UCL LAW SOCIETY
SILK V BRIEF


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LET'S
OPEN UP,
LONDON

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# EDITORIAL FOREWORD

In just three months, so much has happened, and we now find ourselves heading towards a well-deserved vacation. It has been an extremely hectic, yet exciting, first term for the Publications Subcommittee, with the launch of our first-ever Legal Awareness Newsletter, Sponsored by BPP University Law School, and now Silk v Brief's Winter Edition.

This edition marks Silk v Brief's return to a print version, and the Publications Subcommittee and I are incredibly proud to present to you a collection of thoughts, photographs and artwork that shed light on what Recovery and Redefinition means to so many of you. In a guest article, UCL LLM alumna Sylvia Lim shares how studying in London has shaped her as a person, while first-year student Mark Jhaveri shares his thoughts on Newcastle United's change in ownership.

This edition would not have been possible without the hard work of my dedicated subcommittee and all our contributors, and I am grateful for their time and effort in contributing to this edition.

On behalf of the Publications Subcommittee, I hope all of you enjoy reading our thoughts.


*Timothy Koo*
*Publications Officer*
*UCL Law Society 2021/22*

SYLVIA LIM

# ONE YEAR IN LONDON FROM 1988 TO 1989

*Sylvia Lim was a full-time LL.M student at UCL in Academic Year 1988/89. After careers in law enforcement and academia, she returned to law practice. She has been the Chair of the opposition Workers' Party for the last 18 years and a Member of the Singapore Parliament since 2006.*

My one year as a full-time Master of Laws (LL.M) student at UCL began in October 1988. Living at Astor College, a UCL hostel at London's West End, my experiences were admittedly less of academic achievement but rather of broadening the lens with which I saw the world, probably a more important lesson for life.

To be fair to UCL's academic programmes and staff, I should say that I was fortunate to have been a student of some of the leading lights in their fields, even if they were not on the UCL faculty. This was possible as LL.M students registered with UCL could enroll in subjects taught at other colleges such as King's College and the London School of Economics. Thus, I had the privilege of attending Criminology classes taught by Professors Andrew Ashworth and Robert Reiner, world-renowned experts in the fields of sentencing and policing respectively. In the subject Law of Credit & Security, Professor Anthony Guest demanded the highest levels of preparation for his seminars; with a small class of six students, the tension was truly palpable!

However, it was outside the classroom that I learned the three biggest lessons from my time in London. First, I learned about fending for myself far from home. Secondly, I learned about freedom and activism. Thirdly, I learned about embracing cross-cultural perspectives.

<u>The first lesson</u>

Sometime during the early months, I sustained a head injury along Tottenham Court Road. As I was walking past a casino, a man wearing leather boots came running in my direction with a bag in his hand. He collided head-on with me, resulting in both of us falling to the ground and my hitting my head very hard on the sidewalk. I recall blacking out momentarily and then regaining consciousness. A crowd had gathered around me, and a casino employee in uniform came to my aid. Someone then called for an ambulance. When the ambulance arrived, a paramedic asked me whether I felt that I needed to be conveyed to a hospital. I remember wondering to myself why the decision was placed on me rather than professionals. With a large and growing swelling on the left rear of my skull, I opined to the ambulance team that I believed I needed medical attention.

Upon reaching University College Hospital, I waited till a young doctor working for the National Health Service (NHS) finally attended to me. She observed that I had a big swelling on my head (really!); she further advised me that it was - possible that my skull was cracked, but that even if it was, there was not much that could be done. She then handed me a piece of paper asking me to watch out for signs of certain symptoms such as vomiting and double-vision, in which case I was to return for treatment. Her parting words were to ask me to ensure that someone woke me up the next morning.

When I returned to my hostel, I spent some minutes cracking my head (no pun intended) trying to decide which hostel mate I would bother to wake me up the next day. At that point, I suddenly felt alone and vulnerable: if I were not thousands of miles from home, having someone wake me up the next morning would never have been daunting!

I was most thankful that the accident did not affect my cognitive processes. However, 33 years later, the bump on my head remains… a postcard from the West End!

Expectedly, foreign students face loneliness, which can be most acute when the holidays come along. To that end, I shall always remember the kindness of Ms Eva Lomnicka, a co-lecturer in Law of Credit & Security, who would invite students to her home near Wimbledon every year for a meal around Christmas time. That gesture meant a lot to us who had feelings of being homesick.

<u>The second lesson</u>

Coming from an Asian country where one tends to defer to authority, I found my time in London liberating.

The importance of having diverse perspectives when discussing current affairs was brought home to me when I pored over the different newspapers published in the UK. Even a mundane story of a road accident could be narrated from different perspectives, with The Times likely to be critical of the driver's behaviour, while The Guardian would examine if road conditions needed improvement. All in all, the plethora of views led to a wider understanding of issues facing society.

I also witnessed how youth could be fired up to care about events happening on the other side of the globe. I recall one afternoon in April 1989, when a young undergraduate named Saffron came running breathlessly towards some of us in the hostel kitchen, asking: "Have you heard what's happened to the students in Tian An Men Square?" In the coming weeks, many young people took to the streets to protest the brutality and tragedy that occurred.

I remember reflecting on my own initially muted response. I was dangerously close to becoming a person who was indifferent to events that did not affect me directly. My time in London woke me to arrest the slide of indifference.

The third lesson

Finally, I would be remiss if I did not talk about the people who taught me the most – my hostel mates at Astor College.

At the time, Astor College predominantly catered for postgraduate students. We were mostly thankful that we did not have to endure the binge-drinking and youthful over-exuberance of undergraduates! As older students, we engaged in more cerebral pursuits such as discussing current affairs over moderate amounts of wine.

In our chats about world affairs, it became clear that our respective countries organised themselves differently, depending on their values and beliefs. Take taxation for example. Coming from Singapore, I had grown up with the mantra that keeping income tax rates low would encourage individual effort and responsibility, and that having high income tax rates would discourage work and breed dependency. As I interacted more with those from other countries, I began to understand that the dichotomy was too simplistic: Citizens might well choose to pay high income taxes, in exchange for peace of mind and social risk-pooling.

In the course of living at the hostel, I learned much about priorities and values that were drastically different from my own. For instance, I observed that Asian students tended to study courses for utilitarian reasons, to further careers in traditional professions such as law, engineering and medicine. In contrast, our friends from Continental Europe and Canada came to London to read Classical Archaeology, Anthropology and Museum Studies. I recall my friend, Eve, saying she would spend summers in Italy digging for historical artifacts. To those like Eve, living in the city of the British Museum was indispensable to her quest for knowledge itself.

The neighbourhood around Astor College was, and still is, rich in culinary offerings. Even as students without much money, ending the day with decent Italian and Greek food and wine was within reach. While Italian food had been in Singapore for a long time, Greek food was new to me at the time. Slowly but surely, just as lamb kleftiko is roasted on the bone, I became a fan of retsina, a Greek white resinated wine that has a history dating back to the Roman Empire. The aroma of the pine resin infused in the wine uplifts the spirit. Today, I proudly order it every time I visit a Greek restaurant at home, reminiscing about those halcyon days of being a student in London in the 1980s.

Conclusion

My short time in London in the late 1980s was probably too short. Nevertheless, from encountering the NHS, to immersing myself in an active democracy, to opening my mind and tastes to new horizons, there are many precious memories. It was a year well-spent in self-discovery and in understanding the world.

# HUMAN RIGHTS FOR WORKING PRISONERS

VIRGINA MANTOUVALOU

*Virginia Mantouvalou is Professor of Human Rights and Labour Law at UCL, Faculty of Laws. This piece is based on her project 'Structural Injustice and the Human Rights of Workers' which is funded by the British Academy through a Mid-Career Fellowship. Her book on the topic will be published by Oxford University Press in 2022.*

In summer it was highlighted in the press that the Association of Independent Meat Suppliers was in discussions with the Ministry of Justice to explore how prisoners could be used to cover labour shortages that were due to the pandemic and Brexit. The scheme under which this could be done is the 'Release under Temporary License', which permits certain categories of prisoners on day release to work. Another group of prisoners who could work in this context are those with long sentences coming towards the end and who are idle for years while in prison.

Work in prison is not part of prisoners' punishment: the European Prison Rules explicitly say that '[p]rison work shall be approached as a positive element of the prison regime and shall never be used as a punishment'. It is typically justified on the basis of other reasons. It is said that it can promote prisoners' reintegration in society by teaching them new skills and improving their employability, which can reduce recidivism. It can provide them with income to support their dependents, cover personal needs (such as buying credit for their phones), and make their life less monotonous.

Even though work in prison is not part of punishment and should therefore be a right rather than duty, it is often compulsory. A Council of Europe survey that looked at forty member states found that in twenty-five of those prisoners are required to work at least in certain circumstances (*Stummer v Austria,* para 60(a)). Those who refuse to work may be sanctioned with reduced visits from friends and family, reduced television or gym time, less or no income and even solitary confinement.

State-mediated structures of exploitation

While real work in prison can be beneficial, working prisoners are forced and trapped in structures of exploitation that are state-mediated. By structures, I mean patterns that are becoming all the more widespread, and where people are forced and trapped. I call them state-mediated because the state has a major role to play in creating and perpetuating workers' vulnerability by excluding them from protective laws. Prisoners are a vulnerable group, as the European Court of Human Rights ("ECtHR") has repeatedly ruled, and the authorities have a duty to protect them. That the state creates further vulnerability by excluding them from labour rights should be scrutinised carefully.

I will give examples of exclusions from protective rules. In comparative studies of European countries, it has been highlighted that working prisoners are often excluded from the right to form trade unions and the right to strike, from being covered by collective agreements or a social security system, and from minimum wage laws. A Council of Europe survey showed that in twelve member states, prisoners are not included in a pension system (*Stummer*, para 60(c)), while in other countries the affiliation to a social security system depends on the type of work performed. In France, the Criminal Procedure Code states that the employment relations of incarcerated people are not covered by an employment contract. As a result, prisoners do not have rights such as a right to form and join trade unions or a right to sick pay (see further here).

