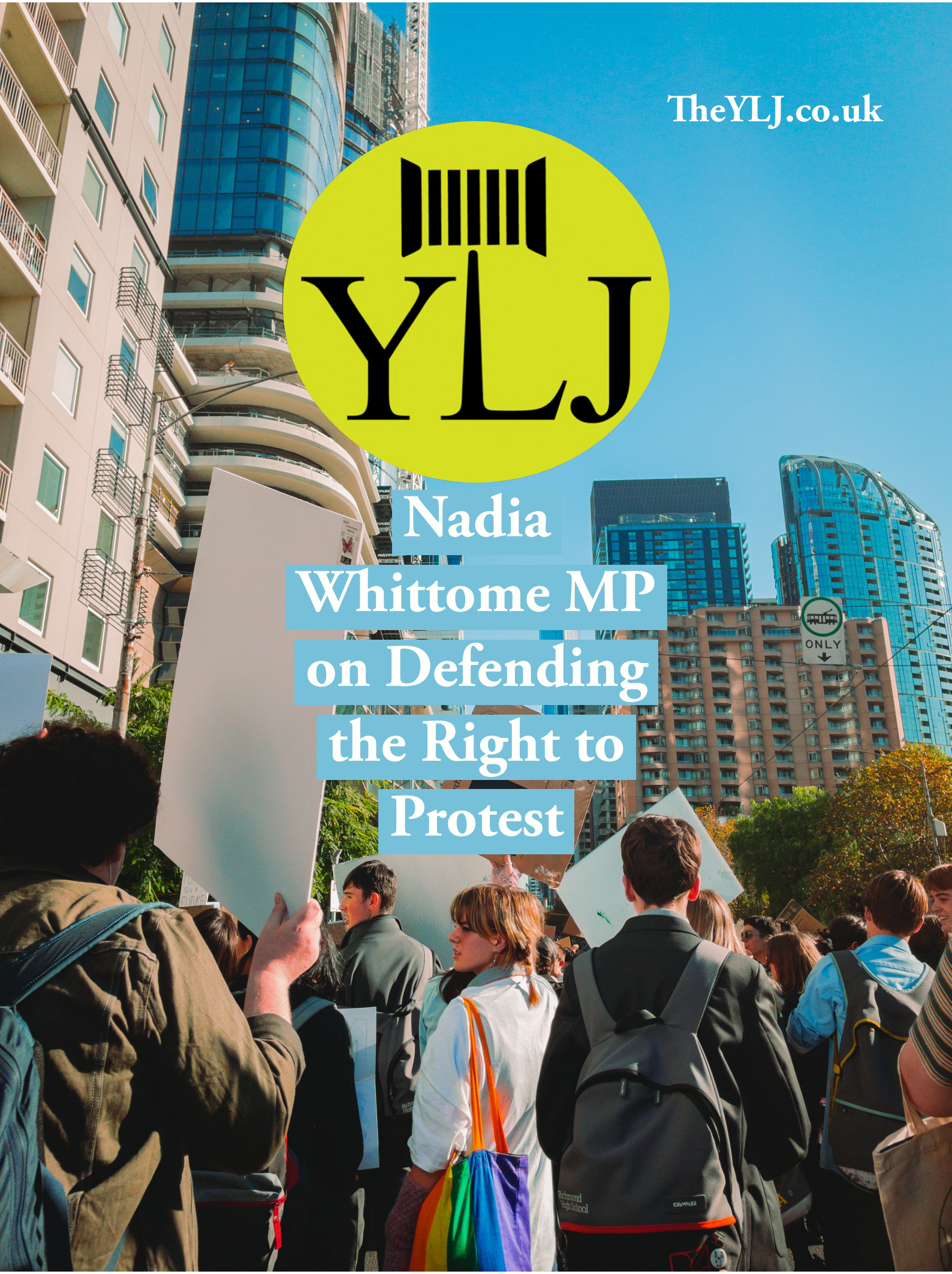
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Nadia Whittome MP on Defending the Right to Protest
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Seventh Edition of the YLJ Magazine

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A Note from the Editors-in-Chief

We are thrilled to finally be able to publish the Seventh Edition of the YLJ Magazine. After the chaos caused by the pandemic, we felt it was important to relaunch the YLJ as a central resource for youth engagement with legal debate.

Each article in the Seventh Edition of the YLJ focuses on a different aspect of law and politics, and we are particularly excited to feature a piece from Nadia Whittome MP, the youngest serving member of the House of Commons, which addresses the highly topical issue of industrial action and protest.

It is this overlap between law, politics and current affairs that we aim to explore with the pieces in our magazine, as we are also proud to present Professor Susan Bright's article on the Grenfell disaster.

Additionally, we aim to inspire young people to explore various avenues in their legal careers. We believe that the advice of academics and writers such as Professor Nicholas McBride and Martin Edwards, will help to broaden our readers' horizons and develop their legal interests. We are also delighted to present a piece from The Honourable Mrs Justice Cockerill on her incredible journey to becoming a chancery judge.

We would like to thank Matti Brooks, Nathalie Edwardes-Ker, Daniel Braun and Cher-Yi Tan for their help and guidance in producing this edition. We hope that you enjoy reading the YLJ as much as we have enjoyed making it. For further articles and for the chance to contribute as a student writer to the magazine, please visit our website TheYLJ.co.uk.

