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SOCIALIST LAWYER

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Book Reviews, Letters and News

Haldane Society of Socialist Lawyers

SOCIALIST LAWYER

Editorial Committee Penny Barrett, Tim Kerr, Tony Metzer, Keir Starmer, Debbie Tripley, June Tweedie, Heather Williams.

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HALDANE NEWS

Conferences

In October we held a very successful conference for newer members entitled 'The Socialist Lawyer, From Theory to Practice'. The conference was opened by Helena Kennedy and attracted a record 130 people. Two conferences are planned for 1989. The first in February concerns human rights in the world context. Details have altready been sent to members. The second is a potential joint conference with the Critical Lawyers' Group scheduled for September.

The Extravaganza

In December the Society revived an old tradition of 'socials' with a fund raising 'extravaganza' in Smithfields. Although the venue was not the best, the last minute cabaret proved highly successful and the evening was enjoyed by all. In addition £600 was raised. Many thanks to all those who supported the event.

The D.N. Pritt Memorial Lecture

This year's lecture was given by ALBIE SACHS. His talk was excellent and the Society was honoured by the fact that this was Albie Sachs' first public lecture since the bomb attack on him last year. An edited version of the lecture appears in this issue of ***SL***.

Seafarers

The Seafarers' Legal Advice Centre battles on in Dover every week. People are urgently required both to observe on the picket lines and to help with related and unrelated legal problems. Please contact Emily Thornberry at 14 Tooks Court, Cursitor Street, London EC4 if you can help in any way. Meanwhile, thanks to all those who continue to carry out this aspect of the Society's work.

Attendance at Executive Committee Meetings

At its December meeting the executive committee adopted the following minute:
'The executive committee may invite any person whether a member or not of the Society to attend and/or participate in an executive committee meeting. Such participation shall be under the direction of the chair of the meeting but shall not in any event extend to voting. The executive committee reserves the right to withdraw an invition by a majority vote of those present and entitled to vote. In the case of such an invitation being withdrawn from a member of the Society the reasons for such a withdrawal shall be recorded in the minutes of the meeting and that person shall be notified of the reasons by letter.'
If you wish to attend any meeting of the executive committee please contact Keir Starmer prior to the meeting. Dates of executive meetings in early 1989 are as follows: Tues 17 January, Thurs 16 February, Tues 14 March and Thurs 20 April.

AGM

The Annual General Meeting will be held on Saturday 6 May 1989 at 2.00pm in the Vera Anstey room at the London School of Economics. Any member may submit a motion to the AGM. Indeed, all members are encouraged to do so. Such motions should be submitted in writing by a proposer and a seconder to Keir Starmer, 1 Dr Johnson's Buildings, Temple, London EC4 BEFORE 14 APRIL 1989.
Written nominations for the positons of chair, secretary and treasurer and for the executive committee should be sent to Keir Starmer at the above address BEFORE 14 APRIL 1989. Each such nomination should be accompanied by a written consent to the nomination by the candidate. Candidates are invited to provide a biography (maximum 50 words).

... More News

The Northern Ireland subcommittee is being revived. For further details contact Keir Starmer.
Pam Brighton resigned as joint secretary of the Society at the December executive committee meeting. Keir Starmer continues as the Society's sole secretary.
Tony Metzer and Lucy Anderson have taken over as caretaker membership secretaries – please bear with them while they reorganise the files.
The discrimination working party is now in full swing. For further details please contact Fiona Freedland, 63c Leconfield Road, London N5.
The next meeting of the Legal Services subcommittee will be on 20 February 1989 at 7.00pm at Tooks Court. Please telephone Kate Marcus for further details: 451 1122 (work) 452 5933 (home).
The Society's trip to Moscow was highly successful; a full report appears elsewhere in this issue. Hearty thanks to Bill Bowring for all his hard work in arranging the trip.

The Codes of Practice

The Crime subcommittee recently submitted a report to the Home Office Review of the Workings of the Codes of Practice issued under The Police and Criminal Evidence Act 1984. The report was based upon the views of over 40 criminal practitioners. On most issues there was wide consensus and striking similarities between the practitioners' experiences. The report proposed substantial amendments to each of the four Codes. It attracted considerable media attention, including an exclusive article in The Independent and features in The New Law Journal and The Lawyer. Lawyers, academics and even the deputy leader of the opposition have also expressed an interest.
The submissions highlighted the way in which the police have devised techniques and procedures which, without contravening the strict letter of the Codes, enable them to avoid or bypass many of their important safeguards. A striking example of this is the widespread practice of asking suspects to sign 'here, here and here' on the first page of their custody record. The unwitting suspect subsequently discovers that s/he has effectively signed away the right to legal advice.
One of the main areas of concern was the number of people who are still interviewed about serious crimes without a solicitor being present and before they have received any legal advice. The proposed abolition of the right to silence makes the introduction of greater protection in this area all the more vital.
The absence of any Code covering the treatment of a suspect following arrest and prior to arrival at the police station was also stressed. Increasingly the police rely upon alleged admissions made at this stage, when no controls apply, in order to gain convictions.

Bill Bowring

Haldane Heads East

The first Haldane Society delegation to visit the USSR for several years landed in the middle of a stimulating and surprising period in the development of Soviet law.
The delegation represented a good cross-section of the Society's members. We stayed in Moscow from 6 to 13 November 1988 and spent four days as tourists, during which we saw the celebrations for the Great October Revolution on 7 November. For three days we enjoyed an official programme efficiently organised by Konstantin Shakhmuradov, General Secretary of the Association of Soviet Lawyers. We have already written to him inviting a similar delegation to come to Britain.

Our programme was full and varied: we met academics at the prestigious Institute of State and Law, the main powerhouse for legal research and reform proposals; we spoke to the woman President of the Krasnaya Presnaya People's Court; and we met advocates both at the Association of Soviet Lawyers and at the premises of the Moscow Collegium of Advocates. What follows is a narrative, setting out as much as possible of what we heard. It is hoped that a deeper discussion will follow.

Institute of State and Law

On the morning of Wednesday 9 November we went to the Institute of State and Law in Frunze Street. There we met Professor Igor Kiselyov of the Sector of Labour Law and Social Services, Dr Shugayev, a former trade union official, and a woman academic, Dr Chekhanova. They were all labour lawyers, and they discussed the new Labour Law introduced by decree of the Supreme Soviet on 4 February 1987.

Professor Kiselyov was positive: he felt that the law represented a clear step towards the legal regulation of collective bargaining arrangements in the new conditions of perestroika. His colleagues disagreed. Dr Chekhanova in particular pointed out the contradiction between Articles 5 and 25 of the new Code. Article 5 prohibits any labour agreements or contracts that worsen the position of workers. Article 25 on the other hand provides that where changes in the organisation of production or structural alterations take place management could vary the terms of employment, within the limits of speciality and profession. They must give two months' notice of the impending changes; but if the worker refuses to change, he or she could be dismissed with no guarantee of reemployment and no unemployment benefit.

Professor Igor Kiselyov

Bill Bowring with Professor Vassily Vlasihin and Aleksandr Podolsky

Dr Shugayev said that some Acts passed recently did not increase the rights of workers but decreased them. Previously there had been very strict stability of labour; now the manager was to be given the right to make changes, for instance regarding transfer to other work without the worker's consent. Further, although a worker could not be sacked without a reason (there were 16 permissible reasons), there was no remedy for wrongful dismissal because the right could not be enforced in the courts. It was therefore only a right on paper.

Dr Chekhanova also criticised Article 9, which deals with discrimination in employment. If a women was refused employment, for instance because she was pregnant, then management had formal penal responsibility. But those rules too only existed on paper; there was no remedy in the court. A woman could complain to the trade union, but it would be very difficult to prove her case. She could go to the procurator, who had a supervisory function, but the procurator had a discretion whether to investigate her case.

We asked about elections at work. Part II of Article 6 provided that the majority of officers in an enterprise were to be elected. The problem was how to realise that in practice. Dr Shugayev gave as an example the problem which had arisen at one of the Moscow enterprises, where the Council of Workers' Collectives voted so as to exclude the majority of officials, despite the fact that the law demanded the election of all the main officials. He believed that these laws needed clarifying. He was also in favour of formal provisions giving workers the right to take economic but not political strike action; although not in essential services.

Krasnaya Presnaya People's Court

That afternoon we travelled to the court building, where we were received by Irina Kiprianova, the President (Senior Judge) of the court.

The judge told us that she had been sitting at the court for many years: if anything, she would like to retire to her family! She was elected by the local (borough) Soviet of People's Deputies for a five year term, on a single candidate list. All judges received full legal training and served for a period of years in the procurator's office. Judicial service was a career, as in France or Germany. 47% of judges are women.

She sat with two People's Assessors, elected by workplaces, unions, etc. They were not legally qualified, but brought practical experience to the Bench. They could outvote the judge. Her court heard both criminal and civil cases. The maximum sentence the court could impose was 15 years' imprisonment. The most common crimes to come before her were auto-theft and burglary. Sexual offences, such as rape, and crimes against children were, she said, practically unknown at her court.

It was impossible for a person to be convicted simply on his or her uncorroborated confession; but such was the thoroughness of the pre-trial investigative procedure carried out by the Militia and Procuracy, that defendants were invariably convicted at the trial itself. The trial was mainly concerned with a detailed examination of why the crime was committed, and with mitigation. The court had a wide range of sentencing alternatives to prison, including fines, community service, licence into the supervision of colleagues at work, curfew conditions at home, and exile to the surrounding towns of Moscow. Civil cases coming before her court included labour questions; disputes about housing allocation, transfer, and permission for subdivision of rooms; inheritance and the consequences of divorce. The judge invited us to sit in on cases at her court; all cases are heard in public.

Association of Soviet Lawyers

This meeting took place on Thursday 10 Novenber at the House of Friendship in Kalinin Prospect. We were greeted by Professor Vassily Vlasihin, of the Institute of US and Canadian Studies, a member of the Presidium of the ASL. He had recently returned from a study tour of the US.

He spoke of the lack of independence of judges (of whom there were 16,000); they tended to be seen as simply another

office of the state. Procurators performed three functions: supervision of administrative action, state prosecutions and investigations. There were 75,000 legally qualified jurisconsults – lawyer employees of state enterprises involved in advice and arbitration work, and also appearing as advocates before the courts on behalf of their enterprise. About 85% of advocates' work was now civil; crime had fallen since the anti-alcohol campaign. Advocates were the only wholly independent profession; the Collegium received no funding from the state.

Professor Vlasihin was clearly an admirer of some aspects of the American legal system. Members of the delegation queried the class content of processes, based on western models, designed to establish a more effective rule of law. He replied that there was no capitalism in the USSR and that everything he said was directed towards protecting working people from bureacracy.

A law student told us about their system of five years' study, with practice in a procurator's office or local council after the third year, and specialisation in criminal or civil law after the fourth year. Qualified lawyers spent three years in the branch of their choice, after which they could transfer. We also spoke to a practising advocate, Aleksandr Podolsky.

Moscow Collegium of Advocates

On the morning of Friday 11 November we went to the office and club-house of the Collegium where we met three advocates, including the President of the Presidium, Georgiy Voskresensky, and a woman Vice-President, A.Zhivina. We were told that the Bar was organised on a regional and city basis, and was fully autonomous and self-governing. Currently there was a major campaign to reorganise it as a national body; this was the only guarantee of a truly strong, independent Bar.

The Moscow Presidum of 19 advocates was elected every three years by secret ballot. Each Moscow borough had an advocates' office, with about 40 to 50 advocates. Recently the maximum tariffs for legal fees had been raised. Fees were agreed between lawyer and client; there was no legal aid and a day in court would cost about 20 roubles. In cases of hardship the court could order costs to be paid out of public funds. The advocates kept 70% of their fees, with the remainder going to the Collegium, to provide a fund for holiday pay and welfare. The Ministry of Justice had general supervision of the Collegium, but could not interfere in individual cases.

A major concern of advocates specialising in criminal cases was that they should have access to clients from the moment of arrest, and not simply at the trial, as at present. About 40% of male advocates were CP members, and about 54% of women. We had a lively discussion with Ms Zhivina about the role of women; she was strongly in favour of women remaining at home with their children. However, all women were entitled to 56 days paid maternity leave before birth, and 56 days after. They could stay away from work for a year in all. Paternity leave was in principle possible.

We asked specifically about personal injury claims. Within ten days of an accident the management must issue an order for compensation. If not, the trade unions would force the management to undertake enquiries. The union would then form an opinion as to whether the management were at fault. Medical labour commissions determine percentage incapacity; compensation was based on a percentage of the worker's average wage for the past year. After those two stages were completed dissatisfied workers could apply to the courts.

The Future

We very much hope to receive a Soviet group in the near future and to let them question us as we interrogated them. Next time we go we want to be able to see the courts in action and to explore the work of the procurators. We will, of course, all speak fluent Russian by then.

Bill Bowring

Why the IADL?

The International Association of Democratic Lawyers was founded in 1946, the same year that the United Nations was created. It has always fought to defend the principles contained in the UN Charter. Its main contributions have been in the evolution of international law. In emphasising the principle of self-determination and the right of independence of ex-colonial peoples it has sustained their struggles. It has stressed the rights of sovereignty of peoples over their natural resources, their right to development, and the achievement of a new international order.

It now has more than 79 member organisations worldwide. The Haldane Society is its British section. Participants from more than 90 countries have attended recent major conferences in Athens and Paris.

The next major international conference, on the *Bicentenary of the Declaration of Human and Citizens' Rights: Actuality, Universality, Perspectives* will be held in Paris on 9 – 11 March 1989. Preliminary conferences were held in Rio de Janeiro, Dakar, Moscow, Brussels, New Delhi and Barcelona on 9 and 10 January 1989. The Haldane's weekend conference on Human Rights, on 11 – 12 February 1989 will also lead into the Paris conference. The next full conference of the IADL will be held in Barcelona on 20 – 24 March 1990.

During the last year the IADL sent missions of inquiry to Chile, to investigate the case of politcal prisoners; to Gibraltar, for the inquest; to Haiti, on the sale of children; to Palestine, in which the Haldane's Vice-Chair participated; to Portugal, on the case of Otelo de Carvalho; to Western Sahara, for the 15th anniversary of Polisario; and four missions to Turkey, on the Kutlu-Sargin trial. There was also a major conference of Jurists of Asia and the Pacific on the Jurisprudence of Peace, Develoment and Human Rights in New Delhi in February 1988.

In 1987 the IADL created an International Standing Committee of Lawyers on the Question of Palestine and Peace in the Middle East, with representation from Mali, Senegal, France, the USA, Belgium, Mexico, India, Greece, the GDR, Spain, Switzerland and the USSR. This Committee publishes a journal in English and French, *Palestine and Law*.

