If not now, when?

Michael Mansfield: The writing is on the wall for legal aid

Chile: Salvador Allende – 40 years on

Benefits cuts; Court interpreters; Alfie Meadows

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

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News and comment including: blacklisting; austerity in Ireland; Basque separatism; ELDH activities; and the fight for legal aid

Court interpreters
Aisha Maniar

Chile: Salvador Allende 40 years on
Victor Figueroa Clark

Syria Statement from International Association of Democratic Lawyers

European constitutions, laws and austerity
Jeremy Smith

Legal aid Michael Mansfield, Anna Morris and Russell Fraser

The trial of Alfie Meadows
Margaret Gordon

Benefit cuts Wendy Pettifer

Socialists and rights
David Renton

Colombia Interview with Carlos Lozano

Mexico Camilo Pérez-Bustillo

Guatemala Siobhán Lloyd

Reviews Film and book
On 2nd May 2013 a perhaps little noticed comment piece appeared in the pages of The Financial Times entitled: ‘Austerity is not the only answer to a debt problem’. The article was co-written by the Harvard University professors Kenneth Rogoff and Carmen Reinhart, seen by many to be the intellectual authors of the austerity measures that have been and continue to be rolled out across the UK and Europe. This revealing article appeared following a strong debate on the efficacy of austerity as a means of dealing with the current financial crisis after an economics student, also at Harvard, found out almost by accident that the data and figures that had been compiled to support Rogoff and Reinhart’s theories did not stack up. The shortcomings in the austerity narrative have been highlighted yet again more recently by the International Monetary Fund’s admission on 5th June 2013 that it had failed to realise the damage austerity would do to Greece. In this issue Jeremy Smith analyses the attempts at subversion of European constituencies in the name of austerity.

Much of this issue of Socialist Lawyer is dedicated to the ongoing campaign against the further round of cuts being proposed to legal aid, coming hard on the heels of the cuts already introduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012 which came into force on 1st April 2013. The deficiencies inherent in arguments put forward in favour of austerity should be at the forefront of the mind when considering the coalition Government’s continued ideological pursuit of the destruction of legal aid. The campaign is not about lawyers and their remuneration but about the protection of the most vulnerable in our society and the preservation of an essential pillar of the welfare state.

The good news is that large parts of the profession have united against the proposals for further cuts to legal aid. 13,000 responses were sent to the Ministry of Justice’s consultation Transforming Legal Aid: Delivering a more credible and efficient system which closed on 4th June 2013. Crown Court judges have come out against the proposals. A large number of Treasury counsel have sent in a joint response in opposition to the proposals. Among their reservations, they express particular concerns about the proposals to introduce a residence test for civil legal aid which ‘risks creating an underclass of persons within the UK for whom access to the courts is impossible’. They go on to state that ‘To deny legal aid altogether to such persons, so that even the minimal rights provided to them by the law cannot be enforced, is in our view unconscionable.’ Strong words from the Government’s own lawyers.

There have been unprecedented and strongly attended demonstrations by lawyers both outside Parliament on 22nd May 2013 and outside the Ministry of Justice (MOJ) on 4th June 2013. The latter of these two protests was sufficiently well attended to lead to the spontaneous closure of Pett France, the road outside the MOJ. The hope is that the unity and momentum which has been invoked across the profession in opposition to these ill considered proposals continues. The consultation may have closed on 4th June 2013 but many battles lie ahead for the campaign as the Government’s proposals look set to be put before Parliament later this year.

The Haldane Society’s President, Michael Mansfield QC, issues a rallying cry to the campaign in this issue while Anna Morris asks: at what price justice? This is a particularly pertinent question as the Lord Chancellor Chris Grayling has set his sights not only on cutting back legal aid but also on privatising both the Probation Service and the Court Service. Within the context of the campaign to save legal aid it is helpful that campaigns such as those being run by UK Uncut continue to remind our politicians and media of the scandal of massive tax avoidance. The estimated £4.5 billion UK Uncut says there is in unclaimed tax is a staggering amount to bear in mind as the Government seeks to continue to justify its deconstruction of the welfare state.

While the campaign in the UK to save publicly funded justice continues, contained within this issue are a number of accounts from other legal campaigns across the world. There is focus on the groundbreaking trial and conviction of Guatemala’s former dictator Efraín Ríos Montt for genocide, and the subsequent decision of Guatemala’s Constitutional Court to overturn the conviction and remit the case for a retrial. Siobhán Lloyd recalls her time spent working in Guatemala City for the legal centre Centro para la Acción Legal en Derechos Humanos. Also in Central America, the legal academic Camilo Pérez-Bustillo writes about the upcoming hearings being scheduled to take place in Mexico City as part of the Permanent Peoples’ Tribunal with the aim of shining a light on the oft forgotten violent story of migrants making their way from Latin America to the USA.

Tim Potter, editor (socialistlawyer@haldane.org)
Evidence of the evils of blacklisting

Haldane members are familiar from previous issues of Socialist Lawyer with the scandal of the blacklist in the construction industry. In 2009 the Information Commissioner’s Office raided the offices of the Consulting Association, which held details on 3,213 construction workers and traded their personal details for profit. The database was used by over 40 construction companies and included information about construction workers’ personal relationships, trade union activity and employment history.

But how does the blacklist and spectre of unemployment affect a real family? What was at stake for these workers as a result of the blacklisting because of their union activity and how is it affecting their lives now? A very real example of the evils of the blacklisting operation can be evidenced in the present circumstances faced by Steve Acheson and his family.

Mr Acheson’s blacklist file included his name, address, date of birth, National Insurance number, mobile telephone number and the fact he was ‘probably EPIU’ – referring to his union membership. There were scores of entries from sources and clippings from the left-wing press. It monitored where he was working and included some places he had never been employed. Among the entries were: ‘Is behaving himself, now a foreman… Lads don’t pay as much attention since he’s not on the shop floor’ and ‘Stephen (sic) Acheson is known to be currently visiting agencies looking for employment in the Liverpool area’.

Mr Acheson had a successful career as an electrician, supervising other workers and working on major construction projects worldwide. His union activity started in 1996, after the death of a 21-year-old colleague at a site on which he was working. Like so many other blacklisted workers, suddenly the phone stopped ringing and he could not find work in the middle of the construction boom. He suspected that there was a blacklist and he was on it, but he had no proof.

Since 2000 Mr Acheson has been unable to secure any work. He was thrown out of work on several occasions on sites across England between 2000 and 2008. He is still continuing his protest at Fiddlers Ferry power station where he was sacked in December 2008 as a result of being on a blacklist as a ‘troublemaker’. For all that time, he has been standing outside the giant plant – one of the North West’s most well-known landmarks with its huge cooling towers looming over the outskirts of Warrington – accompanied by dozens of banners. Through his determination to expose this conspiracy, Mr Acheson has campaigned to ensure that the public is aware of what has occurred.

Mr Acheson would prefer to work and return to a normal life but he suspects that he will never step through the gates of a construction site again. However, he continues to protest to bear witness to the conspiracy on behalf of himself and his family, but also for all the workers and their families who have been caught up in the blacklisting conspiracy. His enthusiasm for trade union work has not diminished and he remains more involved in union work than ever before.

Trade unionists fighting the blacklist conspiracy

February

17: The National Association of Probation Officers warns MPs in a briefing that outsourcing the supervision of certain offenders to the likes of G4S would lead to ‘chaos’. The Government responded by calling the claim ‘scaremongering’.

26: Three new justices are appointed to the Supreme Court. The three are all male and all white. Lord Neuberger, the court’s President, later expressed concerns about a ‘subconscious bias’ against appointing women.

March

2: The Daily Mail reports that Theresa May, the Home Secretary, is to soon announce that the Conservatives will pledge to pull out of the ‘discredited’ European Convention on Human Rights at the next election. The announcement has yet to transpire but the Daily Mail lives in hope.

26: Bosco Ntaganda, a Congolese warlord, denies charges of murder, rape and pillaging and using child soldiers at his first appearance in front of the International Criminal Court. Ntaganda had been wanted until handing himself in to the US embassy in Rwanda the previous week.
On the picket line

A year of Struck Out

Some 12 months ago, I published a book, Struck Out, analysing the Employment Tribunal system that the Coalition Government had inherited, and which has since been subject to dramatic change. My argument was, in brief, that the supposed flaws on which the press focussed and which in turn have justified the changes we all know about were in fact mythical. Rather than foisting employers with a proliferation of speculative claims, a majority of Tribunal claimants succeeded in proving that there had been unfair dismissal, unlawful deductions of wages, etc. Rather than paying huge sums, the values of Tribunal victories were by any standard trivial. Workers who succeeded routinely leave the Tribunals with awards amounting to a tiny fraction of their actual loss. These flaws, I suggested, could be traced back to the policy discussions within the Donovan Commission, from which the Tribunal system draws its root. Or, they illustrated a tension in the earliest years of the Tribunal, between its relatively benign, statutory context, and the deeper common law traditions to which the Tribunal’s jurisprudence was quickly assimilated.

The Industrial Law Journal termed my proposals to increase the prevalence of reinstatement orders ‘controversial’, while otherwise welcoming the book. The book had a positive review in International Socialism, Labour Briefing, Tribune, and Socialist Review. The New Law Journal was a little more sceptical, suggesting that my desire for the de-formalisation of the system was ‘deliberately provocative’: ‘times have changed and are not likely to change back’.

On their analysis of the future direction of change, sadly, the NJR reviewers were most certainly right. The most analytical review appeared on a website Review 31, where I was criticised for blaming the system’s ills on certain default practices of the common law tradition. The reviewer, Simon Behrman, replied: ‘the relative flexibility of the common law allows pressure more easily to be brought to bear from outside the law to achieve change, a process that is often much harder in countries where altering the constitution or the civil code is a laborious and lengthy process. It is at least arguable, therefore, that the common law offers a far less juridified set-up than that of civil law.’ Behrman rejected any hint that the civil law tradition practiced in Europe might be inherently more susceptible to workers’ rights: ‘While I hold no brief for the common law, the argument that rights enshrined in a constitution in themselves offer greater equality is a liberal fiction that in practice serves only to obscure the existing gross inequalities that exist in society.’ It certainly hadn’t been my intention to suggest that the legal system of say France or Germany or even constitutional South Africa were naturally more socialist than our precedent-based system. Rather, by focussing on the common law, my purpose was to try to get at something which I find missing in most legal analysis. In other words, an explanation for how it is that the law feels like it does, how it is that judges can make bad decisions. I wanted to explain how it is for example that a claimant (a worker) who puts in their claim form late can expect the most robust refusal of their Claim, whereas a respondent (an employer) who engages with proceedings for the first time only months after they were required to will inevitably be allowed in to defend the case.

I was interested in other words in the subtle class privileges of the law, and I focussed on the common law as this is the actual point, I believed, rather than anything asymmetrical about the statutory provisions, where the unequal treatment of workers and employers came in.

Of course, since 2010, the Coalition Government have busily disturbing the formal symmetry of employment law, requiring one side only (impecunious workers) to pay fees, introducing one-sided privilege of employer’s dismissal conversations, and so on. But these principles offend deep against the warp and weft of ordinary law. There is no need to persuade any reader of this magazine they are wrong.

The ‘big point’ I was making was that subtle class privilege is a feature of litigation. There is no reason why this argument should be relevant only to employment lawyers. It is just as pressing when you ask a judge to suspend an eviction, and the judge refuses to do so because the family has been wasting its income on a satellite television subscription; or when care proceedings begin with social services’ reports of the parents’ chaotic and untidy homes.

David Renton

Readers of Socialist Lawyer can buy Struck Out with a 30 per cent discount and free UK P&P by entering the code ‘PLUSTUCK’ at www.plutobooks.com/page/promo

April

9: Margaret Thatcher dies.

‘This pensioner chased me up the road brandishing his stick singing “Ding dong! The witch is dead”’ – Tony in Cambridge finds sympathy on the county council election trail the following week

9: The Ministry of Justice publishes its consultation proposing further cuts to the legal aid budget – barely a week after a previous round of cuts came into force. The weeks since have seen protests and calls for the Government to abandon the plans. A petition against the proposals had reached 84,000 signatures by the time of writing.

10: In Bogotá, Colombia tens of thousands of people demonstrate in support of peace talks designed to bring an end to the long running conflict with the Farc. The crowds wore white and chanted that they wanted peace. The Government has reached some agreement over land reforms and will consider political participation of the Farc.
Ireland: revolt against property tax robbery

Across Europe we have seen what austerity really means – the blatant robbery of working class people. After the attempted raiding of bank accounts of Cypriot workers and the onslaught of austerity in Portugal after previous measures were deemed unconstitutional, working class people in Ireland face the prospect of the robbery of a ‘property tax’ from their wages, social welfare payments or pension. The Government is threatening that those that have not signed up to pay the tax can have it forcibly deducted from 1st July 2013.

This move, to give the Revenue the power to collect the tax, is partly due to the success of the massive non-payment campaign against the household tax last year organised by the Campaign Against Home and Water Taxes (www.nohometax.com). Despite massive propaganda, scaremongering and fear, a majority of single home owners refused to pay that tax, which was €100 for every home in the country. Hundreds of meetings were organised across the country, which tens of thousands attended.

In response, the Government passed responsibility to collecting it to the Revenue Collectors. In addition, it has been transformed into a property tax that was demanded by the Troika as part of the so-called bailout deal. This is a tax on the wealth of the rich but on working people’s homes.

Despite the propaganda, these are not taxes to fund or improve local public services. In fact, the funds for local public services are being cut. Instead, this is a bailout tax, pure and simple. The money will go to fund what is, relatively speaking, the world’s largest bank-bailout. While the property tax is supposed to yield €300 million, €26 billion in taxpayers’ money will be handed over to the bondholders this year – between payments on the national debt and payments by the bailed-out banks.

The anger against the property tax and the household tax are not simply about the unjust taxes themselves. They have become a lightning rod for opposition to the politics of austerity and bank bailouts generally. In the face of a Trade Union leadership that has failed to lead any fight back, the Campaign Against Home and Water Taxes has become an important vehicle by which people can respond.

The strategy of the campaign is to maintain the boycott, encouraging people not to register by the deadline of the end of May 2013. According to an opinion poll, 29 per cent of people plan not to pay. This year, however, the campaign is emphasising, that non-registration alone is not enough, because of the power of the Revenue to deduct the tax. Therefore it has to be matched with a massive campaign of protest and political pressure to make it very difficult for the Government to take the political decision to forcibly deduct the tax.

