentioning the Armenian Genocide. Anti-terror legislation, long used to charge Kurdish politicians such as Demirtaş for supporting the PKK, has now been weaponised against Turkish opposition politicians, the publicly-cited evidence for this supposedly being the CHP’s electoral alliance with the pro-Kurdish Peoples’ Equality and Democracy Party (*Halkların Eşitlik ve Demokrasi Partisi*, DEM) in the 2024 election. The removal of democratically elected mayors is straight out of the Government’s anti-Kurdish playbook.

Many Kurdish and leftist observers have made these observations on social media. The pattern is obvious: Erdoğan uses these measures whenever he feels electorally threatened, as in 2015 when the Kurdish HDP threatened his parliamentary majority, or in 2024 when the unofficial electoral alliance between the DEM party and the Turkish opposition threatened his presidential run. The difference now is that Turkish political parties are at the receiving end. This begs an important question: if the fates of the Turkish and Kurdish oppositions are so intimately tied, why are we not seeing more solidarity and joint mobilisation between the two? There are three main reasons.

Firstly, while Erdoğan has also targeted fringe ultra-nationalist parties in his crackdown, the protests very quickly coalesced around Turkey’s age-old societal divide: that between secular Turks, represented primarily by the CHP, and religious Turks, who tend to vote for Erdoğan’s Justice and Development Party (*Adalet ve Kalkınma Partisi*, AKP). Protesters would proudly wave flags of the secular founder of the Turkish Republic, Mustafa Kemal Atatürk, while chanting ‘we are Mustafa Kemal’s soldiers!’ The culture surrounding Turkish secularism, Atatürk, and to a great extent the CHP, is still fiercely nationalist by Western standards, and hostile to any real or perceived Kurdish separatism.

Secondly, due to the nationalist legacy outlined above, mainstream Turkish public consciousness simply prefers to pretend that the Kurdish question does not exist. If you live in a major city in the west of the country, such as İstanbul, İzmir, or Ankara, news from the Kurdish-majority east of the country feels as distant as news from India or China. Armed conflict in Hakkâri or Lice might as well be happening on Mars. This is despite the fact that Turkey’s largest cities in the west are home to millions of Kurds, and the average Turk will regularly >>>

‘The removal of democratically elected mayors is straight out of the Government’s anti-Kurdish playbook.’

>>> interact with them in some capacity. Many of those protesting against Erdoğan are outright ultra-nationalists and fascists, and while they are far from the majority, they remain a notable contingent in any Turkish anti-Erdoğan coalition, further hindering collaboration with Kurdish parties.

Thirdly, and perhaps most importantly, prior to making his move against İmamoğlu, Erdoğan initiated a peace process with the PKK and its imprisoned leader, Abdullah Öcalan. Many Kurds revere Öcalan the way secular Turks revere Atatürk, and his word holds significant sway across the mainstream Kurdish movement, including the DEM Party. The PKK is militarily browbeaten, outmanoeuvred inside Turkey and reduced to hiding from Turkish drones in the mountains of northern Iraq, meaning that they have little choice but to follow Öcalan's directive and the Turkish-led peace process. This has effectively neutralised organised Kurdish mobilisation in conjunction with the CHP.

This situation has created a dilemma for Turkish democracy: as long as there is no genuine, peaceful, and democratic solution to the Kurdish question, Turkish society and law will remain militarised, and as long as society remains militarised democracy will always balance on a knife's edge. By forcing the PKK into unfavourable peace talks, Erdoğan seems to be attempting to force an end to both the Kurdish question and Turkish democracy. Only a united front and joint mobilisation between the Turkish and Kurdish oppositions stands a chance at preventing this.

So what does the future hold for Turkey? Firstly, while the outcome of İmamoğlu's trial is uncertain, the judiciary has long ceased to be independent: already in 2019 the Commissioner for Human Rights of the Council of Europe noted that it 'currently displays, in a large number of cases, unprecedented levels of disregard for the most basic principles of law, such as presumption of innocence, no punishment without crime and non-retroactivity of offences, or not being judged for the same facts again'. Many of the laws used against opposition politicians and their supporters of all ethnicities are laughably broad and vague, and this is a feature, not a bug, of the Turkish security state stretching back to the founding of the Turkish Republic.