The IADL is also represented at the UN, where it is a non-governmental organisation with consultative status, and publishes the *International Review of Contemporary Law* in French, Spanish and English.

Comrades wanting further information on any of the above conferences or publications should contact: Bill Bowring, 4 Verulam Buildings, Gray's Inn, WC1R 5LW. 01–405 6114.

The D.N. Pritt Memorial Lecture – Albie Sachs

Towards a Bill of Rights in a Democratic South Africa

I am very happy that my first public lecture since the bomb should be on the occasion of the Pritt Memorial Lecture. We didn't know Pritt in South Africa, we didn't know whether he was tall or short, I assume that he spoke with what is called an upper-class English accent. We didn't know much about the details of his positions on world affairs but we knew certain things about him, things which have become legendary in South Africa. He was a name, a real name, to all of us; he had courage, we knew that he had brains and we knew that he was on the side of the oppressed and these were all characteristics that he manifested as a person and as a lawyer.

Alarm Bells

We are the only country in the world in which portions of the oppressed created an Anti-Bill of Rights Committee. Part of my brain sympathised completely with this movement. Many black lawyers a few years back established an Anti-Bill of Rights Committee. At that stage a Bill of Rights was being projected by a number of lawyers and business people into South African political legal debate in a way which caused alarm bells to ring. Basically, what the Anti-Bill of Rights Committee founders saw being projected was a constitutional scheme which would be enshrined and sealed before the democratisation of South Africa; a means essentially of preserving the existing privileges of the white population in the guise of an apparently neutral document called a Bill of Rights.

The real objective was to freeze the existing social, economic and cultural situation of the country (in which 87% of the land, including all the rich developed areas, belonged to the whites) by the insertion of a simple clause saying that property rights shall not be disturbed. To freeze also the enormous inequalities that exist between the rich white suburbs and the poor black suburbs in any area of South Africa.

A Bill of Rights cast in that mould would have the effect of abolishing apartheid as a legalised system of constitutional law and replacing it with a legally protected de facto system of inequality – accumulated inequality of generations of suppression, domination and apartheid. It is completely understandable that young lawers active in the anti-apartheid movement should regard a Bill of Rights as a negative scheme that would block rather than enlarge human rights in South Africa.

Genuine Equality

At the same time, other bells were ringing. We can't be against a Bill of Rights, and not just for tactical reasons,– it's obvious for tactical reasons, for reasons if you like of image, to oppose a Bill of Rights makes you appear as though you are against human rights, but that's not the fundamental question. The reason is more profound. We are fighting for human rights in South Africa. That's the centre of our struggle. We are fighting to enlarge the rights of everybody, to create a society of genuine equality. We are for rights and we can't be against the idea of a constitutional framework for rights.

What does this require,then? It requires looking at the question of the Bill of Rights from the point of view of the majority of the population. From the point of view of the people who presently are denied the most elementry fundamental rights. Saying, how can we use the constitution? How can we establish a document that in fact will enlarge our rights, consolidate the rights that we won in struggle and open the way for the further extension of rights in the future. And once the question is put in that way, then a whole flood of themes come out that require, to a certain extent, breaking with what I call the culture of opposition and starting to assume the culture of construction, of building up the new and seizing the initiative in this respect, advancing our own programmes as a means of mobilising our own people, giving sight and coherence to our struggles and seizing the central ground in the struggle.

A New Nation

The people belonging to the oppressor part of our nation by virtue of the lives they lead are incapable of assuming that dimension. They cut themselves off from their fellow citizens and they can never think outside of the group, they can never think in terms of the whole country as real patriots. And perhaps this is an inevitable part of the struggle for liberation that it rests with the oppressed to then take on the dimension of the country as a whole and to have a vision that incorporates everybody in the country.

This has emerged now as the, if you like, historic role and function of the ANC in South Africa, which is going beyond being simply the instument of the people for the destruction of apartheid and is now becoming the instrument that is going to construct and build the new South Africa, democracy in South Africa, the new South African nation. We have to get used to thinking in those terms.

It's not just the pleasure and the fun of imagining that we are living in a post-apartheid South Africa. That could be dangerous because we are still a long way off. But it's seeding into the struggle today here and now in South Africa, the germs, the embryo, the beginnings of the new South Africa, planting those seeds, getting people to struggle now for that vision, going beyond simply the general programme of the freedom charter and beginning to assert and insist on the fundamental constitutional themes that we feel are our own. Right at the heart of this debate lies a Bill of Rights.

> **Ultimately, one looks towards a national convention with some kind of democratically elected assembly being the final arbiters of a Bill of Rights for a democratic South Africa.**

The People's Struggle

A real and true Bill of Rights arises out of struggle and involves the people, not just an abstraction, the people active, thinking, thinking about themseves, their right to their future, making their input. This process has already started in South Africa. For example, an Education Charter has been established in embryo as a result of hundreds of meetings and teachers, schoolchildren, academics, university people and others thinking about education in a democratic South Africa.

The churches are increasingly active in South Africa;

thinking about the whole question of the role and function of the churches in a deeply divided and unequal society. The churches and all the religious organisations and denominations get together and think about the rights and the responsibilities of believers as individuals, as organised communities in a democratic South Africa. They themselves can help define the sections of the Bill of Rights dealing with the question of conscience and the right to believe or not believe, the question of freedom of religious association. Their function, however, extends beyond that to helping to build the new South African nation; to being an active agent for change not simply a beleaguered group fighting to protect this Bill of Rights, but an active participant in the process of overcoming the inequality of the past. The church people can be involved now in constructing the Bill of Rights.

A charter of workers' rights; who better than the workers themselves to be involved in developing such a charter. Not handing it over to a few lawyers to study international documents, but allowing workers the experiences, the special kinds of exploitation which they feel to delineate, lay down the fundamentals of the rights they feel all workers should have in a democratic South Africa.

Women's organisations are active participants in the struggle for liberation in South Africa. Let them now start seeking out the outlines of the constitution, to find for themselves and for the whole country what they feel should be the fundamentals.

Not the Lawyers

The process of establishing a Bill of Rights starts now. It's not something left to some special day, it starts now. It involves literally millions of people, working on their areas of special interest, but not confined simply to them because we are all citizens, we are all interested in the rights of workers and we are all interested in the rights of the religious organisations. We are all interested in the rights of women and so on and so forth. It is a process, it is not something that happens, it is not an event. Lawyers come in, they come in at various stages. Lawyers might come in specifically at the final stage, in producing a document that is consistent with international standards and values and has a vocabulary, a kind of discourse that is immediately acceptable inside the country and throughout the world. But it is not the lawyers who establish the fundamental lifestyle. It is the people who do that.

Let's look at other Bill of Rights documents, for example, the famous one of the Amendments to the United States Constitution. It is a process. Those amendments emerged out of struggle. After victorious revolution the formerly oppressed got together and said we don't want certain themes of our life to be repeated. The colonialists used to torture us to get confessions. We introduced specific laws banning cruel and unusual punishments. The colonialists denied us the chance to speak freely so they put in the first amendment dealing with freedom of speech. The former oppressed getting together and finding out where the shoe pinched, and in each particular case established a clause that dealt with that form of oppression.

In South Africa we want people who have felt in their bones what it is to suffer from oppression, to stand up and say: 'we don't want this to be repeated, we don't want that to be repeated'. Not the wealthy and, if you like, the over-privileged getting together to put together a series of clauses that are simply plucked out of existing international documents and that have the effect of freezing and congealing the existing situation.

Ultimately, one looks towards a national convention with some kind of democratically elected assembly being the final arbiters of a Bill of Rights for a democratic South Africa. It doesn't mean that we have to await that day, it doesn't mean that the inputs can't start now. On the contrary, the success of such an assembly depends to a great extent on the degree to which the ground has been prepared.

The Three Generations of Human Rights

What should the content of such a Bill of Rights be? It is always useful in approaching that matter to use the classification that has recently emerged of the three generations of human rights: first, the generation emerging in the 18th century, out of the anti-feudal and anti-colonial revolutions, classic rights of the individual: the right to vote, the right to due process. Fundamental, we want them; the right to vote is at the heart of the whole debate and struggle in South Africa. We want people to feel free, to feel free to walk around in their own country. Not to have their privacy violated. Not to feel insecure. Not to say that we have exchanged one form of oppression for another form of domination. Basic individual rights and liberties, that's the first generation of human rights.

The second generation emerged towards the end of the last century and this century; social, cultural, economic rights, educational rights. They emerged from the Russian revolution, the rights the social democratic parties have constructed in terms of the welfare states. Another agenda, not inconsistent with, not incompatible with the individual human rights, as fundamental and as important, we want them all as well

Now in the recent period, the third generation of human rights; people's rights, community rights, clean environment, the right to peace, the right to self-determination, to control one's resources – also fundamental, also requiring constitutional recognition of the text. All three generations have to be there, all have to be recognised, all have to be protected. If only the right to vote is recognised the de facto inequality of the past continues. We don't want these things without the right to create a South African nation, to control, to feel the feel the land and its resources belongs to all of us. To have peace in our country should be such a fundamental right – the mass of our people have never known the right to tranquility – the right to a kind of social, community happiness, the right to really love your neighbour and feel neighbourliness, all these are fundamental rights that have to be recognised.

Due Process

Each generation of rights has its own mechanisms, its own procedures. With each generation of rights one looks to the courts to protect these individual rights. Courts and lawyers, due process of law. But, fundamentally the rights to education, to health and so on are to be guaranteed by other mechanisms. Let's take as an example the right to health. What's important, the right to sue your doctor or the right to have safety at work, good water and so on. Maybe or maybe not one should have the right to sue one's doctor but that can't be the basic content of human rights in terms of the right to health. The content of the right to health means imposing legal duties on those who can affect the health of the citizens, to take certain steps to avoid damaging their health and to take positive steps to improve their health.

The third generation of rights are rights which are essentially political in character, but also involve imposing duties on those who could damage the environment, those who can damage peace, those who want to restore apartheid.

Affirmative Action

This brings us to what many of us regard as the central theme of a Bill of Rights for a democratic South Africa and that is affirmative action. We should see a Bill of Rights not only as a negative blocking mechanism, that prevents change under the guise of protecting individual rights. We should see a Bill of Rights as a positive, affirmative document that requires change and does so according to the general principles of affirmative action. What does this mean? It means all public and private bodies in South Africa (presupposing a multi-party democracy with general freedom of speech, organisation, movement and so on) committed to certain fundamental themes which are themes of the constitution. The fundamental theme is to overcome the de facto apartheid in society, the massive inequalities that have been created by centuries of labour domination, racial segregation and apartheid. It is about real equality. And to give an active role to all South African socio-economic, political and cultural life should mean the government, whatever party is elected, has a commitment towards overcoming apartheid at a constitutional level.

What does affirmative action mean? It means change that's irreversible, that's radical, that's speedy. It dosen't mean help yourself so those who are strongest in grabbing will get the most out of changes. It means an organised transition from inequality to equality. It means that in any particular area the affected parties have a say in how that change is going to come about. For example, if it is a question of the economy, private sector, the capitalists will all be involved in this very process. They will have a say as to how the process of training and equal opportunity in industry can be brought about. A time period is set, the targets are set and then the exact means are worked out in terms of the trade union input, the employer's input, the government's, all those affected, and a kind of scheme is arrived at which then becomes legally binding and can be enforced by the mechanism that evolves.

It is a broad kind of scheme that is being projected as a mechanism for change. It has many advantages in terms of flexibility and of extensive participation of the interested parties. It means on the one hand you don't have attempts to create purely bureaucratic solutions, that are worked out in an office and then imposed on the society. On the other hand it dosen't allow those who wish to resist change to hide behind a series of manoeuvres in order to block the scheme.

Affirmative action will apply not only to the content of rights but to the very structure of the whole governmental and judicial apparatus of the country itself. How can you have an army which is completely white dominated and imbued with the ideology of racism being the guarantor of democracy and equality in South Africa? The army has to be reconstructed, in terms of the principles of affirmative action. The police force – the same thing. The prison service – the same thing. It goes beyond simply those obvious areas.

The civil service is a major instrument of racial domination in South Africa. Without a total reconstruction of the civil service, it is impossible to have a human rights programme implemented.

The New Watchdogs

The judiciary – surely in a democratic South Africa the judiciary will have an extremely important role to play, but we cannot leave it to the present judiciary to be the ultimate watchdogs of democracy. And if we do so the people at large will be suspicious of the whole set up. We think of the judges who sentenced the Sharpeville Six to death, stretching existing precedents to diminish the concept of extenuating circumstances and enlarge the concept of common purpose. One thinks of the judges who acquit or give a suspended sentence to a white farmer guilty of the most terrible brutalities against a labourer, letting him go virtually scotfree.

Are these the people who are going to be regarded as the watchdogs of a new constitutional dispensation? One thinks of the judiciary today, the judges are white, white, white, from the bottom to the top, from the top to the bottom. It's not a racial thing, it's a cultural thing, it's a social thing. People who have grown up in a certain community with a built-in insensitivity – one almost said congenital – built in by the very habits of life to the problems, the concerns, the agonies, the desires even the dreads of the mass of the population.

This is not to say that whites are excluded because they are whites. They have a role in a democratic South Africa as full equal citizens. They cannot continue to monopolise, not the judiciary, nor the economy, nor the land, nor the educational system, nor the whole system. The whole society has to be opened up. It has to be made non-racist, it has to be reconstructed on non-racial principles. It has to be representative of the population as a whole so the population as a whole will have confidence in it.

Group Rights

One consequence of the scheme that I have been outlining is that the foundation of human rights in a democratic South Africa would be a guarantee of individual human rights to everybody without discrimination, without regard to race, to origin, ethnicity, sex or creed. That is the fundamental constitutional principle. It is a revolutionary principle in a feudal type society. It's the sort of principle that should get universal acknowledgement and acceptance outside South Africa. Unfortunately, one finds that's not the case. Think of group rights, all sorts of people who call themselves liberals think of the rights of the white minority, when it comes to South Africa.

How can we preserve their rights? Sometimes this is put on a purely tactical basis. When you want change you have to make compromises recognising power, the fact that they are dominating our society. In order to achieve gains in other areas you make concessions to them in this area. Unfortunately the argument is not simply couched in pragmatic terms. The argument is couched in constitutional terms, as though somehow this concept of group rights is a virtue in itself.