The context for this struggle is the weak nature of the Government and the vulnerable position of the Labour Party component in it in particular. The Government is a coalition between the traditionally right-wing Fine Gael and supposedly social-democratic Labour Party. In a recent by-election, Labour was humiliated, with its vote going from 10,000 to less than 1,000 votes. It has been weakened by defections and it faces a wipe out in next year’s local and European elections because of its slavish implementation of Troika diktats.

The strategy of the campaign now is to pile the pressure on. We need the largest possible boycott for this and the campaign should be linked to the growing fight against cuts and attacks in the trade unions, as seen with the rejection of a new pay-cutting deal for the public sector which was advocated by the majority of Trade Union leaders. The No vote to this deal was a clear vote against austerity.

The recent conference of the Campaign agreed that local campaigns should now discuss standing anti-home tax and anti-austerity candidates in the 2014 local elections. It is a method which can be used to force Labour to think twice about deducting the property tax from people’s wages and welfare.

A turning point is being reached in Ireland, whereby people can simply take no more.

Paul Murphy – Socialist Party Member of the European Parliament representing Dublin

April

11: The chief executive of Stobart Group, the trucking group and rumoured future of legal services, is to go on trial for contempt after a whistleblower won a High Court case against him and the group’s legal director. A judge ruled that Andrew Tinkler and Trevor Howarth may have lied in order to silence a whistleblower.

14: Chris Grayling MP continues to pander to the Tory backbenchers as he arranges to have a number of ‘perks’ removed. Grayling wants to stop prisoners using games consoles and watching Sky Television as well as requiring them to wear uniforms rather than their own clothes.

21: A Brazilian court sentences 23 police officer to 156 years in prison each for their role in the killing of 111 inmates during the prison uprising at Carandiru in 1992. Three officers were acquitted and more are to stand trial in the months ahead.

22: Barristers and solicitors in the north-west of England hold an all-day meeting to discuss the Government’s plans to reform legal aid. The de facto strike saw a few hundred barristers meet in a hotel in Manchester to deliberate the proposals. A spokesman for those involved said the ‘turnout demonstrates the strength of feeling across the criminal bar. There is a sense of unity within the room’.
Give peace a chance in the Basque Country

Twenty months ago, the Basque Seperatist group Euskadi Ta Askatasuna (ETA) abandoned its armed struggle in order to seek a political answer to the question of Basque self determination. The Spanish Government refused at the time and continues to refuse to engage with the peace process ETA attempted to begin. Meanwhile, over 600 Basque political prisoners – a startling number for any nation – remain isolated in prisons across Europe. Most are in Spain and France, six are in the UK, and almost all are being held outside the Basque Country as a result of Spain’s policy of dispersal.

Prisoners suffer from acute isolation, their family members having to make an average round trip of 1,300 kilometres just to visit them. Several of them are seriously ill. Two have recently died. Harassment, the use of solitary confinement, and medical neglect are said to be systematic and widespread. Many are still subject to de facto life imprisonment.

In this context, efforts are being made by lawyers, politicians and activists both from the Basque community and outside to highlight Spain’s intransigence and repeated human rights abuses. On 16th April 2013 a public meeting was called by Campacc, supported by The Haldane Society and European Lawyers for Democracy and Human Rights (EDLH). Gorka Elejabarrieta, a representative of the Sortu International Department and former representative of the Abertzale Left in the European Parliament, said a broad consensus exists that this is a political conflict, that autonomy is not enough, and that the Basque people need to be given the right to determine their future freely. There is no political will on the part of France and Spain to engage with a peace process and the current situation is therefore unsurprising – however this will not stop the Basque people continuing to build trust and demonstrate their commitment to a democratic solution.

He said that the situation of political prisoners had to be brought to light and all prisoners released in order to enable any meaningful peace process. Humanitarian issues had to be addressed. Dispersal must end and the Spanish and French governments must no longer be permitted to hide behind ‘security’.

Asier Aranguren, a former political prisoner himself, spoke about the Collective of Basque Political Prisoners and their struggle to oppose unjust prison laws in the face of concerted efforts to stifle political discussions and prevent organisation. Despite enforced isolation, visitor restrictions, phone tapping, aggressive searches and dispersal across more than 90 prisons the Collective survives and continues its effort in the search for a democratic path to self determination.

Iraxte Urizar, lawyer and member of the Basque Observatory for Human Rights, spoke about the attitude of the Spanish authorities and their efforts to bring in as many special measures as they could, justified by a purported ‘war on terror’. The European Arrest Warrant she said has been a huge boost to the Government who use it to seek extradition on the basis that European partners trust each other and don’t ask questions.

Alastair Lyon of Birnberg Peirce and Partners represents Basque prisoners in the UK in their fight against extradition. He spoke about the staggering level of denial on the part of the Spanish Government, the main medical authorities when presented with compelling evidence of torture. Despite hearing direct evidence of torture, from those prisoners brave enough to report mistreatment, and despite international human rights reports saying ‘this must end’, claims of torture were being ignored in Spain. Arrest, incommunicado detention, extracted confessions and torture continue while Spain remains a ‘trusted extradition partner’.

The struggle to establish engagement with the peace process continues. It is faced with indifference in the mainstream British press. However, the All-Party Parliamentary Group on Conflict Issues met on 4th June 2013 to discuss civil society, peace and the Basque Country. The aim was to consider the outcome of a social forum that took place in the Basque country in March 2013 in Pamplona and Bilbao to promote civil society participation in the peace process. Further details can be found at www.v-c.org/resources/event-basque-appg-4-june

Elizabeth Forrester
ELDH General Assembly in Berlin – 4th to 5th May 2013

Members of Haldane’s Executive Committee attended the General Assembly of the European Lawyers for Democracy and Human Rights (ELDH) at the HQ of the German ver.di trade union in Berlin on 5th May 2013. Member organisations in nine European countries were represented.

On 4th May 2013, the conference ‘Migrants – Outlaws Everywhere’, organised by ELDH and the VDJ, Haldane’s German sister organisation, was a challenging and inspiring conference, with more than 100 participants. Adrian Berry, a barrister at Garden Court Chambers and Haldane member, was one of a number of speakers from seven European countries and Togo. The speakers were lawyers and activists who brought together experience of the discrimination, abuse of criminal law and expulsion suffered by migrants and the fight for justice, solidarity and resistance. See www.eldh.eu/publications/publication/migrants-outlaws-everywhere-the-alien-as-an-enemy-162/

Other organisations taking part in the conference included: AKJ-Berlin (students at Humboldt University); the London-based Campaign Against Criminalising Communities (CAMPACC); the ELDH partners European Democratic Lawyers; Fight Racism Now; the Refugee Council, Berlin; Group for Information and Assistance for Immigrants from France; Medico International; and the Rosa Luxemburg Foundation

Highpoints of the ELDH General Assembly included the presence of three ELDH members from the Basque Country, solidarity with Basque lawyers had been the focus of the ‘Day of the Endangered Lawyer’ organised by ELDH in January 2013.

In January 2014 it will focus on the dangerous situation of lawyers in Colombia. The first one in 2012 concerned Turkey, where lawyers continue to be under very serious attack. Munip Ermiş, from ÇHD, the Turkish Progressive Lawyers, took an active part in the General Assembly. Selçuk Kozağaci, the Chair of ÇHD, who spoke at Haldane’s Human Rights Defenders conference in 2012 at Amnesty UK, is still in prison in Turkey. The President of the Istanbul Bar Association has now been prosecuted together with nine board members.

The KCK lawyers arrested in November 2012 number 46 accused, with 22 still detained. The next hearing was taking place on 20th June 2013.

The group of lawyers from Haldane’s sister organisation, ÇHD arrested in January 2013 number 16 lawyers accused, of whom nine are detained. Their trial may commence in September 2013. ELDH will be organising solidarity and observers. Please contact me if you are interested in acting as an observer at either trial.

The General Assembly was also attended by Alexey Kozlov, an environmental activist from Voronezh, Russia. He told us about attacks on the freedom of assembly in Russia in general; the new requirement for NGOs to register as a ‘foreign agent’ in the case of any contacts outside Russia, with large fines (500,000 roubles) and imprisonment for failure to do so; the circumstances of the demonstration at Bolotnaya Square in Moscow on 6th May 2012 and the subsequent prosecution and detention of left-wing activists since, with the threat of up to 13 years’ imprisonment.

ELDH has been asked to support the project for an International Expert Commission (IEC) for Evaluation of Events on Bolotnaya Square in Moscow on 6th May 2012. This is the first large-scale prosecution of the left by the Putin regime. There was a serious and engaged discussion on this topic in which many of those present participated and in which there was opposition to ELDH’s participation by our Greek and Spanish comrades. Following the discussion, the Executive agreed that ELDH should support the IEC.

We are working for closer cooperation between progressive lawyers in Europe. Frédéric Ureel, the European Democratic Lawyers’ President, attended the ELDH General Assembly. The next meetings of the European Democratic Lawyers’ executive are 25th October 2013, in Rome, and the end of January 2014 in Barcelona. Please contact me (b.bouring@lbb.ac.uk) if you would like to come.

Bill Bowring

Defend access to advice

On 9th February 2013, the Manchester-based Access to Advice campaign organised a successful conference on the theme of ‘Free Legal Advice in Crisis’. The Haldane Society was one of 13 sponsoring organisations. Jean Betteridge of Access to Advice welcomed over 120 delegates and organisations from across Greater Manchester, Merseyside, Cumbria, Shropshire and beyond.

A wide-ranging keynote address was given by Steve Hynes, Director of the Legal Action Group, in which the ‘big picture’ of the imminent changes affecting social welfare law advice services was set out and the experience and lessons from the campaign over LASPO (Legal Aid, Sentencing and Punishment of Offenders Act) were drawn upon.

The conference then broke into four workshops considering the subjects of housing, employment and unemployment; family and debt; migrants and BME communities; and disability and sickness. Each workshop was encouraged to consider advice needs and provision before agreeing action points to be fed back into the wider report from the conference.

Julie Bishop, Director of the Law Centres Network, led off the afternoon session with a keynote address which further reflected upon the LASPO campaign and...
The All-Party Parliamentary Group on Legal Aid Meeting on 15th May 2013 started with a number of speakers, including Laura Janes, from The Howard League for Penal Reform, who spoke of the ‘hidden consequences of the cuts’. She described how the end of fixed fees in prison law would remove matters of rehabilitation from scope as only disciplinary and parole hearings would be funded. She stated how this is short sighted as these proposals save an estimated £4 million. She spoke of the end of specialist providers and how no firm will be able to have a solely prison law practice. Instead, general practitioners will be awarded general contracts and be unable to turn down prison law work under the cab rank rule. Lastly, she spoke of the 17.5 per cent fee cuts, which will hit experts as well.

Ms Janes then discussed how the ‘transformation’ would affect judicial review claims. Owing to the gamble of taking on work where one only is paid when the court gives permission to judicially review, there will be a clear risk of hours of work done without pay. This will lead to a focus away from risky cases with wide public interest and will make judicial review as a practice area untenable.

A full report of the conference can be found at http://gmwrag.files.wordpress.com/2013/04/full_report_9_feb_2013.pdf

John Hobson

24: The High Court rules that the Government must hold inquests into the deaths of civilians allegedly killed unlawfully by British military personnel in Iraq. The court said the hearings must involve a full, fair and fearless investigation accessible to the victims’ families and to the public.

4: Around 13,000 replies are sent to the Ministry of Justice in response to its consultation on transforming legal aid as the deadline for responses closes at midnight. Earlier in the day lawyers protested en masse outside the Ministry of Justice, resulting in the closure of the road outside the Ministry to express their firm opposition to the proposed further cuts to legal aid.

5: Lawyers acting for the three surviving most senior police officers on duty during the Hillsborough disaster have questioned the independence of the Government’s panel which reported on the tragedy. John Beggs QC said ‘We do not regard the report as independent’. The inquest is to begin in March 2014.

7: A student is sentenced after saying on Twitter that people who wore Help for Heroes T-shirts ‘deserved to be beheaded’. The case followed the murder of Drummer Lee Rigby. Deyka Hassan had complained to police after receiving threatening replies. She was ordered to complete 250 hours of unpaid work.
Tim Owen QC from Matrix Chambers then spoke of the achievements of publicly funded prison law cases over the past 30 years and spoke of how these changes will hit prisoners’ rights as well as the proper management of prisons.

Mike Fordham QC of Blackstone Chambers brilliantly spoke of ‘timewasters’ and ‘the unworthy’ in the language and subtext of the cuts. The ‘timewasters’, he said, are those with weak claims, but he contrasted this with how the actual proposals are not cutting funding for those without merit, but for those without permission. Mr Fordham clearly stated that the responsibility for determining the viability of claims lies with counsel and that judges will not always agree with counsel’s opinion; however, without certainty as to viability, judicial review cases will not go forward under the proposed changes.

Regarding ‘the unworthy’, Fordham then went through a chilling list of what the Government considers ‘unworthy’, from sanitation concerns to issues of mother and child in prison. Fordham ended his contribution by declaring that if these cuts go through, we will have to call the department the ‘Ministry’, as it will no longer be the Ministry of Justice.

Alison Harvey of the Immigration Law Practitioners’ Association (ILPA) then discussed the impact of the one-year residency requirement, stating how this would be a breach of access to justice and equality before the law.

There was discussion of the Orwellian nature of the language of the Government’s consultation document on the proposed cuts with calls to focus not just on the cuts to legal aid but on the whole system, in which we are marketing British justice to rich foreigners, while closing justice’s doors at home.

There followed a moving contribution from a mother whose severely disabled son benefited immensely from the help of prison lawyers.

Haldane Executive Committee member Paul Heron of Public Interest Lawyers argued that these proposals were an ideological assault on the vulnerable. He followed with the proposal of organisation and strike action, calling on lawyers as workers with the slogan: ‘If not now, when?’

A campaigner from Legal Action for Women then also called on the profession to organise, saying ‘We have to go for broke’.

Haldane Executive committee member Stephen Knight gave a speech pushing for a united front against the cuts and presenting The Haldane Society’s recently passed proposals. These can be found at www.haldane.org/news/haldane-policy-strategy-regarding-legal-aid-cuts.html.

“I know that without legal aid I would still be in prison. Back in the 1970s they sent innocent people to jail by the vanload. But if these cuts go through they’ll be sending them in by the Eddie Stobart truckload.”