Kind regards from the Editors-in-Chief,

Grace Ogle

Sachi Patel

Fionn McFadden

Why We Must Defend the Right to Protest

By Nadia Whittome MP (November 2022)

As the youngest serving MP in the House of Commons, Nadia Whittome MP has already made a name for herself as a determined advocate for workers' rights and social justice. She has been vocal in her opposition to the Police, Crime, Sentencing and Courts Act, and has recently shown her support for railway workers who have chosen to strike. In this article, she elaborates further on her unwavering commitment to supporting legal protest and industrial action, in order to achieve a brighter, and more equal future.

In August 2022, we mourned the death of Roy Hackett, a legendary civil rights activist and one of the organisers of the Bristol Bus Boycott. In 1963, in reaction to the local bus company refusing to hire Black and Asian crews, Bristolians of all backgrounds came together and refused to use Omnibus services. But not just that. Protests were called. Hackett organised blockades of Fishponds Road, standing in the middle and ensuring that no buses could come into the city centre.

The campaign is widely credited with paving the way for the UK's first Race Relations Act, which outlawed racial discrimination in public spaces. Roy himself was awarded an OBE and MBE for his courageous activism. Still, under the measures proposed by this government, he would be facing up to six months in prison.

From Suffragettes chaining themselves to the railings of 10 Downing Street, to ACT UP lying down on the roads demanding action on the deadly AIDS crisis, non-violent disruptive action has shaped our history. Courageous acts of civil disobedience are commemorated

with monuments, celebrated with museum exhibitions, and detailed in textbooks.

It's easy to admire transformative movements of the past, or those standing up against injustices abroad. However, it is harder for governments to tolerate those holding them to account in the here and now- whilst causing quite some disruption in the process. In the wake of recent waves of activism, the Tories have made it their goal to suppress dissent by criminalising the kinds of tactics described above.

In the summer of 2021, the Police, Crime, Sentencing and Courts Act made national headlines with its wide-ranging anti-protest measures. These included hugely increasing police powers to clamp down on gatherings, and threatening campaigners with life-changing sentences - up to 10 years in prison for damaging a statue, for example. Coming at the same time as the murder of Sarah Everard at the hands of a Metropolitan police officer, and the brutal police response to a women's vigil in her memory, the legislation sparked protests up and down the country under the banner of #KillTheBill.

Thanks to the strength of that movement, some of the government's last-minute additions to the proposed legislation were defeated in the House of Lords. But now, in spite of this, they are back with a vengeance, in the form of the Public Order Bill, which has passed three readings in the House of Commons and soon is likely to become law.

So, what does the Bill include? "Locking on", or attaching yourself to an object or person, could result in an unlimited fine or up to six months in prison. Penalties could be imposed simply for being "equipped to lock on" - i.e. being found carrying a bike lock or glue in your bag. Similarly, blocking roads or building works (such as airport expansion) could be punishable with huge fines and jail time.

What's more, so-called Serious Disruption Prevention Orders could be issued to protesters who have never committed an offence. Individuals deemed by a court to be likely to cause nuisance in the future could face bans on attending demonstrations, travelling to certain areas meeting with fellow

activists, or organising on social media.

At the same time, in the name of preventing protests, the Bill seeks to increase police powers to stop and search people with no suspicion. These searches carry a high risk of discrimination: black people are 40 times more likely to be subjected to them than white people.

It is no secret who the Bill is meant to target. Protests by groups such as Extinction Rebellion, Insulate Britain and Just Stop Oil have stopped the country in its tracks, bringing attention to the climate crisis and the government's failure to address it with the urgency it demands. While they have been ridiculed by sections of the media and demonised by government ministers, it does seem that their efforts are working. Public opinion is shifting. The proportion of people who say they are "very concerned" about the environment is now nearly twice what it was in 2010. Like them or not, controversial actions are attracting the kind of coverage that well-funded NGOs spend years trying to achieve. Politicians and the media are being forced to pay attention.

But it's not just environmental protesters who the government is targeting with punitive laws. In recent months, we've seen a wave of strikes sparked by the cost of living crisis. Stagnating wages mean that pay, in real terms, is still lower than in 2008, and now soaring bills have caused the biggest squeeze in living standards for a century. Forced to choose between heating and eating while their bosses claim six figure salaries, thousands of workers are saying "enough".

However, rather than raising public sector wages in line with inflation and tackling poverty pay, the government has responded with plans to further limit the right to strike. This is in spite of the fact that the UK already has some of the most restrictive anti-union laws in Europe, with high thresholds for ballots and a senseless ban on online balloting. This summer, the Tories voted to allow employers to hire agency workers to break strikes. Now, they're proposing even more anti-union measures, such as imposing minimum service levels that would prevent certain key workers from taking effective action.

No one likes a cancelled train, or a journey delayed by people blocking the road. However, what's at stake here is much greater: the very fundamentals of what it means to live in a democratic society. Democracy isn't just the right to show up at the ballot box once every five years. The public must be able to respond when they think those with power are not acting in their best interest. Writing letters or signing petitions only achieves so much, and even polite A to B marches can go unnoticed. So many of the rights we now take for granted, from universal suffrage to the eight-hour working day, we owe to disruptive action: the last resort when asking nicely fails.

When thinking about the right to protest, it's worth remembering that access to power in our society is deeply unequal. The rich and big business have many ways to influence government policy in their favour. They can hire lobbyists and gain access to MPs, or donate huge sums to politicians who serve their interests. Money and status can help access large media platforms and fund campaigns. Finally, large corporations can use the threat of withdrawing investment if they don't get their way.

