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Mishcon de Reya

# 75

## An essay collection

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# Thinking about values

In 1937, 22-year old Victor Mishcon opened a one-man office in Brixton, south London. In 2012, Mishcon de Reya now employs more than 500 people in its offices in central London and New York City. In 75 years a lot has changed.

We recognise that as we grow, and the legal, political and social landscape around us changes, we must adapt too. However, there is something upon which we will not compromise. Our core values, formalised in 2001 and based on the culture instilled in the firm from day one, are at the heart of everything we do. They champion integrity, diversity and innovation. They encourage us to welcome differing opinions and new ideas, to respect fearlessness and creativity. It is for these reasons, and in honour of our values, that we chose to mark our 75th anniversary with this publication, entitled simply “75”.

This is not a typical corporate anniversary volume, charting the chronology of our firm.

Instead, you will find in these pages a collection of essays. From Ed Howker taking us on a stroll through the history of London property and Clive Anderson considering what makes a lawyer a “learned fiend”, to Mary Riddell navigating us through the challenges faced by today’s children and Peter Beaumont exploring how the Arab Spring has tested our understanding of international democracy and law – we believe these thoughtful, stimulating and sometimes provocative essays reflect the changing nature of our global society and the diversity of opinion we hold sacrosanct.

The collection includes a thought-provoking conversation about the nature of law and justice between our deputy chairman, Anthony Julius, and Jo Glanville, director of the writers’ organisation, English PEN.

We are proud to present this collection in conjunction with youth employment charity The Creative Society, which helps jobless young people find work in the creative industries. The charity has been involved at every stage in the production of this book, giving valuable experience to the young people involved.

In the years to come at Mishcon de Reya, we will be assessing our impact upon society and how to ensure we remain true to our core values for the next 75 years. For us, this starts with an understanding of the diversity, not only of our client base, but of each other – of our life experiences and our opinions.

We hope that you will find the wealth of ideas contained in this collection engaging, entertaining and inspiring.

Kevin Gold  
Managing Partner

November 2012



# THE STREET WHERE YOU LIVE

*The changing fortunes of London's citizens are reflected in the value of their homes. Yesterday's down-at-heel terraces have become the smart town houses of today's millionaires. But a thriving city needs houses for all its workers and the key to future prosperity lies in making space for a diversity of incomes and talents*

WALK with me down Portland Road in the affluent Royal Borough of Kensington and Chelsea. We will start on a warm summer evening at the south end by Holland Park Avenue. When we leave the main road you will notice two things: that the traffic noise quietens and that the houses that line each side of Portland Road are fairly called beautiful. They are freshly painted white and flat-fronted in the Georgian style, the rooms within them high-ceilinged and lit by large unshuttered windows.

As we amble along, I'll relate that the British media call this "the archetypal banker street" as we spy smartly dressed residents arriving home from work. When the BBC aired its television series *The Secret History of Our Streets* earlier this year, Portland Street featured as one of the most "gentrified" in London. The men and women who live here are without question rich. They may even be happy. Their properties certainly give them good reason to be – in the past year, they have seen their homes grow in value more rapidly than their FTSE stocks. "What's more," I'll say, "You can join them. All you need is a cool £2.5 million to buy a house here or perhaps £80,000 to rent one for a year."

I don't doubt that you're a person of some means but even if you have that kind of money in loose change you'd be wise not to flash it about because, as we progress north, something rather strange begins to happen. The smooth paint on those Georgian facades begins to crisp and peel, the plaster work begins to crack and splinter and those fine terraces begin to dilapidate before our eyes. Stranger still, children with grubby faces and mothers in grimy aprons emerge on to weathered doorsteps. Above them, shouts and giggles and screams can be heard on the first, second and third floors. Surely these can't be the families of those archetypal, elegant bankers? That once-peaceful street begins to buzz with activity – with flat-capped men in poorly fitting suits, with horses and traps, with poverty and family.



By  
Ed Howker

# Doesn't it seem strange that even land, bricks and mortar, usually considered among the most secure of the investments we make in our lives, can change and change again in a few short decades?

“That’s funny,” you say, “just moments before, Portland Road seemed the very picture of metropolitan sophistication. What’s going on?” I confess I have led you astray. This is no ordinary stroll, I explain. We are in fact, walking through London and through time itself. We’re still on Portland Road. It’s just that the year is now 1937. “You’re taking it very well,” I say, “as well you might – now you can live on Portland Place for a rent of just £2 a week for the whole house.”

You look surprised. “But there is a drawback,” I continue, “Portland Road is a slum in the 1930s. A family of six might live in just two rooms, two or three rooms to a floor, five floors to a house. The roofs on the terraces leak. The residents share a single bathroom. And you won’t catch a banker here unless he has an uncommonly poor sense of direction...”

At that moment I’m interrupted as a crash shakes the whole street and the huge chimney of the Notting Hill Brewery that once stood at the northern edge of Portland Road collapses. It is being demolished for public housing which, as we walk towards it, springs up before our eyes. Lace curtains appear in the ground floor windows, flower boxes bloom beneath them. Satellite dishes fix themselves on to the walls. And, just as soon as they arrive, the kids with grubby faces begin to disappear, replaced by teenagers in hooded tops, men in overalls and women with pushchairs. As Portland Road folds into Nottingwood House, we arrive back in the present day. The social housing that surrounds us – much of

it sold off in the 1980s under the right-to-buy scheme – may not be particularly pretty but it was welcomed by tenants in the old houses because it did at least provide room for private ablution.

As for the purpose of our walk: I wanted to consider why Portland Road, and hundreds more streets like it, have changed their look, and value, and purpose so often and in such a short period of time. Today the north end of the road is still classed as “social” housing while homes at the southern end are some of London’s most expensive. But before homes were built on Portland Road in the 1850s, the whole area was piggeries and potteries. The original development was designed for the urban middle classes. By 1899, in Charles Booth’s London poverty map of this area, he describes the residents as “poor”. In a later version in 1929, those at the north end were called “degraded or semi-criminal”. By the 1960s the street began to be gentrified once more by young families of the middle class. Today, those who live at the south end number among the richest in the history of the world. And put like that, doesn’t it seem strange that even land, bricks and mortar, usually considered among the most secure of the investments we make in our lives, can change and change again in a few short decades?

## *Gentrification*

For each generation living there, Portland Road has had a different connotation but what has caused these connotations to change so dramatically?

Well, some argue that the modern gentrification of Portland Road is a simple manifestation of the immense and growing wealth of the city that surrounds it – and there is truth in that. Others might say that houses in the Georgian style have become particularly fashionable, Holland Park a particularly fashionable place in which to own one. That’s partly true too but we might note also that fashions can change.

Examine the Barbican Centre, located in the heart of the City of London. Designed in what came to be known as “the new brutalism”, this brown-grey concrete development was voted the ugliest sight in London soon after it opened and offered apartment housing of commensurately low value. Now, small flats change hands there for a little more than £1 million. The Barbican, like the houses of Portland Road, is Grade-II listed by English Heritage. It is no small credit to London that these opposing styles of housing can both be considered fashionable enough to protect. But neither capitalist triumph nor architectural fashions completely explain what has happened in these two areas and across London more generally.

What might be difficult to see from the position of the householder, or even in the estate agent’s window, is that for years now London has suffered from a housing shortage – a plain-as-day miscalibration of supply and demand which has created a permanent sellers’ market. The effects of this reverberate from the centre – Zone 1 as the tube map says – all the way out to the far corners of the south-east of England. In short, there are not enough places to live.

Property experts know all this well enough and they know, too, that the situation will not change any time soon. Even as the British economy continues to recover only reluctantly from the 2008 banking crash, analysts predict that the shortage will intensify. Greater London will have just two-thirds of the houses its working population requires in 2021, with the shortage felt most acutely in Zone 1. What is more, the problem is likely to be exacerbated by two connected factors. One is the continuing trend of speculation in the market. Since the turn of the millennium, buy-to-let has been driving purchase prices harder than first-time buyers entering the market. Another is that London property has become a landing-ground for capital flight from the world’s fastest growing, and some of Europe’s fastest slowing, economies: in the past five years such buyers have invested nearly £17 billion here. The homeowners in Portland Road, the Barbican and across London should note that values are likely to continue to rise as a necessary consequence of all this. But there are other consequences too.

House prices will continue to outstrip the wages

of large numbers of the working population, with the effects felt most severely by young workers and immigrants. Young families find themselves priced out of home ownership and forced to pay nearly half of their earnings in rents. Further down the income scale, one-third of those born in the capital are still living with their parents as they turn 30, and couple formation rates and marriage rates have been shown to suffer as a result. In this way, the increase in the value of London’s houses, that has been so beneficial to long-term residents, imposes huge costs on the next generation of its inhabitants. Some might say that this is merely the market in action. After all, if some are unable to afford to live in a major global city, others can and will take their place. But, this logic fundamentally misunderstands the nature of city living.

## *Cities need diversity*

It is Ed Glaeser of Harvard, author of *Triumph Of The City*, who first properly explained the relationship between urban dynamism and low incomes. For Professor Glaeser it is axiomatic that low-income households are drawn to cities since they offer greater opportunities for employment, cheaper amenities and more integrated public transport. Meanwhile, cities themselves thrive by consuming the influx of new labour and grow their wealth accordingly. But if this balance is askew, for example as the result of the high cost of housing, a city’s economy can only slow in the long-term and everyone there will suffer for it. Glaeser claims, in fact, that cities such as Tokyo, New York and London thrive specifically because of an urban architecture that concentrates a huge diversity of incomes, social backgrounds and races, the knowledge of their people and the competition between their new ideas. The metaphorical melting pot is a crucible of growth.

In the twentieth century, Britain addressed all this by building literally millions of social housing units, guaranteeing a place for London’s poor. But this project, which began in the 1930s, slowed to a halt in the 1980s. Following the right-to-buy scheme (in which the homes at the north end of Portland Road were sold off) there have been fewer and fewer places for those on low incomes to live in London. Instead, Britain now attempts to address the capital’s housing crisis through transport infrastructure improvements such as “High Speed 2”, a super-fast rail service connecting London with Britain’s second city, Birmingham, and Crossrail, which connects the far eastern and western edges of the capital with the centre. If people cannot live in the city, they can at least travel to it. But will this be enough?

For Glaeser, at least, “London has imposed a huge cost on itself by keeping its height so low - far too low relative to what an incredibly exciting, great city it is.”

For years now London has suffered from a housing shortage – a plain-as-day miscalibration of supply and demand which has created a permanent sellers’ market

A legitimate concern is that the urban sprawl given licence by transport projects may slow the capital’s growth when compared with other global cities – a commute, however rapid, is no replacement for the dynamism of urban living.

But what does all this mean for Portland Road? Well, in a sprawling city, the architecture of the Portland Road houses, the Barbican and much else in London will be well protected and while globally it remains fashionable to invest in London property, its value will also be protected. But, in a few decades’ time, if London’s housing shortage leads to economic underachievement, that value may begin to stall and fall. For the international investors, this presents little problem – they can move their money rapidly enough. Residents, however, face a disquieting prospect of being tied to housing that is not worth quite as much as they may have hoped.

Today, London’s homeowners are apt to take the history of their communities seriously, waving heritage listings at any who would threaten their streets. Londoners – be they owners, tenants, commuters or dependents – may sometimes seem isolated, their community may seem impersonal, and, in an old city, the past can sometimes seem more tangible than the present. But London changes shape faster than we think. In just 150 years, the land at Portland Road was transformed from industrial land to respectable, then poor, then disrespectable, then fashionable housing. Try though we may, we cannot starve the city of the nourishment it needs or freeze our streets forever and still call ourselves true to the place.