Gerry Conlon of the Guildford Four
These contributions were generally well received, with even David Lammy MP stating that there is a need for strike action to take the message to the wider public.

The meeting on 15th May 2013 was followed on 22nd May 2013 with a demonstration attended by hundreds of lawyers outside Parliament who heard from a series of speakers including politicians, lawyers, and those who have suffered grave miscarriages of justice such as Gerry Conlon. During the afternoon of 22nd May 2013, the Friends’ Meeting House near Euston was packed as again speakers spoke out against the proposals. The unified opposition was palpable. It included unanimous motions against PCT and bidding for contracts, QASA, and for the profession to ‘institute a rolling number of training days increasing in number in dates to be announced’. Keep up to date on this summer’s campaign against the legal aid cuts at www.baldane.org/news/category/legal-aid.

Natalie Csengeri

...
As the Ministry of Justice prepares to carve up criminal legal aid, Aisha Maniar

...if an interpreter is required justice cannot be done without one and a case cannot proceed without one and a case cannot proceed. An interpreter is required on 90.2 per cent of occasions when interpreters are required, because if an interpreter is required justice cannot be done without one and a case cannot proceed. An interpreter is required on 100 per cent of such occasions.’

With so many failings in its first year of operation, the framework agreement has been the subject of inquiries by two parliamentary select committees and the National Audit Office. The National Audit Office’s findings were published in a memorandum in September 2012. It criticised the handling of the procurement process and stated that the Ministry of Justice had not been informed of various contractual breaches, relating to Applied Languages Solutions Ltd/Capita’s inability to assess rare languages and perform checks on interpreters until they were discovered by the National Audit Office. The Ministry of Justice was also criticised for failing to impose contract penalties for clear, repeat breaches. These were only applied after May 2012, more than three months later.

This memorandum largely informed inquiries by the Public Affairs Committee and the Justice Select Committee held last autumn. The Public Affairs Committee report, published in December 2012, criticised the Ministry of Justice’s failure to carry out adequate pre-contractual due diligence on its suppliers, and raised concerns about persisting quality issues.

With the focus largely on the quantitative element of the deal, the quality of the service provided has suffered. Skilled legal interpreters do far more than speak two or more languages as they have to negotiate the gulf between different legal systems, as well as cultural issues within the same language community, such as politics, gender and ethnicity. Problems encountered and reported in the mainstream press have included interpreters failing to turn up on time or at all, interpreters unaware of legal language and court proceedings, unable to speak English, and, in some cases, the foreign language for which they were assigned. Cases have been affected by interpreters only admitting later that they spoke the wrong language or had misrepresented what was said.

Applied Languages Solutions Ltd/Capita won as the failure to provide an interpreter was deemed to be ‘serious misconduct’, as the judge nonetheless dismissed its argument that it only need deliver 98 per cent of the time: ‘the provision of an interpreter where either a witness or a defendant does not speak English (or Welsh), is essential. Without one a case cannot proceed … It is simply no use to a court having an interpreter there on 98 per cent of occasions when interpreters are required, because if an interpreter is required justice cannot be done without one and a case cannot proceed. An interpreter is required on 100 per cent of such occasions.’

‘...if an interpreter is required justice cannot be done without one and a case cannot proceed without one and a case cannot proceed. An interpreter is required on 90.2 per cent of occasions when interpreters are required, because if an interpreter is required justice cannot be done without one and a case cannot proceed. An interpreter is required on 100 per cent of such occasions.’

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looks at the disastrous attempt to privatise the interpreting services in UK courts

and the failure to provide suitable linguists.

All three reports criticise the lack of competition in the procurement procedure and the near-monopoly granted to Applied Languages Solutions Ltd/Capita on court interpreting services. Margaret Hodge MP, Public Affairs Committee Chair, accused Ministry of Justice staff of replacing a ‘public monopoly’ with a ‘private monopoly’ under this agreement.

The Public Affairs Committee inquiries also criticise the role of Capita, well known for its private ownership of public service contracts. Capita, with no previous experience in language services, was not part of the 2010 tender involving 126 companies, all small or medium enterprises, which most language service providers are. In view of that situation, it is not clear that Capita would have been eligible to bid on its own merit. Although Capita is well known for its mismanagement of public contracts, the Ministry of Justice feels reassured by its involvement. With underperformance and errors by Capita, questions have been raised as to why the Ministry of Justice consistently defends the contract it made; the contract could have been terminated for breach at any time given that contract terms have not been met in the past 15 months. Many interpreters would welcome the framework agreement’s termination.

The Justice Select Committee published its report in February 2013 and found that there was no fundamental problem with the quality of service in the old system and the Ministry of Justice had failed to understand the complexities of what was involved. During its inquiry, it also discovered that the Courts and Tribunals Service ‘had actively discouraged its staff from submitting formal written evidence’, including through an anonymous online forum. Sir Alan Beith MP, Justice Select Committee chair stated, ‘The Ministry of Justice’s handling of the outsourcing of court interpreting services has been nothing short of shambolic.’

The Ministry of Justice published its response to the Justice Select Committee report recommendations on 25th April 2013, offering a new package to entice qualified interpreters, and offering a 22 per cent increase in current rates under the framework agreement, changes to the tier system and independent monitoring of it. This is unlikely to make much of a difference to the current situation and amends the original framework agreement.

While Capita reported making no profit on the agreement in its first year and faced fines of around £2,000, Helen Grant MP, Parliamentary Under-Secretary of State for Justice stated, ‘Our changes have saved taxpayers £15 million this year.’ The Justice Select Committee report says that much of this will fall back on Capita. This does not take into consideration the expense generated and continuing to rise due to delays or retrials, individuals held on remand as an interpreter could not be found for a 1.5-minute hearing, or rescheduling of trials. Neither does it compensate the distress caused to claimants or defendants and the loss of confidence in the court and legal process. There is huge potential for a miscarriage of justice in the new arrangement.

The damage is done. In the latest public scandal, on 10th May 2013, pleas were not entered on charges in a quadruple murder case at Nottingham Crown Court as a Mandarin interpreter failed to attend due to the low rate of payment; the judge described the outsourcer Capita as a ‘complete disgrace’ and adjourned the hearing. Local MP, Michael Ellis, has said he will raise the issue of the privatisation of court interpreting services in the House of Commons.

For many interpreters, working under the new agreement is not an option as they would be working at a loss. Central to the service, it is unsurprising that qualified and skilled interpreters refuse to engage in a system that has completely sidelined them. Improvements have been made in the past 15 months, but there is still a long way to go in improving the current arrangement, as well as bringing it back to the performance and quality level of the old system it replaced.

Margaret Hodge MP summed up the Public Affairs Committee inquiry by stating, ‘almost everything that could go wrong did go wrong’ and that the answers given by the Ministry of Justice concerning the failings in this ‘relatively small procurement contract … give me absolutely no confidence’ that contracts for private prisons, for example, will be procured ‘in an effective way for the taxpayer’. The Criminal Law Solicitors Association’s vice-chairman, Robin Murray, also recently referred to this failed privatisation contract in the Ministry of Justice’s current plans to privatise criminal legal aid, stating ‘it repeats the same mistakes all over again.’ A further test will arise for the Ministry of Justice and its support for Capita later this year when in October, European Union Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings comes into force.

Aisha Maniar is a freelance legal translator and editor.

Socialist Lawyer June 2013 13
June 2013 marks 105 years since the birth of Salvador Allende, the President of Chile overthrown in the brutal coup of 11th September 1973. Allende was Chile's greatest President, a man of international stature widely respected by both revolutionary firebrands and social democrats. By being elected the world's first Marxist President Allende broke the mould of the Cold War, and blazed the trail for today's Latin American revolutions. The Popular Unity government and the coup that overthrew it were defining events of the early 1970s, and most political people alive at the time know something about the coup and have their opinions about why it came about.

The current economic crisis and social discontent across much of the world makes the study of the victory of the Popular Unity more relevant than at any time since 1973. Capitalism has shown itself unable to bring peace, human development or economic justice. Armed revolution is not an option in countries with developed political systems and democratic habits. It is therefore interesting to examine how the Chilean left was able to have a Marxist President elected in an open alliance with a Communist Party, even in the midst of the Cold War and in the face of massive US interference.

Since 1973 much of the analysis of the Popular Unity has focused on its failures, on the roots of its downfall and not on its successes. Yet looking back today we can see that it was Allende’s victory that was the most defining moment. In Chile today many of the demands being made by the increasingly militant social movement echo the policies of the Popular Unity government – free education, improved healthcare, democratisation and control of Chile’s vast wealth of natural resources. Across Latin America and beyond the left is building electoral coalitions and mass movements in order to change society, following in Allende’s footsteps.

The Popular Unity was the result of a long process of political education and alliance building. It came about because a generation of political leaders that had been forged within the earlier Popular Front government of 1938 to 1948 came to believe in the viability of an institutional road towards socialism. The leading light of this generation was Salvador Allende, a doctor who was made Health Minister by President Pedro Aguirre Cerda in 1939. Although the Popular Front was not a revolutionary government, it did carry out a series of important reforms that helped democratised education, access to healthcare and some forms of welfare, at the same time as giving the State the leading role in the economy. This government in many ways laid the basis for Chilean development until 1973.

However, the Popular Front was unpopular with many socialists in particular, who felt that their participation was providing legitimacy to an increasingly right-wing government. The Party split. Then in the wake of the victory over fascism in 1945, and with the onset of the Cold War, the US began to push for the expulsion of the Communists from the government. This duly occurred towards the end of 1948, with President Videla telling Communist leaders that he had come under heavy pressure from the US to do so. It was the first time that foreign interference had played a determining role in Chilean politics since the 1891 civil war.

In the wake of the Popular Front demise, the left floundered. Membership of the Communist Party became illegal, with the famous communist poet Pablo Neruda forced to escape over the high Andes into exile. Thousands of their supporters were wiped from the electoral rolls. Their leaders were beaten and imprisoned in concentration camps in the northern deserts. Meanwhile the Socialists were divided. In 1952 during his campaign for the presidency Salvador Allende formed an alliance between his...
small Socialist faction and the Communist Party. The People’s Front with Allende at its head was forced to campaign with no money and with much of its support base still illegal. Allende took just over 5 per cent of the vote in the elections, a miserable tally. It was a depressing time for the Chilean left.

Yet Allende was convinced of the need for an alliance with the communists. As he told his later private secretary in 1950: ‘The Communist Party is the party of the working class. The Communist Party is the party of the Soviet Union, the first socialist state in the world. And whoever wants to make a socialist government without the communists is not a Marxist. And I am a Marxist.’ This conviction, alongside the Communists’ conviction that an institutional path to socialism in Chile was possible formed the basis of the long alliance between the two, which led to the victory of the Popular Unity in 1970.

This alliance and its policies laid the basis for the reunification of the Socialist Party and the legalisation of the Communist Party by the end of the 1950s in the midst of yet another economic crisis and social unrest provoked by neoliberal economists. In 1958, just six years after his initial poor showing Allende narrowly missed winning Presidential elections held under new more democratic rules, and he only lost the 1964 elections thanks to the combination of US interference and the appearance of a social-democratic alternative in the shape of the Christian Democrat party. Yet the Christian Democrats were completely unable to resolve Chile’s structural problems. Economic chaos, social unrest and repression occurred at the same time as political spaces were opened and disappointment took deep root.

By 1969 no other political grouping had a programme as coherent or as rational as that of the Popular Unity. The basic argument was that Chile’s problems had no solution under capitalism. The only way out was to nationalise the country’s mineral wealth, invest heavily in education and healthcare, to develop the nation’s human capital as Allende called it, and to carry out a democratic transformation of Chile’s domestic and international politics. It was a convincing combination of ideology and practical measures. This was, the left argued, the only way to lay the basis for human and economic development while carving a sovereign future for the people of Chile.

The meaning of this programme was hammered home time and again by Allende, by the leaders and members of the two main left-wing parties, and the CUT trade union congress. Allende used to repeat that he did not seek votes but consciences. He wanted people to make a conscious decision to participate in their own liberation. By 1969, Allende and the Chilean left had convinced a majority of Chileans of the need for measures such as the nationalisation of copper. In the 1970 elections nearly 65 per cent of the electorate voted for the transition to socialism of the Popular Unity or the ‘communitarian socialism’ of the Christian Democrats.

The choice of institutional methods to implement this transformation required the reform of Chile’s institutions and a legal system appropriate for the transition towards socialism. Under Chile’s 1925 constitution staggered elections, and the division of legislative powers between the President and the Congress gave each an effective veto over the other. The result was often paralysis. Subsequent reforms served to strengthen the presidency, for example giving him the ability to call referendums, but without actually resolving the impasse because Congress was still able to control both the timing and the content of any such referendum.

To get around this institutional straitjacket the Popular Unity proposed a new constitution to provide the legal...
framework for the democratisation of society. They proposed a new unicameral parliament, the People’s Assembly, which would then appoint an independent Supreme Tribunal which would be free to organise the judiciary’s internal powers. The new judiciary was to function in the interests of the majority, in the same way that the old one had functioned in the interests of the minority. Other measures included a more collective vision of justice by stating that ‘a new conception of the role of the magistrature will replace the present one, which is individualistic and bourgeois.’ Two legal measures, points 38 and 39 of the Popular Unity’s famous ‘40 measures’ were concerned with legal issues, envisioning putting nuisance crime under the legal supervision of local neighbourhood associations, and the creation of legal consultancies in poor neighbourhoods.

Unfortunately the Popular Unity government was unable to implement most of these measures, since it did not have a majority in congress and new elections for congress did not take place until March 1973. Therefore the Popular Unity was unable to reform the institutions of the State to replace the opposition activists who were often ensconced at top levels. In the judiciary this was reflected in the inability to have terrorism and sedition effectively punished.

In 1970 Allende had pushed for the new constitution to be linked to the nationalisation of copper in a referendum that would take place in mid 1971. The benefit of this would be to link the government’s two most important measures at a time of widespread optimism, and while the opposition was in disarray. Furthermore, it would enable the Popular Unity to campaign simultaneously for the municipal elections programmed for April 1971 and the referendum. However, the leaders of the Popular Unity parties feared losing the referendum vote. They feared prematurely uniting the opposition and the potential effect of not getting more than 50 per cent in the municipal elections, something that had never happened before. Ever the democrat, Allende refused to force the issue. The measures were separated. Congress passed the nationalisation of copper unanimously in December, and in April the Popular Unity won 51 per cent of the vote in the municipal elections. It was a huge opportunity lost and it forced Allende to rely on Presidential decree and the goodwill of the Christian Democrats to have his measures passed in Congress. When the Christian Democrats definitively turned against his government towards the end of 1972 the Popular Unity’s chances of success narrowed sharply.

