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SOCIALIST LAWYER

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Book Reviews and News

HALDANE SOCIETY OF SOCIALIST LAWYERS

SOCIALIST LAWYER

Contributions from members are very welcome. If you are interested in writing articles or book reviews please contact HEATHER WILLIAMS at:
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HALDANE NEWS

Conferences

In September 1989 the Haldane Society co-organised a weekend conference with the *Critical Legal Conference*. This was the first joint conference between practitioners and academics on the left for many years. The venue was Canterbury University and discussion topics included 'Women and Law', 'The development of Public Law', and 'Marxism and Law'. Attendance was good with most people staying for the weekend.

In October 1989 the Society held an evening meeting *The Socialist Lawyer: From Theory to Practice*, an introduction to the work of left wing lawyers and the activities of the Society for new members. It was well attended. Helena Kennedy opened the conference by outlining some of the difficulties of practice as a socialist lawyer. Each of the Society's subcommittees described their current work and discussed their plans for the future.

Labour Party Fringe Meeting

The Haldane Society and *The Society of Labour Lawyers* held a joint meeting at the 1989 Labour Party Conference. The topic was legal reform and the meeting was very successful, with questions and discussion exceeding the time limits and continuing in the bars of Brighton and on the journey back. *The Society of Labour Lawyers* has now passed a resolution to work more closely with the Haldane Society, which we welcome.

Speaker Meetings

Three speaker meetings were convened last Autumn. The first was on electronic tagging and brought together some of the hard work of the **Criminal Law subcommittee** which has been researching the use of electronic tags in Nottingham and Tower Bridge.

The second meeting was on employment rights in the light of the Labour Party policy review. It made a valuable contribution to the on-going debate.

The D. N. Pritt Memorial lecture was delivered by Kader Asmal in December. The full text appears in this issue of ***SL***.

Executive Committee

The EC welcomed to its number, as observers, Piers Mostyn (Northern Ireland subcommittee), Fenella Morris (Mental Health subcommittee) and Annie Jessup (Housing subcommittee).

Piers Mostyn

The Guildford Four: Justice on Trial

The judicial inquiry into the Guildford Four affair is underway and the legal establishment will be hoping to relax. Responding to widespread criticism, the Home Secretary has improved the original terms of the May inquiry. Sir John May has assured critics that it will be wholly independent of the prosecuting authorities and that evidence, the sole purpose of which is to suggest the Four's guilt, will not be admitted.

But it remains a judicial inquiry into the judiciary in which a key issue , the failure of the appeal system, will be examined by a retired Appeal Court judge. Of the three lay assessors one is a pillar of the academic legal establishment and another is a senior police officer. Sir John May does not have a reputation as a liberal, as was shown when he upheld the GCHQ union ban in the Appeal Court. Given that any criminal proceedings must finish first, he is unlikely to deal with the substantial issues before 1991, thus incidentally helping to diffuse much of the anger and urgency in the wake of the Four's release. Further, the partial immunity offered does not seem to cover junior officers already under investigation. Immunity is essential if there is to be any chance of obtaining vital evidence on the role of senior officers such as Peter Imbert. There is no power to compel the production of evidence and the attendance of witnesses and there will be no cross-examination of trial or Appeal Court judges.

A Whitewash

All this would be less serious were it not for the gravity of the issues raised. Lord Denning went so far as to state that the criminal justice system is in ruins – only 18 months after his comment (in the aftermath of the unsuccessful Birmingham Six appeal) that it is better for the innocent to stay in gaol than to risk undermining public confidence in the law.

Previous inquiries into police misconduct and miscarriages of justice (Brabin on Evans; Fisher on Confait; Calcutt on the Cyprus ex-servicemen) have led to charges of 'whitewashing' accompanied by suggestions of guilt [1]. The miscarriage is explained away as a procedural technicality. Serious reforms are subordinated to the need to exonerate the criminal justice establishment. In this case the malaise runs to the heart of the system and there can be little hope of anything better without massive external pressure.

Inquiries concerning British policy in Northern Ireland have tended to make light of human rights abuses by the RUC and the army. The inquiry into the shooting of 13 civilians on 'Bloody Sunday' went to lengths to exonerate the parachute regiment [2]. The inquiry into the treatment of internees produced a majority report calling for legislation enabling the minister, in times of civil emergency, to fix *in secret* the limits of permissible ill-treatment to be used in interrogating suspects. This went too far even for the Tory government of the day, which backed the minority view of Lord Gardiner [3].

Damage Limitation

The unfolding of events leading to the Guildford appeal victory and its aftermath suggest that yet again damage limitation rather than justice has been uppermost in the authorities' mind.

The circumstances leading to the 'finding' of new evidence in May 1989 remain unexplained and suspicious. It is claimed the Crown Prosecution Service ordered Avon and Somerset police to investigate the Surrey police papers after the Home Secretary referred back the appeal. But if the DPP was contesting the appeal he must have decided that the convictions were safe and that existing investigations were enough to establish this. The CPS should have had nothing further to look at. Was it already known that the Four were innocent and the DPP's announcement a political decision aimed at avoiding an embarrassing appeal?

The five month delay before the existence of the crucial alibi was revealed is longer than necessary to establish its authenticity. This and the informing of the Prime Minister and even the press before the appellants who were only given the details *one hour* before the appeal hearing on October 19 – suggest the hearing was set up as a damage limitation exercise aimed at minimising questions and debate. In the event, of course, nothing could stem the crisis. Even the right wing tabloids seemed euphoric at the release. No one wanted to be on the losing side and many in the establishment quickly forgot their 15 year campaign of vilification against the Four, their families and supporters.

Extraordinary Complacency

But a grim faced Lord Lane took a different view. From him there was not word of apology and no reference to a miscarriage of justice. He even suggested there may be an 'innocent', technical explanation for the new evidence that led to the quashing – thus setting the scene for a possible smear campaign against the Four in the run up to the inquiry. Lord Lane echoed the approach of prosecution counsel Roy Amlot QC, who went to considerable lengths to exonerate those involved, stressing that Peter Imbert, prosecution counsel and others outside the narrow circle of Surrey officers, were not implicated and had no knowledge of any impropriety. Mr Amlot's confidence was surprising given that a criminal investigation and judicial inquiry have yet to be conducted.

Then there was the treatment of the Four on the day. Despite the DDP's decision not to fight the appeal, the prisoners were strip-searched and held under Category A conditions to the last. With extraordinary complacency, the DPP failed to refer the matter to his Northern Irish counterpart to facilitate Paul Hill's inevitable appeal application on

> **'Many of the safeguards provided under PACE would do little to prevent another Guildford Four.'**

a separate conviction centrally involving the same Surrey officers. Hill was then denied access to his lawyers after the decision, released and immediately re-arrested by the RUC, appearing handcuffed in Belfast the next day.

Couldn't Happen Again?

It is already being claimed that the conviction of the Guildford Four arose from the outdated police procedures of 1974 and that subsequent improvements make repetition today near impossible. Defence lawyers still confronting confessions obtained by oppression, and fabricated or planted evidence would find this hard to agree with. Many of the safeguards provided under PACE would do little to prevent another Guildford Four.

In the Guildford case, custody records could have identified key 'missing' interviews and tape recording would have made alteration or fabrication of statements impossible. But tape recording still does not apply to interviews regarding terrorist offences, for which longer detention is also allowed. Existing rights under PACE are circumvented in any event – with 'confessions' in the back of police vans, suspects not informed of their rights and phone calls denied. A barrage of hostile media coverage and the use of security cordons and police marksmen at court tend to turn Irish cases into show trials – the most recent example being the Winchester Three. As Gerry Conlon commented, 'If you're Irish and you're arrested on a terrorist political type of offence, you don't stand a chance'.

Hardly a Case to Answer

But perhaps most worrying of all is the continuing possibility of a conviction on the basis of uncorroborated confessions. This practice gives paramount status to the credibility and integrity of the police, whose evidence normally carries far greater weight than other evidence in our judicial system. Behind this built-in bias is a presumption that, over and above the need to prove guilt or innocence, public confidence in 'law and order' must be upheld. Such a presumption renders suspect convictions that are based on police credibility. The thread of police credibility runs through the whole Guildford saga – underpinning the trial judge's (now Lord Donaldson MR) willingness to accept what has been described as 'hardly a case to answer' [4], the failure of the 1977 appeal and subsequent refusal to refer back.

In addition, the case reinforces the primacy of jury trial and the right to silence. Despite the fact that a jury convicted the Guildford Four, a jury trial provides a safeguard against judicial bias, juries having less interest than judges in defending the police and preserving the sanctity of the law [5]. The right of silence remains the accused's last weapon against manipulation or abuse of the interview process.

Prosecution Independence

Of equally serious concern was the role of prosecution lawyers and the DPP: why did they not notify the defence of the alibi evidence and why was forensic evidence withheld? Whatever lies were concocted by the police, officers of the court should have put a stop to them when the case got to court. In the Guildford case they didn't. Excuses about panicky officers responding to bomb hysteria cut no ice and reassurance that Guildford couldn't recur under new procedures ring hollow. We do now have the CPS as a formally independent prosecution service, but independent of what? Anyway the Bar was no less 'independent' in 1974 than it is now.

Finally there is the inadequacy of the appeal system: the rigid certainty with which the 1977 appeal was rejected; the new evidence that called for a retrial in front of a jury but was heard by their Lordships; the failure of the Home Office

to re-open the case for so long; and the fact that the second appeal would almost certainly have failed but for the 1989 evidence. The case for an overhaul is overwhelming. A last stop review tribunal would help as a check against miscarriages of justice. But miscarriages are less likely in the first place in a system that is geared towards seeking error instead of a system reluctant to admit its mistakes, and obsessed with the sanctity of law.

References

1. See Christopher Price *Studies in Whitewash,* New Statesman and Society. 17. 11. 89
2. The Widgery Tribunal, 1972
3. Subsequently published as the Gardiner Report, 1975
4. Susan Edwards, *From Scapegoats to Sacrificial Lambs: The Guildford Four affair*, New Law Journal, 27. 10. 89
5. See Anthony Scrivener QC *The Guildford Four,* Counsel November 1989

Joe Boatman

Keir Starmer

The Party's Over – Acid House and the Law

Over the last 12 months there has been widespread media hysteria over so-called 'acid house' parties. Nearly every weekend young people trek many miles to open fields, barns or disused aerodromes to huge parties of anything up to 10,000 people.