The UK National Minimum Wage Act 1998 excludes working prisoners from its scope by providing that a 'prisoner does not qualify for the minimum wage in respect of any work which he does in pursuance of prison rules'. Prison labour often consists of cleaning, cooking and other work towards the maintenance of the facilities. Other times it involves boring and monotonous work for private employers. A recent empirical study reported that a prisoner said:

This job down here, I detest it, I hate it. They … [the instructors] … they will tell you, they will attest to this, I don't like [coming here] at all … I'm not lazy but [these jobs] don't engage my brain, they don't make me feel like I've fulfilled something in the day … What am I doing? Clipping wires? Smashing computers …? (Jermaine, aged 18, Workshop 1).

In this same study, it was suggested that private firms that employ prisoners do this to reduce labour costs.

In a report of the Howard League for Penal Reform, it was documented that the average pay for prison service work is £9.60 per week, while it has also been reported that some prisoners work up to 60 hours per week. Certain private companies pay about £2 per hour for prisoners' labour. The Prisoners' Service Order 4460 says that prisoners who work for outside employers doing a job that is not in the voluntary or charitable sector have to be paid at least the minimum wage. The distinction between work in prison and work outside prison is not justified though. Private employers get prisoners to work for them in prison, and avoid in this way their obligations to pay the minimum wage (see further here).

The vulnerability of working prisoners is further compounded by the fact that they would most probably not be viewed as working under a contract of employment. As a result, they may be excluded from other protections. The issue was discussed in the UK Supreme Court decision *Cox v Ministry of Justice* where it was pointed that the relationship of the working prisoner and the prison authorities differs from an employment relationship: prisoners do not work on the basis of contract, but because they have been sentenced to imprisonment, and are only paid nominally. However, these features 'rendered the relationship if anything closer than one of employment: it was founded not on mutuality but on compulsion'.

The element of compulsion that the Court recognised makes working prisoners more vulnerable to exploitation than other workers and should ground full protection of labour rights. Moreover, there should be scope for recognising an employment relation for prisoners who are employed voluntarily and not under the threat of sanctions.

Other examples of working prisoners' exclusions from protective laws come from the United States, with the highest prison population globally, described as a 'carceral state'. I will give one example. In *Jones v North Carolina Prisoners' Labor Uniona* prisoners' labour union brought a case to court because the prison authorities banned prisoners from soliciting others to become union members, holding union meetings and sending bulk mail of the union. The Supreme Court ruled that this does not violate free speech and associational rights.

Mr Justice Marshall (joined by Mr Justice Brennan) dissented: here was a time, not so very long ago, when prisoners were regarded as 'slave[s] of the State,' having 'not only forfeited [their] liberty, but all [their] personal rights. . . .' [...]. In recent years, however, the courts increasingly have rejected this view, and with it the corollary which holds that courts should keep their 'hands off' penal institutions. [...] Today, however, the Court, in apparent fear of a prison reform organization that has the temerity to call itself a 'union,' takes a giant step backwards toward that discredited conception of prisoners' rights and the role of the courts. I decline to join in what I hope will prove to be a temporary retreat.

Sadly, the ruling in *Jones* has not been overturned, but there have been some developments.

Are the exclusions justified?

Some may think that these exclusions of working prisoners from protective laws are justified because they should contribute to the cost of the running of the facilities. Yet the work that prisoners do often consists in much more than maintenance of the facilities, it can involve long working hours, the quality of the work does not support their reintegration, while private firms make profit from this situation. The fact that this work is linked to structures of exploitation from which profit-making organisations benefit must make us question this supposed justification.

There is another crucial issue. These structures of exploitation are connected to precarious work after they leave the criminal justice system. It has been observed by Erin Hatton that those who have worked in prison 'come to expect – and sometimes embrace – low-wage precarious work outside prison'. In addition, they also face serious obstacles when attempting to find better work because of their criminal record. What we see is that the structure of exploitation in prison extends to structures of exploitation after prison.

Human rights for working prisoners

The exclusions of working prisoners from labour rights may violate human rights law. One problem, though, is that even in human rights law we find exclusions of prison labour.

Article 4 of the European Convention on Human Rights ("ECHR"), which prohibits slavery, servitude, forced and compulsory labour, states: 'For the purpose of this Article the term "forced or compulsory labour" shall not include [...] any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during release from such detention'. A similar exception is found in the Thirteenth Amendment of the US Constitution. The International Labour Organisation ("ILO") draws a distinction between private and public prisons in the Forced Labour Convention No 29 of 1930. It excludes prison work from its scope when it is performed in state prisons, but includes privately-run prisons.

The exclusions of working prisoners from human rights may have seemed acceptable when these legal documents were adopted, but they are not acceptable anymore. The ILO examined in 2007 whether prison labour for private employers complies with the Forced Labour Convention. It said that what is needed is the formal, written consent of the prisoner and working conditions similar to a free labour relationship for labour to be voluntary.

The ECtHR examined prison labour in the *Stummer* case that involved affiliation of working prisoners with an old-age pension system. The finding of the majority was disappointing, as it ruled that lack of affiliation with a pension scheme does not render the Applicant's work forced labour or violate his right to property and the prohibition of discrimination. However, there were powerful dissenting opinions. Judge Tulkens highlighted:

[C]an it really still be maintained in 2011, in the light of current standards in the field of social security, that prison work without affiliation to the old-age pension system constitutes work that a person in detention may normally be required to do? I do not think so. This, in my view, is the fundamental point. Nowadays, work without adequate social cover can no longer be regarded as normal work. It follows that the exception provided for in Article 4 § 3 (a) of the Convention is not applicable in the present case. *Even a*

*prisoner cannot be forced to do work that is abnormal.*

The dissenting opinions in *Stummer* should form the basis for the development of the law in the future.

Captive labour and a continuum of exploitation

I want to point to a *continuum* of exploitation here. A few months ago I wrote on unpaid work requirements that are imposed on certain offenders and managed by profit-making organisations, and on work in immigration detention, arguing that the exclusion of working offenders and immigration detainees from labour rights is not justified. If we take these examples together, we see that the state creates and sustains a continuum of structures of exploitation. It systematically increases the vulnerability of captive labour, through legal rules that exclude workers from legal protections. This is not acceptable.

Frances Crook of the Howard League for Penal Reform was right in her powerful piece in the Guardian. She explained that prisoners can work for private companies and that this can be valuable for them and for society at large. But for prison work to be fair, radical change is needed: prisoners have to earn real wages, have workers' rights, and pay tax and social insurance contributions. It is only through radical change of the legal framework on working prisoners' rights that their recruitment by private companies can be acceptable. Without that, the authorities will be playing a major role in structures of exploitation and violate the human rights of working prisoners.

Note: a longer version of the above was first published on the UK Labour Law Blog.

**HOYOON ANDREW JUN**

## A PANDEMIC OF ONLINE DISINFORMATION

"A lie can travel halfway around the world while the truth is putting on its shoes." The influence of disinformation over the last decade is perhaps best illustrated by a quote oft attributed to American author Mark Twain: except Mark Twain never said that line. In a world of misattributed quotes and fictitious news articles, the pandemic of online disinformation is a significant threat. However, anti-misinformation legislation is not the vaccine.

Symptoms

If you have ever had coronavirus, you will find the virus of disinformation online strangely similar. First, disinformation is highly infectious, instantly and widely spread on social media platforms from person to person. Second, it has uncertain and undesirable real-world symptoms, such as the rise in racist abuse against the Asian community caused by baseless conspiracy theories posted on internet forums. And third, much like the virus that has plagued us for the last two years, it can result in death – seen in harmful rumours masked as credible infection prevention Tweeted, Facebooked or Instagram-storied. Disinformation online is all these things, and the consequences are striking.

For example, the popular myth – made viral with the help of comments by Donald Trump – suggesting that drinking highly concentrated alcohol can disinfect the body and kill the virus seems ridiculous. Yet more than 700 people have died after drinking toxic methanol in Iran alone, thousands hospitalized, and 60 developing complete blindness.

These cases are worldwide. In India, twelve drank liquor made from toxic seeds and became sick after watching a video on social media suggesting that this could give immunity to coronavirus disease. In South Korea, over 100 were infected at a church after salt water was sprayed by bottle directly into the congregants' mouths based on online information that this would kill the virus. Talk about leaving a bad taste.

Additionally, disinformation in the form of conspiracy theories, which thrive on social media platforms such as Twitter and Reddit, have also given rise to harmful social consequences. In May 2020, United Nations Secretary-General Antonio Guterres denounced the "tsunami of hate and xenophobia, scapegoating and scare-mongering" targeted at the Asian communities in Europe and the USA. During the early stages of the pandemic, social media, online forums, and internet figures began to point fingers at China and the rest of the Asian world; unsubstantiated speculation that the virus was engineered as a bioweapon by China, birthed on Twitter and Reddit, has been deemed "scientifically invalid" by the US Office of the Director of National Intelligence, yet is believed by 52% of US adults. Such conspiracy theories of this variety have come with the rise of Asian hate crimes, up by 21% in the UK and 73% in the US during 2020. It is difficult to see this as a coincidence.

Above all, the anti-vaccination conspiracy, which argues vaccines are more harmful than the viruses they protect us from, was born and has multiplied online, with anti-vaxxers social media accounts increasing their following by at least 7.8 million people in 2020.

In the UK, it is predicted that the mortality rate could increase by up to eight times if high numbers of people refuse or delay taking the vaccine. Yet many have refused to take the vaccine; according to the IMF, it ranges from around 10-20% of the UK to 50% in Japan and 60% in France. Disinformation kills.

Diagnosis

It is clear – there is a pandemic of disinformation, with rumours of infection protection, hate-mongering of Asian minorities, and conspiracy theories promoting anti-vaccination causing an array of harmful symptoms. This is a significantly growing problem, and its primary cause is social media and the internet. Social media has allowed us to connect instantly with people all over the world, granted us access to real time information, and given us a platform to express ourselves, but the platform of anonymity and instantaneousness that it affords proliferates unevidenced assertions. Mr Twain is right - according to a study at MIT, news actually travels faster when it is false. As with any infectious virus, disinformation will only multiply if we do not find a cure.

