

Book review

Against the Law: Why Justice Requires Fewer Laws and a Smaller State



Author: David Renton
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In *Against the Law: Why Justice Requires Fewer Laws and a Smaller State*, David Renton cites the late Tom Bingham's complaint: 'Legislative hyperactivity has become a permanent feature of our governance'. Renton analyses the neoliberal legal backlash against the welfare state, launched by Thatcher, extended under New Labour, and brought home by Cameron and May. 1970s neoliberals derided the welfare 'nanny' state, taking aim at 'rights' once thought inalienable: the right to strike; rights against unfair dismissal; rights to fair rent and protection against unlawful eviction; rights against discrimination; and the right to enforce those rights through affordable access to the courts. In place of rent regulation, council tenants received a Tory 'right to buy' (a declaration of interest: the author and I are both members of Garden Court Chambers. I work in-house as a climate justice lawyer at Greenpeace International, while Renton is a noted employment and housing law specialist).

This bonfire of rights was accompanied by a torrent of tribunal regulations implemented through statutory instruments, codes and guidance beyond Parliamentary scrutiny. Priti Patel's refugee-dumping flights to Rwanda don't require an Act of Parliament: they are Home Office 'guidance'. As one senior immigration judge says: 'I don't suppose the judges know any more about it than the appellants who come before them.' He was speaking of immigration law but the same can equally be said of housing, employment and welfare tribunals. Welcome to the world of Ken Loach's *I, Daniel Blake*.

Renton tackles the hard questions. He doesn't toss them down from the towers of academe but lobs them up from the practitioner's trenches where he and his colleagues battle daily for employees, tenants and refugees. Part Two of *Against the Law* reviews the 'Mirage of Democratic Control', the post-truth populism of Trump and Johnson, where gutter racism increasingly dominates any discussion of asylum 'rights' whether in cabinet or in *The Daily Mail*.

In *Jobs and Homes (Jobs and Homes: Stories of the Law in Lockdown*, Legal Action Group, London 2021), Renton drew moving portraits

of employment and housing tribunal injustices under lockdown. *Against the Law* tackles the radical theme of creating a more equal society by 'cutting the law down to size'. The neoliberal British state has grown, not shrunk, generating twice as much legislation today as four decades ago. 'Rights' remain on the statute shelf, above the reach of all but those wealthy enough to afford judicial review, while a defanged and defunded Equality and Human Rights Commission is virtually powerless to prevent discrimination. The Faustian 'right to buy' bargain leaves London's local authorities with 400,000 households on their waiting lists, and 185 of Britain's 350 local authorities with no council homes at all, though the law requires councils to house the homeless.

In a chapter covering 'Big Data', Renton glimpses the dystopian vision of online courts and algorithmic 'justice'. This is not wi-fi sci-fi. Supreme Court Justice Lord Briggs and Master of the Rolls, Sir Geoffrey Vos, seem fascinated by the prospect of almost lawyer-free civil courts, where tick-box forms feed complaints into computers which do away with in-person hearings. Lord Briggs's technology adviser for his 'Online Court' reports was one Richard Susskind, who likens the law to a board game. Susskind claims algorithms can 'identify patterns, regularities that human lawyers cannot' (R Susskind, *Online Courts and the Future of Justice*, Oxford, OUP, 2019, p271), envisaging a world where 'judges might be replaced by machines'. Is every seeker after justice computer literate? Can computer programmers code for empathy, reasonableness and fairness? No, as Renton says: 'The opportunities to challenge discriminatory laws and unjust decisions would be even fewer than they are now.'

Renton writes 'from the desire to see a more equal society and for the gap between the richest and the poorest to be narrowed or abolished'. In that process: 'Some part of our present-day law might survive even the shift to a society designed to resist ecocide and achieve equality,' but 'the main part of the calculation must be to work out how much law should go, which is most of it'. It's a sweeping judgement with which I don't fully agree. However, these are desperate times, and he makes the case

for the state concentrating on fewer tasks and ensuring 'the determined defence of nature, alongside the rights of labour'.

As an environmental litigator, I was naturally drawn to Renton's last chapter: 'The Dilemmas of Environmental Law'. He notes that Marx warned his young supporters 'not to seek a compromise with the law but to remain antagonistic to it'. The fight for social justice may require choosing between a reformist approach—litigating to change the law—or rejecting legal changes that leave bad social relationships intact: System Change, Not Climate Change, as environmental activists demand.

What Renton calls 'the Marxian moments' of history are times when people demanding rights are promised reforms. Should they accept, hoping their demands will be satisfied, but leave social relations unchanged? This question is far from rhetorical in today's context of the eco-crisis, escalating species extinction, pandemic, warfare and unrestrained rising prices, temperatures, sea levels and military expenditure.

What is the role of law in our society where Big Oil is waging an existential struggle against humankind? Renton quotes Andreas Malm's provocatively titled *How to Blow Up a Pipeline*: 'There is no shortage of international legal instruments, and yet global warming continues, indeed is accelerating' (A Malm, *How to Blow Up a Pipeline: Learning to Fight in a World on Fire*, London: Verso, 2021, p. 106). Even ExxonMobil accepts the truths of climate science, while refusing to take responsibility. How far are we from Renton's 'Marxian moment' when key decisions affecting our children's lives are taken by Big Oil's directors and politicians who pander to their fossil capital masters?

As a practitioner, I firmly believe we must continue to use every weapon in the legal toolkit to turn the eco-crisis juggernaut around, even while corporate greed and political (in)actions prove Renton's case that: 'The law is an inadequate weapon to achieve the social and environmental justice that our moment requires.'

Next year sees the 175th anniversary of the Communist Manifesto, where Marx and Engels called on the workers of all lands to unite. Today, more than ever, 'we have a world to win'. Indeed, we have never been in greater danger of losing that world's ability to sustain human and other life forms. The law is not the only way but it's the only non-violent way we have to hold to account those responsible for threatening us all with extinction.

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