Ordinary working-class people don't have any of that. Their power lies in their ability to unite and disrupt business as usual: whether that means exercising their leverage by withdrawing labour, or taking to the streets to force the powerful to listen. When their right to do so is under attack, our politics becomes even more skewed in favour of the privileged few.

It's not only militant activists who have reasons to be worried. When the freedom to dissent is undermined, we all become less free. In honour of all the radical campaigners of the past who we now hail as heroes, let's defend our right to hold power to account. A bit of nuisance is a price worth paying for democracy.

Three Ideas That Will Control Your Future

By Professor Nicholas McBride

Almost every law student has been inspired by the work of Professor Nicholas McBride, who is a Fellow in Law at Pembroke College, Cambridge. His publications such as *Great Debates in Jurisprudence*, have been integral to helping students understand the philosophical foundations of the law. Moreover, *Letters to a Law Student* is one of the most trusted publications when it comes to advising the future generation of lawyers. In this article, McBride draws on important elements of legal history that might just be integral to our future.

At the end of his *General Theory of Employment, Interest and Money* (1936), John Maynard Keynes expressed himself confident that the ideas contained therein would prove influential: 'the ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else. Practical men, who believe themselves to be quite exempt from any intellectual influences, are usually the slaves of some defunct economist. Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back.' What, then, are the ideas that rule today's world, the origins of which are only dimly understood even by those who give effect to them? Here are three of them (and, to my mind, the most important three).

The first goes back to a 12th century monk called Joachim de Fiore. His big idea was that history had a direction, and would culminate in the creation of a Heaven on Earth. Those who talk nowadays of nations undergoing a 'Great Reset' or being 'built back better' are unwittingly channelling Joachim – as do all progressive politicians and revolutionaries who look forward to the day when their ideals will be realised and the world will be perfected. Their ambitions are opposed by those thinkers (notable recent examples are Roger Scruton and Michael Oakeshott; a much older one is Edmund Burke) who take a more pessimistic view of the perfectibility of the world, and see the object of political activity as simply that of 'keeping the show on the road': handing the world on to a successor generation in at least as good a condition as it was in when the current generation received it. As a result, these more pessimistic

thinkers have tended to revere the common law method of law-making: incremental, reactive to problems as and when they arise, not based on any overarching agenda or ideology. However, it is Joachim's vision that holds sway now. This is why statute law has dominated the common law in the 20th century as a mode of ordering what are still known (but for how much longer?) as 'common law jurisdictions': statutes provide a much more direct route to the Promised Land than developing the common law does. The popularity of Joachim's idea also accounts for the extremity of modern-day political rhetoric – if you thought your opponents were getting in the way of Heaven on Earth being achieved, what wouldn't you be willing to say about them (or, worse, do to them)?

The second idea goes back to Jean-Jacques Rousseau's *Discourse on the Origin and Basis of Inequality Among Men* (1755). It is the idea that people are born good, and are made bad (if they are bad) by virtue of the society in which they live. Before Rousseau came along, no-one believed this. Instead, people believed that there is something crooked about all human beings, meaning that everyone everywhere has to be on guard against themselves, and the attraction that evil will always hold for them. As Aleksandr Solzhenitsyn observed in his description of *The Gulag Archipelago*, the chain of prison camps where Soviet dissidents (including Solzhenitsyn) were incarcerated, 'The line separating good and evil passes not through states, nor between classes, nor between political parties either, but right through every human heart, and through all human hearts.' Or as GK Chesterton put it, 'The answer to the question "What is wrong?" is, or should be, "I am wrong."' This suspicion of human nature underlies the law on fiduciaries, in that the law takes the view that A cannot be trusted to administer B's affairs properly if A stands to make a personal gain from administering those affairs in one way than another. But Rousseau's view of human nature nowadays prevails everywhere else. Nature and the 'natural' are romanticised; we are told to 'go with the flow' and that 'children are our future…let them lead the way'; the primary response to criminal wrongdoing is increasingly to seek to 'rehabilitate' the criminal; and scientific modes of reasoning and scientists are idolised as representing a 'view from nowhere' that consequently cannot be corrupted by defective social institutions.

The third idea – in its modern form (it has some antecedents in Ancient Greece) – goes back to Julien Offray de La Mettrie, who was a contemporary of Rousseau's. La

Mettrie's idea was expressed in the title of his 1747 book, *Man a Machine*: that there is no qualitative distinction between people and machines. This idea has come into its own with the computer revolution that was initiated in the 1940s by figures such as Alan Turing, Norbert Wiener, and Claude Shannon. This revolution has created the hope that human mental operations can be replicated, and significantly bettered, by sufficiently sophisticated 'neural networks'. The success of such networks in achieving unheard of standards in playing games like chess or Go has in turn made people think that artificial intelligences could be developed to offer people legal advice or decide legal disputes. Thinkers such as Stanley L Jaki argue that these hopes are doomed to be disappointed. A merely material reality such as a neural network is incapable of comprehending immaterial realities because it does not operate in the same plane of existence as those realities. Human beings occupy both planes of existence – material and immaterial – and are consequently capable of grasping immaterial realities, such as ideas, concepts, reasons, values, memories, love and glory. No matter how sophisticated its construction, a neural network will never be able to have an idea, or respond to a reason, or love (or understand that it is loved). But if a machine cannot be constructed to do all that people's minds can do, La Mettrie's idea that there is no qualitative difference between people and machines can – and does – take the more sinister turn of encouraging us to think of people in purely mechanical terms. Thus is born *homo economicus* – the view of human beings as predictable producers of certain outputs when subjected to certain inputs. This model of human nature would inspire two people in particular, who went on to affect millions of people's lives: Frederick Winslow Taylor, whose 1911 book *The Principles of Scientific Management* set out 'scientific' principles for making production processes as efficient as possible; and Edward Bernays, who in the 1920s wrote the foundational texts on how to manipulate people through advertising campaigns and propaganda.