Although many of the revellers enjoy the particular style of music on offer, pioneered in Chicago nightclubs, most regard these outings as a kickback against the British commercial nightclub establishment. 'Acid house' parties do not end at two or three in the morning, there is no formal dress code and alcohol is not on sale. Drugs are prohibited (and pushers are thrown out). Significantly although more than 50,000 people have been to an 'acid house' party in the last 12 months , instances of physical violence can be counted on the fingers on one hand.

... the police use of roadblocks is not only unjustified but is in most cases unlawful.

Subversion

Why, then, are the media and the government so suspicious of 'acid house' parties? Perhaps it is sheer incredulity that so many young people can enjoy music without alcohol, drugs and violence:- surely they must be up to something! Suspicion of emerging youth cultures is nothing new. Rock 'n' roll, the swinging sixties and the Bay City Rollers are now seen as harmless fun, but at the time they were each regarded, in their own different ways, as being subversive and pregnant with the potential to break down 'normal' civilisation. That the 'acid house' phenomenon should be seen as subversive is particularly bizarre. A car, a telephone and a fairly healthy bank account are essentials for the party-goer. Several cars , several telephones and a very healthy bank account are essentials for the party organisers. However, 'acid-house' parties do reflect two important trends of the 1980's.

A Steady Decline

In the first place 'acid house' party goers are indicative of the depoliticisation of the last decade. Designer labels and Reebok trainers are the symbols with which a whole generation of young people identify. Politics is merely an accessory to be worn on one's lapel – for style, naturally , not affiliation. These are Thatcher's children.

Secondly, the policing of 'acid house' parties illustrates the extent to which civil liberties have declined in the 1980's. The numbers of police officers deployed and the tactics adopted by them to stop 'acid house' parties at virtually any cost would have met with considerable public concern ten years ago. The miners' strike and Wapping paved the way for the policing of 'acid house' parties and unless challenged, current police tactics will pave the way for further restrictions on freedom of movement and freedom of assembly in the 1990's.

Unlawful Restraints

A good example is the widespread use of roadblocks by the police over the last few months. Before 1984 roadblocks were relatively rare. They began to find favour with the police during the miners' strike. Over the last 12 months roadblocks have been set up nearly every weekend – sometimes turning back all vehicles, sometimes leaving it to the discretion of the police officers to identify potential party goers and separate them from other traffic. The most notorious occasion was when the police closed down part of the M3 one Saturday night and refused to let anyone leave the service area on the south side.

Contrary to popular opinion, the police have no general power to set up roadblocks. Whilst people and vehicles can be stopped and searched if certain conditions are satisfied, there is only one circumstance in which people can be physically prevented from continuing their chosen journey. A roadblock can be set up when a police officer has reasonable grounds for believing that a breach of the peace is imminent; see *Moss v McLachlan, the Times* 29. 11. 84.

Spoiling the Fun

The precise definition of 'a breach of the peace' has eluded lawyers for many years. However, even the police accept that the vast majority of 'acid house' parties pass off peacefully. Noise and inconvenience do not in themselves constitute a breach of the peace. Therefore, the police use of roadblocks is not only unjustified but is in most cases unlawful.

Where roadblocks prove unsuccessful the police use a series of other tactics to prevent the party from going ahead. Misinformation is fed to party goers. At its most innocuous – that the party has been cancelled. At its most restrictive – that they will be arrested if they attend this 'illegal' gathering.

If the party does get started, hundreds of police officers, often in riot gear, will enter the party and carry out largely indiscriminate arrests, confiscate equipment and sometimes turn off the electricity. The police have been unable to specify the powers under which they purport to be acting when they do this. Largely the lawfulness of these activities falls to be determined by the same criteria as for roadblocks – whether a breach of the peace is imminent. Accordingly, these measures are probably unlawful in most instances.

There is also the question of police priorities. Every night many people are too scared to travel on the London Underground. Many more will not walk out alone at night. Their fears of violence are well-founded. Inadequate policing is partly to blame. However, on many occasions hundreds of police officers have been employed in trying to shut down 'acid house' parties. No-one should underestimate the inconvenience and irritation of being kept awake by intrusive noise, but nuisance, by its very definition, is an interference with use and enjoyment of property. Personal violence is clearly a more serious problem and should be given appropriate priority. It is not.

And So It Goes On

'Acid house' parties are not illegal *per se*. It has now been established that some parties do not need a public entertainments licence. The real problem is the delicate task of balancing the desires of the party goers with those of the local residents who wish to sleep in peace. The most appropriate way of doing this is by means of 'Noise Nuisance' notices issued by local authorities. The reason that such notices have not been successful in the past is because locations of many parties have been kept secret until the very last minute. The reason for such secrecy is because the police will try to close down a party once they know the location. And so it goes on.

Meanwhile the government is already proposing to extend the Public Order Act by placing further restrictions on the right of public assembly ..... The 1980's have not been years of great progress.

Philippe Sands

Can the Law Turn Green? Citizen, Law and Environment

Increasing awareness of national, regional and international environmental problems is leading to a rapid development of laws designed to protect the environment from further degradation. In the United Kingdom the government will shortly publish a 'Green Bill', to be followed next Spring by a White Paper on the environment. The European Community is devoting increased energy and resources to environmental legislation. And at the international level work has already begun on what could be wide-ranging, perhaps revolutionary legislation to tackle on a co-operative basis the causes and effects of climate change and global warming.

At each of these three, interrelated levels lie important issues of ideology and distributive justice. This article is concerned with one such question: will there be a role for citizen action in the protection of the environment through the enforcement of laws? I am not here concerned with the impact law can have in preventing further environmental degradation. At a minimum, it seems that some of the laws will have an important educative function, possibly changing the way we think about the relationship of people to their natural environment.

Recognizing Our Interests

Rather, this article is concerned with whether individuals and groups of individuals through associations such as Greenpeace, the Council for the Protection of Rural England and Friends of the Earth, have a role to play in enforcing environmental laws. I believe that they do, and that to achieve this, English law must be changed to relax the current restrictive standing requirements which limit individuals' access to the courts. Simply put, English law should acknowledge the reality of our *physical* interest in the environment by translating it into a recognized *legal* interest.

Generally the state (in this country H.M. Inspectorate of Pollution, the Department of the Environment and the Attorney General) has shown itself ill-equipped to ensure that environmental laws are enforced. As early as 1972, writing in the context of the United States, Professor Christopher Stone identified the limitations on an attorney-general's ability to enforce rules designed to protect the environment: 'Their statutory powers are limited and sometimes unclear. As political creatures, they must exercise the discretion they have with an eye towards advancing and reconciling a broad variety of important social goals, from preserving morality to increasing their jurisdiction's tax base [1]. There is nothing in the English law reports to suggest that the situation is better in this country (or that our environment has improved since that article was written).

Developments in Community Law

There is little doubt that European Community law has provided the impetus for the principal developments in English environmental legislation. The Danes rightly complain about the lowly objectives of Community environmental standards, but Article 100A of the Treaty of Rome specifically permits member states to adopt a higher standard of environmental protection where the objectives are genuinely environmental. And the British government discovered during its attempts to privatise water that Community standards could not be ignored.

Plans of Action

As early as 1973, shortly after the United Nations Stockholm Convention on the environment, the Community proposed and adopted its first *Environmental Action Programme*. The fourth such *Action Plan* took effect in 1986. By that year there was already a large body of secondary Community legislation in force, covering all aspects of environmental policy: water, noise and atmospheric pollution; trade and management of waste; the control of chemicals; and the conservation of flora and fauna.

In 1987 the Treaty of Rome was amended by the Single European Act to allow for the enactment of specific environmental legislation by the Community with the following objectives:

- to preserve and improve the quality of the environment
- to contribute towards protecting human health
- to ensure a prudent and rationalization of natural resources

(Article 13OR)

The large volume of Community secondary legislation on environmental matters (now over 100 Directives and Regulations) already provides groups and individuals with a range of potential actions in the UK courts, either to force the government to enforce standards or, where the Community legal standards have been implemented into English law or are directly effective, against those in breach. Much more legislation is on its way, and in some unlikely places.

Green Broadcasting

No-one expected the Council Directive on television broadcasting to be 'green'. However, adopted on 3 October 1989, the Directive (no.L298/23) provides that television advertising shall not 'encourage behaviour prejudicial to the protection of the environment'. The deadline for implementation is 3 October 1991. This rule creates the genuine possibility that a national court or the European Court of Justice might prohibit advertisements which for example, encourage driving a car at speed, or at all, on the grounds that such behaviour is prejudicial to the environment.

Going Dutch

From the perspective of individual action, one of the most significant pieces of Community legislation is likely to be the proposed Council Directive concerning civil liability for damage caused by waste [2]. As presently drafted it would impose a strict civil liability on the producer of waste for personal and property damage and for 'injury to the environment', which is defined as a 'significant and persistent interference in the environment caused by a modification of the physical, chemical or biological conditions of water, soil and/or air...'

The Directive places no financial ceiling on liability. It also provides that where national law 'gives common-interest groups the right to bring an action as plaintiff, they may seek only the prohibition or cessation of the act giving rise to the injury to the environment'. The strict standing requirements of English law will not therefore be relaxed by this Directive (as presently drafted); however, the more liberal approach to standing in the Federal Republic of Germany and the Netherlands is recognized by the Directive. This leaves open the possibility that a UK individual or group could get a Dutch court to prevent activity in the UK which degrades the environment in the Netherlands.

> **English law is profoundly concerned with individual property rights and does not recognize the individual's legal interest in the environment.**

Trees as Plaintiffs

English law is profoundly concerned with individual property rights and does not recognize the individual's legal interest in the environment. An individual must show that her or his property or personal rights have been interfered with and that she or has he suffered before a court will intervene to prevent damage to the environment. In the English courts we have no standing to protect the environment as such.

The Americans have been grappling with this legal difficulty for some time. In the article mentioned earlier, published in 1972(England is approximately 15 to 20 years behind the United States in translating environmental awareness into legal thought and action) Professor Christopher Stone advanced a proposal which would sound absurd to most English lawyers. He suggested that United States law should 'give legal rights to forests, oceans, rivers, and other so-called "natural objects" in the environment – indeed to the natural environment as a whole'

The idea behind the suggestion was to devise a theoretical basis for allowing people, whether acting individually or through associations or through the state, to gain access to the national courts in order to enforce these 'environmental' rights. Professor Stone recognized that the traditional model of United States law, centred around the rights of people and their property, did not provide a basis for most effectively using the law and the courts to protect the environment.

