'I think, therefore, that it is not possible to set theoretical limits to the power of the State to legislate against immorality. It is not possible to settle in advance exceptions to the general rule or to define inflexibly areas of morality into which the law is in no circumstances to be allowed to enter.'

—Lord Devlin, The Enforcement of Morals (1965), pp.12–13.

'The sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can rightfully be exercised over any member of a civilised community against his will is to prevent harm to others. His own good, whether physical or moral, is not a sufficient warrant'.

– John Stuart Mill, Utilitarianism, On Liberty and Considerations on Representative Government (1993), ch. 1, para. 9.

Distribution
As well as a printed publication, the content for this issue of dicta is available online at: www.ublc.co.uk/dicta

Writers
Alexander Hood
Liam Miller
Kristina Plavnicky
Henry Jones
Elisenda Mitchell
Keith Sinclair
Cait O'Reilly
Jonelle Humphrey
Jack Duffy
Tom Williamson
Ellie Drewry
Sarah Andrews
Tom Duck
Yannish Dyall
Ami Sodha
Elliot Lauder
Rory Brown
Georgia Eriksen
Darya Ghasemzadeh
Christopher Olsen
Darius Leong
James Connolly
Anna Andreeva
Ruth Kwabea-Amankwaah
The Howard League Committee

Illustrators
Caspar Wain
Robin Tait
Miriam Cocker
Ellie Drewry

Editor-in-Chief
Sara Louden

Managing Editor
Tristan Goodman

Article Editors
Alexander Hood
Tom Williamson
Ellie Drewry
Eliza Jones

Interview Editors
Inigo Ackland
Emily Barrett

Online Editor
Ami Sodha

Proof Readers
Becky Garner
Oliver Clark
Kirsty Tuite
Winnie Robinson

Designer
Evangelia Papadopoulos

Printing
Premier Print & Mail Group

Thanks to
Taylor Wessing
Weil

dicta

May 2017

Bristol Law School, Wills Memorial Building,
Queens Road,
Bristol,
BS8 1RJ

THE UNIVERSITY OF BRISTOL LAW CLUB WWW.UBLC.CO.UK | Weil | TaylorWessing

CONTENTS

The Fetish For Gay Rights

Words by **Alex Hood**
Illustration by **Robin Tait**

Ironically, I don't care about gay rights. Like a woman who doesn't identify as a feminist, I come under a lot of criticism. My gay friends call it "internalised homophobia" and equate me to someone with a tiptoe in the "closet." My straight friends can barely fathom the idea. They ask, "How can you not believe in legal equality?" (I do, by the way). Society, whether straight or not, sticks to the assumption that because Parliament says that legal rights are the final step in a challenge for civil rights, that the struggle is over. But that's missing the point. Gay rights, although heralded as this shining bastion of liberal society, as a measure by which we can compare the advancement of other progressive jurisdictions, hides and shields the very fact that gay rights don't improve the situation for LGBT+ individuals. When 40 per cent of young homeless people in the US are LGBT+, saying "well, you have the right to marry now", doesn't provide them with a home, or even change the homophobic attitudes of their parents from which they felt they had no choice but to run away from. It is of little comfort to the 55 per cent of transgender people sexually assaulted, where it is an aggravated crime to assault someone because of their gender identity, if the perpetuator is their father. Being protected from workplace discrimination as a result of sexual identity does little to stop the unconscious bias that occurs when mentioning affiliation with the LGBT+ community results in 37 per cent less interview callbacks in applications.

I don't support gay rights because their "success" has presented a gloss over of what it means to be gay: it presupposes that because we have legal equality, we have social equality. It's not true. As someone who still feels uncomfortable with expressing a 'gay' public display of affection, telling me that I am legally allowed to do so does not provide me any comfort. What gay rights has "achieved" is changing homophobia from an overt, easy-to-identify set of opinions and laws (which, for years, the LGBT+ community and its allies have brushed off as irrational) into secretive, hushed attitudes that pervade society. Rather than challenging private homophobic attitudes, gay rights activists are just making them go underground, and with it, making the situation for LGBT+ youths so much worse.

Growing up gay, you're taught to appreciate all the public rights you have: "Look", they say, "you can marry, have civil partnerships, adopt kids..." But these, although well-meant, are meaningless to a 16-year-old closeted teenager. "Great. My life will be better in 10-20 years." It doesn't help the fact that my parents have just quietly made an overtly homophobic joke about the cashier in Sainsbury's. When no one makes a homophobic remark publicly, but instead they're made privately by your own family members, the effect of making homophobia formalistically illegal is to give LGBT+ youth the impression that society supports you, but your family doesn't. Those who you are financially and emotionally reliant on are more homophobic than the rest of society. When sex and sexuality are some of the most personal aspects of your life, having the impression that your own home is the very place you should be fearful of, is it surprising that 44 per cent of young LGBT+ people have considered suicide? No. Yet we still continue to clap ourselves on our backs by the fact that we achieved the very practically superfluous "achievement" of gay marriage.

This fetish for gay rights is hiding the very real, and very measurable, effects of homophobia. Rather than challenge homophobic views, it is allowing them to retreat into the protection of their own homes. For LGBT+ youth, the safest place seems to be the closet. We need to stop the pervasive, damaging and incessant private homophobia that is going unnoticed. Change is necessary, but it is not going to happen through an Act of Parliament.

"F*ck the sistem": A Visit to HMP Bristol

Words by **The Howard League Committee**
Illustration by **Caspar Wain**

Scrawled across the wall of a now-defunct segregation cell at Her Majesty's Prison in Bristol, "F*ck the Sistem" gave a morose insight into the world of a prisoner. This cell, like many others, was stained from a dirty protest. It contained furniture broken, smashed and vandalized by aggrieved inmates and a tangible sense of suffering. The claustrophobic size of the cage-like cells supplemented the dehumanising nature of the prison.

HMP Bristol is a category B prison that houses those convicted and remanded from all local courts. While most of the inmates are adults, it seemed to belie statistics that we came across numerous men who appeared to be our age, maybe even younger. Many of the clichés about prison turned out to be unimpressively un-cliché – they were true. The prison is severely understaffed; there is a struggle to quash the use of synthetic cannabis ('spice'), not least because of its severe mental health implications; there had been three deaths in the last three months, with the most recent case occurring two days before our visit. A sense of oppression existed, too, in the more quotidian aspects of the space. From non-negotiable meal times with supper held promptly at 16.30, to the fetid, heavy air which was symptomatic of the lack of circulation, it was evident that adulthood and humanity were in a permanent state of hold.

The claustrophobic size of the cage-like cells supplemented the dehumanising nature of the prison

The prison's instability was visible. While there, we saw a man around the age of 70 cry to a prison warden; we saw all too many men with black eyes and facial scars; and we had to be rushed out of a wing because a prisoner was refusing transferal and force had to be used against him. But even more jarring were the aspects of the prison that we could not see, such as inmate Jason Conroy who is dubbed by some as 'the biggest threat to women in the country'. He has committed crimes of such severity that female wardens are not permitted to attend to him alone and while most inmates at HMP Bristol do not stay for longer than 12 months, he has not had contact with any other prisoners in nearly two years. His severe autism and estimated IQ of 60 mean that reformation programs will probably never help him, so he remains permanently jailed within the mental health ward. Conroy belongs to a distinct class of prisoners who, through accident of birth, are simply too dangerous, too uncontrollable, too far beyond hope.

The prison community ekes out its own peculiar form of normalcy, with some combination of baffling dynamics existing between prison staff and the inmates. We witnessed, practically took part in, banter which was whipped back and forth as though between the rugby lads after a big match. It was a strange combination of light-hearted repartee and what felt like a 'safe' way to say things how they were. When an inmate shoved his baked potato under our noses to show us how grim prison lunches were, the response he received from the Senior Custody Manager was: "If you don't like it, you can put it on your bald head." The wording promoted hilarity and everyone, prisoner included, appeared amused. But, bald head aside, what the guard had said reflected the oppressive milieu of prison. An inadequate potato may seem insignificant, but what it represents is a total lack of choice. Like children told to eat all their greens 'or else', freedom for prisoners is non-existent. That prisoner could have eaten his potato, or not eaten it and gone hungry (alternatively he could have put it on his bald head and still gone hungry).

Many of the clichés about prison turned out to be unimpressively un-cliché

With hindsight, maybe we shouldn't have all chuckled when the guards joked about prisoners gaining weight because of how good prison food is. Nonetheless it did seem that genuine relationships existed between guards and inmates. The custody manager permitted one inmate whose cell we saw to keep a pornographic calendar, simply to treat him.

Tongue-in-cheek comments were used by prisoners to vent - our guide was mocked (though he gave as good as he got) and told to "shut up" constantly. Maybe it was just the sort of student-teacher dynamic where it is simply more fun to defy authority. But maybe it was a sort of escape for prisoners, an easy and much-needed opportunity to, at least superficially, redress the power dynamic. Maybe this banter was a way to make the conditions of prison slightly more sufferable.

In spite of their friendly smiles and easy demeanor, disquietude laced the words of staff and prisoners alike. It seemed that certainty only existed in these facts: prison is ugly, and there are no clear ways to fix it.

The Game Has Changed

Words by **Liam Miller**

When George Orwell said: “In times of universal deceit, telling the truth is a revolutionary act”, he could not have known how important a mantra this would serve for the modern journalist with a penchant for exposing political corruption and scandal. The emerging methods of obtaining information for mass communication by the media are beginning to dominate the long-established conventions of journalistic research. Over the last two decades, the growth in the number of investigative, undercover journalists and the leaking of information to those journalists as opposed to the established media has revolutionised the way in which society receives and reacts to news. The meteoric rise of social media has given a platform to this innovative way of reporting – leading some to question its legitimacy. If harnessed correctly, however, then these practices could be conducive to the public good.

It was the classic newsreel video – muffled voices and a low quality camera, with subtitles of scandalous remarks about circumventing FA rules on ownership of economic rights of footballers, to a Telegraph reporter posing as a (fictitious) Far-Eastern company. The story of newly-appointed England football manager Sam Allardyce shocked the footballing world and lead to his eventual dismissal as boss. The ethics of The Telegraph, however, were rapidly called into question, with Allardyce himself claiming that: “Entrapment had won.” This was the classic example of corruption being exposed that we have become so used to. Just a year earlier, Lord Sewel was forced to resign from his role as Lords Deputy Speaker, after being filmed by The Sun on Sunday “snorting lines of cocaine with prostitutes.” This type of political sting was different from that of Allardyce’s: it was procured to sell newspapers, with his withdrawal from politics being a mere by-product of the exposé. Many would merely shrug off the story of Lord Sewel as sensationalism, but the revelations by The Telegraph appear to have had an initially positive response, with further investigations being called for. If this method can be harnessed to lead to the enactment of social or political change, then the government should afford more legal protection to investigative reporters. David Sleight, writing in the Law Gazette, contends that “the primary incentive is to sell newspapers… not to prevent crime.”

In an effort to ensure that investigative reporters aren’t used just to “sell newspapers”, those with illuminating stories about government or corporate actions are beginning to reach out to them instead. The culture of ‘leaking’ – secretly giving away information with the hope that some form of social or political change can come from the exposure - has skyrocketed in the last decade. The stand-out example is that of Edward Snowden and the compelling revelation that his employer, the National Security Agency, had set up various global surveillance programmes with the cooperation of telecommunication companies. Snowden reached out to Glen Greenwald, who recounted their dramatic secret meeting in Hong Kong and the various legal positions put forward by The Guardian’s lawyers in his book “No Place to Hide.” Despite the shock created by the revelations, many argue there is little to show for Snowden’s efforts to reduce global surveillance. He has, however, created a newer, more adaptable culture of leaking that has inspired the growth of groups like WikiLeaks and the release of documents such as the Panama Papers.

This is the world we now live in. The traditional operation of the established media has fallen behind the investigative and arguably less-legitimate method of obtaining information. One reason for this is the enormity of social media. Pew Research Centre found that in 2016, 62 per cent of US adults got their news via social media platforms. With anyone in the world able to set up an account and post any story they like, the playing field has been levelled out. One could suggest that this is an anti-establishment pattern; political apathy has driven people to search for their own justice, and for those seeking to expose wrongdoing to come forward. If this is the case, it is difficult to see governments changing their hostile position to the protection of ‘leakers’ and investigative reporters.

Torture: Alive and Well?

Words by **Kristina Plavnicky**
Illustration by **Miriam Cocker**

Speak the word 'torture' and people will immediately understand. Images come to mind of people being beaten, chained up, or denied basic necessities in the pursuit of intelligence or national security. But what is torture? The legal and most authoritative definition of torture is found in the 1984 United Nations Convention Against Torture: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The CIA, ever since 9/11, has embarked on a secret programme of extraordinary rendition, secret detention, and torture, all under the guise of 'enhanced interrogation'. Institutions such as Camp Delta—a detainment camp at Guantanamo Bay—and other heavily classified CIA institutions detain their prisoners and subject them to horrific 'interrogation techniques' such as waterboarding, mock executions, sleep deprivation, and other forms of inhuman and degrading treatment all in the pursuit of information.

The UK, in good conscience, cannot claim its hands are clean when it comes to the practice of torture. Extraordinary rendition, better known as outsourcing, is one of the preferred methods. Terror suspects are transferred out of the country in secret to other countries in thinly veiled attempts to subvert the law and deny involvement. Bagram airbase, a detention facility in Afghanistan also known as 'Guantanamo's evil twin,' saw the detention of several men picked up by the British SAS despite previous claims of non-involvement. When briefing papers were produced proving UK involvement alongside US Special Forces and examples of outsourcing, Ministers had no choice but to withdraw their claims of non-involvement and admit to these practices.

MoUs, or memorandums of understanding, are documents signed between the UK and countries such as Jordan and Libya that allow the deportation of terrorism suspects with promises they will be treated humanely upon return. Despite promises, there are problems constantly monitoring suspects abroad; there is no assurance that acts of torture will not be committed in secret, away from the public eye. Psychological abuse and reprisals are but two examples that go unnoticed.

Torture is never appropriate, nor is it justifiable in the name of self-defence and national security. Law dictates that torture is not acceptable, however, this, inappropriately, does not make it through to practice. The common argument that 'the needs of the many outweigh the needs of the few' is unjustifiable. Torture is not an accurate means of gathering intelligence; there is no guarantee the information offered will be truthful, or simply a wild-goose chase to bring about the end to the torture inflicted upon them. It also poses an ethical problem: it's unethical to let many people die for a moral principle—abstaining from torture—yet it's unethical to torture a man for information.

Even with case law, statutes, and conventions in place meant to outlaw torture, it is unlikely this problem could ever be dealt with entirely. Secret practices will continue and more creative methods of hiding it will be devised, making it even more difficult for the law to catch. Stricter rules and interpretations will offer little to no help. The fight for human rights has gone on for centuries and the continued practice of torture only undermines the progress we have made. Laws meant to outlaw torture are falling short of doing so and failing to protect and preserve human rights.