Group rights are and should be relevant but not in the way they are projected. First of all there are negative group rights, the right not to be discriminated against as a group. No one should be oppressed on the grounds of race, origin or language or religion. It is a constitutional principle completely consistent with the concept of individual rights. The right to non-discrimination should give rise to a kind of class ction. Anybody belonging to a minority or majority group could come along and say: '*My group is being discriminated against as a group*'. You are being harassed, you are being denied jobs, you are being denied equal opportunity, you are being insulted – the appropriate redress is a constitutional response. But to have the kind of group rights where groups of particular form have voting power, where groups have vetoes over legislation is simply to enshrine apartheid and could prevent South Africa from becoming a truly democratic and non-racial society. Those kind of ethnically based political rights are totally at odds with the concept of creating a genuine Bill of Rights for a democratic South Africa.

There are group rights that can be constitutionally protected. Language rights not only can be, but indeed ought to be, must be protected. The equality of all languages whether spoken by half a million prople or by ten million people – you can't say a language is more important because it's spoken by more people. The principle of equality of all languages and the right to develop and use your languages and the literature in your language, the right for your languages to be used for public broadcasts, in television, in schools, these rights have to be and should be recognised. That would include Zulu and Afrikaans and all the languages.

Rights of religious groups and organisations can be protected as group rights. In some cases certain communities have developed a personality. We wouldn't say they are prohibited from organising themselves as a community. There would be, for example, Jews who are not simply religious believers but of a culture associated with the community. Groups who belong to the Greek Orthodox Church. All these rights would be guaranteed and recognised.

Workers

It is very interesting that the greatest proponents of group rights never come up with the question of workers' rights. A huge group, the majority of the population, they will have rights, as workers, trade union rights constitutionally recognised. Half or slightly over half the population will have rights as women because of past disabilities. Because of maternity and childbirth, because of the sexism in society they will have certain constitutional rights as a group that can be recognised, as will other groups. Children will have rights as children. The disabled and so on. Only the question of group or community rights comes in in terms of affirmative action. Only affirmative action works and certainly it won't be a direct copy of the American experience. It involves looking at groups and saying that in certain spheres of our society there is massive inequality which has to be overcome and one cannot avoid to a certain extent the numbers game, the question of quotas. The fact is you have to deal with the real mass of inequalities and to that extent the race theme and factor does come into the constitution but, again, as a negative principle, to overcome the discrimination of apartheid.

Your Criticism

The debate is open, we need your friendship, we need your support but, more than that we need your debate, we need your scepticism, we need your criticism. You can engage with us, you've got to force us to sharpen our understanding, to challenge us, to give us extra information, new perspectives. It is a very exciting moment for South Africa. A moment that many of you involved in similar debates, with a different content, in Britain will be able to share. We are using our skills and understanding not simply to criticise. There can be nothing more intellectually and even emotionally joyous than to feel that you are helping to build a charter for your country, using your learning, your knowledge, your skills. Assisting in the general people's struggle for liberation, not just in a generalised way, not in a defensive way but in an affirmative way.

This is an edited version of the lecture, delivered on 16 November 1988 at the London School of Economics

Edmund Jankowski

The Housing Act 1988: A Return to the Free Market

The Housing Act 1988 is a further application of familiar themes in government policy – privatisation, deregulation and the transfer of power from publicly accountable local government to non-elected quangos. Part I (Private Rented Sector) of the Act came into force on 15 January 1989. Part III (Housing Action Trusts) became law on 15 November 1988, while Part IV (Tenants' Choice) will be brought into force later in 1989.

Deregulation

The government believes that the decline of the private rented sector (today it comprises a mere 7.7% of all dwellings[1]) is due to the Rent Acts, which are seen as driving landlords out of the market. This ignores both the experience of the 1957 Rent Act where deregulation led to Rachmanism and an acceleration in the decline of the sector and the real cause of the decline which is the greater attraction to landlords of selling to owner-occupiers. The Act aims to revive the sector by reducing security of tenure and allowing 'market rents' to be charged.

Private sector tenancies created on or after 15 January 1989 will fall into two main categories; assured tenancies and shorthold tenancies. However, the recent decision of the House of Lords in *Antoniades v. Villiers*[2] may deter some landlords from using these devices. If a letting does not fall into one of these two categories (for example, if there is a resident landlord) there will be no statutory protection for the tenant under the Act. Virtually all the devices currently used to evade the Rent Act (such as 'licence agreements') will still be available to landlords. They will, therefore, be able to avoid giving tenants even the minimal statutory rights they have under the Act.

> **Transferred tenants will have no right to return to the Council if dissatisfied with the new landlord.**

Grounds for Possession

New tenants who share accommodation with resident landlords or who have holiday lets will be particularly vulnerable. The Act allows landlords to evict such tenants without a court order and abolishes the tenant's right to a minimum of four weeks' written notice to quit. Landlords will be free to evict on little or no notice.

Widely drafted grounds for possession are available to landlords against assured tenants. Possession must be given if:

- The landlord intends to demolish or do substantial work to the property. Rightly known as 'The Developers' Charter', this ground will be abused by landlords who will put together evidence that they 'intend' to redevelop with the ulterior motive of gaining possession to sell. It will also be used by developers to get possession from sitting tenants. The landlord will not have to provide alternative accommodation nor will the tenant receive any compensation for loss of the home, apart from reasonable removal expenses.
- There are at least three months' rent arrears at the date of the possession hearing. The reason for the arrears will be irrelevant. The court will have no power to follow current practice and suspend the possession order to allow the arrears to be paid off in instalments.

Possession can also be ordered if one of the discretionary Rent Act grounds for possession is fulfilled with 'persistent delay' in paying rent added as a new discretionary ground.

Upwardly Mobile

Assured tenants will have very little control over rents. Rents can be increased in line with a review clause in the tenancy agreement. Landlords will no doubt have model clauses prepared, allowing them to increase the rent as often as they like. If no review clause is available, landlords will be able to serve notices proposing increases in rent. Tenants who object will be able to apply to the Rent Assessment Committee (RAC), which will fix a rent at which the property 'might reasonably be expected to be let in the open

market by a willing landlord'. The Act also allows landlord and tenant to 'agree' a higher rent than that fixed by the committee.

There is no guarantee that housing benefit will be raised to keep pace with the rent increases the Act will produce. Indeed, the government has made clear its intention to use the housing benefit system as a form of back door rent control to hold down expenditure in this area. Under the Act local authorities will not get their full subsidy if they pay housing benefit above a maximum amount fixed by the rent officer and the Secretary of State has reserve powers to apply a 'rent stop' (a maximum amount of rent for which benefit is payable).

Rather than hold rents down landlords are likely to move upmarket and let to better off, economically mobile tenants. Tenants will have to pay the difference between the benefit they receive and their rent. Many will not be able to do so.

Assured Shortholds

Assured shorthold tenancies are defined in section 20 of the Act as assured tenancies for a fixed term of at least six months preceded by service of a notice in prescribed form. In addition to the grounds for possession available against assured tenants, a landlord will be able to evict on expiry of the fixed term and giving two months' notice. It will not be necessary to prove any grounds for possession. Landlords are bound to make extensive use of shorthold tenancies. Although the shorthold tenant has a limited right to apply to the RAC to reduce the rent if it considers the rent is significantly higher than the rent for similar properties let on assured shorthold tenancies in the vicinity, few tenants are likely to exercise this right and risk eviction. Nor will they be in a position to take steps to have repairs done or harassment stopped.

Members of an assured tenant's family will have very limited rights to succeed to the tenancy when the tenant dies. There can be only one succession by the tenant's spouse or cohabitee. The landlord will be able to evict other members of the tenant's family on his or her death.

A Licence to Evict?

Contrary to government claims, the Act affects the position of existing Rent Act tenants in two ways. First, the succession rights of relatives of existing tenants are being reduced. Although spouses or cohabitees of tenants will inherit as before, other members of the family must have been residing with the tenant for two years (as against the current period of six months) before the tenant's death. The family member can only succeed to an assured tenancy. This proposal will particularly affect carers who give up their homes to look after elderly relatives.

Second, the Act gives landlords a direct incentive to harass and evict existing tenants to gain vacant possession and then relet at market rent. To counter this, the Act contains a new right for tenants who are harassed or evicted, enabling them to obtain damages from their landlord. Compensation is to be calculated by reference to the gain to the landlord in obtaining vacant possession. Although damages could be substantial, many landlords may choose to gamble on the evicted tenant not suing, as is likely in most cases.

The Act toughens up the criminal law by creating an offence of conduct which the landlord 'knows, or has reasonable cause to believe' is likely to cause a tenant to give up occupation. However the pitifully low level of prosecutions for harassment and illegal eviction (76 prosecutions out of 4,500 reported cases of harassment in London in 1985[3]) is likely to remain. The depth of the government's real commitment in this area was shown by its refusal to accept opposition amendments to impose duties on local authorities to investigate and prosecute harassment and to appoint tenancy relations officers.

Housing Associations

The Act treats housing association tenancies granted on or after 15 January 1989 as assured tenancies, thereby removing tenants' rights to the registration of a fair rent and to security of tenure under the Housing Act 1985. Although housing associations will be expected 'to set and maintain their rents at levels within the reach of those in low paid employment' housing association rents will at least double under the new financial regime in which government subsidy will be cut back and associations required to meet the shortfall by raising loans from the private market. Tenants hit hardest will be those whose income is just high enough to make them wholly or partially ineligible for housing benefit.

Smashing the Public Sector

The Act contains three mechanisms for the break up and sale of council housing. First, housing action trusts (HATs) will be set up to take over areas of rundown council housing, to improve the property and then to sell it off. Modelled on the London Docklands Development Corporation, HATs will be run by non-elected boards appointed and accountable only to the Secretary of State. They will have wide powers and responsibilities currently enjoyed by local authorities such as planning, environmental health and improvement grants.

Following a defeat in the House of Lords and pressure from tenants' groups, a HAT cannot be set up if a majority of affected tenants voting in a ballot reject the proposal. The government has made it clear that tenants foolish enough to reject a HAT will not get funds to improve their areas. Tenants will have no right to veto landlords proposing to take over their homes from the HAT. Although in theory tenants will be allowed to return to the local authority on the HAT being wound up, few councils will be able to afford to buy back the properties concerned.

HATs have no obligation to tackle homlessness in their areas but merely have to provide the local authority with 'reasonable assistance' in meeting its statutory obligations.

HATs are based on the theory that an inner city area will be regenerated by bringing in managerial and professional people. Although HATs may well convert their areas from Labour to Tory, the evidence from the Docklands experiment shows that bringing in wealthy outsiders with no real commitment to the area reduces the job and housing prospects of local people.

'Pick a Landlord'

The second mechanism in the Act for selling off council housing is called by the government 'tenants' choice' or 'pick a landlord'. Landlords – whether private companies, individuals, tenants' co-operatives or housing associations (but not local authorities) – will be entitled to approach the Housing Corporation (the quango that currently monitors housing associations) for approval to bid for council housing. Although applying landlords will have to give commitments to relet and to set rent levels within the reach of those in lower paid employment, these commitments will not be enforeable by tenants. If the landlord is not a registered housing association, the only sanction available to the Housing Corporation will be to refuse consent to further acquisitions. Existing acquisitions will be retained. If the landlord is a registered housing association, the Housing Corporation also has the power to remove the board and transfer its stock to other housing associations.

The Act allows the approved landlord to require a local authority to provide it with information about the property

'The Housing Act will force those on low incomes out of rented housing without providing any alternative.'

it is interested in (including details of the tenants' names, addresses and rent histories). The affected tenants can veto the transfer only if more than 50% of them actually vote against it. However the transfer will not go ahead unless at least 50% of affected tenants actually vote (whether for or against the takeover).

If a transfer goes ahead tenants who voted against will remain with the council, a head lease being granted to the local authority. The council's lease will end when the tenant dies or moves out.

'Social Landlord's Charter'

Transferred tenants will become assured tenants. The government has made much of the 'social landlord's charter' which would require the new landlord to give tenants similar rights to those in the 'tenants' charter' in the Housing Act 1985 (for example rights to mutual exchange, to information and to be consulted). In fact, the 'charter' will be no more than guidance on good management practice and on the content of tenancy agreements. If the guidance is not followed the only sanctions available to the Housing Corporation are those mentioned previously. Whether it will be prepared to exercise them is open to question, particularly in the case of large, expansionist and increasingly commercially oriented associations.

The only real right that transferred tenants will retain will be the right to buy. Transferred tenants will have no right to return to the council if dissatisfied with the new landlord and will have no say if the landlord decides to sell out.

Voluntary Transfers

The Act 'clarifies' the existing power of the Secretary of State to consent to a council selling its stock (contained in the Housing and Planning Act 1986). Even prior to the Act becoming law, several Tory councils started to plan disposals of their entire housing stock to housing associations, ostensibly to protect their tenants from developers exploiting 'tenants' choice'. As in the case of 'tenants' choice', affected tenants can only stop the transfer if more than 50% of them vote against it. The injustice of this voting system has been demonstrated by the case of Torbay District Council, when a clear 'no' vote by tenants to a sale was ineffective because the necessary majority was not achieved.

The government sees HATs, 'tenants' choice' and voluntary transfers as providing the legal framework for a ten year programme of privatisation of council housing. The aim is to force authhorities to dispose of their stock and to coerce tenants into 'choosing' new landlords. At the moment, most of the new landlords are likely to be housing associations which are seen by the government as the new providers of 'social housing'.

In the longer term the government's aim is to increase the involvement of private capital in what it calls 'the social rented sector'. The requirement that housing associations raise more capital privately is the beginning of a process that could end with the privatisation of the housing associations themselves.

Onto the Streets

The Housing Act will force those on low incomes out of rented housing without providing any alternative. Deregulation of the private rented sector will accelerate the growing emphasis on short term housing for the affluent and mobile able to pay market rents. The notion of a private tenancy offering a long term home will be a thing of the past. Those who manage to stay on will have insecure, poor quality housing at inflated rents and often in overcrowded conditions. Harassment and illegal eviction will be rife.

Those tenants forced out of the private sector will find it difficult to gain a foothold in the housing association or local authority sector. The government has already indicated that it is considering dealing with the inevitable increase in homelessness by restricting councils' obligations to house the homeless. Socialist lawyers are already campaigning and drafting amendments to the next Bill during its Parliamentary passage. The housing subcommittee of the Haldane Society needs support to carry on this work at a critical time for those at the sharp end of the government's housing policy.

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Tony Metzer

Ways of Making You Talk

On 9 November 1988 Tom King, the Secretary of State for Northern Ireland announced that the citizens of Northern Ireland would lose the right to silence, or more strictly, the right not to have inferences drawn from their silence, whether it be silence at their trial or a refusal to answer questions regarding incriminating forensic evidence or their presence at a particular place.

The right to silence is a constitutional right, yet it has been withdrawn without parliamentary debate and national discussion, by an Order in Council. This procedure involves minimal parliamentary time and no opportunity for amendment. It is widely expected that these new provisions will be extended to England and Wales in the near future.