Likely Developments

The traditional US and English approach to standing is reflected in the Dicta of the US Supreme Court that 'the party seeking review be himself among the injured' [3]. However, as early as 1971 Stone's thesis was partly accepted in the dissenting opinion of Supreme Court Justice Douglas, who held that 'the critical question of "standing" would be simplified..... if we allowed environmental issues to be litigated ... in the name of the inanimate object about to be despoiled, defaced or invaded...' Professor Stone's article and Justice Douglas ' dissenting opinion have had a considerable influence on the development of environmental protection litigation in the United States and suggest one way in which English law might soon develop.

Thirteen years after his original article, Professor Stone noted two separate lines of development in the United States. The first included the relaxation of judicial standing requirements and the extended use of enviromental impact-requirements, increased statutory provision for citizens' suits and expanded reliance on public trust concepts [4]. The second concerned the difficulty of evaluating damage to the environment, even where federal statutes had permitted actions by the state or another 'public trustee' to recover 'damages to the natural resources' from spills of oil and other hazardous substances [5].

Valuing Green Assets

Recent developments in England suggest that this country may well be following the US path. Environmental impact assessments became mandatory in this country in 1988 (as a result of a European Community Directive)[6] and Environment Minister Christopher Patten's positive response to the view expressed in the recent Pearce Report that environmental 'assets' can and should be valued suggests that it will become more difficult to argue credibly that 'environmental damage' is unquantifiable. The increased willingness of environmental pressure groups to use the law and

legal argument is likely to be followed by increased demands for a relaxation of 'standing' requirements in this country to allow citizens groups access to the courts to litigate environmental issues. And, as was suggested above, developments in the European Community are, in part, modelled on US law.

A Question of Commitment

The effectiveness of using environmental law in the English courts will depend on a number of factors. It will depend on the political will of environmental groups to go to court; on the availability of a corps of inexpensive or 'pro bono' public interest lawyers; and on the ability of creative lawyers, judges and regulators to expand the standing of groups and individuals to recognise that they have a legal interest in the protection of the environment.

Environmental groups act, in part, as a check on governments which are not doing their jobs. They act as 'private attorney generals' on behalf of the public at large, and, as such, there should be some sort of public funding to support their work, including a relaxation of their potential liability for the other side's costs if they are unsuccessful. Whether English law will come to recognize that check on governments, and provide standing and adequate remedies, remains to be seen. In the meantime, European Community law has contributed new vigour to the protection of the environment and to the role of individuals and groups.

The author is a director of the Centre for International Environmental Law.

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5. See e.g. Outer Continental Shelf Act Amendments of 1978, 43 USC 1813 (b)(3)(1982); Federal Water Pollu tion Control Act Amendments of 1972, 33 USC 1321 (j)(5)(1982); Environmental Response, Compensation and Liability Act of 1980, 42 USC 9607(f)(1982).
6. See Council Directive of 27. 6. 85, OJ No. L175/40 (imple mented into English Law by SI)

Louise Christian

Yugoslavia – Turbulent Times for Human Rights

While the populations of other eastern European countries have constantly been seen on our television screens demanding democratic rights, there has been much less said about Yugoslavia. During 1989 I visited Yugoslavia three times on behalf of the FIDH *International Federation of Human Rights* – A Paris based organisation with observer status at the UN – to investigate allegations of human rights abuses.

Two of those visits, to Kosovo, revealed considerable evidence of systematic oppression of Albanians on racial and cultural grounds.

> **'The position of Albanians in Kosovo is similar to that of the Jews in Nazi Germany.'**

Unlike other eastern European countries Yugoslavia is a Republic, an increasingly loose federation of separate states. Kosovo is an autonomous province within the state of Serbia. It is an isolated rural area in the south with a little industry in one or two small towns. It is close to the Albanian border and 90% of its inhabitants are of Albanian ethnic origin. Albanian culture, language and traditions are important to the people and they have preserved their way of life although they have long been prevented from crossing the border into Albania itself.

An Ugly Atmosphere

In Serbia, where the federal as well as the Serbian state authorities operate, Serbians are constantly fed propaganda about their own racial heritage. It is claimed that Serbians were the 'original' inhabitants of Kosovo; much is made of Serbian medieval monastery sites and earlier this year elaborate celebrations were staged to mark the anniversary of the Battle of Kosovo when Serbians drove away invading Turks. Whilst Serbian history and culture is identified with the Yugoslav state, the Kosovo Albanians, who adhere to their own traditions, are portrayed as being 'anti- Yugoslav'.

In Yugoslavia generally the economy is in crisis with rocketing inflation (a cup of coffee and a sandwich costs 1,000,000 dinars) and a mounting IMF debt. The authorities have sought to maintain their position by linking Serbian nationalist sentiment with loyalty to the Yugoslav Communist Party. In Kosovo this has created an ugly atmosphere. In March 1989 amendments were proposed to the constitution of the province of Kosovo which removed its autonomy. Many prominent Albanians in Kosovo signed a petition against the amendments. Among them was the secretary of the Communist Party in Kosovo, Mr Vlasi who was then removed from office. There were protests and demonstrations including a miners' strike in the north. Tanks were sent in; there was fighting in the streets; people were killed and injured and many others were arrested.

A Secret Trial

Elsewhere in the Republic, notably in the state of Sovenia where the inhabitants are both geographically and culturally close to the west, these events in Kosovo and their aftermath have created a further loosening of federal ties. In Slovenia there is some of the same enthusiasm for pluralism and political participation that there has been in other parts of eastern Europe.

Visiting Ljubljana in Slovenia on our first mission in May 1989 with Antoine Garapon of the FIDH I was struck by the links the Slovenian activists we met had made with peace, green, feminist and youth movements. These people were not like the largely reactionary *refuseniks* of former times who, once in the west, allowed themselves to be used as pro-capitalist propaganda fodder. The Slovenians we met had far more in common with alternative political movements here – their primary target is militarism and unaccountable state power.

We investigated a secret trial by a federal military court of three young men and an army officer accused of possessing and attempting to publish a secret army document. Rumours in Slovenia abounded that the army document contained contingency plans by the army/federal government to suppress Slovenian autonomy by similar tactics to those

Salih Kabash

Salih Kabash and family

used against Kosovo. About 50,000 people marched to demand rights for these defendants.

The defendants included Janez Jansa who is seen as a political leader for the youth movement. When he and the other defendants were sent to prison the Slovenian authorities were trapped between public opinion in Slovenia and the demands of the federal authorities. At the time we were there Jansa had been transferred to an open prison which he could leave to go to work and the Slovenian authorities arranged for television cameras to accompany us on a tour of the prison, apparently to advertise the good conditions in which he was being held.

The Slovenian parliament set up a commission which later proposed changes in the Slovenian constitution giving Slovenia greater independence from the federal government and removing civilians from the jurisdiction of military courts.

Badly Tortured

Following the trial of Jansa and the others committees were set up in Ljubljana for the protection of human rights and for the protection of Kosovo. Slovenian activists were crucial in securing the information that led to western press reports of the deaths and injuries caused by police in suppressing the Kosovo protests. This sparked condemnation from the Serbian press and an orchestrated campaign of retaliation. In November 1989 Serbians threatened to demonstrate in Slovenia in protest at Slovenian support for the Albanians. In December Serbia actually announced economic sanctions against Slovenia and the situation remains tense.

Our mission to Kosovo at the end of September included in the delegation an Albanian member from Kosovo now living in Slovenia, Salih Kabash. Salih himself had been in prison from 1985 to 1987. He had been a teacher of the Albanian language and literature at a school in Pesc, Kosovo. He was accused of indoctrinating his pupils by teaching them about Albanian history and culture. He now works as a night porter in Slovenia. While in Kosovo we met others who had been in prison for similar 'offences' and had been tortured.

Ali Fonici, a former magistrate aged 35 from Klina, had been in prison from 1985 to 1988, accused of intending to go illegally to Albania. He was badly tortured and is now too weak to work on the farm where he lives with his family. He has no passport and cannot leave Kosovo. We also met Mustafa Krasnici, imprisoned from 1985 to 1988 and tortured for distributing a leaflet about the suppression of Albanians; and Zaman Celaj, an Albanian journalist who is now being tried for political disinformation. During the protest and strikes in March this year Mr Celaj was the only journalist not to publish a government inspired story about a miner who would not leave the picket line to bury his dead wife.

Isolation

At the end of 1989 there were over 200 Albanians imprisoned under purely administrative orders described as 'isolation' – an order that you be kept in a certain place not specified, but in fact in prison. We heard harrowing accounts of early morning arrests by armed police; of people herded together in buses and taken from one overfull prison to another; of severe beatings and torture routinely administered to prisoners as they entered the prisons.

Mr Rexhep Iberdency, a restaurant owner, told us that the worst thing was hearing the screams of other prisoners being beaten in the cells next door. At Lescovacs prison where he was taken he estimated that 50 or 60 people may have lost consciousness from the beatings. Mr Anton Kolaj gave a similar account of events in Lescovacs, describing prisoners being beaten black and blue, losing consciousness and suffering severe internal injuries and injuries arising out of sexual torture. Other accounts, all in gruesome detail, were of a similar nature.

The Differentiated

The position of Albanians in Kosovo is similar to that of the Jews in Nazi Germany. Removal of their basic civil rights, particularly from those in professional jobs, has now been institutionalised. The process is known as 'differentiation' – a cruel combination of Stalinism and apartheid leading to a form of civil and political death. Any Albanian in a professional job is liable to be identified as ideologically unsound because of any expression of support for Albanian culture. He will receive a letter expelling him from the local Communist Party and thereafter will find himself out of a job and unable to find work.

We met an Albanian hospital doctor under pressure to employ Serbians instead of Albanians who had received this letter the morning we met him. He told us that he knew the authorities were trying to get him out of his job. An Albanian professor whose classes were being boycotted by Serbian students was in imminent fear of differentiation. Others we met had already been differentiated – teachers unable to work and writers banned from publication, including Ibrahim Rugova, president of the Albanian Writers' Union. The atmosphere of fear in Kosovo is real. Many people were frightened to talk to us. At one point we were followed by police and our interpreter became visibly sick with terror.