Cure

What about legislation? Some have proposed laws that protect against disinformation. In practice, regulations could find harmfully false online content to be unlawful and have it removed. This could prevent mass disinformation from influencing people's decisions and behaviour, thus preventing social unrest, injury, and death.

However, this is a slippery slope. Like untrialled vaccines, laws that are rolled out in without deeper consideration can have frightening side effects, as governments enact broad, vague measures that are intended to curb the freedom of the press and free speech more widely. Indeed, if social media is regulated, and government is permitted the power to determine what is 'false' or 'harmful', there may be little to stop them from suppressing critical and truthful content under the justification that it is disinformation. This is already happening in some countries in response to Covid-19. In Russia, legislation introduced in March 2020 can impose hefty fines and prison time for outlets guilty of deliberately spreading false information about matters of public safety. In Jordan, a defence law allows the government to monitor, censor and shut down outlets - news website publisher Jamal Haddad was arrested after publishing an article questioning the why vaccines had yet to be given to ordinary citizens. The Network Enforcement Act in Germany allows the fining of social media companies for up to 50 million euros when they fail to remove fake news within 24 hours of notification.

It has been widely criticized domestically and internationally, and at a Bundestag hearing, almost all the experts considered the draft unconstitutional for concerns over freedom of press and expression.

In the UK, the Online Harms White Paper set out proposals for keeping UK internet users safe online and managing 'online harms' and was met with over 2,400 responses with concerns focusing on the impact on freedom of expression. While many of these ideas and laws come from a justified desire to combat harmful internet disinformation, they have vague definitions and broad scopes, easily re-interpreted to censor critical content. Furthermore, some countries that have no genuine concern for freedom of expression have used this opportunity to enact laws that place restrictions on speech that will long outlive the pandemic.

The crucial question then, is this: when, if ever, is the right of freedom of expression outweighed by the harm of what we say? It is true that we live in a pandemic of online disinformation, which has caused racism, injury, and many deaths. However, so far attempts to legislate for the banning of disinformation is dangerous and damaging. Other initiatives such as the UK Government's collaboration with WHO to create and distribute truthful content through communication campaigns such as Stop the Spread have had limited success. It is essential for the world to find a vaccine to online disinformation. Where we will find it is unclear, but it is certainly not on an Act of Parliament.

**ABBIE LEUNG**

## APPLE OF MY EYE

*the first time i felt homesick*
*i was cutting an apple.*

*i had yet to buy a fruit peeler*
*my knife poised at an angle, cutting into the skin.*
*i think about my dad across the dinner table*
*gently guiding the knife with his thumb,*
*turning the apple slowly, patiently with his left hand*
*until a ribbon of red eventually fell onto the tablecloth.*

*i push*
*and a piece of skin flies off, along with a good chunk of fruit.*
*by the time i was done peeling the apple*
*critics could call it a modern artwork sculpture,*
*all angles and misplaced joints*
*red splattering the kitchen counter and sink*
*a juxtaposition of colours and shapes*

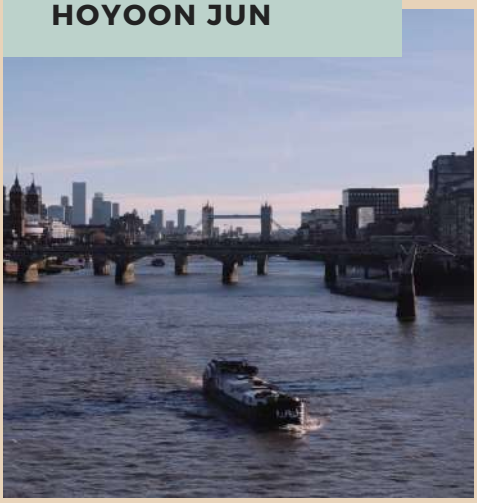
*one two three four*
*slices around the core*
*– quasimodo quadruplets.*
*as i bite into the core to finish off the excess,*
*i think about my mom coming into my room at*
*midnight before she goes to sleep*
*wordlessly handing me a plate of cleanly cut apple slices*

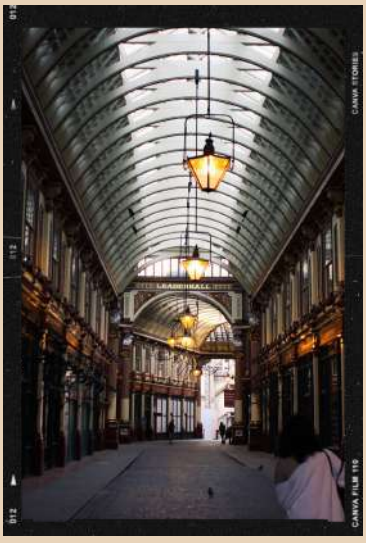
*but not before she stands at the kitchen counter,*
*biting into apple cores.*

**HAYA AL-AMIN**

## ON S'AMUSE SUR LA RIVE

**HOYOON JUN**





## HIGHLIGHTS

**SHAUN FEAKINS**

# REDEFINING PUBLIC HEALTH OFFENCES: A COMPARISON OF TWO ISLANDS' HANDLING OF COVID-19 BREACHES.

In March 2020, while Britain's lockdown debate was still raging, Jeju Island (South Korea) had not only been under strict lockdown for two months – it had also initiated its first COVID-19 civil lawsuit. Two Korean citizens, having arrived in the country from the U.S., flew to Jeju Island from Seoul. They proceeded to holiday, instead of completing a voluntary two-week quarantine. Upon arrival, the pair came into contact with 47 people in 20 locations (per KCDC's efficient contract-tracing technology) and then tested positive for COVID-19, having displayed minor symptoms for three days. A civil suit was brought against them for 132 million won, around £85,000.

The plaintiffs included both the government and two business-owners, looking to recover their losses. The Governor of Jeju stated his intentions to 'send a strong warning' in the fight against COVID-19. Nonetheless, the striking element of this case is the retributive thrust of the lawsuit. Given that the defendants had not tested positive and had not broken any law at the time, this was a landmark case in dealing with carelessness and COVID-19. The Korean government's approach centred around redefining the new normal, through stark preventative measures both legally and epidemiologically.

As a result, this lawsuit was not out of kilter with the Korean government's legal response, which was characterised by a focus on retribution and recovery. There were no qualms in pursuing harsh criminal charges against genuine rulebreakers. One college student ignited a nationwide furore over his lies to contract tracers and is currently awaiting sentencing; his punishment could be up to two years in prison. During the peak of the 'British' variant, foreign citizens were greeted with hazmat suits, fumigators and five stages of immigration at Incheon Airport, laden with warning signs of eye-watering fines and prison-time for failure to comply. Following that, two weeks of mandatory quarantine and three COVID tests would await. The Korean government had learned from the 2015 MERS outbreak, and already had statutory provisions in place, such as Article 49: 'bans on private gatherings of 5 or more people'.

The list of Korean governmental and civil legal procedures goes on. Regarding the U.K., at least geographically, one may have expected some similarity in approach to COVID-19 legislation: both Britain and Korea can limit immigration, given Korea's border with the North and its coastal landscape; both are strong economies with a dominant financial hub (Seoul/London); and both have a pervading respect for the Rule of Law. However, it is striking how different the British government's constitutional approach to the pandemic has been.

It seems unlikely that the stronghanded Korean approach to criminal and civil litigation in the pandemic would have gone down well among the British populace, given that even the most minor of precautionary measures – mask wearing on TFL services, for example – are widely shunned. Korea's article 49 was triggered throughout the pandemic. When the 'Rule of Six' was announced here, the Daily Mail's top comment read: 'I'll do as I please, thanks.' By 2021, there were almost as many CPS prosecutions of 'Assault on Emergency Workers' (1,688 counts), noted by the police as involving 'police officers being coughed and spat on', as there were Korean indictments of breaching stringent quarantine measures (1,702 counts).

For much of the populace and government, coronavirus regulation offences in the U.K. were seemingly considered just that – regulatory. In Korea, it could not have been clearer that, in damaging public health, you were committing a serious moral wrong. Mask-wearing controversies illuminate this point effectively: Mandates on masks in Korea were merely symbolic, purely as mask-wearing has always been considered a goodwill gesture in the interest of public health. Here, Sir Desmond Swayne MP called masks a 'monstrous imposition'. He then chose to wear a scarf over his face in the Commons in an act of petty, though public, defiance. Reflecting Swayne's reluctance to take public health seriously, most legal issues that gained media attention in the U.K. have been initiated against the government and the CPS, rather than by it. Lawsuits have ranged from condemning educational provisions to a civil suit over failures in care homes. One striking case which dominated the headlines regarded British Sign Language, where a deaf woman won a High Court action against the U.K. government's lack of BSL in official coronavirus briefings.

Nonetheless, there is one comparable case to the civil suit on Jeju Island: Five welders were jailed for 14 days for going to Sainsbury's supermarket on the Isle of Mann (a distinct jurisdiction), having broken the island's travel rules in 2020. Their offence was, by British standards, relatively innocuous – they wore masks, came into contact with no one else, but did break the rules of their exemption certificate. However, there was a clear thread running through media reporting

and e-commentators' thoughts. That thread regarded Margaret Ferrier and Dominic Cummings' trips to Parliament and Barnard Castle, respectively. Ferrier had taken a test for COVID-19 having displayed symptoms, and nonetheless travelled to Parliament. As noted by e-commentators on Twitter, there was a not-so-subtle irony in the lawmaker travelling to the lawmaker's building while breaking the law, amidst the most travel-limiting period in British history. Ferrier continued to sit in Parliament for four months, before finally being charged in January 2021. Cummings' trip to Barnard Castle, in potential breach of lockdown regulation, led to an even stronger reaction. The Prime Minister's backing of his chief unelected adviser's trip led to a sharp decrease in government confidence, as reported by a UCL study. In comparing these cases to that of the welders, the retributive measures against 5 laymen would inevitably provoke an adverse public reaction.

As one relative of those imprisoned put it: 'they're in jail and yet the politicians break the rules and get away with it'.