Interview with Dinah Rose QC

Words by **Emily Barrett**

Blackstone Chambers is located at the edge of the picturesque Middle Temple Gardens. Dinah Rose QC has been part of this set since she was called to the Bar in 1989. From then, Dinah has gone on to be named Barrister of the Year in The Lawyer Awards 2009 and last year was appointed a Deputy Judge of the High Court. These are huge achievements for any individual but particularly for a woman. As Dinah points out, "When I first started at the Bar it was incredibly difficult for women. There were some women but not many. A lot of the women were clustered in family law, which I wasn't interested in doing. So then I thought, was this really a realistic aspiration?" Dinah considered the prospect of becoming a solicitor with her careers advisor at the University of Oxford who encouraged her to pursue her ambitions as a barrister. Even though the prospect seemed daunting, her careers advisor told her not to be put off by the challenges and to go for it. Reflecting on this conversation, Dinah says "It was a fantastic piece of advice," and she has never forgotten it. She extends this piece of advice to any budding barristers, "If deep down you want to be a barrister and be the person fronting up a case, there isn't any substitute. If you want to be a barrister, you should have the guts to go for it because there isn't any other career that can offer you what the Bar does."

At the same time, Dinah acknowledges that the Bar isn't for everyone. "In order to succeed at the Bar you've got to be somebody who thrives under pressure. The job is all about pressure. You are constantly under pressure. Your whole life is like taking a series of demanding exams." Dinah doesn't necessarily think that having a law degree gives you any advantage in becoming a barrister. "In Blackstone Chambers there are many people with law degrees and many people with different degrees. Some people have had other careers before the Bar. There's no one route that leads to being a barrister, it's more about the kind of person you are and the kind of environment you thrive in."

Reflecting further on the pressures at the Bar, Dinah is positive about the potential for women to progress compared to when she first started. "The Bar has gotten much better for women. Obviously the number of women in senior judicial appointments is still low but it is better than when I was starting out. There were no women in the House of Lords or the Court of Appeal and only one or two women on the High Court bench. You knew that in every case there was always going to be a man on the bench and a man as your opponent. It still happens where there will be situations where I am the only woman in court. But there will also be situations where all the barristers are women. This would have been unthinkable a few years ago. Over the last two or three years the number of women recruited to High Court has increased significantly so I do think progress is being made."

However, Dinah is not so positive about anyone wishing to start a career at the Bar today and highlights the differences from when she first started. "When I look back I was enormously privileged. I went to university at a time where there were no tuition fees. I also got a grant from the Government to do an extra year of postgraduate study law and a grant to go to the Bar. The Government funded it all. That couldn't happen now." Dinah also cites the collapse of legal aid as an obstacle for the profession. "The publicly funded Bar is now in a state of crisis. There are a small number of very successful commercial-based chambers but a lot of chambers, namely family, criminal and employment chambers, have suffered enormously. This is due to the huge cuts to legal aid and the massive increases in tribunal fees. As a result, I think the Bar will shrink in size and I think it will be less socially diverse. It will become increasingly difficult to access a career at the Bar without family financial backing and that's terrible."

Dinah has been particularly vocal about the negative effects of the cuts to legal aid. However, she does not believe that pro bono initiatives are the way forward. "It is problematic to expect pro bono initiatives run by students or professionals to fill the gap that should be provided by state-funded access to justice. Inevitably people will cherry-pick cases that are attractive to them. For example, in terms of effort they have to put in or whether a case is "deserving" or not and that is undesirable. You need properly funded safety nets, so people can get access to justice. Access to justice at the moment is in a state of crisis."

One of the more controversial cases Dinah has worked on includes acting for The Guardian, which sought to publish private letters written by Prince Charles to government ministers and politicians between 2004 and 2005. Dinah won this case and the letters were published. Inevitably this attracted a lot of media attention, including some negative. As one journalist commented, "the publication of the letters backfired on those who sought to belittle him and revealed the idiocy of the Human Rights industry." In response to these comments, Dinah said, "I think it is wrong to assume that the people who wanted the letters released wanted to belittle Prince Charles. I was simply acting in the case, dealing with the issues on the case. But I think the idea that there should be transparency about what the heir to the throne is saying to Government ministers is a good thing and if that increases his prestige, that's even better. Why is the case only successful if it reduces Prince Charles' standing? I find that a very odd response."

Dinah laughs as she recalls other encounters she has had with the press. "One journalist once called me a crop-haired lesbian lawyer because I was representing a woman boxer who was seeking a license to box. For a moment I thought "am I offended?" Then I thought not really, I did have a short haircut and even though I'm not actually gay, I don't find that offensive." When asked how she deals with the negative attention from the press, particularly negative comments regarding her gender, Dinah says, "I see myself as a person really, not as a man or a woman first but as a person. I get frustrated by gender stereotyping because people are individuals. In some ways I am an intensely feminine person. I love doing embroidery. In other ways I exhibit what you might consider to be "masculine" qualities. I am a very tough debater, I don't give ground and I'm not easily intimidated. That's why I'm a barrister. If you are a woman at the Bar they want to put you in a number of pigeonholes. You're either a ball breaker or a femme fatale. I suppose I'm in the ball breaker camp. But I find it a bit depressing really."

Discussing the Brexit case bought by Gina Miller and its ramifications regarding the attack on the judiciary, Dinah expresses her frustration at the misconceptions of the case. "The Brexit case is fascinating constitutionally because the Judiciary are being asked to protect the sovereignty of Parliament against the Executive. This is why those who attack the judiciary are completely wrong. It is not about the Judiciary seeking to dictate to the Government what they should be doing it is the opposite. It is the judiciary saying that the Government cannot dictate without a proper act of Parliament. The thing that is so beautiful and elegant about the Brexit case is that it is actually the opposite of judicial activism in order to preserve the importance of the sovereignty of Parliament. The attacks on the Judiciary calling them "the enemies of the people" are just outrageous and reveal the ignorance of the people who make them. This is part of a much wider social problem of certain media outlets publishing things that are blatantly untrue in such a strident way that they become believed. It is extremely corrosive."

"When I look back I was enormously privileged. I went to university at a time when there were no tuition fees."

Dinah also led the review of sexual harassment and bullying at the BBC following the Jimmy Savile scandal. "I was quite shocked by what I found at the BBC in terms of the way some people related to each other. There was a real lack of respect in the way that people treated their colleagues. People were sending each other emails that were so offensive and denigrating in their tone. Certainly it is not the way that I would treat anybody in a workplace. I think part of it was the culture that had grown up around the newsroom with the idea that they were all mega tough journalists. Also the problem of very powerful stars throwing their weight about and being managed by producers whom are far more junior to them and who have no power to stop them from misbehaving. Obviously the Jeremy Clarkson incident that happened after my report was actually the perfect illustra-

"One journalist once called me a crop-haired lesbian lawyer because I was representing a woman boxer who was seeking a license to box."

tion of the problem that was identified in the report. Somebody doesn't give you a hot dinner, so you punch them in the face. This is not an acceptable way to behave."

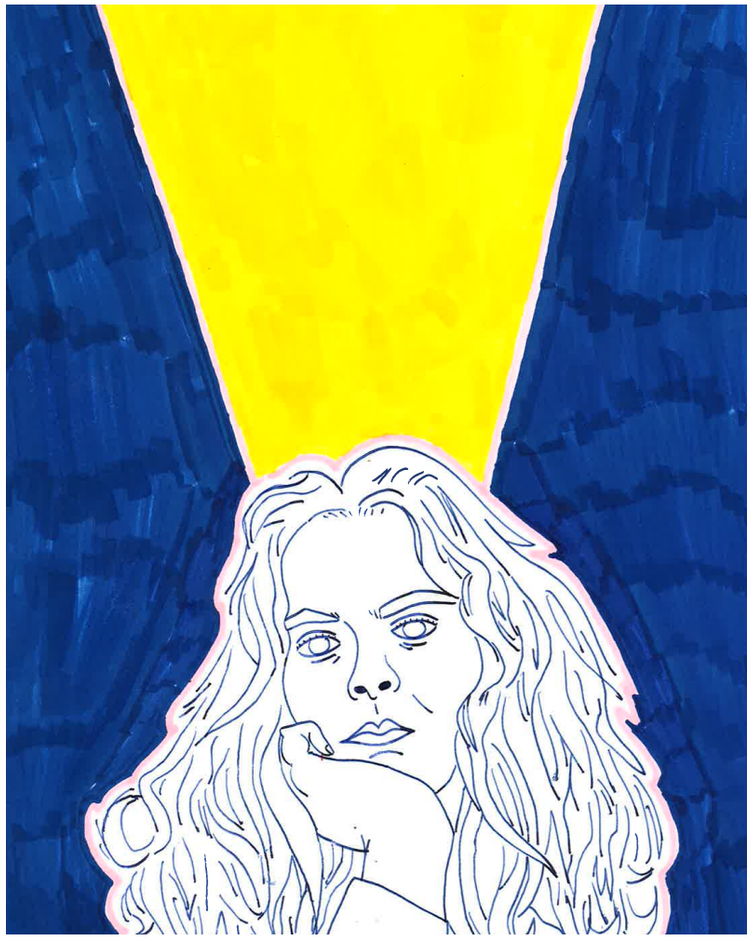
Asked how she deals with particularly emotional cases, Dinah responded, "I think you have to detach because your job is to give objective legal advice and you can't give that if you're emotionally involved. I've been involved in cases with very distressing personal circumstances surrounding them, people who have been tortured, people who have died in depressing situations. But you have to separate yourself from that. Sometimes you have to criticise those who have been damaged by the depressing things that have happened to them and that is very difficult. I try to keep a division between my work and private life. As a general rule I do not work in the evenings. I wake up very early in the morning to work. In the evenings I talk to my family and watch television. I think that is very important."

Dinah thinks that one of the greatest limits of the law that the profession is facing is the provision of access to justice. "I think that within the areas of public law and human rights this is a massive problem and it is getting much worse. Nobody seems to have a solution to it. The same is true with employment law. I spent the first 10 years that I was in practice doing mainly employment cases, particularly discrimination cases. The number of these cases has collapsed after the introduction of employment tribunal fees. People cannot get access to justice through a tribunal after their employer sacks them because they are pregnant. That is a massive problem." In terms of searching for a solution to the problem, Dinah says , "There are some suggestions like having court processes moving online that would cut costs and you can see why that's attractive. But there are risks involved in terms of the loss of the openness of the justice system, which is potentially very troubling. I think we are at a moment now where the potential for technology to cause huge disruptive change is so great and we haven't really thought through the consequences of that. We've seen it in the past year and the way in which social media influenced elections and the Brexit vote. People can't trust any news sources; no one knows the difference between the truth and lies. You get similar problems with the justice system if you move these things online."

–

Mental Health on Trial

Words by **Elisenda Mitchell**
Illustration by **Ellie Drewry**



When one thinks of prisons and prisoners, images of violence, thuggery and orange jumpsuits spring to mind. The idea that prisons are rife with individuals suffering from mental health disorders is far from the perception of prison life portrayed in the media, and yet the prison population that has symptoms indicative of psychosis is between four and six times higher.

One cannot doubt that there are provisions in place to protect offenders with mental health issues. There exists the NHS Liaison and Diversion team that works closely in prisons so that referrals can be made to them. Furthermore, increasingly purpose-built detention and investigation centres are replacing the traditional cells in police stations. What separates these institutions from the typical prisons we have come to know, is that in a majority of cases, there is a mental health nurse present. But whether these provisions work in practice, whether they truly protect those with mental health issues, needs consideration.

If an individual is psychotic and needs to be in a psychiatric hospital, (judged by the NHS Liaison and Diversion team) they can be referred there. However, whether there are beds available is another question. Patients are at the mercy of a "postcode lottery" concerning the level of care they are able to receive. When an offender with a diagnosed mental illness cannot be placed in a hospital, they remain in a police cell. It is counterproductive. For the police service, this is resource intensive. Constant observation over the detainee is needed, which involves removing an officer from frontline duty to act as a mental health nurse. Rather than rely on police officers acting as stop gaps, prisoners should have access to medical professionals. Never would a police officer be a substitute for a medical practitioner for a physical disability; why should this be the case for those with mental illness?

There are solutions. Figures have shown that there is a rise in prisoners being transferred to mental health facilities. In particular, the number of male prisoners being transferred to hospital rose by 20 per cent between 2011 and 2014 in England and Wales. But, the figures are not always complimentary when it comes to justice and mental health; the use of hospital orders has declined by 25 per cent since 2011 among men and a similar pattern can be found among female offenders. There is no indication that the number of mental health offenders has decreased; these figures only show how less and less hospital orders are used in favour of prison sentences. Hospital orders can ensure that individuals be sent for medical care instead of receiving a prison sentence to protect vulnerable individuals. The situation now means that we are inhibiting justice to those most vulnerable in society.

However, mental health offenders are not always sent to prison; judges can also make mental health requirements when sentencing an individual. We can help to tackle the underlying causes of an individual's offending, reducing the likelihood of reoffending, by meeting with health professionals and complying with treatment. Moreover, mental health requirements give authority to the probation office to take action if a detainee lapses. This is a much more benevolent, but assertive, alternative to short prison sentences.

Mental health is being discussed increasingly in politics, social policy and education. However, more must be done to ensure that the law protects offenders with mental health illness - we must ensure the provisions in the 1983 Mental Health Act are in practice and that greater funding is directed to help vulnerable offenders, particularly those with mental health disorders. The current system constantly fails those most vulnerable. It is due to lack of funding, uniformity and specialist care across the prison system. Although there are indications that the system has been reformed and is undergoing review, it is not fast enough. Without doubt, more must be done to ensure that mental health offenders, some of the most vulnerable in society, are not a risk to themselves and others whilst in custody.

The Law Against Terror

Words by **Henry Jones**

Recent legislation and Government actions over issues of national security have infringed upon our civil liberties. The Justice and Security Act 2013 (JSA) has enabled the development of 'secret courts' through the extension of closed material procedures (CMPs) into the civil courts in England and Wales. CMPs are advocated as a means of protecting sensitive information from being disclosed, in order to protect the 'public interest'. They enable the introduction of sensitive information by one party, which has not been disclosed to the other party, in a trial that can only be seen by a judge, and security cleared "special advocates". These reforms jeopardise the guarantee of a fair trail, and more broadly, the Rule of Law. The Government has claimed that such a development is necessary due to the regularity of the Government having to settle cases involving national security outside of court, due to their inability to disclose important 'sensitive' material. This reasoning seems to have masked the reality that the reform has led to a significant departure from established and major legal principle, and that as a result, our civil liberties are being infringed.

The principle of open court is one that has long been established. In the words of Lord Shaw in Scott v Scott (1913): "publicity in the administration of justice…is one of the surest guarantees of our liberties". The increased use of these 'secret courts' poses a significant threat to any notion of an open, impartial and fair legal system. CMPs are increasingly being used as the norm and not as exceptions in extreme cases, and the number of official applications for secret court hearings more than doubled in 2015 according to figures released by the Ministry of Justice. The cloak of national security is therefore being exploited to resist legitimate claims.