A Focus of Protest

I returned to Kosovo at the end of November to go to the Court House where Vlasi, the previous Communist Party Secretary, and 14 others were being tried on charges of incitement to riot. Like other delegates from international human rights organisations I was not allowed into the trial. The President of the Court claimed that 'technical reasons' prevented this as the Court room was too small.

Ali Fonici with Salih Kabush

Albanians were gathered outside the Court room. There had been further protests and demonstrations and another strike by miners leading to more fighting with police and more casualties. The charges against Vlasi and the others were described to me by lawyers as blatantly political and patently false. The 'evidence' against Vlasi consists principally of protests against his removal from office for opposing the amendments to the Kosovo constitution. The trial is expected to last some time and will become the focus of Albanian protests and the symbol of their exclusion from civil and political rights. The future looks gloomy unless some of the spirit which is transforming politics in Slovenia can eclipse the present reactionary backlash in Serbia.

The D. N. Pritt Memorial Lecture – Kader Asmal

Human Rights in Northern Ireland: Britain's Responsibilities

The issue of human rights in the North of Ireland is central to Anglo-Irish relations. It is the central issue, not only from the perspective of a lawyer who lives and works in Ireland, but also from your perspective, and it is therefore necessary to use this occasion provided by the Haldane Society to challenge in a fundamental, direct and systematic manner the direction of British policy towards Ireland, Maltland's 'first flight of the the common law ', or, less euphemistically, Britain's first colony.

Now, whatever your concerns in this matter, whether it be the suppression of terrorism, the upholding of British standards in the North, your desire for a united Ireland, or peace in the North of Ireland, British lawyers must unite in opposing the degradation of legal standards in the North of Ireland, which has had catastrophic results, human and political and which has brought neither peace nor a settlement in Ireland any nearer. It is not easy for me, as a lawyer, and a British educated and trained lawyer, to say that British policy in the North of Ireland has ensured that the legal and judicial system has become part of the process of pacification, of the triumph of security over legality. Not in the formal or procedural sense, because in the formal or procedural sense the British parliament has always passed the laws, but in a substantive sense. To speak of due process, the rule of law, or the protection of human rights, in the North of Ireland is to apply concepts that have little relevance to law or to Northern Ireland.

Little Impact

British lawyers, therefore, face a challenge arising out of the events in Northern Ireland over the past 20 years in particular, but going back to the constitutional settlement of 1920/21, British lawyers have not really grappled with or understood the issues that we face in Ireland and in Britain. The lists of abuses over the last 20 years may be well-known, but whether they have made an impact on the consciousness of professional legal bodies – of your Bar Council and your Law Society, of your law schools and of your voluntary associations – is doubtful. Under the guise of combating terrorism or, in other words, abandoning the luxury of liberty in order to counteract terrorism, the most far reaching changes in the administration of justice have been made in your name in the North, which have had the most drastic and fundamental effects in the society I live in, in the South. Not all of these changes have been limited to Northern Ireland, and the adoption of some of these measures – such as seven day detentions and the ban on interviews on radio and television by spokespeople of certain organisations – have eroded long cherished rights in Britain itself. Other measures, such as the abolition of the right to silence, have been used in the North as stalking horses for the whole of the United Kingdom.

Assembly-Line Justice

So my first point, therefore, is that what happens in the North has a direct effect on the health of democracy in Britain itself. The abuses arising out of the current emergency may be well-known but they need rehearsing: from the past use of torture during interrogations, (which resulted in a very important finding of the European Court of Human Rights), to widespread and random arrests , to assembly-line justice and show trials, to mass detention without trial, to the systematic ill treatment of prisoners , to the collusion between law enforcement agencies and Protestant paramilitaries, to the notion unique in modern time of internal exile within a country and of course, in more recent times, to miscarriages of justice that have driven a spear through the whole system of justice in your country.

Pacemaker

A Catalogue of Abuses

These are not isolated, or erratic, or fortuitous measures, but are very much integral to the system of justice itself. The use of special courts, where 10,000 people have been prosecuted and found guilty from 1973 to 1988, the use of supergrasses, the deliberate adoption by the administration of what one judge in Northern Ireland called 'the final court of appeal' – the lethal use of firearms to remove people who are embarrassments to the policies of the administration: all of these measures have been criticised or condemned by a series of governmental or unofficial international inquiries or by the invocation of international standards. So we find ourselves in a situation where confidence in the very administration of justice has been lost.

This is not simply a matter of past history, because within the last two years we find, as part of the catalogue, the following:

- The Prevention of Terrorism Act – a unique piece of leg islation that has become permanent, has become con stantly renewable. And your government had recently derogated from the European Convention of Human Rights in order to allow seven day detention to continue, following the ruling by the European Court of Human Rights in the *Brogan* case that it was contrary to Article 5 of the Convention.
- The right of accused persons in Northern Ireland not to answer police or court questioning has been destroyed.
- The law on the searching of premises has been made more draconian in the last 18 months.
- Candidates for election – in a part of the United King dom – have been forced to sign a special declaration against terrorism.
- The taking of mouth swabs without a suspect's consent.

This means that in the North of Ireland there has been a frontal assault on civil liberties and on accepted standards of behaviour in the administration of justice itself, which have had the most far reaching effects. The most glaring example of this has been the immunity given to law enforcement officers in January 1988 for perverting the ends of justice.

McCarthyism at its Worst

But the effects have not been limited to Ireland, North and South. In your country, the vocabulary of dissent itself has been poisoned. Early this year, a junior minister in the Home Office, speaking under the protection of parliamentary privilege, castigated certain lawyers for being soft on the IRA or, in his own words, the lawyers were' unduly sympathetic to terrorism'. A few weeks later, the first casualty in the practising legal profession occurred through the murder of a former student of mine from Trinity College Dublin, Pat Finucane to whose memory this lecture is dedicated. His murder struck fear among all lawyers, not only in the North, but in the whole of Ireland. His murder was a frontal assault on the right of defence.

A few weeks ago the then Home Secretary, Douglas Hurd, smeared the Labour Party for not adopting a bi-partisan policy on the renewal of the notorious Prevention of Terrorism Act, accusing the Labour Party of attempting to 'humour the friends of Sinn Fein in their ranks'. The implication of this was that if you did not support the Prevention of Terrorism Act, you support terrorism. This was McCarthyism at its worst.

Finally, I refer to a third example of how the whole administration of justice is perverted and the vocabulary of dissent itself is prostituted. In the middle of the prosecution of three young people at Winchester Crown Court for conspiracy to murder Mr King and persons unknown, the then Northern Ireland Secretary, Tom King, intervened at a crucial stage in the case to announce the government's decision to abolish the right to silence in Northern Ireland. He drew attention to the association between those who

Tony O'Shea

invoke the right to silence and terrorist organisations. Thus what might have been an ordinary trial was, in my view, transformed into a political showpiece trial.

A Serious Indictment

Normally, one would have looked to lawyers in Britain for an irresistible demand for the dismissal of these three politicians because of the inherent danger involved in the observations they had made. The fact that none of them suffered such a fate is a serious indictment of the response of the legal profession in Great Britain.

And so the main lesson to be drawn from the experience of the past 20 years is that the British government has used a sophisticated version of the famous Coercion Acts of the nineteenth century in order to deal with the situation in the North of Ireland. The British government has shown scant regard for international opinion and international and domestic legal standards. There has been neither proportionality in its response to terrorism nor an acknowledgment of the need for adequate supervision and accountability of the vast increase in the power of the administration. There has been too ready an acceptance of what your Prime Minister said in October 1988: 'To beat off your enemy in a war you have to suspend your civil liberties for a time'.

> **'... the whole administration of justice is perverted and the vocabulary of dissent itself is prostituted.'**

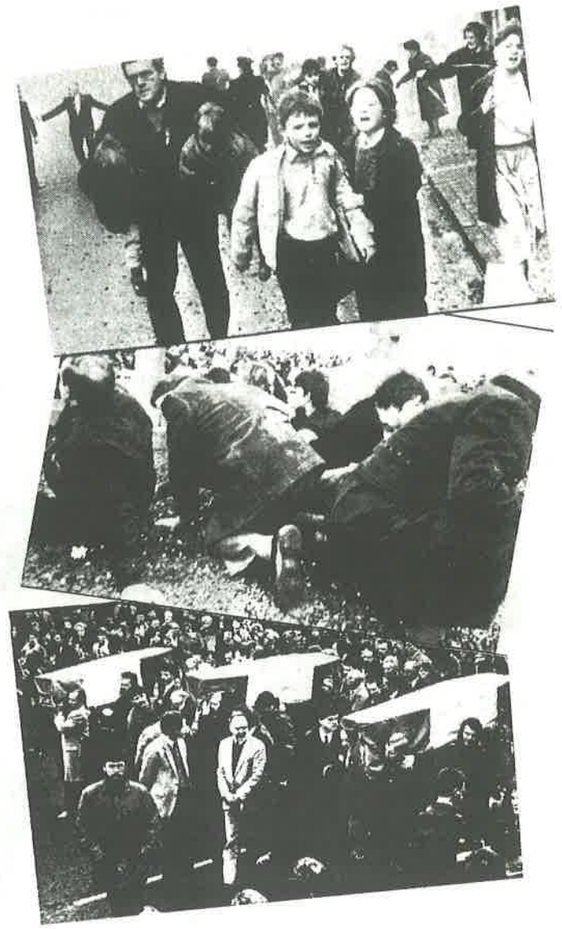
There is of course, no state of war, nor in the European Convention sense no state of emergency from 1985 to 1988.

The temporary has become permanent. Your Northern Ireland Secretary of State said, only a month ago, that the IRA could not be militarily defeated. The 'war' against the IRA is a stalemate. In spite of this situation, you have to suffer the virtually permanent suspension of what are basic and fundamental rights. My contention is that the United Kingdom is behaving and has behaved in the North in the same way that colonial powers exerted their sovereignty in the old-fashioned empires.

Prolonging the Agony

Of course, we must take into account the special circumstances that exist in Northern Ireland, as these cannot be ignored in any assessment of the protection of human rights. Over the last 20 years there has been serious internal conflict in Northern Ireland, and the conflict has raised challenges for Britain and for the Irish authorities, challenges about how you deal with physical violence in a democratic country.