Secondly, the protests, while impressive at first and still capable of occasional bursts of energy, have largely fizzled out. Most protesters are young students, part of a generation that doesn't remember a time before Erdoğan and missed out on the previous wave of mass protests in 2013 which began at Gezi Park. The prevailing sentiment amongst people above the age of 30, beaten down by years of dictatorship, crushed hopes,



The judiciary 'currently displays, in a large number of cases, unprecedented levels of disregard for the most basic principles of law.'

Picture: Shealah Craighead / Flickr

and a seemingly never-ending economic crisis, is that of resigned despair or apathy. 'I was at Gezi Park, and it changed nothing' is a common refrain among thirtysomethings. Trade unions have likewise been either co-opted or hollowed out by the state, and besides half-hearted boycott lists of companies that financially support the AKP circulating on WhatsApp, no real movement towards collective action, such as a general strike, has coalesced.

However, not all is lost. İmamoğlu's arrest led to a surge in his popularity, and the CHP now leads the AKP in polling: the fact that Erdoğan had to resort to İmamoğlu's arrest is a sign of vulnerability. Behind the scenes, the removal of CHP mayors has been as much about money as politics. Ninety-nine İstanbul city council employees were arrested alongside İmamoğlu on corruption charges: in Turkey, like most of the world, awarding municipal contracts to political allies and friendly companies is a key source of corrupt funds and political patronage, and losing İstanbul was a big hit to the AKP's financial machine. There is a good chance that a worsening economy and a more heavy-handed autocracy will push many Turks towards the opposition.

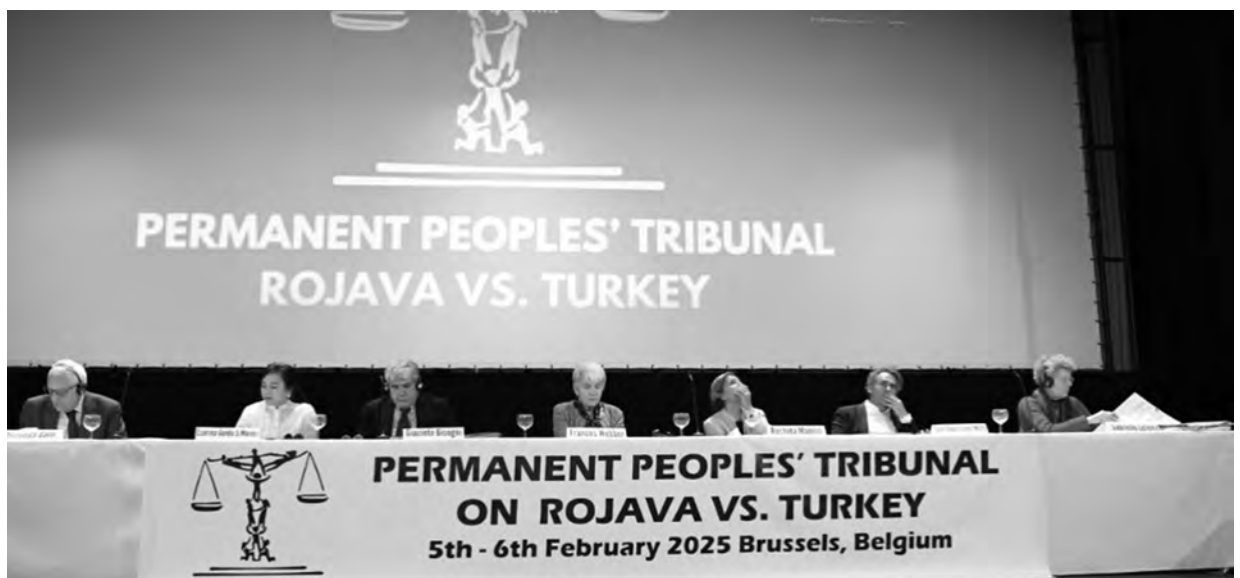
Another factor is how long the peace process with the Kurds will hold, as once again, events unfolding today are not wholly new. In 2013, Erdoğan initiated a peace process with the PKK to consolidate his vote among the Kurds. Once Demirtaş's HDP managed

to rally a large enough number of both Kurdish and Turkish voters to deny Erdoğan a parliamentary majority, Erdoğan ended the peace process and swiftly moved to deploy anti-terror legislation and rhetoric against all non-Islamist Kurdish movements. Everybody involved in the current peace process remembers this, and it is doubtful whether many believe this process will be any more sincere.

