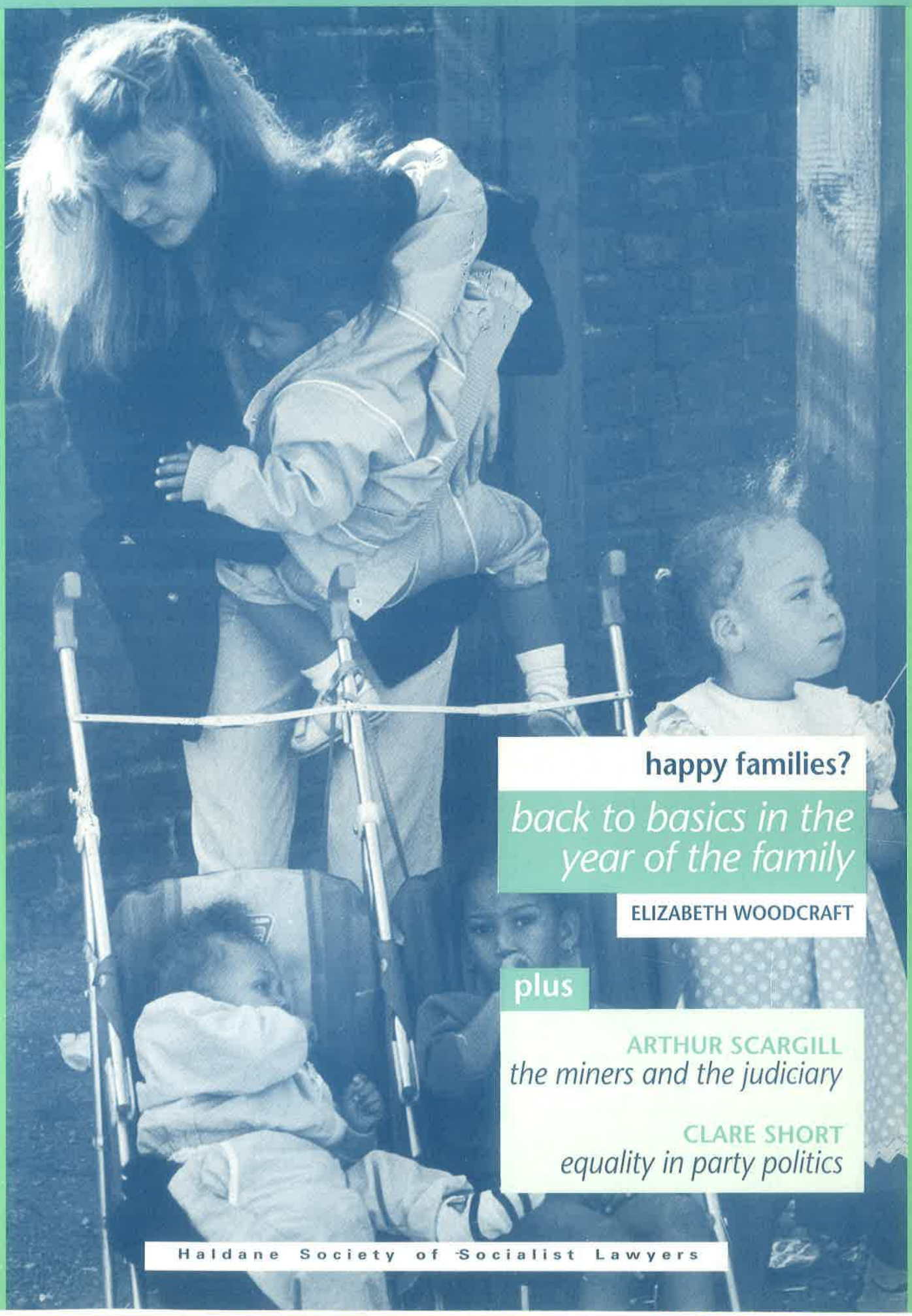
21
spring '94
issue 21
£2.50

socialist LAWYER

news • features • reviews



happy families?

back to basics in the year of the family

ELIZABETH WOODCRAFT

plus

ARTHUR SCARGILL
the miners and the judiciary

CLARE SHORT
equality in party politics

Haldane Society of Socialist Lawyers

HALDANE SOCIETY of Socialist Lawyers

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, both nationally and internationally, from a socialist perspective. It is independent of any political party. Its membership consists of individuals who are lawyers, academics or students and legal workers, and it also has trade union and labour movement affiliates.

As a member of the Society, you will receive 3 free copies of *Socialist Lawyer* each year. You will be informed of the Society's public meetings which are free to all members. You will also have access to one or more of the sub-committes which meet regularly. Through those sub-committees you will have the chance to participate in and organise international delegations.

Join the Haldane Society now! — Please fill out the slip on the back cover.
For further details please contact Nadine Finch, telephone 071 254 1280.

Haldane Society Sub-Committees

At the heart of the work of the Haldane Society lie the various sub-committees, which cover a broad range of issues and whose work includes campaigning as well disseminating information and stimulating discussion on the particular area. All members of the Society are encouraged to join one or more of the committees or to form new ones. We would in particular like to revive the Housing Sub-Committee and would welcome suggestions. Below are listed details of the different committees, including the relevant contact person. For details of recent activities please see *Haldane News* on page 5.

Crime - Members are welcome to join the committee's mailing list for details of future work & events. *Convenor: Mike Baker, tel: 071 797 7766*

International - Meetings, with an invited speaker, are on the second Tuesday of each month at 2 Field Court, Gray's Inn, London WC1 at 7pm.
Convenor: Bill Bowring, tel. 071-405 6114

Lesbian and Gay - *Convenors: Tracey Payne and Stuart Walker, Mitre House Chambers, 44 Fleet Street, EC4. 071-583 8233*

Trade Union and Employment Law - Meetings take place on the third Tuesday of every month. *Convenor: Steve Gibbons, tel: 071-254 9633.*

Northern Ireland - *Convenor: Cath Casserly, tel: 071 353 1633.*

Mental Health - *Convenor: Fenella Morris, tel: 071-797 7766.*

Women - *Convenor: Sonali Naik, c/o 20-21 Tooks Court, London EC4.*

Environment - *Convenor: Simon Curran, tel: 071-622 1401.*

Student & Trainee - *Convenor: Richard Bielby, tel: 071 274 0850.*

Immigration - *Convenor: Lisa Connerty, tel: 071 582 9862.*

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SOCIALIST LAWYER:

ISBN No - 09 54 3635

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COVER PHOTO:
John Arthur / Reflex

CONTRIBUTIONS
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Insight

South African Elections - Haldane Vice President is ANC Candidate

The African National congress is widely expected to win South Africa's first ever non-racial one-person, one-vote elections. Voting takes place over three days from 27 April 1994 and candidates drawn from a national list will be elected on the basis of proportional representation. Haldane vice-President Kader Asmal is an ANC candidate.

Much has to be done to educate South Africans how to vote for the first time ever. The ANC also faces the real prospect of intimidation in the rural areas from right wing farmers and police.

Further, if the ANC is to have a decisive say in drawing up a non-racial constitution, it must secure 66% of the vote, a figure not even remotely achieved by any British government.

The ANC faces opposition from a well organised and financed National Party and badly needs resources to wage a successful campaign. Therefore it has launched the Votes for Freedom Campaign with a target of £1m to be raised from supporters in Britain. Money raised will be used to provide audio and video equipment, broadcasting messages, computers, fax machines, vehicles and publicity materials.

The Haldane Society has long supported the ANC's struggle and urges its members to give generously to the fund.

Cheques made payable to "Votes for Freedom" can be sent to ANC, PO Box 38, 28 Penton Street, London, N1 9PR.

Mark Guthrie

Haldane Society — West Midlands Group

We hope to establish a regional group of the Haldane Society in the West Midlands, to provide a forum for discussion and for forging links.

The first meeting will be on 12th April 1994 at 7pm, at the Irish Centre, Digbeth. Contact: Bryan Nott on 021 449 1931 for further details.

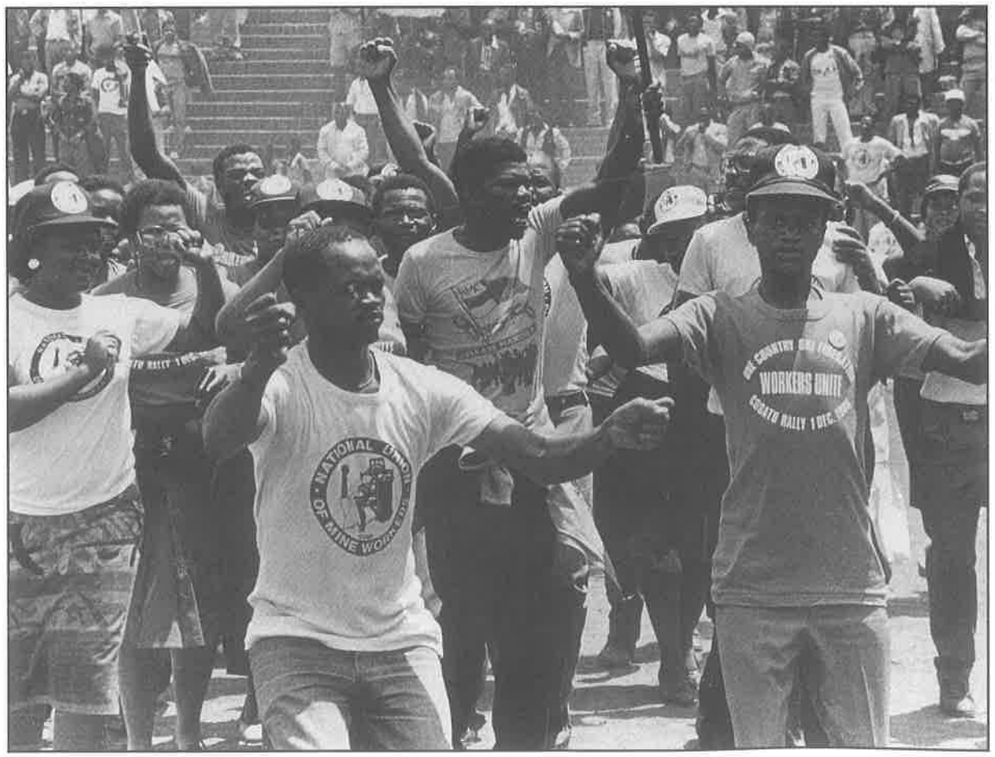


Photo: IDAF

Haldane News

The Haldane Society Executive has been very involved recently in work around the Criminal Justice and Public Order Bill (see page 16) and in organising a number of public meetings to highlight national and international concerns - from police accountability to the South African elections.

Much time has also been devoted to preparations for moving to the new Haldane Offices in First Floor South, 20-21 Tooks Court, London EC4. The office is currently undergoing refurbishment and we aim to have it operational by the end of March. Until a telephone is installed, members are advised to continue to use the Society's present address and telephone number.

Once the office opens, it will be available for use by members for meetings, in addition to housing the Society's membership records, back copies of publications, including *Socialist Lawyer* and the Haldane archives.

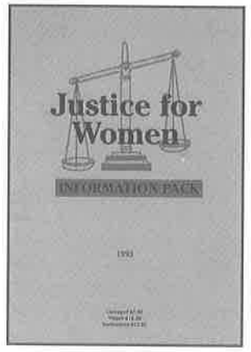
Any member with material which could be added to the archives should contact me.