In that sense, the story of Portland Road is the story of London and its people – of limitless possibility, of fortunes changed. And the next time we walk the streets, we should admire them, not just for the history they reflect but also for the dynamic future they represent. 

1937

By  
Barbara Gunnell

The year Victor Mishcon opened a one-man legal practice on Brixton High Street in south London was a period of mass unemployment, economic decline and hardship for many. A university education was out of his reach and he was obliged to learn his trade on the job. The 22-year-old Mishcon would identify with young Londoners today.

George Orwell wrote *The Road to Wigan Pier*, recording grinding poverty in the industrial north. Beyond the UK, a vicious civil war was underway in Spain; in the Soviet Union show trials culminated in the execution of hundreds of thousands accused of anti-Soviet beliefs; in Germany, the growing Nazi threat to European peace was becoming clear for all who wanted to see it.

Yet 1937 was not a year of fireworks – that was 1936 with fascist riots in London’s East End, the abdication crisis, and Hitler’s propaganda Berlin Olympics. 1937 was a Janus year; looking back on those events and forward with foreboding. Within two years, Victor Mishcon and an entire generation would leave homes and jobs to fight in the second world war of that century.

In May, George VI was crowned, a coda to the 1936 crisis when his brother Edward had chosen the woman he loved above the throne. “Bertie” was a reluctant King, a stutterer and, in the opinion of many, not up to the job. His family of four moved into Buckingham Palace, his and their quiet fortitude ultimately hugely appreciated.

There was also creativity and fun. J R R Tolkien published his first high fantasy novel, *The Hobbit*, to instant critical acclaim; Walt Disney’s *Snow White* and the Seven Dwarfs was released, the first full-length animated colour film ever; and the first issue of the *Dandy* comic from Dundee publishing house D C Thompson hit the news-stands. Born that year were the playwright Sir Tom Stoppard, football legend Sir Bobby Charlton and Welsh singer, Dame Shirley Bassey.

Interestingly, and perhaps unpredictably, it is the legacy of the joyful events of 1937 that makes a larger contribution to our lives today. 

# The gap between law and justice

*Anthony Julius, Deputy Chairman of Mishcon de Reya  
in conversation with Jo Glanville, Director of English PEN*

*JG: Anthony, if you had to identify the factor in the lifetime of Mishcon that represented the most important shift in the impact of the law on society, what would it be?*

AJ: Let me identify two, and then I’ll make a stab at assessing which is the most significant. One is national, the other international. And they relate to the period across the end of the twentieth century and the beginning of this century. I joined Mishcon’s in 1979 so we are talking about the last two decades of the twentieth century and the first ten or eleven years of this century. As I joined, there was the emergence of a culture in our own legal system of judicial review.

And that felt, at the time, to be immensely important. I found myself acting for the Prison Officers Association.

I was brought into cases where prison officers were troubled about the erosion in their authority because of prisoner litigation directed at disciplinary decisions being made in prisons. Hitherto, the legal view had been that what went on in prisons was essentially a matter for prisons. Prisoners did not have the right to complain about disciplinary matters. Then the courts decided there should not be spaces in our polity that were free of judicial scrutiny and that no decisions by people with statutory responsibilities, politicians and other people with power over the rest of us, or a fraction of the rest of us, or a particularly vulnerable fraction of the rest of us, that were not subject to judicial scrutiny.

For me, the readiness of the courts to assume jurisdiction over decisions and spaces that hitherto had been immune from such review was really important. It related to changes in political theory. Think about the history of the twentieth century – two major challenges to liberalism, first from the Right and second from the Left. The challenge from the Right collapsed in 1945; the challenge from the Left in 1989. What that meant was not quite “the end of history”, but the end of the twentieth century’s challenge to the late-nineteenth century liberal world order, represented, in an institutional sense, by the League of Nations.

Liberals tend to think of politics in terms of holding the ring – what Ronald Dworkin, for example, talks about when he identifies the liberal privileging of “the right over the good”. Liberalism is not about this or that concept of the good life, but rather about allowing competing versions of the good life to flourish under conditions of fairness for all.

So, the juridification of political life, by which I mean the readiness of political institutions, political parties, political actors, to conduct their political contest by reference to legal principles, litigation, treaties – and all the rest – was very significant.

The second development was at the international level, and concerned the readiness of national and supranational institutions to intervene in political arrangements in third party countries. This was and continues to be of immense

significance. It is not just Iraq or Kuwait, or Serbia or Libya, or the absence of intervention in Syria; this is also about the post-Nuremberg emergence of international and criminal bodies that have the power to pursue individual malefactors.

I identify a connection between the two: the growth of the judicial review culture in the UK, and the emergence of supranational institutions to police the world (and the readiness of individual nations and those institutions to go further than policing and engage in interventionist wars). Both are about making coexistent the world and the legal governance of the world. They are two aspects of the same larger political-legal project.

*JG: Do you think that the developments you identify – an extraordinary movement for global justice and developments in national justice – bring an expectation of justice through society at every level that is actually very difficult to fulfil? Whether this is in terms of international justice where the UN, as is the case with Syria, has had its hands tied by the national and international interests of members of the Security Council, or in terms of the man in the street who does not have access to justice because of the changes to Legal Aid in the United Kingdom?*

AJ: Yes, I think that is right. First of all there is an increased expectation of justice, which is going to be frustrated.

## Lawyers have an immense capacity for doing good and an immense capacity for doing evil



The increased expectation is a result of the collapse of alternatives to the liberal project, and what the liberal project itself promises but cannot deliver. Early in my career I read a novel by William Gaddis, *A Frolic of His Own*, where someone says: “Justice? – you get justice in the next world; in this world, you have law.” It has stayed in my mind. It’s inherently memorable! All progressive political movements seek to close the gap between law and justice in this world. And, in that sense, liberalism is not different from the Leftist project. But, when in a very public and vocal way you are striving to close the gap between law and justice, you encourage people to think it can be achieved. And of course it cannot be – not entirely. So disappointment, frustration, anger – and resentment – is written into that project.

That is the bit that no one can do anything about. What people can do something about is creating expectations with one hand and then attacking and disabling them with the other. Such as, in effect, the destruction of the legal aid system in this country. Such as, an incomprehensibly arbitrary interventionist/non-interventionist, non-strategy pursued by national and international institutions so that it is impossible for any opposition group, say, in a country oppressed by a dictatorial entity, to know the criteria it must meet before a successful appeal for outside assistance can be made. So, yes,

there is a high level of expectation – with disappointments and frustrations written into it.

*JG: You mentioned the failure of fascism and, many years later, the failure of communism. Do you think expectations of justice became divorced from those old political positions and much more centred around the human rights framework with the collapse of those ideologies?*

AJ: I’ve seen it said that human rights are the new religion, or a substitute for a religion. I think that misunderstands the development and, in a way, is also a disparagement of it. The emergence of a human rights political culture feels to me an unqualified good, and part of a rational and (at least partly) realisable project of narrowing the gap between law and justice – which can never of course be closed. It feels to me, when I think back over my own life, which began in the arctic depths of the Cold War, that I would be as entitled as any sunny nineteenth-century liberal optimist to regard the trajectory of my life, and the period in which it has been lived, as describing an unrelentingly upward arc.

*JG: Thinking of the execution of Saddam Hussein and the lynching of Gaddafi; maybe those acts would always be shocking at any time to witness. But is it true to say*

*that now, with expectations of justice, however heinous the crimes of these men, we need to see a process of justice?*

AJ: Yes, that is true. But I also think that if the laws of war themselves represent principles of justice then killing in combat is one thing and killing following capture is another. I would like to see more thinking on whether a third, in some sense “middle” category can emerge. I am not a public international lawyer, but I have discussed with friends the question of whether it is possible to identify some rationally defensible category which is predicated neither on the premise that the world is a single police precinct nor the premise that the world is a place in which the mere declaration of a war on terror allows one particular country to just rampage through the globe acting without any regard or reference to normative behaviour.

We are constantly, in political terms, being confronted with this choice. Either the world is a single police precinct and the UN is the equivalent of the friendly police sergeant at the desk, or the world is a jungle in which the good guys are fighting the bad guys and to seek to restrain the good guys from pursuing the bad guys is to side with the bad guys. Can a third principle emerge, which is not just some half-witted

attempt at compromise? What is that principle? That feels to me like a genuine, and important political-legal project for our time.

*JG: Tell me more about lawyers and their emergence into politics – exploring this theme of what you call “juridification”. Through history, in extreme periods, we have seen lawyers and judges pulled into taking political positions or being exploited by political parties. How does this manipulation occur and what part do lawyers, as political actors themselves, play in politics?*

AJ: Plainly, lawyers in the legal system are vulnerable to manipulation. The Leveson Inquiry is an obvious example. Freedom of expression and freedom of the press, in particular, as a sub-set of freedom of expression, are purely political issues.

The idea that a lawyer can competently address a political issue is a weird misunderstanding of the hierarchical relations between politics and law. It precisely inverts them. The question of the character of a freedom of speech regime in any particular country will be settled by politics, not by law.

That David Cameron, who is not a lawyer, should have thought this sensible is an indication of the extent to which an utterly misinformed culture defers to lawyers and judges in particular. That is

one reason. The second is that it is a familiar political reflex that if something requiring critical attention of a political character arises, and you do not want to have to deal with it, no one is going to criticise you for taking a moment of reflection, and then go on to say: it should be a judge. Judges are, in the gallery of heroes and villains in national political life, in the main, on the heroes’ side. They are professionally required to be impartial, sagacious and fair-minded. Who would not want that kind of person? The problem is this does not address the question of whether judges are competent to address political concerns. A judge, for example, would not be in a position to sit in a laboratory and undertake experiments in a particular scientific project. Because that is not what lawyers do.

*JG: Is it also about political failure?*

AJ: Yes, it is that too. The manipulation of lawyers is a way of avoiding having to make a hard decision, but it reveals a misconceived deference to lawyers. Putting to one side how lawyers are used, misconceived, misrepresented, exploited – ask the question: what about lawyers as political actors? Not how they are perceived or used, but as purposive, independent political actors in their own right. That is a separate and immensely interesting question and takes me to an analysis of exemplary legal

careers in the twentieth century: a place where legitimate crude thinking can play its part, and does, for example, in the opposition of Andrey Vyshinsky and Hans Litten.

Any lawyer going into the profession would have to understand he or she is going into a profession that has an immense capacity for doing good, and an immense capacity for doing evil. That is not really understood. In the case of the doctor Harold Shipman, for example, he was and is regarded as an abhorrent and also aberrant individual – acting independently of his function as a doctor in the murders he committed. But lawyers also have a capacity for doing great evil in their capacity as lawyers. Acting as lawyers. The hysterical, intimidatory, denunciatory, oppressive bullying and verbal violence directed at the old Bolsheviks and others by Andrey Vyshinsky during the Moscow trials of the 1930s is one of the most deforming events in the history of the legal profession in the twentieth century. Probably ever.

Hans Litten, on the other hand, was an extraordinarily fearless, remarkable lawyer who was ready to cross-examine Hitler and use the courts as a forum for political intervention and for good. That is also the answer to the liberal who argues the priority of right over good – the right itself is the good. In some respects. 

# RECESSION'S CHILDREN

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*Britain's promise to children has always been that each generation will do better than the last. That pledge is hard to keep in a time of austerity but there are other ways to improve the lives of young people*



By  
Mary Riddell



PHILOSOPHERS have long debated the moral hard-wiring of the very young. To John Locke, the newborn was a *tabula rasa*, receptive to nurture and unrelated to Jean-Jacques Rousseau’s “noble savage”, imbued with a natural sense of right and wrong.