Crucially, the procedures under the JSA additionally threaten the guarantee of a fair trial. As Lord Neuberger said in Biyam Mohamed (2010), "a litigant's right to know the case against him and to know the reasons why he has lost or won is fundamental to the notion of a fair trial". This right is clearly denied in the process of CMPs, and the significance of the denial of the ability to know the case against you is affirmed in Lord Kerr's statement in the case of Al Rawi (2011) that "the right to be informed of the case made against you is not merely a feature of the adversarial system of trial, it is an elementary and essential prerequisite of fairness". The JSA has undermined our civil liberties and more broadly the Rule of Law in disregarding the principle of open court, thereby challenging the guarantee of a fair trial. This seems astoundingly disproportionate, especially given the pre-existence of the already adequate Public Interest Immunity procedures that are far more open and fair.

The more recent Counter Terrorism and Security Act 2015 is a further example of the government's attempt to remove fundamental rights in the name of national security and terrorism prevention. Not only does the legislation allow for passport seizure and retention powers, which invite discrimination, but also a regime of temporary exclusion orders (TEOs). TEOs risk exposing British citizens to torture or delivering them into the hands of terror factions, by rendering UK citizens and residents stateless for up to two years. Furthermore the Act does not provide any access to court to challenge the new powers created, and poses a serious threat to the right to a fair trial. The new data retention powers represent a challenge to the right to privacy and mirror the blanket powers sought under the Data Retention and Investigatory Powers Act, legislation which was rejected by the European Court of Justice. Unsettlingly, the Act further contains measures that seek to breathe new life into the widely discredited Terrorism Prevention and Investigation Measures (TPIMs) regime. The reintroduction of relocation measures under the TPIMs violates the right to family life, and again the measures include no provision for access to a court to challenge the new powers.

Under the pretences of national security and terrorism prevention, government actions and legislation plainly constitute significant infringements upon our basic civil liberties. Whilst the dangers of terrorism must certainly be addressed, this must be done within the Rule of Law and with regard to civil liberties. When combatting terror, it is crucial that our values and fundamental principles must not be abandoned, and continued adherence to established legal principles must be enforced.

Referendums & the British Constitution

Words by **Keith Sinclair**

The EU referendum on the 23rd June 2016 raised issues as to the place and purpose of referendums within the British constitution. As the backlash following the decision of the High Court by some pro-Brexit groups illustrated, their position is an uneasy one. The British constitution is well-entrenched in representative democracy and parliamentary sovereignty. As such, a vote to 'leave' as a means to restore parliamentary sovereignty smacks of a strong irony.

But what are the problems with national referendums? Only three have been held thus far: on the UK's continuing membership of the EEC in 1975; whether to adopt AV voting in 2011; and the UK's membership of the EU last year. Parliamentarians and academics have consistently cast doubt on them, due to their inference that Parliament lacks either the competence or authority to make decisions. They also risk 'hijacking' by pressure groups, political parties and governments freed from the normal restraints inherent in the parliamentary process. Dr Ron Levy, of the Australian National University, has written on "deliberative democracies" – namely, that laws may have validity by their receipt of proper parliamentary debate and scrutiny leaving issues to be wrangled out in the press and the echo-chamber of social media creates a vacuum of informed deliberation. Moreover, all three national referendums were arguably used as a 'political tool' rather than a legitimate constitutional mechanism – Harold Wilson and David Cameron both received heavy criticism in 1975 and 2016 respectively for using them as a manifesto pledge to patch divisions in their respective parties. The 2011 AV referendum, too, was a concession made to the Liberal Democrats as a part of the coalition agreement.

However, this begs the question: 'how have other jurisdictions incorporated referendums into their constitutional arrangements?' An obvious example is Switzerland, where direct and representative democratic machinery operate in parallel. The Swiss framework is rooted in its emergence as a federal republic in 1848; by incorporation of referendums from the outset, the Swiss have avoided problems such as those encountered by Britain. Indeed, national referendums best suited to a 'bottom-up' arrangement will sit awkwardly in any system based on a 'top-down' vesting of power. Although, this is not without its own difficulties. The Swiss government is yet to reach a new agreement with the EU regarding free-movement following their 2014 referendum, but has also rejected calls for a second referendum to reverse the result, demonstrating their constitutional importance. Moreover, referendums in Switzerland are not the reserve of the most contentious issues and don't attract the aggressive campaigning as seen in Britain. Indeed, the Swiss have been consistently engaged with their democratic processes for almost 200 years in a way Britain has yet to become accustomed.

So, what may the UK learn from the Swiss approach? Absent fundamental reform, national referendums are unlikely to ever sit comfortably within the British constitutional structure. Unlike in 1975 and 2011, the 2016 referendum revealed Parliament's failure to reflect the electorate on continuing EU membership. Instead of a referendum, the constitutionally 'correct' solution would have been a general election, returning a House of Commons with sufficient euro-sceptic MPs to achieve Brexit. However, as demonstrated by the historic turn-out in June, referendums have become hugely popular. Indeed, it is arguable that Pandora's box has been opened, but we should be mindful that, thus far, this debate has been almost entirely attached to the issue of Britain's EU membership – a particularly contentious issue. Referendums may become a pillar of our constitution, bringing far-reaching change; equally, they may simply be relegated to history. The outcome of the Brexit negotiations will likely determine which road Britain takes.

A Step Into The Future?

Words by **Cait O'Reilly**
Illustration by **Caspar Wain**

In a world of seemingly daily scientific advances, where information technology is constantly reaching new heights, it's unsurprising businesses are capitalising on these opportunities to increase trade. Leading law firms are no different, with many seizing the chance to jump on the artificial intelligence craze. But how much are these new levels of sophistication going to affect legal practice as we know it?

Artificial intelligence is a reality, no more the domain of science fiction and extraterrestrials. Systems such as Kira have been developed to take on tasks that previously required human intelligence. This software reviews contracts quickly and effectively, allowing access to relevant information almost instantaneously. The system claims to save around 20–90 per cent of the time usually allocated to analysing contracts. Kira has been implemented by commercial firms like DLA Piper and Clifford Chance, to mitigate risks and enhance their market profile. With reputations as global market leaders, the uptake by these firms indicates that this is becoming a trend across the entire legal profession.

Concerns come with this software, however. Alongside obvious doubts over software crashes and bugs, with regards to a high-stakes profession like commercial law, experts have voiced fears over whether a procedural program can be as accurate as trained lawyers with vast experience.

Furthermore, there is an increasing risk that artificial intelligence threatens jobs. Solicitors and administrative staff, who make up a large proportion of a law firms' workforce, may be asking: "Will the rise of artificial intelligence push me out of a job?" If a piece of technology can perform a role just as a professional can, this only enhances fears about job security, which are even more prevalent in today's precarious economy.

However, whilst artificial intelligence software is still in its infancy, the benefits are easy to envisage. Commercial law firms regularly cite "innovation" as a foundational principle of their businesses. Perhaps the exponential uptake of A.I can be attributed to a desire to adhere to this reputation. The developers of Kira themselves describe it as offering "dramatically faster and more comprehensive advice on all kinds of contract review and analysis" that satisfies the market's current demand of "more for less".

Instantaneous fact-checking software reduces costs for clients as they spend less money on billable hours. Accordingly, being able to check through a multitude of documents means an increase in efficiency, with lawyers then having more time to spend on issues where their analytic and reasoning skills will be put to better use. This is even more relevant in the ever more globalised business world. Artificial intelligence software can be utilised across the world, facilitating easy communications between lawyers in different jurisdictions. Finally, software like Kira takes only a short time to set up and does not require training. As well as cutting down on costs for clients, it cuts down on costs for those in the legal profession.

Overall, whilst there are fears that the rise of technology may push traditional roles from the legal profession, the uptake of artificial intelligence is to be celebrated. The fact that the legal profession is now implementing these innovative techniques ensures that administrative work can be done faster, leaving time for more contentious matters. Rather than threatening jobs, software can be used in conjunction with the expertise of lawyers to save time, provide more efficient service to clients and benefit law firms overall. Artificial intelligence may be futuristic, but it's certainly a step the business world is keen to embrace.

Toeing The Fine Germline

Words by **Jonelle Humphrey**

Advances are rapidly occurring in human embryonic research. Embryonic stem cells, for instance, have garnered attention due to their regenerative quality and potential to cure degenerative disorders. In 2015, in vitro fertilisation (IVF) clinics in the United Kingdom (UK) obtained permission to conduct mitochondrial transfers to prevent transmission of mitochondrial disease from mother to baby. This entails replacement of the defective mitochondria from the mother's egg with healthy mitochondria from a donor egg. Such children with DNA from three persons have aptly been dubbed "three parent babies". Thus, the International Society for Stem Cell Research in its 2016 guidelines, asserted the need for a specialised Embryo Research Oversight (EMRO) process.

Embryonic experimentation legislation has always been a balancing act between scientific progress and ethical considerations. This balancing act has been thrust to the forefront in the recent debate to extend the time-honoured fourteen day rule.

In the UK, experimentation can be conducted on surplus embryos created via IVF: that is, eggs fertilised in a culture dish for implantation in the uterus. Experimentation must not be conducted past the fourteenth day of embryonic development. The fourteen day limit was proposed in 1984 by philosopher Mary Warnock. The rationale is that this is the latest point at which an embryo can no longer divide into a twin and individuality is assured. The primitive streak that is cells marking the embryo's head to tail axis also appears. Warnock stated that after this stage the embryo progresses rapidly towards foetal development, gains a spinal cord, and thus acquires the ability to feel pain. Recent developments jeopardise the rule.

In a study published on 4th May, 2016 in Nature, Cambridge University scientists reported growing human embryos in a lab for thirteen days after fertilisation, surpassing the prior record of nine days. This experiment teetered dangerously close to the edge of legality. The scientists claimed they desired to observe aspects of early embryonic development that are typically obscured in the womb. Subsequently, the scientific community has demanded an extension from fourteen to twenty eight days in the interest of scientific advancement.

Ethical issues unavoidably arise. If the extension is enacted, what is to prevent further concessions to tamper with the embryo past twenty eight days in future? Warnock deemed the extension a slippery slope. This has been refuted on the basis that enough embryonic material, from failed pregnancies advanced beyond twenty eight days, exists for research. Thus this extension would be final. However, the extension is not the core ethical issue. The embryo's life does not commence on day fourteen but arguably at fertilisation; therefore, should the fourteen-day rule itself exist? Should the intrinsic value and sanctity of human life be treated as nothing more than a lab experiment?

Proponents of the extension contend that the rule was not founded in ethics but policy. Its purpose was to strike a balance between differing views and encourage public confidence in the regulation of science. Furthermore, it was previously inconceivable that an embryo could survive beyond fourteen days in vitro. This extension, therefore, was never a question of morality but scientific capability.

Regardless of the debate's outcome, regulation must keep pace with embryonic experimentation to ensure that scientists do not overstep legal and ethical boundary lines.

Police Brutality In Britain

Words by **Ruth Kwabea-Amankwaah**
Illustration by **Robin Tait**

When President Lincoln signed the emancipation proclamation, it heralded a long journey toward racial equality in the United States of America. Over the years, major strides have been made, including President Johnson's Great Society legislation that had civil rights at its core. However, irrespective of these victories, the cancer of racial discrimination is still evident in America. Social media and cable networks in America are flooded with #blacklivesmatter, detailing numerous counts of police brutality. With the 24 hour media constantly throwing light on deep rooted discrimination in the 'land of the free', it is often forgotten that on our side of the western hemisphere we are also plagued with such issues. Will such a movement be needed in the UK to raise awareness?

In the UK, the police killed Mark Duggan from Tottenham because he was suspected to be planning an attack. Media reports suggested that he was a gangster, public enemy and the person who took the first shot. However, an independent police inquiry found that Duggan was not the first to open fire. The inquiry also revealed that the police fed false information to the media. Such misleading information is the reason his mother insisted on a transparent judicial process of the case. In an article in The Voice, the author stated that "a nation cannot effectively go to war with a bunch of 'very nice people', therefore the enemy must be defined – by the media – in a manner so damning that you and I don't care how or why they're killed." The Duggan incident is not a singular one. His tragedy is a direct reflection of the culture of well-mannered racial discrimination in the UK.

The number of casualties in the UK is not as high as that in the USA. Factors such as America's Second Amendment, which grants citizens the right to bear arms, must be considered when comparing the countries. Why is there such political apathy in the UK towards police brutality when in 2015, according to the Institution of Race Relations, statistics indicated that young black men are 4.2 times more likely to be targeted?

Regulation is urgently needed to ensure that all people, irrespective of their ethnic origin, are treated equally. Practical steps might include the creation of a police complaints system that is truly autonomous of the police and the state, coordinated by the people themselves. Such a body must have the power to ensure that police face the consequences of their actions. Officers must be prosecuted and convicted for their violent behavior.

Duggan's murder endorses the need for civil movements and new laws in the country to address these issues. It also debunks the notion that the UK police system is the better model when it comes to police brutality. In today's society, where the truth is stifled due to "the fear of causing offence and the fear of ruffling the careful layers of comfort", as rightfully put by Chimamanda Ngozi Adichie, the notion that the British Police do not have a race problem leaves room for complacency in a country where much needs to be done to safeguard civil liberties.

Interview with Dr Eirik Bjorge

Words by **Emily Barrett & Inigo Ackland**

Dr Eirik Bjorge is a Senior Lecturer in Law at the University of Bristol. Eirik was previously the Shaw Foundation Junior Research Fellow at Jesus College, University of Oxford. He has advised States, private entities and individuals on matters of public international law, human rights law, and constitutional law.

Are you enjoying your new position as Senior Lecturer at the Law School and settling in to life in Bristol?

Very much. I moved here at the beginning of September and I've found it a most congenial university, extremely welcoming with very interesting colleagues and students. Bristol is also a wonderful city, so I'm having a great time of it.

Why did you decide to study law in the first place?

I know some people, typically older lawyers, don't want to hear people saying, "I want to study law because I want to change the world". But that is in my view an excellent reason to study law; it may be true. For me it was wanting to work with human rights, believing in the court system, in the rules-based international legal order and also in the rules-based domestic legal order, where someone isn't right just because they are strong. I believe in that; I still do and that's why I wanted to study law.

So human rights and international law are your specialties, why these specific areas?

In a sense it's a little personal. I'm Norwegian; I moved here from Norway and I love the fact that people come together from various countries and agree on certain rules, which apply at an international level. States bind themselves to rules under international human rights conventions and they want to be held accountable. There are so many examples of states cheating and trying to get away from the obligations that they have claimed to take on in good faith. I think we should take that seriously and hold them to account.

What has been one of the most memorable moments of your career to date?

Two moments come to mind. First, I wrote a book which received the Gold Medal of the King of Norway. I'm not by any stretch of the imagination a staunch royalist – quite the opposite, I am a republican - but it was quite something to meet the King of Norway and have a fifteen-minute interview with him. The book was on treaty interpretation in international law and the King had been well briefed, so we sat in his rather gorgeous study and he quizzed me on what I'd written. He really held my feet to the fire on serious topics of international law.