That you may not have heard of any of the people mentioned in the previous paragraphs vindicates the strength of Keynes' dictum. Obscure though they might be, it is hard to imagine any figures who will play a more important role in shaping your future. Writers such as George Orwell and Aldous Huxley have already, in their very different ways, done the job of describing what that future will look like. These three ideas, taken together, point us towards a future where: (1) people will be encouraged to think of

themselves in purely mechanical terms, and discouraged from engaging with any of the immaterial realities listed above; (2) politics will become an enterprise concerned only with ensuring that people's material needs – conceived of in a very basic, infantile fashion – are catered for; (3) decisions about how this will be done will be increasingly outsourced to experts whose decisions will be based on 'scientific' knowledge and principles, and as such will be unimpeachable and beyond suspicion; (4) because of (1), law will no longer seek to achieve its goals by appealing to people's reason but will instead use threats of punishment as its primary means of ensuring that people do not act in disapproved ways; however, (5) the expense and inefficiency of governing in this way will result in law's withering away as a method of controlling society, in favour of alternatives such as the use of state propaganda and making it physically impossible to act in disapproved ways.

If this future does not seem particularly utopian to you, but instead profoundly dystopian (as it did to Orwell and Huxley) the fault lies in one or more of the three ideas set out above. For me, all three of these ideas are bad (and bad both in the sense of 'false' and in the sense of 'productive of great evil'). A sound approach both to politics and law depends on all three of these ideas being thrown over in favour of the ideas they supplanted. If you agree, there is no time to waste in exposing and resisting the effect that these ideas are having right here and now on practical men and madmen in authority. Your very future depends on it.

My Journey to Becoming a Chancery Judge

By The Honourable Mrs Justice Cockerill

The Honourable Mrs Justice Cockerill is one of the most influential legal minds of our time. As the first woman to hold a position as a chancery judge in the High Court, and one of very few state-educated judges, she has become renowned for challenging the status quo. This is reflected in her article – which she shares her life lessons on reaching successes, as well as the people, places and experiences that helped her along her way

The Editors in Chief have asked me to write a few lines about my career, and how I became (as I was when they asked me!) "Judge in Charge of the Commercial Court". On one level you could tell this as a very predictable story. When I was five, I wanted to be a judge … But to be honest that was just because judges got to tell people what to do, and life as a five year old was a bit short on that.

In fact, when I went to university, I had my sights firmly set on becoming a solicitor. My major interest was history, but I could see no prospect of a job coming from that. Law was interesting, and I had had opportunities to see the work of both local and city solicitors. I didn't know any barristers, and work experience with barristers was not something my school offered. Sure, my headmistress had said, "Why not a barrister?" but the only thing I knew about being a barrister was that you have to stand up in court in front of a terrifying judge – and I was entirely confident that I could never do that.

But by the time I came to near the end of my second year at university I had glimpsed the world of the barrister and secretly, it was what I wanted. I had seen devastatingly clever counsel in conference, I had fallen in love with Lincoln's Inn, I had taken papers down to Fountain Court Chambers into a beautifully decorated room lined with law reports and Loeb editions...

It was what I wanted, but I was just too afraid. Until, that is, two of my male contemporaries (whose abilities I did not rate) said, blithely and with utter confidence, that they were going to the Bar. At which point some version of Cheryl Sandberg's "What would I do if I weren't afraid?" principle kicked in,

with a vengeance. If they could do it, I couldn't believe that I couldn't too. My major change of plan was taken badly at home; I already had a training contract lined up with a top firm – how could I throw up this security on a whim? My father wheeled out his company's General Counsel to explain to me that the bar was sexist, and one had no chance – even as a man - if one had no connections. If anything were needed to stiffen my resolve it was this. I worked as never before to actually learn some law, and tried mini-pupillages in as many sets as would take me. One was an assessed mini-pupillage at what was then Four Essex Court (now Essex Court Chambers). They made me an offer of pupillage.

I joined Chambers and worked my way up – via shipping, insurance and re-insurance, commodities, banking and all the other myriad commercial disputes which charm away the time of the busy commercial barrister. The work was – and is – extremely varied. Think of any essential of modern life (electricity, gas, fashion, streamed TV - to pick a random few) and behind it lies a web of commercial contracts, which often lead to disputes. So a commercial barrister gets to find out a huge amount from the inside about a large number of different businesses. It is a wonderful job for anyone afflicted with insatiable curiosity!