“One-nation Britain”, the legacy of Disraeli to which many across the political spectrum now aspire, currently contains two childhoods. The chasm between the rich and the poor, the spoiled and the deprived, the angel and the monster has rarely seemed greater. To adults, children represent the struggle between hope and fear. Their lives, seen through a grown-up prism, reflect our failings or amplify our virtues. They offer a glimpse of our perfectibility or our capacity for destruction. They are our final warning or our last best chance.

Long after the French sociologist, Philippe Aries, first argued that children were not merely apprentice grown-ups, childhood remains a wholly-owned subsidiary of the adult realm. Children’s needs, rights and wishes are defined by adults who set legal, cultural, social and political requirements according to the general assumption that the child’s best interests mirror those of the people who make the rules. Given the fairytale vision of children as good or evil, this is unlikely to be the case.

Austerity, poor education, family breakdown and reduced access to the law all threaten the life chances of recession’s children. The “British promise”, under which each generation does better than the last, is being ruptured. Even before the financial crash of 2008, childhood was a checklist of adults’ negative ambitions — that young people do not get seduced by chatroom predators or lipstick marketers; that they do not become obese or anorexic; that they are not denied a place at the best school or university; that they do not end

up drunk, drugged, pregnant or dead. British children are among the safest in the world, and yet fear of risk is now so exaggerated that it causes dangers, rather than averting them. Withholding the MMR jab, on the spurious ground that it might be linked to autism, allowed the dangerous disease of measles to resurface.

### *Neverland*

If dreams are rationed, then so are the uses to which children can be put. Since we lack a market for under-age chimney sweeps and long ago gave up procreating out of social habit, it is customary to ask what children are for, beyond helping to sustain our rapidly-growing ageing population. Society would be offended to think itself child-hostile, especially when worship of the young can border on the maudlin.

We need to be clear, though, where this sentiment is focused. The grief unleashed when a child is killed by a stranger or, much more frequently, by a parent endorses old myths of childhood. Recycled media portraits of those who meet terrible fates depict children who will never age.

Unchangeable as their peers grow old before their time, they will not become drop-outs, or teenage rebels, or failures. These lost children will never crush the fantasies of adults. Dreams of a better childhood are not only born of nostalgia for a golden Neverland. They are also the sensible basis for public policy. Despite instigating a lamentable crackdown that served to criminalise and jail record numbers of children, Tony Blair also oversaw some progress. His pledge to abolish child poverty by 2020 set the tone for Sure Start programmes, designed to support children and parents from all backgrounds. By 2004, childcare provision

was improving, though still inadequate, with one place for every four children under the age of eight. By 2005/06, spending on early years education and childcare had tripled to £1.5 billion since 1997.

In 2012, the picture looked far bleaker. Government figures showed 281 fewer Sure Start centres than in 2010 when the Coalition government came to power. In October 2012, Graham Allen, the Labour MP who had worked with government to champion early intervention, wrote to David Cameron, warning him that plans to divert grants worth up to £1.5 billion would be “economic folly”. Meanwhile, with 2.3 million children still living in poverty in the UK in 2010/11, according to the Joseph Rowntree Foundation, it was clear that the progress made in the pre-recession era was slipping.

And yet there was an outcry in parts of the media when Save the Children, originally founded in 1919 to alleviate the starvation of children in Germany and Austria-Hungary, announced its first appeal in memory for British youngsters. Commentators fulminated that the UK’s curse was not poverty but the parents who spent their benefit cheques on burgers and wide-screen televisions. It was left to Justin Forsyth, Save The Children’s chief executive, to remind critics of the emergence of food banks in Britain and point out that many of those struggling to cope were the working poor. Where in the mid-1990s, 45 per cent of children in poverty had working parents, that figure had risen to 61 per cent by 2012.

In the centre-left analysis, poverty is a determinant of educational failure, addiction, crime and family breakdown. The work and pensions secretary, Iain Duncan Smith, believed that the reverse was true. With £18 billion of welfare cuts already announced, and more to

come, the government had already missed, by 600,000, the target of halving child poverty from the 3.4 million of 2000. Mr Duncan Smith’s answer was to get the numbers down by measuring child poverty differently.

On his figures, £171 billion had been spent on tax credits and almost £330 billion extra on welfare between 2010 and 2013 just to stand still. Whatever the view on his approach, no one disputed that the stratagem of alleviating poverty by increasing tax credits was unsustainable and that redistribution would have to be replaced by measures such as a living wage – an approach the Labour Leader, Ed Miliband, described, for want of a more voter-friendly term, as “predistribution”.

Far away from the boardrooms, however, divisions were widening between the affluent and the deprived among recession’s children. As Andrew Adonis noted in his book, Education, Education, Education, schools have been a weak engine of social mobility, with only six in ten children leaving school with five good GCSEs. For several years young people classified as NEET (not in education, employment or training) hovered around one million.

Even for the more fortunate, there was no presumption of happiness. Depression is reported to be up 70 per cent since the mid-1980s and stories of teenage suicide, self-harm, materialism, fecklessness and drinking binges suggest that society has the effect of alienating its young.

### *Alienated adolescents*

Few citizens are as darkly drawn as adolescents. The fear of “bad” children encourages government to bow to – and perhaps unwittingly to inflame – mob instinct. The age of criminal responsibility is set worryingly low,

## Society would be offended to think itself child-hostile, especially when worship of the young can border on the maudlin

at ten, and although the numbers of children in prison have fallen since their peak during the Blair government, the state has proved a shameful custodian.

In January 2012, two teenagers died in prison. Jake Hardy, 17, was found hanging in his cell in Wigan, and Alex Kelly, 15, was discovered unconscious in a youth jail in Kent. Their names join the roster of the 272 under-21s (of whom 33 were not yet 17) who, at the time of writing, have died in custody in England and Wales since 1990. In general, their fates provoke no public outcry. When, occasionally, the story of some vulnerable youngster emerges, society realises that it was all a case of mistaken identity. These boys, not our monsters but our victims, were only children after all. That is not to condone bad or violent behaviour – merely to suggest that juvenile law-breakers, including the baby-faced rioters brought before the courts following the summer riots of 2011, are not an alien breed but, in many cases, a mirror to the family, community, neighbourhood and nation that shaped them.

Britain has trouble defining, in cultural terms, a coherent philosophy of childhood. As a consequence, children are treated simultaneously as fragile innocents, sexually-aware consumers or yobs and thugs – in other words, as mini-adults. Even small children are, for example, expected to be silently stoical about parental absence and divorce.

If recent trends continue, more than a third of new marriages will founder within 20 years, and four out of ten will end in divorce. With divorce rates in England and Wales among the highest in Europe, more than one in four children will have lived through a parental break-up before he or she is 16. Studies have shown that, while most go on to develop normally, and indeed benefit from complex families, a minority will

fare worse. This group is likely to become poorer, live in worse housing, do less well at school and leave earlier, get pregnant earlier than their peers and have problems with smoking, drinking and drugs.

While class and money do not ordain contentment or alleviate family conflict, that list suggests that children in material deprivation are prone to fare worse when a family breaks up. The adverse effects of divorce are unlikely to be mitigated by changes in family law. The family justice system, as it stood, was far from ideal, with long delays to court hearings. There are, however, grave anxieties that the modernisation drive may make things worse.

The first main change so far relates to what happens to children after a separation. The government has said it wants to get rid of the terms “residence” and “contact” and replace them with child arrangements orders. The favoured presumption, contrary to recommendations by the Family Justice Review, is for a statutory provision for both parents to stay involved.

While this may look like common sense, the notion – implicit in the proposal – that children split their time equally between both parents is not necessarily in their best interests. Prior to a planned restructuring of the family courts in 2013, the Legal Aid, Sentencing and Punishment of Offenders Act 2012 slashed legal aid, prompting Resolution, the family lawyers’ association, to warn of “potentially devastating consequences”. Not only would the courts, of which 40 per cent face closure, be clogged with people representing themselves, but more children may lose contact with a parent or suffer because of an unfair settlement. According to Resolution members, less than 25 per cent of those they currently help would still qualify for legal aid. Once

again, families who cannot afford access to the law are likely to fare worse.

### *A way forward*

Over a range of areas, children are the silent victims of a recession that, even when growth returns, will have damaged many lives, some irretrievably. There will be no return to the tax-and-spend era or to a redistribution programme that smoothed the roughest edges of inequality. This, then, is the chance for any government to make a virtue out of necessity by reversing the costly policies that perform the double feat of damaging children’s lives at great cost to the state.

So, on justice, the age of criminality should be raised, and no child be jailed or put on trial in an adversarial process designed for adults. Their cases, however serious, should be treated as matters of child welfare.

On early intervention and on education, government must realise that short-term savings inevitably lead to longer-term public expense. Each teenage Neet is estimated to cost the Exchequer £56,000 during his or her lifetime. Doubling nursery provision, bolstering Sure Start and introducing a technical baccalaureate are among the measures recommended by Lord Adonis, who echoes the (still controversial) view of the Conservative education secretary, Michael Gove, that academies should be rolled out to raise standards.

On the law, the streamlining of the family courts should be carried out in strict accordance with the best interests of children. That test would mean reining back excessive cuts to legal aid.

Finally, children’s rights (a lesser and even more dimly-viewed subset of human rights to many citizens) should be routinely invoked and

honoured. It is no coincidence that the UK, more cavalier than many comparable nations in observing the UN Convention, also fails its children so frequently.

That neglect is woven through society. The notion of the good child and the bad is as old as folklore and as new as every dreadful story to hit the media. A third of British children never go outside the home alone because of fears of abduction and murder which are still, despite tragedies, a minuscule risk, unchanged in six years. These privileged prisoners have disproportionate anxiety invested in them by a society terrified for some children and terrified by others.

Many children have wonderful childhoods. It would be ludicrous to compare the lot of poorer children born in the twenty-first century with their Victorian forebears. And yet something is missing. Young people, absent from government debate, become society’s focus chiefly either in rare and tragic cases or to make an (often spurious) political point.

Soon after the riots of 2011, Ashraf Rosli, a 17-year-old who had his jaw broken by a rioter and then, while being “helped” back on his feet, had his Playstation stolen, declined to share the view of much of the media that he was the victim of a feckless culture. He was not angry with his young attackers, he told the BBC. He forgave them, and he still believed in Britain.

So much for the broken country lamented by Mr Cameron. Long ago, another British Prime Minister, John Major, announced in the aftermath of the killing of the Merseyside toddler, James Bulger, by two young boys, that society should “condemn a little more and understand a little less”. He was wrong. In the interests of tomorrow’s Britain, it is vital to reverse that proposition. 

## Juvenile law-breakers are not an alien breed but, in many cases, a mirror to the community that shaped them

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# AFTER THE ARAB SPRING

*The revolutions across the Middle East raised the hope of a new era of democracy governed by the rule of law. But the new doctrine of “responsibility to protect” has been sorely tested by events on the ground*



By  
**Peter Beaumont**

ONE OF THE first individuals I encountered during the Arab Spring was a young Tunisian Islamist who had been thrown out of a window by the police. I met him in his lawyer's office in Tunis above a narrow street on the edge of the Casbah. As the old regime of Zine El Abidine Ben Ali had fallen, he had been released from jail.

It was early in the Arab Spring. The first big demonstrations in Egypt's own revolution had yet to occur. The uprisings that would turn to war in Libya and Syria had not yet begun. Our conversation touched on the usual issues about human rights and law: the impunity of the police forces of the old regime and the lack of due process in the courts. The fact that we could talk openly seemed significant. The French colleague with me that day had been stabbed by the thugs of former president Zine El Abidine Ben Ali on a reporting trip made under the old regime. Tunisia, back then, and the subsequent excitement of Cairo's Tahrir Square to where I travelled next, seemed to offer bold new possibilities for rights and accountability.