The second thing I wanted to mention had very little to do with me personally - I was just a small cog in a big machine in a case brought before the European Court of Human Rights in Strasbourg, concerning the burka ban in France. A French law student had wanted to challenge that ban and I was part of the legal team that took the case in the end to the Grand Chamber of the European Court.

We lost big of course. But to be there and to take on the French state, putting forward our arguments on behalf of this young law student, was a really powerful experience. I was deeply unhappy when we got the judgment, and it did make me question the system that I have invested so much of my time and my efforts into, but one just has to keep on going.

What would you say is one of the most pressing issues facing international law today?

I think one of the most pressing issues facing international law today is similar to what we faced throughout most of the twentieth century and before that. It is making big powers play by the rules of the game. Making sure that powers such as Russia, the USA, and China, particularly those three states, are willing to make good on their promises to follow the system of the rules-based international legal order.

Do you think that international law has failed regarding the crisis of refugees in Europe?

International law is only as good as states want international law to be. In the aftermath of World War Two, one of the many things the international community did was to agree on the 1951 Refugee Convention, which is a wonderful document. It was as revolutionary then as it remains today; but now of course you have a different situation. The refugee crisis is terrible. Thousands of individuals are crossing the Mediterranean, fleeing from torture and horrid regimes. But the issues we are facing now are very small in comparison to the immediate post-war period. If you go back and read, for example, through the reports of The New York Times after World War Two about the displaced persons in Europe who were refugees, then you realise that today's problems are small compared to what Europe and what the world has seen in earlier decades. So the idea that we are now seeing something that is completely unprecedented and cannot be coped with within the framework of our international legal system is quite frankly so much hot air. To sum up, however, I think that international law has not been allowed to tackle the crisis. States - such as my native Norway - Britain and many other states, have done what is in their power to undermine the Refugee Convention and owing to those political choices international law has not been given its due in this connection.

Do you believe that the UN Security Council's power of veto, held by the five permanent member states, is a hindrance to international justice?

In short my answer is that yes, I agree with the trend of your question. I think it is a problem and it is something that needs changing. The present or dispensation, where the permanent members have a veto, was one which made political sense when the United Nations was set up, simply because the United Nations couldn't get anywhere when it was being set up without the cooperation of those particular five states. Now I think that the UN Charter was on the whole drafted such that it has withstood the test of time. It has developed in many ways as a function of developing society; but giving certain countries a veto power over possible interventions to safeguard peace around the world plainly doesn't work, and so the Charter is in need of change, and the big question, which I'm hoping you won't ask next, is how you change it in a politically acceptable way, and that I don't know.

How do you think the importance of international law is going to change after Brexit, if at all?

A wonderful international lawyer, one of my heroes, Judge James Crawford, of the International Court of Justice recently said that what with Brexit and President Trump, what is going to happen to the international legal order? The EU may fall away, the USA may opt out of the international law of the world community and the only thing that will be left, he said, will be general international law. So the fundamental law of norms of international law will in a sense become a fallback. Some of the Brexiteers say that if we leave the European Union we will fall back on the rules of the World Trade Organisation. However, I am skeptical of that particular view, and of how helpful it is going to be to Britain. Nevertheless, I do think that in a world where we take some things for granted, the cooperation of a recently benevolent, hegemonic USA that cooperates in the United Nations, that cooperates in the formation of rules of international law such as NAFTA, but so many others, or the choice by the United Kingdom to leave the European Union, we do in a sense fall back on the basics, and the basics of international law.

Post-Brexit what do you think is going to be the biggest problem or limit facing the UK from a legal perspective?

Post-Brexit, or during the long, no doubt protracted period when Britain is trying to extricate itself from the European Union, and after that extrication has been affected - so many extremely interesting questions of EU law will remain. What about the rights we have acquired and relied on as EU citizens? The rights we have been exercising in other European countries, which other Europeans have been exercising in this country? Some of those rights will now have become vested or acquired rights and will to some extent continue to remain. Which? How many? To what extent? Those will be questions for litigation. I'm very pleased to say to my EU students in our seminars, don't despair, you're studying EU law now, and although Britain is leaving the EU you will be able to use it because of the kind of relationship that the UK will have with the EU post-Brexit: whether some kind of bilateral relationship, whether a membership of the European Economic Area, or a fully-fledged membership of the EU. Even if we have the hardest of hard Brexit's, there will be so many EU law questions for decades to come that will keep us entertained, and which will keep Bristol lawyers - whether solicitors, barristers or academics - in remunerative activity for many years to come, so there's no need to worry!

Questioning The ICC

Words by **Jack Duffy**

In asymmetric warfare, “the strong do what they will, the weak do what they must” (Thucydides). This is no more apparent than in the 22-day campaign of destruction by the Israeli armed forces in Gaza between 27th December 2008 and 18th January, 2009.

By the end of the offensive, the Israeli forces had killed 1400 Palestinians. According to some reports, 82 per cent of these deaths were civilians. The attack utilised artillery fire, drone strikes, bulldozers and, most unconscionably, white phosphorous. While the Israeli Defence Force destroyed homes, schools, hospitals, and mosques, Palestinian civilians were demoted and dehumanised as mere “supporting infrastructure”.

According to Israel’s former Sephardic Chief Rabbi, Mordechai Eliyahu, “there was absolutely no moral prohibition against the indiscriminate killing of civilians during a potential massive military offensive on Gaza aimed at stopping the rocket launchings.” However, international law demands that any use of force, even if alleged to be in the name of self defence, must be proportional.

As such, when you contrast a death toll of 1400 Palestinians against 14 Israeli deaths, there has to be an investigation into whether the ends justify the means. An investigation that can only be done by an omniscient investigatory power that considers all the relevant factors that the majority of people are unqualified to consider.

Thus, it seems obvious that the International Criminal Court (ICC) should have provided an in-depth examination into the legality of the actions of Israel during this period. Especially after it was found that the Israel Defence Force (IDF) had committed serious violations of International Humanitarian Law following thorough investigative reports by a number of international committees set up by The Human Rights Watch, Amnesty International, the League of Arab States, the Human Rights Council and even the UN fact-finding mission in 2009.

Nevertheless, the ICC Prosecutor refused any opportunity of investigation as it deemed that Palestine was not a state. Contrary to the 130 Nations who, at the time, recognised it’s statehood. While it is the prerogative of the Prosecutor to make such a decision, the de facto recognition of Palestine’s statehood by the General Assembly in 2012 rekindled the hope of at least an investigation.

However, “the only thing necessary for the triumph of evil is for good men to do nothing” (Burke), and the ICC once again did nothing.

When we compare the fervent determination of the ICC to hold African states accountable for their actions, against its inactivity when it comes to Western political and economic powers, we have to question whether or not we are witnessing institutional failure or an indefensible bias.

Between 2007 and 2008, 1,200 persons were killed and many wounded, raped and displaced in Kenya because of uncoordinated and undisciplined civil violence. While the war crimes in Kenya were abhorrent, fewer people were killed and injured than in Palestine. Yet Kenyan perpetrators were quickly held to account while Israel remained unchallenged.

If it is true that the ICC unduly favours the investigation of international crimes in the poorer and less powerful states over the wealthier and politically influential states, then this is an unacceptable injustice that fundamentally contradicts with the core aim of the ICC: to ensure that everyone is accountable to the law. An immediate re-evaluation of the purpose of the ICC is required.

Finding The 'Political' In Genocide

Words by **Tom Williamson**
Illustration by **Miriam Cocker**

For many, genocide simply means the ‘evilest’ of human history. Our vision of these cataclysmic events is muddled by our preconceptions, fuelled by monolithic events such as the Holocaust and Rwandan genocide. Through this lens, genocide is characterised by its violent nature, an exponential level of killing, and an industrialised process mechanised by a desire to rid the world of a distinct group.

However, the word was not designed to be as clear cut. Focusing on actualised events over legislation creates scope for misinterpretation, or in worse cases, ignorance in the face of genocide.

Genocide is a uniquely modern experience. Raphael Lemkin coined the term in 1944 after witnessing the brutality of the Holocaust and dedicated his life to bringing this new-age war crime into international legislature. After much lobbying, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations general assembly on 9th December 1948. Article 2 defined genocide as “acts committed with intent to destroy, in whole or in part.” These included: killing members of the group; causing serious bodily or mental harm to the group; deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; and forcibly transferring children of the group to another group.

This definition has been met with serious debate over what constitutes a “group” and what counts as “in whole or in part.” Although Article 2 rigidly states a group is a “national, ethnical, racial or religious group” (for example, Jews and Tutsis) within early drafts, Article 2 initally included “political” groups. The term was omitted after Lemkin was met with serious pressure from the USSR to alter his draft.

Why? The USSR was enacting the largest and most violent political purge in history, the Great Terror. Unlike the bureaucratic nature of the Holocaust, the Soviet purges were chaotic; a snowballing monster that claimed the lives of 3 million people. Notably, group classification was ambiguous and politically driven. Those captured were condemned as “traitors”, and “Anti-Soviet elements”. People were not defined by their religion or race, but their political stance as an ‘enemy of the state’. The entire political class was decimated, the Red Army purged, the Kremlin silenced and any dissension meant one’s whole ‘group’ was labelled a political enemy.

Even Holodomer, a forced famine in Ukraine, has yet to attain unilateral confirmation of genocide. Debate rages between whether this event marked a political move by Stalin to purge the dissident “Kulaks” from Ukraine, or if the event was ethnically or nationally driven, or simply just a mistake. Regardless of cause, this action took the lives of 7.5 million people.

Lemkin continued to condemn the USSR’s actions his entire life. For him, the mass exodus of political opposition through purges met the criteria of a ‘group.’ Yet, this notion is problematic. Not only do academics question the ill-defined groups and intentionality behind the purges, but they also suggest adding the ‘political group’ will open the floodgates for countless more accusations of genocide, leaving the term too easily applicable. After all, should the actions of the Jacobins against the French political class be genocide? Is the removal of an aristocracy genocide?

Considerable research still needs to be done surrounding the intentionality of the Great Terror, and whether Stalin had an innate desire to remove a distinct group.

Law & Art History

Words by **Ellie Drewry**
Illustration by **Ellie Drewry**

In mid-19th Century France, sensationalist literature was printed with vivid yellow covers.

The choice of yellow was a deliberate one; yellow was supposed to represent sickness, thereby associated with sexual promiscuity and lack of traditional morality. Rather than censor art like the English - the Obscene Publication Act of 1857 made the sale of 'obscene' material a statutory offence - the French legal system attempted to manipulate and shame society into not consuming art. Law attempted to control our perception of art.

This attempt at manipulation massively backfired. As usual, art was one step ahead of law, and artists instead reclaimed the colour and changed its perception. Vincent van Gogh, for example, painted his yellow sunflowers to entice the revolutionary artist Paul Gauguin to his now infamous "Yellow House", and included yellow-bound books in "Still Life with Bible" and "Parisian Novels". The colour itself came to represent a rejection of repressed Victorian values so successfully that the last decade of the 19th Century became known as the "Yellow Nineties". Through satire, art managed to outsmart laws that threatened its very nature.

The relationship between law and art has been historically tempestuous. Law is constantly playing catch up with the art world; art consistently pushes boundaries and often prides itself on challenging the establishment. Law, on the other hand, is the establishment. By comparison, law is seen to stifle modernity; it clings to traditions that make it inaccessible.

Perhaps the most obvious artistic tradition associated with the law is the legal dress. Edward III's reign saw the introduction of fashionable dress to the court room, and in 1635 a definitive guide set out what existing robes should be worn and when. Though the traditional dress has been updated since 1635, the need to cling on to art and fashion from the 17th Century suggests, again, that law is unable to challenge and redefine itself in the way that art consistently does. Legal attire is now essentially fancy dress to make one look like a 17th Century white man.

It is inherently problematic that judges look like 17th century white men because it consolidates the idea that those men should decide and implement the law. It puts white, male, outdated judges on a pedestal. It suggests that they are fountains of knowledge, and that one must dress up like them and imitate them to be good lawyers and judges.

The most common rebuttal to this suggestion is that traditional legal dress is just that: a dress, a tradition, a slightly amusing echo of the past. This may be true in a world that was no longer discriminatory, but that is not reality; fewer than one rape victim in thirty can expect to see her or his attacker brought to justice, and, as of 2010, the proportion of people of African and African-Caribbean descent incarcerated in the UK is seven times greater to their share of the population.

Ignoring the fact that legal attire is inspired by a legal system that was racist and sexist, and now fails to shift those prejudices, is therefore insensitive. A judge that is a woman of colour still gives her sentence dressed in clothes inspired by a racist and sexist institution.

Even if the majority of people do not know the inspiration behind old legal dress, it is still inaccessible. It is very expensive, looks ridiculously out of place, and is intimidating. Were the average person to think of a judge, the outfit is the first image that would arise in their mind; the art wears the judge rather than the judge wearing the art.

Law has a long way to go to be accessible. It should attempt to learn from the art world and adapt more fluidly. Law's conservatism is so entrenched that it has had an impact on art history; Puce got its name because the famously beheaded King Louis XVI saw Marie Antoinette trying on a new type of gown and said its colour resembled "couleur de puce": "the colour of fleas".

The Psychology Of Cross-Examination

Words by **Sarah Andrews**

Humanity has been fascinated by psychology since Plato first surmised that the brain was the mechanism behind all mental processes. From the personal to the professional, psychology is second nature.

Law, too, has failed to elude the seductive grasp of the last great mystery. Most studies into psychology and how it relates to the law, however, involve its application to juries in the courtroom. Not much has been explored as it relates to witnesses.

The very nature of the adversarial trial demands an element of competition, which manifests most profoundly in cross-examination. It is thought of as the most formidable of trial aspects and the most difficult skill to master, and in 1880 the first didactic work on the subject, Harris' Hints on Advocacy, was written. The author, Richard Harris, was an accomplished King's Counsel who encouraged a melodramatic courtroom style bordering pantomime. The stellar advocate, to Harris, was of high intellect, superior wit, and unerring charm. If one adhered to the principles and learned from mistakes, the hapless witness would be no match.

Harris begins his lessons with advice familiar to today's standards: don't ask questions without knowing the answer; don't ask questions that will prompt a flood of damaging information; avoid asking questions the opponent has purposely left out (the answer likely benefits him and is more effective if it comes from you); don't push an unwilling witness too far, or you risk turning hesitation into outright negation. Harris refers to cross-examination as a mental duel between advocate and witness, the first requisite being a knowledge of human character.

Knowledge of human character in 1880 extended as far as eleven archetypes of witness. The Lying witness, Flippant witness, Dogged witness, Hesitating witness, Nervous witness, Cunning witness, the Canting Hypocrite, the witness Partly True and Partly False, the Positive witness, Stupid witness, and Truthful witness made their debut and were each designated various methods of cross-examination. But the list resembles a cast of characters more than scientific classification. At the time of writing, no study on human behaviour had been carried out, no empirical evidence gathered, no statistics tallied; Harris' advice drew validity from experience and was related through anecdote. The only mention of what could be deemed psychology is found in his explanation in determining a witness's honesty: "If you watch minutely you will find a difference in tone and manner when he is speaking more directly from the particular motive… It will manifest itself in his voice, in his look, and in his whole demeanour."