Nadine Finch, Secretary

Justice for Women - Information Pack

Justice for Women (JFW) is a feminist campaigning organisation that deals with individual women's cases, such as Sarah Thornton, Emma Humphreys and Janet Gardner, as well as concentrating on political and legal reform.

Twenty years of the women's liberation movement has provided the feminist analysis against all forms of male violence and has meant campaigners have been able to look at the specifics of the ill-treatment of many battered women who kill their violent partners. Many in JFW have worked around the issues of violence against women for a considerable time.



After thousands of requests from students, academics, would-be campaigners, political activists and members of the press, JFW realised the need for general information on the issue of domestic violence and spousal homicide to be collated for easy access. The JFW collective has therefore compiled an information pack, with an outline of the law, details of case studies, press cuttings, statistics and resource lists. The information pack (£5.00 unwaged, £10 waged and £15 institutions) is available from the London Justice for Women Collective, 55 Rathcoole Gardens, London, N8 9NE.

Rights of Women Conference

'Women & the Law'

26th & 27th March, 1994 London

Rights of Women is holding a women-only conference on legal issues, aiming to bring together feminist activists, researchers, academics, practitioners, and advice workers to discuss issues in and around the law and to formulate strategies for dealing with and improving women's position in the legal structure.

The conference will be comprised of speakers, workshops and plenary and will address a wide range of issues including:

Domestic Violence, Sex Discrimination, Race Discrimination, Immigration, The Children Act, The Child Support Act, Lesbian Parenting, Meditation, Compensation and Sex Abuse,Women Who Kill, Women and Europe, and more.

BOOKING FORM

The conference will take place on Saturday 26th March and Sunday 27th March at the University of London Union, Malet St, London WC1.
A creche will be available but booking is essential and vegetarian and non-vegetarian lunches will be provided on both days. The ve nue is wheelchair accessible and a signer will be available if requested by 11th March.

FEES for the conference including lunches are:

- Women sponsored by their firms / chambers / unions / other organisations £70
- Individual waged women £40
- Unwaged / low waged women £15

Name: ..... Fee: .....

Address: .....

.....

Children: ..... Ages: .....

Please include your cheque made out to Rights of Women with this form and return by 11th March to:
52 Featherstone St, London EC1Y 8RT.
Further information is available on 071 251 6575.

family divisions?

Family values and Back to Basics are high on the Tory Party agenda in 1994 - the United Nations Year of the Family. Elizabeth Woodcraft, barrister and Chair of Rights of Women, urges a radical approach to bringing up children and the explosion of the traditional family fantasy.

Everybody is an expert when it comes to families. We all come from one and may well still be members of one. Many of us may have had difficulties in our family life, but probably even more of us have a fantasy about the family we should have,been brought up in - the one where mum was at home doing the ironing, dad had a steady job, we all went on glorious summer holidays to Aberystwyth and we ended up being happy, rich and famous.

The family is an important unit for governments. Margaret Thatcher was the person who said that there was no such thing as society, only families and individuals. It's where the State can off load many of its responsibilities and collect taxes at the same time. But we don't talk about that.

The Conservative Party has nowhere to run. They have been in power for 15 years and even they can see that things are going badly. The recession, unemployment, homelessness, rising crime. Who can they blame? The people of Britain. And where do they live? In families.

In recent months the family has taken centre stage. Most obviously around the Tories' Back to Basics campaign, 'a return to family values', and its tawdry collapse with revelations of MPs' indiscretions. Most formally with 1994 being the United Nations Year of the Family. The Government brought in the Children Act 1989 as an attempt to keep families together, while the Child Support Act 1991 was brought in to ensure their financial security if they fell apart.

The Back to Basics campaign started with single mothers, accusing them of having children to obtain council housing and blaming them for the rise in crime. In July 1993 John Redwood MP, then Welsh Secretary, said 'the natural state should be the two adult family caring for their children.' The implication of this is that this is indeed the natural state and anything else is therefore unnatural and inferior. This approach is reflected in the Courts' attitude to the family. In 1990 Glidewell J. said, 'I regard it as axiomatic that the ideal environment for the upbringing of a child is the home of loving, caring and sensible parents, her father and her mother.'

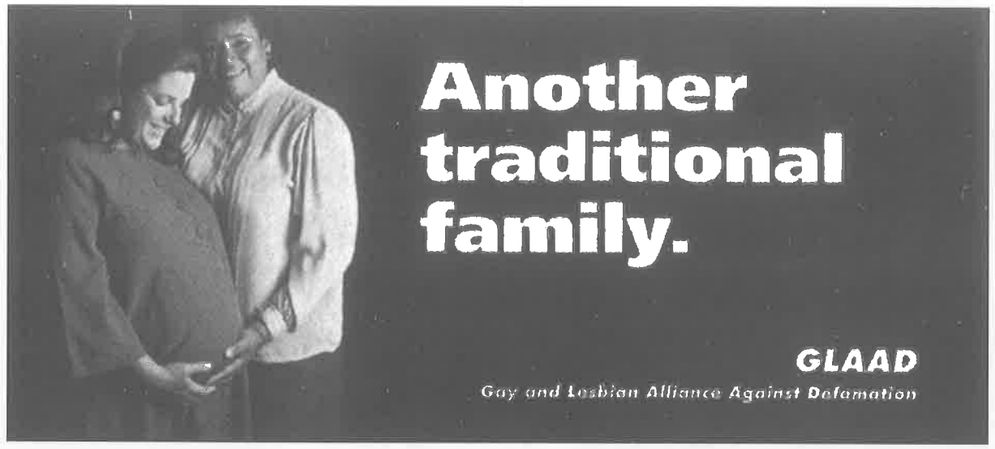
So let's really get back to basics.

test yourself

1. What is a family? Is it
   a) a mother, father and 2.4 children?
   b) a group of people including at least one adult who live together in a caring and supportive environment?
2. If your answer to 1 above was a) (and even if it wasn't) answer the following: What does each member of the family do? Describe in some detail.
3. How many of your answers to the above are based on:
   a) reality?
   b) the Bible?
   c) wishful thinking?
   d) a Barbara Cartland story you once read?
4. What is a family value?
   How does this differ from other sorts of values?

The issues raised in these questions form the basis from which the family values debate starts. However, one of the difficulties facing the Left is how to engage in the arguments. The terms have been set. The Tories have taken the moral high ground. The Labour Party may say, 'single parents have a hard time and should not be criticised,' but it is then left floundering in the ideological wilderness and ends up lamely agreeing that the traditional family is the best.

In a lecture at a Democratic Left event in November 1993 Stuart Hall said, 'One key reason why the Left finds it difficult to enter into this debate is because its conception of families, of social belonging, and indeed of community



is cast in such a riotously, rigorously traditional framework. Once the Left accepts the current terms of the debate, it inevitably finds itself colluding and pushing men and women back into relating in traditional ways.

And those traditional ways do not always work. Because the family is in big trouble. At least 1 in 3 marriages can expect to end in divorce. In 1989, out of 184,610 divorce petitions, 48% were based on behaviour and 86% were issued by wives. In 1991 26,236 injunctions were granted under the Domestic Violence and Matrimonial Proceedings Act 1976. Three quarters of acute child sexual abuse occurs within the home. Even the police have specialist domestic violence and child protection units.

If marriage was a product on the shelf, it would have to be recalled because of its enormous failure rate - a guaranteed 1 in 3 breaking down. Who would invest in such a product? Who would put down the deposit for the wedding (£5000? £6000?) if the risks were so high?

Despite all this the Courts and the State work together under the auspices of the Children Act to maintain the family unit. We should not forget that the philosophy of the Children Act was to a great extent a response to the Cleveland crisis - the State gone mad, children dragged away from loving parents. The response was stricter tests for Local Authorities, not necessarily a bad thing, but it is worth remembering that from 121 cases brought before the Courts on the basis of diagnoses by Doctors Higgs and Wyatt only 26 children from 12 families were found to have been wrongly diagnosed.

But the Children Act went further and introduced the concept of Parental Responsibility - automatic between married couples, possible for unmarried fathers. Furthermore, residence orders, which replaced custody orders, could now be shared between parents.

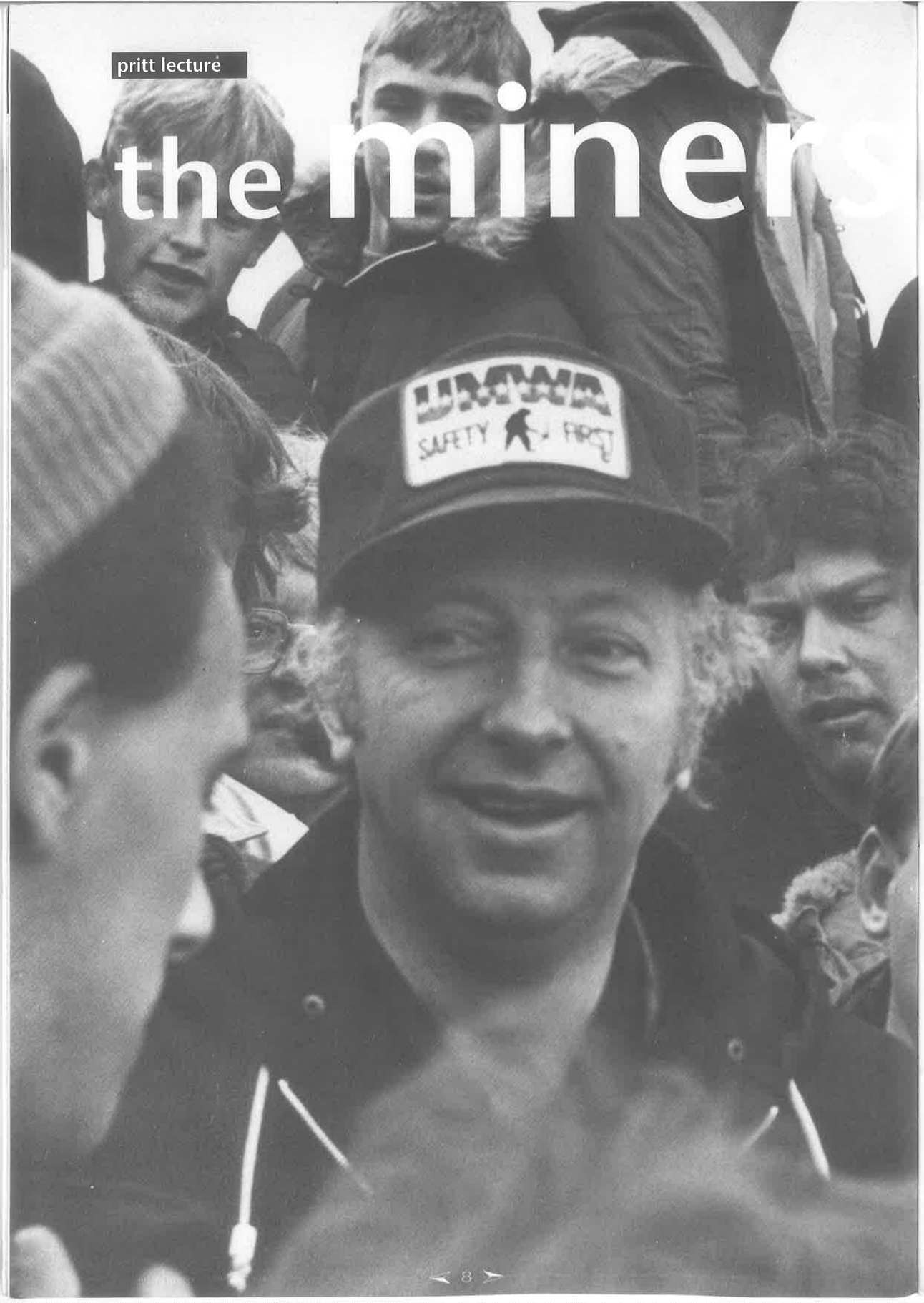
test yourself (part 2)

5. Why do some women deny men contact with their children?
6. Why do two-thirds of men fail to pay maintenance?
7. Is domestic violence valuable as
   a) an example for children of problem resolution?
   b) a way of keeping a person in his/her place?
8. Who is doing this problem resolution? Is it
   a) men?
   b) women?
9. Think for thirty seconds about the implications of your answer to question 8. Now go back to question 5. Does it all become clear?