Two years on I cannot feel so optimistic. For the Arab Spring, as it has unravelled, has laid bare the contradictions inherent in the application of international humanitarian law, not least where it collides with foreign policy and with the self-interest of the international community.

One notion that has collapsed, as the authoritarian Syrian regime of Bashar al-Assad has imploded, is the emerging Responsibility to Protect doctrine, and with it the growing expectation in some quarters that definitive game-changing interventions in conflicts are the inevitable moral and legal response to gross human rights violations. The case of Syria, where western powers have retreated to a pragmatic realpolitik, despite evidence of regime abuses, stands in stark contrast to that of Libya, where western airpower and material support to the rebels helped sweep away the regime of Muammar Gaddafi.

The reality is that, far from clarifying and hardening general principles of the universal applicability of international and humanitarian law, the Arab Spring has reminded us how highly selective states and international institutions are in determining their responses to human rights crises. The events of those months can more usefully be seen as the culmination of a longer period of debate over the utility of intervention in political and humanitarian crises, a conversation that has its roots in the failure of the international community to respond adequately to the challenges posed by the Bosnian War.

### *Unintended consequences*

The outcomes of recent interventions, in Iraq and Afghanistan and, most recently, in Libya (the first of these on a questionable legal basis) have led to sharp re-evaluations of what is realistically achievable. They have also forced us to assess the unforeseen and unintended consequences of intervention. The evolving debate has, ironically, itself become a source of tension, not least because a strong strand in the narrative of Arab Spring participants has concerned human rights, accountability and social justice. This phenomenon was noted by Jordan J. Paust of the University of Houston Law Centre in 2012 in his essay “International Law, Dignity, Democracy, and the Arab Spring”, who wrote:

“More recently, various individual and group participants in the Arab Spring have noticeably embraced and reaffirmed predominant patterns of human expectation and claims occurring worldwide regarding individual dignity and worth, self-determination of peoples, related human rights with respect to relatively free and genuine participation in governmental processes and the standard of legitimacy of governments, democracy as a universal core value, and the right of rebellion or revolution and the concomitant right of a given people to seek self-determination assistance.”

But new problems arise. One is that as the appetite for new interventions (and the ability in the West to pay for them) has diminished, the legitimate expectations (for instance in Syria and Bahrain) have collided with the rediscovered notion that the foreign policy of states, even collectively, should be guided more clearly by a limited self-interest.

A second problem dramatised by the Arab Spring is the overlap between the realms of international law and

diplomacy. While co-dependent in many respects, these do not always have the same motivation. Indeed, in the one instance during the Arab Spring where the international community applied the doctrine of Responsibility to Protect (in Libya where it justified the use of airpower to prevent a feared massacre in Benghazi), the consequence of that operation, the fall of the Gaddafi regime, has had a profound knock-on effect for Syria and for international relations.

Russia, one state that could, possibly, mitigate the violence in Syria and nudge Assad towards a process of political transition, has claimed it was misled over the Libya operation, and that far from being designed to protect civilians it was designed to bring about regime change. Such a complaint does not need to be taken entirely at face value, but it does demonstrate that not only may different parties agreeing to an action undertaken under international law view the intervention differently; they may also subsequently deploy its lessons differently.

In the area of human rights abuses, the international responses to the Arab Spring reveal a widespread and even more pernicious problem. The limited enthusiasm for calling to account those responsible for rights violations has created a new impression of impunity. In the case of Libya, a conflict I covered, it became clear (for example, from the excellent work of Human Rights Watch) that both sides committed atrocities. Those of us who covered the last battle of the war, in the city of Sirte where Muammar Gaddafi was caught and killed, saw that for ourselves. I saw captives being beaten and abused on a number of occasions. We have learned since then that almost 70 members of the pro-Gaddafi forces, captured alive, were executed in a hotel in the city. This crime has generated little publicity or international pressure for accountability.

Libya is not the only case. In post-Mubarak Egypt political protestors have been imprisoned, beaten and shot under the direction of the generals. In one of the most serious incidents (the so-called Maspéro Massacre in 2011) 27 Christian Copts were attacked and killed by the army. Only three soldiers were convicted of manslaughter, sentences delivered by a military not a civilian court.

### *Norms and Consistency*

In Syria we have witnessed a similar tendency: in this case, to focus on the greater crimes of the regime of Bashar al-Assad, both in the year-long official UN war-crimes probe under Brazilian Paulo Pinheiro and in

remarks of individual governments about who should be held to account. But, as human rights groups have pointed out, here too anti-government groups have committed crimes, albeit on a lesser scale. Civilians, including pro-regime journalists, have been kidnapped and killed, while captured members of militia groups (most infamously in an incident involving members of the “Berri clan” in Aleppo) have been filmed being executed in the street.

In any conflict or post-conflict situation, the application of international legal norms, including a consistent regard for accountability, matters profoundly. Between warring parties, the idea that different rules apply or that one side is more likely to be brought to justice, can unnecessarily prolong the violence. Similarly, the belief that one party may enjoy impunity during a period of conflict is equally dangerous. Indeed it can influence whether, and to what degree, actors in a post-conflict settlement are prepared to use violence to settle political disputes.

I witnessed striking examples of this in post-Saddam Iraq. A high tolerance and acceptance, among officials in the Coalition Provisional Authority, of revenge killings contributed to the emergence of a toxic sectarian struggle marked by suicide bombings and death squads. Sadly, this violence has become normalised in Iraqi politics. There is an irony in all of this, since, in theory at least, key players in international diplomacy, including the British Prime Minister David Cameron, have paid lip service to the notion that in the context of the Arab Spring, human rights and international law should be seen to be universally applicable. In a speech to the National Assembly in Kuwait, the British Prime Minister set out what were supposed to be the parameters of the UK’s approach to these events, based, in the words of the Foreign Office, on “upholding universal values, rights and freedoms, with respect for the different cultures, histories and traditions”.

### *Exceptionalism*

Kenneth Roth, executive director of Human Rights Watch, himself a lawyer, noted a significant change during the Arab Spring: a slow and grudging acceptance that the West’s “Arab exception” – its willingness to tolerate an authoritarian government to guarantee “stability” – could no longer hold in the face of demands for change. But the acceptance is indeed grudging, because as noted above, it has so far been applied only partially and unequally.

That principle of “Arab exception”, articulated among others by Henry Kissinger, is found in the western notion that the Middle East has somehow been historically exempted from the Peace of Westphalia notion of sovereignty and inter-state relations, established at the end of the Thirty Years War. For Kissinger, one of the most significant aspects of the Arab Spring, was that it challenged that system. He argued earlier this year:

“The diplomacy generated by the Arab Spring replaces Westphalian principles of equilibrium with a generalised doctrine of humanitarian intervention. In this context, civil conflicts are viewed internationally through prisms of democratic or sectarian concerns. Outside powers demand that the incumbent government negotiate with its opponents for the purpose of transferring power.”

Human Rights Watch’s Kenneth Roth has identified what he believes to be an odd phenomenon: a lack of enthusiasm among some major democracies for the Arab Spring. He wrote:

“Disappointing in their response to the Arab Spring have been some democratic governments of the global South, such as Brazil, India, and South Africa.

They seemed to be guided less by the aspirations of the Arab people than by their commitment to outmoded views of national sovereignty, even when it has meant shielding repressive regimes from urgently needed international pressure. Despite themselves having developed accountable governments and the rule of law, these Southern democracies showed only sporadic interest in helping the people of the Arab world who were struggling to do the same. More often, they pointed to the potential misuse of human rights pressure – the fear that it might serve as a tool of Northern dominance – to justify failing to use their own influence on serious violators of human rights.”

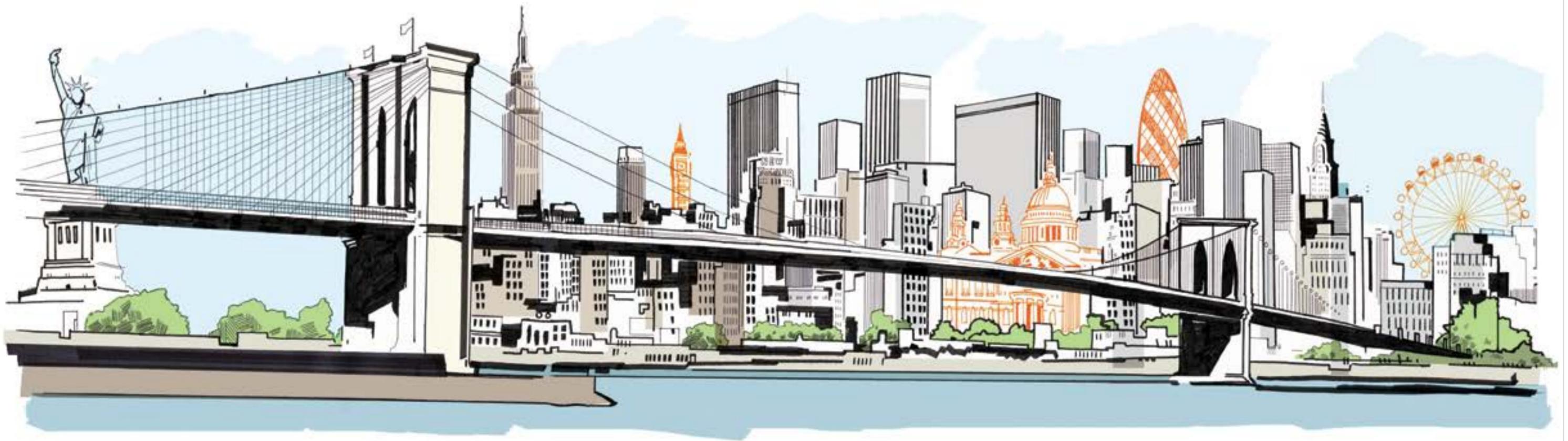
And yet, for all the disappointments, challenges and fears that the Arab Spring has brought in its wake, the upheavals have provoked an exacting debate on every aspect of international law and diplomatic relations, from the universal application of human rights to issues of intervention, sovereignty and accountability. What emerges as a consequence will transform not only that region but the way we think about the world. 

# Anything you can do...

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*The Big Apple or the Big Smoke?  
American D.D. Guttenplan realises he has  
become hooked on London's mature but spectacular  
pleasures while English-born Clemency Burton-Hill  
just knows no city can compare with the mighty  
pageant of New York*

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# A London Particular

*Or, How I Learned to Stop Worrying and Love the Big Smoke*



By  
D.D. Guttenplan

GEOGRAPHY is not destiny. As an instance I offer myself, a reluctant migrant to these shores. Reluctant how? you ask. Like this: in college I spent a semester studying in Paris. Later, when I came to Britain as a graduate student I used to cycle around on my yellow American Schwinn ten-speed, bought with the proceeds from delivering newspapers after school in Hollywood, Florida - I was the only Jewish paperboy in the whole of South Florida - and schlepping my books in a tan plastic bag from Fnac, the Parisian bookseller. Pretentious? *Mais oui!* But also, as my girlfriend used to tease me, “a way of telling the whole world that you’d rather be in Paris than here”. Which was true. We were 90 minutes from London by train - and only a bit longer in my battered Morris Traveller - yet I hardly ever went there. Spain, certainly. Italy frequently. Paris, whenever possible. I once tried to drive over the Pyrenees until a rueful tow-truck driver on the A6 north of Auxerre informed me “*Le moteur, c’est foutu.*” When the same girlfriend craved a glimpse of the sea, we set off for Maldon. But London? That was the town I wouldn’t go to... Until, reader, I married her.

Even then the idea of actually moving to London seemed far-fetched. For one thing there was the weather. My wife’s family lived in London, and before we got married I’d visited just enough to experience both the charms of the capital’s Christmas shut-down and the predictable “surprise” of a sodden British summer. When Salman Rushdie had the angel Gibreel enumerate the benefits of turning London into a tropical city - higher quality popular music, improved street-life, spicier food, brighter colors, better sex - I knew what he meant.