This type of analysis is recognised today as physiology, the primary interest of which was the study of behavioural conditioning at the turn of the 20th century. Pavlov's dogs and the controversial Little Albert experiment demonstrated how nurture could outperform nature – the science of lying was not far behind.

Physiology has always been the barometer for lie detection. The polygraph, invented in the '20s, records a blip in the reading if the subject's physical condition changed, which was first interpreted as guilt. The problem was that the symptoms of guilt are shared with several other psychological states; sweaty palms, reddening cheeks, dry mouth, and perspiration can all be indicative of love, fear, excitement, or anger. The polygraph merely identifies that an emotion is being experienced, and is regarded as unreliable in the scientific community.

Through a modern perspective, works like Harris' Hints are socially and psychologically inappropriate, and the 1950s offered no more to cross-examination than the addition of a new category of witness – the woman. Today, of course, we know there is virtually no difference between the brains of men and women, and we know that to classify somebody based purely on their observable characteristics is wrong and inefficient. As such, modern books on cross-examination look hardly like their descendants. Larry Pozner and Roger Dodd, two eminent American attorneys, wrote Cross-Examination: Science and Techniques in 1993, and the classification of cross-examination as a science is the first of many distinctions.

The book displays an undeniable change in attitude. Its chapters teach methodology and case development rather than outsmarting the hoi polloi; the advice proffered is technical and purposive. The advocate no longer bests the unwitting, categorical witness; he creates discourse that leads to conclusion. Trickery and deception are reserved for television as the spotlight fades from the talented advocate to due process and equal treatment. The extent of witness classification under trial procedure rules stops at 'vulnerable' or 'hostile'. But despite the increasing amount of legislation governing advocates' behaviour, law has not completely escaped the intrusion of psychology.

Modern cross-examination involves covert advocacy, otherwise known as persuasion, which uses uncontroversial principles (e.g. mirroring body language, dressing nicely, using simple language, etc.) to influence the jury's opinion of the advocate and, therefore, his case. These principles are incapable of regulation – imagine counsel being thrown out of court because his shoes were too shiny! Advances in psychology might have protected the witness from being made a fool on the stand, but now the jury has become the target.

Harris encouraged the savage impeachment of witnesses; psychology revealed that both his classification of witnesses and definition of 'dishonest' were incorrect. Regulations in law were put in place to ensure that justice was observed through objective fact and rigorous procedure, but psychology has shown us that bias can pervade even the most innocuous and well-intentioned of juries. An understanding of psychology as it relates to the courtroom has shown that the adversarial system does not accommodate human nature, so perhaps it is time to put the system itself under examination.

Interview with Katie King

Words by **Emily Barrett**

Katie King graduated from the University of Bristol with a law degree in 2015. She joined Legal Cheek, a legal news publication, as a reporter shortly afterwards. She is now Features Editor.

How did you end up working at Legal Cheek?

It was a lot of luck. I used to follow the site a lot when I was at university and once I'd graduated and was working as a paralegal at a law firm in Brixton. It was a family law firm – no Clifford Chance! I didn't dislike it, but I felt there was no real option of career progression because I knew I didn't want to complete a training contract there. So I was in paralegal limbo not quite knowing where to go from there. Then I saw Legal Cheek was advertising for interns. I interviewed for the position and didn't actually end up getting it. But they say everything happens for a reason; I would have been really scared to leave a full-time job for an internship. It just so happened a few months later a full-time position came up at Legal Cheek, which was great timing for me.

What is a typical day like at Legal Cheek?

Working here is much more a 9-5 job than working at a law firm. I get in at around 9am and work through the morning rush, checking out what has happened overnight. I scan the morning papers and see if there is anything urgent we need to pick up on. Then I spend most of the morning preparing the news for the day. By around midday everything has usually calmed down and so I work on features for the website, which often includes a lot of interviews. I also spend time moderating comments, investigating tip-offs and attending events.

What has been one of the most memorable moments for you working at Legal Cheek?

EU law was my favourite subject when I studied at Bristol. I distinctly remember being played a video by our EU law lecturer at the beginning of second year. It was a short video of Paul Craig, one half of EU law textbook authors Craig and De Burca, talking about the importance of EU law. When the Brexit chaos came about, I got the opportunity to interview him on it. It was a lot of fun – he has such a wonderful brain and I really wanted to listen to what he had to say. Sometimes interviews can be hard work and it can be difficult to get people to open up to you, but he was fascinating to listen to.

What would you say are the advantages of working at Legal Cheek in comparison to more conventional legal routes?

The hours, the intense subject matter and the gruelling nature of the work means a career in legal practice is not for everyone. Things are much more relaxed here. When I worked at a law firm, there were always impending court deadlines and the solemnity of the subject matter had the ability to creep into your personal life in a way that I don't think journalism does. Of course, there is the possibility of someone bringing legal action against us, but we are given sufficient training to avoid this, so it isn't something that keeps me awake at night. You also meet great people in journalism. I've met Lord Neuberger, Lord Justice Briggs and Attorney General Jeremy Wright, for example, and Judge Rinder. It's great.

Do you have any advice you would give to current law students?

I don't think there is any substitute for hard work! But one thing I would say is that there is no shame in getting creative with revision techniques. I'd recommend downloading an app into which you can submit your notes and the app will read you your notes back to you. It's great to give your eyes a break and means you can listen to your notes on the go. Plus when the app's voice pronounces a case in a funny way, it helps you remember it.

When you are writing an article how would you go about sourcing and writing it?

Every article is so different, but we are always subjected to legal obligations and there are checks that need to be done. It's important our pieces are balanced: if an accusation is being made against a firm or chambers you always have to go to them first to give them the chance to comment within a reasonable deadline. Our pieces always go through more than one person to make sure they are legally sound. I think there are also moral obligations on journalists: sometimes you need to be sensitive about how you go about tackling a story, especially if it's very personal. Ultimately, we always have to remember we write predominantly for law students and we need to give them what they want to read.

How would you describe the relationship between Legal Cheek and law firms?

We generally have good relationships with law firms. Most of our readers want training contracts, and given that we are the number one news publication for law students in the UK, law firms generally do like to work with us. At the same time, we are an independent news source and part of our charm is that we like to demystify the profession for our readers, and don't like to pay these often intimidating organisations too much respect.

Are there any legal trends or developments that law students should be aware of?

Upcoming changes to legal education are very important for law students to be aware of. The Solicitors Regulation Authority is looking to completely overhaul legal education in 2019 with the Solicitors Qualification Exam. This could result in the LPC being split in two, so there is a mini LPC before a training contract and a mini LPC after. Something for aspiring solicitors to be aware of!

"The hours, the intense subject matter and the gruelling nature of the work means a career in legal practice is not for everyone."

Migration: Another Failing Of The EU

Words by **Tom Duck**
Illustration by **Caspar Wain**

Europe's response to the migration crisis is and has been inadequate. The Calais Jungle, the epicentre for migrants in their quest for refugee status, went to the Immigration and Asylum Chamber of the Upper Tribunal in R (on the application of Zat) v Secretary of State for the Home Department [2016], where it was resolutely affirmed that the Jungle resulted in "a serious and manifestly unlawful breach of (residences') right not to be subject to inhuman and degrading treatment." There was a breach of Article 3 of the European Convention - prohibiting torture - and the UK's main response was to contribute £2 million for a 1-kilometer-long, 4-meter-high wall. Donald Trump: we beat you to it.

Now that the Jungle has been dissolved, some may say that the crisis is over. I disagree: The Jungle was but a part of the wider failings of international institutions, particularly the EU, to deal with the mass migration of people. It was not an isolated incident.

Firstly, 'the Jungle', legally speaking, should not have existed because migrants should be processed in asylum centers, not be left to live in destitute camps. The Dublin III Regulations, imposed through membership of the EU, is designed to create "a process for early warning, preparedness and management of asylum crises serving to prevent a deterioration in, or the collapse of, asylum systems." One such provision is that asylum seekers are to be processed in the country in which they initially arrived in the EU. If the migrant illegally enters another EU state, that state has no obligation to consider their asylum claim and the socio-economic legal protections afforded to these individuals is immediately challenged.

The issue is the maxim 'a team is only as strong as its weakest member'. In the 2011 case M.S.S v Belgium and Greece, Belgium could not remove an asylum seeker to Greece under the Dublin III Regulations because "there existed at the time... a systematic deficiency in the asylum procedure and reception conditions of asylum seekers". Essentially, the Dublin Regulations could not be strictly applied as Greece could not sufficiently protect the rights of the asylum seeker. So migrants face a choice: hope that the country in which they arrive quickly improves its asylum system or become undocumented. Dissolving the Jungle does not tackle the entrenched issues with a migration system which commits migrants to making a choice between two undesirable solutions.

Migrants should be processed in asylum centers, not be left to live in destitute camps.

Member states are much more vulnerable to political reactionism

This has interesting consequences for the EU. The core principle of the European Union is that European sovereign states come together as one body. This involves allowing free movement between the Schengen states. Internal states quickly find that they have insufficient domestic remedies for mass quantities of migrants as previous EU migration-control focus has been on these external states. Suddenly, the EU's treatment of migrants as a 'European problem' collapses and states are left alone.

This leads to one simple conclusion: there is little confidence in the Dublin Regulations. So what replaces these 'legal' rules? Individual states are increasingly being called to make decisions about their own asylum processes outside of the EU regulations. Where the EU can detach itself from politics and can protect human rights, member states are much more vulnerable to political reactionism.

Fears over the consequences of the migrant crisis arguably played a key role in the minds of many voters choosing Brexit. The migration crisis most likely provided ammunition in support of Marine le Pen's Front National to become one of the most successful far-right parties in France's history. Likewise, on December 4th Austria almost elected the first European far-right head of state since 1945, seeing Norbert Hofer come a close second place with 46.2 per cent of the vote. Outside of Europe, it has provided vital evidence for Donald Trump's anti-immigration campaign. This isn't to say that mass migration is objectively bad, only that where the law fails to deal with such an issue, those most vulnerable are easy targets for politicians seeking cheap success.

The UK's response now becomes more relevant in protecting the welfare of migrants. However, the UK has since voted to leave the European Union, has made clear statements of intention to reduce immigration and still appears deaf to increasingly loud calls to protect human rights.

Justice Delayed, Justice Denied

Words by **Yannish Dyall**

A shift in military strategy in the 1960s-70s created a need for the USSR to build a military base. The US needed to regain control over the sea highways and, with the help of a military base, kept a close eye on the USSR; hence the lease of Diego Garcia was signed with the UK. However, few know about the controversial excision of the Chagos Archipelago from Mauritian territory prior to the independence of Mauritius in 1968. Amid the negotiations, what happened to the 'Ilois' was and still is very much inadmissible; it is a flagrant case of violation of Human Rights as well as international laws.

Separating Chagos from Mauritian sovereignty was legally, and morally, contentious. Indeed, the detachment of the archipelago from the territory of Mauritius would contravene Paragraph 6 of the United Nations Resolution 1514. Partial or total disruption of territorial integrity is, as a matter of law, inadmissible. The United Kingdom, some claim, blatantly defied this notion and cornered Sir Seewoosagur Ramgoolam, sent to negotiate independence. Foul means were clearly used. They somehow blackmailed him into a situation where he felt that the only way to independence was the excision of the Chagos; 'leaders' who were not even heads of states of Mauritius at that time sold the Chagos Agalega Company in the British Indian Ocean Territories (B.I.O.T) for £600,000. This act has no validity, and the leasing of the island of Diego Garcia to the USA is an additional contention. The lease, which Mauritius was almost coerced in accepting, becomes irrelevant in a post cold war configuration. This persistent control over Chagos is a clear-cut act of colonization we just cannot accept in the 21st century.

Mauritius needs to re-assemble her territories to start developing its blue economy. The 50-year lease is coming to an end in December 2016, and, after the two-year window of negotiations, there is a threat of automatic 20-year lease. Mauritius is claiming that the Chagos be returned to her as part of her territory and that any negotiations around Diego Garcia be made directly to her. The implicit threats of the US and UK are surprisingly aggressive. What is all this hiding? Mauritius, they should understand, is not as diplomatically insignificant as they would like to believe. With countries like India and Australia standing firmly by her on this issue, her claims will have a loud enough voice in the UN to be able to make things move.

In the midst of all these claims, I think the human dimension of the problem needs to be prioritised. In the 1970s when B.I.O.Ts were being created, we hardly knew the shameful process through which the Chagossians would eventually be evicted from their homelands and dumped into Mauritius and Seychelles, dispossessed of everything and forced to brave extreme poverty and cultural alienation. Their fundamental rights were violated and they were fooled into leaving their homes to be permanently barred from them. Their opinions were never summoned. Today, Britain and the US seem to have become amnesic to this shameful conspiracy. How to repair this injustice? When the psychological trauma that the Chagossians suffered from is taken into account, financial compensation seems insufficient. Allowing them to return to their homeland and start things anew is, in my opinion, the only legitimate option. Mauritius should keep pressing over the return of the Chagos and should not let itself be intimidated by what appears to be some desperate and misplaced threats from abusive diplomatic strategies.

Limits Of Counter Terror Legislation

Words by **Ami Sodha**
Illustration by **Robin Tait**

The UK's expansive counter-terror legislation has, over time, generally been reactive, enacted as emergency temporary measures which have been continuously renewed and consequently become permanent. However, current measures are controversial to say the least. In a time when countries are in the midst of an all-out war against threats of terror from both internal and external sources, emergency actions are neglecting fundamental rights.

I spy with my unlawful eye. The United Nations Human Rights Committee has previously warned the UK regarding certain counter-terrorism measures. The UK's power to temporarily seize passports of suspected individuals was a particular measure brought into question in 2015. The UN further advised the government to revise its maximum period of detention before charging suspected terrorists, which at that time stood at 14 days, labelling it a "blanket denial of bail". The UN advised, among other things, that the UK should review its laws on snooping by intelligence agencies to comply with international human rights agreements. Rachel Logan, Law and Human Rights Director at Amnesty International, backed the UN's call for an "urgent overhaul of the UK's inadequate surveillance laws".

Yet despite this opposition from the UN and human rights groups, the UK has done nothing to reduce the invasive nature of such measures. In fact, we are witnessing the official passing of the Investigatory Powers Act 2016 (the 'Snooper's Charter'). The legislation ratifies snooping powers, empowering security services to give unparalleled access to web-browsing histories, which are now legally required to be stored for one year by web and phone companies. Such actions of collecting communications data in bulk were actually always deemed unlawful under Article 8 of the European Convention of Human Rights between 1998 and 2015. Is it suddenly acceptable to undermine the rule of law?

Vive l'autoritarisme! The UK must avoid reaching the stage of France, which through expanding its counter-terror measures under the umbrella of a 'prolonged state of emergency', puts its citizens, particularly those of an ethnic minority, in a state of fear.