Things change quickly in politics, especially in Turkey, and it might not be long before the CHP and Kurdish movement find themselves in a position where it is existentially imperative to form a united, democratic front against dictatorship. The CHP, while sluggish and lethargic, has numbers and a truly national organisation, while the Kurdish movement brings to the table a high level of organisation and the ability to mobilise large numbers of devoted supporters: together, they can mount a credible challenge to Erdoğan, the AKP, and the corrupt state apparatus that continues to rob its own people blind and insult their collective dignity. The main challenge is for CHP supporters and Turkish society at large to rid themselves of national chauvinism. There can be no democracy in Ankara without peace for the Kurds and vice versa: the sooner Turkish society accepts this, the closer it will be to reinstating some semblance of the rule of law and justice.

Mehmet Bozdağ is a law student and activist

'Many of the laws used against opposition politicians and their supporters of all ethnicities are laughably broad and vague.'



Rojava Tribunal and the 'crime of silence'

by **Frances Webber**

For two days in February 2025, the Free University of Brussels became a courtroom. On trial were Turkey's president, Recep Tayyip Erdoğan, three senior ministers and a general, charged with crimes of aggression, war crimes, crimes against humanity and grave breaches of humanitarian law and human rights from 2018 to date. The prosecution was brought on behalf of the people of Rojava, or the Democratic Autonomous Administration of North and East Syria (DAANES), at the request of nine organisations including the Rojava administration and civil society groups there and in the Kurdish diaspora. None of the defendants appeared, though all were notified. The proceedings were watched in the hall by an audience of hundreds from the Kurdish diaspora in Europe and supporters, and were livestreamed to Rojava.

Rojava v Turkey was the 54th hearing of the Permanent Peoples' Tribunal, an international organisation set up in 1979 to provide public recognition and some sort of accountability for severe violations of human and peoples' rights which find no visibility or identification in domestic or international courts. The full judgment is available on the PPT website. Turkey and Syria are not members of the International Criminal Court; Rojava is not a state and cannot bring a case in the International Court of Justice; Turkey's domestic law contains many exemptions relating to

military operations; and Syria's courts were under the control of various militias, so the conditions for a 'public opinion' tribunal were met.

Background

Rojava became synonymous with the defeat (2012-2019) of the Islamic State in Kurdish-majority areas of Syria by the People's Protection Units (YPG) and the Women's Protection Units (YPJ), and was acclaimed for its respect for ethnic, religious and gender equality in its self-governed autonomous region. For the Turkish state, ethno-nationalist since its modern foundation and notorious for the persecution of its own Kurdish minority, Rojava, adjoining its southern border, is a sore spot, a cultural anomaly to be obliterated. It is thus treated as a hotbed of terrorism:

every Kurd is considered a member of the Kurdistan Workers Party (PKK), just as for Israel every Palestinian is Hamas. Three major military operations since 2016, including invasions in 2018 of Afrin (north-western Syria) and of Serekaniye (north-east Syria) in 2019, and countless drone strikes, carried out by Turkish forces or Syrian proxies trained, funded, equipped and directed by Turkey, have sought to depopulate northern Syria of its Kurds.

The trial

There was a panel of seven 'judges', two from Italy, one each from Spain, South Africa, the Philippines, Belgium, and myself from the UK. We heard evidence detailing how the Turkish state and its proxy militias have subjected Rojava to bomb attacks on civilian areas including markets, fields, villages and residential street; targeted killings of civilians, particularly politically active

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>>> women, journalists and protesters; the destruction of civilian infrastructure, including hospitals, medical facilities and dozens of Rojava schools all in residential areas far from military targets, dams (Tishreen Dam is subjected to regular bombardment), water plants, and electricity and gas stations. As a result, hospitals and hundreds of thousands of people are left without clean water, electricity or cooking fuel. We also heard evidence detailing the use of banned weapons; the degradation of the environment through destruction of agricultural land and illegal logging; and the forcible displacement of the Kurdish population. Afrin city's Kurdish population fell from 95 per cent before 2018 to one-quarter after the Turkish attack and occupation. The prosecutors estimated that 138,000 Kurds in total have been displaced.