Police Agitation

The move has been prompted by considerable agitation in the last few years from the police and some members of the legal establishment. They believe that the exercise of the right has led to many guilty people being acquitted and are irritated by what they perceive as an abuse of a 'privilege' rather than an exercise of a right.

It is important to examine this view to see whether it is borne out by established facts and to consider whether the change is necessary, or desirable.

> **'What advice is a lawyer supposed to give under the new law?'**

Unquestionably, one of the consequences of the abolition of the right to silence is a shift in the burden of proof. A basic tenet of an accusatorial system of criminal justice is that it is for the prosecution to prove its case and there is no obligation on a suspect to assist in that course. Since it will now be possible for tribunals to draw inferences from a suspect's refusal to answer questions from police officers, the onus will inevitably shift onto the suspect to give an account of his or her movements to the police.

The point is well expressed in the leading American case of *Miranda v. State of Arizona*[1]:

'Our accusatory system of criminal justice demands that the Government seeking to punish an individual must produce the evidence against him by its own independent labors rather than by the cruel, simple expedient of compelling it from his own mouth.'

Spill the Beans

Should pressure be put on a suspect in an adversary model to make a reply? The police view is that if one is innocent, it is common sense to talk. However, it is only 'common sense' if the interrogator is entirely impartial and if the suspect knows precisely what he or she is supposed to have done. Understandably perhaps, police officers questioning a suspect presume guilt, so that added pressure may be brought to bear upon a frightened, disorientated, innocent suspect. Police questioning varies in fairness and competence, but these difficulties will arise even with genuine but zealous officers who believe sincerely that they have the right suspect. There are great dangers in concentrating police attempts to collect evidence on confessions, without giving suspects full and adequate safeguards. Considerable practical difficulties in preventing police abuses are immediately foreseeable. How will the police employ the new (and no doubt long-winded) caution? What will be its exact wording? How can the emphasising of certain parts of the caution to lean on suspects to talk, be minimised?

Confess and Be Convicted

Convictions obtained by 'confessions' without corroborative evidence are liable to be unsafe. Murder cases which may well be in that category include Timothy Evans, whose innocence did not save him from the gallows; the 'Guildford Four'; and Derek Gordon who confessed to murder, was charged and kept on remand until one Steven Gayle also confessed and was sentenced to life imprisonment.

Carole Richardson convicted in the 'Guildford Four' case blames her own weakness as much as her police interrogators for what she contends are false admissions. She does not believe that they were out to frame her but simply that they believed she was guilty. She maintains 'They must have done or they would not have kept going on and on'.

The availability of tape recordings at all police interviews and the full implementation of all the procedural safeguards contained within the Codes of Practice of the Police and Criminal Evidence Act 1984 would decrease the risk of unfair questioning, at least at the police station, but arguably the most important safeguard is the presence of a defence legal adviser.

Access to Legal Advice

The great majority of suspects are unaware of their right to see a solicitor and do not request one. A recent Haldane Society study[2] indicates that only 20% use the duty solicitor scheme. Moreover, suspects are often denied access. The system is repeatedly flouted, by the officer informing the suspect that there is no solicitor available or tricking the suspect into signing away his/her rights on the custody record.

Even when a duty solicitor is available, the suspect has often made admissions before obtaining legal advice or will speak when advised to say nothing. Denial of access to legal advice is especially serious in Northern Ireland where more than half of those who request it are turned down. Those arrested under terrorist provisions can, and in practice do, have access to a solicitor denied for up to 48 hours without being brought before a magistrate. Possible provisions for greater access to lawyers and the tape recording of interviews will not apply to those arrested under emergency powers. Deliberately not taping the interviews of suspected terrorists looks like cynical encouragement to 'verbal them up.'

The absence of immediate legal advice is often a reason why suspects remain silent. Moreover, the best advice from a lawyer has often been to say nothing because at an early stage, only the police know the nature of the case they are making and the state of the evidence available to them. What advice is a lawyer supposed to give under the new law?

Reasons to Keep Silent

There are numerous reasons to remain silent which are wholly consistent with innocence, they include:-

- nervousness or inability to talk
- fear or shame at revealing for example membership of an extreme political party, or an illicit affair which would provide an alibi, or an explanation of other suspects' whereabouts at the time of the offence;
- threats from the outside;
- the risk of disclosing other (less serious) criminal activity;
- protecting someone else;
- unfair methods of questioning;
- not knowing exactly what is alleged, so that it could be contradicted.

Most Suspects Talk

Recent studies indicate that the right to silence is only exercised by a small minority. The Royal Commission on Criminal Procedure (1981) found that 60% of suspects made confessions or admissions in interview, 20% were released without charge, 8% refused to answer questions at all. The Royal Commission recommended that the right ought to be not only retained, but strengthened. This view was implicitly followed by the current government in the Police and Criminal Evidence 1984.

> '.....'

In a separate study, Michael Zander also found that only 4% exercise their right to silence.[3]

The Metropolitan Police have asserted that the right to complete or partial silence is now exercised by a fifth of all suspects, but there are no hard facts to support this. Even if true, it hardly represents a large increase from the 12% found by the Royal Commission back in 1981. Moreover there is no evidence to support the case that more guilty people go free as a result of exercising the right.

Heavy Burden

Zander comments persuasively that the burden (of proving its desireability) on those advocating change is a heavy one and is not made out. Full research needs to be undertaken not only to establish the proportion of suspects remaining silent, but also how many of those are then acquitted and in what circumstances. The limited research undertaken so far does not indicate that silence leads to acquittal. In Zander's study, three quarters of those who remained silent pleaded or were found guilty.

In recent times, significant inroads have already been made into the right to silence by means of forced disclosures before trial (alibi defence, expert evidence, outline defences in some fraud cases, certain compellable answers under the Companies Act 1985 and the Financial Services Act 1987).

The Criminal Bar Association in recommending the retention of the right to silence, makes an interesting and cautionary observation: '[The loss of the right to silence] would furnish the police with strong additional power, constitute a disincentive to investigation and change the accusatorial system of trial to a suspect's disadvantage without adequate safeguards for protection. It would be bizarre if it were achieved in haste, without due consideration.'

Future Uncertainty

It is not clear what difference the abolition of the right will make in practice. Suspects will probably be advised (if a lawyer is present) to talk only via prepared statements, or may still, in some cases, prefer to remain silent. In addition it is unclear how the judges in Northern Ireland will draw inferences. What, for example, would be the evidential status of the refusal to talk? What, in particular, would be its status at committal proceedings? Would it be used as corroborative evidence only, or could it be regarded as tantamount to a confession in certain circumstances? What is to be the relationship of the new law with the privilege against self-incrimination? How can the subtle excesses of prosecution-minded judges be adequately countered?

Possibly, although there is no detailed evidence in support, abolition would result in the police obtaining more confessions, but this would not necessarily lead to more frequent exposure of the truth. There is an increased and real risk of confessing to a crime which a suspect has not committed, especially if he or she is suggestible and easily intimidated, as are many young persons, the ill-educated or mentally subnormal.

Need for Safeguards

A rule must clearly cater for the inarticulate and inadequate as well as for the sophisticated, persons of good character and hardened criminals.

In my view the abolition of the right to silence tilts the balance of crime-solving against a suspect's presumption of innocence and in favour of the prosecution without any proper safeguards. It is an ill-conceived plan covertly undertaken without proper investigation and research, relying heavily on unproven assertion and on prejudice. Attempts to introduce it in England and Wales should be strongly resisted. Its implementation in Northern Ireland has further eroded civil liberties there. The principle of not putting pressure on a suspect to participate in his or her own conviction is ultimately more important than the possibility of a few more convictions, whether right or wrong.

References

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John Platts-Mills QC:

Reminiscences of a Radical Lawyer

John Platts-Mills Q.C. (JPM) is an integral part of the Haldane Society. He is currently the president, a post he has held since 1978. Before that he was chair of the Society from 1942–43 and again from 1961–67. A New Zealand born radical, he has experienced the changing political fortunes of British socialism over the last 50 years. JPM was a Labour MP between 1945 and 1950, when he became an independent on his expulsion from the party. More recently, he has received high acclaim as a criminal advocate taking silk in 1964. Head of the 'Cloisters' chambers, he has always deserved the label of 'radical lawyer'. Here he talks to **Keir Starmer** (KS) about the Haldane Society.

KS: John Platts-Mills, you joined the Haldane Society in about 1937, what sort of organisation was it then?

JPM: It has been very active in a narrow circle. This was largely due to the work of Dudley Collard and Neil Lawson. They required everyone to join the Labour Party, a trade union and, if you knew Dudley, the Co-op. The membership of the Haldane Society wasn't very big – much smaller than today. Everyone wanted to interfere with everything in the world and with the ascendency of Hitler the Society quickly became very active internationally.

> **We had hundreds of children knitting balaclavas for the Red Army.**

KS: But in reality it was just a grooming shop for prospective members of the Parliamentary Labour Party?

JPM: Probably that's true. There was no rival society at the time and most active people were in the Labour Party. However, in the true sense it was non-committal – you didn't have to be in the Labour Party. We had Communist Party members. I even remember some very conservative people in the Haldane Society simply because they were progressive and wanted change in the law.

KS: I'm not sure whether you would classify Winston Churchill as a 'progressive' conservative, probably not, but in 1941 you carried out some very important 'requests' of his.

JPM: It was Cripps' daughter who sent me on. She summonsed me from the Temple saying 'Daddy wants you'. So I had to go along to Whitehall – I knew Cripps anyway. Cripps said 'I've got a job for you, I'm taking you to see the old man'. So he took me along to the House of Commons where we met Churchill in his room. Churchill said that if people in this country believed what he had been teaching them since 1918 there would be no war effort. He had been teaching them that the Russians eat one another and eat their children. He said 'we've got to change all that'. He told me that I could have all the money I wanted and could get a small team together to improve Anglo-Russian relations. We set up an office in St. Georges Square. We had hundreds of children knitting balaclavas for the Red Army. We must have had many hundred tons of knitted goods. All in fact destined to sink on the convoy on the way there. School children were all writings essays entitled 'What I will say to Joseph Stalin when I see him' and 'What I want to say to Joseph Stalin when I see him again'.

KS: Your personal 'Anglo-Soviet' friendship extended beyond 1945. Against the advice of people like Nye Bevan you urged the then Labour government to ally with Russia rather than America.

JPM: Well to make friends with them at least, bearing in mind that we had been their closest ally in the war, not take sides necessarily. I was against Atlee and Bevan for effectively starting the Cold War. They really took on Churchill's job. I'm sure Churchill approved strongly of the appointment of Ernest Bevin to the Foreign Office, he was sure that he would go strongly against Russia.

KS: You attended the funeral of Joseph Stalin.

JPM: Yes, I was a member of the World Peace Council. I was immediately thrown out of my then chambers on my return.

KS: Looking back now, with the benefit of hindsight and especially now that Gorbachev is in power, would you say that Nye Bevan was right and that you were wrong for supporting Stalin? Or do you still stick to your guns?

JPM: Well in terms of my own personal 'getting on' I was very unwise. But in principle I was against the Cold War and I think that we all should have been.

KS: In the late 1940's problems with the Labour Party extended beyond you personally. In 1949 the Society split and the Society of Labour Lawyers broke away. Why was that?

JPM: That was Gerald Gardiner wanting to get on. He had not been in Parliament and wanted to assure his position in the Labour Party. He was a distinguished lawyer and had the potential to be Lord Chancellor. He was chair of the Haldane Society at the time. He tried to drive out everyone who wasn't a member of the Labour Party by a whole series of manoeuvres like votes and postal votes. There was tremendous debate as to whether we were allowed to have a postal vote. Then it was all decided at a mass meeting. When he didn't get the right result he marched off with the other exclusively Labour Party members.

John Platts-Mills on the Grunwick picket line

KS: Isn't it now time for the two societies to get back together?

JPM: I can't think of any reason in the world why they shouldn't. The Labour Party is a much more understanding and broad based party now. We ought to hold the Labour Party to the phrase that it is a 'broad church'. I really don't see any reason why we should not be affiliated again.

KS: The Haldane Society has a proud history of involvement in industrial disputes and you involved yourself in the Grunwick dispute. In particular you marshalled the picket line dressed in your barristerial suit, black bowler hat and umbrella, with 'The Times' rolled up under your arm.

JPM: It wasn't arranged like that. I was on my way to court and wanted to go via Grunwick to lend support. The only way to do that was to go very early in the morning. The Haldane Society had decided to join the picket line that day – there were already 20 or 30 Haldane members there. They were all isolated from the main pickets and hemmed in by the police. One of our oldest members had the megaphone and when I arrived he gave it to me and said 'Here you are, John, you have a go'. I remembered that during the 1919 police strike the police couldn't find anyone to help them picket. So I told them that the only people who would help them picket was the Haldane Society so they better let us picket here.

KS: In 1975 you delivered a lecture to the Society on the role of the radical lawyer and shocked some members by advocating a fully integrated system of radical prosecutors, radical magistrates and judges and even radical commercial lawyers. You disagreed with the idea of 'socialist outposts' in the profession. Do you still adhere to those views?

JPM: I don't think I ever put it quite like that. I'm very keen on socialists working together. We should unite ourselves like fists and hurl ourselves at the enemy. On the other hand every individual ought to be spread out and merged with the wider groupings that one belongs to as much as can be. I've tried to do that. In chambers anyone can come not just lefties. It has worked quite well I think.

KS: Do you believe then in some sort of creeping take over of the profession?

JPM: No, of society itself! That's what we're after.

KS: The problem is that the forces of society will not allow such a process to take place. Indicative of that is that you yourself have never been called to the bench.

JPM: I wouldn't expect to be. I've never thought of that – indeed I'm not sure that any barrister thinks of that.

KS: How have radicals coming into the profession changed over the period you have known?

JPM: Well the tradition of being a radical lawyer is well established now. Young people can come to the bar with confidence that their career won't be set back by being a radical. I see no reason why we shouldn't have radical judges soon and radicals getting into every good position in the profession. They should try to be the best lawyers. I personally could have done many things better. In my early days I rather plunged in and shed my allies. I was too eager to thrust forward too fast.

Louise Christian

Police Complaints Authority – Worse Than Useless?

In the last seven years the number of police complaints has steadily fallen while at the same time civil actions against the police have increased. In London there were 9,178 complaints in 1981 declining to 3,045 in 1986. In the same period damages recovered from civil actions have increased by some 400%. On a recent television series 'Police Powers' Deputy Assistant Commissioner Winship, Head of the Police Complaints Bureau at Scotland Yard, identified what he perceived as a whole legal industry based around pursuing civil actions against the police and advising complainants not to cooperate with the police complaints system. All the evidence suggests that the credibility of the police complaints system is diminishing among both the public and lawyers.

