

SIDE TRACK FOUR

LEGAL AID

Another day, another drastic shake-up.

This time it's the [law and legal aid](#). The Coalition government has turned the bankers' crisis into their very own version of the attacks of 11 September, an 'emergency' justifying a series of assaults on the poor of which proper Tories like George Osborne may long have dreamed but which surely even they could never really have thought possible. Now, brilliantly, the need to bail out feckless financiers has given them their excuse: the poor must be plundered to keep the rich on the road –

A Tory perfect storm.

But the law risks getting in the way of this brave new world.

The government meets the threat in two ways.

First and exceptionally – only when it has no option – it removes legislation that requires it to act as though fairness really mattered rather than being no more than the advertiser's slogan it has become in coalition mouths. So Harriet Harman's Equality Act is to be [repealed](#). Much better from the coalition's point of view is to preserve the form of the law while making sure the poor have no chance to use it.

This is where the cuts on legal aid fit.

Gone will be support against grasping private landlords, savage debt sharks, schools that fail their most vulnerable pupils, dismissal-happy employers, and much else besides, in the fields of welfare, negligence and family law. David Cameron will still be able to lecture the Chinese on 'the merits of the rule of law' and the Lib Dems – that rest home of hobbyist lawyer-politicians – will not feel obliged to kick up a fuss. But the legal system will once again be open to all in exactly the way that the [Savoy](#) is after its recent zillion-pound refurbishment.

Perhaps 'the Big Society' will step up to the challenge?

But of course it turns out that all the informal systems of legal support provided in deprived communities are themselves to a greater or lesser extent dependent on local authority funding and this is now itself in large part about to be turned off. Maybe the idea is for the good people of home-counties Britain to forsake their jam-making and bell ringing and travel into the inner cities to offer their thoughts on the legality of the arbitrary deprivation of a person's benefits, the imminent eviction of a family or some such other matter, easily

grasped (in this benign big society which we are all – luckily! – about to join) by force of altruistic will rather than by some boring emphasis on intellect or expertise?

A LOOPHOLE?

The proposals leave one opening. There is no removal of funding for those cases (called ‘judicial reviews’) in which the legality of government action is challenged. This litigation is still managed by the courts which, quaintly, remain both independent of government and inured to the integrity of the laws that their personnel are required by virtue of their office to interpret and to protect – no civil servant can order a case to stop or entirely ignore its outcome.

And while the Equality Act may soon be gone, the [Human Rights Act](#) is not (yet?) scheduled for the chop, and it contains much that may prove useful as the coalition’s attack on the poor moves comes closer to reality. There is no ‘human rights’ to legal aid but:

- Impoverishment can be ‘inhumane treatment’ and so barred by the Act when it is brought about by deliberate government action, for example.
- Forced labour in exchange for benefits may also be hard to justify under the human rights law. As a result of a [recent Supreme Court decision](#) many evictions by local authorities will need in future to be preceded by a full discussion in court of the extent to which the move infringes the victims’ right to family life and privacy.
- Many benefits cannot be taken away without some kind of fair hearing – this too is the result of the Human Rights Act.

The government may not have thought about all of this. But these will all be ‘judicial review’ cases and so can be funded. Expect much anger about solicitors in BMWs and high-handed judicial meddling as the lawyers whose livelihoods have been threatened by the loss of their usual business swoop in on judicial review as a potential life line.

And we can be sure that the coalition’s attitude to the poor will give them lots of business.

THE LIMITS OF THE LAW

The law can do some defensive work here for sure. Judicial review can be an irritant certainly but perhaps not very much more than that.

In this as in other areas there is no avoiding the importance of protest.

The wonderful students have shown the way.

Will the lawyers follow, downing tools across the profession in support of the disadvantaged and the vulnerable? It happened in Pakistan where the lawyers became unlikely folk heroes in their defence of their chief justice. Might we have a senior partner in a commercial firm

being charged with dropping fire extinguishers of roofs or trespassing on private property? That'll be the day. But it is protest and solidarity across civil society that will undermine the government's moral authority before the electorate get the chance to destroy it.