I was very fortunate to be led in a number of cases by some really fantastic silks – most of those within chambers (including my pupilmaster Richard Jacobs QC) but also some from other sets, such as Julian Flaux QC and Peter Gross QC. It turned out that the advice I had been given – that it would be impossible for a person with no connections to make her way in this elite world - was about as far off the mark as it is possible to imagine. Throughout my career more senior barristers and judges went out of their way to be welcoming and encouraging to me – that was how the commercial bar was even back in the mists of time in the early 1990s – I can only say that I think it is even more so today. The commercial bar welcomes people of every background; perhaps the more so as the client base is so very international. With 75% of cases in the Commercial Court having at least one non-English party, and with London being the centre of a hugely busy and dynamic international arbitration business, recruiting people who reflect that diversity and who can bring different dimensions to a team is hugely – and increasingly - important. Of course I cannot say I never encountered sexism – in pupillage a partner in a City firm

asked me what I intended to do after my pupillage was over, plainly assuming I had no prospect of tenancy. On the other hand I suspect that in my early forays in court my rarity value got me a slightly kinder hearing than my male counterparts might have received ….

For most of my time in practise I had no idea of being a judge, despite the best efforts of Lord Mustill (who returned to chambers as an arbitrator, and with whom I got to work on some expert opinions for the US Court) to persuade me otherwise! The reason for that was a combination of realising just how many talented people wanted the job and how hard judges work for relatively little money compared to what one earns at the Commercial Bar. For most of this time the idea of being a historian actually had more charms; and in my spare time I started a bit of the research which would later lead to a rather substantial biography of Edward I's queen, Eleanor of Castile.

I took silk in 2011 and spent my first few years in silk with the interesting combination of big competition claims, lots of disputes about superyacht construction and the odd outing in the area of transnational obtaining of evidence – an eclectic mix. By this time my provisional plan was to work part time and write history part time. With my biography of Eleanor of Castile having been published and well received, I signed a contract to write a biography of Eleanor of Aquitaine; so all was set fair for that plan. But then someone suggested I try my hand in the upcoming Deputy High Court Judge competition, which was designed to provide a route to the bench for those with no previous judicial experience (traditionally it had been expected that those who wanted a career on the Bench would become Recorders, sitting in criminal cases, to gain experience). I was pretty confident I didn't want to do it, but 100% confident I wouldn't get it; I knew a number of the other applicants and did not consider myself in the same league. In the end I stuck an application in largely so that I could meet any future suggestions with the response that I had tried and failed, end of story.

To my immense surprise I was successful; and it was even more of a surprise when I found that I loved sitting as a judge far more than being a barrister, and even more than writing history. In truth the job combines the attractions of both disciplines. You get all the excitement of being in court (but you don't have to stay up all night preparing cross-examination), you get to decide the answer, and you get to write the story of why that is

the right answer. Sitting as a deputy was a huge challenge, of course – not least because as a barrister one specialises, and for most people (certainly for me) those specialisms narrow the more senior one gets; whereas a judge is a generalist. So, for example, I had to embrace the challenge of sitting in the Administrative Court – where I had never appeared at all in practice. Even in the Commercial Court, having done very little international fraud work, a good deal of what I saw was fairly new to me. Whether one enjoys becoming a judge depends a lot on one's appetite for a steep learning curve at this stage in life. For me it was and remains a treat to be learning so much every day. Even more than life at the Bar, it is an extraordinarily friendly and supportive working environment; people are really happy to spare time to answer questions about how the job works, and to allow you to "sense check" or work through difficult points.

I found sitting as a deputy constantly interesting and satisfying. And so, having gone into the process with no very serious thought of the bench, I rapidly moved to planning to apply in 3 years - then in 2. In the end I applied a year after I first sat as a deputy, and was appointed in Autumn 2017 – I had to start a bit late to get the final bits of research on Eleanor of Aquitaine finished to the point that I could complete the book in my holidays….

The full time job has proved to have even more charms than sitting as a deputy – as a full time King's Bench Judge I get to sit in the Court of Criminal Appeal, and to go out on circuit to preside over murder trials, as well as sitting in the Commercial Court, the Administrative Court, the Technology and Construction Court, the King's Bench Civil List and the Competition Appeal Tribunal. There is always something new to learn both as a lawyer, and about how the courts work. For example I was appointed Judge in Charge of the Commercial Court in 2020 while I did that job, which involved spending nearly all of my time in the Commercial Court, I learnt a huge amount about the complexities of listing cases as well as deciding them, and how to ensure people get their cases heard within a reasonable time, as well as about how the court interacts with other commercial courts around the world. Throughout the covid of course I had extra fun - trying to ensure that the court continued to hear its full roster of cases whether by live, remote or "hybrid" hearings.

After two years I stepped down as Judge in Charge last August and I am now very much enjoying being

able to do more of the broad spread of King's Bench work. So at the moment I am juggling an application on documents regarding disclosure in a competition case in the CAT with the closing submissions in a Financial List case about collateralised debt obligations; but next week I will be sentencing someone for manslaughter on grounds of diminished responsibility …. Never a dull moment, for sure!

Leading a Double Life as a Lawyer

By Martin Edwards

Solicitor and award-winning crime novelist Martin Edwards shares his experience of balancing a career in law with a passion for writing. With many law students feeling the pressure to join City law firms for the pay and prestige, his story is invaluable in showing how there are numerous paths to success, and that the pursuit of happiness can take many intricate twists and turns.

I never meant to pursue a career as a lawyer. Let alone spend a lifetime in the profession. I still can't believe it's happened, given that my sole ambition – from the tender age of eight – was to be a crime writer. But I've combined my legal work with publishing mystery novels for more than thirty years now.