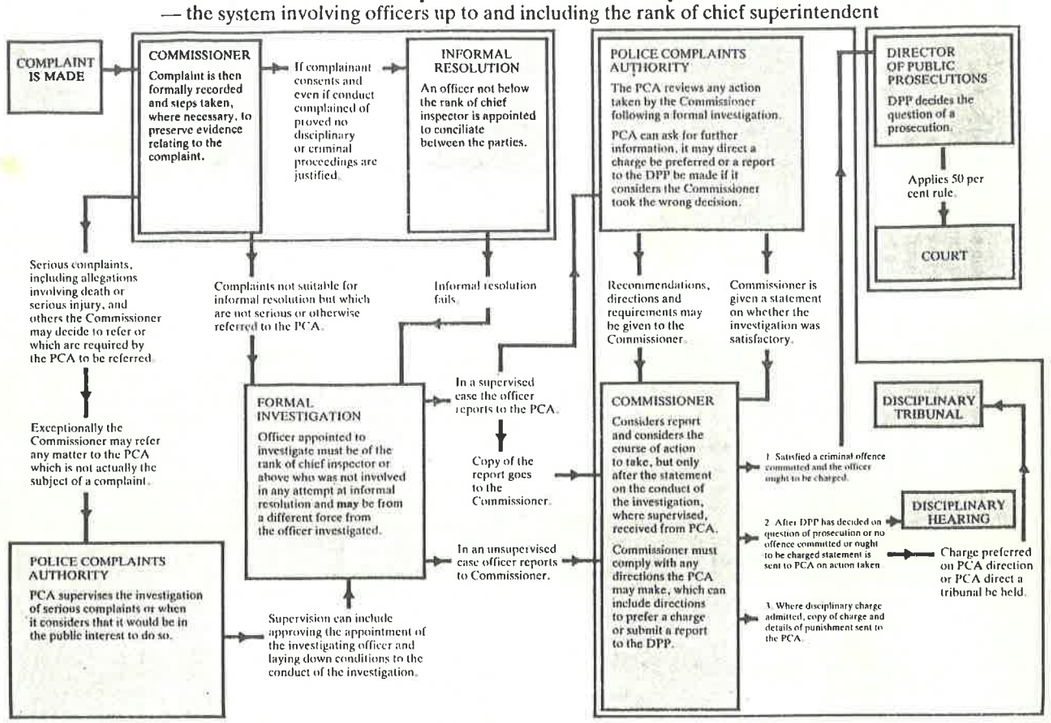
The new PCA was established by the Police and Criminal Evidence Act 1984 and given greater powers than its predecessor, the Police Complaints Board. This seems to have had little impact on public perceptions of the system. Like the Police Complaints Board the PCA is a small quango of 12 members appointed by the Home Office, with a national remit. The Authority is divided into two sections, one dealing with the supervision of the investigation of complaints and the other dealing with recommendations arising out of completed investigations.

The House of Commons Select Committee Report on Police Complaints had recommended a comprehensive network of regional police complaints officers but this proposal was turned down by the government. The effect has been that the PCA has little contact with complainants except by letter and only a limited amount of direct contact with the police who carry out the complaints investigation.

Adrian Franklin

Police complaints and the Metropolitan Police

— the system involving officers up to and including the rank of chief superintendent



Power to Intervene

The Chief Constable of the Force to which the complaint is submitted, (or in cases of complaint against senior officers (except in London) the Police Authority) decides whether to refer it to the PCA. Complaints involving an allegation of serious injury must be referred. Serious injury is defined in the Act as 'a fracture, damage to an internal organ, impairment of bodily functions, a deep cut or a deep laceration'.

The power of the Authority to intervene in the actual investigation of complaints represents the biggest change from the old system under which the Police Complaints Board had no ability to intervene whatsoever. The Authority may also require any complaint to be referred to it for consideration. The Authority then decides whether to supervise the investigation. It must do so in the case of complaints alleging police conduct resulting in the death of or serious injury to some person and also in the case of any other complaints specified by the Secretary of State in regulations.

It may supervise the investigation of any other complaint if it considers that it is desirable in the public interest to do so. During 1986 the Authority decided to supervise 681 cases out of 3,687 brought to its attention. This was about 10% of the total number of 6,523 complaints in that year.

A Bland Response

Supervision of the investigation entails one of the members of the Authority being delegated to the particular complaint. What then happens is that, 'the supervising member will receive a stream of medical and forensic science reports, written statements, tapes of recorded interviews and video recordings, all of which need to be studied with care. That study sometimes results in the investigating officer being required to pursue a different line of enquiry'[1].

Although none of this information will be made available to the complainant, there is nothing to stop the complainant or his or her solicitors asking the PCA to ensure that particular lines of enquiry are pursued or that statements are taken from particular persons.

At the conclusion of a supervised investigation of a case the Authority must provide a statement on whether it considers the investigation to have been concluded satisfactorily. There are no known cases of the Authority stating that the investigation was not conducted satisfactorily and complainants are likely to get a bland letter informing them that their complaint has been thoroughly investigated to the satisfaction of the PCA.

Disciplinary Action

After the investigation is concluded a copy of the report can be sent to the Director of Public Prosecutions for consideration on whether to bring criminal charges. In the case of a complaint against a senior officer this must happen unless there is no question of a criminal offence being committed. In the case of a complaint against any other officer the Chief Constable/Commissioner can also decide whether the offence indicated 'is such that the officer ought to be charged with it'. If criminal charges are not brought the Chief Constable/Commissioner (or in the case of complaints against senior officers outside London, the police authority) considers whether disciplinary action should be taken.

If criminal charges are brought and the officer is acquitted he cannot face disciplinary charges concerning the same allegations. This is why no disciplinary action was taken against the police officers involved in the shooting of John Shorthouse and Cherry Groce, after their acquittal on criminal charges. The decision whether or not to take disciplinary action is recorded by the police in a memorandum to the PCA which, like its predecessor the Police Complaints Board, has power to overrule the police and direct that disciplinary charges be brought.

If such a direction is given (and also for other charges at the discretion of the Authority) the disciplinary charge will be determined by a tribunal consisting of a Chief Constable or person nominated by the Commissioner plus two members of the PCA supervising the investigation. In most cases disciplinary hearings are conducted by a single senior officer.

The record of the PCA in recommending additional disciplinary charges is not dissimilar to that of the Police Complaints Board. In 1982 there were 263 disciplinary charges initiated by the police and the Police Complaints Board recommended 46 further disciplinary charges of which the police accepted 30. In 1986 there were 161 disciplinary charges initiated by the police; the PCA recommended that a further 56 charges be brought and 40 were accepted by the police. In the remaining 16 cases the PCA used its new power under PACE to direct that charges be brought.

Defence Statements Witheld

For lawyers advising people with civil actions against the police, the police complaints system is usually viewed as offering little or no benefit to the plaintiff. It is important that a police complaint is recorded at the time the incident happened but once the complaint has been officially registered, many lawyers will prefer to try and stop the police investigating it. Such an investigation will certainly prejudice any pending criminal proceedings and under no circumstances should the police be allowed to take statements from defence witnesses while these are active. Even after criminal proceedings are over, it is not a comfortable situation to have the police taking statements from prospective defence witnesses in a civil trial. Experience shows that such statements are invariably supplied to the police defendants' solicitors in the civil action.

However the complainant's solicitor cannot get access to these statements. In *Neilson v Laugharne*[2] Lord Denning MR ruled that public interest immunity attached to them. Despite this solicitors for the police still attempted to cross-examine plaintiffs and their witnesses on the basis of statements collected in the course of investigating the police complaint.

In *Hehir v MPC*[3] this manifestly unfair practice was checked by a ruling that public interest immunity could not be waived without the consent of the maker of the statement. Nevertheless the obvious injustice remains that police defendants have the benefit of statements taken for the purposes of the police complaint and yet the complainant has no access to them.

Bitter Experience

When senior police officers criticise lawyers for advising their clients not to cooperate with the police complaints system they should realise that such advice tends to be based on bitter experience of the way in which the system is manipulated to the advantage of police defendants in a civil action. This is done without any apparent feeling of obligation to the complainant/plaintiff or to the public interest that the truth emerges.

Despite all this there may be situations where lawyers can make some use of the PCA for the benefit of their client. Firstly, lawyers should ask the Authority to intervene in the investigation of all serious complaints, whether or not involving injury. The Authority can be written to directly and asked to consider supervising the investigation.

If there are civil proceedings contemplated it may well be that the letter will also request that no investigation be undertaken until their conclusion but it will at least bring the matter to the immediate attention of the Authority. Where there are no civil proceedings it is worth involving the Authority in cases such as police failure to investigate racial attacks or in incidents involving police racism. Three years after a new disciplinary offence of racist behaviour was introduced no police officer has been charged with it.

'A Load of Middle Class Wallies'

The overall picture, however, is that the PCA has little or no credibility with anyone (a police delegate at the Police Federation Conference in January 1988 described it as 'a load of middle class wallies'.) The whole process of investigating and determining the outcome of police complaints is shrouded in secrecy, the complainant is not told what has been discovered in the course of the investigation or why decisions have been made.

The Authority has been timid at opening itself up to the public or exploring the reasons for failing public confidence in the system. It presided over the decision not to bring disciplinary charges against any officer involved in complaints concerning incidents in the miners' strike. Instead of expressing unease, its 1986 report suggested that most miners recognised that the police were just doing their job – an opinion with which some would disagree.

No thanks to the PCA, the biggest breakthrough in any police complaints investigation concerned the youths attacked by officers in a transit van in Holloway. But this occurred not because of the PCA at all, but because of pressure from the public and the media after details of the investigation and the police conspiracy of silence became known.

All experience suggests that opening up the investigation process to the scrutiny of the complainant and his/her solicitors is the only way to bring about any reversal in the decline in confidence in the police complaints system.

References

1. *Police Complaints Authority Report 1986*
2. [1981] 1 Q.B. 748
3. [1982] 1 W.L.R. 765

John Sturrock

Tony Ward and Dave Leadbetter

'O Death, Where is Thy Sting?

The answer to St Paul's (and Brendan Behan's) question is, all too often: in the coroner's court. Inquests often have the atmosphere of a posthumous trial by innuendo. A habit which many lawyers find hard to break is to refer to the deceased's family as 'the defence'. Even when criminal conduct by the police is alleged, it often seems to be the deceased who is on trial.

'A Very Low Priority'

Despite their drawbacks inquests can also be a source of consolation. It can be a real comfort to discover the truth about how a loved one died. But there are many obstacles along the way, the most obvious being the lack of legal aid. The government admits that inquests are, in the current Lord Chancellor's words, 'a very low priority'. The rationale seems to be that an inquest cannot award damages or pass a prison sentence and the mere pursuit of truth is a waste of taxpayers' money. This attitude contrasts sharply with the position of publicly funded bodies such as the police and the prison department, where presentation of the 'truth' in a particular light turns out to be ample justification for legal representation at public expense.

Tim Kerr

How, When and Where

The government's tendency to belittle the importance of inquests belies the notion that an inquest is a sufficient substitute for a public inquiry. As Woolf J remarked in the case of Colin Roach, mysteriously shot in a police station foyer, an inquest is indeed a public inquiry in the sense that it is an inquiry and that it is held in public, but not of the kind the Home Secretary was being asked in that case to set up. It is a restricted inquiry concerned with establishing 'how, when and where' a person died. How restricted depends on the coroner's interpretation of the word 'how'.

The coroner's discretionary powers also extend to the calling of witnesses. The coroner decides whom to call, on the basis of statements taken by the coroner's officer (almost always a seconded police officer) or by the police, which the lawyers appearing at the inquest are not permitted to see. Not only is there no right to insist that potentially important witnesses be called; there is also very little advance information about the witnesses who are called, making cross-examination difficult.

Procedural Absurdities

A crucial difference between inquest and public inquiry procedures is that it is not permissible to address the coroner or inquest jury on the facts. Juries are only called in about 4% of all inquests, but these include most contentious cases such as deaths in custody. The only interpretation of the evidence which the jury hears is the coroner's. Some coroners can sum up complex and controversial evidence clearly and fairly; others cannot. Often the coroner's mind appears made up before the inquest starts, based on the statements, and the case is conducted so as to railroad the jury into returning the 'right' verdict as quickly as possible. The inquest on Blair Peach, killed in Southall in 1979, best illustrates these defects. But the recent conclusion of the Peach family's civil action against the police also shows how important inquests can be. The case had dragged on for nine years. Then after a crucial victory in the Court of Appeal onthe question of disclosure it began to look as if the truth might come out in court. The police avoided potential further embarrassment by making an offer the family effectively could not refuse. The inquest was the only legal tribunal before which the police could be publicly called to account – however inadequately – for clubbing an innocent man to death.

An Institution in Decline?

Blair Peach's case also inspired E.P. Thompson's spirited defence of the inquest system, and more specifically the coroner's jury, as one of the 'institutions of this country' which the police, and the law-and-order brigade were seeking to subvert. Thompson contrasted the Peach inquest coroner's attitude with that of his great 19th century predecessor Thomas Wakley, whose inquests produced several sensational exposés of institutional cruelty. While Thompson was right to highlight the democratic significance of the coroner's jury, the problems that have beset the inquest system since its early 19th century heyday run deeper than some authoritarian conspiracy against the rights of the British people.

> **The jury often looks like a rubber stamp for conclusions which have already been reached**

Wakley was partly responsible for sowing the seeds of decline by his encouragement of forensic medicine and the preliminary enquiries he instituted in advance of the inquest. Subsequent developments in policing and scientific methods have robbed the inquest of its central role in the investigation of deaths. Most inquests now serve merely to present in a public forum evidence already assembled by the coroner, his/her officers, the pathologist and the police. The jury often looks like a rubber stamp for conclusions which have already been reached.

Should we now follow most US jurisdictions and discard the inquest as an inconvenient historical relic and leave it to the experts to write a report instead? The trouble is that experts and professional investigators are fallible. As a method of investigating deaths, the inquest is archaic; as a forum where the investigation of deaths can be challenged and scrutinised, it is potentially invaluable. But this potential will not be realised unless the right of interested parties to challenge the official version of events is recognised as legitimate.

June Tweedie

Unanswered Questions: The Gibraltar Inquest

On 6 March 1988 three Provisional IRA members crossed from Spain into Gibraltar. Within hours they had been shot dead by the SAS. The IRA accepted that they had been on 'active service' in Europe, and 140lbs of Semtex were later found in Malaga. But on 6 March they were unarmed. Their car contained no explosives.