The last few questions have obvious implications for lawyers. These are the issues we face daily in the family courts. I represent women who have been battered, others whose children have been sexually abused, others again who are lesbians. Women without men. Women who are doing a perfectly good job bringing up children. But my clients are constantly confronted by a judiciary that is tied to the fantasy of the traditional family. Indeed it has been so long regarded as axiomatic that a man and a woman are the best combination to bring up children that few have thought to research the issue, which leaves lawyers in a difficult position when it comes to challenging the preconceptions.

But interestingly two studies have recently received some attention in the Guardian. A report produced by the Family Police Studies Centre indicates that children of one-parent families can, and do, perform at least as well as children of two-parent families. The importance lies, says the report, in the nature of the family disruption rather than the disruption itself. The second study by psychologists from City University suggests that genetic ties are less important for family functioning than a strong desire for parenthood. It was found that parents with IVF, donor insemination or adopted children displayed more warmth, emotional involvement and 'interaction' than parents with normally conceived children.

The notion of the traditional family is safe and comforting. But for many people it is a fantasy, and for some a dangerous exploitative environment. It is important for the Left in general and lawyers in particular to be prepared to grasp the nettle and argue for a riotous and refreshing approach to bringing up children, which acknowledges the difficulties in family life and allows for a range of different possibilities.



Arthur Scargill during the 1984 Miners Strike Photo:N Myers/NUM

the miners and the judiciary : the ongoing struggle

Last year's annual Pritt Lecture, in memory of the radical lawyer and Haldane Society founder, D.J. Pritt, was given by *Arthur Scargill*, President of the National Union of Mineworkers.

The inability and unwillingness of the common law and of judges to deal sympathetically with the collective demands of workers over the centuries was the theme of Arthur Scargill's lecture. The experience of the miners, whether in confrontation with the Heath Government in the 1970s, or being criminalised and cast as *'the enemy within'* by Thatcher during the 1984/5 strike has been one of continuous conflict with the power of the law. Short lived legal victories such as the High Court decision in December 1992 temporarily halting the government's pit closure programme are, according to Arthur Scargill, the exception to this rule.

Here, we print an extract from his speech where Arthur Scargill examines judicial attitudes of the 1900's and finds little has changed.

Britain's miners have had a turbulent history and had to fight the whole judicial system in order to secure decent working conditions, wages, and a degree of fairness and democracy which certainly throughout the seventies many took to be their right!

A century ago, on the 7 September 1893, an incident occurred at Featherstone in the heart of the West Yorkshire coalfield which led to a British Army Regiment - for the first time since Peterloo - being used to shoot and kill mineworkers in what was to become known as the 'Featherstone Massacre'. It was, in fact, a conspiracy to murder - a conspiracy which involved the British Government, the Colliery Owner, Lord Masham, Lord St. Oswald who requested the use of troops, Mr. Holliday the Colliery manager and Gill the Deputy Chief Constable.

The miners at Featherstone were not on strike but 'locked out'. The only violence that night was by the Staffordshire Regiment. The 4th estate (the media) played its usual role in supporting the Government and used emotive words like 'marauding mobs', 'rioters' and 'acts of violence by the miners'.

On the 7th September 1893 with over 2,000 miners gathered and no microphone available, it is just possible that some did not hear the Riot Act being read out. The troops used Lee Enfield rifles which could kill at three miles and penetrate 35" of solid elm. The two men who had been killed had died in different places and under different authorities; as a consequence two inquests were held one in Wakefield and one in Featherstone.

At the Wakefield inquest medical evidence showed that Arthur James Duggan had been shot in the back of the leg (he was obviously going away from the scene). Witnesses swore that Duggan was only an innocent bystander and yet in spite of the substantial weight of evidence, including that of the medical authorities the jury mainly on the direction of the coroner returned a verdict of 'justifiable homicide'. In may of course, have been possible that the bullet was similar to the one that killed John F. Kennedy in 1963 and did a spectacular three mile u-turn before striking Duggan, but you may feel that this decision was a 'clear miscarriage of justice'.

At the inquest of James Gibbs in Featherstone, the Captain of the Staffordshire Regiment was asked why bullets capable of piercing 35" of solid elm had been used. The coroner intervened and according to the press 'observed with humour' they didn't make bullets for popguns.

In words which could have been familiar to those of Lord Denning he actually stated that 'the troops were under the direction of the Government and the Government could do no wrong'. Lodge, the Wakefield lawyer representing the Union responded by saying 'with respect the Government do many wrongs'.

There was a subsequent Royal Commission which turned out to be no more or less than a 'white wash' of the events and yet within two years all the men who were shot were awarded compensation by the State as nearly a century later the victims of the battle of Orgreave were awarded compensation for the violence done by them by the State's riot police.

I contrasted the attitude of the Labour Leadership in 1893 with that of the Labour Leadership in 1984 and found it quite revealing.

In 1893 Keir Hardy and Cunningham Graham, leading socialists, gave unequivocal support to the strikers and spoke at the funeral of James Arthur Duggan in what was probably the first major socialist speech ever heard in Featherstone.

Cunningham Graham said

"The Featherstone shooting was but an incident in the great battle between Labour and Capital and showed that the 'fetish property' which had been erected into the place of a god had more sanctity than human life".

Compare that speech with Neil Kinnock's disgraceful denunciation of miners who banded in 1984 and 1985 on picket lines for the right to work and for basic human dignity.

ALARM UK—

anti road building group actions grow

In 1989 then Secretary of State for Transport, Paul Channon, announced the 'largest road building programme since the Romans'. At £23 billion the Department of Transport (as usual) were promising to deliver much of what the powerful British Road Federation (BRF) demanded. But the DoT and the BRF had reckoned without the changing mood of the British public towards a transport policy dominated by road building: writes *Jonathan Bray of ALARM UK.*

Five years on and the anti-road movement, in the words of the Guardian, has made transport the 'key (environmental) issue and the road groups are challenging the way Britain is developing and expressing best the dissatisfaction with present economic models and the need for long-term thinking'.

ALARM UK now has a network of over 200 community groups taking on a road programme that threatens more than 150 sites of Special Scientific Interest, 50 National Trust protected properties, and over 800 archaeological sites.

A number of important victories have been won, with some of biggest 'green-field' road plans already dropped, such as the M1-M62 Link in Yorkshire and the East London River Crossing through Oxleas Wood. There have been spectacular showdowns over particularly damaging schemes which have reached the construction stage - such as the M3 at Twyford Down and the M11 Link road through East London.

ALARM UK's campaigns have come up against the law in two ways. First, proactively, using the law to try to stop proposals which the road planning system has authorised. Secondly, reactively, when the authorities have used the law against protesters taking part in campaigns of non-violent direct action.

In our experience, the proactive use of the law is rarely successful. I'm not aware of any road campaign that has managed to stop a scheme through the courts. The courts seem to take the view that unless the authorities have taken decisions that are utterly unreasonable, in every way, then the decision arrived at by the planning system should stand. Presumably judges do not want to see the courts being used by protesters as a rerun of the public inquiry.

Despite this, taking court action is very appealing to anti-road groups. Many groups feel cheated by a road planning and public inquiry process that on the surface looks a model of integrity and objectivity but which is in fact a decorous charade hopelessly rigged in favour of the road builder. Having suffered at the bands of the road planning system they look to the courts to get justice. But the courts are not about justice, they are about the law, and because judges don't want to rerun public inquiries the abuse of the law has to be flagrant before judges will consider taking on the Department of Transport.

Cartoon: Nick Newman

However, the courts have been very effective in generating publicity for anti-road groups. Journalists love court cases. No matter how obscure the point of law on which the case turns. For example the High Court case on the East London River Crossing earlier this year attracted so much coverage that it helped make Oxleas Wood a national issue, which in turn led to the road being dropped.

In general we advise groups to concentrate on building up high-profile broad-based campaigns that exert so much political pressure that the authorities have little choice but to back down. We tell them not to let their hopes rest on their moment of glory in the Strand. They will almost certainly lose and it costs so much that it may break them.

There are those however who heed our advice and end up in the courts anyway! These are the people who the authorities prosecute for taking part in campaigns of non-violent direct action against road schemes. Already

the authorities do their best to uncouple the direct action side of road campaigning from 'respectable middle England' campaigners

protesters have been jailed, while others have been threatened with a share of the cost of disrupted work on the M3 at Twyford down just for being in the crowd at one peaceful rally! The proposed toughening of the laws of trespass could have a significant effect on direct action protesters.

Here, the best possible legal support and advice is vital. ALARM UK has a sub-group coordinating legal support and is very grateful to those lawyers that have given freely of their time and knowledge. We feel that as well as high quality legal support the best defence we have is public opinion. The jailing of the Twyford Seven earlier this year provoked a huge outcry and since then the authorities have been noticeably reticent in their use of prison sentences. While the authorities do their best to uncouple the direct action side of road campaigning from 'respectable middle England' campaigners, we intend to keep this broad-based and flexible alliance together. So far we've succeeded. By and large the 'respectable' campaigners of the shires are happy with direct action, and happy to threaten to use this tactic themselves if all else fails.

ALARM UK will continue to work with local groups to use people power to change transport policy. We exist on a shoestring - despite our success we've never been given a single grant - so donations are always welcome. David Plumstead, our legal coordinator is always happy to hear from those with legal expertise who are willing to help. *Contact ALARM UK at 13 Stockwell Road, London, SW9 9AU, 071 737 6641.*

w o m e n as walking wombs

The complex public debate over fertility and scientific developments in genetics and embryology has only touched on the question of who controls women's wombs - women themselves or the medical profession. Legal researcher Michael Thomson considers a recent case which highlights the question of control and consent.

In March 1993 Barbara Whiten, thirty-five, underwent a hysterectomy at King's Mill Hospital in Mansfield, Nottingham. Ms Whiten had, for a number of years, suffered from endometriosis, a chronic disorder of the womb lining. Whilst Ms Whiten and her partner had wanted a child they believed the endometriosis had left her unable to conceive.