Leading that strange double life has been great fun. The two worlds may be different – in fact they are *very* different – but I've found that experience and skills developed in one area turn out to be unexpectedly useful in the other. And I'd encourage anyone reading this article who likes the idea of writing as well as working in the law to give it a go.

From the moment I discovered Agatha Christie as a small boy, I never wavered in wanting to write my own mystery novels. And I didn't want to write just one – I was very clear that writing ought to be at the centre of my life. So I dreamed of writing a series of books. My early efforts, when I was still at junior school, weren't exactly masterpieces, but I kept going.

When I shared my ambition with my parents, they were horrified. For years they tried to persuade me to get a 'proper job'. Eventually I

surrendered and agreed to train to become a solicitor. Secretly, I resolved to give up the job as soon as I got my first book published…

I was lucky to be offered a place at Balliol College, Oxford, to read Law. I was the first person from my family to go to university – my Dad left school at fourteen and worked in steelworks. I found I enjoyed academic law, yet I still kept writing whenever I got the chance.

When it came to finding a job, I had a couple of offers from big London firms, but I worried that if I joined them, the work would get in the way of my writing. So I trained with a smaller firm in Leeds. In those days, there was no minimum wage, and I was poorer than at any other time in my life. However, I was committed to my ambition and started to write a thriller – in longhand. One of the secretaries at work offered to type it and we agreed an hourly rate. But she wasn't a fast typist and I quickly ran out of cash. So the book was never typed – probably just as well, because it wasn't much good!

I qualified and again turned down opportunities to join City firms. Instead I went to work for a small firm in Liverpool. The main attraction was that the two senior partners had both published books. They encouraged my writing and I started to publish articles in legal magazines on my subjects – commercial and employment law. I was then commissioned to write a legal book – on the business aspects of buying a computer system – and because this sold well, more commissions followed.

At the age of twenty-eight I became a partner in the firm, but I was worried that I wasn't progressing as a novelist. What I'd learned about deadlines and negotiating contracts with publishers was useful, but I realised I had to make the effort to write a novel that was of a high enough standard to be publishable. I decided to create a solicitor who indulged in amateur detection, and to set the story in Liverpool. The result was Harry Devlin, who first appeared in *All the Lonely People*. At long last, in 1991, I became a published novelist and the book was shortlisted for a major prize.

Contrary to my original plan, this *didn't* cause me to give up my legal career. I was married with two small children and a mortgage, and

I remembered my parents' words of caution. And I did *like* the law. In fact, becoming a published novelist didn't even cause me to give up writing legal books and articles. *Careers in the Law*, for instance, ran to numerous editions. I've always been keen to encourage young lawyers to develop their skills – and to make sure that they enjoy their careers as much as possible. I've also pursued a long-term interest in equal opportunities, which led to four editions of *Equal Opportunities Handbook* for two different publishers.

For many years I continued as a partner in the firm, while writing legal books and articles, and trying to establish myself as a crime writer. I was a member of the Law Society's Standing Committee on Employment Law for many years and I found that really interesting. Making sure that you do things that interest you is the key to maintaining good levels of productivity and efficient time management.

I won't pretend that it was always easy. I ran a large department for more than twenty years and managing people properly demands plenty of commitment. In many ways, the legal work itself seemed a lot easier than the various facets of management (including endless partners' meetings!)

However, I did find that writing, and mixing with fellow authors at literary events around the country and overseas, was a hugely enjoyable way of 'getting away from it all'. Quite therapeutic on some occasions….

I also felt that the narrative skills I developed as a writer were helpful to me as a lawyer – for instance, when acting as an advocate in the employment tribunal. Telling *factual* stories effectively is a valuable attribute in the law as well as in many other walks of life.

So I continued to juggle full-time lawyering with writing crime fiction and gradually my reputation as a novelist grew in the way I'd hoped for. There were setbacks along the way, mainly because I had an extremely clear idea of the type of stories I wanted to write. However, in my early years as a published author, the type of mystery fiction, in which intricate plots, as well as good characterisation and a strong setting are at the heart of the book, was rather out of fashion.

This is where having a 'day job' proved invaluable. Perhaps I see it

more clearly now, with hindsight, than I did at the time. Because I had a separate income stream, I could afford to write the type of stories that I really cared about and believed in, rather than the sort that publishers wanted me to write, simply to suit the vagaries of the market.

In the long run, this has benefited my writing in terms of maintaining quality. It's also helped my books to keep selling – even those I wrote a long time ago, when the legal profession, and the world as a whole, were very different. The truth is that, regrettably, this is a luxury often denied to full-time authors. I have plenty of friends whose writing has been affected adversely by marketplace pressures. Sadly, some of them have abandoned writing altogether.

For me, it was always vital to keep going if a particular book didn't sell as well as I'd hoped, and to believe that one day, if I stuck to my principles about writing, my luck would turn.

Finally, it did turn and in 2008 I received my first major literary award, a Crime Writers' Association Dagger. Before that, I'd had several shortlistings, but winning the Dagger was a breakthrough. I also started to write a blog, 'Do You Write Under Your Own Name?' which proved popular and made my writing more widely known. I enjoy writing the posts and the blog continues to this day.

I must admit, I was relieved when I was able to reduce my office work, and for the past nine years I've been a consultant, which has allowed me to find more time for writing.