In areas under occupation, there has been systematic looting and seizure of property. There has been theft of crops, illegal taxes, kidnap for ransom, illegal detention and transfer to Turkey. Civilians have been tortured and raped, and cultural and religious erasure attempted through changing street signage and the language of instruction in schools, and the destruction of graves in Kurdish cemeteries and of many ancient monuments, including a 3,000-year-old temple.

Since witnesses in Rojava were unable to travel to Europe after the fall of Bashar al-Assad in December 2024, there was no 'in-person' direct testimony. We heard evidence from some witnesses via live video link, but most testimony took the form of recorded interviews, conducted by a network of Kurdish contacts and presented by a team of twelve prosecutors from European and international lawyers' and rights groups, including Haldane's own Declan Owens. A full list of prosecutors is available on the Rojava Tribunal website. The team also presented contemporaneous audio-visual evidence of attacks and their aftermath, including militias' mobile phones and drone cameras which filmed human and other targets, such as cemeteries and ancient monuments, before and during attacks on them. Many media, NGO and UN reports provided important corroborative evidence. We also had expert evidence, such as that from weapons and medical experts confirming that the 2019 artillery attack on the north Syrian town of Serekaniye used white phosphorus, an incendiary banned for use against people because of the extreme suffering it causes. Illegal logging in the Turkish-occupied area around Afrin was evidenced by satellite imagery revealing extensive deforestation leading to the documented degradation of 114 forests in the area, with profound effects on the environment and on lives and livelihoods.

Statements made by the defendants before, during and after military operations revealed the intention to



clear the Kurds out of the area near Turkey's southern border, replacing them with other ethnic groups displaced from elsewhere in Syria, militia members and their families, and refugees hosted by Turkey during the civil war. The displacement was followed by the immediate 'Turkification' of occupied areas, with signage, storefronts, currency, phone networks and postage stamps being switched overnight. We heard evidence that Kurds remaining were often arrested and transferred to Turkey as suspected terrorists, or kidnapped for ransom, homes taken over, with olive crops – the main source of income for 75 per cent of Afrin's population – stolen and rebranded as Turkish, and fields confiscated.

The anger, grief, strength and resilience displayed in the testimony of survivors of atrocities and the bereaved lost none of its emotional power even though it was relayed electronically. Bereaved mothers grieved their loss.

Survivors of illegal detention and repeated rapes by Turkish intelligence and Syrian militia members vowed to continue the struggle for women's rights and for Rojava. Two young survivors of a drone attack which killed five of their schoolmates, playing volleyball in a school playground chided the world for its indifference.

Guilty as charged

The Tribunal found the defendants guilty as charged. We found the Turkish state's attacks on Syrian territory constitute the international crime of aggression – both direct (artillery and fighter jets) and indirect (drone attacks by Syrian proxy militias for which the defendants have command responsibility). The pretext of 'self-defence' against terrorism was unjustified, in the absence of armed attack from DAANES. We found grave breaches of the duties of an occupying power under the Fourth Geneva Convention, particularly relating to

Screenshot from a video of the raid on civilian protesters gathered at Tishreen Dam on 21st January 2025.

'The anger, grief, strength and resilience of survivors of atrocities lost none of its emotional power even though it was relayed electronically.'



ensuring humane treatment, protection from violence, torture, collective punishment or illegal deportation; prohibitions on looting, hostage-taking, transfer of population, destruction of property, exploitation of resources, and trial in military courts; and guaranteeing adequate food supplies, hygiene conditions and medical care.

These grave breaches are war crimes. Forced displacement and ethnic engineering is a particularly serious violation, as are the cases of kidnap, torture and rape. All entail criminal responsibility for those planning, carrying out or permitting them.