The hysterectomy was performed by Reginald Dixon, a consultant gynaecologist and obstetrician. Having opened up Ms Whiten the surgeon noted the uterus was enlarged. Whilst the surgeon had the option of closing the abdomen and scanning to determine whether the enlargement was due to a gestational sac or a pathological factor, the uterus was nonetheless removed. Ms Whiten, contrary to her belief that she was unable to conceive, had in fact been eleven weeks pregnant. In the absence of her consent her pregnancy was terminated, and the foetus removed along with her uterus and ovaries.

doctor v patient

The Whitens are now pursuing a claim for damages against Reginald Dixon. The Crown Prosecution Service is also considering the case. The Whitens' claim for damages appears unlikely to succeed. The court is unlikely to challenge a clinical decision made in good faith[1]. Nor will Mr Dixon face liability under negligence if he is able to furnish the court with evidence that 'he has acted in accordance with a practice accepted as proper by a responsible body of medical men [sic] skilled in that particular art.'[2] This construction of negligence may mean that Mr Dixon is not negligent so long as he has acted reasonably, as Professor Kennedy has argued: 'a doctor is never committing an offence when he [sic] is acting as a reasonable doctor.'[3]

The primary importance of the Whitens' ordeal is not, however, the legal challenge that is being taken against the clinical decision and action of one doctor. Rather its importance lies in highlighting the existence of culturally and medically anachronistic attitudes towards women.

Reginald Dixon justified his decision to perform a non-consensual, and perhaps illegal abortion on the grounds of Ms Whiten's 'recent history of deliberate suicide attempt.'[4] Mr Dixon therefore viewed Ms Whiten as either unfit to be a mother, judging pre-conception behaviour as dictating post-natal care, or believed the hysterectomy as necessary to restore her mental stability. This latter rationale, and to some extent the former, illustrates the persistence of a uterus-centred notion of women amongst the medical profession.

This construction of woman was prevalent in the closing half of the nineteenth century. Medicine of the period focused on the uterus in a way that may be described as 'decidedly unscientific and even obsessive.'[5] The focus upon the uterus and the ovaries lead to a construction of woman as in all aspects genital-centred. Her physiology and very womanhood depended upon her uterus: '...it must be remembered that [the uterus] is the *controlling* organ in the female body, being the most excitable of all, and so intimately connected, by the ramifications of its numerous nerves, with every other part.'[6]

As central to the female physical economy the uterus and ovaries were seen to determine the perceived natural traits of womanhood: 'Instincts connected with ovulation made her by nature gentle, affectionate and nurturant. Weaker in body, confined by menstruation and pregnancy... both physically and economically dependent upon the stronger and more forceful male.'[7]

The female generative organs therefore became a shorthand for the desired characteristics of womanhood, as the Vice-President of the British Medical Association illustrated: 'Let us regard the uterus... as a symbol, representing not simply itself and its appendages, but the sum total of the peculiarities of the female organisation.'[8]

With the female generative organs so placed bio-medical arguments could be employed to oppose activities that took a woman beyond her *natural sphere* of home and family. Male opposition could code itself in the language rational, objective bio-medical fact. Objections to the developing social and economic role of women could therefore be re-ordered as paternalistic physiological concerns. Physiological arguments evolved to oppose the higher education of women,[9] their employment outside of the home,[10] and the emergence of female doctors.[11]

The uterus-centred notion of woman was most pervasive, and most destructive, within the sphere of illness. Whilst woman was constructed as weak and persistently ill, her ills were deemed to be caused by her generative organs and their physiological processes. With the perceived nexus between the reproductive organs and the nervous system, the uterus became the origin of most diseases under the 'reflex irritation' model of disease causation.[12] Any dysfunction, disease, or disorder of the uterus or ovaries was therefore held to have a corresponding reaction in some other part of the body, what Wade termed *hystero-neurosis*.[13]

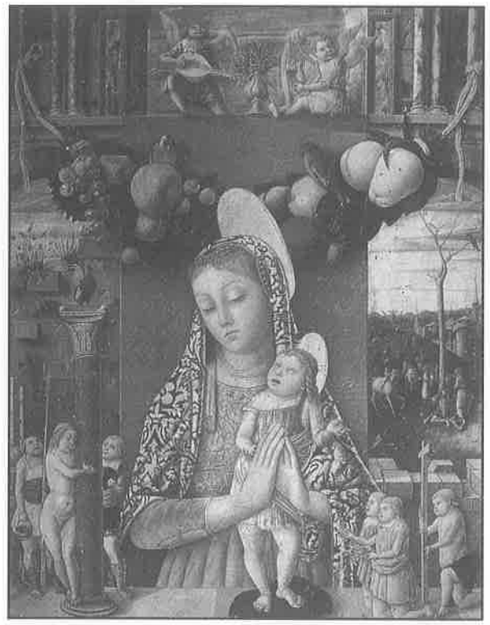
This model of disease causation lead to the treatment of disorders and diseases, such as tuberculosis, through *local treatment* of the uterus. Yet the reflex irritation model was also applied to combat a believed epidemic of insanity.[14]

'The justification of terminating her pregnancy on the basis of her recent mental health creates echoes of the historic objectification of women as walking wombs'

Psychology of the period worked within the framework of the physical and mental interdependence.

It is within the framework of the *reflex irritation* model, and more specifically its application within the context of a genital-centred view of women, that the hysterectomy of Ms Whiten must be viewed. The justification of terminating her pregnancy on the basis of her recent mental health creates echoes of the historic objectification of women as *walking wombs*, and of a time when the uterus existed as a 'highly perilous possession.'[15] Dr Dixon's decision, and the support he has received from his health authority,[16] reveals the persistence of a view of women as uterus-centred. It is this persistence, in part, that has resulted in Ms Whiten's case, and the numerous non-consensual hysterectomies and ovariotonomies that the Whiten's case has bought to light.[17] It is also this attitude that has facilitated court ordered obstetrical intervention, both in this country[18] and more notably in America.[19]

To some extent the uterus-centred notion of woman is now being challenged. Medical journalist Caroline Richmond, had her uterus and ovaries removed at St. Thomas's Hospital London, without her consent, in April of last year. Ms Richmond took her case to the police. After more than a years' investigation the Crown Prosecution Service informed Ms Richmond that they had been unable to secure enough evidence to bring a prosecution. In the light of Barbara Whiten's case, and others that have now come to light, Ms Richmond has co-founded a new charity with the purpose of raising funds for the prosecution of any surgeon who removes a woman's reproductive organs without her express consent. Whilst the fund may be faced with more than one-hundred and fifty years of medical



dogma, the founding of this new charity is nonetheless a timely and a necessary start.

Any person who would like more information about the Hysterectomy Legal Fighting Fund should contact Caroline Richmond on 081 788 3930.

Notes:

[1] See *Whitehouse v Jordan* [1980] 1 All ER 650 at 658

[2] *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118 at 122

[3] I. Kennedy, *Treat Me Right: Essays in Medical Law and Ethics* (1988) at 76-78

[4] The Independent on Sunday, 12 October 1993

[5] A. Douglas Wood, *'The Fashionable Diseases': Women's Complaints and their treatment in Nineteenth Century America*, Journal of Interdisciplinary History, IV: 1 (Summer 1973) 25 at 29

[6] F. Hollick, *The Diseases of Women, Their Cause and Cure Familiarly explained* (New York, T.W. Strong: 1848) 42

[7] C. Smith-Rosenberg and C. Rosenberg, *'The Female Animal: Medical and Biological Views of Woman and Her Role in Nineteenth Century America'* Journal of American History, 60 (September 1973) 332 at 337-338

[8] W.F. Wade, *'On Some Functional Disorders of Females'* Lecture II BMJ, June 12, 1886, 1095 at 1096

[9] See, for example, The President of the British Medical Association, Withers Moore, *'The Higher Education of Women'* BMJ, August 14, 1889, 295

[10] See, for example, D. Berry Hart, *'The Nervous Exhaustion of Women'* BMJ, November 30, 1889, 1240

[11] See, for example, General Council of Medical Education and Registration, *'Discussion of the Admission of Women to the Medical Profession'* BMJ, July 3, 1875, 9

[12] See, W.F. Wade, *'On Some Functional Disorders of Females'* Lecture I, BMJ, June 5, 1886, 1053 at 1057

[13] Ibid

[14] Between 1859 and 1896 the number of people in England and Wales categorised as insane increased from 36,762 to 96,446, BMJ, March 14, 1898, 783

[15] Wood supra, at 29

[16] See The Independent, 14 September 1993

[17] See The Independent, 13 September 1993

[18] See M. Thomson, *'Mother Vs. Child'* Socialist Lawyer, 18 (Winter 1992/1993) 21

[19] See J. Gallager, *'Prenatal Invasions and Intervention: What's Wrong With Foetal Rights'* Harvard Women's Law Journal 10 [1987] 9

labour pains:

gender equality in party politics

The proposal to introduce quotas for female representation throughout the Labour Party will have a profound impact on male vested interests. Clare Short MP, Labour Spokesperson on Women, reports on the struggle for equality and the backlash.

Over the past few years, a quiet revolution has been taking place in most of the British Labour Party's sister parties throughout the world. It has been led and helped along by Socialist International Women. It is the result of an experience shared by our sister parties in very divergent conditions that we will never achieve a real sharing of power between men and women without using positive action to transform the culture of our organisations. This is hardly a shocking conclusion. Major employers in the public and private sector have found exactly the same. Rhetoric about equal opportunities is not enough to produce results. Positive action has to be taken to review recruitment and promotion patterns in order to ensure that talent rather than prejudices control events. Many employers have made changes as much for reasons of self interest as justice. They have become conscious that they are losing out on the talent of women and understand that the performance of their organisations are improved by the recruitment and promotion of more women.

the numbers game

In the British Labour Party, there was added urgency behind this move. The research evidence is clear that women - across the categories of age, class and ethnicity - have more progressive political views than men but trust the Labour Party less and do not feel it represents them. Thus in 1989 it was proposed and agreed by an overwhelming majority at Labour Party Conference that we would introduce a quota of 40 per cent women at every level of our organisation. From the officers elected at branch level to the composition of the National Executive Committee (NEC) there had to be at least 40 per cent women in all positions of power. The changes required constitutional amendments and for bodies like the NEC we arranged to phase the change because we had no wish to displace good men, but to ensure that women took 40 per cent of the vacancies for all new selections. This process of change is now rippling through the party. It caused a little protest here and there but nothing very major. It was when we came to parliamentary selection that the squeals and howls became fast and furious. It seems that the conservative elements in our party do not mind women being branch officers or even members of the NEC but if they ask for equal representation in the House of Commons then things have gone too far!

The 1989 decision to introduce quotas at every level of the party included a commitment to ensure that the Parliamentary Labour Party (PLP) should contain 50 per cent women in ten years time or after three elections. The decision was agreed overwhelmingly but no mechanism was put in place to ensure that the decision was implemented.

At the 1993 Conference this mechanism was agreed. It was a modest, patient but invincible proposal which will ensure men and women share power equally in the PLP. It will take a few elections to achieve this parity but, if the mechanism remains in place, progress is inevitable. The women's conference has voted for a number of years that there should be a rule that whenever a Labour MP retires, there should be an all women shortlist, until women become 50 per cent of the PLP. This proposal has been defeated by the national Conference on a number of occasions. A compromise was therefore required. It was proposed and agreed in 1993 that in each region there will be all women shortlists in half the safe seats where Labour MPs are retiring and half the winnable marginals. This means that popular men who fought last time or have been heir apparent for years, can be accommodated but progress will be inevitable.

male backlash

It has been very interesting to see various elements amongst the great and the good try to destabilise the proposal. Arthur Scargill complained to the Equal Opportunities Commission that the proposal was illegal. Anthony Lester, the Liberal Democrat peer and equal opportunities specialist, declared to the world and the Guardian that the proposal was illegal. Other 'equal opportunity' lawyers climbed on the bandwagon to argue that Labour was going too far and breaching its own Sex Discrimination Act. Later, even Neil Kinnnock and Roy Hattersley expressed disapproval. It is strange how soon those who have demanded loyalty from others forget the need for loyalty to decisions properly and democratically made!