Then there were the English. I had been treated very kindly as a student by almost everyone I met. But what stuck in my head, for years afterwards, was the dentist’s secretary who turned me away after I arrived five minutes late for my appointment. “Can’t you see I’m in pain?” I mumbled through swollen molars. “That’s as maybe,”

came the reply, “but if we made an exception for you, we’d have to make an exception for everyone.” Not to mention - shush! - the Jewish question. I knew there were Jews in England - I’d met two at my college. I even had a cousin who’d been to Oxford. When I went to visit him for the first time in London he served pork chops - marinated in milk. There was also my friend Tashman. Although he’d grown up in California, and I’d lived all over the eastern US, our parents had once belonged to the same shul in Memphis. Now he lived in Belsize Park, where in an Indian restaurant across the street from his flat he explained to me the lay of the land: “There are two kinds of Jews,” said Tashman, “loud Jews and quiet Jews. Now you and I,” he added unnecessarily, “are loud Jews.” At this point I could feel the other patrons of the Bengal Palace not looking at us. “But your British Jew,” he suddenly stopped booming, “is a quiet Jew.”

When we moved from Brooklyn to Islington in 1994 I felt like a gefilte fish out of water. Partly because all the other men in our square who were home during the day were on benefit. Partly because there wasn’t a decent bagel between our house and the Seven Sisters Road. But mainly because London just wasn’t New York.

Geology isn’t destiny. Manhattan, famously, is built on schist - a metamorphic rock that is the ideal base to support skyscrapers. Whereas London, for the most part, is built on clay - as I discovered a few years ago when, after a particularly dry summer, the front steps of our house started to fall off. Hence London’s devotion to what Henry James called “the principle of indefinite horizontal extension”. If, like me, you lack an innate sense of direction, the presence of even a few recognisable tall buildings can be very reassuring. The dome of Sacre Coeur, the Tour Montparnasse and the Eiffel Tower had often steered my walks through Paris. In New York the Chrysler Building seemed like a benevolent great aunt,

## Every time I thought I had a solid grasp of how the city worked the weight of contrary impressions pulled me down

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guiding me through midtown, while a glimpse of the Empire State, whether from street level or from a south-facing window would inevitably lift my spirits. London, by comparison, lacked loftiness, its vistas hardly ever inviting the eye upwards and its endless brick terraces, attractive enough when taken in small doses, seemed in aggregate to fan out centrifugally in all directions without ever indicating a central or focal point.

Even genealogy isn't destiny. When I moved to New York from Memphis, aged 17, I was sufficiently green in the ways of the metropolis to try to hitchhike down Broadway to the Columbia campus. Yet becoming a New Yorker felt like my birthright. Not just because my mother had grown up in Brooklyn, and my father in the Bronx. My maternal grandparents still lived in Washington Heights, and I had sufficient cousins in the city that, had I been so inclined, I could have had shabbos dinner with a different relation every week for months without repetition.

I was not so inclined, preferring instead to roam the city with like-minded friends, émigrés from the south or the mid-west or the vast suburban wastes of the Boston-Washington corridor, walking across every bridge connecting Manhattan to Long Island or the Bronx, riding every subway to the end of the line, drinking in every celebrated bar, from Small's Paradise on 135th Street to the West End, the White Horse, the Cedar Tavern, Chumley's, and the Ear Inn. We started out as tourists who thought of ourselves as pilgrims and ended up New Yorkers, in full possession of the facts of city life. Trying to understand London after that felt like building on clay. Every time I thought I had a solid grasp of how the city worked, the weight of contrary impressions pulled me down. New York's political economy was simple: all real wealth came from real estate, which also accounted for the balance of forces on most public

controversies. You could literally delve below the surface of Manhattan streets - as I had once done for a newspaper - revealing a tangle of television and electrical cables, water and sewer tunnels, steam pipes, subway trains and ancient subterranean ponds and streams. But if you wanted to understand life on the surface, the only question you really needed to ask was "Who owns the land?"

In his preface to the New York edition of *A London Life*, Henry James alludes to "the bewilderment of the good American... in the presence of the 'European' order". London was not simple, and certainly not in a hurry to yield up its secrets.

Yet here I am - still nobody's idea of an Englishman but proud to call myself a Londoner. Unlike Kafka's Gregor Samsa, my own metamorphosis was gradual, practically alluvial. You may have noticed a certain kind of American who comes to live here, quickly takes to dressing in tweeds (or floral prints) and after a few years their accent starts to drift across the Atlantic, their plosives positively popping and their dentals dancing on the teeth. Umbrellas are carried furled, weekends are spent in cottages, and the gaudy carnival of American popular culture - and politics - occasions only embarrassment.

Well I am not one of those Americans. When the World Cup comes around, it is strictly team USA for me. Until then, though, you can find me and one or another of my children at the Emirates cheering for the Arsenal. Two of them were born here; all three have been educated in London. And watching what the city has given them - a sense of security in their own American/British/Greek/Jewish skins, the cultural confidence of big-city kids everywhere, a reasonable measure of physical safety, and most of all a cosmopolitan ease in relating to people of all colors and conditions, and in taking difference for granted - probably did more than anything else to bring me around.

The subcultures I grew up in were, without exception, parochial. Now there is plenty to criticise about London: the Northern Line, over-zealous parking wardens, the sharp disparity in educational provision between neighbourhoods, half-hearted cycle lanes that abandon you to your fate, lax enforcement of canine clean-up laws on Hampstead Heath and the way the 168 bus seems to just stop running at rush hour for starters. But parochial it isn't. Walk around my block and you can hear Arabic, Chinese, English, French, Polish, Russian, Turkish and Urdu; walk a few blocks more and you'll find everything from Amharic to Wolof.

Nor is it a museum. Unlike certain European cities whose glories seem preserved under varnish, London is always changing. The view from the top of Parliament Hill - my favorite daytime prospect - now includes the London Eye and the Shard and the Gherkin as well as more familiar landmarks like St Paul's and the BT Tower. The display from Westminster Bridge at night, though totally transformed from the "ships, towers, domes, theatres, and temples" of Wordsworth's day is still dazzling enough to justify his verdict that "Earth has not anything to show more fair".

I leave London every summer and, while I always relish my time in America, the city seems more hospitable every time I return to it. Moving house - and neighbourhood - made a big difference. Although it lacks the intense oranges and russets of a New England fall, Hampstead Heath in autumn is pretty spectacular: brambles heavy with fruit for the picking, acorns and conkers underfoot and meadows of lush grasses daubed with purple and white. Rushdie's tropical paradise seemed far-fetched, but this year it was warm enough for swimming well into September. On a hot Indian-summer Saturday, the Heath's mixed pond heaved with flirting couples and ageing bohemians, while the men's pond may be the only place on earth where gay men,

Orthodox Jews and observant Muslims (and some more ageing bohemians) all happily share the same few square feet of cracked concrete.

And if that sounds awfully bucolic I should mention that my current neighbourhood also boasts a wealth of perfectly decent bagels. Meanwhile, my search for superlative specimens eventually led me to the morning queue at Daniel's in Temple Fortune, where I met plenty of London's unquiet Jews, along with an abundance of freethinking Jews and enough communal vitality to make the ghost of T.S. Eliot distinctly uncomfortable.

But if London today is no longer the city I found so opaque twenty - or even ten - years ago, that may also be because I have changed as well. New York will always be my first love, the city of my youth and young manhood and the setting for adventures I have neither the energy nor the foolhardiness to want to repeat. Besides, even if I could be 17 again the days of cheap Manhattan rents and \$5 bleachers at Yankee Stadium are long gone.

London offers other consolations: pears and plums - and figs! - from our garden, Kesar mangoes from the greengrocer at the end of the road, the view from the top of the 24 bus, the Kitaj tapestry that greets me whenever I cycle down to the British Library, the steps of the British Museum in summer, herons on the island in Regent's Park, the steam trains that sometimes puff along at the bottom of our garden, running with a friend on the Regent's Canal, sculling with my son on the River Lea, sharing a gin and tonic at the movies with my wife, watching hordes of elated, screaming children, including mine, sledding down Kite Hill whenever it snows.

These are mature pleasures, perhaps slightly less intense than the bliss of youth but more durable, and more precious. Writing these lines I realise I've lived more of my life in London than anywhere else. Am I here permanently? Who knows? Certainly there are worse places. 



# Implausible city

*Teeming, frustrating and lonely,  
but New York's still got it*



By  
Clemency Burton-Hill

BEING a freelance writer has its upsides and its downsides; but an indisputable up is the ability to choose one's office daily. As I write, I am sitting in a small café on Hudson and Charles, spotted on a whim as I crossed over the street from Seventh Avenue. It boasts walls of exposed old brick and studiously shabby wooden furniture; a vinyl jazz record turns on a gramophone in the corner.

October sunlight slants lazily across the street and slinks in through the café windows, gilding a wall of analogue photographs depicting the proprietor's great-grandparents in curling sepia. It is late 2012; the New York headquarters of some of the twenty-first century's most cutting-edge technology companies are nearby; but with this chipped mug of coffee in my hands here and that Charlie Parker LP spinning there, I could be occupying the sort of contemplative corner spot that any number of human characters in New York may have occupied before me. Other years, other faces, other times.

People sometimes complain that Greenwich Village, like much in Manhattan, has "altered beyond recognition" and I'm sure in many ways it has – it is in the very nature of this town, the very name of this town, to enshrine the possibility of change. But I also know, I feel intuitively, that there is still in these streets the unwavering spirit of the old city, catering generously and eternally to the needs of those whose hearts are open, curious and yearning. There's no place like this on earth. In other words, New York's still got it.

When I turned eighteen, I was given a subscription to *The New Yorker* for my birthday. A decade later, almost to the day, I moved to Manhattan and for the first few months I lived here, the simplest and most wondrous of the inestimable gifts this city bestows seemed to be this: that I could open those storied pages, flip to

*Goings On About Town*, and, if I so desired, "go on about town". I could read about a jazz gig, a book reading, a film opening, a symphony or rock concert, an opera, a play, a new restaurant and, bank balance permitting, experience it that same night. Back in my hometown of London – itself a city not without wonder – reading the *Goings On* section of the *New Yorker* became a weekly act of masochism, yielding predictable twists of almost palpable longing. To read about what was happening that same night across the Atlantic; to dream, to imagine, but to be able only to imagine – to not be in New York was sometimes too much to bear.

Yet this is a city that has always been created by the imagination; a metropolis lovingly constructed in ink and paper and celluloid and dreams as much as it is by bricks and mortar, steel and glass. To borrow an insight from that master observer of New York, E.B. White, there are roughly three New Yorks: that of the natives, that of the commuters, and that of the settlers. That was true when White wrote *Here is New York* in 1948, and it strikes me as resoundingly true today. Like him, I believe that the third New York will always be the most important, the most vital, because it is the one whose foundations are laid first in the minds of human beings born and living elsewhere – those for whom New York City is the ultimate destination. When the settler-dreamers hit the bedrock, having crossed bodies of water, been coughed up through tubes or tunnels or deposited by planes, it is up to them – to us – to turn those dreams into something resembling reality. And because New York has a unique capacity to absorb whatever is thrown at it and whomever arrives on its shores, they invariably do play their own unique part in shaping what happens next in the mighty pageant that is life here. Although, not always: New York also spits out more dejected and

## What astounds me is how the clichés and stereotypes, myths and legends, go on being true

disappointed souls than any other city on earth. We transplanted “New Yorkers” must also live with the lurking shadow of that possibility every day.