In areas not occupied by Turkey or its proxies, we found violations of the laws of war – the principles of distinction (prohibiting indiscriminate attacks or attacks on civilian targets), protection of civilian property including in particular hospitals, dams and energy facilities, prohibition of weapons causing unnecessary suffering, and of retaliations against civilians, cultural property and the environment. Although Turkey has not ratified Additional Protocol 1 to the Fourth Geneva Convention, the principles have become part of international law, constituting *jus cogens*, and giving rise to individual criminal responsibility. In addition the

war crime of pillage, which we found to apply to the mass appropriation and theft of civilian property (land, houses, crops, machinery, archaeological treasures), is an ancient rule of international law engaging individual, corporate and state responsibility. While we were not asked to make a finding of genocide, the definition of which in international customary law and jurisprudence is limited to acts seeking physical destruction of a group, we concluded that the pattern of cultural and historical erasure through destruction of heritage is evidence of the *dolus specialis* of the crime of genocide.

Many of the acts established by the Tribunal – forced displacement, targeted killings, illegal detention, torture, sexual violence, destruction of cultural heritage – also constitute crimes against humanity (as codified in the Nuremberg, Yugoslavia and Rwanda Statutes, in Article 7 of the Rome Statute and in customary international law), taking place as they have in the context of a widespread or systematic attack against the civilian population of Rojava. We found, finally, that the attacks on Rojava are severe violations of human rights principles of self-determination, equality and non-discrimination, rights to life and

personal integrity; respect for family life, children's rights to education and cultural and linguistic heritage; rights of free expression and assembly. We concluded that the consistent and compelling picture of widespread, pervasive and systematic violations of human rights is equivalent to the punishment of a people for being Kurdish and for creating a society based on the principles of gender equality, inclusion, justice and solidarity.

The response of the international community has been grossly inadequate. The US paved the way for the 2018 and 2019 military operations by withdrawing its troops, a betrayal of its allies in the defeat of IS. Apart from short-lived suspensions and restrictions of arms sales by a number of European countries after the 2019 invasion, Turkey's aggression has gone unchecked.

Our detailed recommendations form the basis for future campaigning. Turkey must stop its aggression and allow investigations into reported crimes. Syria must acknowledge the autonomy of Rojava and respect its arrangements for gender, ethnic and religious equality. The United Nations must initiate investigations, sanctions and action to stop the aggression and to bring perpetrators to justice. Europe, its governments and institutions must review policy, impose sanctions, stop licensing the sale of arms to Turkey, initiate and/or support prosecutions under universal jurisdiction. The international community must support the peace process in Syria and as a prerequisite, remove the 'terrorist' label from all participants. This last recommendation should also be applied to the British and European governments which continue to treat as terrorists those peacefully supporting the PKK and its leader Abdullah Öcalan. For analysis and context of recent events see Iida Kāyhkō's article 'Repression and resistance: counter-terror raids target the Kurdish community in London' in *Race & Class* 66:4 (2025).

We issued our judgment in the European Parliament building in Brussels on 26th March, before MEPs, two Nobel peace prize laureates – and on livestream, the Kurds of Rojava and the diaspora, and their supporters. Our purpose is to counter the 'crime of silence' in the face of atrocities, to 'provide visibility and the right to speak'. We hope that those who listen will take the messages conveyed in our recommendations to the widest audience, to put pressure on those with the power to act.

Haldane VP Frances Webber is a retired barrister who specialised in immigration, asylum and human rights. She co-edited two editions of *Macdonald's Immigration Law and Practice*, authored *Borderline Justice: the fight for refugee and migrant rights* (Pluto, 2012) and writes regularly for *Race & Class*

Uncovering what is secretive in the state



BOOK: Pacification: Social War and the Power of Police
by Mark Neocleous, Verso Books, 2025

On 4th July 2025, direct action group Palestine Action was added to the list of proscribed organisations on the initiative of Home Secretary Yvette Cooper, who stated that ‘proscription represents a legitimate response to the threat posed by Palestine Action’. Against the protests of UN experts, civil liberties organisations and hundreds of lawyers, it is now a terrorism offence to be a member of, support, donate money to or display symbols of Palestine Action. In the weeks since the passing of the proscription order, hundreds of protesters have been arrested, most for displaying signs stating support for Palestine Action – but among the arrestees there are many who have simply protested the ongoing genocide in Gaza, with no mention of proscribed groups. It is impossible to read the intentions of the Government as anything other than attempted *pacification* of the entire movement in support of Palestinian liberation; a form of

lawfare inseparable from the broader intentions of the security state in monitoring and disrupting avenues for dissent.