Following the numerous terrorist attacks in France in the past few years, President Hollande's government enacted extended counter-terror laws in early 2016, furthering the power of authorities to conduct house raids, access personal data and place suspected individuals under house arrest, all without judicial oversight.

Again, in response, the UN, Human Rights Watch and Amnesty International berated this expansion of government surveillance, stating that it placed "excessive and disproportionate" restrictions on civil liberties. Despite the growing opposition of human rights groups, the French government has persisted with its aims. Since the state of emergency measures went into effect, nearly 3,400 house raids were carried out and 576 judiciary proceedings opened, with only six of those cases related to terrorism. Security forces were overstepping the mark greatly, implicating those with no connection to terrorist groups and targeting others based on little more than affiliation to a mosque.

The parallels between the UK and the French governments' attitudes towards counter-terror measures are hugely prominent. Whether it is an over-invasive snooping into personal data or a physical raid, the effect is the same. The only difference is that France more overtly uses its measures to target the Muslim minority. Otherwise, what can be seen are two governments completely overlooking their responsibility to protect civil liberties. This is no longer a question of utilitarianism and no longer about the public interest. Basic human rights are threatened to such an extent that our government is being labelled the most 'Orwellian' in Europe. The limited rights protections afforded by the law, more present now then ever – with each anti-terror law that is reactively passed, the needle moves closer and closer towards state power and away from civil liberty.

Chemsex

Words by **Elliott Lauder**
Illustration by **Miriam Cocker**

In November 2016, Stephen Port (labelled as 'the Grindr Killer') was convicted on seven counts of administering a substance, three rapes, three sexual assaults, and four murders. This conviction brought 'chemsex' to the attention of the national media, with much focus placed upon how he used the gay dating app Grindr to find the victims, and a relatively unheard of drug called 'GHB' to render the victims unconscious. Following the convictions, the families of Port's victims have initiated proceedings with the Independent Police Complaints Commission for the police's inadequate investigation of Mr Port, and by failing to connect up the evidence which would have prevented him killing on multiple instances. If the police had understood, or at the very least listened to someone who did understand, the way in which 'chemsex' operates in the LGBT community, they would have had the resources to prevent Mr Port's crimes escalating to the level which they unfortunately did.

For those unfamiliar with the term, 'chemsex' refers to homosexual or bisexual men who use specific drugs during sex with other men (often groups of men), in order to prolong the sexual encounter. The drugs commonly used are Gamma-hydroxybutyrate (GHB), mephedrone (Speed, m-cat, meph etc.), methamphetamine (crystal meth), cocaine, and MDMA. For many involved in the chemsex scene, the drug use and sexual encounter is an intertwined experience, with an associative dependency on both in a related manner. It is not just a case of a substance addiction with added sex, or in contrast a case of sexual addiction with occasional drug use; it is an intersectional dependency upon both.

Stephen Port's murders aside, there has been a dramatic increase in accidental fatalities related to the chemsex scene over the past few years; one report in the January 2017 volume of the Forensic Science International Journal found a 119 per cent increase in GHB-associated deaths in 2015 compared to 2014 in London. This study by toxicologists at Imperial College London concluded that "Further studies on the use of GHB are urgently required to understand the extent of its use... and the full extent of the harms it causes".

But much in line with the UK's law and policy on drug use, the criminal law is being used as a superficial preventative mechanism. The Chief Executive of London based LGBT health organisation London Friend said that "There is an increasing number of gay men receiving probation orders in relation to offences that have happened within chemsex". Handing out a drugs rehabilitation order to someone whose addiction extends beyond the consumption of a single substance is clearly not working. Through interviewing men involved in the South London chemsex scene, researchers at the London School of Hygiene and Tropical Medicine found that the major harms resulting from chemsex were not directly associated with addiction, but related to broader impact on physical, social, or relational well-being. Focusing solely on the one instance of criminality in the chemsex scene cannot be effective in seeking to resolve the more long-term harmful consequences.

Despite it seeming like a distant and minute issue, which may never materialise in your life, it is prevalent amongst the inner city gay communities, even here in Bristol. It is important that all corners of society are thoroughly understood, so that quality resources and advice are at the disposal of the law enforcement authorities. Had the investigating officers in the Stephen Port case been aware of the reasons why GHB was found in the victim's blood, and the reasons why Grindr was used to locate victims, then they could have prevented his crimes from being a serial matter.

Jihadi Jails

Words by **Rory Brown**

Fresh in her role as Lord Chancellor, Liz Truss' introduction of 'specialist units' for Britain's most dangerous convicted terrorists marks a reckless and wholly misdirected policy shift in the losing battle against Islamist Extremism (IE) in prisons. These changes dilute the long-standing policy of dispersal - where the most damaging individuals convicted under the Terrorism Act 2000 and subsequent legislation were distributed across Britain's eight high security prisons. These individuals will now be imprisoned collectively in 'jails within jails', separate from the wider prison population.

Truss' changes are based solely on growing fears of radicalisation within prisons. IE is highly politically motivated and, consequently, many convicts embrace prison time as an opportunity to fulfil their duty in mobilising supporters within the vulnerable and unsettling prison environment. This threat has continued to grow in the spur of terrorist convictions since the 7/7 London bombings. So what is the problem?

The narrow-minded approach adopted by Truss ignores any wider implications. It is entirely misleading to view the issue of IE within the vacuum of high security prisons, and Truss' proposals neglect the practical operation of IE across Western society. Instead, these changes simply strive to hide the current system's institutional failings.

Truss seemingly intentionally, or negligently, disregards that prisoners within 'specialist units' may not be isolated without contravening fundamental rights. In contrast to the Provisional IRA's autonomous and independent operation within prisons during the 1980s, the leaderless operation of Al Qaeda in the West utilises loose networks of individuals inside and outside prisons. This concentration of dangerous prisoners therefore encourages the creation of operational IE command structures within these specialist units and facilitates coercion between influential terrorists. Despite the fresh appointment of a directorate for Security, Order and Counter-Terrorism to monitor the new threat posed by these developments, Truss' policy reversal remains irrational and misplaced in this way.

IE commonly presents itself as a power struggle within prisons. In turn, this promotes the intimidation of and use of violence against prison staff and the justification of radical behaviour on grounds of faith. This 'gang culture' ultimately pursues the segregation of prisoners, as evidenced by the 2016 Acheson Report's recognition of radical prisoners' exploitation of prison imams and Friday prayer sessions. These existing problems demonstrate the short-sighted nature of Truss' apparently progressive changes - it is utterly unrealistic to expect the already under-resourced prison system to deal effectively with a stronger concentration of these problematic individuals.

The proposals fail to take cognisance of the fact that many politically motivated prisoners perceive their imprisonment as punishing their belief system rather than their actions. Labelled 'Jihadi jails', Truss' changes reinforce the misdirected claim of the institutionalised state persecution of Muslims. Alongside undermining the popular legitimacy of the justice system, this message aligns directly with that of IE and thus creates significant potential for the radicalisation of individuals outside prison.

In light of these damning truths, why has the Lord Chancellor implemented these changes? The intense political scrutiny on the prison system derives from strong public interest in prisons, despite its relative inaccessibility to most. These changes reflect the popular political system where politicians prioritise ineffective action over non-action.

Despite addressing the issue of IE radicalisation, Truss' proposals suffer from a narrow-minded perspective toward the wider issue of terrorism within prisons. Ultimately motivated by public and political considerations rather than their genuine effectiveness, these changes mistakenly prioritise the problem of radical conversions over the wider potential for significant harm arising from the creation of prisons as 'focal points' for terrorism.

Pot Luck: The Role Of The Jury In Rape Trials

Words *by* **Georgia Eriksen**
Illustration *by* **Ellie Drewry**

Rape is epidemic. The statistics from rapecrisis.org speak for themselves; every year, approximately 85,000 women and 12,000 men are raped in England and Wales. That's roughly 11 rapes, of adults alone, every hour. Yet, only 15 per cent of these victims choose to report it. Why do the vast majority remain silent? Do they refuse to press charges out of fear or embarrassment, or could it be the role of the jury in rape trials that deters them?

There is no requirement that the jury represent a cross-section of society, but randomly selecting twelve people to decide the verdict is deemed fairer than one lone judge because there will inevitably be some diversity in their ages, ethnicities, religions and so on. This 'fairness' however, is questionable. Juries are often inherently biased without even realising it.

Studies show that jurors find it easier to empathise with a same-sex defendant; 78 per cent of females give more initial guilty verdicts for rape as opposed to just 53 per cent of males. Age and education were also significant for men; as age increased, they became more likely to convict, but conversely males of higher education levels were more likely to acquit. If these strong correlations exist, this makes the social composition of a jury significant as the social demographics of a given jury could prove far more favourable for one defendant to another. It seems markedly unfair that the verdict could be swayed by mere pot luck of who is in that particular jury on that day. Surely trials need more consistency.

Studies show that jurors find it easier to empathise with a same-sex defendant

That's not to say that every elderly male is likely to convict just because of his age and gender. Most jurors undoubtedly take their oath "to give a true verdict according to the evidence", seriously. But as Marilyn Chandler Ford explains, "juries interpret evidence in the context of their own unique experiences". This means interpretation will vary from one juror to the next; some may be predisposed to feeling sympathy or contempt for a victim or defendant as a result of a particular negative experience they have experienced or heard about. It is in this way that the ubiquitous presence of the media extends to the courtroom. What a juror reads or watches can profoundly shape their attitude towards a given person, and towards rape, before they even set foot in the courtroom.

In a particularly obtuse article written by men's rights activist Paul Elam, he claimed that rape trials cannot be trusted and if he were ever called to sit on the jury he vowed to vote 'not guilty' even in the face of overwhelming evidence that the charges are true. This logic would surely prove problematic for Elam if the complainant were a male, as in fact 1 in 10 victims of rape are. Not only does his ignorance completely undermine the whole point of a 'fair' jury system but he disregards the individuals in the trial entirely. He effectively depersonalizes rape and reduces the trial to mere point-scoring or a competition between the sexes. With only 5.7 per cent of reported rapes resulting in conviction, although it shouldn't be, this feeble statistic is a deterrent in itself. Why enter this 'competition' as complainant if you will probably lose?

in no way does this entitle a man to penetrate them against their will

One reason for such low conviction rates could be that jurors often base their decision on how convincing each side is in "telling the story of how a crime happened", Michelle O'Brien claims. Effective defence barristers can use this to their advantage by shifting the focus of the trial onto the victim lying about a lack of consent. All it takes is one seed of doubt to be planted in the juror's mind and this is enough for an acquittal.

Often the focal point is on the complainant 'leading the defendant on', which is seemingly a popular belief; The Office for National Statistics found that over a third of interviewees believed women who flirt are partially responsible for being raped. Julie Bindel claimed in The Guardian that consumption of alcohol too is now "the new short skirt". Of course, irrespective of whether someone's choice to consume alcohol or wear skimpy clothing appears 'suggestive', in no way does this entitle a man to penetrate them against their will. There is no excuse for sexual violence. Yet in the light of these figures it is quite frankly unsurprising that 85 per cent of victims don't report their rape, as it seems the complainants are scrutinised more than the alleged rapists.

Surely a fair trial requires more consistency, but what is the alternative? The jury could just be replaced by one specially-trained judge who would be more experienced in the law and surely better suited to suppressing personal bias than twelve random members of the public. However, this is not so straightforward. The stereotype of judges typically being old, white and upper class may deter even more victims from going to court, especially ethnic minorities, and once rape trials are no longer tried by jury the floodgates are opened for requests for other crimes to do the same. Moreover, there is no proof that one judge would necessarily be fairer, as studies by The Guardian show that even in all their presumed wisdom, judges are more lenient at the start of the day and after a scheduled break in court proceedings. It would appear there is no clear answer, but in the face of such a high number of rapes and such a low number of reports, something must change.

Old Dogs, New Tricks

Words by **Darya Ghasemzadeh Mojaveri**

According to the solicitor's regulation authority, "solicitors and law firms regulated by the SRA are in a period of significant change" caused by technological challenges, market competition and economic pressures. As a result, clients have become more sensitized to the need for value, efficiency and reduced costs. Law firms seeking to attract new clients, retain existing ones and maximise profitability must now not only offer the best possible service, but at the lowest possible price. In essence, the legal industry is more competitive than ever.

The legal landscape has changed. Law firms have willingly said goodbye to typewriters and case libraries in favour of laptops, search engines and case management software, and the roles of administrative staff have dramatically reduced. Legal assistants no longer have to spend countless, billable hours reading cases in a firm's library as the development of search engines such as Lexis and Westlaw have meant that lawyers are no longer expected to be memory banks of cases. But now that an endless array of what used to be the expertise of legal professionals is readily available to the general public at the click of a mouse, solicitors should strive to transcend beyond merely verifying relevant laws and manifest their true talent by integrating their commercial awareness and practical understanding of their client's needs into the advice they provide.

Part of the problem however, is that the academic side of law does not reflect the changes that have developed in the legal market. Most universities still emphasise exams instead of coursework and prohibit the use of cheat sheets, thereby leaving many young prospective lawyers confused and disenfranchised about the expectations they will face. Today's generation of younger, tech savvy lawyers, like everyone else have embraced the advancements of our generation. While technology arguably has facilitated the daily tasks of law firms, the benefits of legal technologies extend to almost all legal professionals and have therefore raised the bar for the legal industry in general. In light of such competition, how might law firms need to use technology to boost their productivity in order to distinguish themselves from their competitors?

One way of boosting client appeal and giving the impression of efficiency is by offering a fixed price for services. Most law firms today use case management software that enables an hourly billing mechanism. Law firms seeking to distinguish themselves from the competition can take advantage of this niche in the market and instead choose to adopt a mechanism whereby prospective clients are offered a fixed price right from the outset. However, it is almost impossible to predict the billable hours on a case, and the colossal standard expected of law firms today threatens the legal market by making the playing field uneven, as smaller or even mid-tier firms cannot afford to bear so much financial risk.

Productivity is maximised by adopting document automation software and artificial intelligence. This method has allowed Linklaters, a winner of the FT top 100 innovative lawyers awards, to save 4,000 billable hours. Smaller law firms, unlike magic circle giants, cannot afford to allocate human resources to developing their own in-house technology. They can however, still follow the lead by simply purchasing automation software from external providers. The controversial 'contract express' is one of numerous legal automation software which replaces the cumbersome process of having to look up legal document templates and litigation procedure in the CPR (Civil Procedure Rules) and manually drafting them with a simple questionnaire. Lawyers have been reduced to simple form-filling, mind-numbing, procedure-following bureaucrats.

Alternatively, law firms are cutting down on manual clerical tasks by adopting the right case management software for their needs. Traditional case management software such as Alpha Law offer basic options like case opening, closing and time tracking, leaving paralegals and legal assistants with having to manually carry out tasks such as compile the billable hours, archive emails and electronically file correspondence and discovery. Precious, potentially billable hours therefore end up being spent on filling the gaps where the technology falls short.