The music fades, the needle lifts, and a bearded barista with complicated tattoos on his forearms whom I’d wager lives in Brooklyn goes to flip the record to its B-Side. Which reminds me of a startling fact: the first jazz disc ever to be cut in the world was cut in New York. Ever in the world! It was Nick La Rocca’s Original Dixieland Jazz Band with “Livery Stable Blues”, in early 1917. But I plucked that particular “first” from the sky; really it’s not so startling – New York is a city of firsts. A city of human beings calmly doing things that will forever alter the direction of how those things can be done.

From sculptors to subway contractors; from traders of sundries to traders of derivatives; from writers of music to writers of insurance to writers of code. Right now, I wonder, how many blocks am I from wonder? A short stroll in any direction and I might run into a movie crew shooting on a corner of Bleeker whose young director, as yet unknown, will win an Oscar next year; I might walk past an innocuous office building on Houston in which employees at a start-up whose name we’ve never heard of are busy inventing the next game-changing technology that we will soon all take for granted; I may glance at construction workers on a downtown skyscraper site whose silhouette will one day be a byword, a metaphor, a symbol for something the whole world understands – or maybe will just be a building so beautiful it makes people weep. This guy sitting next to me, meanwhile, tapping away on his laptop; for all I know he could be writing the world’s next award-winning novel.

Since arriving at this café, moreover, I have seen through these sunlit windows every sort of

human face pass along Hudson Street. Even here, in this achingly well-heeled neighborhood where a brownstone townhouse around the corner on Perry is apparently on the market at fifteen million dollars (“What the hell – I’ll take two!”) I have seen faces old and young; faces black and brown and pink and white and many shades of grey. Faces beautiful and completely unmemorable; faces brimful of life; faces seemingly close to death.

Perhaps these faces come from Puerto Rico, from Sierra Leone, from Mexico, England, Haiti, Cuba, Latvia, Kenya, Russia, Ireland or Italy. Perhaps from China, Tunisia, Wales, India, Jamaica, New Zealand, Greece or Poland. Perhaps they were born in a gleaming hospital uptown, or in a railroad apartment in an outer borough; perhaps they were born half way around the world. But here in New York they are. And as White memorably observed: “the collision and the intermingling of these millions of foreign-born people representing so many races and creeds make New York a permanent exhibit of the phenomenon of one world”.

The phenomenon of one world. We know all this, of course. New York as a racial melting pot, a magnet for all-comers, a global crucible of creativity: all of this has been said in myriad ways, by multitudes and over many years. But just as New York has every type of potential racial problem and for the most part enjoys a continuing and frankly miraculous city-wide tolerance, an “inviolable truce” between peoples, what astounds me is how the things we know about the city – the clichés and stereotypes, the myths and legends – go on being true, and indeed, get truer. Why? How? How do you work, New York? How are you even plausible?

When you tell people you live in New York, I have found, reactions generally divide into

## This guy tapping away on his laptop could be writing the world’s next award-winning novel

those whose eyes widen with envy and those who wrinkle their brows in horror – or, worse, pity. “Oh no,” they shake their head, “I could never live there – so noisy, so dirty, so smelly. And why does everyone have to be so unbelievably rude?” There are also those who grumble that New York has somehow lost its character; been homogenised and commercialised and overrun by identical shops, adverts and tourists who genuinely appear to think queuing outside Abercrombie & Fitch a valid use of time. Well, yes. Surely Broadway has its grim bits; clearly one does well to avoid Times Square.

Obviously you ignore the horse-and-cart guys in Central Park and of course you don’t eat at Olive Garden or wait forty-five minutes for a Magnolia Bakery cupcake. And of course New York is smelly and dirty and busy and crowded. If White thought in 1948 that “the normal frustrations of modern life are here multiplied and amplified” he would possibly be dismayed (but not surprised) to discover that more than half a century on there is still “not enough air and not enough light, and there is usually either too much heat or too little”.

But in general, I believe, New York still has more life and curiosity and character in a single city block than even – dare I say it – London. And I’m a born and bred London girl who once suspected that if you were to cut my veins I would bleed the Thames. (I have also lived in Paris, and – hit me over the head with a baguette – I’m afraid that glorious capital does not compare either.)

For more than three years, for example, my local Subway stop has been Grand Central. Rushing across the main concourse before I head underground to catch a train, I try always to

look up at the ceiling and promise myself I will never, ever take such a sight for granted. When back in London, equally,

I remind myself not to sigh in inevitable disappointment when I board the Piccadilly Line to go home. It’s a grossly unfair comparison, of course: how could poor old Hammersmith, my local Tube, ever hope to win against those majestic cathedral glories on 42nd Street? But that is the point, isn’t it?

In January 2012, the population of the entire New York City metropolitan area hit nineteen million people. It can be lonely here; sometimes unutterably so: a teeming place of human isolation and even desperation. By Grand Central Station I have indeed sat down and wept. But as White also captured brilliantly: “Although New York often imparts a feeling of great forlornness or forsakenness... you always feel that either by shifting your location ten blocks or by reducing your fortune by five dollars you can experience rejuvenation.”

Reducing one’s fortune by five dollars here, by the way, remains the easiest damn thing in the world. Another cup of coffee at this very café, especially if accompanied by one of those artisanal sea-salt cookies they bake downstairs, will barely leave me change from twice that. It has probably never been more difficult or more expensive to live in New York. Yet I, and so many others, would not be anywhere else in the world. Shifting my location, I will take my five bucks and get another coffee at some other place, ten blocks away, twenty, or who knows where. It doesn’t matter where I go: I open the door and the universe awaits. 

NEW YORK CITY 2012



# COURT ON SCREEN



By  
Vanessa Thorpe

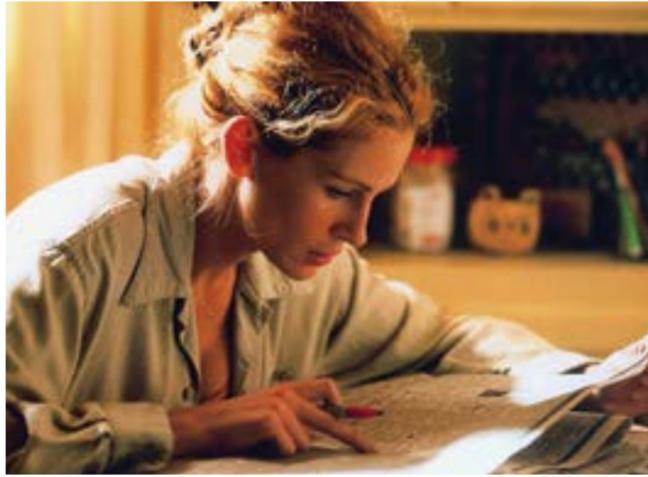
*Why do lawyers make such good film heroes? And why are there so many memorable Hollywood movies based on the notion that justice will prevail?*

THE COURTROOM is a neat place to end a story. Judgment is final there, in theory, and villains are dispatched, so it is no surprise when film-makers choose to deliver their dramatic punch in a trial scene.

Cinema, and particularly Hollywood cinema, has given audiences so many powerful set-pieces that some claim it has influenced actual court proceedings. According to one German academic paper, “Law in Film: Globalising the Hollywood Courtroom Drama” by Stefan Machura and Stefan Ulbrich, barristers around the world are now more prone to leap up to make objections, or to call for exclusion of evidence in a manner that apes the adversarial American style of legal argument, although it is out of place in other judicial systems.

So why do screen lawyers win our hearts? The answer is that a succession of legal heroes created by brilliant actors and writers have made the courtroom glamorous.

The screen lawyers to cast the longest shadows – the giants of the black-and-white era on both sides of the Atlantic – are played by persuasive stars such as Robert Donat in Rattigan’s *The Winslow Boy*, James Stewart in *Anatomy of a Murder*, Henry Fonda as *The Young Mr Lincoln*, Spencer Tracy, defending evolution in *Inherit the Wind* or prosecuting Judy Holliday in *Adam’s Rib*, Charles Laughton in *Witness for the Prosecution*,



Previous page: Gregory Peck as Atticus Finch in *To Kill a Mockingbird* (1962)  
This page clockwise: Julia Roberts in *Erin Brockovich* (2000); Joe Pesci in *My Cousin Vinny* (1992); Dustin Hoffman in *Kramer vs Kramer* (1979)

Maxmilian Schell in *Judgment at Nuremberg*, Orson Welles in *Compulsion* and, perhaps most significantly of all, Gregory Peck as Atticus Finch in the film of Harper Lee's *To Kill a Mockingbird*. Peck's Finch, who is defending a black man on a murder rap against heavily stacked odds, opens in top gear, telling the court: "To begin with, this case should never have come to trial. The state has not produced one iota of medical evidence that the crime Tom Robinson is charged with ever took place."

These are people you definitely want on your side. Charming, cunning, yet righteous, they have been followed by modern screen advocates cut from the same cloth. So we have Paul Newman, who turns his back on drink to face the court in Sidney Lumet's *The Verdict*, or Harrison Ford, who suddenly finds himself in the frame for murder in *Presumed Innocent*, and Matthew McConaughey, the actor who gave up

real-life law studies in order to present his case to the bench in *A Time to Kill*, *Amistad* and then *The Lincoln Lawyer*.

With time, actresses, too, have been allowed to put away their damp lace handkerchiefs, step out of the witness box, and take on the role of learned "briefs". Glenn Close played the hapless attorney who defends Jeff Bridges in *Jagged Edge*, Kelly McGillis represented Jodie Foster's rape victim in *The Accused*, and even Cher donned sensible shoes for a court appearance in *Suspect*.

While film has rarely paid attention to the details of correct legal procedure, frequently ignoring the "cab-rank rule" and the requirements of full disclosure, the passage of years does seem to have worn away the respect in which the court and the judiciary are held. In *Kramer vs Kramer* we see Meryl Streep's divorce lawyer deliberately smear the reputation of a responsible father played by Dustin Hoffman; and when Emma Thompson

plays a version of the British solicitor Gareth Peirce in *In The Name of the Father* in 1993, the subject is the miscarriage of justice that jailed the Guildford Four. At its most extreme, in *The People vs Larry Flynt*, a real-life pornographer, played by Woody Harrelson, is allowed to treat the court with zany contempt, throwing oranges as he defends freedom of speech.

This scepticism is not entirely new. In fact, the best courtroom films have always hinted at the potential failures of the system. Robert Bolt's 1966 screenplay for *A Man For All Seasons* revels in the hopelessness of Thomas More's cause, as Henry VIII and Thomas Cromwell orchestrate his downfall. And *Twelve Angry Men* points out the pitfalls of the jury system, while at the same time celebrating its democracy.

This last may be the best-loved legal drama of all, yet the action does not take place in court. Instead Henry Fonda plays

an Everyman, simply known as Juror 8, who turns his eleven fellow citizens towards leniency with his purity of spirit.

Other great courtroom classics have charted the march of social progress. In *The Trials of Oscar Wilde* in 1960 Peter Finch faces an overt form of state homophobia, while in 1993 Tom Hanks fights a more corporate variety in Jonathan Demme's 1993 film *Philadelphia*. But the most renowned progressive battle is surely the one waged against capital punishment in *Compulsion*. Here Welles plays a famed attorney who defends two boys who have committed a lethal crime out of sheer devilment. Inspired by Clarence Darrow's defence of real killers Leopold and Loeb, Welles tells the Chicago court he has heard "nothing but the cry of blood in this room", concluding "If you hang these boys it will mean that

in this country a court of law could not help but bow down to public opinion."

Frequently a trial is used to frame a plot, as when Joan Crawford's story is told in flashback in *A Woman's Face*, or in the surreal, celestial trial scenes that see Roger Livesey argue for the life of David Niven in Powell and Pressburger's mesmeric *A Matter of Life and Death*.