Ultimately, neither politician was indicted by the government or the law courts until long after the publicity of their respective cases had died down, and Cummings' case was closed completely by Durham Constabulary. Paul Davies, Boris Johnson, and Jeremy Corbyn were all embroiled in scandal at times, too. These cases are less indictments against the British legal system's abilities to cope with a pandemic, and more against the government's inability to follow its own rules. An individual's ability to sue the lawmaker successfully, as in the BSL case, is a stamp of pride for equality legislation, personal liberty, and the courts in the U.K. But had government officials not repeatedly undermined the public health offences that they were creating, retributive and punitive measures that worked so effectively in Korea may not have left such a sour taste.

**NATASHA BOWATER**

## MY JMC EXPERIENCE

From staring at Zoom, to standing in front of the former President of the Supreme Court of the United Kingdom, it's safe to say that my mooting experience has not been conventional. The progression from my bedroom to the imposing Bentham House Moot Court took place over the course of a year and culminated in being masked face-to-masked face with Lord Neuberger, whose reputation precedes him. A name present in, no doubt, all of the law textbooks lining my shelf, the Right Honourable Lord Neuberger of Abbotsbury served as President of the Supreme Court from 2012 to 2017 and presided over such landmark cases as *Nicklinson*, the *HS2 Action Alliance* case and *Stack v Dowden* (the bane of my existence in first year). He has heard the legal arguments of many first-class advocates over the years. And here he was judging me. A mooting novice competing in her first in-person moot. Add to this the fact that the moot was taking place at the beginning of October and the legal portion of my brain had been in hibernation for the duration of summer. Safe to say, I was not feeling too optimistic!

The subject of the moot was contract law and, specifically, the doctrine of lawful act duress. This was a full circle moment, as Round 1 of the UCL Junior Mooting Competition was also based on contract law.In the weeks preceding the moot, I had spent more time with Casedo than my flatmate and had spoken the words "my learned friend" more often than I had said "hello". Although I was now familiar with the preparation process, I can't lie and say that it wasn't a challenge. However, it had become a challenge I relished.

The air in the Moot Court crackled with nervous anticipation and the Freshers sat on the benches behind us must have wondered what on earth they had let themselves in for in signing up to such an intense competition. This atmosphere only intensified with the arrival of Lord Neuberger, mask on his face and our mooting future in his hands. This may sound dramatic, but, honestly, it was such a surreal moment realising that I was about to present a legal argument to one of the most influential legal minds of his generation. Never mind surreal, it was terrifying. I cleared my mind and went into a headspace solely focused on the law I had to grapple with. If you'd have asked me for my address in that moment, I doubt I would have answered correctly. However, I could have outlined the entire history of lawful act duress in the English law backwards in Latin (a slight exaggeration, but you get the gist). The whole experience is a blur, but I do remember one memorable moment. This was when one of my fellow finalists quoted Lord Neuberger to Lord Neuberger, whose eyes gave away the smile he was suppressing beneath his mask.

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# ADVICE TO FRESHER SELF

*"Just because you're doing what you love doesn't mean it's always going to be fun - the key is learning how to run with your challenges rather than away from them."*
-Jaden Yuen (Year 2)

*"Your body is a temple, your health is it's religion - never forget that."*
-Anonymous

*"Pain is cyclical, like the oceans' waves. Learn to surf it out and cruise. It will get better."*
-Anonymous

*"Say Yes to as much as possible. Go to that party, sign up to that society, run for that position. You have the time now to do it and start creating friendships everywhere you go."*
--Anaya (Year 3)

*"UCL Law can sometimes feel like a race with everyone against each other to secure top grades - slow down and don't let this get to you!"*
-Anonymous

*"Try as many things as possible: join competitions (law society's especially), participate in social events, do some travelling, or just simply leave your room!"-*
-Charlotte Choy (Year 2)

*"Stay on track with lawscasts, but you never really need to do all the reading lol ;)"*
-Anonymous

*"If you can, organise study groups with friends. You only have seminars once a fortnight per module, and so having more opportunities to discuss the content might help with your understanding!"*
-Mayowa Osadiya (Year 2)

*"Find your happy place when life gets too stressful."*
-Anonymous

*"Don't let uni stress, grades and career prospects take away from the time you dedicate to things you actually enjoy doing. Balance is key!"*
-Anonymous

*"Embrace confusion, as it betokens the path to understanding."*
-Marcus Kembery (Year 2)

*"Enjoy London as much as you can! Year 2 and 3 get a lot more busier, so do take the time to explore the city and what it has to offer."*
-Anonymous

*"A decision by the court is a judgment, not a judgement"*
-Maximilian Becker-Hussong (Year 2)

*"Organise your notes, or you'll have to spend a long time refreshing your memory during exam season!*
*Take it easy and focus on yourself; just because some of your classmates are, at times aggressively, competitive doesn't mean you have to be too.*
*And lastly, start writing that essay."*
-Haya Al-Amin (Year 2)

*"When you need a boost - hit tinyurl.com/nebergiveup in your search bar."*
-Dominic Ko (Year 2)

"Keep it calm, and be consistent."
-Camila Alvarez-Comella (Year 2)

"Have fun - make sure you don't overwork yourself!"
-Britney Laryea (Year 3)

"Don't sweat the small stuff."
-Natasha Bowater (Year 2)

"Chill."
-Lili Price (Year 2)

"Slow down, don't take first year too seriously. *But* give yourself a week for every essay - you owe it to yourself."
-Ben Matthes (Year 2)

"Take it one day at a time."
-Defne Fresko (Year 2)

"Not everyone is on the same path or timeline; go at your own pace and take it easy- be brave enough break out of mold if you want to!"
-Anonymous

"Don't stress yourself out and don't forget to have fun."
-Raphaëlle Martinez (Year 2)

"Join as many events as possible, meet new people and have fun!"
-Zevida Chew (Year 2)

"There is a world outside of reading statutes & academic commentary - make sure you go out and get involved with different UCL societies & people!"
-Anonymous

"Do the lecture before the reading."
-Anonymous

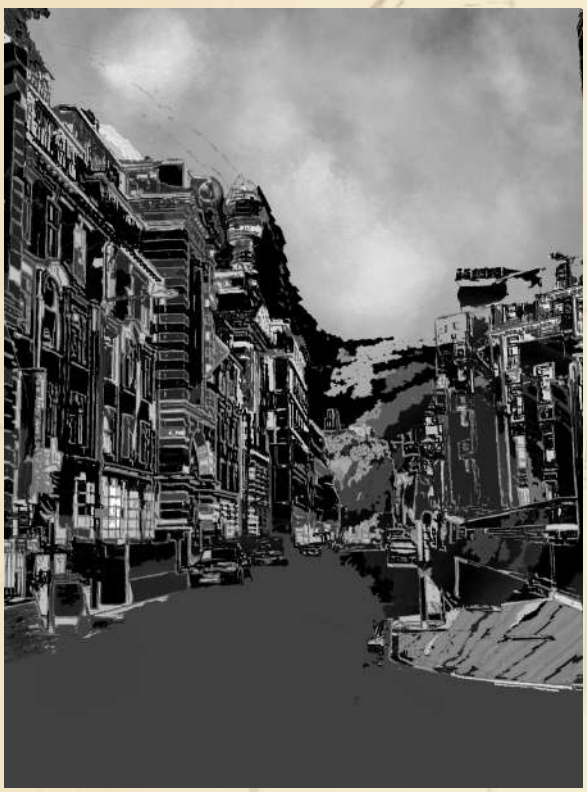
"Don't worry be happy"
-Anonymous

"Remember that there's more to uni life than just your law degree!"
-Madeline Lee (Year 2)

"It's not that deep - relax and don't be too hard on yourself.
The professors aren't that scary and they do want to help.
Learn where the best seats are in student centre and book early."
-Emilia Robson (Year 2)

"It's okay not to be on top of everything all the time."
-Stephanie Ng (Year 2)

## ARCHIE HUNT



LINES & OUTLINES

WEI HENG TAN

# COVID IS NOT THE GREAT EQUALISER: AN INTERSECTIONAL PERSPECTIVE ON COVID-19 AND STRUCTURAL INEQUALITIES

What is Intersectionality?

Coined by Kimberle Crenshaw, 'intersectionality' is a perspective that analyses the cumulative effect and complex relationship between different oppressive structures (i.e. heteronormativity, masculine privilege). In doing so, intersectionality disregards identity labels, such as race and gender, as silos to compartmentalise people. Rather, it takes a 'fractal' approach to understand the simultaneity of oppressions that intensify the vulnerabilities of different individuals and communities. It analyses not just identities, but also social processes and structures.

Thus far, most COVID-19 studies have exclusively focused on gender, race and poverty as isolated variables. However, this approach ignores historical structures such as the legacy of medical mistrust borne out of discrimination, and geographically embedded structures of marginalisation. Intersectionality accepts that social effects are not homogenous. It asks not "which was more affected: men or women?", but asks which women and which men were disproportionately affected.

Current policy-making is limited due to the (1) adoption of a one-size-fits-all approach, (2) conceptualisation of health as the responsibility of individuals, (3) centring of the experience around the majority race, middle-class people as normative, and (4) contextual factors. As a result, it ignores interlocking identities. Identities are not a binary (and/or), but a matrix (both/and): as a gay white man from a low socioeconomic status (SES), one would be a minority despite being part of the majority race. The minority/majority distinction is insufficient to properly understand these intersections between labels.

Health Inequalities

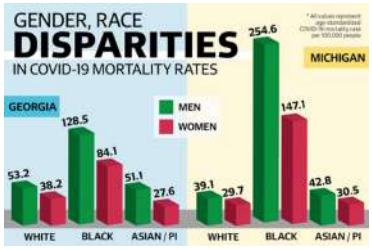
Diseases are not socially neutral. Drawing on history, the 1918 Spanish influenza epidemic in America saw a higher rate of infection among the working class as compared to the rich. Similarly, COVID-19 equally reflect how existing structures of injustice create such 'discrimination'. For one, the severity of COVID-19 is exacerbated by pre-existing chronic conditions like HIV/AIDS. In universal healthcare systems like the United Kingdom, marginalised communities have less access to medical healthcare, with the number of patients per general practitioner 15% higher in the most deprived areas compared to the least deprived areas.

As a result, marginalised groups with existing chronic conditions are less likely to receive treatment for COVID-19 and their pre-existing conditions, which would worsen the effects of the virus.