But far from assisting in ending the violence in Northern Ireland the state's response (the violations of human rights, the lack of proportionality, and the lack of adequate supervision of the powers the administration have taken) has, in my view, prolonged the agony. Raising the spectre of terrorism has stifled debate in your country and the state's disproportionate response has led in fact to increased support for paramilitaries, and to a situation where a significant minority in the North believes that the law is indifferent to their aspirations and to their needs. And just as significant is the refusal of the United Kingdom to observe international standards, because international standards provide for a higher floor of rights than the legislation in your own country.



Counter-Insurgency Initiatives

A few years ago a former Home Secretary referred to an 'acceptable level of violence' in Northern Ireland. An acceptable level is an expedient level, a level of violence that governments can live with, which must be totally unacceptable to those who are civil libertarians and democrats. Since 1969, 2,700 people have been killed in Northern Ireland. Apply that to your country, to the whole of the United Kingdom, and this would be equivalent to over 91,000 people being killed. Thousands and thousands have been injured, and the compensation your government has paid extends into, now, nearly a billion pounds. Serious erosions of civil liberties in the cause of anti-terrorism may be justified, but they must be consistent with applicable international standards. The measures taken have failed to contain terrorism but the price paid has been large.

The counter-insurgency approach, as exemplified in the *Brogan* case, had has a serious effect on the corruption of the judicial and of the legal system, not only in Northern Ireland, but in the United Kingdom itself. The unique succession of counter-insurgency initiatives introduced in the early seventies to control the violence of the loyalists, and the native republican parliamentary forces, requires careful study by British lawyers as they show a reliance on Kitsonian measures, rather than attempting to deal with the grievances concerning the administration of the law.

Self-Determination

I want to end by looking at an aspect of the relationship between human rights and civil liberties in the North, and Britain's responsibility, by referring to the issue of what lawyers call sovereignty, because, as an international lawyer, I have been struck by the insistence of the British government that the sovereignty of the United Kingdom is not affected by any development in Northern Ireland, whether i twould be by the 1985 Anglo-Irish Agreement or by any other development.

The point that I want to make here is that we must remove the myth of British neutrality concerning Northern Ireland. Britain is closely involved and the notion of Britain's neutrality is a distortion of history which does not provide an adequate basis for any subsequent settlement.

The present government supports what it calls the right to self-determination of the majority in the North. Now, the right to self-determination of course is an imperative of democracy and is a very important democratic principle for international lawyers. It has been the argument for the national and the cultural and social development of nations without external interference and without the partial or total disruption of national unity or territorial integrity. My contention is that neither geography nor history nor political logic can justify the continued partition of Ireland, neither can the law. Political violence, as Paddy Hillyard has said is part of the basic conflict over national identity , but the British government has defined it as a problem of law and order, as a deliberate strategy. Therein lie the seeds of disaster, Paddy Hillyard concludes, and, in my view, the seeds of disaster have been the fact that successive British governments have refused to accept or acknowledge the right to self-determination of the whole island of Ireland. The seeds of disaster lie in the refusal to acknowledge that fundamental right

The Wall of Silence

Apart from Kevin Boyle and the British government, no one else has attempted to make a sustainable case that the minority in Ireland has the right to self-determination. The proper unit for self-determination is the whole island of Ireland. The Haldane Society should sponsor work in this area to show the legal and historical validity of this approach.

The issues which face British lawyers in relation Northern Ireland are enormous and important. But the wall of silence, cracked to a certain extent by the revelations concerning the Guildford Four, must be removed. The permanent emergency in Ireland has sacrificed the law. Its proper role must be vindicated.

This is an abridged version of the lecture, delivered on 12 December 1989 at the London School of Economics.

Greville Janner QC MP

Nazi War Criminals – Should We Let Them Get Away?

Ain Erwin Mere arrived in Britain in April 1947. He settled in Leicester. Five years earlier, Mere had been Chief of Police in Estonia – responsible for all the concentration camps in that region.

In November 1960, the Soviet Union requested Mere's extradition. The list of allegations cited was formidable: participation in the murder of 10,000 soldiers at Jagala concentration camp; torture of inmates at Talinn Central Prison and participation in the execution of Jews at Kalevi Liiva. The extradition request was turned down. He was tried in absentia in Talinn in March 1961 and found guilty. Ain Erwin Mere died on 5 April 1969 in his Leicester home, peacefully.

In October 1968 the British government was informed that people were living here who were suspected of committing horrific crimes in German occupied territories during the Second World War. The then Home Secretary, Douglas Hurd, established an 'Inquiry into War Crimes' to be carried out by Sir Thomas Hetherington QC, former DPP, and William Chalmers, former Crown Agent for Scotland.

> **'To take no action would taint the United Kingdom with the slur of being a haven for war criminals.'**

The Home Secretary asked the Inquiry: 'to consider... whether the law of the United Kingdom should be amended in order to make it possible to prosecute for war crimes persons who are now British citizens or resident in the UK'.

'....a realistic prospect of conviction'

The Hetherington/Chalmers Report was presented to Parliament in July 1989. The Commissioners found sufficient evidence to justify 'a realistic prospect of conviction' for murder against three people – with 78 other cases needing further investigation. Their report recommends that legislation be introduced swiftly to enable the prosecution of those alleged to have carried out these bestial crimes.

Emphatically, the report concludes: 'The crimes are so monstrous that they cannot be condoned... To take no action would taint the United Kingdom with the slur of being a haven for war criminals'.

The Home Secretary told the House of Commons that he was 'impressed by the force of the argument' in the report's conclusions but he would leave the final decision until Parliament had expressed its views.

In December 1989 both Houses of Parliament held full scale debates on motions backing the Inquiry's recommendations. The majority of peers who spoke were against, but there was no vote. The House of Commons passed the motion with an overwhelming majority of 225 – a three to one vote in favour. The majority among Conservative MPs was 30. Only 10 Labour MPs voted against.

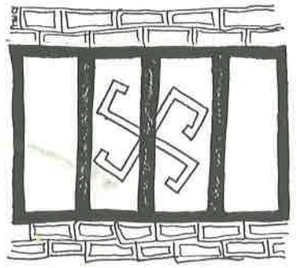
What is proposed? That as an alternative to extraditing suspects to stand trial in the Soviet Union (which the government firmly opposes) or depriving them of their British citizenship and deporting them, United Kingdom courts should be given jurisdiction over these cases.

Legal at the Time?

In the Common's debate, former Prime Minister Edward Heath referred to the 'shattering constitutional changes' proposed. Surely not. A British citizen who murders someone abroad is liable to prosecution and has been since the Offences against the Persons Act 1861 was passed. But only people who were British citizens *at the time* of the alleged offence can be prosecuted. It is hard to understand why people who have come to Britain and assumed the privilege of British citizenship should escape the duties, responsibilities and liability to criminal offences that go with it.

Mr Heath asked, during the debate: 'Are we to have retrospective, retroactive legislation to deal with this alleged crime?'

Retrospective legislation is objectionable if it allows for the punishment of an act committed by someone who was unaware of its illegality. It can scarcely be argued that murder on such an enormous scale could have been thought acceptable under domestic law at the time it was committed.



Anyway, no new offence is to be created. Not only *were* these crimes against domestic laws when committed, they were also crimes under international law, as violations of the laws and usages of war. Additionally, both European and United Nations human rights conventions explicitly permit such legislation. So retrospection is minimal.

What about the rules of evidence? Changes proposed in the Inquiry's recommendations are all in line with current practice and existing precedent. Live video'd examination and cross-examination, recorded evidence and evidence from deceased witnesses are recommended by the report. All are provided for by the Criminal Justice Act 1988. There is nothing new about receiving in evidence statements from witnesses since deceased. Live TV satellite links would mean that a witness unable to travel to the United Kingdom could still testify, be examined by both parties and allow judge and jury to observe their demeanour.

Fifty Years On

How accurate are the memories of witnesses of events so long ago? Lord Home told the House of Lords that 'old men forget'. Kitty Hart, a survivor of Auschwitz, told an international conference on war crimes – held in London in October 1989: 'If a person has absolute power of life and death over you – even for an instant – that face will be etched on your mind forever. You cannot possibly forget it, even if you try'.

Kitty Hart gave evidence last year in the High Court of Wuppertal, West Germany, at the trial of Gottfried Weise. Weise was a SS officer in Auschwitz. His nickname was 'William Tell', because he used to shoot tin cans off the heads of prisoners. Blind in one eye, his actions usually led to the death of his victim – often a child. At the end of the trial. the judge was impressed by the accuracy of the evidence given. Winding up, the judge remarked that those who spoke were calm and without emotion. Weise was convicted on their evidence.

Soviet Co-Operation

Documents and witnesses, vital to both the defence and prosecution, are predominantly from the Soviet Union and Eastern Europe. Ivor Stanbrook MP – leading opponent of legislation – has questioned the reliability of any evidence provided by Soviet citizens and authorities. Yet in other war crimes cases, no documents from the Soviet Union have been found to have been forged or tampered with. Never has recourse to Soviet source evidence diluted any of the rights of a defendant under domestic law.

Can the defence be sure of receiving the necessary facilities to enable adequate preparation for trial? Mr Stanbrook: 'Does anyone imagine that a defendant or his representative would be able to travel freely and unmolested in Soviet Russia to gather evidence and to find witnesses to support his case?'

The experience of other western countries suggests that they would. In the case of *The United States v Artishenko*, the Soviet authorities on only one day's notice provided the defence with six witnesses. In *The United States v Mykola Kowalchuk*, Soviet witnesses provided exculpatory evidence for the defence. There are many other cases of such co-operation.

Why only legislate against people who committed Nazi war crimes? What if we were to discover criminal fugitives from the Pol Pot or Idi Amin regimes? These people could already be tried under British law. Under the Geneva Conventions Act 1957, prosecutions for wilful killing and torture committed anywhere in the world by anyone, can take place in British courts, provided that the crime was committed since 1957.

Justice Must Be Done

What of other countries? Britain is the last of the major World War Two allies to act. Recently, Australia and Canada (both with legal systems based on our own) passed legislation. Both countries commissioned and received advice that such measures were in accordance with their own constitutions and with international law. Both are proceeding with trials.