Meanwhile, fashions in writing had begun to change and my type of fiction was becoming more popular. I also drew on my experience of writing non-fiction legal books (where it is obviously important to be clear and accurate) in writing non-fiction books about the crime genre. This led to my book *The Golden Age of Murder*, which won four awards; although it was non-fiction, this success sparked greater interest in my novels.

I've now published twenty-one novels, including eight in the Liverpool series, eight more involving 'cold cases' in the Lake District, and three set in the early 1930s, the Rachel Savernake books,

which have been the most commercially successful of all. My work has been translated into languages ranging from Hungarian, German, and Italian to Korean, Japanese, and Chinese.

In recent years I've relished travelling around the world to talk about crime writing in such exciting places as Hawaii, Iceland, Florida, Toronto, Dubai, and Shanghai. I've lectured on the *Queen Mary* and devised an online course for would-be crime writers called Crafting Crime.[1]

As the time I devote to the law has diminished, I've seized the chance to develop as a writer in a number of different areas. One exciting example was writing an audio drama for *Doctor Who*, which was recently recorded by leading actors. At present I'm working on a TV project in collaboration with a bestselling writer. There have been other fun experiences, such as taking part in *Christmas University Challenge 2022* and becoming President of the Detection Club, the world's oldest social network for crime writers.

So I'm now first and foremost a writer rather than a lawyer. In my mind, that was always the case, and I never made any secret of it. But I've benefited enormously from my legal career. Most importantly of all, I've enjoyed that career for its own sake, as well as loving the literary life I set my heart on all those years ago.

[1] www.craftingcrime.com

Six Years on from the Grenfell Tower Fire

By Professor Susan Bright

Professor Susan Bright is a Professor of Land Law and McGregor Fellow at the University of Oxford. She is most influential in the sphere of land law, and appears frequently on the reading lists of law students up and down the country. She has conducted ground-breaking research in the area of multi-owned property, as well as fire safety. Most notably, she has focused on the fire at Grenfell in 2017. Her article for the YLJ therefore discusses the shortfalls of the government in ensuring that the most vulnerable, are kept safe.

It is now almost six years since the fire at Grenfell Tower on 14th June 2017 in which 72 people died. On the next day the then Prime Minister, Theresa May, ordered a public inquiry. Phase 1 of the Grenfell Tower Inquiry focussed on the factual narrative of the night and reported on 30 October 2019, confirming that the primary cause of the rapid spread of fire was the cladding system that had been installed when it was refurbished a couple of years earlier. Phase 2 of the Inquiry, still underway, is examining how Grenfell Tower came to be in this condition, receiving evidence from a variety of industry and government personnel. Each week there are new, shocking, revelations including how an insulation manufacturer 'manipulated' official testing and marketed products 'dishonestly', how the Building Research Establishment failed to warn government officials about 'catastrophic' fire test results years before the Grenfell Fire, and how the government failed to amend building regulations despite various experts having expressed deep concern about fire safety issues in blocks of flats with recommendations that fire standards needed review.

The particular cladding system used on Grenfell Tower, known as ACM (Aluminium Composite

Material) with a polyethylene core, is highly combustible. As Peter Apps wrote in *Inside Housing*: "[…] the plastic in the middle will burn like solid petrol in the event of a fire".[1] Almost 500 high-rise residential and publicly owned buildings have now been discovered to have the same type of cladding systems. But this is not the end of the problem. Since the Grenfell fire there have been other residential fires that have destroyed blocks which are neither above the 'high-rise' category on which most attention has been focussed (18 metres or at least seven storeys), nor have ACM cladding. What has become clear is that fire safety issues are widespread in modern blocks of flats. Other types of cladding – particularly some HPL (High Pressure Laminate) and timber cladding systems –have also been found to be combustible. And then there are problems with balconies and internal compartmentation, as well as the major issue of missing cavity barriers. It's been estimated that up to 11 million people are caught up in the mess.

For those living in, or owning flats in affected blocks, the impact has been huge. Individual flat owners have been sent bills of five figure sums to cover remediation costs, many considerably in excess of £50,000. In addition, there are also ongoing regular costs in 'at risk' buildings: insurance premiums have soared, fire alarms have been installed, and in many buildings there is also a 'waking watch' – staff employed to patrol the building 24/7 and raise the alarm if there is a fire. The mental wellbeing impact of living through this crisis has been described by leaseholders as "catastrophic", "devastating" and "traumatic". For most it is not the risk of fire that is the major source of anxiety, but multiple intersecting worries: the financial impacts, the uncertainty around whether the building will be fixed, trying to navigate complex technical and legal details, feeling there is no-one to help them, and feeling trapped in a home that cannot be sold, or mortgaged,

[1] P. Apps, "Was the cladding legal", *Inside Housing* (London, 23 March 2018).

with life decisions on hold indefinitely. Many have become campaigners, joining the UK Cladding Action Group, the End our Cladding Scandal campaign, and other local campaign groups.

The injustice of the situation is obvious. Leaseholders, those who own flats in these blocks, are without fault. They did not cause the problem. Many defects are simply because developers did not build in according with the Building Regulations. But it is also clear that the regulatory system is itself particularly to blame. Evidence is emerging at the Grenfell Tower Inquiry that many people in both industry and the government knew that there were significant risks long before the Fire; warnings were ignored, failed test results were covered up, opportunities to tighten regulatory control were not taken up. It is a shameful story, and leaseholders are the innocents impacted by this. They could not have discovered the problem before buying. And yet they are the ones affected. It is their homes impacted. Under the terms of most leases the costs of fixing the problem can be passed onto the leaseholders and so it is their financial position that is devastated, and some have already become bankrupt. The fire safety crisis is both their present nightmare and affects their futures.