Intersectionality and Data Analysis

Often, statistics provide a sweeping and inaccurate understanding of the effect of COVID-19. The figure below seems to support the proposition that the mortality rate of COVID-19 is higher in men than women. However, a more nuanced view (that is informed by intersectionality) would dispute the overly simplistic universal conclusion. Researchers at Harvard's GenderSci Lab found that contrary to previous studies, an intersectional approach found that disparity due to sex varies by race: "Black women have a higher mortality rate than white men and Asian/Pacific Islander men". This draws attention to the likely presence of social processes like racism that influence such disparity.

Data is not objective because of its apparent correspondence with reality. Interpretation is what gives life to the data collected. Moving forward, policy-makers should avoid using demographics as the sole explanation for health inequalities. It is crucial to consider oppressive structures and intersectional experiences when interpreting data.




To dispel the binarism and unravel hidden hierarchies in our data analysis, we need data from a large set of factors (i.e. marriage status, sexual orientation, disability, geography). Beyond the distinction of men and women, we have to recognise that, for example, single mothers and women in the frontline are more vulnerable than white-collar women. This underscores the importance to understand how different factors interact to shape COVID-19 risks and responses. This is best achieved by marrying quantitative and qualitative methods. Quantitative studies can focus on the specific power structures and groups while qualitative studies can investigate the varying social forces that are shaping one's experience.

Intersectional Experiences of COVID-19

We can understand the relationship between COVID-19 and inequality by asking:

(1) How structures of inequality affect the spread of the pandemic, and (2) how responses to the pandemic heightened these structures.

Many would carry the distant memory of lockdown - being cut off from friends, dining out, and, perhaps most importantly, clubs. On one hand, many were laid off or had a significant reduction of work hours. The ones affected were the women, youths, and low-wage workers. Primarily composed of individuals from a lower SES, the effect was the reinforcement of the poverty cycle. On the other hand, white-collar workers were able to take their work online through teleworking. A survey of several OEDC countries showed that the most privileged were less likely to suffer economic consequences as they were more likely to retain their jobs. This often involves a predominantly white, educated, male workforce who are already of an upper-middle-class standing. In addition, women in the teleworking sector had to reduce their work hours due to the increased caretaking responsibility following school closures. Thus, the lockdown policy had the effect of reinforcing the gender, racial and socioeconomic divide.

Despite the paramount importance of essential sectors such as healthcare and cleaning amidst the crisis, the pandemic did not improve their job conditions or monetary value. These key workers did not have benefits like sufficient pay and welfare protection, which white-collar workers receive. Further, these workers faced a higher risk of COVID-19 exposure, leading to higher rates of infection and mortality. Sadly, these sectors are disproportionately populated by low-skilled women and ethnic minorities, with statistics showing more than 50% of these workers belong to the lowest educated groups in the United Kingdom.

As a result, COVID containment policies had the effect of reinforcing pre-existing labour market inequalities. The educated and high-paid can persist securely with minimal losses. Conversely, the less educated and low paid are more vulnerable to exposure and are experiencing greater economic disruption. Ultimately, it preserves existing structures of injustice since racial minorities, due to a legacy of discrimination, occupy a lower socioeconomic status.

COVID-19 also questioned the assumption of a home being a safe and sufficient place. School closures meant that income families not only have to cope with online teaching, but also balance childcare and work at the same time. Digital inequalities emerge as the well-off were able to purchase the necessary instruments to support homeschooling and provide sufficient space for studying. However, low-income families lacked the capacity to manage such unexpected expenses while ensuring their children are well-fed since government subsidies had previously ensured affordable school meals. The result: while ethnic majorities saw a yearly increase in the proportion of university-educated students, the proportion of black British school leavers began to fall, reversing the progress made.

On housing, multigenerational households lead to increased opportunities for COVID-19 transmission. This primarily affects ethnic minorities of working-class backgrounds. Such raced classism demonstrates the intersecting effects of race and class.

## The Growing Importance of Intersectional Analysis in Public Policy

Intersectionality is crucial in ensuring a more equitable response to COVID-19. There is no "view from nowhere", and by implication no policy is neutral. To escape a one-size-fits-all policy that caters to the majority while hollowing solidarity, an intersectional perspective is needed. Simply looking at inequalities as separate categories leads to an "oppression Olympics" where marginal groups compete for resources and those in power have the benefit of choosing their categories of interest. An intersectional perspective encourages analysis beyond visible inequality and into underlying social forces and interacting structures of oppression.

To realise the perspective gained, we can look to international examples that adopt an intersectional approach to protect vulnerable groups. UNDP Zimbabwe took an intersectional gender and disability-inclusive approach by holding workshops for women and girls with disabilities, caregivers and local workers. The Hawai'i State Commission on the Status of Women has proposed the creation of social infrastructures, such as childcare and education, to help marginalised communities recover. Similarly, more targeted policies are required to better address the unequal impact of the pandemic. Furthermore, it is important to include a diverse group in the political and technical committees that manage such emergencies. Greater representation and the adoption of an intersectional perspective would help the government design policies that mitigate the unequal effect of the pandemic.

## Conclusion

As argued by Iris Marion Young, society has a collective responsibility for justice. Oppressive structures are (re)produced by large numbers of people acting according to societal norms, which then normalises and entrenches it as status quo. However, norms can be beneficial to some, while directly or indirectly being harmful to others. As we are part of the social process that created present-day inequalities, there is a collective responsibility to rectify them. By extension, as opposed to the tyranny of the majority in the form of a one-size-fits-all policy, governments have a moral imperative to ensure those who suffer the intersectional brunt of structural inequality are cared for.

YANPEI ZHANG

# IDENTITY AND RACIAL BIAS IN THE CRIMINAL JUSTICE SYSTEM

The UK in 2021 is more ethnically diverse than ever. It is often claimed that we live in a "post-racial" society or a "colour-blind" nation, where one's opportunities are defined only by ambition and merit, not by racial classification or ethnic origin. However, there remains a disproportionately large number of people from minority backgrounds in the criminal justice system. It hardly seems plausible that BAME men and women, who comprise only 14% of the population, could possibly commit 25% of crimes – but this is exactly what the statistics imply. Critics view the disproportionately high arrest and imprisonment rates of BAME individuals as evidence of entrenched racial discrimination in the criminal justice system.

While it is no longer palatable for laws to contain overt racial bias, there has been a shift from explicit de jure racism to more insidious de facto racism. Minorities are subject to unequal protection under the law, excessive surveillance, and discriminatory practices in the justice system. Studies have found that ethnic minorities are treated more harshly than Whites in similar situations at various stages of the criminal justice process after controlling for legal factors. To trigger reform and spark a revolution in our collective consciousness, it is important to first recognise that the entire justice system is vulnerable to racial prejudices and cultural stereotypes.

Members of the police force, legal professional, and the judiciary ought to be made "self-aware" and acknowledge the possibility that their actions and decisions may contribute to racial inequalities. Superficially race-neutral laws have the potential to reproduce racial disparities as officials exhibit unconscious biases when exercising power, allowing discrimination to enter the system. The UK should enact legislation and policies that more aggressively promote racial justice. Furthermore, it is necessary to design procedural safeguard mechanisms at arrest, sentencing, and beyond.

Rates of arrest are generally higher for ethnic minorities. The data is particularly concerning for Black people, who are 18 times as likely to be stopped and searched by police without reason under section 60 of the Criminal Justice and Public Order Act 1994 vis-à-vis their White British counterparts. Such State-sanctioned harassment undermines public confidence in the police force and makes little difference in addressing serious crime. This suggests that current race neutral laws are inadequate; the government must implement policies and regulations that proactively protect the BAME community from egregious racial profiling. All police officers should be subject to mandatory implicit bias training to encourage greater transparency and internal consistency when making split-second decisions.

Procedural solutions pre-trial and within the courtroom may help to bridge the racial divide. Plea bargains explain in part the differences in length and severity of sentences served. White defendants plead not guilty to 31% of charges, compared to 40% of BAME defendants. Admitting guilt can lead to a more lenient community punishment or reduce custodial sentences by up to a third in comparison with jury trials. Lack of trust in the legal system, rather than a lack of legal advice, is at the crux of this issue. Many BAME defendants neither trust the advice they are given, nor do they believe they will receive a fair hearing from magistrates.

Many defendants question the motives of legal aid solicitors, who are regarded as representing "the system" rather than their clients' interests. Such lack of confidence is not unfounded: research has shown that defence attorneys, who are supposed to be unrelenting advocates for their clients and are obligated to act in their best interests, exhibit racial biases similar to those found in the general population. To overcome the problem of trust, affirmative action policies should be introduced to help BAME youth study law, diversify the composition of the legal profession, and shatter the racial glass ceiling.

Juries should be managed to ensure that their composition is fair and impartial. Jurors should not be inappropriately excluded on the basis of race or ethnicity, but be carefully screened for prejudices and, if necessary, removed. Where possible, juries should include members of the BAME community to represent the UK's modern and dynamic demographic makeup. It has been demonstrated that the racial composition of juries can impact the verdicts delivered to minority defendants. BAME jurors may be more sympathetic to the individual circumstances of minority defendants, due to their shared identities and experiences. Their mere presence may embolden White jurors to broach the thorny subject of racism during deliberations. Furthermore, encouraging BAME participation in the criminal justice procedure will help to foster trust in the system.

Judges have a critical role as the criminal justice system allows for considerable judicial discretion. Judges must recognise that susceptibility to racial stereotypes and broader cultural schemas can influence a defendant's perceived blameworthiness. Judges should employ an actively interventionist approach to check and balance against biases that emerge throughout a trial. At sentencing, judges should be receptive and sensitive to the context in which an offence was committed and consider that minorities are often subject to racial biases and fewer socioeconomic opportunities throughout their lives.

Moreover, judges ought to challenge any potentially discriminatory treatment by other actors and incorporate identity into the decision-making process. That is not to say that minorities should be disposed of more leniently or held to a lower standard than White defendants, but it is true that crimes of the same nature are often qualitatively different depending on a defendant's background.