The Popular Unity did not survive to enact its most fundamental reforms, with one exception. The nationalisation of copper, although partially revoked by Pinochet, still remains the basis of the Chilean economy today. Indeed Chile’s economic ‘success’ since 1990 is largely based on the income from this one mineral. What could have been achieved had it not been partially privatised can only be imagined. Yet as other countries have shown, State ownership of copper alone would not have resolved Chile’s problems, nor made Chilean society more democratic. The only way to do this was through a transition towards socialism, a fact that remains as true today as it did in 1970. This year Chileans go to the polls once more, with a fundamental cause being the democratisation of the political system and constitutional change. Allende’s legacy lies here, in what has been achieved, and in what remains to be won.

Victor Figueroa Clark teaches history at the London School of Economics and is the author of Salvador Allende: Revolutionary Democrat, (Pluto Press), which is released on 20th August 2013.
Statement from the 
International Association 
of Democratic Lawyers

SYRIA

‘We oppose military intervention in Syria and demand negotiations for a peaceful resolution without preconditions.’

The International Association of Democratic Lawyers (IADL), a non-governmental organisation having consultative status with the United Nations Economic and Social Council (ECOSOC), is dedicated to international law, particularly the peaceful resolution of disputes as set forth in the UN Charter and basic human rights instruments.

IADL has issued two comprehensive position statements regarding the continuing crisis in Syria. In March 2012, IADL called for an immediate cease fire to allow for peaceful resolution of the conflict consistent with the UN Charter. At that time IADL said: ‘The IADL condemns in the strongest possible terms these threats to international peace and security which are prohibited by the UN Charter and the doctrine of jus cogens.’

In December 2012, IADL stated its categorical opposition to any foreign intervention in Syria, including economic, political, and military interference in the internal affairs of the Syrian people. IADL further called for an immediate end to violence by all sides to the conflict, and a peaceful resolution of the dispute, in accordance with the UN Charter, as well as accountability for war crimes.

Since December 2012, the situation in Syria has further deteriorated. IADL continues to affirm its prior statements and positions. However, because the military conflict has proceeded unabated, resulting in many civilian deaths, and as the Syrian people have suffered untold numbers of deaths, dislocations and horrific suffering, a further elaboration is required.

IADL believes that the conflict threatens to destabilise the entire region resulting in a threat to international peace and stability. This requires the UN Security Council to take steps to end the threat to peace. Instead of taking steps to restore peace, many States have encouraged escalation of the violence by funnelling arms to groups of ‘rebels’ some of which are irregular forces from outside Syria. Many countries have been threatening to intervene militarily. Israel has engaged in bombings in Damascus and other places. The European Union has now followed the demand of the United States to end the military embargo and to allow member States to directly provide military assistance to certain rebel groups.

Under Article 2(4) of the UN Charter, it is illegal for any State to threaten to use military force against a sovereign State, or to engage in a war of aggression against another State. Article 2 (7) also prohibits member States from interfering in the internal affairs of another State. These provisions of the Charter were more specifically articulated in 1970 in General Assembly Resolution 2526 entitled, ‘Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations’ and in 1974 in Resolution 3314 defining aggression. Resolution 2526 prohibits States from arming one side of an internal dispute for the purpose of interfering with the right of the people of the State to self-determination. Resolution 2526 specifically requires States to refrain from organising or encouraging the organisation of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State. The Resolution further requires States to refrain from organising, instigating, assisting or participating in acts of civil strife or terrorist acts in another State, or acquiescing in organised activities within its territory directed toward the commission of such acts, when those acts involve a threat or use of force. These provisions are reiterated in General Assembly Resolution 3314 which reiterates the duty of all States to refrain from acts of aggression, and specifically defines these same acts as acts of aggression.

Therefore, the actions of the United States, the European Union, and any other States which have and/or are now planning to provide arms to various factions in the Syrian opposition, or which are considering the use of military force would be engaging in illegal actions in violation of the Charter as spelled out in General Assembly Resolutions 2526 and 3314. Such illegal actions will make those States accomplices to war crimes which will inevitably occur as these actions will result in more targeting of civilians.

IADL opposes any foreign military intervention in Syria. IADL opposes all actions which violate the UN Charter and General Assembly Resolution 2526. IADL demands that all sides enter into a durable cease fire and begin negotiations for a peaceful resolution of the conflict without preconditions, and seek permanent peace and reconciliation.

International Association of Democratic Lawyers is a Non-Governmental Organization with consultative status to ECOSOC and UNESCO. www.iadllaw.org

Socialist Lawyer June 2013
European constitutions, laws and austerity

The crisis in the eurozone goes on as Europe’s leaders continue to peddle ‘austerity’ measures – but, as Jeremy Smith argues – these policies are undemocratic and, in fact, unnecessary.
It’s been a bad year for austerity in Europe. Especially bad for those who have been hit most directly – with Eurozone unemployment at a record 12 per cent level. But bad too for the reputation of the political and academic class who have preached to us the virtues of ‘expansionary fiscal contraction’, i.e. the thesis that public spending cuts (euphemistically called ‘consolidation’) lead directly, and fairly rapidly, to economic growth. Reality has proved the absolute opposite.

Although not the primary tool of the ‘austerians’, we are also witnessing a process in which constitutional law is being conscripted in Europe as an instrument for the enforcement and ideological underpinning of austerity, and of neoliberal values more generally. In a nutshell, the aim is to constitutionally ‘hardwire’ Hayekian policies, and outlaw Keynesian and other progressive economic policies. In other words, to take economic policy options out of reach of democratic decision-making.

A year ago, I wrote an article in Socialist Lawyer entitled ‘Greece: towards a creditors’ constitution?’ In February 2012, the Eurogroup of Finance Ministers had referred to the intention to introduce in the Greek legal framework:

’a provision ensuring that priority is granted to debt servicing payments. This provision will be introduced in the Greek constitution as soon as possible.’

Fortunately, as I noted, the Greeks have a constitution that is quite complicated and time-consuming to change, and ‘as soon as possible’ has not yet arrived.

Alas, this is not true everywhere. In 2011 the Spanish PSOE government had already pushed through a rushed change to their progressive post-Franco 1978
The constitutional embedding of ‘absolute priority’ for creditors is thankfully still rare. This rings a little hollow with unemployed at 13 per cent, youth unemployment over 60 per cent. This provision can safely be ignored, it seems, by national and European policy-makers.

Compare Articles 35 and 135 of the constitution. Article 35 still proclaims: ‘All Spaniards have the duty to work and the right to work. …to advancement through work, and to a sufficient remuneration for the satisfaction of their needs and those of their families…’

This rings a little hollow with unemployment at 27 per cent, and youth unemployment over 60 per cent. This provision can safely be ignored, it seems, by national and European policy-makers.

Under Article 3(1), the signatory States commit to achieve an annual government budget which is balanced or in surplus, with a leeway of 0.5 per cent of GDP. The full set of detailed rules is laid down in other complex documents to which it cross-refers, making this a highly non-transparent Treaty.

In fact, the main legal-political purpose is set out in Article 3(2): ‘The rules set out in paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes.’ (Emphasis added).

In other words, Chancellor Merkel and President Sarkozy felt that just having European level legislation was not sufficient – the Maastricht criteria must be legally enforced also at national level.

So far, this strategy is working, at least up to a point. In 2009, Germany had already added the ‘debt-brake rule’ into its basic law. From 2016 onwards, the federal government is forbidden, save in emergencies, to run a structural deficit of more than 0.35 per cent of GDP, although it is allowed to ‘take into account, symmetrically in times of upswing and downswing,

Reinforce European austerity is the ‘debt-brake’ provision. This is being imposed at both European and national levels.

The broad principle goes back to the Maastricht Treaty of 1992 which (Article 104c) laid down in law the arbitrarily-defined budgetary discipline compliance criteria, namely:

- The annual budget deficit to GDP ratio must not exceed 3 per cent;
- The government debt to GDP ratio must not exceed 60 per cent.

These need to be seen together with the European Central Bank mandate that makes price stability – i.e. inflation – its primary legal objective, to which all else is made subservient. This is unlike the US Central Bank, the Fed, which by law has to balance inflation and employment considerations.

From 2010, having reframed the crisis as one of public finances, it was decided to strengthen the European-level framework for enforcing the Maastricht criteria. It is a nice irony that in the Euro-decade to 2010, two major ‘marginal’ governments were France and Germany, both of which had deficits and debt/GDP ratios that well exceeded those permitted, and neither of which was ‘punished’.

Compare the Germany and Spain debt to GDP percentage figures from Eurostat in the graphic above. So Germany, with its own Hartz IV ‘structural reforms’ from 2003, to 2005 exceeded the Maastricht level for nine out of ten years, while Spain was within the limit every year till 2010.

European Union’s objectives for sustainable growth, employment, competitiveness and social cohesion,

So far, alas, the only ‘achievement’ is negative growth, mass unemployment and deeper social division.
the effects of market developments that deviate from normal conditions.”

In December 2012, Italy also amended its constitution to impose a ‘balanced budget’ requirement, in particular Article 81, though couched in language that leaves a wide degree of discretion:

“The State shall balance revenue and expenditure in its budget, taking account of the adverse and favourable phases of the economic cycle. No recourse shall be made to borrowing except for the purpose of taking account of the effects of market developments.”

In 2011 the Berlusconi government had been effectively ‘ordered’ to take a series of economic steps set out in a letter of 5th August from the then Governor and Deputy Governor of the European Central Bank, Messrs Trichet and Draghi. These two bankers also added, in a shocking usurpation of role:

“In view of the severity of the current financial market situation, we regard as crucial that all actions listed [above] be taken as soon as possible with decree-laws, followed by Parliamentary ratification by end September 2011. A constitutional reform tightening fiscal rules would also be appropriate.”

France, by contrast, has so far decided to act by legislation rather than by changing its constitution.

EU legislation

The Treaty in reality adds little by way of substantive content to what is now contained in EU legislation, notably the so-called ‘six pack’, five regulations and one directive, all dated November 2011, with tough-sounding titles such as:

- Regulation on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies.
- Regulation on enforcement measures to correct excessive macroeconomic imbalances in the euro area;
- Regulation on the financing of the Economic Adjustment Mechanism.
- Regulation on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies.
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In short, the EU now has ample legislative powers to enforce the Maastricht criteria upon recalcitrant Member States, without any need for the new Treaty.

Conclusions

The European Union, for all its weaknesses, has been a progressive force in many fields, for example, in respect of gender equality, social rights, and environmental protection. These gains are all at risk.

It is the logic of a single currency to require member States to abide by a common set of rules in the common interest. The problem, however, is that within the Eurozone framework, there is almost no room for democracy.

The set of rules chosen is a narrow and ideologically partisan one, aimed at enforcing in perpetuity a highly limited role for the public sector, and at promoting Hayekian free-market policies over Keynesian or other progressive policies to combat unemployment and get economies working for the majority.

We are seeing the start of a new and dangerous campaign by the right – to remove choice in economic policy from the democratic domain.

Postscript:

On 28th May 2013, just after my article was completed, JP Morgan’s European Economic Research team published a report on ‘The Euro Area Adjustment’.

It bears out my thesis more fully and explicitly than I could have imagined. In sum, the authors say that national constitutions born out of the defeat of fascism are no longer fit for purpose and ‘need to change’. In their own words:

‘The constitutions and political settlements in the southern periphery, put in place in the aftermath of the fall of fascism, have a number of features which appear to be unsuited to further integration in the region.’

‘At the start of the crisis, it was generally assumed that the national legacy problems were economic in nature. But, as the crisis has evolved, it has become apparent that there are deep rooted political problems in the periphery, which, in our view, need to change if EMU is going to function properly in the long run.’

The political systems in the periphery were established in the aftermath of dictatorship, and were defined by that experience. Constitutions tend to show a strong socialist influence, reflecting the political strength that left wing parties gained after the defeat of fascism. Political systems around the periphery typically display several of the following features: weak executives; weak central states relative to regions; political clientalism; and the right to protest. It is not exactly a rallying cry for democracy.

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Jeremy Smith is a barrister and Director of Policy Research in Macroeconomics (PRIME)
The State has a responsibility to enshrine the principles of justice in legislation as well as establishing and maintaining the means of its implementation.

This Government and its predecessors have increasingly failed in both these respects. They speak gobbledygook about human rights. The two most central figures, the Justice Minister and the Home Secretary, have recently displayed an appalling lack of understanding in their wild hostility to the European Convention on Human Rights. The cuts on all fronts not only withdraw benefits but also emasculate the most vulnerable. Whole areas are now without any legal aid or only a skeleton resource.

None of this is primarily about lawyers, although they are affected, it is about a basic provision: justice, the very substance of what is left of our democracy. No fundamental rights are worth the paper they are written upon unless they can be enforced especially against overweening and corruptive authorities.

All this is known and has been foreshadowed over the last decade. The proclaimed agenda is the privatisation and
fragmentation of all public services. The thinly veiled rationalisation now is the crippling debt brought about by a freewheeling private finance sector. There are alternatives which George Osborne vehemently opposes such as a financial transaction tax.

Now is the time to alert and collectivise the public conscience to take a stand. It cannot be achieved by pockets of protest and opposition within the legal profession alone. Negotiating for the crumbs that might fall from the table is also not an option. There has been, with small exceptions, an intransigence and almost dismissive contempt by Government towards the plight of the citizen.

The writing is on the wall for all to see and has to be erased by the determination and singular purpose of civic society. There are presently many networks available to facilitate this, Avaaz and 38 Degrees are but two fine examples which serve constituencies of millions. They have already brought about seismic shifts in opinion and policy. The Coalition has a limited shelf life and its misplaced objectives can be removed by concerted effort.

Michael Mansfield QC is President of The Haldane Society
The Government’s attack on Legal Aid

by Anna Morris

If you stand by the Royal Courts of Justice and listen hard you might be able to hear the rumble of a convoy of lorries heading for the centre of legal London. These lorries, wearing the cheerful green Eddie Stobart livery, are the Government’s new vision for the delivery of publicly funded legal services.