The suggestion that the Conference decision may have breached the law sent a ripple of glee through ranks of aspiring men who had felt that they could not openly object to equal opportunities for women but did feel very angry that an equal share of vacancies would reduce their chances.

The Equal Opportunities Commission took legal advice and concluded that the proposal did not breach the law. The Sex Discrimination Act specifically exempts political parties from its provisions. The reactionary equal opportunity lawyers therefore had to argue that because the law forbids discrimination in awarding a professional qualification, a Labour constituency in selecting a candidate is creating a potential MP which is a profession. In fact the courts have been asked to adjudicate on Labour selections on a number of occasions. They have always ruled that the Labour Party is a private organisation that can select according to its own rules. It is the electorate who create MPs when they vote.

The decision is due to be implemented from June 1994. Consensus meetings will be held in every region. Representatives of constituency parties will be asked to reach agreement on which selections will be confined to women. The NEC will intervene only if consensus is not reached. Local men will have a chance in half of all the winnable selections in their area. But half will select women. The beauty of it is that parties will have a choice of a range of talent, political view and temperament. There will be full political freedom of choice but the outcome will be a big increase in the number of women candidates.

It is impossible to be precise about the numbers that will result because we cannot be accurate about retirements. But the next parliament will have about 80 women in the PLP out of, let us hope, 327. This is only 1 in 4 but I suspect we will start to reach the numbers that create a critical mass that changes the culture of an organisation.

I am convinced that this change will radicalise and strengthen the Labour Party and improve the quality of our representation. It is interesting to watch the shock waves reverberate. I always expected a backlash on quotas. It was not until they were extended to the selection of MPs that it came. My hope is, however, that the operation of the quota at every level of the party will revitalise and strengthen the organisation. I also hope that as the Labour Party becomes more women friendly it will become more human friendly, more representative and more powerful.

'aspiring men felt that they could not openly object to equal opportunities for women but did feel very angry that an equal share of vacancies would reduce their chances.'

scapegoats not solutions

Nadine Finch, Secretary of the Haldane Society, analyses the Home Secretary's most recent response to miscarriages of justice, and the proposals contained in the new Criminal Justice Bill.

When Gerry Conlon stepped into the glare of the media lights outside the Old Bailey and punched the air in salute to those who had campaigned for his freedom, it appeared as though British Justice was putting its house in order at last. Since then the successful appeals by the Birmingham 6, Maguire 7, Judith Ward, Stefan Kiszco, the Cardiff and Tottenham 3 and the Taylor sisters have further highlighted the dangers of uncorroborated confessions, trial by media and the vulnerability of the individual in our criminal justice system.

But the lessons that should have been learnt from these cases have been skilfully kicked into touch by the present government. Its first response was the classic solution of a government that needs to be seen to be acknowledging public concern and is determined not to change policy - a Royal Commission.

government agenda

The Haldane Society established a working party and produced a detailed submission to that Commission. We took a very critical look at the criminal justice process as a whole, from the point where the police first target the individual through to arrest, interview and the courts. Interestingly enough, we also made submissions on areas not officially within the remit of the Commission but which were of concern to us - concerns that had arisen out of the workings of the Prevention of Terrorism Act and our research into the criminal justice system in Northern Ireland. It now appears that we were correct to assume that the government's agenda was not as narrow as it purported to be.

As time passed there were clues as to the government's real intent. In the majority of the miscarriage of justice cases, police misconduct played a prominent part. Yet these officers were acquitted, if indeed they ever came to trial. In one case, it was held that the events had occurred so long ago that a fair trial was not possible. Such a decision should not be seen as a mere example of one judge's use of discretion. Similar arguments led to the acquittal of officers accused of misconduct at Wapping during the News International dispute, and yet failed at the end of last year to halt the extradition of Irish man, Gerard Power, to Germany to face charges.

a prosecutor's charter

As soon as the Commission had reported, members of the Haldane Executive met and prepared a draft press release in response to the Royal Commission's recommendations. We found little to commend, apart from the removal of the need for corroboration in rape trials, the establishment of an independent appeal body and support for the retention of the right to silence. We planned to use the Runciman Report to highlight our views on the Criminal Justice system and in September 1993, held a fringe meeting at Labour Party Conference, entitled 'The Runciman Report - A Prosecutor's Charter'.

However, Michael Howard's speech at the Tory Party Conference the following week, rendered the Royal Commission virtually redundant. The speech was a masterpiece of populism. It pandered to individualistic concerns about current events - hit and run accidents caused by joy-riders, new age travellers, street robberies, lack of available housing. And instead of offering real solutions in terms of job opportunities and new houses, Michael Howard produced a shopping list for simplistic instant solutions - build more prisons, lock them up younger and for longer, deny them bail, evict them within 24 hours and make them tell the truth.

This became the basis for the latest Criminal Justice and Public Order Bill - not the experiences of all those wrongly convicted, not the analysis and research provided by the Royal Commission, but the bedrock of righteous reaction that has been the hallmark of Tory Party policy since 1979. This is the same righteous reaction that, despite rhetoric about individual rights, has sought to deprive us of trade union rights, the right to demonstrate, the right to claim asylum from persecution, the right to housing and the right to legal aid.

Yet somehow a notion of justice and fairness has survived against all the odds within the criminal justice system. It seems that the judiciary and the public were prepared to give the benefit of the doubt to even those most castigated in our society - the Irish, black youth, alleged child molesters and murderers.

Clearly this was inconsistent with the policy of righteous reaction - the correct response should have been to make examples of and to punish. Michael Howard therefore ignored the views of those with experience and understanding of the criminal justice system and instead took his lead from the media, who daily profited by sensationalising law and order issues. The Bill was truly a prosecutor's charter.

no right to silence

This is perhaps best exemplified by what is at the heart of the bill, the abolition of the right to silence. A variety of other measures, also imported wholesale from legislation currently in force in Northern Ireland, reinforce this position. These measures will allow adverse inference to be drawn at trial from a defendant's unwillingness or inability to give answers to questions about the alleged offence, from the point at which the defendant is first stopped up until the time the defence closes its case.

Further measures will give the police unfettered powers to stop and search in connection with terrorist matters. There will be no requirement to provide grounds for their actions. This will allow the police to mount road-side checks at will. It will also facilitate the type of low-level information gathering and political profiling of the community, perfected over the years by the security forces to Northern Ireland.

It will further become an offence to go equipped for terrorism. Due to the often home-produced character of terrorist devices, this has meant, in Northern Ireland, that carrying rubber gloves or lengths of electrical wire is potentially an offence. Moreover, the defence has to prove that the items were not intended for terrorist use. Given the paucity of access by the defence to forensic services and the need to give an immediate explanation about items in a suspect's possession, the potential for this becoming a useful catch-all charge are immense.

Finally, there is the new offence of having information likely to be of use to terrorists. There is no requirement to prove intent on the part of the alleged offender. It takes little imagination to guess at possible uses against dissident journalists, political activists or those campaigning against miscarriages of justice.

no safeguards

The very miscarriages of justice which first founded the public disquiet about the criminal justice system involved those accused of terrorist related crimes. Their cases proved that the safeguards in our system were powerless to prevent miscarriages of justice. International civil liberties groups have further supported the findings of groups such as the Haldane Society that the system of criminal justice operating in Northern Ireland does not guarantee the civil and legal rights Britain purportedly subscribes to as a signatory to both the European and International Conventions on Human Rights.

And yet we have a Criminal Justice Bill which does not propose even one extra safeguard for the accused and instead imports wholesale legislation from Northern Ireland. Even as the Bill was being debated in committee, the European Commission accepted that a case challenging the removal of the right to silence in Northern Ireland should be tried by the European Court on Human Rights.

The Bill has precious little to do with justice and far more to do with controlling a population increasingly frustrated by the inability of government to meet its needs. It offers no solutions, only scapegoats.

indefensible weapons
putting polaris on trial -

Writing in a personal capacity, Keith Mothersson of the educational charity, Institute for Law and Peace, describes the efforts of a Welsh based group, Pax Legalis, to put nuclear preparations on trial - and the fundamental constitutional issues raised.

In January 1985 a Nuclear Warfare Tribunal was convened in London by an alliance of peace, trade union and professional groups, including Lawyers for Nuclear Disarmament. For four days the late Sean MacBride and his distinguished Tribunal colleagues heard evidence from expert witnesses and international lawyers. The Tribunal found that: *'possession of nuclear weapons and planning of a nuclear war are in breach of Articles 6 and 6(a) of the Nuremberg Charter.'*

proceeding in good faith

Present in the audience were ex-WW2 pilot and retired art lecturer, Fred Starkey, and three neighbours from Mold, North Wales who considered that the next stage should be to challenge this 'crime against peace' in the British law. As a result they formed the group Pax Legalis. Although warned of obstacles ahead, the group took the view that by proceeding against the State's nuclear strategy in good faith they would also be putting our legal system to the test.

After collecting impressive documentary evidence with the help of sympathetic defence analysts, Pax Legalis obtained Counsel's opinion from Patrick O'Connor, supported by Professor of Public Law, John Griffiths.

In June 1987 papers were delivered to the Attorney General and DPP, applying for leave to prosecute the Secretary of State for Defence for conspiring to commit genocide, murder and breaches of the Geneva Conventions. Their applications were rejected without explanation. In October 1987 a failed attempt was made to persuade the High Court that the prosecution consents had been withheld in an arbitrary and unreasonable manner. It looked as if further progress had been stymied.

It was then that Pax Legalis was joined by Robert Manson, a Dyfed law student who had advised on, and made, many personal attempts to lay anti-nuclear informations in Magistrates courts. Manson realised that by altering the wording of the charges from 'conspiracy...' to 'conspiracy to incite...' it would be possible to circumvent cumbersome legal procedural requirements. Pax Legalis commissioned him to produce a series of papers dealing with all relevant legal aspects.

side-stepping the royal prerogative

Manson realised that foremost among the concerns which would inhibit Magistrates from issuing a summons would be the presumption that, because Defence falls within the sphere of 'Crown Prerogative', the Courts should entertain no challenge as to how the executive exercises such prerogative power.

In clearly argued legal submissions Manson reviewed a long chain of authorities, distinguishing between legal and other grounds. He concluded that a claim to be acting on the royal prerogative does not absolve the Defence Secretary from operating 'some or other policy which is lawful'. Just as in Bractons's day the King was accountable to the law 'for it is the law that maketh the King', the executive remains so accountable in the exercise of the residual areas of royal prerogative that exist today.

By 1991 Pax Legalis were ready to try again. Manson presented the Mold bench with his legal submissions, to accompany updated documentary evidence and expert witness statements. After adjourning to consider the paperwork the Magistrates took the unusual step of adjourning to a hearing with Treasury Counsel for the Respondent. At the removed hearing the Defence Secretary successfully argued that as an 'emanation of the Crown' he was immune from the criminal jurisdiction of the courts 'for acts done in his official capacity'.

Pax Legalis appealed to the High Court. After protracted delays, three days were set aside for the hearing, beginning on 19th May 1993. Immediately, the Court intervened holding that Pax Legalis should have come to the High Court by a different route, judicial review.