In September Gibraltar's Supreme Court was taken over by one of the longest and most dramatic inquests of recent years. In this article I explore some of the legal issues that arose from the hearing.

The Gibraltar Courtroom Entrance

The Jury

Ordinarily, a jury inquest inspires greater public confidence than one conducted by a coroner alone. However, at the outset of this inquest Mr. McGrory, for the deceaseds' families, submitted that the coroner should sit without a jury. He argued that there would be prejudice amongst potential jurors; witnesses adverse to the government's case and lawyers for the next-of-kin had been maligned in the media. The coroner agreed with the Crown representative that a jury was legally mandatory because the deaths constituted '... circumstances the .... possible recurrence of which is prejudicial to the health or safety of the public ....'[1].

There was also concern over the coroner's refusal to question potential jurors about their government or Crown connections. John Laws, for the government, correctly argued that there is no right to challenge an inquest juror in the absence of direct contact with one of the parties, or evidence of bias. However, the Crown was an interested party to the proceedings, and there was arguably an analogy with an inquest on a prisoner dying in prison. The Gibraltar Coroner Ordnance would prohibit anyone working at, or even trading with, the prison from serving as a juror[2].

There was no hard evidence that any of the individual jurors was in fact biased; indeed their questioning of witnesses indicated a degree of objectivity. However, in a case with such major political implications, the watching world may doubt a jury that contained two high grade civil servants.

The Police Investigation

Crucial to the inquiry was evidence collected after the shootings. Police Commissioner Joseph Canepa said he had not thought about a possible unlawful killing, and the police investigation appeared to reflect that view. As the coroner remarked, scenes of crime procedures seemed to have been forgotten. No official photographs were taken; bodies and cartridge cases were removed without recording their positions.

The subsequent collating of witness statements was carried out at an unhurried pace. Lucinda Bullock was not approached for two months to make a statement; the police said there was no immediate need to do so because she 'only' corroborated her husband's account. Another witness was told that the police were 'too busy' tot take an immediate statement; one was eventually taken ten days later.

Curious Omissions

As there is no advance disclosure of witness statements at an inquest, evidence may never come to light unless the coroner asks specific questions. And since the proceedings are inquisitorial rather than adversarial, the coroner should elicit important points from a witness' statement. They may be retracted or contradicted, but the jury should have the opportunity to assess the truthfulness of the evidence as a whole, in the full knowledge of any inconsistencies.

These proceedings were, on the whole, fairly conducted. However, Mr. Pizzarello at times played an insufficiently inquisitorial role, leaving it to an enterprising juror to clear up confusing testimony. He also omitted to ask witnesses some key questions.

A case in point was that of Inspector Revagliatte. He said that prior to the shootings he was on general mobile patrol, caught in traffic nearby. His car was called urgently back to base. He turned on its siren, and, apparently oblivious to the operation, drove past two of the suspects being followed by SAS soldiers and their surveillance and police teams. According to some witnesses the siren precipitated the shootings. Revagliatte's evidence was vital. He stated that the siren was unpremeditated and was not a signal to start shooting; nor an excuse to do so when the suspects turned to see where it came from.

But the Inspector's role in the Operation was never revealed. He was officer in charge of the police firearms teams which had been on the streets for a number of hours and were fully aware of the potential arrests. Meanwhile, apparently, their superior officer was completely unaware of the impending events. Had the coroner pointed out this curious omission, the evidence of the 'accidental' siren might have been effectively challenged.

The Summing Up

The fundamental flaw in the coroner's summing up was his legal analysis of the verdicts available. Unlawful killing requires proof beyond reasonable doubt, and lawful killing proof on the balance of probabilities. If the jury decides the killings were unlawful on the balance of probabilities, but not beyond reasonable doubt, then neither standard is reached and the proper verdict is an open one. The coroner mistakenly directed the jury that, if they were not satisfied beyond reasonable doubt that the killings were unlawful, they should bring in a verdict of lawful killing.

Although the coroner did say that an open verdict would be the only alternative if the situation could not be resolved either way, he did not explain how this proposition fitted in with his earlier direction, which it appears to contradict.

The Open Verdict

Two successive English Lord Chief Justices, Widgery and Lane, have stressed that an open verdict does not suggest that the jury is not performing its proper function, and that there are 'many, many cases where there is real doubt as to the cause of death and where an open verdict is right, and where anything else is unjust to the families of the deceased.'[3] Despite this clear guidance, Mr. Pizzarello told the jury 'I must urge you, in the exercise of your duty, to avoid this ... verdict'.

The combination of these misdirections left the jury with little choice. Unless they were satisfied to the very high standard necessary for an unlawful killing verdict, they had only one alternative – lawful killing. Two hours before bringing in their majority verdict they were at deadlock, indicating that at least three jurors thought all three killings were unlawful beyond reasonable doubt. We will never know how many would have opted for an open verdict if it had been properly left to them.

Riders and Recommendations

Despite a clear imperative in the Gibraltar Coroner's Rules[4], the coroner failed to give any guidance to the jury on their power to add 'riders' to a verdict, to avoid similar fatalities in future. When the Rules were pointed out, Mr. Pizzarello's response was; '... if you keep to the short verdicts ... you cannot go wrong.' The coroner effectively took away the limited right of the jury to comment on some of the issues raised.

Pressure of Time

Inexplicably the coroner appeared to pressurise the jury to bring in a verdict. He sent them out at 11.30 am after reading out his summing-up at breakneck speed. Unusually, they were then given a 45-page transcript. After reading and interpreting the coroner's directions, they had to apply the law to the mass of evidence heard over three and a half weeks. At 5.20pm the coroner told the jury that it was 'reaching the edge' of a reasonable time in which to consider its verdict. The coroner then gave them a majority direction, and what sounded like an ultimatum to return a verdict by 7pm. At 7.15pm the verdicts were announced, by a majority of 9–2. Whether or not an ultimatum was intended, the remarks may well have pressurised the jury.

A Challenge to the Verdict

It is therefore arguable that there were serious misdirections to the jury providing solid legal grounds for quashing the verdicts. Whether the families take such a step is another issue, given the financial implications of a new inquest and concerns about the impartiality and adequacy of the proceedings overall.

Misleading

What, then, do the verdicts establish? A majority of the jury was clearly not satisfied, on the evidence before them and in the time available, that the three killings were unlawful beyond reasonable doubt. Whether the authorities have proved that they were lawful, even on a balance of probabilities, is a more difficult question. The combined effects of pressure of time and the coroner's misdirection may well have produced a distorted picture. The lack of recommendations from jury or coroner is a further disappointment in an already limited inquiry.

Whatever the outcome of any challenge to the verdicts, this inquest could not, by its very nature, deal with questions of fundamental importance. Only a public inquiry with wide terms of reference could begin to address the wider issues. To contend that the questions posed by the killings have been answered and the government vindicated, is at the very least misleading.

June Tweedie attended the proceedings as an observer on behalf of ***Inquest****. For Inquest's full report on the Gibraltar proceedings, phone 01-802-7430.*

Richenda Power

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1. Coroner Ordnance, s6(2)(c)
2. Ibid, s4(2)
3. *R. v. City of London Coroner, ex p. Barber* [1975] 1 W.L.R. 1310; *R. v. City of London Coroner, ex p. Calvi*, The Times, 2.4.83
4. Rule 32, referring to rules 27 & 34

Mary Stacey

Ethical Disinvestment

Recent years have seen ethical or non-financial considerations playing an increasing role in investment decisions. This has resulted in the establishment of 'ethical investment funds' and advisory organisations such as the Ethical Investment Research and Information Service.

A whole range of ethical considerations may influence investors; but the one most likely to arise is financial involvement in apartheid South Africa. For most fund trustees, avoiding investments in South African-related companies involves actively disposing of existing holdings as well as an 'exclusion policy'.

Judicial Block

The 1984 case of *Cowan v. Scargill* (1) seemed to sound the death knell for disinvestment action by trustees. The NUM trustees of the Coal Board's pension fund sought, in line with their union policy, to (a) prohibit any increase in overseas investment (b) provide for the withdrawal of existing overseas investment and (c) prohibit investment in energy industries in direct competition with coal.

The NCB trustees would not accept these restrictions and applied to the court for directions on their powers and duties concerning investment. The court found the NUM trustees to be acting in breach of trust by seeking to limit the scope of investments.

Best Possible Return

Sir Robert Megarry emphasised the duty of trustees to get the best possible return on investments for the beneficiaries and stated that 'in considering what investments to make trustees must put on one side their personal interests and views.' But the judge also conceded that where trustees failed to make a particular investment for social or political reasons and the alternative investment was equally beneficial to the beneficiaries, 'then criticism would be difficult to maintain in practice, whatever the position in theory.' Only in cases where the alternative is less beneficial that would trustees be 'open to criticism.'

The court reiterated the duties of trustees to act with prudence and care and to have regard to the need for diversification. For medium-sized funds even a wide-ranging exclusion policy still leaves a sufficient choice of investments to ensure that a reasonable rate of return can be maintained while minimising risk.

In the case of the NCB pension fund, however, the range of investments the NUM was proposing to prohibit was exceptionally wide and would have excluded a large proportion of shares traded on the Stock Exchange. The fund was worth approximately £6 billion with over £200 million available for investment annually. Megarry emphasised its size as compared with the proposed stringent investment limitations and stressed the duty of the trustees to take advantage of the full range of investments authorised by the terms of the trust.

Exploiting the Risk Factor

Emphasis on the duty to minimise risk and to employ prudence can help avoid problems. It is lawful for trustees to exclude speculative companies on grounds of risk. Given the deteriorating political and economic situation in South Africa, the risk argument can be powerfully deployed.

How this could be done is illustrated by the subsequent unreported Scottish case of *Martin v. Edinburgh District Council*. It concerned the council's policy of withdrawing investments from South African-related companies as an indication of its 'abhorrence of apartheid'. A Tory councillor challenged the council's action. The court found that although the trustees had taken professional advice on how to effect their disinvestment policy, they had not expressly considered whether the policy was in the best interests of beneficiaries, nor had they obtained professional advice on this point. It seems to follow that if the council had armed itself with an accountant's report justifying the policy on financial grounds before resolving to implement it, the legal challenge would have failed. The case shows how a disinvestment strategy could be implemented without a breach of trust.

> **The best way forward is to concentrate on companies with strtegic involvement in key sectors of the apartheid economy.**

The Council of the Law Society recently decided by a majority vote to disinvest from Northern Engineering Industries plc and Courtaulds as part of a policy of disinvesting from any company deriving more than 5% of its profits from South Africa. This decision followed pressure from members and from Lawyers Against Apartheid which moved an amendment to the adoption of the annual accounts at the 1988 Law Society AGM requiring the Council to review the Society's investment portfolio with a view to disinvestment. The decision demonstrates that disinvestment is both financially and legally feasible.

Boycotting Apartheid

In the context of South Africa, disinvestment strategies take several forms. Many funds including trade union and municipal funds now specifically ban investment in South African companies. This is the best way to ensure that the problems thrown up by the Megarry judgment do not arise. An express ban, in the terms of the trust deed itself, will of course only be available if the monies are provided by someone sympathetic to the liberation struggle.

The best way forward is to concentrate on companies with strategic involvement in key sectors of the apartheid economy. Disposals of shareholdings in companies and the refusal to reinvest are not just expressions of moral revulsion against apartheid. They also help to persuade firms to sever their investment links with South Africa. Companies which do the most to aid the regime – especially oil companies, mining houses and computer companies – should have the maximum pressure put on them to withdraw. The same goes for companies with particularly repressive employment records.

South Africa's political instability is exacerbated by its crumbling economy. Low or negative growth, aggravated by rising inflation and the impact of tightening sanctions, has led to high unemployment. Companies exposed to these conditions find their share prices adversely affected by investor perceptions of financial risk. These are the perceptions which can be exploited by ethically minded fund managers looking to steer clear of the Botha regime.

Reference

1. [1984] 2 All ER 750

Helena Kennedy

The Chilean Election: A Testimony of Strength and Optimism

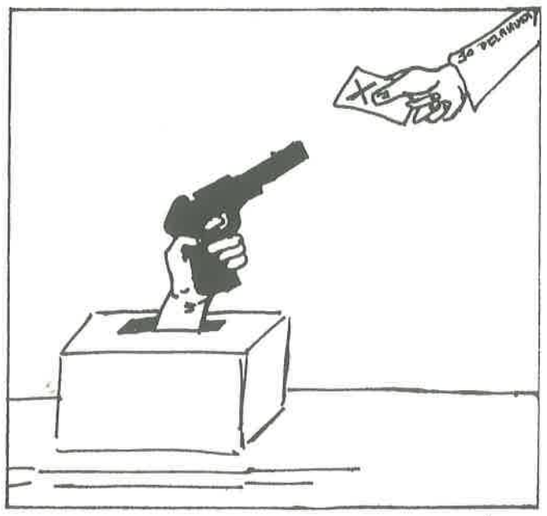
The Chilean plebiscite of 5 October 1988 was seen by much of the world as a contest between dictatorship and democracy. In the weeks after General Augusto Pinochet was officially designated the government's 'candidato unico' for the presidential plebiscite hundreds of parliamentarians, journalists and representatives of organisations around the world travelled to Chile to witness what was regarded as a measure of the legitimacy of his military government.

Anticipating this interest and forseeing the need to put the plebiscite into context the London-based Catholic Institute for International Relations (CIIR) and the Washington Office on Latin America (WOLA) sponsored a joint mission to Chile from September 3-10 1988. I had the good fortune to be invited to join the delegation along with George Foulkes MP, the Labour party spokesman on Latin American affairs.

Conditions for Democracy

Our brief was to look at the conditions for democracy in the run up to the election. Our first premise was that a plebiscite could not be compared with open and competitive elections. However after a long debate about whether or not the process should be boycotted, a broad opposition coalition had emerged in Chile in the *Command for the No*. It accepted that in contesting this plebiscite on unequal terms there were obvious inherent risks but nevertheless decided to embrace the challenge. It seemed to us that it was imperative for outsiders to find out what was really going on. So often international observers hop on planes and arrive to watch ballot papers being stuffed into locked boxes and feel content to provide corroboration for an electoral charade.

We spent some of our time meeting with officialdom: the Head of the Electoral Process, the leaders of different political organisations, staff of embassies, as well as lawyers and human rights workers. We also got out of Santiago and travelled into the country to visit *poblaciones* where working class people were able to provide at times an even clearer picture of the current situation.



Free Fair and Secret?

It soon became obvious that there was little opportunity for massive fraud at the polls. People had registered to vote in unprecedented numbers, but the possibilities for abuse by double registration could only be effected on a small scale and was not a major concern of the opposition. The real problem lay not in securing a clean election but a fair one.