‘How is it possible that a society so fundamentally irrational, so horrendously exploitative, so palpably absurd, is preserved and maintained?’ Thus opens Mark Neocleous’s *Pacification: Social War and the Power of Police*. The answer, he argues, is centred around the processes by which the state and capital pacify the people, constituting us as ‘obedient subjects who acquiesce in our own subjection’. Neocleous argues that a social war is being waged on the masses by capital, realised through the state’s willingness to neutralise any potential for uncontrolled social life, with disobedience automatically framed as insurgent, criminal and dangerous.

In *Pacification*, Neocleous adds to his formidable body of work on the interdependent relationship between capitalism and security. Having previously examined the co-constitutive histories of the security state, capital accumulation, enclosures, policing and militarism, Neocleous now turns to pacification and its co-conspirators, counterinsurgency and containment, to examine the role of pre-emptive neutralisation of dissent as an underpinning of capitalist modernity. Containment, counterinsurgency, pacification – Neocleous wastes little time on pulling apart these different concepts, choosing rather to treat them as overlapping controls imposed on unruly societies by the state-economic matrix which seeks to extract our labour with as little pushback as possible. Evoking Aimé Césaire’s *Discourse on Colonialism*, Neocleous notes how the very *development* associated with the creation of capitalist

economies and sovereign states functions as a form of containment, engineering manageable populations.

Neocleous’s strength is in the grounding of his work in close examinations of theoretical, lexical and political developments: *Pacification* delves deeply into the development not only of practices of counterinsurgency, but their ideological backing. He charts the development of methods of social control from the birth of capitalism, through French and British imperialism, to the spread of US-led militarism during the Cold War and the so-called ‘war on terror’, and throughout pays close attention to how the development of military and police power has occurred in tandem. *Pacification*’s focus on primarily European political and economic thinkers at times makes this violent power seem too abstract, although Neocleous is quick to allow an undercurrent of rage at the injustices of such power to surface.

Two examples used by Neocleous demonstrate the breadth of the project of pacification: First, he turns his attention to the police practice of kettling – holding protesters in place for extended periods of time, essentially a makeshift imprisonment – giving a detailed

‘Neocleous charts the development of methods of social control from the birth of capitalism.’

account of its origins in 1980s policing in Germany and the UK. Subsequently, he shows the legal manoeuvres, retroactively applied, that created a ‘rule of law’ justification for the practice of kettling to exist. For Neocleous, the de facto imprisonment of the kettle is a show of police force with a pedagogical aim: ‘the disobedience of our protest is interpreted as a sign of our willingness to undergo a lesson in obedience’. The kettle, he argues, is ‘a microcosm of the state’s wider fantasy of containment’.

As another example of containment, Neocleous turns his attention to debt as a disciplinary mechanism, the ‘cleanest weapon’ of pacification. Evoking Marx’s description of capital coming into the world dripping with blood, Neocleous writes of debt as a way for capital to ‘capture and cage us’ and for the state to ‘police and punish us’. Money, and the lack of it, imposes obedience through fear: research shows that mortgage holders are less likely to go on strike. Debt not only colonises the lives of individuals, it is also inherent in the colonial processes through which the Global North disciplines and pacifies the South.

‘Pacification,’ Neocleous writes, ‘is always already directed towards the future, towards cutting off alternatives, blocking threats to the social order, crushing hope’. His hope, and that of his readers, is that this kind of deep work in uncovering that which is secretive in the security state, in understanding forms of domination inherent to capitalist modernity, can build meaningful resistance against the many-headed beast of pacification. It is up to the indebted and kettled, the proscribed and criminalised, to make the world anew.