Conscious of the risk in costs, Pax Legalis beat a diplomatic retreat. Over the following summer, further paperwork was resubmitted to the Magistrates Court and Summonses were again refused. A new High Court date, was obtained for January 1994 for an application for leave for a full judicial review hearing of the renewed refusal to issue summonses (likely to take place in summer 1994).

One welcome by-product of this frustrating episode is that the High Court will now have the benefit of a July 1993 ruling on a closely related point of constitutional law.

In the Home Secretary (Baker) deportation case, *In re M*, the House of Lords held:

'The argument that there is no power to enforce the law by injunction or contempt proceedings against a minister in his official capacity would, if upheld, establish the proposition that the executive obey the law as a matter of grace and not as a matter of necessity, a proposition which would reverse the result of the civil war.'

So far the Defence Secretary's breath-taking attempt to annul the constitutional fundamentals has been met with no public outcry. When the issue comes up for judicial review it is hoped that the High Court will be aware of both public pressure and pressure from groups such as Charter 88 all of whom object to our constitution being swept aside to shield these 'indefensible weapons' and the 'ungiveable orders' they entail.

encouragements to loyalty

Assuming that Pax Legalis win this next round, what then? Mold Magistrates Court will be obliged to issue a set of summonses against Malcolm Rifkind and his predecessors. After that the likelihood is that the Attorney General will take over the prosecutions and quash them in the interests of the nuclear State. He will claim to be acting 'in the public interest', which is doubly bizarre since, if nuclear preparations are lawful, a test case could surely only strengthen deterrence. Such a public vindication would warn off CND supporters who are currently leafleting nuclear personnel to encourage them to loyalty in the very difficult legal position in which they are being placed. These leaflets suggest that, in a crisis, nuclear personnel would have the right and legal duty to quietly disconnect the nuclear button or arrest superior officers who incite them to murder harmless civilians![1] Significantly, no prosecutions have so far resulted.

siege for justice

Despite this, the Attorney General will probably survive judicial review of his decision to prevent a test case (as he did in 1987). But politically the affair could be a grave embarrassment, the more so if, as seems likely, it coincides with hearings on the legality or otherwise of the use of nuclear weapons before the International Court of Justice at the Hague. The government would be open to the charge that its principal Law officer was effectively frustrating the rule of law in this vital area of national - and international - life.

Already there is talk of a new wave of anti-nuclear law enforcement action, centred as much on local courts as on often distant nuclear bases. If the legal actions disclose both charges known to law and a prima facie case, many of our 30,000 magistrates may decline to do the Attorney General's dirty work for him, necessitating the issuing by him of repeated orders not to prosecute.

Like the magistracy in Italy who are helping to expose corruption, Pax Legalis hope our own courts could yet prove themselves Justices of a true Peace in refusing to shield Britain's shameless posture of nuclear 'deterrorism'.

Notes:

[1] According to the British Manual of Military Law, officers have a legal duty to refuse 'manifestly illegal' orders and to 'avert and prevent the operation of unlawful commands' (I para 23; III para 627f)

Further information on Pax Legalis from 3 Llys Fammau, Pantymwyn, Mold, Clwyd CH7 5EZ, tel 0352 740844

The Haldane Society commends to all its members and readers of Socialist Lawyer the appeal for funds to publish *The Pax Legalis Papers*, being launched by the Institute for Law and Peace, 17 Herbert Street, London NW5 4HA

compelling circumstances —

gay relationships & the UK immigration rules

With the recent debate on reducing the age of consent for gay men to 16 years, the issue of equality for gay men and lesbians is back on the agenda. Solicitor Michael Davies considers the existing inequalities in immigration law and proposals for reform.

One of the areas where gay men and lesbians are most blatantly discriminated against is the area of immigration. The series of Immigration Acts passed by successive governments, both Conservative and Labour, have made it increasingly difficult for people to enter and remain in the United Kingdom either temporarily or permanently. Much of the criticism, quite rightly, has been directed at the racist nature of the immigration laws. However there has been little criticism or acknowledgement of the way the law discriminates against gay people seeking to enter or remain in the United Kingdom on the basis of a gay relationship.

discriminatory rules

Under the immigration rules you can apply to enter or remain in the United Kingdom on the basis of heterosexual marriage if you can comply with certain requirements. Heterosexual couples who are not married, but plan to marry can obtain entry as fiancees. In addition non married couples who for whatever reason do not wish to get married can apply to enter or remain in the United Kingdom under a special Home Office concession applicable to common law heterosexual relationships.

No such rules or concessions apply to gay couples. One assumes the Home Office allows people to remain on the basis of permanent heterosexual relationships because they have some humanity and recognise the significance and importance of a loving relationship between two people who have committed themselves to one another, live together and hopefully plan to live the rest of their lives together. It follows that the reasons why the Home Office does not allow gay people in such relationships to remain is because it does not consider gay relationships to be as important or valid as heterosexual ones. It appears unwilling to accept that gay people are capable of love and dedication equal to heterosexuals.

The present Home Office view is summed up in a letter from Charles Wardle, the Minister responsible for immigration. In one letter to an MP he wrote that 'we have no plans to make any changes either in immigration law or in practice relating to such [homosexual] relations. English law does not accord any legal status to lesbian/homosexual relationships. There is no provision in the Immigration Rules and applications therefore fall to be considered as a matter of discretion outside the Immigration Rules. They are unlikely to be approved unless there are genuine exceptional circumstances of a compelling nature'.

legal challenge

If love for another human being with whom you live, sleep and plan to spend the rest of life with does not amount to a compelling circumstance it is hard to think what would. In practice the only compelling circumstance that the Home Office is prepared to recognise is where one of the partners is dying of Aids. Apart from such cases the position is quite clear - gay people are not welcome here and the existence of a permanent gay relationship is not considered a worthy reason for allowing someone to remain in this country.

Those who innocently apply to the Home Office thinking that their relationship must surely count for something receive an unpleasant shock when they are informed that their relationship is not good enough reason for wanting to remain in this country and one that is not acceptable to the British government.

The only significant legal challenge to this position was in 1984 when Lars Wirdestedt, a Swedish citizen, took his case to the Court of Appeal. He had been in 'a firm, stable and lasting homosexual relationship' for over five years with a British citizen. He had applied for permanent settlement in the United Kingdom on the basis of his relationship. The Home Office decided, however, that 'under the Immigration Rules you do not qualify for the grant of leave to remain by virtue of your association with (your lover)'. Mr. Wirdestedt asked the Home Office to depart from the Immigration rules and allow him to remain anyway and the Home Office refused to do this. The Court of Appeal upheld the Home Office decision.

european solution?

In 1983 an attempt was made to challenge the position in the European courts. X and Y had been together for four years when X was found guilty of overstaying and a deportation order was made against him. He was from Malaysia. An application was made to revoke the deportation order on the basis of the relationship but it was refused. X and Y therefore left the United Kingdom and went to live in Sweden. They made a complaint to the

'Britain has even shown reluctance to allow gay people to remain in the United Kingdom where they fear being persecuted in their own country because of their sexuality.'

'the discriminatory rule forces people who wish to remain in this country on the basis of their gay relationship to deceive the Home Office about their real intentions'.

European Commission on Human Rights. They complained that under Article 8 of the European Convention they were entitled to a right to family life and a right to respect to private life. In refusing to allow X to remain in the United Kingdom, Y's right to a family life was being interfered with. The Commission held that homosexual relationships cannot be classified as family life and dismissed the complaint (although they also held that deporting a person in the homosexual relationship could amount to interference with private life in certain limited circumstances).

Britain has even shown reluctance to allow gay people to remain in the United Kingdom where they fear being persecuted in their own country because of their sexuality. A number of countries, including the USA, have recognised that gay people can be persecuted as members of a particular social group. The law in this country, however, does not regard gay people as members of a particular social group as defined by the 1951 United Nations Convention on Refugees. In the case of Zia Binbasi in July 1989 the High Court upheld this position. The case of Binbasi was particularly offensive because of the suggestion by the judge that homosexuals should refrain from practising their sexuality in order to avoid any persecution.

proposals for change

There is clearly a need for the law to be changed. Recently the Home Office issued new instructions to its officials concerning the marital and non marital relationships of those heterosexual people facing deportation or removal. These instructions follow a series of rulings on the right to family life in the European courts. The instructions show that the Home Office is more likely to allow heterosexual families formed in the United Kingdom to remain together. Gay couples, however, continue to be excluded.

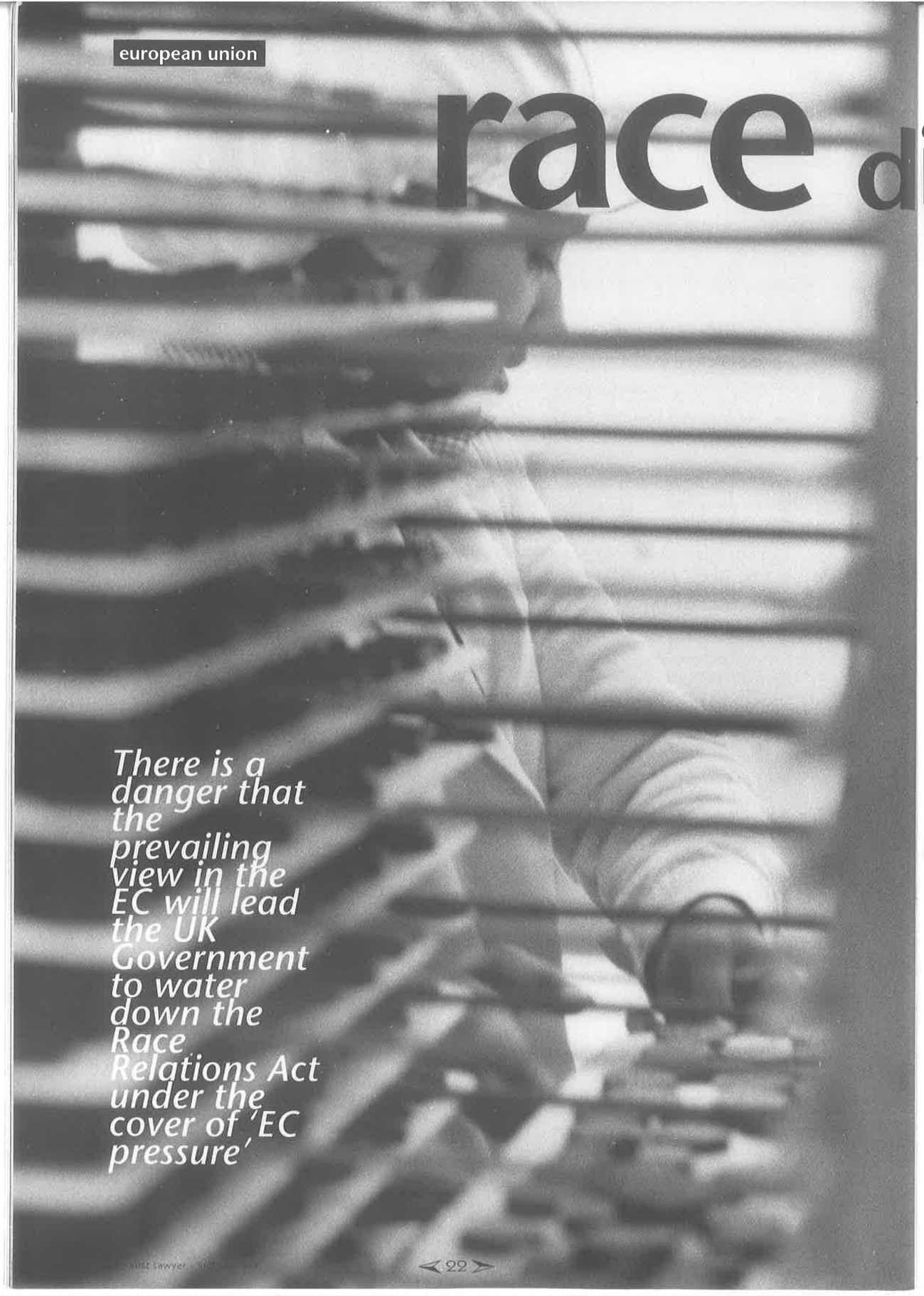
The argument in favour of reducing the age of consent to 16 years is that the current law discriminates against gay men. The issue is one of equality. Surely the same principles should apply in immigration. Gay couples should be treated exactly the same as heterosexual couples. No Act of Parliament would be required to change the position. The Home Office could simply announce that the policies it currently applies to cohabiting heterosexual couples will be applied equally to gay couples.