Many of the electorate could not believe that the ballot would be secret. All sorts of quite fanciful rumours were repeated to us time and time again by poor people particularly in the country areas: the ballot paper would be photosensitive and take fingerprints, a secret camera would be hidden in the voting booth, an invisible number could be made visible afterwards by using ultra violet rays or some scanning device.

> **'.... we were given a shocking picture of the fear instilled in much of the local population. They were being told they would lose jobs and homes if they voted against the established order'**

The fear of the consequences of such disclosure can only be understood in the context of 15 years of terror and repression. The irony of this situation was that it became the job of the opposition to convince the electorate of the secrecy and soundness of the election process.

Risky Business

What they had greater difficulty in doing was countering the pressure and inducements which the other side could bring to bear, particularly outside of Santiago. George Gelber of CIIR and I went up to Copiapo, a desert mining town in the North, where we were given a shocking picture of the fear instilled in much of the local population. They were being told they would lose jobs and homes if they voted against the established order. People in public service were most vulnerable. School teachers particularly had been subjected to pressure and had been sent forms to complete indicating their loyalty to the regime.

Other workers from outlying areas explained that they lived in company towns where the mine owners had spelt out their voting requirements and made it clear that voting the wrong way, if it became known, would mean the loss of home and livelihood. While this did not deter everyone it clearly affected any open organising, discussion, canvassing or public meeting. No one could afford to be identified as opposition. Ricardo Legos, the Socialist Leader, described the problems of holding public meetings when he toured the

Tim Kerr

North because no schools or public halls were available as meeting places.

Carrots and Sticks

So much of the pre-election trappings that we take for granted were rendered impossible because of fear. It was therefore extraordinary that so many people were prepared to go out and leaflet the communities and knock on doors and it was often from this source that the most heartening reports of smiles and nods and secret determination came filtering back.

Pinochet's other strategy was to offer inducements in the form of housing benefits or the gift of a bicycle or foodstuffs. However the poor often seemed amused at the crudeness of this attempt at bribery.

Television had a powerful effect in the run-up to the election. Having been starved of any real sighting of an opposition on television the people where overwhelmed by the election broadcasts which were allowed in the month preceding the plebiscite. Town squares which normally teem with people ambling and smoking in the evening would be totally evacuated during these television spots.

The regime relied heavily on a campaign of fear. Pinochet was pictured as the answer to anarchy and citizens were seen on screen wheeling empty baskets in bare-shelved supermarkets or shuddering defencelessly while masked hoodlums broke their windows and beat their children.

By contrast the opposition broadcasts were sheer joy. They were not only optimistic and celebratory but were technically masterful. So many actors, directors, artists and creative people in television have been exiled or forced out of their jobs under the regime that this opportunity to put their talents to the services of the opposition was a wonderful challenge.

Shadow of Armed Forces

Some people were disappointed that not enough was made of the outrages against human rights, which have been Pinochet's hallmark. The organisers of the opposition campaign insisted that it was imperative not to alienate the armed forces at this time as they would be an important factor in any transition from junta to democracy. Yet amongst the families of those who have disappeared, been tortured or killed there was a creeping concern that as in Argentina the crimes of the regime could be forgotten in the deals which might be struck to oust Pinochet.

The experience of being in Chile at that particular time was a potent reminder that optimism and the human spirit can remain strong despite the most horrific odds. It was a lesson in hope and made me feel shame at the despondency we sometimes indulge in here.

El Pueblo Vencerá

I left Chile with a strange secret: knowledge that the people were going to win. My sense of that had become stronger the more I talked into the early hours with all our contacts. The results could never reflect the reality of how people feel about Pinochet; the fear factor had to diminish the size of any victory, but victory there would be. What was less certain was whether Pinochet would concede defeat. People speculated about all sorts of scenarios involving a denial of the people's wishes. Many of the projections involved the provocation of such civil unrest that the regime would insist on the need to remain in control.

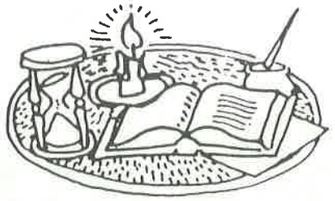
When BBC radio 4 announced the results of the plebiscite I laughed and wept simultaneously. I wanted to be there dancing and hugging all the brave, good people I had met and I envied George Foulkes his return visit. As the days and weeks have passed I have become angry that such a powerful vote of no confidence has had such little immediate effect. Repression continues, the death squads are still taking their victims. The hardship and poverty for the majority of the population is increasing. Laws have been entrenched which ban any political organisation advocating class struggle or which undermines the state or the family.

Constitutional Fraud

There are also statutes which greatly inhibit public demonstration and freedom of the press and which make it an offence to criticise the head of the armed forces who just happens to be El Presidente. The Constitution which Pinochet introduced is a travesty of justice which may possibly prevent any transition to democracy since it vests so much power in the security forces.

The plebiscite demonstrated the will of the Chilean people but the road ahead is no clearer. Now more than ever international pressure has to be applied to Pinochet himself and to our own government which lends credence to his regime. Anyone who has the opportunity to visit Chile should seize the chance, if only to have one's own political faith restored.

REVIEWS



THE BLINDFOLD REMOVED ? A REVIEW OF 'BLIND JUSTICE'

BBC 2
October – November 1988

Now that the dust of the 'Blind Justice' series has settled and we are back with Rumpole on our screens as the general viewing public's main window into the workings of the legal profession, the time is perhaps ripe for a more critical look at the series that was generally hailed by the intelligent media as excellently crafted and a 'warts and all' portrayal of the self-proclaimed radical bar.

At the very end of the last episode Katherine Hughes, ably played by Jane Lapotaire, explains not only the rationale of the series but arguably that of the radical bar itself; justice is blind because the very people whom it is supposed to serve have forgotten the meaning of liberty. What preceded that statement was an attempt to show what the radical bar is trying to do about this state of affairs.

The important topics which each episode dealt with, from police corruption and judicial 'fixing' to racism, sexism and the secret state were all arenas into which various radical lawyers, noticeably all white, were litmus tested for ideological purity. Although all the right questions were asked, the answers which came back were confusing.

Take for instance James Bingham, the 'radical toff'; a well intentioned liberal playing at being subversive but whose class origins prevent him from ever being a fully paid up member of the radical bar. In one episode he was exposed for saying he would defend anyone, even a racist, by virtue of the cab-rank principle and because everyone has the right to be defended – the standard argument that 'even a rat deserves a fair trial'.

Fair enough, you may say, but where was the argument advanced against this, beyond straightforward condemnation of the hapless Bingham? His violent client's extreme views may have enabled a judgment to be made in the particular case, but surely an issue as important as this should not be judged on how vocal one racist is, or the degree of racism present in a particular person.

In Frank Cartwright we saw a barrister of deep political conviction and yet a sexist in the home, leaving his wife to cope with the domestic set-up while he was defending the rights of everybody else; a man who created an egalitarian set of chambers, and allowed his pupil to take part in meetings, but who baulked at being attacked by the same pupil for 'ideological impurities' once the meeting began.

The only central character to emerge relatively unscathed was Katherine Hughes herself, but largely without any explanation of what principles the radical bar has in its intellectual armoury to try and offset the imbalance between the power of the state and the individual. We were told for instance that she would not defend consent rapes, but not told in any depth why. The viewer then watched as Hughes, forced to take a case she did not want to, went on to defend the alleged rapist with the kind of cross-examination of the complainant that was not only politically unsound but ought to be inadmissible as well.

The overriding impression was that the radical bar is just as replete with its obscure and impenetrable individualists and is just as much of an ivory tower as the rest of the judicial system – perhaps even more so. Indeed the series brought into question whether such a phenomenon as the radical bar exists at all as a definable entity, or whether it is no more than a loosely knit group of individuals who do not really stand for anything coherent beyond their anti-establishment stance.

There were far too many negative images, stereotypes which somehow slipped in although superfluous to the themes of the episode in which they occurred: clerks concerned only with money, solicitors and outdoor clerks depicted as shabby and ineffectual. One scene showing a black clerk at Fetter Court smoking marijuana may have had large sections of the viewing public saying 'well he would wouldn't he?'

The difficulty inherent in the series seemed to be the old problem of the relationship between objectivity and partisanship. Using the 'warts and all' technique undoubtedly gives us enlightenment on vitally important issues such as the nature of the secret state, but it also makes us painfully aware of the lack of guiding principles to govern the operation of the radical bar. The gentle viewer is given no vision of hope, of how things ought to be. The end result is a series of essays in human frailty and double standards but little more.

As we return to the more approachable anti-establishment figure of Rumpole, guiding principles can take a back seat again, since his is clearly intended to be no more than a lone voice crying in the wilderness against the more absurd orthodoxies of the legal establishment.

The task of 'Blind Justice' was more difficult and the makers should not be judged harshly for not succeeding entirely. Despite the criticisms I have levelled against the series, it provided a refreshing insight into the mechanics of the legal profession and did engage some controversial contemporary issues affecting the rights of us all – such as the treatment of Irish suspects which I personally found compelling, informative and enjoyable viewing.

Mike Bailey

The 'Blind Justice' series has been nominated for a British Academy of Film and Television Arts award.

THE CRIMINAL PROSECUTION AND CAPITAL PUNISHMENT OF ANIMALS

E.P. Evans
Faber and Faber, £4.95

In 1750 at Vanvres Jacques Ferron was tried, convicted and sentenced to death for buggering a mare. Happily, the mare was acquitted of complicity in this indecency. The inhabitants of Vanvres had rallied round and given evidence on her behalf. At the trial they stated they had known the mare for four years and she had at all times shown herself to be a virtuous and well behaved beast. Upon hearing such persuasive testimony the court decided that she had been an unwilling party to the offending act and declared her not guilty. Few other animal defendants have been as fortunate.

E.P. Evans' book provides documentary proof of the cliché that truth is often stranger than fiction. It records a long, and generally unknown, history of animal prosecutions. In each instance the helpless creature has been charged, tried and (usually) convicted strictly in accordance with the criminal or ecclesiastical laws of its time. This method of policing the behaviour of the animal kingdom has led to barbaric and senseless cruelty (in some cases convicted animals were burnt alive) and often, it must be said, to comic absurdity.

Readers will probably have no difficulty guessing who has benefitted most from these prosecutions. Defence lawyers have been assigned in nearly all cases. Generally the fauna have been fortunate in their advocates. Most spectacularly, Batholmew Chassenée – a distinguished French jurist of the 16th century – is said to have made his reputation at the Bar as counsel for a group of recidivist rats, on trial before the ecclesiastical court of Autun for their wanton destruction of the local barley crop. Evans relates that due to 'the bad repute and notorious guilt of his clients' Chassenée was forced to employ a barrage of legal chicanery. After many days of legal argument the rodents were acquitted on a technicality.

Chassenée went on to write an incredibly pompous textbook on the subject of animal law. He included details of the correct procedures and helpful precedents. Doubtless, therefore, he would have been interested in the article published in the Journal of American Folk-Lore (January-March 1892 edition) in which the author respectfully suggested that a standard letter before action to a group of rats should be addressed to 'Messrs Rats and Co'.

Indeed, the proper means of notifying defendant animals of their impending trials has presented the judges with one of their greatest dilemmas. Defects in this process have provided the animal world with its most successful line of defence. In Spain in 1859 the ecclesiastical court was taking no chances. When complaint was made against a local group of voracious caterpillars the court ordered that copies of the summons be posted on five forest trees. History does not record whether the keener-eyed among the accused caterpillars made it to the trial.

When needed, the creative judicial mind was often close at hand to circumvent apparent procedural defects. In the 14th century the electorate of Mayena brought a complaint against some troublesome Spanish flies. The wily trial judge ruled that the trial could proceed in the flies' absence as none of them could have yet reached their age of majority.

Many ingenious defence arguments have been employed over the centuries. A lawyer appointed to defend some greedy termites in the province of Piedade no Maranhõ in Brazil praised the industry of his clients declaring them to be far superior in this respect to their prosecutors, the Franciscan friars of the cloister of St. Anthony. I particularly liked this line of argument. Regrettably, the trial judge did not.

Those of our readers anxious to expand their practices may also be interested to know that the boundaries of the criminal law need not stop at animals. Evans tells of the legal system in Ancient Greece under which, for example, a naughty statue which irresponsibly toppled over, killing a man, was sentenced to banishment beyond the Athenian boundaries. Criminality among inanimate objects appears to be rife. In 1591 the great bell of Uglich rang the signal of insurrection that led to the assassination of the Russian prince Dimitri. For this serious political offence the radical chimer was sentenced to perpetual banishment in Siberia. Cheeringly, though, in 1892 after many harsh years in solitary confinement, the bell was granted a pardon and was restored to its original place.

Evans' book was first published in 1906. The author treats his subject matter seriously. He uses this lamentable history to powerfully illustrate the dangers both of taking arid legal theory to its 'logical' conclusion and of allowing fear and superstition to provide the predominant impetus for prosecution. Recently re-published, this book highlights the often tenuous link between the law and reality.

Heather Williams

THE JURY UNDER ATTACK

Mark Findlay & Peter Duff (eds.)
Butterworths

The most recent attacks on the principle of trial by jury for serious offences have either been direct – Diplock Courts, proposed 'trial by accountant' in fraud cases and an increase in the number of summary only offences; or indirect – jury vetting, restrictions on challenge and increased types of verdicts. It is significant that these attacks are put forward in the guise of reform.

Zenon Bankowski's 'The Jury and Reality' should be carried at all times by criminal defence lawyers forever confronted with questions about representing 'guilty' defendants. Although the piece presumes a prior knowledge of the debate, the struggle through the slightly academic style is rewarded by a number of nice dilemmas if not answers.

Jury secrecy is explored by The Honourable Mr. Justice McHugh, who suggests that knowledge of jury deliberations would only undermine public confidence in the system. The constraint which this lack of knowledge imposes on any valid debate is considered by Richard Harding and Michael Levi in relation to complex trials. They suggest that there is insufficient evidence to support the argument that juries are incapable of dealing with complex cases.

The comparatively narrow ambit of the collection leads to a measure of overlap in the essays. This aside, they are a useful and rare contribution to the debate on the future of the jury. The essays define the breadth and extent of the attack and identify the real issues. The hidden agenda behind these 'reforms' appear to be a simple anxiety that too many defendants are being acquitted.