Crime is a complex social phenomenon and there are myriad explanations for the overrepresentation of BAME individuals in the criminal justice system, some of which extend far beyond the system itself. The law forms part of the solution, but other factors also need to be addressed in the fight for racial justice. Crime should be conflated with socioeconomic factors, which help explain the disproportionate prosecution, policing, incarceration, conviction, and disenfranchisement within BAME communities. White Britons have nearly treble the average home ownership rates of Black Africans. The recent COVID-19 pandemic has also highlighted unequal health outcomes, as Black African men have a 2.5 times higher risk of death compared to their White British counterparts. As the Lammy Review puts it, "prisons may be walled off from society, but they remain a product of it".

**MARK JHAVERI**

## THE NEW NORMAL IN PREMIER LEAGUE FOOTBALL

*Money over Social Values and the Law: A brief analysis of the Saudi-Newcastle takeover*

On the 7th of October 2021, Newcastle United Football Club was bought for £300 million by an investment consortium led by the Public Investment Fund of Saudi Arabia, chaired by crown prince Mohammed bin Salman, taking a majority 80% stake in the club. Thousands of fans celebrated the change in ownership outside of the club's stadium, St. James' Park. Various journals including The Guardian confirmed the euphoric scenes and put forth the image that the pride of a city had been restored. The takeover was welcomed by the people of Newcastle because the fans had been frustrated with their previous owner, Mike Ashley, who for 14 years merely used the club as means to promote his company "Sports Direct" and failed to invest in the club like the fans expected. Under Mike Ashley's reign, Newcastle United delivered only poor results on the pitch and ultimately failed to provide the city, where football lies at the core, with a source of happiness. The takeover led by the Saudi investment fund has turned the club into the richest team of the Premier League and thus provides a major opportunity for the club to compete at a higher level again, boosting the morale of the city. Furthermore, Newcastle also views the takeover as an investment into the city itself, hoping to see economic development in the deprived areas of northern England. Similar multimillion pound club takeovers from the past two decades like that of Roman Abramovich at Chelsea FC, Sheikh Mansour at Manchester City FC and Tamim bin Hamad Al Thani at Paris St. Germain FC are proving to become the new normal in football. While the Newcastle takeover at first glance seems like a massive opportunity for the city as a whole, the transaction should have been stopped because it is giving rise to deeper sociolegal issues that go beyond football; it is allowing big money deals to override the preservation of liberal, social values and the law.

The Newcastle United takeover by prince Mohammed bin Salman should have been put to a stop as his social values are not aligned with those of football. Football has always been the game where everyone of all races, genders, ages and religions come together and see themselves as equals. Football unites the different societies of the world into one. Footballing organizations such as FIFA and UEFA have also in the past few years stepped up and raised their standards of inclusivity to those who take interest in the game. For example, women's football is being promoted and discrimination against ethnic minorities as well as the LGBTQ+ community is being combatted through various campaigns such as the "Say No to Racism" campaign. More importantly, the football community has begun to sanction those who do not comply with their values. To me it seems quite ironic then that football has not made a statement against prince Mohammed bin Salman, who represents a state which outlaws feminism, homosexuality, and atheism. By condemning these values, fundamental, liberal norms like the ability to express a self-identity are being endangered. Clearly, such views are out of line with those of the game of football and should not have been endorsed by allowing the Newcastle transaction to happen. Unfortunately, the consequence of this transaction is that bin Salman's image will be elevated unjustifiably via football, while his affiliation in oppressing calls to equality are downplayed.

The Premier League, the league in which Newcastle United plays in, represents arguably the biggest stage of football. It is financially established through impressive TV deals and a massive, loyal fanbase. Due to the scope of its global outreach, which most world leaders cannot even achieve, the Premier League's behaviour exerts tremendous influence over society. Using the notion that greater influence results in greater social responsibility, the Premier League has a moral and social duty to promote to its audience key values like equality.

However, in the case of this transaction, we have seen the league pass up on this responsibility; instead, the Premier

League was swayed by the attractiveness of bin Salman's huge sum of money and ignored the importance of making a public statement in respect to preserving core social values.

Having been connected to a multitude of international legal controversies, bin Salman is also legally not a fit person to become an owner of a Premier League football club. To illustrate, US intelligence reports have linked bin Salman to the murder and dismemberment of an exiled Saudi journalist and critic of the regime in 2018, Jamal Khashoggi. Followingly, the Saudi state trialled 11 suspects, of which eight were convicted, in order to disassociate bin Salman from the situation. UN Special Rapporteur Agnès Callamard referred to the trial as an "antithesis of justice", where the actual perpetrators of the crimes walk free. Bin Salman is additionally being linked to war crimes by Human Rights Watch. Starting a war in Yemen back in 2015, bin Salman is now using unhumanitarian methods of combat. Most notably, he has set up an economic blockade to stop food from entering Yemen, creating a man-made famine. Using starvation as a tool for warfare is a serious breach of the Geneva Convention and has led to thousands of civilian deaths. On top of all of that, bin Salman is even associated to piracy related crimes against the Premier League itself. BeoutQ, a Saudi company, has been pirating TV rights from beIN Sports, a broadcaster in Qatar who holds the actual rights to show Premier League games in the Middle East. Both Sky Sports and BT for example were illegally streamed in Saudi Arabia via BeoutQ. Consequently, the World Trade Organization accused the government of Saudi Arabia, with bin Salman at its head, of breaching intellectual property rights by failing to address the situation. Bin Salman's alleged involvement in these crimes amounts to serious, international legal breaches which need to be further investigated instead of being brushed under the carpet by the takeover of Newcastle United.

In England, the Rule of Law establishes that everyone, including the government, is subject to the law. In theory, this constitutional principle should make it impossible for a man like bin Salman, who sees himself above the law as presented by the evidence above, to buy ownership into a football team.

Even if the allegations are proven wrong, further investigations into bin Salman's character should be required before allowing the transaction to go through. The Newcastle transaction however has demonstrated to be that England is failing to live up to its standard of justice by allowing a potential war criminal to freely conduct business in their country. While the UK government should have called this out, they deliberately chose not to. Partially, this can be explained by the government's desire keep Saudi Arabia as a crucial trading ally in the Middle East. In fact, Britain heavily relies on Saudi Arabia for its oil and weapons trade. To exemplify the hypocrisy of the government even more, Prime Minister Boris Johnson did not hesitate to criticize the proposition of the "European Super League." He even threatened to pass legislation to stop it from materializing so as to appeal to the many English fans who too opposed the idea. This demonstrates that the UK government is indeed capable of and willing to exert pressure onto football clubs and leagues, however, it chooses only to do so when it serves its political interests. In the case of the Newcastle transaction, preserving constitutional principles did not match up with political interests such as foreign investment into England. Hence, the government kept silent.

From the Newcastle United takeover, we have seen that in the new normal of football, attractive business deals will prevail over the preservation of fundamental, liberal values and legal principles. In the case of bin Salman, who evidently appears to deviate from those values, neither the English Premier League nor the government decided to step up and prevent his investment from materializing. Thus, there appears to be a major flaw in the system, where the Premier League lacks the motivation to stand up for its community values and where the government acts hypocritically towards its own constitutional guidelines: that the rule of law can be ignored if political interests are being served. As an enthusiast of football myself, I seek to criticize this new norm in football. As mentioned earlier, the game of football is truly welcoming and inclusive to all. These characteristics are what make us refer to football as "the beautiful game." It is time then, that the leagues and governments make an effort to preserve these characteristics, so that the game doesn't become a rotten one.

**JUSTIN CAI**

## CATCHING UP WITH MISINFORMATION AMIDST THE COVID-19 PANDEMIC

The advent of the COVID-19 pandemic has changed the world irreversibly. Lockdowns and other restrictions implemented to 'flatten the curve' of infection have led to the adoption of new technologies that further global digitalisation.

These developments range from contact-tracing apps to drones that broadcast mask-wearing announcements, all of which work with varying levels of efficacy (depending on who you ask). That said, this embrace of technology has come at the cost of misinformation which has preyed upon the anxieties and fears harboured by ordinary people. This

article will centre around this concept and will look at how the law can catch up with misinformation in an increasingly volatile and unstable world.

The law must evolve to account for the dynamic character of the digital world, because unfortunately, increased convenience and innovation creates opportunities for new avenues of exploitation. One example of this incessant difficulty with digitalisation is an uptick in scams that aim to exploit society's increased reliance on technology and digital communication. The UK National Crime Agency has issued warnings against e-scammers looking to exploit the confusion and uncertainty caused by the pandemic. This reliance on technology has also spurred the prominence of COVID-19 related misinformation, particularly relating to bogus claims that threaten the integrity of public health responses. A popular avenue for misinformation comes from social media, where accounts promoting anti-vaccine campaigns have amassed millions of followers. In one instance, oral administration of 'colloidal silver' was promoted as a potential treatment against the virus, even though the National Center for Complementary and Integrative Health had previously reported that 'scientific evidence doesn't support [its use for] any disease'. The problem has become so widespread that the WHO has described it as an 'infodemic', to spotlight the pandemic of false information running parallel to the actual pandemic.

Though some of these claims come across as comical initially, like Brazilian President Jair Bolsonaro's claim that the COVID-19 vaccine turns people into crocodiles, they are still capable of damaging one's well-being. The ingestion of ivermectin as a COVID-19 prophylactic — which had been done because of reliance on fraudulent findings — had led to 6 hospitalisations in Oregon and two deaths in New Mexico from ivermectin poisoning. In 2020, EE personnel faced attacks and death threats due to 5G conspiracy theories. Furthermore, Italian findings suggest that vaccine-related misinformation is liable for a decrease in vaccination rates, which proved to be dangerous when the Office of National Statistics found that unvaccinated patients faced a substantially higher risk of death from COVID-19 compared to their vaccinated counterparts: unvaccinated people accounted for nearly 850 of the total COVID-19 related deaths over an eight month period, whereas fully vaccinated people accounted for only 33 deaths. It would be fair to infer that several of these deaths could have been prevented by addressing vaccine-related misinformation.