The Home Office is currently consolidating the Immigration Rules. Both the Law Society Immigration Sub Committee and the Immigration Law Practitioners Association (ILPA) recommended that stable homosexual relationships should be recognised in the Immigration Rules. The organisation Stonewall, which campaigns for lesbian and gay equality, submitted a document recommending that the Immigration Rules could be simply amended by adding the words 'or partner' after the word 'spouse'. There would be no practical difficulties in amending the Immigration Rules and policy. It is the political will that is lacking.

Numerous countries have changed their law to enable their people of different nationalities to live together in one country. Within the European Union both Holland and Denmark have progressive laws. Further afield New Zealand has specific laws allowing homosexual partners leave to enter or remain in New Zealand on the basis of a relationship with a person settled there. The government in fact recently reduced the requisite length of relationship from four years to two years.

The current law in the United Kingdom remains backward, discriminatory and the cause of great distress and anguish for those whom it affects. It is about time the government of this country brought itself up to date with the real world. Change is unlikely to take place, however, unless pressure is brought to bear on the government and other political parties to persuade them of the injustice of the current position.

Photo: Della Grace



race discrimination and european law

With the rise of racism and the far right across Europe there is an even greater need for equal treatment of individuals and groups regardless of citizenship, race or ethnic origins. Lecturer Nigel Duncan assesses efforts to combat discrimination in the Union.

The weakness of the Social Chapter proposals, the sluggish performance of a European economy run by bankers and the rise of the Right set an uncertain stage for the development of the EC-wide race discrimination laws. However, it is the specifically racist politics developing across Europe that makes an effective response urgent. A starting point would be a provision analogous to existing European Community (EC) laws on gender discrimination. A recent report by Forbes and Mead[1] indicates wide variations between the anti-discrimination provisions and their implementation in each member state. Marks out of 30 ranged from 18 (Britain) to 5 (Luxembourg). UK legislation, although unsatisfactory, does at least provide the basis of a remedy in many situations which are not addressed across the Community. If we take the principle of free movement of persons seriously, ethnic minority people must have similar levels of protection in all member states. Moreover, there is a real risk that the Government may use arguments for uniformity across the community to erode what protection exists here, unless provisions can be improved generally.

Forbes and Mead identify three groups of countries: firstly, those with a multi-cultural approach, developed legislation, remedies and access, and state supported agencies to develop protection (UK and Netherlands). Secondly, those where some legislation and remedies are available (France, Germany, Spain and Italy). Thirdly, those with an assimilationist approach and minimal legislative base, ineffective remedies and a lack of awareness of issues (remaining states).

Forbes and Mead suggest that the main factors influencing this are the size and concentration of visible minority population; citizenship status and voting rights; the level of industrialisation; and attitudes to assimilation, integration and multi-culturalism.

A state may thus have domestic legislation, but poor access to remedies. There may be constitutional provisions, but these may be vague and may only protect citizens. A state may be signatory to international conventions on race discrimination[2]. These however, may only protect citizens or those in public sector employment. Therefore where the constitution denies citizenship to most visible minority people, as is the case in many states, these provisions may have little impact. It is worth noting that the UK is unusual in that the vast majority of visible minority people enjoy voting rights, and are protected by the Race Relations Act 1976 (RRA), even if not citizens.

european community law

Sex discrimination legislation, authorised by Treaty of Rome Article 119, was developed through the Equal Pay Directive 75/117 and the Equal Treatment Directive 76/207, which impose obligations on member states to implement their provisions in domestic legislation. *Marshall v. Southampton & S W Hampshire AHA*[3] established that Directives are binding on emanations of the state. *Marleasing SA v l a Comercial Internacionale de Alimentacion SA*[4] established that directives are relevant in interpreting national legislation claimed to cover their requirements. These developments are leading towards common standards on gender discrimination throughout the EC, while retaining a variety of approach which enable good practice precedents to be developed.[5] In fact they have also had some impact on race discrimination in UK because the Sex Discrimination Act 1975 (SDA) and RRA are similarly drafted. European Court of Justice (ECJ) rulings on SDA provisions are applied when they arise within the RRA to achieve consistency (eg meaning of "justifiability" - *Bilka-Kaufhaus GmbH v Weber von Hartz*)[6].

The lack of such parallel legislation in most EC states and the fact that the debate centres on immigration, asylum and 'migrant' workers in a climate of hostility towards these groups must be addressed. Although UK race discrimination laws continue to be tainted, particularly in their implementation, by racist arguments about immigration, the relatively settled nature of the U.K. visible minority population and the fact that they generally have voting rights have influenced perceptions.

'the UK is unusual in that the vast majoriy of visible minority people enjoy voting rights'

While there have been developments within the EC on race discrimination there have been reports or declarations without binding effect. The crucial issue which must be addressed is competence. EC institutions require authority from the Treaties for any objective they pursue. It is, for example Art 119 that gives competence to prepare laws on equal pay. In the absence of an equivalent Treaty provision it has been assumed that there is no competence to develop race discrimination measures. However, two lines of argument suggest that competence does already exist.

Article 118 provides for co-operation between member states in the social field. In the cases *Germany, France, Denmark and United Kingdom v. Commission*[7] the European Court of Justice held: 'The promotion of the integration into the workforce of workers from non-member countries must be held to be within the social field within the meaning of Art 118, in so far as it is closely linked with employment. This also applies to their integration into society ...'

However, Art 118 deals only with co-operation between member states and it may not, unless amended, empower legislation.

Article 235 authorises the Council of Ministers to take measures necessary to attain one of the objectives of the common market (including movement of workers) where the Treaty has not provided the necessary powers elsewhere. It can therefore be argued that Art 235 authorises the Council of Ministers to take steps to ensure that workers and their families are protected from racial discrimination in member states other than their own, to prevent a barrier of labour mobility. Analogous reasoning lay behind the introduction of the Equal Treatment Directive 76/207 and is a sufficient basis unless it is argued that equal treatment between persons of different racial, national or ethnic origins does not constitute an object of the EC.

If these arguments are insufficient the competence of the EC institutions to legislate on race discrimination (and most member states reject competence) it will be necessary to amend the Treaty. A draft amendment has been drawn up by Richard Plender QC on behalf of the Commission for Racial Equality. It adds a new activity to Art 3 to cover race, and related forms of discrimination, and a new Art 118C, which specifies powers to issue Directives and make Regulations on such matters. If the arguments as to competence are accepted, or if such an amendment is made, a draft Directive is ready and available, prepared by a group of independent experts with support from the CRE and organisations in other states. The issue now is to find the political will to implement it.

pressure for reform

Many bodies, including state agencies and voluntary organisations are working towards these goals. In Britain the CRE is joined by the Joint Bar and Law Society Working Party on Race Relations in Europe which is working on amendments to the Treaty on European Union, the next opportunity for which will be in 1996.

Another strategy which the CRE is hoping to support is a test case. If a UK member of an ethnic minority were to be denied goods, services or employment in another EC member state, or if a UK professional who is a non-EC national were to have difficulties getting a professional qualification recognised, the issues could be raised in the ECJ. This may provide an opportunity to raise the issue of competence, or at least to increase awareness of the issue of race discrimination and to support the campaigning which should continue. Practitioners who come across such a case should contact the CRE.

There are particular reasons why UK citizens should press for achieving this. Not only must the rise in racism be clearly challenged by the EC institutions and UK visible minority people receive equivalent protection in other EC states. There is also a danger that the prevailing view in the EC will lead the UK Government to water down the Race Relations Act under the cover of 'EC pressure'. Anti-discriminatory practices may be undermined: for example, with the introduction of compulsory competitive tendering, questions concerning race have been asked of potential contractors as part of an affirmative action programme. This may become illegal under EC Directives on contracting procedures on the grounds that they are anti-competitive.

There are also positive developments to be sought. There are grave limits on the effectiveness of UK race discrimination legislation : the refusal to extend it to Northern Ireland; the limited remedies, the absence (unlike the USA) of a financial remedy for unintended indirect discrimination, with its powerful influence for affirmative action; and the difficulties of funding representation. Community-wide legislation would address some of these issues, and development of basic principles by the ECJ could challenge others. The matter is now urgent.

My thanks to Chris Boothman, Legal Director of the CRE, for much of my source material and access to the Opinions of Richard Plender QC, the draft amendments to the Treaty of Rome and the draft Directive.

Notes:

1. Measure for Measure: A Comparative Analysis of Measures to Combat Racial Discrimination in the Member Countries of the European Communities, Ian Forbes & Geoffrey Mead (Equal Opportunities Study Group, University of Southampton) 1992.
2. eg: UN International Convention on the Elimination of All Forms of Racial Discrimination; ILO Convention 111 on Discrimination in Employment and Occupation; and the European Convention on Human Rights.
3. [1986] 2 ECR 723.
4. [1992] 1 CMLR 305.
5. See McCrudden: Procedures and Remedies: The Louvain-la-Neuve Conference on Access to Equality between Women and Men in the European Community (1993)22 ILJ77.
6. [1987] ICR 110.
7. [1987] ECR 3203 at 3252.

"ARMED AND DANGEROUS" - My Undercover Struggle Against Apartheid, Ronnie Kasrils
Heinemann, Pbk. £6.99

By 1961 apartheid repression had reached unprecedented levels. After 49 years of peaceful protest, the ANC's demands were met by for ce from the Verwoerd regime. Sixty-nine people were killed and 179 were wounded at Sharpeville and a state of emergency declared. The ANC was driven to armed struggle and what became it's armed wing, Umkhonto we Sizwe (MK) launched its first carefully planned acts of sabotage on 16 December 1961. One of those responsible for a bomb blast at government offices in Durban was a young communist, Ronnie Kasrils.

This book is a personal account of the next 30 years of struggle, most of it spent in exile, during which Kasrils rose to become head of intelligence in MK and a leading member of the South African Communist Party (SACP). The title is taken from a South African television news warning in November 1991 to the public about himself while he was on the run for hatching a so-called 'Red Plot'. It was not just the apartheid regime which regarded him as dangerous; in November 1988 a Tory MP accused Kasrils of orchestrating 'terrorist' activities from his home in Golders Green.