Stobart Barristers already provide legal services to private paying individuals and companies and claim to be able to save customers 50 per cent compared to ‘doing things the old way’ by cutting out solicitors. But it doesn’t stop there: Stobart has also been in discussions with the Ministry of Justice about signing massive contracts to provide publicly-funded criminal defence representation from the police station to the Crown Court. And they are not the only ones; G4S and Serco are also rumoured to be interested in bidding for these contracts.

The idea behind this is ‘Price Competitive Tendering (PCT)’. The Government wants providers of legal services to tender for contracts to provide legal representation for those accused of criminal offences. In doing so it hopes to reduce the national numbers of criminal legal aid providers from 1,600 to around 400. The contracts will be awarded to those who are able to deliver legal services to the highest number of customers at the lowest cost per unit. As Stobart himself says, ‘we wouldn’t use 10 trucks to deliver one product.’ But what is that ‘product’ in the context of our justice system?

The ‘market-based approach’ to the provision of public services is sadly not new, even within the legal sector, but PCT, if implemented, will effectively mean the end of the high street legal aid solicitor, the specialist human rights lawyer and quite possibly the independent criminal bar.

You only have to think back 20 years to some of the historic miscarriages of justice that have been overturned, in large part assisted by the commitment and forensic ability of specialist legal aid lawyers such as Gareth Peirce, Imran Khan, Louise Christian and numerous others. Without them we would not know the truth about the Guildford 4, the Birmingham 6, or the Cardiff 3. What is now clear is the Government does not want these kind of lawyers operating within our system and put quite simply, wants to drive them out of business.

As anyone who works with the criminal justice system will tell you, clients are not customers, but often individuals with complex issues, needs and legal challenges. It is the job of a skilled representative to explore evidence, challenge facts and question the legitimacy of their client’s accusation by the State.

This is particularly true of those working with young people, those with mental health problems. There are also those cases where the State engages in the political criminalisation of those who belong to particular communities, ideologies or circumstance through terrorism legislation, public order acts and anti-social behaviour legislation.
The majority of criminal cases can not be reduced to a low cost ‘unit’ that can be simply transported from the start of the process to the end. Justice is not simply a question of logistics.

The Government also proposes to remove the right to choose the solicitor who will represent you in a criminal trial. The provision of a duty solicitor scheme at the police station has been a valuable part of the legal advice landscape for many years but the removal of the right to choose who represents you beyond that first stage will effectively create a two-tier justice system with those who can pay to choose lawyers based on merit rather than contractual obligations.

The United States has such a system with an under-resourced public defender service for the majority and high profile and high-cost attorneys for the rich. The British justice system stands alone in its provision of the highest quality lawyers to everyone, irrespective of their means, but not for much longer.

The provision of quality legal services based on the ability to pay is not new. Legal aid has been means tested in the Magistrates’ Court since 2006 and most people earning a full-time wage, no matter how modest, are denied public funding. Those denied funding are simply forced to represent themselves.

But there are already warning bells sounding about forcing individuals to appear in person. In April 2013 a judge in Durham Crown Court refused to sentence a man who admitted stealing more than £5,000 from an elderly woman. The man had pleaded guilty before magistrates but later told the writer of his pre-sentence report that he was lawfully entitled to the money. The man said he had spoken to the duty solicitor but was representing himself at Crown Court because he had been declined legal aid. ‘I can’t afford a barrister,’ he said.

While the Government may think the proposals will save money, the Judiciary have warned that the increase in litigants in person appearing before the courts unrepresented will prove more, not less costly to the justice system. In a recent judgment of the Court of Appeal, Sir Alan Ward stated ‘It may be saving the Legal Services Commission which no longer offers legal aid for this kind of litigation but saving expenditure in one public department in this instance simply increases it in the courts.’ The family and immigration courts already know too well the increased burden that litigants in person put on the system and the cost is not just economic, but emotional.

But PCT is just one part of the most radical shake-up of legal aid since its inception in 1949 as part of the post-war commitment to the welfare state.

The first wave of reforms already implemented by the Legal Aid, Sentencing and Punishment of Offenders Act in April 2013 included the exclusion of swathes of areas of advice beyond the scope of funding such as welfare benefits, immigration, employment, divorce and child residence, and school exclusion appeals. There is now a proposed further reduction of fees in areas of work such as family and civil legal aid of around 30 per cent. The net effect of these waves of cuts is that post-2015 there are unlikely to be any specialist civil legal aid lawyers left at all.

It is civil legal aid that has supported bereaved families through inquests into the deaths of Jean Charles de Menezes, Ian Tomlinson and Mark Duggan, and which will hopefully support many families demanding answers from the 2014 Hillsborough inquests. It is civil legal aid that gives these families a route to accountability by funding claims under the Human Rights Act against the police, prisons and the armed forces for breaches of their obligations to protect the lives of their loved ones. The proposals also put under threat the funding for making an application for judicial review, one of the key ways an individual can challenge decisions made by public authorities.
The impact of the cuts on vulnerable individuals cannot be underestimated. The denial of access to legal advice comes as a sucker punch following the body blow of the slashing and restructuring of welfare benefits. The Institute of Race Relations has stated that they will severely impact on BME clients and therefore increase social exclusion. The housing charity Shelter has been forced to shut over a third of its advice centres across the country, and both the British Red Cross and the Citizens’ Advice Bureaux have said that the cuts have left them having to reduce services and make redundancies.

In an even crueller twist, the Government proposes to limit access to civil legal aid to those who have been resident in the UK for more than 12 months. The measure will affect the ability of recent migrants or those with vulnerable status such as trafficking victims, to challenge their treatment in the criminal or civil courts, compounding the two-tier system that will inevitably be created.

In a recent speech, the President of the Supreme Court, Lord Neuberger, warned that the biggest victim of the Government’s proposals could be the rule of law itself. He said: ‘in order for a State to remain inclusive it must not just express a commitment to the rule of law: it must provide effective mechanisms through which its citizens have genuine access to the courts.’ He added: ‘If all members of society cannot gain genuine access to the courts, then the possibility exists for society to become exploitative, as some elements take advantage of the fact that they can ignore the law with relative impunity.’

Sadly it appears that this Government’s commitment to the privatisation of public services knows no bounds. With the majority of court custody and enforcement services contracted out to the likes of Serco, 14 private prisons run by G4S, and proposals to contract the provision of the Probation Service to a similar company, the question is whether public interest will have any place in a court of law? Instead, the courtroom will be full of corporate representatives, each seeking to reduce overheads such as justice and compassion in the name of increasing profit margins.

And what about a conflict of interests? We could soon see the same company that represents you at court, detaining you, transporting you to court, then monitoring you on electronic tag or putting you in one of their corporate run prisons. What economic incentive does that provide to test the prosecution case and acquit the innocent?

The legal and justice sector is rightly up in arms: Early Day Motions and Petitions are swirling through the courts, then the possibility exists for society to become exploitative, as some elements take advantage of the fact that they can ignore the law with relative impunity.

Grayling does not believe prisoners should have access to free legal advice concerning matters such as treatment, sentencing, disciplinary action and parole board reviews. Instead, he tells us, the prisoner can raise a complaint through an internal procedure. Never mind that many prisoners will be burdened with much of the health, educational and social problems associated with criminality which will make it quite impossible for them to put their own case effectively. How prisoners are treated is fundamental to their prison existence and to restrict their ability to ensure that treatment is lawful begins to look like a form of punishment in itself.

In criminal legal aid, the consultation forwards plans for a model of price competitive tendering. Bids will be invited below a fixed ceiling for batches of work around the country. It is a system in which only warehouse law firms will exist and high street firms will either die or be absorbed by large corporations intent on delivering legal services cheaply for maximum profit. The future will be
one in which suspects are apprehended by G4S investigators, transported by G4S security, detained by G4S officers and imprisoned in G4S jails – at each stage represented by G4S lawyers.

With price competition will come the removal of the right to the solicitor of your choice. Representation will be allocated by rota and it will be made difficult to change solicitor should you wish to for any reason. The idea that quality can survive the casual vandalism of these proposals is absurd. The model of turbo price competition used in some US states tells us that.

Fees in criminal legal aid is a favourite target of justice secretaries and Grayling is no exception. Yet, there has been no increase in barristers’ fees since the 1990s. While a handful of criminal QCs do earn significant sums the rest of us do not. It may be that such fees should be discussed but not, as the Justice Secretary does, in a bid to undermine the entire system. As a trainee barrister I have a guaranteed income of £12,000 during my first year. We do not ask for sympathy, merely accuracy.

On the civil side the planned fee reductions mean many lawyers’ practices will simply no longer be viable. So those who specialise in housing, homelessness, actions against the police and judicial review – all crucial mechanisms for ensuring State accountability – will disappear. Their successors will be the warehouse G4S model or non-specialist charitable organisations staffed by well-intentioned but resource-poor lawyers. There will be no equality of arms in the courtroom.

As a result of previous reforms, from 1st April 2013 a raft of areas no longer attract free legal advice.

Employment cases, non-asylum immigration cases, consumer rights and welfare benefits were all removed from scope. In the case of the latter it is estimated that 40 per cent of challenges before the benefits tribunal succeed. Money would be saved by the Department for Work and Pensions making the correct decisions in the first place. There has been no opportunity to yet assess the impact of these changes but that has not deterred Grayling from unleashing a new round of cuts.

There is to be a residency test for those claiming civil legal aid. Applicants must be in the country lawfully to be able to apply and for those who are, an additional requirement of 12 months’ residence is imposed. This is the sort of divisive approach to immigration we have come to expect from the Conservative side of the coalition. Children of people here unlawfully will be left without the protection that would otherwise see them housed and looked after. Foreign students and people here on a temporary visa will be unable to challenge State wrongdoing.

If money is all that Chris Grayling understands then he should understand this: these proposals will cost more in terms of the miscarriages of justice, social harm, and disruption to the court service which will result, than the £200 million he seeks to save.

Russell Fraser is a pupil barrister and joint secretary of the Haldane Society of Socialist Lawyers. He has written this in a personal capacity. This article first appeared in the New Statesman and is reprinted here with their kind permission and that of the author.
The shocking image of a shaved, scarred head belonging to the student protester Alfie Meadows—who suffered life threatening head injuries from a baton assault during the protest against the Government plans to raise tuition fees from £3,000 to £9,000 on 9th December 2010—was widely reproduced in both the print and electronic media.

In the Autumn of 2010, the newly elected coalition Government announced that they would be giving universities the ability to raise tuition fees from the previous £3,000 cap to £9,000. The rise in tuition fees would exclude many students from higher education and leave those who attended with crippling debts. The policy was in breach of an election pledge by the Liberal Democrat partners in the coalition. This was coupled with an announcement that the Educational Maintenance Allowance which supported students from poorer backgrounds in post-16 education was to be abolished.

These two cuts provoked widespread anger among young people already facing unprecedented levels of unemployment, unpaid internships and staggering housing costs. Government spending cuts would impact disproportionately on the young and their life chances. History shows that many young people who were similarly affected in the 1980s were never able to get their lives back on track.

The widespread anger at the policy prompted a series of demonstrations in November and December 2010 which resulted in a number of arrests, including the high profile arrest of Charlie Gilmour, the son of Pink Floyd guitarist David Gilmour. Students and their supporters, who included school age students and academics, as well as other activists, spent cold winter afternoons and evenings protesting against the cuts. On one of these demonstrations the police kettled students, including school children, at which Alfie and his 14-year-old sister attended.

The demonstration on 9th December 2010 was the fourth and final demonstration organised in protest against the rise in tuition fees and was the best attended. Alfie, who was a philosophy student at Middlesex University, attended the demonstration with friends.

The protest began on the Victoria Embankment and proceeded to Parliament Square where the students were kettled. CCTV
footage from 9th December 2010 shows lines of armoured police officers attacking protesters with batons. A group of police horses charged at the protesters in Parliament Square. The Hilliard brothers, Christopher and Andrew, faced charges resulting from an incident where a police officer fell from a horse.

The vote was scheduled to take place during the evening of 9th December 2010 and protesters including Alfie Meadows and Zak King proceeded to Whitehall to protest outside Parliament. Large numbers of police attended to reinforce the line and alterations took place between police and protesters.

At 6.00pm the vote was called and protesters were kettled in Whitehall. It was here that Alfie was assaulted.

Following his assault, Alfie submitted a complaint to the Independent Police Complaints Commission (IPCC) and made a detailed statement describing the circumstances coming up to his assault.

At the same time as Alfie submitted his statement, police officers from operation Malone began to investigate alleged acts of violent disorder arising out of this protest. As his solicitors, we were shocked when he was invited to attend the police station for interview.

Alfie was charged with violent disorder and appeared at City of Westminster Magistrates’ Court. His case was committed for trial and was joined with the cases of six others.

The first trial was listed at Kingston Crown Court together with Zak King and five others.

The prosecution focused on the alleged actions of protesters pushing harris fencing towards the police. The prosecution showed footage showing the alleged attack.

The biggest practical challenge in relation to Alfie’s defence was viewing and collating defence footage and use of force records, incident report books, vehicle logs, bronze logs, and silver logs were also scrutinised.

Enquiries included searches on the internet and in the media for witnesses to the events. Eventually we were able to identify Jill Austin, a doctor from Dundee who had never met Alfie before.

The jury was hung and for Alfie and Zak but acquitted the other protesters of violent disorder.

Commander Johnson, the Silver Commander, gave evidence and was cross-examined by Michael Mansfield QC who sought to put the trial in the context of the police actions against the miners and Hillborough.

Jill Austin was able to give evidence about her experiences of protest. She had attended with a first aid kit and had spent the afternoon treating protesters with baton injuries in Trafalgar Square. Her evidence of the effects of the kettling on Westminster Bridge was particularly compelling. She described how the police officers on the bridge could receive information by radio but were not able to get messages to their commanders.

The case was transferred from Kingston Crown Court to Woolwich Crown Court, where a second trial ended up being aborted because of illness affecting the defence team, the judge and a juror.

On the first day protesters were excluded from the trial causing widespread distress.

After a three-week trial, a Woolwich jury finally acquitted Alfie and Zak King to widespread relief.

It was two years after the charge and two years and three months following the protest. The lives of both young men had effectively been on hold for this period and their education and careers have been disrupted. Alfie’s good nature and concern for others meant that he spent a great deal of time supporting other protesters facing prosecution including attending their trials and campaigning on the issue.

Disclosure of the vital parts of the prosecution case including crucial footage and the police logs was only achieved by persistent applications.