In a true courtroom drama, though, the bulk of the action takes place before the judge, allowing the hero to engage in a duel of words. A notable exception is Joe Pesci who, as an unconventional trainee in Jonathan Lynn's *My Cousin Vinny*, presents the case for the defence with the words: "Everything that guy just said is bullshit. Thank you."

A satisfactory legal screenplay should deliver a twist. Without spoiling any fun here, honourable mentions must go to the closing

scenes of both *Witness for the Prosecution* and *Primal Fear*, starring Richard Gere, where all the facts are suddenly flipped on their heads. Ideally, too, a finale offers a bit of courtroom trickery. This might involve a lawyer throwing an object at the accused to find out whether they are left or right-handed - a ruse used to effect by Cher in *Suspect*. Or the eyesight of a key witness can become a crucial plot point. In *Twelve Angry Men* the jurors work out that a woman giving vital incriminating testimony must normally wear spectacles because they spot small marks on the sides of her nose.

If you are seeking heart-warming justice, however, there is only one place to look, and that is *Miracle on 34th Street*. In the 1947 film, starring Natalie Wood as a little girl, a lawyer successfully argues that Santa Claus really does exist when he presents a judge with tangible evidence by the bagful. Does the law accept that the Post Office is a "competent authority", he asks? Well, if so, then the thousands of letters sent to Father Christmas every year are proof positive he exists. Called upon by the judge to present "further exhibits", the doors open at the back of the public gallery and 21 sacks of mail are wheeled in. So Santa Claus, here in the Oscar-winning guise of Edmund Gwenn, triumphs over legal pedantry. 

## THESE ARE PEOPLE YOU DEFINITELY WANT ON YOUR SIDE – CHARMING, CUNNING, YET RIGHTEOUS



Above: Matthew McConaughey in the *Lincoln Lawyer* (2011)  
Right: Henry Fonda as one of the *Twelve Angry Men* (1957)



# THE PRESS WE DESERVE

*Only an independent and transparent mechanism can deal with an unethical press*



By  
Charlotte Harris

MAZHER Mahmood worked as an undercover reporter for the News of the World for 20 years. The “Fake Sheikh”, as he became known, claims to be responsible for assisting in the arrests of more than 250 criminals. One of his methods was to disguise himself, either as a sheikh or a businessman called Fernando, in order to set up celebrities and Royals to provide sensational front-page stories for millions of readers. He now works for the Sunday Times.

Writing in the Financial Times in July 2011, just after the announcement of the closure of the News of the World, the commentator John Lloyd wrote: “When you consider Mahmood’s achievements, you get some sense of what kind of public interest haul a cavalier attitude to private life can turn up...” However, the recent

debate about media ethics has not been about exposing tabloid villainy. It has been about power.

The hearings of the Leveson Inquiry, set up to look into the culture and ethics of the press, revealed that large sections of the media industry had turned a blind eye to unethical practices, including phone hacking, bribing police and blackmail. Such practices had been allowed to flourish over decades and were often committed in the name of high morality. Press representatives and press victims daily competed for the moral high ground in their account of events to the Inquiry.

In the Spring of 2011, the use of injunctions to prevent publication of stories about a number of well-known individuals came under sustained attack in the media. Soon after that came revelations that the News of the World had hacked the phone of missing schoolgirl Milly Dowler while a police search was underway (revelations which led, ultimately, to the closure of the paper in July 2011). There followed a period of intense scrutiny of the Murdoch-owned newspaper group, News International, including by the Culture, Media and Sport select committee and by the Leveson Inquiry.

Two clear camps have emerged. On the one side are those in the newspaper industry who claim regulation would fatally undermine freedom of expression. On the other, there are the victims of press misconduct, who claim that their rights have been violated and that with press freedom should come responsibility. Most of the press had failed to report on media misconduct until phone hacking was exposed by one of its own, the Guardian (“the newspaper that hates newspapers”, as the television satire *The Thick of It* described it). Both sides have traded accusations of hypocrisy in the subsequent fight for the moral high ground.

Here are some of the arguments. When a Sun journalist was arrested for paying money to the police, Trevor Kavanagh of that paper was outraged: “Journalists are being treated like terrorists and investigated more closely than the Lockerbie Bomber,” he said. Paul Dacre, editor-in-chief of the Daily Mail asked (of the Leveson Inquiry):

“Am I alone in detecting the rank smell of hypocrisy and revenge in the political class’s current moral indignation over a British press that dared to expose their greed and corruption...?”

Private Eye has frequently recorded how the two sides of the media ethics debate mirror each other in hypocrisy. Its editor, Ian Hislop, discussed a famous example of this in a television documentary in Autumn 2012. The Private Eye issue following the death of Princess Diana in 1997 carried the headline “Media to Blame”, echoing the sentiment of a nation disgusted at the hounding of the Princess in her lifetime. A speech bubble from one mourner says: “The papers are a disgrace”. A fellow mourner replies: “Yes, I couldn’t get one anywhere”, to which a third voice, from the crowd, responds: “Borrow mine, it’s got a picture of the car”.

The satirical magazine’s message was clear: as consumers of salacious media, sometimes we get the press we deserve. At a seminar on press standards in the wake of the arrest of tabloid journalists, Paul Dacre described the morality to which Mail readers subscribe: “The problem is Britain’s liberal class - the people who know best and who really run this country - by and large hate the popular press. After all, the red tops can be vulgar ... they also represent the views of millions of ordinary Britons.”

Dacre, who claims the Mail is the voice of the masses, continued: “The Hampstead liberal with his gilded life-style understandably enjoys the Guardian – a paper that deals with serious issues. But does he or a judge have any right to deny someone who works ten hours a day in a Sunderland call centre and lives for football, the right to buy a paper that reveals the sexual peccadilloes of one of his team’s millionaire married players - a player who uses his celebrity to sell products to him and his children?”

Kiss-and-tell stories are the most profitable side of tabloid sales. They are also the stories most likely to be the focus of enquiries into unethical practices. Dacre may attempt to seize the moral high ground by claiming that such stories benefit “millions of ordinary Britons”. But they also have huge

earning potential for publishers. When judges have to decide whether a story is in the public interest, they undertake a famous balancing exercise. That exercise is not limited to judges. Editors make such decisions every day, as do individual journalists. So how should that balance be drawn?

Both sides of the debate acknowledge that hacking phones or blagging medical records are criminal acts. Both sides agree that medical information and sexual information are private matters. The justification for breaking the law depends on whether there is sufficient public interest in a story to outweigh the privacy rights of those who are targeted. As the Editor’s Code of Practice states: “Engaging in misrepresentation or subterfuge can generally be justified only in the public interest and then only when the material cannot be obtained by other means”.

The perfect tabloid newspaper splash is both interesting to the public and in the public interest. There would be defences available to journalists who used subterfuge or infringed privacy in order to pursue these stories. Examples are MPs’ expenses, the abusive behaviour of Jimmy Savile or the Hillsborough cover up.

However, even in this ideal world of the “perfect splash” there is not unrestricted immunity. Payments to police, bribery and corruption are hard to justify, even where the story is of public importance. Where national security is at stake, or there is a police operation in force, even the pursuit of a public interest story could do significant harm.

Sometimes newspapers take advantage of the public interest argument, when a story is merely interesting or titillating to the public. That is when real damage can be done to individuals. An example is the treatment of Chris Jeffreys. The retired schoolteacher was wrongly accused of the murder of Jo Yeates in December 2010. Intense character assassination followed. He was painted as an eccentric, a freak and a peeping tom. He was stripped of his rights without a trial. On the “public interest scale”, there are some stories that are clearly not in the public interest but are likely to sell

# LAWYERS TO LEGISLATORS

By  
Martin Bright

newspapers. A good example is the photographs of the Duchess of Cambridge sunbathing - published on the continent and available on the internet. The British press, which did not print the pictures, published instead numerous articles about the anger of Prince William at “topless Kate” pictures.

At the other end of the scale, there are stories covering public interest topics of considerable importance that are unlikely to attract large numbers of readers. These are earnest articles on issues that are important, but which have the potential to bore the public. Most stories published in tabloid newspapers inhabit the middle ground. These cover celebrity love lives and entertainment-related news. In order to keep these stories, which may have salacious or sensational content, on the right side of the law, public interest is often generated in the form of moral outrage. This “outrage inflation” aims at producing a public interest justification for publication of what would otherwise be obviously private information.

There is a crucial difference between a story published in the public interest and one inflated by fake moral outrage to attract readers but reduce the risk of legal action. This “morality gap” is at the heart of the debate over the future of journalism. There is an ethical cost-benefit exercise that balances the risk of legal fees and damages against potential newspaper sales. Recent events suggest that when

some tabloid editors considered the public interest it was simply another way of saying “what can we get away with?”

Only an independent and transparent regulatory mechanism can deal with this “morality gap”. For instance, revelations of phone hacking were in the public interest and ultimately attracted high readership.

## THIS MORALITY GAP IS AT THE HEART OF THE DEBATE

But they were not initially published in tabloid newspapers because it was not in their interest to do so. It was getting too close to home. The tabloids knew that Gordon Taylor and Max Clifford had made successful claims, but they did not report this as it would have led to questions about where their own stories had come from. The Operation Motorman papers obtained by the Information Commissioner from private

investigators show that back in 2003 every newspaper group was using these investigators to obtain private information. Around this time, phone hacking appears to have been rife. With the exception of some broadsheets, the press did not report it. There is a double standard here. By suppressing stories that do not support their power and influence, newspapers act not as champions of freedom of speech but as censors of the embarrassing and inconvenient.

The most dramatic consequence of the moral crisis produced by phone hacking was the silencing of the News of World in the face of the Dowler scandal. Unable to defend itself, News International cut out its own tongue, firing its staff and closing the paper. The extraordinary final edition on 10 July 2011, carried a quote from the left-wing journal Tribune, published in 1946. It was from George Orwell’s essay “The Decline of the English Murder”.

“It is Sunday afternoon, preferably before the War. The wife is already asleep in the armchair, and the children have been sent out for a nice long walk. You put your feet up on the sofa, settle your spectacles on your nose, and open the News of the World.”

The quote was chosen to provide literary endorsement for the legacy and longevity of the News of the World. But it also encapsulates the battle for the moral high ground. The Orwell piece is, in part, about the satisfaction that readers derive from newspaper murder

reports that paint picture of middle-class moral decline: of adulterers plotting to rid themselves of their wives.

Regardless of whether one considers that there should be an independent statutory underpinning to self-regulation by the press, or whether the current law is sufficient to deal with abuse and criminal activities, it has become increasingly necessary to reconsider how, in the digital age, the news media can be made accountable when it crosses the line.

Should Internet Service Providers be liable for the content that they publish? Should ISPs have a positive obligation to identify users who break the law or post harassing or defamatory content? Is privacy in the age of the social network something that has been voluntarily surrendered? Can newspapers continue to publish false prominent stories but only tiny apologies? Should the press be trusted to choose its own regulators from the industry in order to protect its independence? Is freedom of speech the price that has to be paid for fair speech?

Arguments about freedom of expression become distorted at the extreme ends of the scale - totally free and unaccountable speech at the one end and censorship at the other. The balancing exercise of what is acceptable is, today, one of deep complexity. It is unlikely to be resolved until a new system is put into practice and begins to affect the culture and ethics of news reporting. 

What happens when lawyers become politicians? Gordon Brown appointed eight lawyers to his first cabinet when he became Prime Minister, a record that outstripped even Margaret Thatcher and Tony Blair – the prime ministers usually considered most friendly towards the legal profession. For some, this provided the definitive confirmation that New Labour, the movement that defined the politics of the late twentieth century, was a conspiracy of lawyers.