France, the United States, the Soviet Union, West and East Germany, Poland and the Netherlands have all brought to court alleged war criminals. The United Kingdom has not.

The Bishop of St Albans spoke of his fear that 'the proposal to pursue the last remaining war criminals may be turned by the enemies of Judaism into yet more hostility'. The prosecution of people who killed Jews does not create antisemitism. Antisemites create antisemitism. And they do not need excuses for their views or activities.

Justice must be done now.

The author is Labour MP for Leicester West and joint Hon. Secretary of the All-Party Parliamentary War Crimes Group.

Mark Rowland

Too Poor to Benefit – the Social Fund in Practice

In April 1988, there took place the greatest changes to means-tested social security benefits since 1948. At the heart of the changes was the replacement of supplementary benefit by income support and the Social Fund. Two years later, the effect on those claimants who have unusual needs can be clearly seen.

Income support has many of the features of supplementary benefit but there are two major differences affecting those with exceptional needs.

Individual Needs

Firstly, weekly entitlement to supplementary benefit was calculated on the basis that the claimant might have 'additional' as well as 'normal requirements'. The legislation governing additional requirements was detailed and complicated. Only certain needs could be taken into account, but at least the requirements of each individual were considered and there was a fair amount of discretion as to the amount to be awarded, particularly where large sums might be needed. By contrast, income support has standard personal allowances (although they vary with claimants' ages) and then seven standard premiums payable if the claimant falls into one or more carefully defined categories covering families with children, single parents, pensioners and the disabled.

Secondly, lump sum single payments of supplementary benefit could be made. Again there were detailed regulations involved but they were not totally inflexible and, once a person fell within them, he or she was entitled to a payment sufficient to meet the need. Under the new system, there are no single payments of income support. Instead there is the Social Fund which can make grants or, much more often, loans. Whether or not a payment is to be made, and the size of any such payment, are within the discretion of a social fund officer from whom there is no right of appeal.

The Problem with Premiums

There is no doubt that premiums are simpler to administer than additional requirements. But the standardisation which provides efficient administration creates problems for claimants. The biggest losers under the new system are the most severely physically or mentally disabled who generally have high additional requirements to cover the cost of attendance, domestic assistance, extra clothing and laundry and expensive diets. But many less severely handicapped people also lose out because, although four of the seven premiums are for the disabled, the criteria for qualifying are not immediately concerned with the financial needs of the disabled.

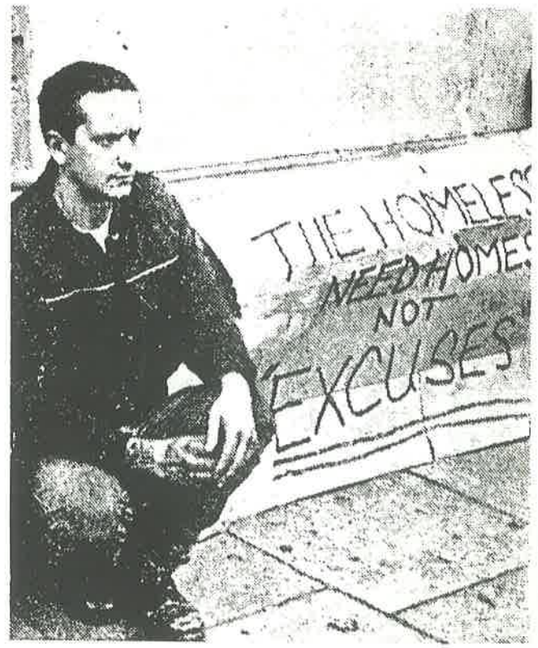
For example, entitlement to the higher pensioner premium depends on entitlement to certain incapacity or disability benefits unless the claimant is at least 80 or is blind. A person may not be ill enough to qualify for any of those benefits and yet may need an expensive diet to maintain his or her health. Furthermore, two people may be equally ill but, because one became ill when young enough to receive mobility allowance, invalidity pension or severe disablement allowance, one receives the premium and the other does not. Many pensioners in their late 60s and 70s and in poor health never qualify for this premium.

Similar conditions apply to the other disability premiums. A claimant qualifies for the disabled child premium only if the child qualifies for attendance allowance or mobility allowance, or is blind. Children do not qualify for those two benefits if under the ages of two or five respectively (although the minimum age for attendance allowance is to be abolished this year). In one tragic case, mentioned in *Poverty* (Spring 1989, page 6), twins were born prematurely weighing only two pounds each and having immature lungs. One was severely disabled with hydrocephalus and cerebral palsy but was too young to be tested for blindness. Their mother died soon after their birth and the father was left to bring them up alone on income support without any disability premium to assist with the exceptionally high fuel bills needed for extra heating and hot water or all the other extra costs.

This type of problem inevitably arises with a system which places administrative convenience above individual justice. Some people may gain, but that is little comfort to those who are left without enough money on which to live.

A Limited Budget

Writing in ***SL*** in the Spring of 1988, Richard Drabble said of the Social Fund: 'Experience over the next few months will reveal the extent to which fears about its practical operation are justified'.



Jonathan Stearn

The first problem is the amount of money available. Expenditure on single payments depended on the demand. By contrast, the Social Fund has an annual budget and the idea is that it should not be exceeded whatever the number of claims. The Social Security Advisory Committee suggested that the Fund's budget for 1988/89 should be at least £350m based on spending on single payments in 1985/86. However, the government had reduced entitlement to single payments dramatically in August 1986. As a result, expenditure fell from £335m in 1985/86 to £190m in 1987/88 and so the Social Fund budget was set at £203m in 1988/89. Of that, only £60m was earmarked for grants as opposed to loans. It has been calculated that, by 1988 families with children lost on average about £3 per week through the loss of single payment entitlement under the pre-1985 rules, even when the gains they made under the system of premiums are set against it. The 1989/90 budget was also set at £203m, representing a further cut in real terms.

The national budget is then divided among local offices so the amount to be paid out also depends upon the local budget. When the Social Fund first come into operation, most offices underspent their monthly shares of the annual budgets because they were being too cautious at the expense of the claimants. This meant that they could spend

... it is to be hoped that the Social Fund in its present form has a fairly short life.

much more than expected towards the end of the financial year and still remain within their budgets. Most appear to have done so although overall expenditure was still less than the amount allowed. They then had to reign in their expenditure when faced with the budgets for 1989/90. Those offices which had underspent by too much were rewarded with reduced budgets for the next year.

Community Care Grants

The only non-repayable grants are community care grants. All other Social Fund payments are by way of loans. The principal purpose of these grants is to enable people to live within the community rather than in institutional or residential care and to ease exceptional pressures on them and their families.

It is a weakness of community care grants that they (like single payments) are available only to those in receipt of income support, because they replace not only single payments but also resettlement benefit which was paid to long term hospital patients upon their release. Many people do not qualify for community care grants because they are entitled to invalidity benefit or retirement pensions, providing them with an income just too high to enable them to claim income support. The exclusion of those not entitled to income support is to be challenged in the Divisional Court. If the challenge is unsuccessful, the problem will increase as more people become entitled to additional pensions from the State Earnings Related Pension Scheme and from occupational and personal pensions.

About three quarters of the expenditure on community care grants is for furniture and household equipment. In practice, they are given in circumstances similar to those for which many single payments might have been claimed. The classes of eligible claimants are, however, much more limited.

Crisis Loans and Budgeting Loans

It is ironic that successful applications for crisis loans are most likely where they are made because income support is paid fortnightly in arrears rather than in advance like supplementary benefit. Indeed, most crisis loans in the first year of operation were for general living expenses and went to childless unemployed people.

Budgeting loans are there to meet important intermittent expenses. Many are for the replacement of major items of household goods which people cannot be expected to purchase out of income support. They are expenses which people living on income support for a long time will inevitably have. People are not eligible until they have been receiving income support for six months, so it is too bad if expenses arise before then.

The major problems arise because these are loans. Many elderly people simply refuse to apply for loans because they do not want to get into debt. Only 4% of budgeting loans went to pensioners despite the fact that they are almost all long term claimants.

Repayments of loans are normally at the rate of 15% of income support (not counting housing expenses) spread over up to 78 weeks. £10 a week in not unusual. In exceptional circumstances, repayments may be as much as 25% of income support spread over two years. The Social Security Advisory Committee has pointed out that claimants' incomes are being reduced below the present benefit level to repay loans for items the benefit rates are not designed to provide for.

Extra Referrals

Of course, the ability to repay is a matter the social fund officer is required to consider (under section 33(9)(d) of the Social Security Act 1986) when deciding whether to make a payment. This is a particular problem for people aged under 25 who receive less benefit than others. If you are too poor to repay a loan no payment is made.

It is unclear what happens to those who are refused loans because they cannot repay them. All local officers have been provided with the Family Welfare Association's Charities Digest so that claimants can be told where to go next but, despite fears that the charities would be swamped with applications, this does not appear to have happened. Applications to charities have increased but not as much as expected. On the other hand, statutory agencies including social services departments have reported many extra referrals because people do not have enough money to cope. Presumably, many people just decide to 'manage somehow', like the pensioners who refuse to apply for loans to replace broken cookers.

Inconsistent Decisions

Any system requiring a large number of people to make decisions is bound to result in some inconsistency, but the Social Fund has features which exacerbate the problem. Decisions in Social Fund cases are made by social fund officers on the basis of directions from the Secretary of State, and on official guidance. Nevertheless, there is intentionally, an enormous amount of discretion vested in

Joan Roth/Camera Press

social fund officers and each will exercise it in his or her own way.

The existence of the budget promotes further inconsistency not only between local offices but also between decisions given by the same officer on different dates. Each office naturally has to adopt a system of priorities in the light of current expenditure. Often, the effect of financial constraints is that both fewer and reduced payments are made and loans may be offered instead of community care grants.

There is also no proper appeal process. Decisions may be reviewed both in the local office and by a social fund inspector. Nearly a third of local office reviews result in payments, suggesting that the procedure is not a waste of time. However, it does not do a great deal for consistency between offices and only 4% of review decisions are referred to inspectors.

Legal Challenge

The amount of discretion within the system makes it difficult to challenge decisions in the courts but four applications for judicial review are to be heard together early this year. Two are being brought by the Child Poverty Action Group and two by Sheffield Law Centre.