Over 368 pages the reader is treated to a fast moving and often exciting account of these 'terrorist' activities and of the personalities involved in them. Particularly for followers and participants in the anti-apartheid struggle the book provides a useful and highly readable insight into issues such as the ANC's Angolan detention camps, the Bisho massacre in September 1992 and Operation Vula which was the plan to re-establish senior ANC underground leadership inside South Africa.

It is perhaps unfair to criticise the author for not engaging in deep analysis of the successes and failures of ANC and SACP strategy. Kasrils, after all, was head of intelligence and on the eve of South Africa's first ever one-person, one-vote elections, it's probably not the time for it. In any event, the book makes no claim to such pretensions. It does succeed, however, as a real life political thriller. It is an exuberant expression of the energy and commitment shared by millions of South Africans which has put them irreversibly on the road to freedom and democracy.

Mark Guthrie

More Kinky Friedman
by Kinky Friedman
Faber and Faber, £4.50.

Last summer if seemed you couldn't turn on the radio or open the review pages without coming across Kinky Friedman, the Jewish Country and Western singer cum detective story writer. Well that may well happen again with the paperback publication of 'More Kinky Friedman', a bumper volume of three new mysteries, of which I chose 'Elvis, Jesus and Coca-cola'.

Kinky Friedman singer and detective story writer writes about Kinky Friedman singer and sometime detective. Kinky has two girlfriends, Uptown Judy and Downtown Judy. Uptown Judy disappears in mysterious circumstances leaving Kinky's name and telephone number conspicuously in her flat. Kinky's film maker friend dies having finished a documentary on Elvis impersonators which has also disappeared. His assistant is bloodily murdered, leaving Kinky's name and number behind.

Kinky assigns himself to the job, assisted by the Village Irregulars, Ratso, Rambam and Downtown Judy. And an omnipresent cat to whom he addresses remarks and shows significant letters 'I showed the letter to the cat. The cat half closed her eyes, a sure sign of agreement, communication or, possibly, ennui. It crossed my desk that at this moment there were, very probably, men masturbating in mental hospitals, who in their ample spare time, showed letters to cats.'

The film turns up and when shown at the only available venue, a gay porn cinema called Fort Dicks, a supposedly long dead mafioso is caught accidentally behind a scene of Italian Elvises performing in a trattoria. After some scrapes with a hitman called Frankie Lasagna and a snuff movie director, the story rather disappointingly resolves itself.

As a mystery, 'Elvis, Jesus and Coca-cola', doesn't really create enough suspense to succeed, but as a cleverly written mesh of characterisation and one-liners it had me hooked. The nearest I can get to a comparison is a cross between Charles Bukowski and PG Woodhouse. Waiting for celestial inspiration, Kinky writes: 'Two espressos and half a cigar later there had been no sign from the heavens. The view from the kitchen window was pretty ho-hum. A riot of gray. God and Jesus, apparently, were not saying dick. Either they didn't exist, they didn't care, or they were both autistic'.

Characters leap from the pages. Kinky lights a cigar in the NYPD headquarters: 'Don't smoke that in here' said Fox. 'We got new regulations. No Jewish cowboys can smoke cigars in homicide'. A put down from a private detective is described thus: 'Rambam gave me a look that would have withered a flower pressed in a book containing the poetry of John Keats'.

In short, real crime buffs may find this short on story and suspense, but if you're looking for some clever laughs and zany ideas, you'll love this.

Sarah Goom

REVIEWS

Arguments for a New Left: Answering the Free-Market Right
Hilary Wainwright Blackwell, Oxford. £12.99. December 1993

David Hare has recently spoken of the Labour Party as 'terrified of controversy, terrified of internal argument, and ... terrified of a play (The Absence of War) that asks what has happened to its own ability to give voice to its great passion for social justice.'

Hilary Wainwright is far from being a Labour Party ideologue (if there is such a thing). She is interested in 'parties of a new kind', internationalist, responsive to and respectful of social movements, whether innovative grass-roots trade union organisation or m ovements based on the community.

She was impelled to write this ambitious work by her meetings with young civil activists in the Czechoslovakia of 1989 whose rejection of communism had led them to rule out any consideration of 'genuine socialism'. As she relates, this required her to 'call on all the intellectual and political resources of the unformed, inchoate political tradition in which I had an intuitive but unscrutinised confidence.' She wants to be able to argue convincingly that the motor of socialist transformation is the organisation of people without private wealth to achieve equality, democracy, liberation and social justice.

She therefore seeks to bring together experience of grass-roots struggle with crucial theoretical issues in a way which is intelligible to activists in the social movements, not just to academics and politicians. For this she is well qualified. Hilary Wainwright is already known for her 1981 (with Sheila Rowbotham and Lynn Segal) *Beyond the Fragments: Feminism and the Making of Socialism* and her 1987 *Labour, A Tale of Two Parties*, and as a leading member of the Socialist Society and moving spirit behind the Socialist (Chesterfield) Conferences.

Her own activist trajectory started with the 1968 student movement, and continued with the Lucas Aerospace workers' alternative plan in 1975, and the Greater London Council's Industry and Employment Committee in 1982-5. All these experiences are integrated into this book, together with her extensive discussions with oppositionists in the former 'socialist' Czechoslovakia, Hungary and (in 1990) East Germany, as well, more recently, with the Gothenburg Womens High School in Sweden, and the new parties of the left in Denmark and Norway.

What is new and distinctive in this book is her insistence that the enemy must be confronted on the theoretical level as well. Her target is Friedrich Hayek, the author of The Road to Serfdom (1944), and the most resilient of neo-liberal thinkers. She analyses his life and intellectual development, and takes on not only his free-market ideology and hatred of socialist but, more centrally, his theory of knowledge. This, in her view, denies human agency, and renders knowledge individualist rather than social. It also, paradoxically, leads him to favour order and tradition, the authoritarian rule of the few who can understand the ways of the market.

Against this elitism and positivism, Hilary Wainwright wishes to counterpose a pluralistic approach to knowledge, valuing the experience of grass roots activists. Her theory is one of 'differentiated democracy', which combines participative democratic practice in the everyday workings of economic and social life with formal representative democracy to set objectives and frameworks. Her view of knowledge validates theoretical, experimental, tacit and social dimensions, with, she hopes, radical implications for the character of democracy.

From what position does Hilary Wainwright start? She is not afraid to categorise herself. She is one of a group of 'late sixties activists in new movements', who were 'unselfconsciously eclectic in the theoretical traditions on which they drew' - from anarchism to an uneasy relation to Marxism. She distinguishes between a creative development of Marxism as a 'source of analytical tools and research agenda for explanatory social theory', and a less helpful, as she sees it, influence of Marxist theories of social agency. She is particularly interested in the work of the 'critical realists' like Roy Bhaskar, sympathetic to Marxism as the framework for a research programme, but not satisfied with its present form. She sees the conceptual tools they have developed as overcoming the lag between the collapse of positivism in science and philosophy, and its persistence in methods of state, economic and party organisation.

Hilary Wainwright is very much part of an English (but not parochial) socialist tradition which includes William Morris, E.P. Thompson, and Raymond Williams. She is sure that people will continue to struggle to be free of oppression and exploitation; she desires socialism. Are the theories for which she argues adequate to inform political action in the face of pauperisation of the South by the North, trade war between states of the North, environmental catastrophe, and the rise of racism and fascism? I am not sure, but I strongly recommend that readers of Socialist Lawyer buy and study this book.

Bill Bowring

Appalling Vistas

Spring is sprung, and as we approach that always tricky lilac/ dead land-interface, vagabond hordes are circuiting the land, strewing misery and division wherever they come to rest.

'New-age travellers', you say? Forfeit that Legal Aid franchise! These are pampered promenaders, pomaded and pompadoured to a man. They are Her Majesty's sweet-smelling judges of the one Bench or the other. They wouldn't become Crusty if you dipped them in egg and turned them up to Regulo Seven. So why do you never see travellers and judges in the same room at the same time? Could they be related? Or even the same people in different coloured frocks?

1. As anyone will tell you who has appeared before the Employment Appeal Tribunal or read the tabloid outpourings of the former Judge Pickles, your average judge is inordinately fond of the most ramshackle old vehicle.
2. In fact, members of both groups are happy to supplement their meagre state stipend - (travellers - about 50 quid a week; judges - neck end of 100) - by turning their hand to any bit of journeyman hack-work which happens along.
3. Travellers keep small, pointy-headed pets called 'Towser' on frayed bits of string. So do judges; they usually call them 'Jaypees'.
4. Both judges and travellers are recognisable by their wild, matted hair. Sadly, most judges cultivate it in their noses and ears. At least they don't put it in beads.
5. They both aspire to total isolation from modern society. It had to be a judge, for example, who first asked a question which was subsequently to ring around the football stadiums of the world: 'Who is this Paul Gascoigne?' [Contrast with the following equally common exchange: Q. 'Which is that Paul Gascoigne?' A. 'He's the fat one on the Bench. And it's Mr Justice Gascoigne to you'].
6. Both groups fear that they have recently been infiltrated by agents of groups which imperil their continued well-being. The new-age fraternity by middle-class 'weekend ravers'; the higher judiciary by HH Judge Stephen 'Mr S' Sedley.
7. And as if that wasn't bad enough, they each also face a concerted external attack: the judiciary from the European Court of Justice, and travellers from the forthcoming 'Travelling People (Slaughter of the Firstborn) Act' and its likely successor, the 'Undeserving Poor (Something-For-Nothing-Society Abolition) Act 1995'.
8. Travellers worship a number of different deities, including the earth-spirit, 'Gaia'. There are many within the judiciary who have a similarly unshakeable belief in a godhead known to them only as 'Sireyevanlawrenskyoosechempee'.
9. And, as you might expect, both groups are fond of arcane, quasi-religious ritual. However, judges are invariably unwilling t o light up a ciggy and squat naked in the gathering Wiltshire gloom, preferring to draw the line at the odd rolled trouser-leg and a discreet dash of patum peperium. Except, of course, in the Long Vac.
10. Members of neither group have ever appeared, drunk and lecherous, on GMTV. Not one! No sirree! No problems on that score, Squire!
11. Both groups are often confused with others which are, in truth, quite distinct. With travellers, it's gypsies. With judges, it's taxi drivers. That this is a source of constant irritation is clear, for example, from the pavement cabaret once so entertainingly performed in front of the world's media by Harman J.
12. Finally, and perhaps most alarmingly, both are suspiciously quick to lament the passing of the old ways. They frequently hark back to a past Golden Age, represented by tall hedgerows, pastoral eglantine, the diamond band of the rolling road on the velvet of the furrowed field and, of course, by the Star Chamber.

And so the gaffe is blown and this implausible treason revealed. Our esteemed judges are, in truth, nothing more than clandestine vagrants, awaiting their call to emerge and wreak a terrible, bucolic vengeance upon us all. Before long, the patent-leather pumps will give way to a pair of ill-shined 'Doc Martens'. We'll have the Levellers serenading the new judicial year and 'Lord Chief Justice Zac' on Question Time. We cannot allow this to happen. There must be road-blocks in the Strand and dawn-raids on Lincoln's Inn. We demand a 100-yard exclusion zone around every County Court, the forcible branding of stipendiary magistrates and the confiscation of every P-reg Wolseley in the land. Something must be done, before our beloved courts are brought juddering to a halt, like the M5 near Stroud every August - only without the Happy Eater and the bloke shoving his bare bum against the glass.

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