It is worth counting off those lawyers to see just how senior they were in that cabinet: Douglas Alexander, Hazel Blears, Des Browne, Alistair Darling, Harriet Harman, Geoff Hoon, John Hutton and Jack Straw. Not all are household names, but these are not minor figures. All can claim, in their way, to have made a contribution to the political culture of the New Labour project.

Even in its conception, it could be claimed that New Labour emerged from the legal world. Though three of Blair’s most important co-conspirators (Mandelson, Brown and Campbell) were non-lawyers, the next circle of influence was dominated by solicitors and barristers, the latter taking up a significant role.

Blair’s first Lord Chancellor, Derry Irvine, often a controversial figure during his tenure from 1997-2003, was matchmaker to Tony and Cherie Booth, who met as pupil barristers at his chambers. More significantly, he was the man who oversaw the incorporation of the European Convention on Human Rights into UK law.

Fountain Court, Tony Blair’s own chambers, was right at the heart of “the project”. Blair’s former flatmate, Charlie Falconer, who worked alongside him in the 1980s, succeeded Lord Irvine on his retirement in 2003. And another colleague, Peter Goldsmith, ennobled in 1999, was the Attorney General who provided the advice that took the country to war in Iraq.

It is not surprising that a lawyer-dominated government produced significant legislation, some of which, it could be argued, transformed the country beyond recognition: not just the Human Rights Act, but the Freedom of Information Act, legislation to devolve powers to Scotland, Wales and the London Mayoralty, and the establishment of a national minimum wage. But it could also be argued that such a government resulted in a mania for legislation. In 2010, the Liberal Democrats estimated that Labour had created more than 4,000 new laws while in power. The Daily Mail reported that new offences included “disturbing a pack of eggs when not instructed to by an authorised officer”, “allowing an unlicensed concert in a church hall or community centre” and, naturally, “wilfully pretending to be a barrister”.

The Coalition government has not been so dependent on lawyers. Cameron’s inner circle contains none and the cabinet has just one full member who has practised the law, Welsh Secretary David Jones. However, before jumping to conclusions and suggesting that the Coalition could maybe have avoided the accusation of an “omni-shambles” if a few decent legal minds had been appointed to more senior ministerial posts, it is worth looking at the conclusions of a study published nearly 50 years ago on what happens when lawyers become legislators. “Lawyers in Politics: A Study in Convergence” by Heinz Eulau and John D Sprague was a “behaviourist” study into the phenomenon.

The authors concluded: “Our problem became one of explaining the lack of differences between lawyers and non-lawyers in politics.” In other words, once lawyers become politicians, they are probably all as bad (or as good) as each other. 

# My Learned Fiends



By  
Clive Anderson

“THE FIRST thing we do, let’s kill all the lawyers” is the famous suggestion made by Dick the Butcher, an otherwise unremarkable character in Shakespeare’s otherwise unmemorable Henry VI Part 2.

Why is this line quoted so often and with such relish? It cropped up recently in the court case concerning the man who joked on Twitter that he was going to blow up an airport if it didn’t improve its service. He didn’t mean it literally, but did Dick the Butcher?

Nobody, apparently, likes lawyers. They bamboozle the poor, rip off the rich, twist words, exploit loopholes, spin out disputes for their own benefit and win the argument by knowing the meaning of the law and the details of the small print, without caring about justice. Most people

don’t even like their own lawyers who take too long to do anything and charge too much when they have done it. Perhaps that is why we call ourselves by so many different names: solicitors, barristers, counsel, attorneys, advocates, notaries, silks, sergeants, or – in Scotland – Writers to the Signet. Like criminals or conmen we have loads of aliases. Of course many of these *noms de loi* are now out of date. Nowadays within the profession, most lawyers are just called “fee earners”.

I am a lawyer myself. Well, I used to be. I jumped ship to become a chat show host and an occasional journalist. Not that that helps. Neither of my additional trades does much for my standing in the world either. If I could just become

an estate agent as well, I could be as unpopular as a banker, if not as wealthy. At least I was a criminal barrister. Which isn’t always too bad in the public imagination, if only in works of fiction: Atticus Finch, Rumpole of the Bailey, Perry Mason and so on are all fictional counsel for the defence and emerge as heroic figures in their respective novels, films and television series. We may want our government to be tough on crime and tough on the causes of crime, but in courtroom dramas we side with the poor sap in the dock and the guy trying, against all the odds, to get him off and prove him innocent.

It is not quite like that in real life, where a verdict of not guilty has to be harvested from a few seeds of doubt planted in the jury’s mind. As a non-fiction criminal practitioner the thing you are most often asked is “how can you represent someone who you must know is guilty?” Do tax lawyers, I wonder, get asked how they represent someone they must know really ought to be paying more to the Revenue?”

The modern term “human rights lawyer” makes for good public relations, though I suppose all lawyers ultimately represent humans and their rights. But it sounds friendlier than “corporate lawyer” or “treasury devil”. Very often lawyers get a hard time between hard covers. Charles Dickens was especially severe on the profession. As a young man he worked as a law clerk, but that did not mean he much liked his learned friends.

At one point he intended to read for the Bar himself, getting as far as joining the Middle Temple. Then his career as a writer took off, relieving him of the need to make a living out of the law, except by satirising it. Just as some of the best bits of Dickens are his observations of the adult world as seen through the wondering eyes of a child, he tends to see the legal world through the exasperated eyes of the layman or the despairing eyes of a litigant. In his great legal novel, Bleak House, the rituals of the courtroom are presented as inexplicable and incomprehensible.

“Mr. Tangle,” says the Lord High Chancellor “Have you nearly concluded your argument?” “Mlud,

no – variety of points – feel it my duty tsubmit – ludship,” is the reply that slides out of Mr. Tangle. “Several members of the Bar are still to be heard, I believe?” says the Chancellor with a slight smile. Eighteen of Mr. Tangle’s learned friends, each armed with a little summary of eighteen hundred sheets, bob up like eighteen hammers in a pianoforte, make eighteen bows, and drop into their eighteen places of obscurity...

This is the fabulous case of Jarndyce v Jarndyce – an ancient dispute about multiple wills which is the basis of the novel’s plot. And a curse upon everyone tangled up in it. It does nobody any good

## DICKENS WAS ESPECIALLY SEVERE ON THE PROFESSION

- apart from the lawyers who are shown to be in it for themselves and for the money. Eventually Jarndyce v Jarndyce comes to an end, not with a judgment of Solomon but because the money runs out, all spent on legal fees and court costs. And all the ranks of lawyers can scare forbear to laugh. Dickens’ particular indictment here is of the strange ways of the High Court of Chancery, which was already being reformed by the time he published Bleak House, but his essential point, that the costs of litigation leave the litigant possibly off his head and certainly out of pocket, even if he wins, is as true today as it was then.

Of course it’s not the fault of individual lawyers that the legal system

is complicated or even unjust. But while the layman doesn’t blame the medical profession for the complexity of the human body, the legal system is man-made. So it looks less like complexity, more like a conspiracy.

And do lawyers do themselves justice by the way they conduct themselves? To return to Dickens: In The Pickwick Papers, Samuel Pickwick is taken to court, sued for breach of promise by his landlady Mrs Bardell. This is a more light-hearted scene than anything in Bleak House, but the lawyers emerge no better. The small and small-minded judge nods off to sleep and conducts the trial in a bad temper, on occasions mis-hearing the evidence. Obviously a grotesque exaggeration of the judiciary in real life. Counsel for Mrs Bardell, Mr Sergeant Buzfuz, is a red-faced bully, twisting every word of every witness. Well, who has ever seen a courtroom advocate like that?

But in serious or frivolous mood, Dickens seems to be in complete agreement with the opinion expressed by his character Mr Bumble in Oliver Twist, who of course insists, “the law is a ass – a idiot”.

Lawyers are not the only ones to suffer from a sort of stereotyping, which you could call “job-ism”. It may not be as ghastly as racism or sexism, but tarring all members of a trade or profession with the same brush is still unfair. Not all lawyers are money-grabbing sharks, not all accountants are boring, not all bankers are fat cats, all coppers are not bastards.

So let us have more examples of lawyers being shown in a favourable light. Charles Dickens did create one lawyer capable of greatness. The brilliant but slapdash Sidney Carton in a Tale of Two Cities is not perfect. He is cynical and depressed and drinks too much. But at the end of the tale he chooses to save his client from the guillotine, not by a great piece of advocacy or knowledge of the law but by allowing himself to be executed in his place.

“It is a far, far better thing that I do, than I have ever done; it is a far, far better rest that I go to than I have ever known.”

That sort of dedication to one’s client and the selfless practice of the law is clearly an example to all of us.

# Contributors

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Clive Anderson is an award-winning broadcaster and presenter. He currently hosts Loose Ends, BBC Radio 4's Saturday entertainment programme and Unreliable Evidence, in which he discusses legal issues with major figures from the world of the law. He spent 15 years practising as a barrister and is a sought-after host for major events such as the BBC Proms.

## Peter Beaumont

Peter Beaumont is a foreign affairs correspondent for the Guardian and the Observer newspapers. Author of The Secret Life of War and Revolution Road, he has covered more than a dozen conflicts including Iraq, the Balkans and Afghanistan. During the Arab Spring he reported extensively from Tunisia, Egypt and Libya.

## Clemency Burton-Hill

Clemency Burton-Hill is a broadcaster, journalist and author. A presenter of BBC television's The Culture Show, Review Show, Young Musician of the Year and the BBC Proms, she also hosts Weekend Breakfast on Radio 3. She is a regular contributor to the FT Weekend Magazine, the Independent and the Guardian. Born in London, she has lived in New York since 2009.

## Jo Glanville

Jo Glanville is director of English PEN, the writers organisation. She has been an award-winning editor of Index on Censorship, which campaigns for freedom of expression, and a BBC current affairs producer. She writes for a variety of publications including London Review of Books and the Guardian.

## D.D. Guttenplan

D.D. Guttenplan is London correspondent for the American weekly The Nation, and chief education writer for the International Herald Tribune. He is the author of The Holocaust on Trial: History, Justice and the David Irving Libel Case and American Radical: The Life and Times of I.F. Stone. He is a frequent commentator on American culture and politics for the BBC.

## Charlotte Harris

Charlotte Harris is a partner at Mishcon de Reya. She specialises in media law and has represented a number of victims of phone hacking. She gave evidence at the Leveson Inquiry into the culture, practice and ethics of the British press and regularly comments in the media. She is a director of the not-for-profit Hacked Off Campaign.

## Ed Howker

Ed Howker is a regular contributor to the Guardian, a current-affairs programme-maker for Channel 4 and co-author of Jilted Generation: How Britain Bankrupted Its Youth, an examination of the diminishing economic opportunities for young people in twenty-first century Britain. He lives in Soho.

## Anthony Julius

Anthony Julius is Deputy Chairman of Mishcon de Reya, a litigator and an acknowledged expert on defamation. He is also a noted author whose books include T.S. Eliot, Anti-Semitism and Literary Form and Trials of the Diaspora, a history of anti-Semitism in England. He is Chairman of The Jewish Chronicle and a visiting professor at Birkbeck College, University of London.

## Mary Riddell

Mary Riddell is a columnist for the Daily Telegraph. A former deputy editor of Today newspaper, she has worked for the Observer, the Guardian, the Daily Mail and the Mirror. Her writing awards include interviewer of the year in the British Press Awards, and she has twice won the Bar Council's annual award for legal journalism.

## Vanessa Thorpe

Vanessa Thorpe has been The Observer's Arts Correspondent for the past 13 years where she has covered arts and media for news and feature pages and also contributed regularly to the Guardian. She was formerly a news reporter for the Independent on Sunday, having started her journalistic career at a local newspaper group in North London.

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