Alfie and Zak were well supported not only by their families and friends, but by a widespread network of supporters led by Defend the Right to Protest, who attended the trial and organised demonstrations outside the court room. This made the defence a real team effort.

The trial highlighted the inequality of arms between the prosecution and defence under litigator’s fees. Defence lawyers are paid on the basis of page counts on prosecution papers which did not include the analysis of CCTV footage that was the basis of Alfie’s defence. The defence were paid basic fees for the re-trial. The defence was only possible with a large amount of unpaid work put in by the defence team. The defence was also assisted by being able to work with Alfie’s civil team.

Alfie and Zak’s defence would simply not be possible under the new funding proposals for legal aid. Neither of them would have had the choice of a specialist lawyer.

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Alfie and Zak’s defence would simply not be possible under the new funding proposals for legal aid. Neither of them would have had the choice of a specialist lawyer. The specialist firm Kellys Solicitors, who are based in Brighton and acted on behalf of Zak King, would not have been able to act in a London based trial and Alfie would not have been able to choose to be represented in his criminal case by the same firm as was dealing with his civil case. This is further reason, if any were needed, to oppose the Government’s proposals to radically change legal aid.

Margaret Gordon is a solicitor at Christian Khan Solicitors.
In February 2013 representatives from over 40 groups met together to form the Campaign for Benefit Justice to organise against the most vicious attack on the welfare state by any Government since its inception in 1947.

All benefit cuts are an attack on the poor. What is often forgotten is that millions of low paid workers also claim benefits. The division between those in and out of work is totally artificial. Benefit claimants have become scapegoats for the recession. Blame the shirkers not the bankers who continue to net million pound bonuses in the wake of the UK’s loss of its triple star credit rating cry the Tories. It’s easy to live off £7.7 a week shouts Ian Duncan Smith. Immigrants are consistently portrayed as stealing the jobs of deserving strivers with hysteria mounting over the relaxation of benefit restrictions for Romanians and Bulgarians. The press misrepresented these restrictions as relating to their right to freedom of movement as EU migrant workers. This has in fact been in existence since they joined the European Economic Area in January 2007. Such racism undoubtedly contributed to UKIP’s high polling turn out in Eastleigh.

The disabled, already adversely affected by the introduction of Employment Support Allowance and ATOS testing, will experience enormous hardship because of the bedroom tax.

We should not forget the cause of death of a single homeless man who died while sleeping rough on 23rd February 2013 in Aylesford, Kent being attributed to hypothermia. David Gauntlett was only 35 and died as a result of being evicted from a derelict railway building in which he was sleeping. During March 2013 over 5,000 cold related deaths were recorded with no mention of the fact that many people’s incomes are so low they have to choose between paying for food or fuel.

**Employment Support Allowance (ESA)**

Even before the benefit cuts introduced in April 2013 we had seen the implementation of ESA which came into force from October 2008. The brain child of Yvette Cooper MP under the last Labour Government it introduced a much stricter capability to work test in order to claim what was previously Incapacity Benefit. The Tories toughened up this test by introducing a much harsher Capability Assessment Test run by ATOS in November 2011.

All new and repeat ESA claims are subject to ATOS assessments after an initial claim over 13 weeks at £7.71 per week. There are two levels of payment: those in the support group deemed incapable of work and those in the work related capability group deemed able to carry out some work. The support group receive slightly more benefit.

In order to claim ESA a person needs to score 15 points at an ATOS exam. Channel 4 provided evidence to support allegations that ATOS examiners, most of whom have a medical qualification but are not doctors, work to a set quota of failure. This was borne out by many claimants scoring zero on their assessments, irrespective of the degree of severity of their illnesses.

Appeals against ATOS refusals take up to a year to be heard during which period the claimant only receives reduced ESA of £7.71 per week. Up until March 2013, £60 million had so far been spent on appeals. Even if a claimant is successful, they face another re-assessment by ATOS 13 weeks after their appeal decision. Some claimants die before their appeals against nil assessments are heard.

**April 2013 – month of misery**

From 5th April 2013 a pilot to cap benefit claims nationwide was to be rolled out in London in the areas of Bromley, Croydon, Enfield and Haringey. This cap will be at a total per week of £350 for a single person and £500 for a couple including Housing Benefit which bites sharply in London where housing costs are higher.

The bedroom tax also came into force on 1st April 2013 for tenants in social housing. Housing benefit claimants must pay 14 per cent towards their rent if they over occupy by one bedroom and 25 per cent for more than one bedroom. Up to four children under ten of any sex are expected to share a bedroom as are two children over ten of the same sex. A disabled child is not exempt from the tax if they use a second bedroom for their carer, even if they live together. The question of whether disabled children need their own bedrooms is currently being considered in the Administrative Court.

From 1st April 2013, Council Tax Benefit recipients have to pay 10 per cent towards their Council Tax.

From 1st April 2013, legal aid cuts mean that there is now no free legal advice available to interpret the Kafkaesque bureaucracy which is supposed to deal with these changes.

The pilot Universal Credit (UC) schemes, which also replaces and includes Housing Benefit and which will be administered by the Department for Work and Pensions, are to begin in the same boroughs as the benefit caps. In addition to implementing the caps, applications for UC have to be made on line, when over 50 per cent of claimants cannot use a computer because they do not have access to one, or because they do not know how to use one, or because they do not speak English. Claims will be paid monthly into arrears and paid straight into bank accounts. Backdating is only for a month and there is no provision for payment pending appeal.

**The effect of the benefit cuts**

Already the New Policy Institute has calculated that 440,000 families will lose £16.90 a week in the double whammy of bedroom and council tax cuts. Tenants are understandably perturbed. The combined effect of all these cuts will lead to higher rent arrears, County Court possession orders and come Autumn 2013 a huge rise in evictions. Attempts by local authorities to increase rents to compensate for this loss of income will be a drop in the ocean of the vast increase in centrally subsidised expenditure to pay private landlords to provide temporary non-secure accommodation for the homeless.

Because of both the high cost of particularly private accommodation in London and the refusal of 90 per cent of private landlords to accept tenants on benefits we will see the dispersal of the homeless outside London. Local authorities will have little choice but to
perpetrate the social cleansing aim of the Government by offering the homeless accommodation outside the South East, where rents are cheaper.

The stress that will most likely be placed on the court service can not be understated. Courts are already hard pressed and potentially face the privatisation of their support staff. More litigants-in-person appear in the courts every day due to the implementation of legal aid cuts.

Campaign for Benefit Justice
It is vital that we all campaign together to roll back the most severe attack on those hard won rights which were delivered to the survivors of the Second World War in 1947. We cannot go back to the days of Victorian moralism and notions of the deserving poor. The cuts attack the most vulnerable in our society: the sick, the disabled, the old, migrant workers. We must stand shoulder to shoulder and remember that the distinction between ‘striver’ and ‘scrounger’ is totally misconceived. Anyone working today could be unemployed tomorrow and any worker today may be claiming benefit top ups to achieve a living wage.

We can campaign on both micro and macro levels. We must engage those in the trade union movement still in work, and take a lead from the fierce struggles of groups like Disabled People against the Cuts (DPAC). The Government is not confident that they can achieve the implementation of these cuts without significant social unrest, and we must hold them to account.

Claimants cannot survive on £71 per week. Many have multiple debts and benefit deductions. Indeed people are dying as a result of hardship caused by these reforms.

Action should be taken when evictions really start to bite in the Autumn. It will be difficult to persuade Councils to refuse to issue proceedings over rent arrears, and often hard to identify how much of those arrears are caused by benefit cuts. Effective action can be taken to liaise with court staff and duty solicitors to identify when tenants are being evicted by bailiffs and to mount local protests led by Tenants’ Associations at people’s homes. A landlord’s representative must be present when bailiffs change locks.

Some legal challenges have already succeeded, for example against the JSA Workfare schemes. Sadly the Government’s reaction is always to bring in new legislation to get round the legal decisions. We have to be aware that any victory in court is likely to give only a breathing space.

One fight is to force the Labour Party back to socialist politics to get it to commit in its 2015 Manifesto to repealing the recent pernicious legislation. The Campaign for Benefit Justice is working both nationally and locally to achieve this aim. Tenants need to be made aware of just how hard they will be hit in the months to come and to be given support to join together to resist.

Wendy Pettifer is a solicitor at Hackney Community Law Centre

Philip’s story (name has been changed) – a Hackney Law Centre client

Philip is nearly 60. He is British. He is a Housing Association tenant in Hackney and has a two bed flat as he was a single parent. He is single. His rent from April 2013 will be £140 per week. His adult daughter moved out years ago. She is now a single parent on Income Support and lives out of London. He has previously suffered from depression and attempted suicide.

He worked as a chauffeur for many years until he was made redundant in 2010

He only claimed JSA and full Housing Benefit when his savings ran out in mid 2012.

He was diagnosed with colon cancer on New Year’s Eve 2012 and was in Homerton Hospital for ten days from 15th to 25th January 2013 when a section of his colon was cut out and replaced. Unfortunately his operation was only partly successful and he is now diagnosed with level four cancer. He started chemotherapy with very strong side effects on 26th February 2013.

His application for ESA was initially refused. His sympathetic housing officer was persuaded to continue his housing benefit on the basis of a nil income assessment. Philip was without any income from 2nd January 2013.

He got advice from the Law Centre and after numerous calls to the Department for Work and Pensions we served a letter on their legal department outlining the engagement of sections 3, 6 and 8 of the Human Rights Act 1998 by their failure to pay and threatening judicial review proceedings. On 11th March 2013 Philip’s ESA was paid and back-dated. For over two months he had no income for heating or food at the same time as struggling to come to terms with cancer and very heavy chemotherapy during an extremely cold winter.

Philip has not yet undergone the dreaded ATOS assessment. If he fails and appeals his benefit will be reduced to £71 per week. From 1st April 2013 he is also subject to the bedroom tax and will lose £14 from his ESA. In addition he will have to pay £10 a week towards his council tax which leaves him with £49 per week to live off.

The Law Centre can no longer help Philip as all legal help for benefits advice has been stopped by the Government’s legal aid cuts.

Philip has worked all his life and contributed to society by paying his taxes. He now faces destitution and terminal illness with no support as a result of benefit cuts.
Do socialists still have an alternative concept of rights?

An obvious starting point is Karl Marx’s position on human rights. We can begin with his response in 1844 to Bruno Bauer’s pamphlet The Jewish Question, in which Bauer opposed Jewish demands for political liberation on the grounds that no one in Germany was emancipated and that Jews should fight not for their liberation but for universal liberation. This sparked some caustic remarks from Marx on the limited notion of liberation espoused by Bauer. Political emancipation, Marx observed, took the form of negative liberties such as the right not to be imprisoned or the right not to be prohibited from having a profession. Marx wrote: ‘Liberty … is the right to do everything that harms no one else … [T]he right of man to liberty is based not on the association of man with man, but on the separation of man from man. It is the right of this separation, the right of the restricted individual, withdrawn into himself. The practical application of man’s right to liberty is man’s right to private property.’

Over the next forty years, Marx and Engels were to sharpen this critique of rights and develop a richer sense of how an alternative society might work. But they never wavered from this original scepticism to asks

David Renton

Socialist Lawyer June 2013
equal point of view, are taken from one definite side only -- for instance, in the present case, are regarded only as workers and nothing more is seen in them, everything else being ignored. Further, one worker is married, another is not; one has more children than another, and so on and so forth. Thus, with an equal performance of labour, and hence an equal in the social consumption fund, one will in fact receive more than another, one will be richer than another, and so on. To avoid all these defects, right, instead of being equal, would have to be unequal.\footnote{Mackie's \textit{Critique} is worth bearing in mind when considering, for example, the employer's duty under section 20 of the Equality Act 2010 to make reasonable adjustments for a disabled worker. If an employer employs two workers, one of whom is disabled and uses a wheelchair and one of whom does not, and the doors to enter the workplace are beside a short flight of stairs, an equal balance between disabled worker and employer can only be achieved by the employer buying a ramp to the door. The same treatment of both workers would result in the employer discriminating against the disabled worker. An equal outcome depends on unequal treatment. Even contemporary law, at its present limited stage of development, obliges the employer to buy the ramp; although it allows the hegemony of the employer back in by making the purchase necessary only if it would be 'reasonable' to require it. What for contemporary law is a heavily-qualified anomaly is in Marx's hands, the principle under which an entire legal system would be constructed: 'In a higher phase of communist society', he wrote, 'after the enslaving subordination of the individual to the division of labour, and therewith also the antithesis between mental and physical labour, has vanished; after labour has become the prime want; after the productive forces have also increased with the all-around development of the individual, and all the springs of cooperative wealth flow more abundantly -- only then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: From each according to his ability, to each according to his needs! This is one of those concentrated passages of careful thought that repays careful re-reading. First of all, it is clear from it that Marx, despite, his rights scepticism, understood the desire for justice that lies behind most rights discourse, whether the rights themselves are virtuous or otherwise. He was not hostile to justice but passionate about going much further in the same direction. Second, in referring to 'phases' of communist society Marx is describing socialism not as one and for all process, but as a series of steps towards an ideal. Like the novelist who writes and rewrites the same book, or like Marx himself in his decades long struggle to complete \textit{Capital}, we should not assume that the first draft will be the final version. Third, long before a just system of 'rights' could possibly be practical, all sorts of conditions will have to be encountered and passed: the breaking down of the division of the day between work and non-work, the spread of co-operative forms of production, and the extraordinary increase in human productive capability that we could have if only the whole world had universal access to the very latest intellectual terms. In contemporary terms, Marx is envisaging a world in which all of Africa and all of Asia had access to the same levels of agriculture and industry as the most developed regions of the West; Marx is asking what law there might be during, and beyond, transitions of this scale. In these circumstances, the revolutionary fragment buried even in laws such as the present-day Equality Act law could be developed and generalised, i.e. there would be rights, but unlike the rights enshrined in the European Convention on Human Rights, the equality principle would be equality of outcome rather than equality of opportunity. Everyone should give what they can; everyone must have what they need. Drawing on Marx, a useful approach to the problem of right in the crisis of the present day, could be to disregard temporarily the search for further and better lists of rights in order to focus on their revolutionary kernel: i.e. the right to a just outcome. Part of establishing a fair outcome depends on a system of \textit{expropriation}. There are models, even under contemporary law, of how this could work. In the emerging field of environmental law, there is a developing concept of environmental 'responsibility' and 'stewardship'. For example, Section 24 of the \textit{South African} constitution provides a right of all people to have access: a. to an environment that is not harmful to their health or well-being; and b. to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that: i. prevent pollution and ecological degradation ii. promote conservation; and iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. A moment's thought will show that the idea of a right to prevent ecological degradation is a right that is only capable of enforcement if there are others, i.e. people holding property, who have caused or risk causing that degradation. Polly Higgins' \textit{Eradicating Ecocide} uses interchangeable terms of environmental 'responsibility' and 'stewardship' and portrays the key task of the moment as being to shift the focus from commodity to responsibility. Now we are used to hearing 'responsibility' as a weasel-word to justify, for example, right-wing arguments that welfare benefits should not be universal, but should be made conditional, e.g. on a person taking up low-paid part-time work, which will contribute to a general lowering of the average wage. But there are other notions of 'responsibility' which point in more interesting directions. When family members ask a court to determine where a child should live, the starting question is whether the applicant has 'parental responsibility'. The idea is very simply that a child, as a human being, cannot be subject to the ordinary principles of private property, they cannot be owned. Accordingly rather than asking first 'who has the right to care for the child?', the court's first question is 'who has the duty of care?' Contrary to the
demands of campaigns such as ‘Fathers for Justice’, the answer will not necessarily be ‘the father’, it may not even be either of the parents. Section 3 of the Children Act 1989 defines parental responsibility as ‘all the rights, duties, powers, responsibilities which by law a parent of a child has…’

When a local authority’s social workers have reached an interim view that a child is suffering or likely to suffer significant harm living with their parents (section 31 Children Act), they initiate care proceedings. The initial step in these proceedings is often for the local authority to ask the court if it may share parental responsibility with the parents.