The cases raise several issues. One is the validity of the Secretary of State's direction excluding all those not receiving income support from entitlement to community care grants. Another is whether a social fund officer is entitled to refuse a payment solely on the ground that the local office has run out of money when the claimant would otherwise have been successful.

Also to be challenged are the way social fund officers apply the official guidance, and the system of reviews by social fund inspectors. These inspectors seldom substitute their own decisions for those of the original social fund officer and interfere only if the social fund officer took the wrong approach to the case; they then send the case back to the local office for redetermination.

Success for the claimant in any of the cases is likely to have a substantial impact on the way the Social Fund is operated. In any event, it is to be hoped that the Social Fund in its present form has a fairly short life. Its introduction has cost the poorest in our society millions of pounds.

REVIEWS

SECTION 28 – A PRACTICAL GUIDE TO THE LAW AND ITS IMPLICATIONS

Madeleine Colvin with Jane Hawksley
Liberty, NCCL, 1989
£4.50

Section 28 of the Local Government Act 1988 is a repellent piece of legislation. Readers of *SL* will be all too familiar with it. It prohibits local authorities from 'intentionally promoting homosexuality' and from promoting in a maintained school the 'acceptability of homosexuality as a pretended family relationship'. It became law in May 1988.

Section 28 made bigotry respectable, and has encouraged expressions of prejudice against lesbians and gay men; from virulent articles in the press, to physical attacks on individuals and to arson. It has already led local authorities and others, who fear that they might fall foul of it, to opt for damaging self-censorship.

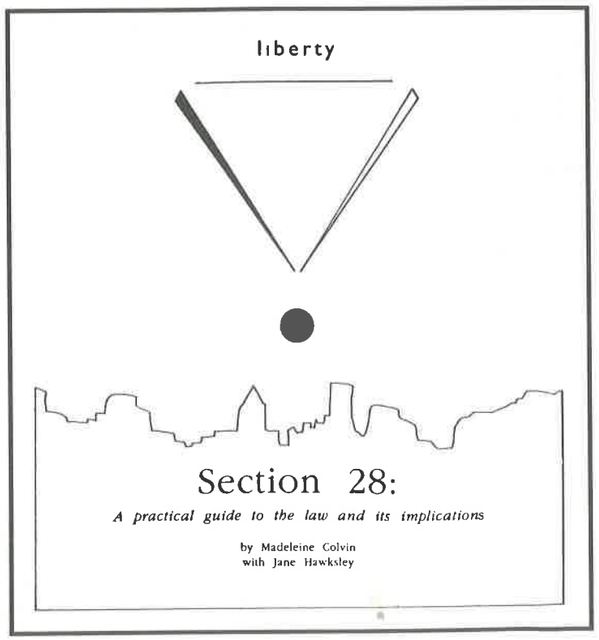
Furthermore, it is an unintelligent and badly drafted piece of legislation. *Section 28* is an invaluable guide for all those who seek to limit the damage done by its namesake. It is clear, readable and informative, and intelligible to lawyers and non-lawyers alike. It analyses the section and sets out what is and what is not prohibited, who is and who is not affected by it. It also suggests the interpretation that might be placed upon it by the courts. It gives helpful advice which should make legal challenges less likely to succeed. It provides an outline of the legal remedies available to anyone faced with the misuse of the law.

Section 28 is eminently usable. It recognises that not all its readers may have the time to read the whole book and therefore deals separately with the implications for local authorities, for voluntary organisations and for education, as well as indicating the general chapters which everyone should read. It sums up its conclusions throughout in boxes which I found helpful and eye-catching.

The appendices are full of potentially useful ammunition. We are provided with the text of parliamentary statements, letters from government ministers and the government circular intended to explain the section to local authorities. Extracts can be quoted to advantage in times of trouble. For example, the Earl of Caithness in the House of Lords on 16 February 1988 said; 'There is no case for any public authority discriminating against anyone solely on the grounds of sexual orientation, or seeking to persuade others to do so'. Finally, there is a list of addresses.

In *Section 28* Madeleine Colvin and Jane Hawksley describe the unsavoury aetiology and the dangerous implications of the section. They clarify the law and provide invaluable information for anyone who might have to deal with it. They have produced a book which is encouraging and, in the best sense, reassuring. It is easy to fall into despair in the face of irrational hatred embodied in legislation. This book shows what can be done to counter, defuse and challenge it. Its publishers describe it as 'an essential work of reference', and an 'authoritative handbook'. I can only agree with them.

Irena Ray-Crosby



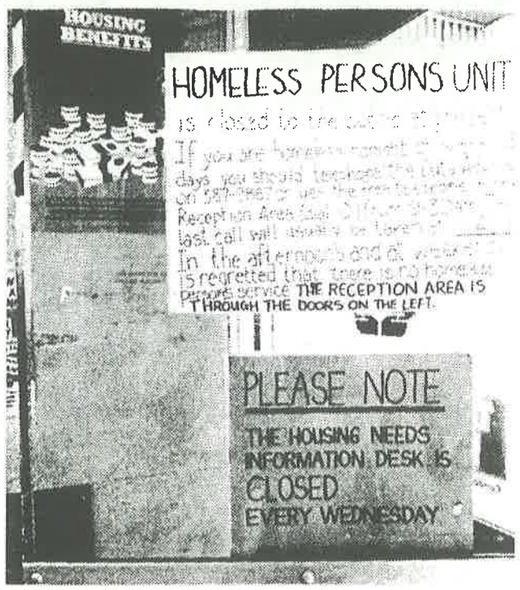
SUING FOR THE COMMUNITY – AN ACCOUNT OF THE WORK OF A COMMUNITY LAWYER

Peter Bartram
Cambridge House and Talbot
£3.00

The Cambridge House & Talbot university settlement was founded in Camberwell in 1889. A short time later it became the venue for a group of aspiring lawyers to dispense professional advice. The author was their descendant and this book details his own and the centre's exploits on behalf of the people of south London between 1981 and 1984.

Here we are very firmly in the sphere of Public Law (capital P, capital L), where 'section 99, Public Health Act 1936' trips more readily off the tongue than 'Antonpillermarevaamericancyanamid'. Bartram himself makes a further distinction, between the philosophy of the Cambridge House Legal Centre and that of the law centres which proliferated in the early 70s. It was this philosophy, he suggests, which led the CHLC to eschew 'individual' work and concentrate on community-based initiatives. It is characteristic of the candour which permeates this book that the limits of this approach are openly acknowledged; housing issues became paramount and many groups, such as the old, the aged or disabled – at least where their problems were not their homes – were excluded. For the author this is a source of regret.

Early assistance was given to an alcoholism group and to an adult literacy scheme, but the centre's main efforts were on behalf of a number of tenants' groups for whom, case studies make plain, the enemy was not necessarily the private developer/contractor, but local bureaucracies, the effects of whose stultifying indolence were often equally brutal.



Robert Aberman

Bartram then attempts to define the role of the community lawyer. This clearly rankles with his successor whose own brief deposition hints at a recent change of tack. Bartram, however, displays considerable clarity of thought. He is able to identify a particular role for the 'specialist' (ie lawyer) within the campaigning process, and offers a penetrating analysis of the conservatism (small c, big C) of private practice and the intrinsically political nature of its cherished 'impartiality'.

If the obligations of 'citizenship' are to be rammed down the people's throats, then they should also be told of their corresponding rights. This book provides primary evidence of this need and of the need for legislation to recognise the 'collective action' which is as desirable in public as in product liability law.

It would appear that the publishers only narrowly avoided calling this book *It Shouldn't Happen to a Community Lawyer*. That would have been misleading; though what we are given is clearly a personal account, it is mercifully free of whimsy or sentiment. It is an honest and clear-sighted appreciation - which is technical where necessary, but even then sharp and readable - of the forces which oppress the less well-favoured.

Though never didactic, *Suing for the Community* may also be a useful guide to those treading a similar path, as it offers knowledge filtered through practical experience and thereby empowers people to resolve difficulties through their own efforts. As the ideal, so the book: admirable.

David Hewitt

THE RETURN OF BLACK MASK

During my sabbatical from this column, I avoided all detective fiction.

So I was at a loss when deciding on books to review on my return. There was one book left over from my last column which I never got around to reading. Then I went to the crime section of my local bookstore and picked out two paperbacks that looked interesting. Gradually a theme emerged which enables me to dwell on that ever interesting question of whether men can create women heroines, or whether only a woman can really portray the soul of her own sex.

I was attracted to ***Blackeyes*** by **Dennis Potter** because I had enjoyed *The Singing Detective* enormously on television. I had not read any reviews of this novel when it was first published and was intrigued. Dennis Potter has shown his interest in the way popular culture entwines itself into our daily lives and become associated in our conscious and subconscious minds with critical life events. The hero of The Singing Detective is even called Philip Marlowe. Within days of my starting Blackeyes the novel, Blackeyes the t.v. event hit me and I wasted many hours not only watching it but watching and listening to people talking about it on radio and television. Of course by the time you all read this column the circus will have passed on and been forgotten.

Dennis Potter has created a critique of male behaviour towards women in general (and an extremely passive victim in particular) by portraying that behaviour with some relish to show its wickedness. I don't object to this on feminist grounds, as do some but agree with Germaine Greer, Fay Weldon and Joan Smith (who coincidentally wrote a book I will review later) that the man's a man and can only give us his own viewpoint. It is just a bad, sour book with no redeeming characters or ideas. It is really a book about men and if it convinces any not to be so beastly, terrific, but it says nothing to me. The women characters are utterly unreal and invite no more sympathy than any of the odious men. The fashionable subject of child abuse is at the bottom of it all. Compare Potter's fictional victims with the beautiful and feisty real life survivor seen on *The Bandung File* recently. She saw her own ability to realise her potential with dignity and self respect as the ultimate triumph over her abuser. In Blackeyes there is a death, some policemen and a scene in a morgue to qualify this book as detective fiction.

By welcome contrast ***Child Proof*** by **Michael Z. Lewin** has a delightful gutsy heroine, middle aged social worker Adele Buffington. My only problem with this book is one of languages. Although set in Indianapolis, the English language keeps creeping in. Come on, Michael, I thought, Americans don't say 'flaming', 'nutter' or 'peckish' under any circumstances. This little mystery was solved when I read on the dust jacket that Michael Z. Lewin, although American, has lived here since 1971 and the purity of his American has been severely undermined.