James Bowen

CRIME BOOKS REVIEWED BY BLACK MASK

It's the same old problem: no time to read. Fiction has become a luxury for me, rather than the necessity it has been for nearly all my life. So why should I waste those precious free reading moments on low rent detective novels when I could be reading Proust? The truth is, I am not even a committed addict of detective fiction. I have friends who read everything, even the most pulpy, and trade them in bundles with their addict friends. As for westerns, sci fi and even most spy stories, they do nothing for me, however well written. Basically, I am a lover of real literature, a closet highbrow pretending to be cool in the way that French intellectuals used to go wild over Jerry Lewis movies. But from my snooty intellectual standpoint I believe that genre fiction offers 'real writers' a structure and discipline that is very appealing, as well as a forum to air their personal views and prejudices. So the best detective stories for me are ones which cross over into 'real literature'.

Julian Barnes is about as high brow as you can get; a well thought of Booker nominee who wrote a fictional life of Flaubert. Under the pseudonym of **Dan Kavanagh** he has written a number of books starring Duffy, a bisexual private eye. The Duffy books are the first ones I have found which are left wing (ish) and written by an English man. ***Putting the Boot In*** is hilarious. Duffy is an ex policeman who has been forced to resign from the Met after a scandal involving a young boy. He has been so traumatised by this experience that he has given up sex with men. Plus he is very worried about Aids. So he has a celibate relationship with a long suffering WPC. He is a goalkeeper in a Sunday football team, given to much existential musing as he lets other teams' balls into the net. In this book Duffy is hired by the manager of a local football team to investigate what turns out to be a complicated double cross involving property values, planning permissions and selling the team down the river. The National Front plays its villainous part. Here is Duffy's summary of the problem: 'So the Nazis recruit the thugs, and the thugs all watch the football together, and the thugs go to the Nazi rallies, and bring more thugs along to watch football. And the thugs drive away the fans. Why should anyone come along here and pay a couple of quid to stand in the rain and see his side lose and then get spat at by some fourteen year old skinhead as he's leaving the ground?' Anyway, Duffy infiltrates the Nazis and undergoes a silly and very English initiation rite involving toast and marmalade. The book is very funny all the way through. ***Going to the Dogs*** isn't so good. Duffy is no longer anxious about Aids nor as neurotic generally; this makes him and the book less interesting. The plot is a spoof on the traditional country house murder story, with the body of a dog in the library (the porn video library that is). The villains are the upper classes and Duffy has some amusing things to say about posh people. But really the story feels laboured, written perhaps with an eye out for a television series.

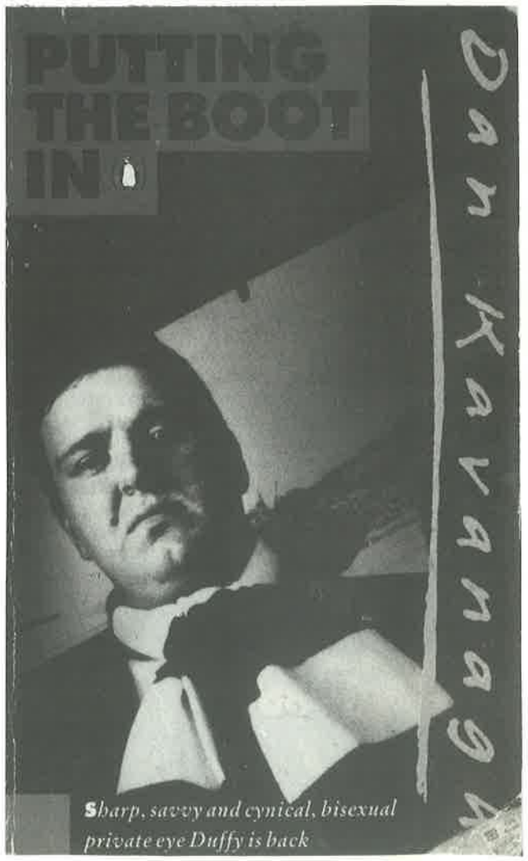
Bandits by **Elmore Leonard** is not a détective novel at all but what I suppose is called a thriller, a genre closely related to the private eye story. In some ways it is as simple as can be. A heist is planned and the reader is kept in ever increasing suspense, hoping the characters will pull it off. Elmore Leonard is a classic genre novelist, and has a number of westerns to his credit as well as thrillers.

Recently he has received a lot of attention from book review sections and Sunday magazines. In interviews he is inevitably asked why he doesn't write 'real novels' since he is so good. He prefers the discipline of the genre, a fact for which we should all be grateful. Bandits starts 'Every time they got a call from the leper hospital to pick up a body ...' and goes on, every sentence perfect, every bit of dialogue true to its character. Leonard has a particular feel for the way ordinary people talk, and has a unique sympathy for working class characters, which is neither patronising nor slumming. The hero is an ex-convict originally drawn to crime to release him from the boredom of tedious and dead end jobs. A glamorous ex nun involves him in a plan to hijack an evil colonel who is fundraising for the Contras, and divert the spoils to the Sandinistas. Running along with the main story is a clever subplot which brings its own suspense. Two of the characters, the ex nun and a bank robber released from prison after 25 years, are desperate to say goodbye to celibacy. So while we worry about the heist we are also wondering whether these two will get their rocks off before the last page. This book brings to mind that hackneyed phrase 'I couldn't put it down', actually uttered by my dear partner on holiday, to explain why he disappeared for a whole afternoon, neglecting friends, family and children. New Orleans is the location. Leonard often sets his novels in run down American cities; he actually lives in Detroit. Try any of his books but I think Bandits is the best.

So where does this leave me? Reading detective novels which are not minor entertainments but major works of world literature. I certainly hope I can find enough to review. But readers, should I branch out? What about non-fiction of interest to socialist lawyers?

Putting the Boot In, by Dan Kavanagh, Penguin, £2.50
Going to the Dogs, by Dan Kavanagh, Penguin, £2.99
Bandits, by Elmore Leonard, Penguin, £3.50

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



LETTERS

DANGEROUS EMISSIONS?

Dear *SL*

My Council was particularly interested in Tim Kerr's article entitled ***Why Wait Till Someone Gets Hurt? Safety Injunctions***. And specifically in the paragraph referring to public and private nuisance.

For some years the Trades Council and local tenants at a nearby council estate have been concerned at what they feel are excess emissions from a local factory producing vinyl wallpapers. Local residents, a hospital for the elderly and schools have been affected. Some residents have experienced bouts of nausea and sickness.

Analysts' reports have been undertaken by the local authority but only small extracts have been made public, on the ground that the company's commercial interests would be affected by more extensive publication.

Attempts to resolve the problem to the satisfaction of tenants have failed. Even the Factory Inspectorate appears to be on the defensive, and politicians, although Labour, take the view that jobs are at stake if too much aggravation develops. Both residents' representatives and the Trades Council were interested in the possibility of an injunction.

We assume legal action would have to be taken by a resident suffering? And that we would require scientific evidence which could be costly. Could the requirement of an interest in land be satisfied by a council tenant's lease? How much would legal action cost? We would certainly need a good and sympathetic lawyer.

The local authority insist there is no breach of the nuisance laws. But sickness and effects on vegetation continue – thin films of plastic-like skin cover gardens and produce. The company claims to have introduced precipitators to reduce pollution but residents claim there has been little if any improvement.

Could you offer further advice? All of our efforts have so far been ignored.

Dave Ayre,
Wear Valley District Trades Council

We're sorry but we can't give specific advice or recommend a lawyer because of the codes on professional conduct we have to work under.

ELECTORAL INJUSTICE

Dear *SL*

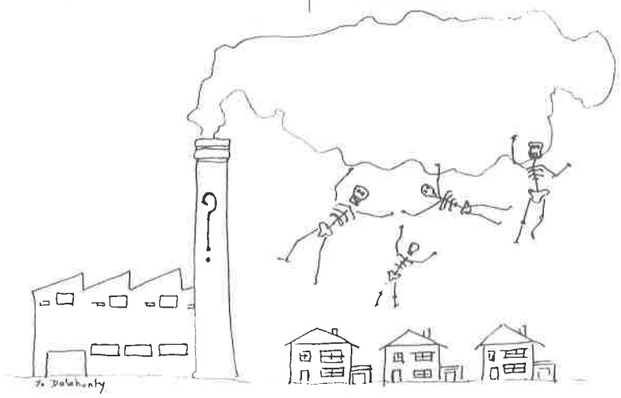
I was very pleased to read Gavin Millar's article ***The Quest for Justice at the Polls*** in the last issue. I would like briefly to add my own experiences which offer little cause for optimism. I have twice taken up issues relating to elections with the Press Council and the Advertising Standards Authority. On each occasion it proved to be a waste of time. In late May 1983 the Tories, via Saatchi and Saatchi, published an ad alleging that the policies of the Labour and Communist parties were identical on a whole range of issues. One of these was said to be the opposition of both parties to 'secret' union ballots. Then as now, the allegation was completely false in respect of both parties' policies. However, the Press Council does not deal with 'advertisements' and the ASA would not dream of interfering with the 'essential democracy' of party political advertising.

I was particularly incensed by this piece of mendacious advertising since in the case of my own union, the CPSA, the Communists had successfully campaigned with all sections of the left, except Militant, to secure workplace meetings and secret workplace ballots.

I am also concerned about party political broadcasts on television and radio. It was noticeable at the last election that, whereas the NF and BNP each enjoyed a minimum five minute broadcast (free) because they were both prepared to lose 50 deposits each, no party to the left of Labour was 'granted a right of audience'. The threshold was once 30 candidates, until the Communist Party put up 50 candidates and it was then raised to 50. This obviously hurts left parties campaigning extensively on a wide range of issues, rather than concentrating on a single issue or a narrow range of issues.

There is another insidious encroachment into the already limited opportunities for political 'debate' of the party manifestos: the opinion polls. Polls are used to enthuse reluctant voters, lull complacent voters or to write off voting options. In addition, of course, the main commissioners of such non-scientific efforts are the press whose ownership is concentrated in so very few capitalist hands.

D. Shepherd



noticeboard

PUBLIC MEETINGS PROGRAMME

25th January 7.15pm
WORKERS' RIGHTS IN TWO CONTINENTS

Speaker: Astrubal Jimenez; Banana Workers' Union, Columbia
Invited speaker: Dumisani Mbanjwa, National Union of Metalworkers, South Africa

Joint meeting wih the Society of Labour Lawyers

8th March 7.15pm
OFFICIAL SECRETS/SECRET SERVICE

Speakers: Isabel Hilton, journalist, Duncan Campbell, journalist, Geoffrey Robertson QC
Chair: Sarah Spencer, NCCL

Joint meeting with the National Council for Civil Liberties

15th March 7.15pm
LEGAL SERVICES IN THE 1990's: THE GREEN PAPER

Speakers: Richard de Friend, academic, Stephen Sedley QC

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

Non-members: £1
Concessions: 50p

MANCHESTER BRANCH

The MANCHESTER BRANCH of the Haldane Society meets on the 2nd Wednesday of every month at 6.30pm in the Manchester Town Hall, Albert Square, Manchester.
Contact the convenor for further details:
Alison Cantor,
97 Claude Road, Chorltonville,
Manchester M21 2DE
Tel: (061) 881 4017 (evenings).

INTERNATIONAL CONFERENCE ON THE BICENTENARY OF THE DECLARATION OF HUMAN RIGHTS

9, 10 and 11 MARCH 1989
PARIS, SALLE CLEMENCEAU, SENATE – PALACE OF LUXEMBOURG

The International Association of Democratic Lawyers, the international organisation of progressive and socialist lawers of which the Haldane Society is the British Section, is organising a conference on these themes.

The conference is to be held on the bicentenary of 1789, the French Revolution. There will be sessions on: The Declaration of Human Rights in 1789; the enlargement of Human Rights since 1789, including rights of peoples and rights of minorities, economic, social and cultural rights, male and female equality, new technology and new rights, and the right to peace and right to development; and the realisation and guarantee of human rights. There will be many workshops and round-table discussions.

The Haldane Society should be represented at this conference by as strong a British contingent as possible. Would all comrades who are interested in participating please contact:

Bill Bowring, 4 Verulam Buildings, Gray's Inn, London WC1R 5LW. Tel: 01 405 6114

THE EMPLOYMENT LAW BULLETIN is a highly successful quarterly journal published by the Employment Law Committee of the Haldane Society. It has a wide circulation among Trade Union, Trades Councils and labour lawyers. If you wish to subscibe, the annual rates (four issues) are as follows:

Individuals 1–5 copies	£5.00 per sub
Organisations 1–10 copies	£10.00 per sub
10–50 copies	£5.00 per sub
50 or more copies	price negotiable

All prices include postage.
Please send orders with payment to: Keir Starmer
285 Archway Road London N65AA

CLASSIFIEDS

THE LESBIAN & GAY SUB-GROUP of the Haldane Society are planning to set up a lesbian & gay legal archive. The archive would be available for research and would provide a focus, on a month to month basis, for discussion of developments in the law relating to lesbians & gays.
As our group has limited resources we would welcome any contribution you could make in the form of reports of cases, case notes, articles or any printed matter relating to the law as it affects lesbians and gay men. The archive will be housed at: Wellington Street Chambers, 35 Wellington Street, London WC2
Any contribution should be addressed c/o Linda Webster.

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

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

SUBCOMMITTEES

CRIME	Anita Leaker, Dwek Wyman and Walters, 317 Kentish Town Road, London NW5
EMPLOYMENT	Jo Delahunty, 14 Tooks Court, Cursitor Street, London EC4
GAY AND LESBIAN RIGHTS	David Gere, 2 Plowden Buildings, Temple, London EC4
HOUSING	Edmund Jankowski, 25 Keppel Road, London E6 2BD
INTERNATIONAL	Bill Bowring, 4 Verulam Buildings, Gray's Inn, London WC1R 5LW
LEGAL SERVICES	Kate Marcus, 96 Chichele Road, London NW2 Rhys Vaughan, 382 Dickenson Road, Longsight, Manchester M13 0WQ
MENTAL HEALTH	Andrew Buchan, 1 Dr Johnson's Buildings, Temple, London EC4
RACE AND IMMIGRATION	to be announced.
RECRUITMENT	Beverley Lang, 1 Dr Johnson's Buildings, Temple, London EC4
WOMEN	Alison Lee, c/o 14 Tooks Court, Cursitor Street, London EC4

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MEMBERSHIP APPLICATION FORM

Complete this form (Block capitals please) **and return it to:**
Tony Metzer c/o 1 Dr. Johnson's Buildings, Temple, London EC4.

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to the credit of the **HALDANE SOCIETY OF SOCIALIST LAWYERS** account No. 29214008 National Girobank, Bootle, Merseyside G1R 0AA (sorting code 72 00 05) the sum of £8 / £10 / £12 / £20 / £30 (please delete as appropriate) now and thereafter on the same date every year until cancelled by me in writing.
(To be completed by Membership Secretary
Please quote our reference_____)

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National Affiliates	£30.00
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Haldane Society of Socialist Lawyers