Having determined that pandemic-related misinformation poses a threat to one's life and wellbeing, it is time to talk about solutions. The main issue that appears when dealing with misinformation is that of enforcement, or rather a lack thereof. In a report titled 'Misinformation in the COVID-19 Infodemic', the Digital, Culture, Media and Sport Committee raised issue with the 'lack of consistent standards' across online platforms in their efforts against COVID misinformation, as current legal regulations allow platforms to use in-house criteria to categorise and target misinformation. This means that a false claim stricken from one platform may resurface in another, leading to a situation where online regulators are left playing an endless game of Whack-a-Mole with fraudsters and exploitative characters.

The subjective application of mechanisms against misinformation is incompatible with the objective outcome of injury and death ensuing. For this reason, the law must redefine the way in which it handles medical misinformation. I propose that the law not defer responsibility to online platforms, but rather grant public health bodies the legal power to determine whether a COVID-19 related claim amounts to misinformation or not.

There are various compelling reasons to advocate for such an approach. One reason is that reference to expert evidence is already done in deciding in legal cases, along with the inclusion of evidence — authored by medical personnel, as per the 'Misinformation in the COVID-19 Infodemic' report — in the parliamentary process. The law's prior reliance on recognised authority can be carried over. Recognised medical authorities, with legal mandate, are well-positioned to help digital platforms filter out misinformation through scientific methods of systematic testing, experimentation, and scrutiny. If a claim is disproven in the process, there is a compelling case to lawfully restrict its propagation as something potentially detrimental to public health interests.

Another advantage of this approach is that it would lead to methodical, consistent results against COVID-19 misinformation. The findings of scientific bodies can be applied across multiple platforms simultaneously for expediency, thereby preventing false claims from resurfacing elsewhere. This approach also means that the fight against misinformation will be facilitated by those with the proper qualifications. This in turn increases the probability that online information is scientifically accurate, standardises the criteria in which misinformation is examined, and allays fears of politicization.
An additional benefit is the improved sense of fluidity and responsiveness to new claims, as our knowledge of the COVID-19 virus is constantly evolving. Medical authorities are more likely to be at the forefront of the field, and are therefore more suited to adjust their evaluation of potential misinformation quickly given any new information.

That being said, it is preferable for enforcement to operate on a multilateral basis. Pandemic-related distortions, disinformation, and misinformation are global issues that deserve global attention. It is here that comparative law comes into play. Much exploration is needed to determine

how different countries with distinct legal systems, values, and priorities may collaborate and adopt a unified approach to combat the costly effects of medical misinformation. The issue of comparative law would be best answered by someone with authority on this topic.

In sum, the law ought to defer responsibility to scientific authorities to fight against misinformation amidst the COVID-19 pandemic. This is a serious matter that requires the attention of experts, who should be given the jurisdiction to address misinformation through the law itself. One who acts hesitantly accomplishes nothing. It is time for resolute action to be taken, so that we may accelerate our recovery from this pandemic and redefine the way medical misinformation is handled.

**LISA ONYEKA**

## DEEPFAKES AND THEIR RELATIONSHIP WITH LAW AND POLITICS

*As deepfakes increase in prominence so too will their capacity to wreak havoc, particularly on political institutions. As such, governments must react to this growing threat in a timely fashion.*

The term 'deepfake' refers to a piece of synthetic media - for example, an image, video, or audio clip. More specifically, this synthetic or fake media is so called because it is created using deep learning technology, a type of artificial intelligence (AI). As such, it is cleverly an amalgamation of the two phrases: 'deep learning' and 'fake'. The term and the controversy surrounding it first rose to prominence in 2017 after a Reddit user of the same name posted pornographic videos on the forum where adult entertainers' faces were replaced with that of celebrities. Since then, there has been a plethora of synthetic media hitting the web.

The most well known form of deepfaked media are videos. These are generated through AI learning what a source face looks like by analysing numerous images of an individual, and then superimposing the face onto a target body. Similarly, deepfaked audio clips can be created through algorithms being used to analyse an individual's speech patterns and inflections which can then be used to synthesise voice clones. Deepfake technology may even be able to create entire fictitious persons complete with a unique face and profile.

Media manipulation itself cannot be described as a new phenomenon. For example, fashion publications have been retouching and smoothing pictures to achieve more polished looks for many decades. Similarly, the technology to produce deepfakes has arguably been around for some time, the most recognisable use being special effects and CGI in the film industry to create, de-age, age up or even revive dead actors. However, beforehand, key barriers to the production of synthetic media were the requirements of often expensive specialised equipment and software as well as appropriate proficiency in them.

*As deepfakes increase in prominence so too will their capacity to wreak havoc, particularly on political institutions. As such, governments must react to this growing threat in a timely fashion.*

Now, recent technological and software advances mean it is entirely possible for anyone to create a deepfake. Mobile applications make it all too cheap, easy and accessible; with examples that do all the hard work for you being FaceApp, FakeApp, and ZaoApp. So popular was ZaoApp, allowing users to change a character's face in a film or TV clip by using selfies from their phone (and generating it in under eight seconds) that within three days it became the most downloaded app in China.

Potential impacts

As deepfakes continue to increase in scope, scale and sophistication, the possible effects and the affected are immeasurable. For instance, deepfakes could spell trouble for the judicial system, with faked events being entered as evidence. They also pose a personal security risk. Given that deepfakes can mimic individuals' faces and voices, they could potentially trick systems that rely on this as a mode of secure biometric recognition and as such, the potential for scams is apparent.

Perhaps most worrisome of all are deepfakes featuring political figures. Individuals and organisations alike now wield the means to produce fake news for political sabotage. They can create synthetic media of political figures purporting to do or say things they never actually did. This may in turn have profoundly negative consequences on the functioning of liberal democracies. For example, targeted videos portraying politicians making hateful comments may impact vital democratic processes such as electoral campaigns. If weaponised by hostile governments, deepfakes could even pose threats to national security or impair international relations.

Current examples of synthetic media in politics

In April 2018, Buzzfeed released a deepfake video of Barack Obama purporting to say crude words about Donald Trump to demonstrate how easy it is to discharge and highlight its risks to public discourse. More recently, Channel 4 published a deepfake of the Queen's 2020 Message which garnered two million views. Now, recent technological software advances mean it is entirely possible for anyone to create a deepfake. Mobile applications make it all too cheap, easy and accessible; with examples that do all the hard work for you being FaceApp, FakeApp, and ZaoApp. So popular was ZaoApp, allowing users to change a character's face in a film or TV clip by using selfies from their phone (and generating it in under eight seconds) that within three days it became the most downloaded app in China.

*The popular film 'Rogue One: A Star Wars Story' utilised technology similar to that which is used to create deepfakes in order to de-age actress Carrie Fisher*

One confirmed employment of a deepfake by a political party in an electoral campaign occured in 2018 when sp.a, a Flemish socialist party posted a video on its social media pages where Trump appeared to taunt Belgium for remaining signatory to the Paris climate agreement. Although a poor forgery, and signposted as fake in a concluding statement, this could soon become part and parcel of political debate. It is also entirely possible that a deepfake played a role in the crisis that occurred in Gabon in the same year.

Relatedly, shallowfakes are beginning to emerge in politics. These are media that are either doctored with rudimentary editing tools or presented out of context. An example is a video where Nancy Pelosi, the Speaker of the United States House of Representatives, had one of her speeches slowed down, making it sound slurred, with the intention of making her look convincingly incapable. It reached and was shared by millions, even by the likes of Donald Trump's lawyer and the former mayor of New York, Rudi Giuliani. Similar tactics were seen in the run-up to the 2019 UK general election, during which the Conservative party manipulated an interview with Keir Starmer, then Shadow Brexit Secretary, to make it seem as though he was unable to give an answer on the party's Brexit stance.

This mischief-making is only likely to increase and is exacerbated by the fact that deepfakes are often very realistic. Though there is some way to go before they are totally undetectable, strides in that direction continue to be made. There may come a time when even the trained eye may struggle to distinguish forgeries from factual media with this crisis of misinformation we may be facing being dubbed the 'infocalypse'.

The role of law and lawmakers

Currently, no country in the world has passed legislation specifically made to combat the rise in deepfakes. However, in the meantime, deepfakes may be limited by established laws and legal doctrines that target disinformation. This includes the torts of passing off, which may apply only insofar as the victims have previously commercialised their public image; malicious falsehood, albeit this requires that the false words spewed result in quantifiable monetary loss, and defamation, although in order to be actionable, the individual depicted must normally show such a publication caused them 'serious harm'.

In truth, the use of deepfake technology and potential for malicious deployment begs the need for Parliament and the courts to react. The Online Harms White Paper published by the Department for Digital, Culture, Media and Sport subcommittee in 2019 shows that the UK is alive to the issue and indicates it is planning to regulate soon. The challenge, however, is how exactly to go about regulating this emerging threat, particularly to liberal democracy. What is the best approach? How far should it go? Should any obligations be imposed on platform operators to control what content is disseminated? Though an outright ban of deepfakes may be the most effective way to limit all problems, this would no doubt be incompatible with the fundamental human right of freedom of expression contained within Article 10 of the European Convention on Human Rights and transposed into UK law through the Human Rights Act 1998.

*Since the publishing of the Online Harms White Paper no further action has been made by Parliament to pass legislation to address the rise of deepfakes*

Across the pond, political deepfakes are banned in two US states: Texas, being the first, and California, which makes it illegal "to create or distribute videos, images, or audio of politicians doctored to resemble real footage within 60 days of an election".

However, even with appropriate law, criminal sanctions, civil remedies and effective enforcement, this does not tackle the issue of the detrimental consequences viral deepfakes may have, nor their clean-up. Consequently, it appears there must be a two-pronged solution.

The role of tech and tech companies

As is the case with many other evolving technological issues, legislating is not the only answer. In fact, it is unlikely to deter those who are determined to undermine political trust and sow disinformation.

Ironically, AI has a starring role to play in combating malicious deepfakes with governments, universities and tech firms all currently funding research to help with its detection. For example, Faculty, a UK-based startup whose clients include the Home Office and numerous police forces, has teams exclusively focused on generating thousands of deepfakes using all the leading deepfake algorithms in the market in order to train up systems to

distinguish true media from synthetic. Similarly, Amber, a company in New York is looking to create a form of "truth layer" software that can be embedded in smartphone cameras which will act as a watermark to verify a video's authenticity.