Iida Käyhkö



Picture: © Jess Hurd

Asking what the ‘right to resist’ means



BOOK: The Human Right to Resist in International and Constitutional Law

by Shannonbrooke Murphy, Cambridge University Press, 2025

This recently published work by Shannonbrooke Murphy, a variation on her PhD thesis at Middlesex University, is necessary and timely. At the risk of gross understatement, there is certainly a great deal globally and domestically for right-thinking people to resist.

Despite the ancient origins of the right to resist and its more modern role in the nascent constitutional documents of the French and American Revolutions, the right has received very little attention from human rights scholars, with the notable exceptions of Costas Douzinas, Christopher Finlay and Howard Caygill.

Murphy's work does not use historic or contemporary resistance movements as case studies, unlike Noura Erekat's excellent *Justice for Some: Law and the Question of Palestine*. The works studied are also, by her own admission, solely in English. She doesn't focus on the Eastern

origins of the right to resist or look at the approaches to it in Confucianism, Islam or early Soviet legal theory.

In the first chapter, Murphy details the problems with conceptualising the right to resist. She states that in its purest form, the right to resist creates 'a lawful exception covering a wide spectrum of "otherwise unlawful acts", expanding and contracting depending on the immediate facts of any individual case'. However, she highlights the inconsistencies of such a working definition when, for example, Nelson Mandela would not meet the standards of the UN Declaration on Human Rights Defenders because of his history with uMkhonto weSizwe. She also details the greater uncertainty of the right in respect of violations of environmental rights and how one defines oppression.

The second chapter goes into detail about what the right to resist is not. It is not the same as the right to protest, the right to rebel or even the right to revolution. At the end of the chapter, she advances a working definition of the right to resist at its most basic: as a 'limited and conditional right to disobey the law'. In a human rights framework, this is modified to a right triggered to resist human rights violations when there is no other alternative.

The third chapter looks at the nature of the right to resist, critically

Nelson Mandela would not meet the standards of the UN Declaration on Human Rights Defenders because of his history with uMkhonto weSizwe.

examining Hersch Lauterpacht's view of the right as an inherent and higher law, which therefore does not require codification. Murphy examines the nature of the right, its coexistence with the rule of law, whether it is an enforceable claim right, the right as immunity from prosecution and the application of just war theory to the use of the right. The chapter poses questions for future scholarship rather than really providing answers.

The fourth chapter is a deep dive into the right to resistance, looking at what exactly the actor is resisting. Is it tyranny, oppression, or violations of human rights or constitutional guarantees? She focuses on the triggers for the right to resist and the necessity and proportionality conditions on the exercise of the right and the question of who the duty-holder of the right is.

Chapter five surveys the history of the right to resist within the Western tradition, focussing on the Greek right to tyrannicide and the European right to resist in the Middle Ages, as captured in Britain by clause 61 of the Magna Carta (although this was an elite right rather than a right for the people). The Irish right to resist in Brehon law is also discussed. There is then a focus on the right to resist making its way into the French and American post-revolutionary documents and Latin American constitutional documents. According to Murphy, 16 to 20 per cent of modern written constitutions contain some variation on the right to resist.

The sixth chapter contrasts the settled position of the right to resist in domestic law (even if it is somewhat a paper right), with the absence of express provision in international law. Murphy examines the implied right within UN documents and resolutions. She concludes that,

'The right to resist has received very little attention from human rights scholars.'

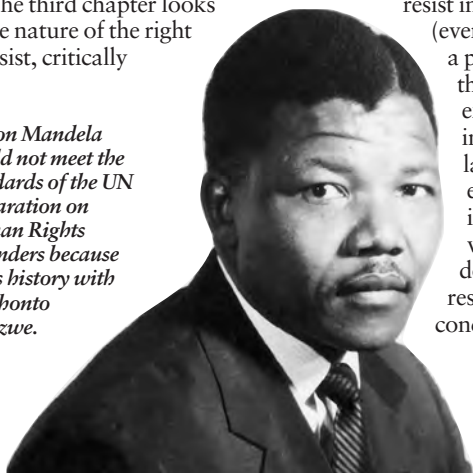
however, despite the convoluted and arduous task of identifying an implied right in international human rights law, there is an implied right to resist.