The weakness of leaseholders in law is indefensible. Few leaseholders have any cause of action against those who created the problem. Quite apart from the numerous funding risks associated with bringing groups of leaseholders together in order to litigate, as well as the challenge that itself poses, the major problems lie in the substantive law. A contrast is often made between the position of leaseholders, and the position of someone who buys a faulty toaster. Unlike for the purchaser of a toaster, there are no consumer warranties for leaseholders. The idea of caveat emptor ('buyer beware') in the context of buying a new build flat is wholly inappropriate. Nor are tortious remedies easy to pursue against the wrongdoers, the developers and others professionals. The cause of action that is most intuitive is negligence. But because of the House of Lords decision in

Murphy and Brentwood, any damages are seen as economic loss and therefore unrecoverable. The law need not be this way. In New South Wales, Australia, there has been recent legislation that introduces a statutory duty of care to protect homeowners against economic loss. The most hopeful cause of action is under the Defective Premises Act 1972 under which a person taking on work in connection with the provision of a dwelling owes a duty to see that the dwelling will be fit for habitation. Mounting litigation to secure a remedy for breach of this duty will not be straightforward, and even in order to reach the stage of issuing a claim there will need to be substantial expenditure on lawyers, court fees, and technical experts. Once the claim is issued the leaseholders may be at risk of having to pay not only their own costs, but those of the defendant if the claim does not succeed. And however strong a case there can never be guarantees of the outcome. One case, *Naylor v Roamquest*, has just settled. The claim was issued in spring 2019. Before the recent settlement there were more than 10 court orders (particularly focussed on case management), and 3 reported judicial hearings but the key substantive hearing, addressing whether there was a breach of the Defective Premises Act 1972 and what the appropriate remedy would be, never took place. Of course, the terms of the settlement remain confidential. But litigation is a costly, risky and emotionally draining process. Furthermore, for most blocks, mounting litigation has not been possible because the building is too old; a claim must be brought within 6 years of the work being completed. This is about to change: when the Building Safety Act 2022 comes into force at the end of June, the limitation period under the Defective Premises Act for historic work will be extended to 30 years. Nonetheless, litigation is not a good way forward.

What is needed is a speedy process by which at risk buildings are remediated. The person with both the legal responsibility to do this and the power to do so is the freeholder (as owner of the external walls and other common parts). Unless the block is collectively owned by

the leaseholders the freeholder may be the original developer or, often, an investor. The complexity of modern building ownership means that often the ultimate 'owner', the freeholder, is opaque and may be an off-shore entity. Before the Select Committee on Cladding Remediation the Building Safety Minister, Lord Greenhalgh, noted the difficulty of pursuing certain beneficial owners, the 'shadowy individuals that sit behind…shell companies' and who 'should be pariahs in terms of future business in this country'. The recent Chair of the National Fire Chiefs Council (NFCC) Roy Wilsher has also spoken of challenges in identifying the person responsible: "We have many examples of foreign nationals who now live in Jersey and have their money in the Cayman Islands owning blocks, tracking them down, making them do something is difficult." Again, this adds to the complexity in trying to get things fixed.

The scale of the fire safety problem and the number of people affected means that it has moved up the political agenda. There has been a significant shift in the tone of messages coming from the government since Michael Gove was appointed Secretary of State for Levelling Up, Housing and Communities. He issued a statement on 10 January 2022 warning developers that they will have to pay to fix the cladding crisis, and that there would be new measures to protect leaseholders. The current approach in relation to developers is largely one of the government 'persuading' them to remediate their own buildings, but this is shortly to be backed up by new provisions in the Building Safety Act 2022 that give the Secretary of State power to prevent non-performing developers from being able to secure planning permission and carry out future development. The Act also contains measures to protect some leaseholders from some of the costs, in effect forcing the costs onto the freeholders and developers. Where, as is sometimes the case, the freehold is owned by the leaseholders, (enfranchised buildings) there is to be a different approach, yet to be revealed.

Michael Gove accepts that the government must also take its share of responsibility for the failure of enforcement and compliance in the building safety regime. This is, perhaps, reflected in the public funds that have been made available to cover the cost of replacing cladding. But it is partial: it does not extend to non-cladding costs, and is not available for all buildings. Further, the scheme has been notoriously difficult to administer and many blocks have been waiting a very long time for the outcome of applications and the release of fundings. Although I have argued, with Douglas Maxwell, that the ongoing crisis constitutes a breach of the UK's positive obligations to preserve life under Article 2 of the European Convention on Human Rights, pursuing a legal claim under the Human Rights Act 1998 would not be easy and would entail many procedural and practical challenges.

It is shameful that almost six years on from the tragic events at Grenfell Tower there are still millions of people unsure about whether, and when, their flats will be made 'safe enough', and who is going to pay for it. Although the change in tone from the government since the appointment of Michael Gove as Secretary of State is to be welcomed, and following the Building Safety Act 2022 some leaseholders no longer carry such large financial risks, there are likely to remain a substantial number of buildings stuck without remediation for many years. There still needs to be more done, more accountability, and more funding.


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