The legal industry, now more competitive than ever, has embraced legal technologies in order to meet the demand for faster, cheaper services. Despite this, technologies now form part of the competition as they have become both a challenge and a potential growth area for law firms. The extensive role of legal technologies is a threat to many careers within the legal industry with case management and legal research software meaning that the demands for legal professionals, especially those working within the administrative side, is bound to shrink even further. Are we seeing the death of the Human Lawyer?

Interview with Alex Hasek

Corporate Associate at Weil, Gotshal & Manges

Words by **Inigo Ackland**

Alex Hasek is an Associate in the firm's Corporate practice. He studied Law at the University of Bristol and graduated in 2005.

What has been your biggest career highlight to date?

There have been quite a few career highlights over my time at Weil. A stand out example for me would be the opportunities I have had to go on secondment. As a trainee, I had the opportunity to go to New York and a couple of years ago I went on a client secondment to a private equity house client, which was an amazing career development. I also qualified into my preferred team seven years ago, so when I look back on the many different stages of my career it is very rewarding.

It is hard to pick out a particular transaction and say that is a career highlight, but a good example of a transactional highlight was working for Access Industries and Renova as part of a consortium disposing of their 50 per cent stake in the Russian Joint Venture TNK-BP for $28 billion to the Russian state-owned oil company Rosneft. This was a particularly exciting transaction due to its nature, the parties and jurisdictions involved and the pace of the transaction.

How do you differentiate yourselves from other leading US firms like Kirkland and Ellis or Akin Gump, and from leading UK firms like Slaughter and May?

I would separate this into two parts because I see US and UK firms very differently. In terms of other US firms, we were one of the first to build a genuine UK practice from UK lawyers in London. It is only recently that some firms have tried to emulate this, but we were definitely one of the first US firms to do so, and there are still many US firms that have not done so. So if you look at the percentage of US to UK partners in London, many US firms are still very weighted towards the US side, whereas for us only a small minority of our work is generated from US partners and we are very much a UK practice built on UK partners for clients based in the UK (with international operations).

In addition, I think our 'one firm' principle and partnership model further differentiates us as we get genuine collaboration, not only between different offices but also different departments within the firm. It is not an 'eat-what-you-kill' sort of mentality, which can create a lot of internal friction; that is not how Weil operates and I think it makes it a more enjoyable place to work, as well as more rewarding as everyone is working towards the same goal.

In terms of UK firms, we have very, very strong individual practice areas, and due to our size we are quite nimble as a firm within London and internationally. We are very good at the things we choose to focus on, whether private equity (both fund formation and transactional), finance, restructuring or litigation work. However, most UK firms have a much broader practice, with many lawyers in a broad spectrum of areas, and I think if you are not sure what you want to do as a lawyer, there is an appeal to applying to a firm with that offering. However, if you know that you want to do something commercial – maybe you are not certain whether it is private equity, M&A, finance or restructuring – then I think the US firms are much more focused on those areas, and the work you get is at the higher end of the transactions that are in the market.

What makes Bristol students unique and employable to firms like Weil?

I think when you are hiring people you obviously want students to be very capable, but also likeable, well rounded and have common sense. I think Bristol students have a very good mix of intelligence, common sense and likeability, which is exactly the type of graduate that we are looking for. There were four Bristol students in my intake nine years ago (approximately 30% of the intake), which is a testament to some of the students that Bristol produces.

What is the main piece of advice you would give to aspiring lawyers?

I think a mixture of being yourself and researching the firm in detail. What I mean by 'be yourself' is that each firm knows what it is looking for - if you try and pretend to be someone you are not, it is likely that the firm will pick you up on it, and even if they don't, and you do get in, you might end up not wanting to work there. When people research firms they quite often just focus on the tiny details like recent transactions, and although this is useful, you want to know why a firm is what it is, what makes it up and whether it is a place you want to work - what are its core competencies, what does it focus on and what areas of practice does it have? In addition to this, it is essential to understand the character of a firm, and that only comes across from meeting people who work there. Being yourself means that you already click with the firm before you step in the door, whilst researching the firm means that you can genuinely answer the question that will always come up in any interview - which is why you want to work there!

With over 1000 lawyers operating in offices over three continents, in what ways do you see the firm's "one firm" principle represented in your day-to-day activities?

I think it goes to a point I mentioned earlier. One thing that differentiates us is the collaboration between offices and departments; everyone is working towards the same goal, there is not the same degree of protectionism between partners and their own work. Everyone very much has an open door policy and that is not just reflected within the office, it is reflected across the firm, and you feel that when you are working on transactions across borders. I genuinely see different offices as part of the same firm. Weil is not a firm built up by mergers. It has been built by local hires building their own practices locally and, with this 'one firm' mentality in mind, it is not a patchwork of different law firms that have merged over the years with very different identities.

The theme of Dicta 2017 is "the limits of law". Relating to specific experiences in your career, what limits of the law, if any, have you had to deal with?

Within a commercial context, I guess this topic is open to a great deal of interpretation, but a classic example is a tax. I am not a tax lawyer, but tax legislation only goes so far.

You end up with tax legislation that is left open to interpretation, and the tax structuring of any transaction becomes very complex as it is cross-border with many different interpretations to approaches. Therefore, a limitation of law is where the legislation stops and the interpretation and practice begins.

From a personal standpoint the most applicable context is being commercial rather than just legal. To elaborate, I think what distinguishes the best lawyers is not only knowing what the law is but being able to translate the law for your client, taking it to the next level and applying it to your client's business and helping them understand solutions to any legal problems. An exceptional lawyer is able to present it to the client in a way that they can clearly understand. That is the most applicable thing for me; I think that around 30 per cent of what I do is hard letter law and case law, whilst 70 per cent is taking that 30 per cent and putting it in a commercial context - that is the key.

Weil has an award-winning Pro Bono practice with over 900,000 pro bono hours recorded during the past decade. How have you seen limits to the law displayed in this area?

A very good example is the Clemency Project, which

"It is essential to understand the character of a firm, and that only comes across from meeting people who work there."

our US offices are a part of, and it is on our website. The Clemency Project assists federal prisoners who wish to apply for clemency and relies on the serving President using executive clemency powers to reduce sentences of eligible serving prisoners. Weil helps to vet the requests of federal prisoners who meet certain criteria; basically, they are non-violent, low-level drug offenders who have served many years, shown good conduct in prison, and would likely have received a shorter sentence had they been sentenced today. To date, Obama has commuted the sentences of almost 350 individuals, and as part of this process, Weil has screened the records of more than 30 prisoners and identified six candidates for clemency.

Often you can find some quite extreme examples of sentencing, particularly in local courts. Therefore, this project is really worthwhile and a stark example of a limit of the law and how we can address this unfairness in the legal system.

In your opinion, what is the biggest issue facing UK law firms?

I think there are possibly four general issues.

1. The first of these is firm size and retention of talent and this stems from maintaining both high quality and broad practices. For example, a firm may want to keep a strong Private Equity team whilst maintaining a very broad practice. It makes it hard to retain the very top talent, because the Private Equity team may have competing offers at, for example, US firms. Moreover, if the UK firm addresses this by paying them more than the rest of the firm, it can have an adverse effect on retention in lower paid departments or offices. You see this a lot in the market recently with big private equity moves, and this has been a very big challenge for UK firms. Some have managed to increase pay, but not all firms are able to do that. This is a very real, live and difficult problem for UK firms to face, which is compounded by a second issue – the mid-market squeeze.

2. Since the financial crisis, many clients have been very focused on fees, particularly in the simpler more commoditisable work. This is an area that UK firms have traditionally relied on, and the resulting fee pressure is causing issues on UK firms' profitability.

3. The third issue is the inability of UK firms to break into the US market. You look at the top firms in the US and none of them are UK firms. Within certain areas many US firms have been extremely successful in the UK and, with clients looking to access US capital or expand into the US, it becomes a big challenge for UK firms who have not been able to expand their practice successfully.

4. The last issue and this is a challenge facing both UK and US firms, is technology and new competition. With regards to technology, new software is able to do more of the commoditised work and that will continue to develop. This will be a long-term challenge over the next 20 years as computing becomes more and more powerful and is able to replicate more human tasks. This is combined with competition, and when I say that, it is not just competition from other law firms, which in and of itself is a challenge, but new types of competition evolving. You are going to see accountancy firms with legal teams that have scalability through the firm's network, and other companies with extremely large legal, becoming new competitors within the market.

From a commercial legal perspective (and in light of the Gina Miller case) how is Brexit potentially going to affect the way inwhich Weil conducts business in the UK?

There is definitely uncertainty in the market in the interim and, whatever the final outcome is, it will invariably affect our clients and we need to adapt to that quickly to be able to cater to their needs, as will all law firms. Given our size and focus I think we are well placed to do that. I am not sure it necessarily affects the way in which we conduct business. We will always focus on the clients and adapt to their needs regardless of what the situation is, and Brexit is just another example of that.

Do you think Trump's plans to alter the financial regulations, for example coming close to dismantling the Dodd-Frank Act, one of Obama's greatest legacies, is likely to lead to another financial crisis?

First of all, I think what a President says and then ends up doing are two very different things, and that is not a comment on Trump, in particular, that is a comment about all political leaders! I doubt they will dismantle the Dodd-Frank Act in its entirety, and if he does change it then we will have to see what the extent of that is. Even if he changed it materially, will that in and of itself lead to a financial crisis? No, it won't.

This is just part of an economic and political cycle that goes back generations and will continue to do so. When markets are buoyant, greater risk-takers rise to the top as they achieve higher returns. So, if you look at who was leading many of the big financial institutions before the financial crisis, they were all from fairly high-risk backgrounds. As soon as the financial crisis came, institutions became much more risk averse, and these individuals were replaced with people who were more risk averse. At the same time, new regulation kicked in, due to political pressure, to protect consumers and became more restrictive to free markets. When markets start turning more positive again and they become more buoyant there will in turn be pressure to reduce regulation to free up markets to achieve greater returns – potentially exposing markets to the same distortions that exposed them in the first place, and history keeps on repeating itself.

> ***"We will always focus on the clients and adapt to their needs regardless of what the situation is, and Brexit is just another example of that."***

Eliminating Humanitarian Intervention

Words by **Christopher Olsen**
Illustration by **Robin Tait**

The absurd doctrine of humanitarian intervention simply does not work. The age-old moral arguments for freeing nations enslaved by tyranny are rendered obsolete when foreign citizens continually mistake their liberators for "conquerors". We see this repeatedly when Western powers have attempted to topple brutal dictatorships. This policy falls in line with Tony Blair's doctrine of "responsibility to protect": an international legal obligation to intervene for the protection of foreign civilians against their demagogic oppressors.

The 1999 NATO bombings in Kosovo were, in Blair's opinion, a response to ethnic Albanian repression by Milosevic's Yugoslavian government. But, Operation Allied Force was a violation of Article 2(4) of the UN Charter, prohibiting the use of force against a state. It also indicated that NATO was moving away from its original role as an organisation for collective self-defence and instead becoming an unwarranted global police force. The net result of this illegal exploit was that Kosovo and the Balkans became a series of ungovernable UN protectorates, as highlighted by the continued ethnic violence in the region.

The Iraq War remains the most controversial international conflict of modern times. Jeremy Corbyn maintains that the illegality of the war was sold to the British people on the "false pretext" that Saddam Hussein possessed WMDs. This blood-soaked fallacy still fuels public resentment towards the former UK Labour government, indicated by the long-awaited 2016 Chilcot Report and its assessment of Tony Blair and George W Bush. Crucially, the intervention to save the Iraqi people was illegal owing to its lack of prior authorisation by the UN Security Council.

Even though NATO did possess UN SC Resolution 1973 for their intervention during the Libyan Civil War of 2011, the resolution crucially permitted no "foreign occupation force", but instead limited the intervention to the establishment of a no-fly zone over Libya. Thankfully, NATO's intervention was therefore minimal enough for Libya to remain relatively stable. This was due, however, to one important British advantage: Colonel Gaddafi's deliberate division of Libya and subsequent weak military rule. This made it easy for the NATO-led coalition to supply arms to the Libyan rebels that ousted Gaddafi's murderous regime. Nevertheless, these weapons have now found their way into the hands of ISIS militants, fuelling further unsettlement of Libyan polity. Consequently, this has tarnished the international legacies of both Barack Obama and Hillary Clinton. Once again, NATO's intervention failed to revive a sense of national democratic stability.

The currently ruinous state of Aleppo exemplifies the fundamental flaws surrounding humanitarian intervention. One could argue that removing Syria's powerful dictator, Assad, from power through further airstrikes would destabilise the region even more and intimidate Assad's supporter Vladimir Putin. I am not suggesting appeasing Russia is a desirable policy. However, as US President Donald Trump has proposed, Russia and the USA may be able to work together to destroy ISIS without interfering in Syria's domestic affairs. To achieve this, America must stop supporting unknown and potentially dangerous Syrian rebels intending to oust Assad. If the USA and Russia can work together with Assad, the Islamic State can be defeated. ISIS is the Iraq War's most damning legacy; a terrorist menace the West created, which now threatens us all.

Many alternative factors may have influenced the downfall of Libyan democracy, and it is important not to exclude these. However, clearly the doctrine of humanitarian intervention is almost invariably disastrous for all parties involved. Liberating a nation is as much an ideological argument as a military one. Ultimately, a country's freedom can only meaningfully come from within.

"A large temporary screen has been installed in the square outside where I can watch Wimbledon while reclining in a deckchair!"

A Day at Taylor Wessing

Words by **Tom Connock**

First-year trainee at Taylor Wessing LLP

8.30am: *I arrive at the office early and head up to Cloud 9, our staff restaurant, to enjoy a cooked breakfast with some of the other trainees. The sun is shining so we sit on the terrace and enjoy the views across London. We all try to meet regularly to catch up and discuss our various seats.*

9.15am: *I head down to my office, make myself a coffee and begin making a to-do list for the day. My supervisor has scheduled a meeting with me at 9.30am to discuss a new deal and set me some tasks.*

9.30am: *After checking my emails, I am asked by my supervisor to produce a first draft of a legal charge for a new matter. We discuss the structure of the deal and the issues that will need to be addressed. As part of the team, trainees are given a high level of responsibility and are expected to assist in drafting important documents. I download the Taylor Wessing legal charge precedent and begin making the necessary amendments.*

11.00am: *I attend a short training session which is delivered by our professional support lawyer. Regular training sessions are important to ensure the team is always aware of new developments in the law.*

11.45am: *I continue with my drafting of the legal charge. As the deal involves some development work, I speak to an associate in the construction and engineering department for assistance. Taylor Wessing has a great collegiate atmosphere and departments often work closely with each other.*

1.00pm: *I head outside the office to grab some lunch in the sunshine. A large temporary screen has been installed in the square outside where I can watch Wimbledon while reclining in a deckchair!*

1.45pm: *I arrive back at my desk and have a voicemail message from a trainee at another firm wanting to discuss some amendments to draft board minutes. I call her back and we negotiate some wording to be inserted. I check this with the supervising associate who agrees it is appropriate. I email the trainee to confirm the board minutes are agreed.*

2.30pm: *On a separate matter, I attend a brief conference call with a client to discuss some outstanding points in a draft loan agreement and take detailed notes. Following the call, I assist my supervisor in incorporating these points into the document. Many of the outstanding points are commercial (rather than legal), however it is important that everyone understands the client's concerns.*

4.00pm: *I sit down with my supervisor to discuss my draft legal charge. He makes some amendments to ensure the document is more favourable to our client. We then send the document to the borrower's solicitors for their review.*

5.00pm: *I update the 'CP checklist' for another matter that I have been working on. The CP checklist records the progress of the 'conditions precedent'. I collect updates from the various departments working on the matter. I also speak to our counterparts at a law firm in New York who are advising the client on aspects of US law. The multijurisdictional nature of the work can be very interesting and trainees are often the main point of contact for foreign counsel.*

6.30pm: *The firm is hosting a client summer drinks event and I have volunteered to assist with welcoming the guests and handing out name badges. When all of the guests have arrived, I grab a cold beer and network. Events like this are a great opportunity to meet and speak with clients in a friendly environment.*

Combating Discrimination

Words by **Darius Leong**

Social bias is a multifaceted monster, masked under the guise of preconceived prejudices and harmful stereotypes, perpetuated by people unknowing of the truth. These forces work together to cause discrimination. Historically, discrimination is the unjust treatment of different groups, especially in relation to their race, age, or sex. However, following Stonewall and a more inclusive civil rights movement, discrimination has also become more visible towards LGBT individuals. Further, the voices of other minority groups, such as the disabled, continue to be ignored in policy making, causing serious concerns.