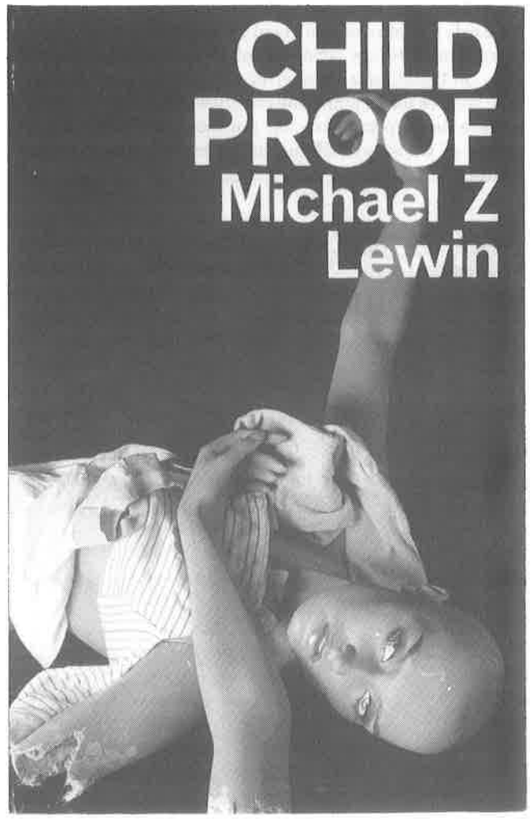
Indianapolis, probably not that fascinating at its best, doesn't really come alive either. But Adele is great. She has a 20 year old daughter who gives her a lot of aggravation and a career as head of a social work agency. She also has a boyfriend, a suitor in the police department – younger, handsome and sought after by other girls – and other minor flirtations. She is brave, cool in a crisis, with plenty of snappy repartee for all occasions. There is a funny scene when she and yet another policeman have to pretend to neck (at least Lewin doesn't use that graceless English word *snog* or even worse *canoodle*) in a parked car while staking out the villains. "Come here, big boy", said Adele'. Now Adele is so wonderful that it gradually dawned on me that Michael Z. Lewin must be a woman. However he makes a major omission which proves beyond reasonable doubt that he is not. HE NEVER TELLS US WHAT ADELE IS WEARING. The mystery itself involves women and children and is most affecting.

Joan Smith is my only authoress and unfortunately a disappointment, especially given her lucid analysis of Dennis Potter. Her book ***Why Aren't they Screaming?*** is set round a women's peace camp; a right-on subject if ever there was one. She breaks what I consider one of the first laws of crime writing. The victim is a real person, and killed off well into the novel causing the reader distress and eliminating the most interesting character. This mistake also casts doubt on the novel as entertainment which is its essential quality. It is certainly not well written enough to sustain it as anything else.

Although beautifully dressed, the heroine is in all other respects a complete drip. Suffering from glandular fever she is always tired, frightened, tearful and speechless in a crisis. She is a real goody two shoes – here is just one example: 'checking there were no yellow lines in the road, she parked and got out of the car'. Maybe Joan Smith is creating a feminist heroine as a good citizen in an attempt to forge new ground and inspire us all to avoid yellow lines, but for me I like my heroines to be made of larger, more heroic, less law abiding stuff.

Blackeyes, by Dennis Potter, Faber and Faber, £3.99
Child Proof, by Michael Z. Lewin Macmillan, £9.99
Why Arn't they Screaming? by Joan Smith, Faber and Faber, £3.50

Black Mask is **Beth Prince** and she would like any suggestions for suitable books to review.



THE PRISONERS ABROAD HAND-BOOK SERIES - GUIDES TO THE CRIMINAL JUSTICE SYSTEMS OF FRANCE, SPAIN, GERMANY AND GREECE

Richard Vogler
Prisoners Abroad, 1989
£10.00 each

For anyone planning a criminal excursion to selected parts of Europe, these books are essential travelling companions. Of course, mere possession of one of these texts without a convincing excuse may well obviate the need to commit a crime before sampling the appropriate criminal justice system. Be that as it may, this series contains most of the information which the travelling criminal might require but otherwise be too shy to seek.

The contents run from a description of police uniforms to a breakdown of weekly prison pay allowances. Each volume makes free use of textual devices such as quixotic scatterings of bold characters, appropriately reminiscent of an Englishman abroad speaking loudly and clearly in a language of his choice. They also contain a thumbnail sketch of the available types of lawyer in each of the countries covered, thus allowing the reader to know, with Wilde's cynic, the cost of each and the value of none. Brutally paraphrased, the series holds that there are private lawyers, who are grossly expensive, legal aid lawyers, who are grossly inexperienced, and British lawyers abroad, who are grossly ignorant. That must be comforting reading in a remand cell.

On the brighter side, every aspect of courtroom practice, down to the correct dress for each of the (professional) participants, is covered in depth. So too is the overall system, with an analysis of the rights and responsibilities of those involved. Those details would plainly be useful to the accused whose lawyer is too rich, inexperienced or ignorant, as appropriate, to offer an explanation of what is about to happen.

The serious question arises, have these books a point? The answer to that must be qualified. They are beautifully researched and clearly laid out, with large text for important points followed by explanations offered in smaller type. But for the early parts, covering police uniforms and state of armoury, they would be a genuinely useful first resort for anyone unfortunate enough to find himself or herself in trouble abroad. The irony is that the very people whose ignorance and predicament would make the books valuable to them are probably the least likely to have access to them at the crucial time. Certainly consuls, interested friends and relatives could usefully arm themselves with the relevant volume to enable them to understand and oversee. Furthermore, despite the author's plain objective to avoid writing books for lawyers, his style and his scholarship do make them an interesting read for the ignorant British lawyer.

Ashley Underwood

The handbooks are available from Prisoners Abroad, 82 Rosebury Avenue London EC1R 4RR

JUSTICE DENIED: IRISH PEOPLE AND THE ENGLISH LAW

Conor Foley and
Martin Moriarty
A Connolly Association pamphlet
£1.00

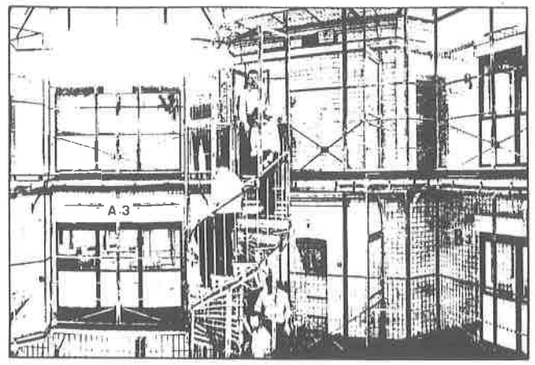
For many the recent release of the Guildford Four was the long awaited acknowledgement of an old truth: the four were innocent. The media struggled to try and explain the conspiracy of silence that had surrounded their case for 15 years. The public heard of defects in our legal system, of the need for a new tribunal to review similar cases, of police corruption and possible malpractice at the highest levels. However, there was little discussion about whether Irish people charged with terrorist offences receive a fair trial in Britain. Nor did the media address the institutionalised racism facing the Irish in Britain which allows their civil liberties to be eroded by the Prevention of Terrorism Act.

This pamphlet examines the way the British legal system has treated Irish people facing terrorist charges. Although the pamphlet is slim it loses none of its impact for its brevity. It takes four individual cases including those of the Guildford Four and the Birmingham Six. By doing so it demonstrates the grave miscarriages of justice meted out to Irish defendants. The writers believe that as long as the PTA remains on the statute books no Irish person accused of terrorist crimes can expect a fair trial. Their view is that the PTA is used to intimidate and criminalise the Irish. They highlight the reaction of the public and media to the Deal bombing to show that the British attitude to the Irish in Britain has not changed since the Guildford Four's release.

The pamphlet examines the ways in which the media interferes, distorts and colludes with the anti-Irish racism of the legal system. The writers call for the repeal of the PTA and for reporting restrictions to be placed on all cases of arrest under the Act.

Much of the ground covered by the pamphlet is likely to be familiar to ***SL*** readers. It does not deal in detail with the provisions of the PTA or other legislative measures that restrict the civil liberties of the Irish. Nevertheless it is easy to read and generally informative – it left a bitter taste in my mouth.

Debbie Tripley



noticeboard

PUBLIC MEETINGS PROGRAMME

23rd January 7.15pm
MISCARRIAGES OF JUSTICE – CAN THE LAW COPE?

Speakers: Shaun Waterman, Broadwater Farm Defence Campaign, Paddy O'Connor, Barrister.

14th February 8.00pm
LEGAL REFORM AND THE COMMUNIST AGENDA

Speakers: Anderei Kostin, counsellor for the Russian Embassy and a speaker from the East German Embassy

27th February 7.15pm
WOMEN'S REPRODUCTIVE RIGHTS – THE SOCIALIST AGENDA

Speakers: Jo Richardson MP, shadow spokesperson for women, Leonora LLoyd, member of the National Abortion Campaign, and a speaker from the Campaign for Access to Donor Insemination.

All meetings at:
the London School of Economics, Houghton Street, London WC2

Non-members: £1
Members: 50p

MANCHESTER BRANCH

The MANCHESTER BRANCH of the Haldane Society meets on the 2nd Wednesday of every month at 6.30pm in the Manchester Town Hall, Albert Square, Manchester.

Contact the delegate for further details:
Anthony Coombes
c/o John Pickering (Solicitors),
Old Exchange Building, 6 St. Anne's Passage,
29–31 Kings Street, Manchester.
Tel: 061 834 1251

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The Morning Star are looking for lawyers willing to provide libel reading services on a voluntary basis. If you are interested please contact **Kate Markus**, 96 Chichele Road, London NW2

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SOCIALIST LAWYER

The Haldane Society was founded in 1930. It is an organisation which provides a forum for the discussion and analysis of law and the legal system from a socialist perspective. It is independent of any political party. Its membership consists of individuals who are lawyers, law teachers or students and legal workers and it also has trade union and labour movement affiliates.

The Subcommittees of the Haldane Society carry out the Society's most important work. They provide an opportunity for members to develop areas of special interest and to work on specific projects within those areas. All the Subcommittees are eager to attract new members so if you are interested in taking a more active part in the work of the Society please contact the Convenor and s/he will let you know the dates and venues of the meetings.

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CRIME	Sally Hatfield, 10A Lavender Hill, London SW11
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