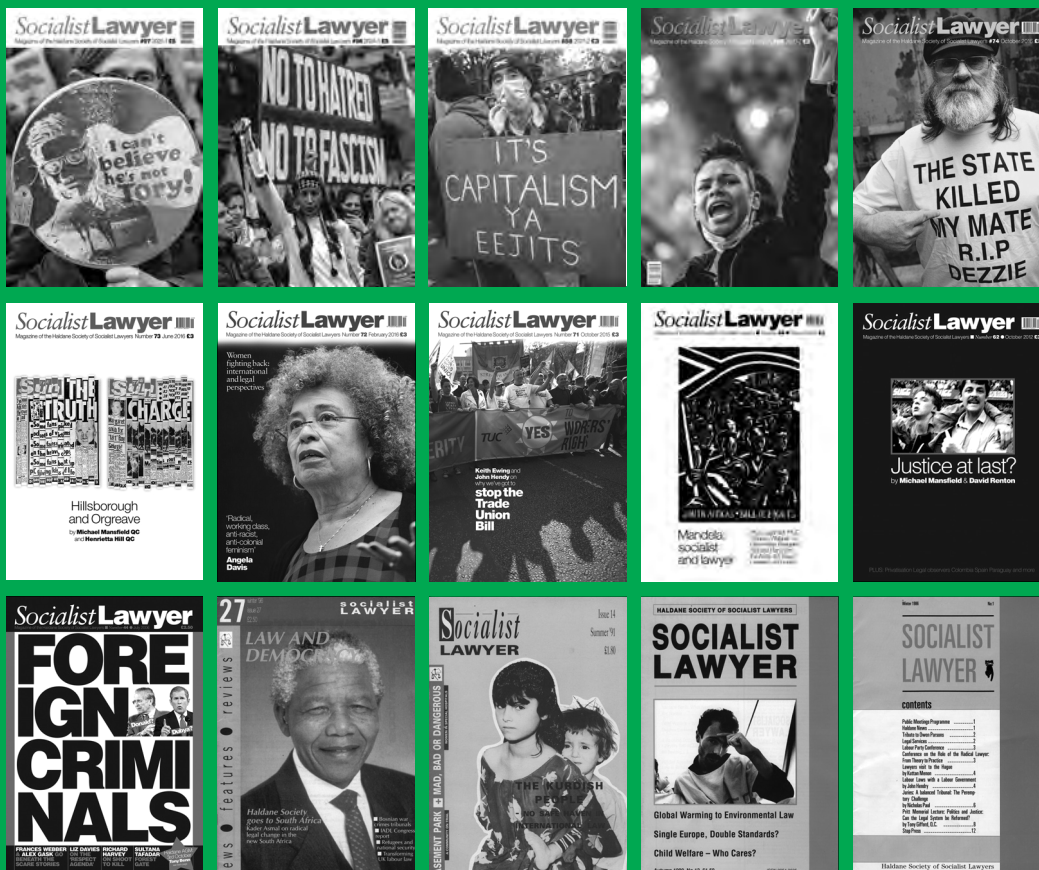
The final chapter builds on the previous one, showing the submersion of the right to resist in international treaties, looking in particular at attempts to read the right into the International Covenant on Civil and Political Rights and the Refugee Convention. She then looks at the limited right to resist within the African Charter on Human and Political Rights and the Arab Charter on Human Rights, and the practical limitations on its uses, but also the fact that a codified right can be used in contrast to the European Convention on Human Rights, which is silent on the right. The very act of trying to litigate the right in the African Court of Justice and Human Rights, even if ultimately unsuccessful, concentrates judicial and nation-state minds on the right.

The purpose of the book is to pose questions, engender debate among scholars and potential readers in resistance movements (particularly political prisoners) and provide suggestions for future scholarship, rather than actually to provide answers or be definitive. This work is useful and probably achieved what Murphy set out to do in her PhD.

However, I am left wanting to read a different book. I would prefer a study looking at the efficacy of the employment of the right to resistance. Building on the work of Banu Bargu, questions could be asked as to whether hunger and thirst strikes – and other lesser forms of non-violent resistance – are more effective than armed resistance, or whether engaging in armed resistance and employing a 'terrorist' strategy is ever justified.

Jonathan Boyle





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