Children Act 1989 proceedings are not by any means ‘model’ instances of the law at its best. In ‘private’ Children Act 1989 care proceedings, courts are torn between competing instincts including the knowledge that children in care are often bitterly unhappy, and the consciousness also that some families are actually so unsafe that there is no alternative but to remove the child. The positive feature of this litigation is the absence of a ‘parents’ rights’ discourse. A parent who says merely that their child is their child, therefore it is their right that the child should live with them, will not get far; the court will expect a much more serious focus on the true best interests of the child. If only we could learn to treat the ownership of property with the same scepticism with which we already treat the purported ownership of children.

As a conceptual example in considering how a fully developed legal concept of environmental responsibility might work, a person who believes that a polluter risks causing ecological degradation on a piece of land, might petition a court complaining that the polluter has lost the right to environmental responsibility for that piece of land. A court would investigate. It might find that the applicant’s case was made out, in which case, they could listen to proposals that the responsibility for that piece of land should be given to another. They might find that the applicant’s case was hopelessly weak. They might instead find that the land should remain with its present owner, but only on an interim basis, subject to the present owner demonstrating that their custodianship was rapidly improving and they were taking all steps to prevent pollution.

There is no reason of principle why there should not equally be an overriding duty of ‘social responsibility’. In order for someone to exercise any right as an owner of property, or for any contract to be enforced, the owner should be capable of being challenged by anyone – a worker, consumer, anyone – on the grounds that their stewardship of the property was deficient, and should be given to another. Where an employer did not pay the minimum wage or their workplace was unsafe, the ordinary principle should apply that their workplace should be passed to another.

The rule that is proposed is simple and intuitive. Questions of whether a workplace is properly run can easily be determined by juries, to whom we already leave inquests and sometimes very complex questions of criminal law.

There is no political will in Parliament for anything like this model of social responsibility because the large majority of political forces are signed up to a vision of untramelled corporate power, with all the disasters that has caused, in terms of recession, bankers’ bail outs, and collective austerity. We are not going to see the expropriation of capital without social upheaval.

In working out the next step for the rights discourse, socialists should go further than the majority of rights activists. We have a concept of right in which the highest categories are human need, and agency to answer human need. The next step is a right of expropriation where property ownership limits human potential.

The simplest rebuttal of the present proposal – for an overarching concept of social and/or ecological responsibility which would be capable of taking priority over all other property rights and any contractual agreements – is that class society has been in existence for around 10,000 years without having anything like such a practice. For around a third of that time we have had an idea, through contract law, that property is disbursed in agreements, the terms of which are binding on the contracting parties. No commercial agreement could be attractive if its effect was constantly uncertain. This is exactly the spirit in which socialists should respond to big questions about what the law should be in the future. Socialists should demand what is absolutely incompatible with the conditions of capital and the State: the right not to be exploited. We ask of course in a modest fashion, pointing out in this way the absurdly limited conditions under which capitalism allows billions of people worldwide to live.

David Renton is a barrister at Garden Court Chambers and a member of The Haldane Society’s executive committee.
As it turns out, we were lucky to see him at all, as the UK Government had, without explanation, not issued his visa in time. It was only after a concerted effort by the organisation Justice for Colombia ('JFC') and UK Members of Parliament that Carlos was finally given clearance to travel.

While this seems a mere inconvenience, it has greater ramifications as Carlos is one of the most prominent peace figures in Colombia. Since the beginning of the civil war, Colombian human rights defenders have faced continuous harassment, death threats, torture, disappearances and assassinations at the hands of paramilitaries and the military, often with the direct or indirect collusion of the State. Shockingly, this targeting of human rights defenders has only increased since the beginning of the peace process in November 2012.

Fresh from the small victory of his admittance into the UK, Carlos was upbeat. Considering his status as a respected political figure by both the left and right, we began by talking about his political experience.

**Could you tell us about your political career up to the point of the current peace process?**

All my life I’ve been on the left. Since secondary school I was in the Colombian Communist Party. I studied law at university and in the 1970s moved to the Soviet Union to work for the federation of youth for five years.

On my return to Colombia I again started to organise within the Communist Party. In 1991 I became editor of Voz, replacing lawyer and former senator Manuel Cepeda, who was then murdered by paramilitaries with the complicity of the State in 1994.

During the time of Pastrana’s Government I was included in the Commission of Notables which was created as part of the peace process of that period.

In 2008 I jointly published a book entitled *What, How and When do you Negotiate with the FARC?* which was a collection of Yezid Arteta, Medofilo Medina and my experiences of working as an intermediary and advocate for peace.

With the introduction of the Uribe Government it became impossible to create spaces for peace and dialogue. The Government even tried to falsely accuse me of working with the FARC, claiming to have found damning documents in a computer which had been recovered following a Government raid of a FARC camp. A case was begun against me in the courts but was later dropped as the court recognised that there was no merit to the claims. Unfortunately these false accusations are made to intimidate people into ceasing their human rights work.

**Why have previous peace talks failed?**

The reason the peace talks with Pastrana failed are the same ones which existed in previous talks, i.e. the establishment did not allow for any political, social or economic change. They would ideally like to see the present peace talks result in a simple laying down of arms, rather than any substantial change in society. They have a will for peace, but not for change.

It is correct to say that there were military actions undertaken by the FARC during the previous peace process which precipitated the end of the talks, but these were simply a pretext for the establishment to abandon a process they understood would not lead to a simple demobilisation of the guerrilla.

**How is the current process any different?**

Unlike previous processes, the Government has been willing to discuss the agenda for the talks. This is a good sign as it shows from the outset that the Government is willing to discuss the possibility of change. There are five topics on the agenda: (1) Comprehensive agrarian development policy; (2) Political participation; (3) An end to the conflict; (4) Solution to the problem of illicit drugs; and (5) Victims.

Though these topics are important, we are concerned that the Government has insisted that the economic model in Colombia is not part of the agenda. In relation to political participation, the Government wants to reduce this to simply giving guarantees for FARC members which will allow them to run in elections. We believe that the idea of public participation needs to be greater than this. We do not only want democratisation following the talks, we need popular participation in the talks themselves. Only popular pressure can create momentum for the oligarchy to accept what is necessary for peace.

**What role do international bodies have in this process?**

We believe that the international Inter-American Court, the International Criminal Court and the Commission of Human Rights all have a part to play in this process. They have in their own ways been useful bodies which have highlighted human rights abuses in Colombia. We are worried however that these bodies may create unnecessary obstacles to the peace process, in particular around the issues of victims and transitional justice. There is currently a very strong debate taking place among the left as to how to proceed with these matters. Eventually there will need to be a Truth Commission to deal with these matters thoroughly.

**What role do lawyers have internationally in this process?**

The primary role for lawyers around the world is to raise awareness of the peace process and to place pressure on the Colombian Government to make sure that the process does not collapse.
Mexican standoff

by Camilo Pérez-Bustillo

The Permanent Peoples’ Tribunal (PPT), the most widely recognised successor to the Russell Tribunal of the 1960s and 1970s, will be holding hearings in Mexico City from 19th to 21st August 2013 focussed on systematic human rights violations against both migrants in transit and migrants of Mexican origin, and related issues regarding the rights of refugees and victims of forced displacement. Many of these migrants have their origins in indigenous communities and peoples in Mexico, Central America, and the Andean region.

These hearings are part of an unprecedented three year process undertaken by the PPT to assess the responsibility of State and corporate actors within the context of Mexico’s overall human rights crisis which has deepened over the last six years, resulting in over 100,000 civilians dead and disappeared since 2007 under both former president Felipe Calderón and current president Enrique Peña Nieto. Further hearings regarding migrant rights issues pursuant to the PPT process in Mexico will be held in May 2014, and a final general hearing to conclude the process in June or July 2014.

Serious human rights violations have persisted in Mexico since Peña Nieto took office in December 2012, returning the former longtime ruling party known as the Institutional Revolutionary Party (PRI) to power, following bitterly disputed elections earlier that year. The authoritarian régime headed by the PRI and its previous incarnations for over 70 years between 1929 and 2000 was characterized by widespread human rights violations and corruption, including deep-seated complicity with Mexican and international drug cartels. The country’s first relatively free elections for president took place in July 2000, but Mexico has never undertaken key steps to complete its purported process of democratic transition such as trials for human rights crimes prevalent during the PRI régime, and the organisation of a national Truth Commission, as in similar contexts such as Argentina, Chile, Guatemala, El Salvador, and Peru.

Conceptual and methodological foundations of the August hearings

The hearings build on conceptual and methodological foundations laid during the PPT’s two year process of hearings in Colombia between 2006 and 2008, given the increasingly convergent character of human rights violations in Colombia and Mexico (what is referred to in the latter context as ‘colombianisation’). These foundations also include the conclusions resulting from hearings held in Mexico City and Quito, Ecuador in October and November 2010 and again in Mexico City in November 2011, by the first tribunal of conscience (International Tribunal of Conscience of Peoples in Movement-ITCPM) focussed on violations of migrant rights throughout the world, which was organised in collaboration with the PPT by over 500 organisations led by the International Migrants’ Alliance (IMA).

The PPT hearings in Mexico also reflect broader efforts to rethink and reshape the epistemology, history, theory and praxis of human rights from the perspective of the Global South, based on the understanding that failures to fully recognise the dignity and rights of migrants and indigenous peoples, ‘peoples in movement’, reflect the overall deficiencies of hegemonic, Eurocentric, neoliberal, and liberal versions of such rights. This critique includes an emphasis on the PPT and similar tribunals of conscience as spaces for the construction of alternative, counter-hegemonic forms of justice, law, and rights ‘from below’, and on the affirmation of a universal right to freedom of movement which includes the right to migrate, not to migrate, and not to be arbitrarily displaced. The Mexican hearings are also grounded in the understanding that most contemporary processes of human mobility constitute a violation of the right to migrate to the extent that they result from conditions of life in communities and countries of origin which make a dignified life impossible, producing multidimensional violations of internationally recognised economic, social, and cultural rights, such as poverty, inequality, and multiple forms of discrimination. Such conditions in turn are the predictable result of the imposition of convergent forms of State, structural, and systemic violence reflected in neoliberal ‘free market’ and ‘free trade’ policies, mega-development projects, and the devastation of natural resources and the environment which are inherent in capitalist forms of globalisation. Under such circumstances most processes of human mobility in fact constitute variations of forced migration and displacement.

Global migration policy trends: the post-9/11 paradigm

The August 2013 hearings in Mexico will include exploration of the extent to which serious, recurrent violations of migrant rights affecting both migrants of Mexican origin (over 34 million currently living in the USA) and hundreds of thousands of migrants in transit through Mexican territory, reflect broader trends in global migration policy. These include the emergence of a post-9/11 paradigm characterised by the subordination of migration policies to the supposed imperatives of post-9/11 conceptions of ‘national security’, ‘anti-terrorism’, and the so-called ‘drug war’, as well as their...
targeted for elimination because of their status as which has been characterised by the 2010 International Honduras, El Salvador, Guatemala, Ecuador, and Brazil, the August 2010 massacre of 72 migrants in transit from change.

and other forms of exploitation of natural resources policies, mega-development projects involving mining and the effects of neoliberal 'free market' and 'free trade' forms of violence include militarisation, paramilitarism, impossible in communities and countries of origin. These and systemic violence that make a dignified life characterised by convergent processes of State, structural, rights cannot be freely exercised within contexts This framework is grounded in the recognition that these migrate, not to migrate, and not to be forcibly displaced.

The hearings in Mexico will also explore the extent to which the tendencies referred to above in the Mexican context are analogous to similar trends such as the role of Frontex within the framework of the European Union and Schengen. In both cases the net result of the application of such policies has been a sharp increase in the number of migrants dead and missing en route in the deserts and seas along the peripheries of the US and Europe, which vastly exceed the victims of past aberrations which are much more generally recognised such as the Berlin Wall. One of the Tribunal's key objectives with the Mexico hearings is to contribute towards more concerted and effective recognition and collaboration between migrant rights movements and defenders in the US-Latin American context and in that of Europe, Africa, and the Middle East, as well as on a global scale.

Substantive elements of the August 2013 hearings

The August 2013 hearings will focus on issues related to the rights of both Mexican migrants and migrants in transit, primarily from Central and South America and the Caribbean, within the context of what the 2010 Tribunal of Conscience has characterised as the implementation of a politics of ‘State terror’ against migrants in transit. This will include cases presented by Mexican and international migrant rights defenders and migrant networks and organisations arguing that the PPT should approach such issues from the perspective of the affirmation of a universal right to free mobility, freedom of circulation or movement, including the right to migrate, not to migrate, and not to be forcibly displaced.