*Companies like Faculty will be instrumental to combating malicious deepfakes*

The Big Tech players are not being stagnant either. Last June the first Deepfake Detection Challenge Dataset launched, backed by the likes of Facebook and Microsoft as well as academics from an array of top universities. This drew more than 2,000 participants and saw research teams around the globe collaborating and competing to innovate new technologies in order to detect deepfakes and manipulated media, speeding up progress in this area. Sparked in part by the 2020 US election, Facebook also banned deepfake videos that are likely to mislead viewers. However, this does not extend to deepfakes meant as parody or satire, nor shallowfakes. Meanwhile, Twitter's synthetic and manipulated media policy states that "you may not deceptively promote synthetic or manipulated media that are likely to cause harm", the consequence being its labelling or removal.

Alarmingly, as detection improves so too will deepfake algorithms. For instance, after it was discovered in 2018 that deepfake faces blink unnaturally this was soon addressed. Such is the nature of the game. To quote the co-founder and CEO of Faculty, Marc Warner, "it's an extremely challenging problem and it's likely there will always be an arms race between detection and generation."

My view

Government proactivity in taking actionable steps to limit the spread of harmful deepfakes by investing in the advancement of deepfake detection and watermark technology is certainly welcomed, but strangely they are yet to deploy the most obvious tool in their arsenal: the law. This may be because there is a belief that the law is ill-equipped to tackle the issue. Regardless, alongside having a deterring function, the law also operates to denounce and label certain behaviours as undesirable. As such, it still makes sense to legislate. Further, existing laws that may restrict the circulation of deepfakes only do so under certain circumstances: specific legislation aimed at limiting their potential damage is now overdue.

Currently, governments have taken a largely hands-off approach in relation to regulating social media platform operators. They should instead pass legislation going further than that of current tech companies policies, requiring that both malicious deepfakes and shallowfakes be removed from their servers whenever found. Though some may criticise this as beyond the remit of public institutions, the power and influence that the biggest social media platforms have over society is immense, it follows that the law should reflect this fact. In my view, an ideal framework would be one where numerous states band together and create some form of standardised regulation. This would not only help push tech companies to abide by these stipulations but would also make it easier for them to do so by reducing the number of different rules coming from different countries that they would have to comply with.

I genuinely worry about the possible chaos deepfakes can bring to all walks of life, especially the threat they pose to democracy. I am fearful of the prospect of an 'infocalypse', where individuals and countries will be facing an onslaught of disinformation, and that politicians could be undermined or leverage the circulation of deepfakes as a veil to hide behind by merely denouncing unspeakable comments they are found to say as just another example of synthetic media. I am, however, optimistic about the progress tech companies are making. Continued investment in deepfake spotting and watermarking is vital as is increasing public awareness of the issue, because no matter how good and efficient legislation might be, it can only be applied after the damage has already been done.

Though chilling, this is just another example of the law and governments struggles to come to grips with technological advancements, other recent phenomena being the regulation of drones, autonomous vehicles and taxing Big Tech.

**JASMINE CHAN**

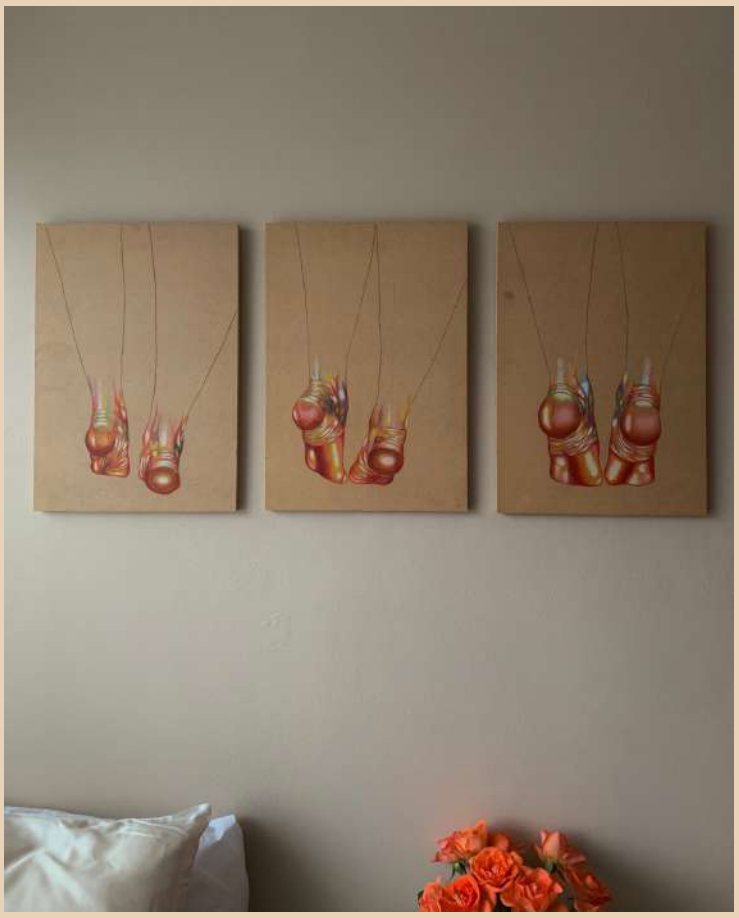
## UNTETHERED

*Waking up to four walls in fall*
*Once prompt promises of privacy to ponder*
*Now dividers of sight but not sound*
*Your absence, only echoes harder.*

*Isolation brings no consolation*
*Surviving through nights by constellations*
*Tracing back our last memory*
*To the last landing streak of sunset*
*Right in the silence we held between us.*
*Left ear*
*Red from blushing like a fool*
*Eyes closed*
*Reading between the lines*
*Hand out*
*Reaching for yours.*
*Silhouette obeys*
*Body hesitates*
*He turns.*
*Once again, I was*
*One second short*
*Two breaths quick*
*Three steps behind.*

*Recovery will find me in rediscovery*
*Reunion with a peace I hold within me*
*Lest it be lost in fear or uncertainty*
*Poetry please remind me*

*Line by*
*line,*
*Word by word,*
*Letter by letter.*



**NIKI MARASHI**

## LA POINTE DES PIEDS

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Hogan Lovells

# The key traits of every Hogan Lovells lawyer

## Intellect and intellectual curiosity

We challenge conventional thinking and that often means doing work with little precedent. You'll need to be ambitious and able to look beyond the obvious to deliver something unique and exceptional. We also look for a strong academic record from GCSE onwards up to a 2:1 across your degree and above (or equivalent).

## Commercial awareness

Clients need us to be their trusted advisors across their business. You'll need to be comfortable speaking their language and interested in how business works.

## Communication and interpersonal skills

When working with clients it's important to be able to communicate in both a clear and concise way. Good verbal and written communication skills are a big part of being a successful lawyer.

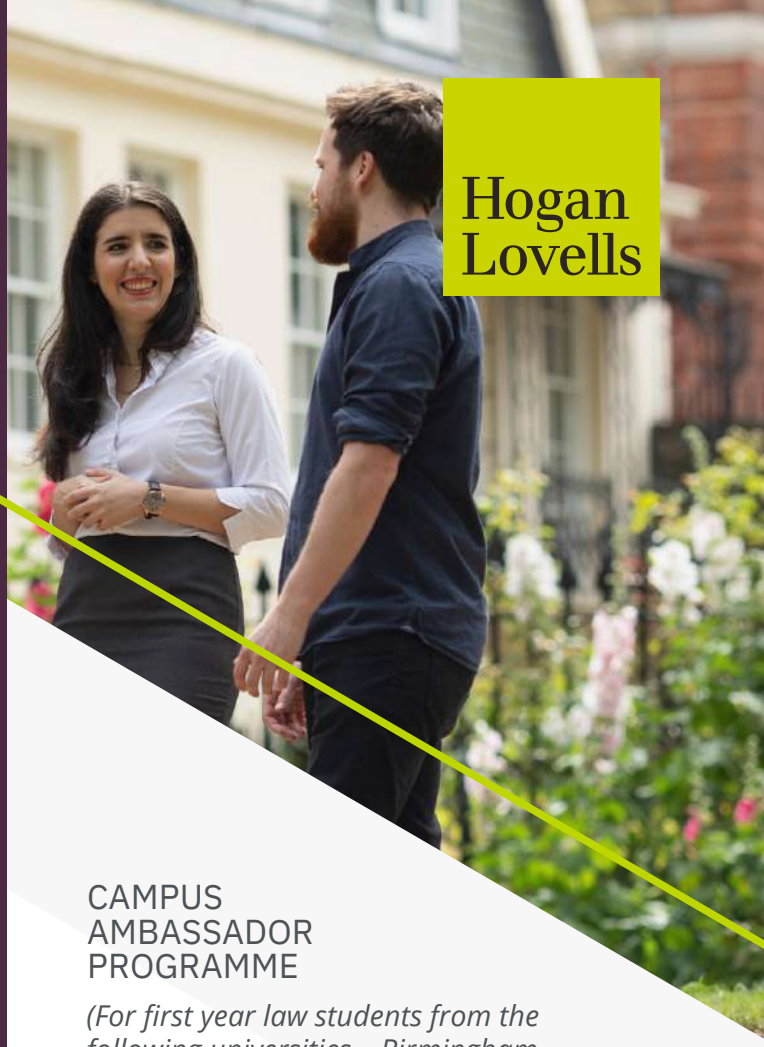
## Team working & building relationships

No one can do what we do alone. You'll need to relish being part of a team, where everyone pitches in and achieves great things as a collective.

## Resilience

You'll have a rigorous attention to detail, be calm in the face of complexity and deadlines and happy to put in extra hours if that's what it takes to deliver exceptional work. You'll need to be comfortable adapting to new surroundings, respond to cultural nuances and tackle the unpredictable with confidence.

# Dates and deadlines

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*(For all final year students and graduates)*

6-17 December 2021

Application period
20 September – 31 October 2021

## SUMMER VACATION SCHEMES

*(Open to all students from penultimate year onwards and graduates)*

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Scheme 2: 25 July – 12 August 2022

Applications period
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