The UK's implementation of the Equality Act 2010 has supposedly marked a significant shift in promoting anti-discrimination and equality principles enshrined in EU law. This single piece of legislation has combined nine previous laws, including the Sex Discrimination Act 1975, Race Relations Act 1976 and the Equality Act (Sexual Orientation) Regulations 2007 into one single statute. Under the auspices of the European Court, UK legislation has prevented public and private institutions from discriminating in the workforce and beyond. Coupled with recent legislation such as the Marriage (Same Sex Couples) Act 2013 which formally allows same-sex couples to marry, it's arguable that discrimination is being combated better than it ever has before.

Nonetheless, our laws are still unsatisfactory. Although LGBT individuals are now allowed to marry, adopt children and serve in the military, they are still affected by a range of discriminatory practices elsewhere. Regarding religious institutions, the church is still allowed to dismiss religious leaders on grounds of their sexuality. Within the criminal justice system, one in five LGBT people expect to be treated worse than heterosexuals when reporting crimes. A quarter also expect discrimination in reporting a homophobic hate crime.

Issues of institutionalized police bias against ethnic minorities are also prevalent. Over-policing and a focus on black criminals by mainstream media perpetuates the notion that these communities are disproportionately responsible for crime. Fears of terrorism have recently made specific Asian communities targets of hate crimes and unnecessary suspicion. While the Equality Act 2010 rules any bias and hate crime unlawful, it is still unable to prevent them from occurring from the outset.

There also continues to be serious failings with regards to disabled individuals. In failing to improve transport infrastructure for the physically handicapped, the government has been too sensitive to the costs that may fall on rail service corporations and taxi drivers. Whilst employers aim to assess handicapped candidates fairly during recruitment, they too fail to make reasonable adjustments at later stages, such as in dealing with sickness absence and promotion.

Although legislation can be criticised as incomplete, our media should also be blamed for perpetuating discrimination. Numerous news outlets have taken advantage of the European migration crisis and other baseless rhetoric to fuel anger towards Muslims and European immigrants during the Brexit referendum. What followed was a slew of hate crimes reported across the UK, which was subsequently mirrored in the aftermath of President Trump's success in the United States. Endless misinformation on social media sites has also paved the way for stereotyping diverse communities of people, greatly hampering the progress of these communities.

Although the law could regulate the media to eradicate falsehood that divides people and causes discrimination, this would create a slippery slope towards unwanted media censorship which threatens a free society. Instead, a better course of action would be to raise peoples' awareness of discrimination issues and their harmful impacts on society. Such changes in our education and media will help achieve the goals that our legislation has long set out to achieve, effecting society from a cultural (rather than legislative) perspective.

Failing To Get Off The Ground

Words by **James Connolly**
Illustration by **Caspar Wain**

Would it be unreasonable to assume that during the 'era of rights' in which we live, fundamental human rights would protect innocent civilians from indiscriminately devastating aerial bombardments? Likewise, would it be fanciful to imagine that the European Court of Human Rights, the most progressive and effective human rights enforcer, would hold perpetrators to account? Unfortunately, in the words of Phaedrus, "Things are not always what they seem."

As the nature of military operations evolve, ground operations have become increasingly unpopular compared with aerial bombings (i.e. drone attacks and air strikes). The collateral damage arising from such attacks can be blindly catastrophic. For example, the coaltion fighting IS in Syria has killed at least 300 innocent civilians through airstrikes, with the UK alone conducting 48 strikes in 6 months.

This shift in military practice is driven by rapid technological advancements and consequently has out-grown the ECHR's reach. This means that aerial anti-terrorism efforts, arguably the biggest culprit of human rights infringements upon the most vulnerable and alienated communities, have been pushed into an accountability vacuum.

In practice, the ECHR's role is much more than a protective façade – it is by far the most effective mechanism by which victims can seek redress. Whilst international humanitarian law may hold the perpetrating states to account, it will rarely (if ever) provide the victims with due redress. Likewise, the sudden developments in military tactics leaves it equally out of the reach of the traditional mechanisms such as the Geneva Convention. It is for this reason that an effective application of the Convention is more important than ever.

The problem boils down to the interpretation and application of Article 1 of the European Convention of Human Rights which reads: "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

The Grand Chamber has ruled in a string of confusing and contradicting judgments that contracting states' jurisdiction cannot exist extra-territorially, save only for where it exercises "effective control" over the geographical area. Initially, this could only arise as a consequence of territorial or political influence. However, Strasbourg now reads Article 1 to include the circumstances where states have control over the individual in question. This expansion from a "spatial" to an "individual" conception of jurisdiction has allowed both accountability and redress for violations committed by ground troops in unoccupied territories.

Unfortunately, this is no longer enough. How can it ever be said that a state has control over an individual when they are actually thousands of miles away in an operations room? The long range and instantaneous nature of modern military efforts has allowed them to escape the Convention's grasp. Attempts have been made to claim that pre-strike surveillance would create effective control over individuals. However, this is unrealistic as it would lead to the logically absurd conclusion that while researched and specifically targeted aerial attacks should be subject to human rights accountability, impulsive and indiscriminate bombardments are immune.

This is an extremely worrying narrative, as the vacuum in protection is set only to expand. As military endeavours continue to be launched from distant operation rooms and the devastation caused is increasingly seen as a virtual reality without consequence, the inability of the ECHR to hold states to account and compensate victims is a fundamental failure in its cardinal objective. This new type of indiscriminate killing is the very class of atrocity that the Council of Europe envisaged when drafting the Convention. Until the ECHR's conception of jurisdiction is reconfigured, its inadequacies will anchor it to its irrelevance.

Mind Over Matter

Words by **The Howard League Society**

It is a poorly-kept secret that prisons are repositories for society's most vulnerable. The poorest, least educated and most psychologically damaged are disproportionately represented within the UK's criminal justice system. 29 per cent of prisoners have experienced abuse; 41 per cent observed violence in the home as a child; 24 per cent had been in care during their childhood; 85 per cent of prisoners in Bristol Prison do not have a GCSE in English or Maths.

The penal system fails to provide the vulnerable with chances for self-reliance and actualisation. With so many damaged individuals imprisoned, it is unsurprising that mental ill-health is so much worse in this cohort than in the general population. Few statistics speak more eloquently to this than the Ministry of Justice's damning statement which reported 34,586 incidents of self-harm in UK prisons in 2015, an average of one every 15 minutes. Last year 105 prisoners in the care of the state took their own lives, with this year set to be the worst on record. Six per cent of the general population has attempted suicide. In prison, that figure stands at nearly 50 per cent for women.

Notwithstanding their criminality, the number of broken people passing through the prison system time and time again means that prisons must acknowledge their responsibility to intervene in cycles of self-destructive behaviour. Prisons are neglecting this responsibility. With over 3,134 serious assaults in prison from 2015-16, is it reasonable to expect individuals to move on from experiences of the normality of violence and criminality when it continues in prison? Violence breeds violence, and this system is counterproductive to society's aims and detrimental the well-being of prisoners.

When it is not uncommon for prisoners to have to idle away as many as 23 hours a day in their cells, prisoners are deprived of any meaningful mental rehabilitation. Instead, they are met with an abject lack of stimulation and a surplus of trauma. Worse still, it is estimated that 43 per cent of prisoners lose touch with their families and over a fifth of those who were married before entering prison get divorced or separated when they are incarcerated. The impact of this is huge: 40 per cent of prisoners saw the support of their families as essential in stopping them from reoffending in the future.

Deprived of external support and isolated on the inside, the necessity of proper mental health provisions in prison is obvious. In 2015, it was uncovered that over 70 per cent of those who killed themselves in prison that year had known mental health conditions. Yet, nearly one in five of those diagnosed with a mental health problem received no care whatsoever from a mental health professional in prison. Many of these deaths may have been avoidable.

If the government intends to commit to its promise of a programme for mental health reform, prisons must be the principal battleground. In the maiden speech by the new Secretary of State for Justice, the Rt Hon Elizabeth Truss outlined a bold vision for Conservative reform. She noted that '[p]risoners are often the most damaging people in society but they are also often the most damaged'. She promised reform, that '[t]his government is going to take on the problem of Britain's prisons and we are going to make prisons work.' Yet any solace we find in her promising plans is shadowed by the barrage of recent prison riots and murders; a sure sign of the deteriorating state of our prisons. Until we begin seeing tangible changes and results in the way that prisons in this country engage with the mental health crisis, the government's mistakes will continue to be fatal. Elizabeth Truss claims 'determination to take on those who say nothing can ever change' as a Conservative value. With anticipation, we ask her to prove us wrong.

Prioritising Among The Vulnerable

Words by **Anna Andreeva**
Illustration by **Ellie Drewry**

Certainly, it is any government's focus that welfare is provided for the vulnerable groups in society, but categorisation of such groups is unregulated. This creates additional, more intricate problems.

Once the backbone of the welfare state, legal aid in the UK has been steadily cut since the early 2000s, leaving the vast majority of population ineligible for protection. Yet recent legislation changes in the form of the Legal Aid, Sentencing and Punishment Act (LASPO) in 2013 have created further restrictions to funding, targeting crucial areas such as welfare benefits, housing and immigration. However, more problematic is the fact that the government is yet to conduct the promised subsequent review of the implemented changes. This gap was instead filled by Amnesty International, whose report provides statistics illustrating that before the Act was introduced, legal aid was afforded in 925,000 cases, which has dropped to only 497,000 after the passing of LASPO, amounting to an almost 50% decrease.

The devastating implication of this data is that the most vulnerable members of society may be in a position where they must represent themselves in court. This poses particular difficulties for children and immigrants, as neither group possess the necessary resources or has an understanding of the legal issues. In a situation where both categories are combined, the problem is magnified. As a result of the current Migration Crisis in Europe, an overwhelming influx of claims of children seeking to enter the UK has hit its borders. It is estimated that there are up to 2,500 immigrant children annually who are denied legal aid and are left destitute of justice. Current reform leaves these unaccompanied immigrant children defenceless, fleeing from war zones, atrocity and broken homes. Facing a lack of legal advice and representation, there is very little chance for appeal.

Bearing these facts in mind, it would be surprising to learn the Ministry of Justice, despite a series of cuts, spends 1.5 billion on legal aid annually. In fact, I am not arguing that government funding for legal aid needs to be dramatically increased. Undoubtedly, this is a generous amount of money, especially when considering other vital welfare categories that government spending should go towards.

However, it is essential that the government reviews the allocation of funds within legal aid. While there are many groups of people who can be categorised as vulnerable, these should be divided into hierarchical subcategories, proportionately reflecting the needs of each claimant. Amnesty International makes a strong case for children to be prioritised as a group who receive legal aid regardless of the subject matter of their case. In any imaginable scenario, surely it will always be more emotionally and intellectually challenging for a child to go through the agony of personally arguing their claim than it would be for an adult in the same situation. Naturally, the outcome of such a claim has a minuscule chance of success, meaning the law is failing to adequately safeguard children, for many of whom it is literally a question of life and death.

Distribution of legal aid funding is a complex issue and administrating a review of this procedure will in itself incur even more costs. However, in the current social climate, there is a particularly urgent need for rapid and efficient reform to support the children whose safety and security depends on the success of their claims, yet whose access to law is severely constrained.

CONTRIBUTORS

Sara Louden

Editor-in-Chief

The goal of Dicta this year was to cast light on the grey, uncertain and unreached areas of the law. Thank you to the team who has made it possible.

Ami Sodha

Online Editor

'The limits of the law' expresses perspectives on the role of law in society. The depth of explorations and breadth of topics is a testament to the nature of Dicta.

Tom Williamson

Article Editor

The theme of the 'limits of law' proved a compelling and distinctly diverse topic, granting writers the freedom to connect with some of the most progressive and controversial legal issues.

Ellie Drewry

Article Editor

Law is influenced by relationships with victims, with art, with politics all of which are covered in Dicta. Learning more about the value of these relationships has been a joy.

Eliza Jones

Article Editor

As students we generally encounter the limits of the law as hypothetical scenarios; problem questions with far-fetched facts. Hopefully this edition of Dicta will demonstrate that these limits are very real and varied.

Tristan Goodman

Managing Editor

Enduring legal responses are increasingly frustrated by rapidly changing politics. This year's edition of Dicta not only questions the absence of legal responses, but the value of their presence.

Emily Barrett

Interview Editor

Our legal system is not perfect. However, we are very fortunate to be part of a community of professors, solicitors, barristers and law students alike who strive to make it the best that it can be.

Alexander Hood

Article Editor

"The only difference between stupidity and genius, is that genius has its limits"
- Albert Einstein

Inigo Ackland

Interview Editor

In a world awash with corruption it is all too easy to forget that our own legal system, so widely admired, is far from a fountain of justice. Dicta hones a thought provoking lens (on the limits of law) far closer to home.

Evangelia Papadopoulos

Designer

Evangelia is a graphic designer and visual artist based in Bristol. She is invested in designing experiences, conversation starters and ponderings through a broad range of different mediums.

Caspar Wain

Illustrator

Caspar is an illustrator based in Bristol. He combines his high key colour-schemes, energetic drawing languages and cheeky storytelling skills to creative vibrant contemporary illustrations.

Miriam Cocker

Illustrator

Miriam is studying for her masters in English Literature and enjoys doodling with purpose in her spare time!

Robin Tait

Illustrator

Robin is an English student at Bristol who is more likely to be found in a life drawing class than the library. In her first year she became a proud co-editor of the student led Manor Hall arts magazine.

Ellie Drewry

Illustrator

Ellie has illustrated for Helicon, That's What She Said and Brasshead. Last year she set up Bettering, an arts magazine to raise money for Bristol Refugee Rights.