This framework is grounded in the recognition that these rights cannot be freely exercised within contexts characterised by convergent processes of State, structural, and systemic violence that make a dignified life impossible in communities and countries of origin. These forms of violence include militarisation, paramilitarism, and the effects of neoliberal ‘free market’ and ‘free trade’ policies, mega-development projects involving mining and other forms of exploitation of natural resources which result in environmental devastation and climate change.

A key specific case which will be presented is that of the August 2010 massacre of 72 migrants in transit from Honduras, El Salvador, Guatemala, Ecuador, and Brazil, which has been characterised by the 2010 International Tribunal of Conscience of Peoples in Movement as the first massacre of ‘continental dimensions’, and as a case of ‘migrant genocide’, where migrants in transit were targeted for elimination because of their status as migrants. It will be argued that the massacre, which according to State authorities was carried out by members of the ‘Zetas’ drug cartel, was both the predictable and thus preventable result of the overall policy of State terror against migrants in transit, which lays the basis, among other factors, for a finding of State responsibility for actions and omissions which culminated in this grave incident.

The massacre and the mass graves with hundreds of still mostly unidentified bodies which were found in the same municipality of San Fernando in the months following the massacre, arguably included both crimes against humanity and potentially, war crimes. The Tribunal determines that Mexico’s so-called ‘drug war’, including the militarisation of the country’s overall public security apparatus, amounts to an ‘armed conflict’ within the meaning of the Geneva Conventions and international humanitarian law.

Most of the regions in Mexico which have been militarised pursuant to the ‘drug war’ are also characterised by latent armed insurrections such as the Zapatistas in Chiapas, which the Mexican State has responded to with concerted counter-insurgency initiatives and the promotion of paramilitary forces (often intertwined with drug trafficking cartels) similar to those which have become the single most important sector responsible for human rights violations in Colombia. Militarisation and paramilitarism are in turn among the most important causes of forced displacement in both Colombia and Mexico, and arguably also of forced migration in Mexico.

Other issues or cases which will be presented in Mexico in August include alleged violations of what migrant advocates have characterised as rights to refuge, asylum, hospitality, solidarity, humanitarian assistance, and sanctuary, recurrent patterns of harassment and threats against migrant rights defenders, and policies of arbitrary and abusive detention including torture and other forms of inhuman and degrading treatment of migrants in transit on Mexican territory.

Members of the international jury, advocates, and observers participating in these hearings will include jurists and scholars from the USA, Norway, the United Kingdom, Iran, Colombia, Guatemala, and Brazil, among others. Honorary members of the jury include longtime US political prisoner, journalist and activist Mumia Abu Jamal, a former Black Panther.

Camilo Pérez-Bustillo is Research Professor of the Graduate Programme in Human Rights and the Faculty of Law, Autonomous University of Mexico City (UACM) and was Research Professor at the Instituto Tecnológico y de Estudios Superiores de Monterrey (ITESM).
In May, the Constitutional Court in Guatemala overturned the genocide conviction of the former dictator José Efraín Ríos Montt. The ruling is a blow to those fighting for justice following Latin America’s ‘dirty wars’. The general had earlier been sentenced to 80 years in prison for complicity in the deaths of 1,771 people. Siobhán Lloyd looks at the country’s troubled past and present...

I first went to Guatemala in the summer of 2002 to volunteer at the Centro para la Acción Legal en Derechos Humanos (CALDH), a well-known human rights legal centre in Guatemala City. I recall that on one of my first days there, the legal director explained that Guatemala was like a Gabriel García Marquez novel. Some things changed as new characters entered the story but no matter how many advances people thought they had made, history repeated itself and everything returned to the way it had been before.

Guatemala is a spectacularly beautiful country. Its indigenous people make up approximately 39 per cent of the population, the vast majority of whom are Maya and whose cultures and traditions have been preserved since the Spanish conquest.

During the Cold War, Guatemala, like many countries, was caught between the West and the Soviet Bloc. In the 1950s, a reformist government attempted to introduce some land reform by appropriating land from wealthy landowners and redistributing it. However, the President, Jacobo Arbenz, was ousted from power in 1954 by a CIA backed coup. Following this, a number of left-wing guerilla movements began to form and a civil war ensued between 1962 and 1996.

Over 200,000 people died during the conflict. By far the most violent part of the war took place between 1978 and 1983 under the presidencies of Lucas Garcia (1978-82) and Efraín Ríos Montt (1982-1983) who had overthrown the former in a military coup. According to the Inter American Court of Human Rights, their counterinsurgency policy was characterised by ‘military actions geared toward destruction of groups and communities as well as the forced displacement of indigenous communities when they were considered potential supporters of the guerilla forces.’ The Guatemalan army identified the Mayan indigenous people as ‘domestic enemies’ as they were deemed to be the social base for the guerillas and its ‘scorched earth’ policy entailed the massacre and forced displacements of many of their communities.

One such massacre took place in the village of Plan de Sánchez in Baja Verapaz. The villagers were accused by the military of belonging to the guerilla after they refused to participate in the Civil Defence Patrols (PAC). In early July 1982, a plane flew over the village and bombed places near the inhabited areas. Then on 18th July 1982, a group of approximately 60 people, including members of the army, military commissioners, members of the PAC and possibly members of the judiciary entered into the village. The men, women and boys were separated from the girls and young women. Approximately 20 girls aged between 12 and 20 were mistreated, raped and murdered. The other boys...
Many of them had already spent some time in exile in others in the organisation were followed and threatened. Inter American Court of Human Rights. The lawyers and as taking cases, such as that of Plan de Sánchez, to the Garcia, Ríos Montt and their military high command, as crimes against humanity and genocide perpetrated by Lucas the State authorities that it should investigate allegations of collating evidence from the survivors and trying to convince time I was there, the legal department was in the process of documenting the atrocities committed by both State forces and the guerrillas during the civil war. The report found that the vast majority of the violations had been committed by the Guatemalan army, paramilitary forces and other State actors. Two days later Archbishop Gerardi was brutally murdered. The following year, the Commission on Historical Clarification produced a report: Guatemala: Memory of Silence, in which it found that approximately 200,000 people had been killed during the civil war but that acts of genocide had been perpetrated against certain Mayan communities between 1981 and 1983 when 81 per cent of the grave human rights violations had been committed.

and girls were beaten to death. Others were forced to gather into a house and its yard. Once they were there, members of the commandos threw two hand grenades and fired indiscriminately at their victims. It was estimated that 268 people were executed that day. Those who survived fled the village.

This pattern was repeated across certain areas of the country. Some 200,000 refugees crossed the border with Mexico between 1981 and 1984. However, this did not stop the Guatemalan army, which sent aircraft and soldiers in to Mexico to harass and kill the refugees who had fled from Ríos Montt’s brutal regime.

The civil war ended in 1996 following lengthy peace negotiations. As part of the peace accords, the constitution was amended so that Guatemala’s Mayan population and their lifestyles traditions and customs were to be protected (Article 66) and no one who had come to power through a coup could become president (Article 186).

In 1998, the Dioceses of Guatemala, under Archbishop Gerardi, published Guatemala: Never Again, a report documenting the atrocities committed by both State forces and the guerrillas during the civil war. The report found that the vast majority of the violations had been committed by the Guatemalan army, paramilitary forces and other State actors. Two days later Archbishop Gerardi was brutally murdered. The following year, the Commission on Historical Clarification produced a report: Guatemala: Memory of Silence, in which it found that approximately 200,000 people had been killed during the civil war but that acts of genocide had been perpetrated against certain Mayan communities between 1981 and 1983 when 81 per cent of the grave human rights violations had been committed.

CALDH’s legal department was the representative of the Asociación para la Justicia y Reconciliación, an association of survivors of some of the worst massacres committed during Lucas García and Efraín Ríos Montt’s regimes. At the time I was there, the legal department was in the process of collating evidence from the survivors and trying to convince the State authorities that it should investigate allegations of crimes against humanity and genocide perpetrated by Lucas García, Ríos Montt and their military high command, as well as taking cases, such as that of Plan de Sánchez, to the Inter American Court of Human Rights. The lawyers and others in the organisation were followed and threatened. Many of them had already spent some time in exile in Mexico or the USA themselves during the civil war.

I returned to Guatemala in the summer of 2003. Ríos Montt had been nominated by the ruling Guatemala Republican Front (FRG) to be their candidate in the presidential elections that were to be held in November 2003. His candidacy had been rejected by the Supreme Court of Justice on the basis that he was constitutionally barred having come to power through a military coup. The Constitutional Court then overturned that decision on the basis that the constitution had been drafted after he had come to power. However, at what felt like a game of judicial ping-pong, the Supreme Court then suspended his candidacy while it heard another complaint only to be overruled by the Constitutional Court once again. Meanwhile, on 24th July 2003, approximately 35,000 of Montt’s supporters took to the streets of Guatemala City where they attacked the buildings and offices of opponents of his candidacy. A journalist was killed. CALDH’s offices were closed down as everyone fled to safety in a nearby district.

Although the mobs left the streets the following day, there was a harrowing sense of fear everywhere and people were extremely concerned about what could happen if Ríos Montt actually came to power.

Fortunately, the Guatemalan electorate rejected his bid to become president and he only won 11 per cent of the vote. He was then placed under house arrest and investigated for the manslaughter of the journalist who had been killed during the earlier unrest. The charges were dropped in 2006. Montt was then elected as a congressman and benefitted from immunity until he stepped down in 2012. Within weeks he was summoned to court and charged with genocide and crimes against humanity.

On 10th May 2013, 86 year old Ríos Montt was convicted of genocide and sentenced to 80 years’ imprisonment by a Guatemalan court. However, his conviction was set aside only 11 days later by the Constitutional Court which annulled all proceedings that had taken place since 19th April 2013 when the General had been temporarily left without a defence lawyer.

Lucas García died in exile in Venezuela in 2006 before his victims were able to see him convicted for the heinous crimes he was alleged to have committed. Let’s hope that history does not repeat itself.

Siobhán Lloyd is a barrister at 1 Mitre Court Buildings.
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Indian eye-opener

Jai Bhim Comrade (2011)
Directed by Anand Patwardhan

Jai Bhim Comrade represents a 14 year labour of love and will by the documentary film maker Anand Patwardhan. This epic three hour film was given a rare screening at the Institute of Contemporary Arts on 20th March 2013 as part of this year’s Human Rights Watch Film Festival. It is due for a further screening at the Sheffield Documentary Film Festival in June 2013. As those who attended the Q&A session after the film were shown at the ICA will know, Anand Patwardhan is an unashamed socialist. He has made in this film an eye-opening account for those unfamiliar with India’s severe caste discrimination.

The film commences with the events of 1997 that led to the police shooting of 10 unarmed Dalit protesters in the Ramabai Colony in Mumbai. The Dalits are those from the oppressed caste known as the ‘untouchables’. The film goes on to shine a light on the socially destructive stratification of the caste system that has existed for over 2,000 years.

Patwardhan traces events that followed the 1997 shootings of the Dalit protesters which saw the suicide of the Dalit singer, poet and activist, Vilas Ghoge, who found the deaths of the protesters too much to bear. The film seeks to illustrate the dignity within the Dalit community. There follows compelling individual testimony and riveting footage as Patwardhan’s camera moves through the dusty alleys of the Ramabai Colony and into Maharashtra villages. Given the connection to Vilas Ghoge, there is a particular focus in the film on those musicians and poets who continue to pass on their songs of ‘upliftment’ and lament. The songs invariably urge their listeners to continue in their struggle for dignity as they blend dance, politics and humour.

The songs recorded in this film recall Dalit heroes of the past, most notably the political leader Bhimrao Ambedkar, also known as ‘Dr Ambedkar’. The incredible and progressive story of Dr Ambedkar forms a centre piece of the film. Disturbingly the memory of Dr Ambedkar and his significance is shown as being appropriated and subverted by right wing nationalistic political parties seeking the Dalit vote. Dr Ambedkar rose from the Dalit caste to gain PhDs from Columbia University in the USA and then the London School of Economics. He was also called to the Bar in England before returning to India to seek to represent and act as an advocate for his caste. He is perhaps the least well known of the three barristers, Gandhi and Nehru being the others, involved in India’s move to independence from the colonial rule of Britain. It is striking that Dr Ambedkar, a man from the lowest caste for whom it is deemed education should not be permitted, was chosen by Gandhi to write India’s new constitution. One of the memorable Dalit songs of ‘upliftment’ about Dr Ambedkar heard in the film which will resonate with readers of this magazine is ‘My barrister is coming home’.

The scope of Patwardhan’s film is stirring. In this respect it is reminiscent of similarly consummate and lengthy documentaries such as When the Levees Broke by Spike Lee and The Battle of Chile by Patricio Guzmán. The film is presently only being screened at film festivals such as in Sheffield. Patwardhan, who made the equally engrossing 1985 film Bombay Our City, seems presently content for his films to receive their main screenings and distribution within India. A wider release can only be hoped for.

Race aware

Lives; Running
By David Renton

Zero books
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After a year in which sport has been hugely prominent, most obviously through the London Olympics, Lives; Running is an unusual book which provides a deeply personal narrative of the author’s experiences of running both competitively and recreationally.

The descriptions of early expectations of - and indeed realised - success in middle distance running at school bring the reader into a private world where the joys of achievement and pain of injury impact heavily in a context where great emphasis is placed on sporting prowess, through peer and family culture. The author however interjects interesting facts and analysis of a sport for which he remains clearly passionate, most significantly of the oft-forgotten rivalry in middle distance running between Steve Ovett and Sebastian Coe that developed in the late-1970s and which reached its peak at the 1980 Moscow Olympics.

Fascinating detail is provided about those two individuals’ backgrounds and experiences and which in particular furthers a degree of insight into Coe’s trajectory from ungracious loser to Ovett in the 800m Olympic final, to Tory MP and then ultimately to crowned glory as the Chair of the London Organising Committee of the Olympic and Paralympic Games (LOCOG) and beyond.

As the currently shallow discussion about the ‘legacy’ of the London Olympics proceeds, it is refreshing to read an account of sport by someone who was active in the important critique and attendant activism surrounding the Games.

The contributions of such individuals, as people passionate about sport but also about real accessibility and participation will be essential as the memories of London 2012 fade, the corporate Olympic juggernaut moves on and cuts in public funding for leisure services translate.

In essence however Lives; Running is a memoir of one individual’s relationship to sport and the power of the same to ultimately provide a straight forward enjoyment, far from the madding crowd or otherwise.

John Hobson
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